

SUPERIOR COURT OF CALIFORNIA )  
COUNTY OF SAN DIEGO  
CENTRAL

MINUTE ORDER

DATE: 04/09/2013

TIME: 11:29:00 AM

DEPT: C-71

JUDICIAL OFFICER PRESIDING: Ronald S. Prager

CLERK: Lee Ryan

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

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 **modifies** the ruling on defendant Apple Inc.'s ("Defendant") demurrer and motion to strike to the second amended complaint ("SAC") as follows:

As a preliminary matter, the Court declines to strike plaintiffs Brandon Felczer ("Felczer") et al. (sometimes collectively "Plaintiffs") opposition on timeliness grounds.

The demurrer is overruled and the motion to strike is denied in part and granted in part with leave to amend for the reasons stated below.

As to plaintiff Ramsey Hawkins' PAGA claim based on Labor Code sections 98.6 ("section 98.6") and 232.5 ("section 232.5"), Plaintiffs set forth sufficient facts to support this claim. Section 232.5 subd. (a) states that an employer may not, among other things, require an employee to "refrain from disclosing information about the employer's working conditions." Plaintiff alleged that Defendant's policies contained language purporting to preclude Plaintiffs from disclosing or discussing their working conditions. (SAC, ¶¶29-30.) Since it is well-settled that a demurrer does not lie to portions of a complaint, the court need not address whether Plaintiffs have stated facts sufficient to state a claim as to section 98.6. (*Kong v. City of Hawaiian Gardens Redevelopment Agency* (2003) 108 Cal.App.4<sup>th</sup> 1028, 1046.) However, with respect to Defendant's request to strike section 98.6, it correctly noted that Plaintiffs failed to allege facts stating that Hawkins disclosed information, filed a complaint regarding those policies, or that Defendant actually retaliated against him or other putative class members. The allegation that Hawkins, among others, was "damaged" "[a]s a direct and proximate result of Defendants'

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unlawful actions" is insufficient. (Complaint, ¶34.)

As to the relation back doctrine, Defendant's argument falls as to the rest break claim for the reasons set forth in the Court's ruling on the motion for leave to amend. Thus, plaintiff Joseph Carco's ("Carco") rest break claim is not time-barred.

As to the contention that the final pay, wage statement, and paycheck claims of certain Plaintiffs are time-barred, the Court notes, as a preliminary matter, that Defendant had previously raised these arguments with Judge Curiel, who denied the motion. (Reply, Exhs. V, W.)

Labor Code section 200.5 extended the statute of limitation. Labor Code section 2699 subd. (a) provides that actions taken by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees "may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees." Thus, the statute of limitations is three years when either the DLSE or an aggrieved employee brings a PAGA claim. Hence, even without an unfair competition claim, Plaintiffs' paycheck, final pay, and wage statement claims would be subjected to a limitations period of three years, not one. However, since Plaintiffs allege an unfair business practices claim, the paycheck and wage statement claims have a four-year statute of limitations period.

Nevertheless, Carco's claim for final pay is time-barred. The applicable limitations period is three years. (*Rineda v. Bank of America, N.A.*, (2010) 50 Cal.4th 1389, 1395.) Plaintiffs alleged that his employment terminated on June 20, 2008. (SAC, ¶18.) The original complaint was not filed until December 16, 2011.

Carco, Felczer, and Ryan Goldman's paycheck and wage statement claims are derivative in nature. Thus, they relate back to the filing of the original complaint and are not time-barred.

Finally, the Court concludes that Plaintiffs properly defined the limitations periods for Subclass Nos. 1 and 3 for the reasons stated above.

Plaintiffs are directed to file and serve their third amended complaint by April 24, 2013.

**IT IS SO ORDERED.**

*Ronald S. Prager*

Judge Ronald S. Prager