(UPERIOR COURT OF CALIFORNI(
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 04/09/2013 TIME: 11:10:00 AM DEPT: C-71

JUDICIAL OFFICER PRESIDING: Ronald S. Prager
CLERK: Lee Ryan
REPORTER/ERM: Not Reported
BAILIFF/COURT ATTENDANT: Lynn Wilks

CASE NO: **37-2011-00102593-CU-OE-CTL** CASE INIT.DATE: 12/16/2011
CASE TITLE: **Felczer vs. Apple Inc [IMAGED]**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

EVENT TYPE: Motion Hearing (Civil)

APPEARANCES

The Court, having taken the above-entitled matter under submission on 04/05/13 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

The Court rules on plaintiff Brandon Felczer's ("Plaintiff") motion for leave to amend the first amended complaint ("FAC") as follows:

After taking the matter under submission, the Court confirms its tentative ruling.

The motion is granted for the reasons stated below.

Plaintiff seeks leave to amend the FAC to add an additional itemized wage statement cause of action, additional class representatives, and to reinstate a rest break claim pursuant to Code of Civil Procedure section 473 subd. (a)(1).

A court's discretion to permit amendment of the pleadings is exercised liberally. (See *Nestle v. Santa Monica* (1972) 6 Cal.3d 920, 939.) Denial is rarely justified. (*Morgan v. Super. Ct.* (1959) 172 Cal.App.2d 527, 530.) In addition, courts do not consider the validity of the proposed amended pleading in deciding the motion since the opposing party will have the opportunity to attack the validity of the amended pleading via a demurrer, motion to strike, etc. (See *Kittredge Sports Co. v. Super Ct.* (1989) 213 Cal.App.3d 1045, 1048.) "[I]t is an abuse of discretion to deny leave to amend where the opposing party was not misled or prejudiced by the amendment." (*Id.* at p. 1048; *Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 761.) Furthermore, delay alone is not grounds for denial of this motion. (See *Kittredge Sports Co. v. Super. Ct.* (1989) 213 Cal.App.3d 1045, 1048; *Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 563-565.)

Here, Defendant has not made an adequate showing of prejudice to justify denial of this motion. Plaintiff informs the Court that Defendant has taken only one deposition and propounded written discovery. Plaintiff contends that Defendant would only need to redepose Plaintiff on the rest break issue and have not taken the depositions of the proposed class representatives at all. Also, the deposition of Defendant's person most qualified for retail rest breaks has not yet been taken. Furthermore, no trial date has been set and the class certification motion has not yet been heard.

In the event that the Court granted Plaintiff's requested amendment, Defendant asked the Court to impose conditions. However, conditions are rarely justified (See *Armenta ex rel. City of Burbank v. Mueller Co.* (2006) 142 Cal.App.4th 636, 642) and Defendant has failed to show prejudice.

With respect to the relation back doctrine, "an amendment relates back to the original complaint if the amendment: (1) rests on the same general set of facts; (2) involves the same injury; and (3) refers to the same instrumentality. (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 408–409.) In *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1199 (hereafter "*Amaral*"), the court stated that "it is the sameness of the facts rather than the rights or obligations arising from those fact that is determinative." "Thus, amendments alleging a new theory of liability against the defendant have been found to relate back to the original complaint, so long as the new cause of action is based on the same set of facts previously alleged. (*Id.* at pp. 1199-1200; see also *Grudt v. L.A.* (1970) 2 Cal.3d 575, 583-584; *Lamonte v. Wolfe* (1983) 142 Cal.App.3d 375, 378-380.) Likewise, an amendment seeking new damages relates back to the original complaint if such damages resulted from the same operative facts i.e., the same misconduct and the same injury previously complained of. (*Amaral, supra,* 163 Cal.App.4th at pp. 1199-1200.) Notably, Defendant's cited cases did not involve the circumstance in which a prior claim was requested to be reinstated in an amended complaint.

Here, as to the first element, the rest break claim is grounded in the same general set of circumstances. Notably, the claim was previously set forth in the original Complaint.

As to the second element, the new claims are based on the same injuries alleged in the Complaint. Here, the injuries and damages were each the result of an illegal break policy-a policy which Defendant verified controls the employees' ability to take both rest and meal breaks, and is contained on the same piece of paper. (Reply, Exh. T.)

As to the third element, the new claims are based on the same instrumentality. Here, the instrumentality is the unlawful break policy, which all of the putative class members were subjected to, and which caused the class members to miss breaks, both meal and rest. Said break policy was alleged throughout all versions of Plaintiff's complaints. (Complaint, ¶28; FAC, ¶29; proposed SAC,¶36.)

With respect to proposed plaintiff Ramsey Hawkins' Private Attorney General Act ("PAGA") claim, the Court notes that Plaintiff stated on page 12 of his moving papers his intention to amend to add a PAGA claim and provided a redlined version of the proposed SAC with his moving papers to show where the proposed amendments are. (Moving Papers, Exh. B.) This is sufficient compliance with California Rules of Court, rule 3.1324. Furthermore, Plaintiff provided evidence that Defendant had indicated that it only opposed the amendment as to the rest break claim. (*Id.* at Exh. C.)

As to the contention that Plaintiff failed to meet and confer, Plaintiff provided evidence to show that Defendant was served with a copy of the letter sent to the Labor Workforce and Development Agency ("LWDA"). (Moving Papers, Exh. P.) In addition, Plaintiff sent Defendant a letter stating that the

proposed SAC would include Hawkin's PAGA claim. (Reply, Exh. U.)

However, the Court agrees with Defendant that Hawkins claim does not relate back since it not based on the same set of facts allege in the FAC. (See Proposed SAC (redline), ¶¶29-31, 107.)

IT IS SO ORDERED.

Ronald S. Prager

Judge Ronald S. Prager

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

Central
330 West Broadway
San Diego, CA 92101

SHORT TITLE: Felczer vs. Apple Inc [IMAGED]

CLERK'S CERTIFICATE OF SERVICE BY MAIL	CASE NUMBER: **37-2011-00102593-CU-OE-CTL**

I certify that I am not a party to this cause. I certify that a true copy of the attached minute order was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 04/09/2013.

Clerk of the Court, by: L Ryan L. Ryan ; Deputy

TYLER J BELONG
HOGUE & BELONG
430 NUTMEG STREET SECOND FLOOR
SAN DIEGO, CA 92103

JULIA C RIECHERT
ORRICK, HERRINGTON & SUTCLIFF LLP
1000 MARSH ROAD
MENLO PARK, CA 94025

JESSICA R PERRY
ORRICK, HERRINGTON & SUTCLIFFE, LLP
1000 MARSH ROAD
MENLO PARK, CA 94025

LYNN C HERMLE
ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 MARSH ROAD
MENLO PARK, CA 94025

JEFFREY L HOGUE
HOGUE & BELONG
430 NUTMEG STREET, SECOND FLOOR
SAN DIEGO, CA 92103

☐ Additional names and address attached.