SANCHEZ, et al. v. MCDONALD'S RESTAURANTS OF CALIFORNIA, et al.

(1) PLAINTIFFS' MOTION FOR SUMMARY ADJUDICATION
(2) MCDONALD'S CROSS-MOTION FOR SUMMARY ADJUDICATION
(3) MOTIONS TO SEAL

Date of Hearing: **April 20, 2017**
Department: 308
Case No.: BC499888

RULING

Plaintiffs' motion for summary adjudication is GRANTED.

McDonald's cross-motion for summary adjudication is DENIED.

McDonald's motions to seal are GRANTED.

PLAINTIFFS' MOTION FOR SUMMARY ADJUDICATION

By this motion, Plaintiffs David Cruz, Ines Mendez Merino, and Jonathan Valentin (collectively, "Plaintiffs"), on behalf of themselves and the certified Overtime Subclass, move for summary adjudication as to the issue of liability[1] of Defendant McDonald's Restaurants of California, Inc. ("McDonald's") on the 4th cause of action[2] for failure to pay overtime wages. The Overtime Subclass is defined as "all Class Members who worked a shift that began on one calendar day and ended the next calendar day (an 'overnight shift') followed by a shift that began on the same calendar day as the overnight shift ended, who were not paid all overtime for all time worked in excess of eight hours in a 24-hour period." See Ruling on Submitted Matters Re: Motion for Class Certification and Related Motions, pp.6-7.

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[1]   CCP §437c(f)(1) provides: "A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if the party contends that the cause of action has no merit, that there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action, that there is no merit to a claim for damages, as specified in Section 3294 of the Civil Code, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs. A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." (italics supplied). "Notwithstanding subdivision (f), a party may move for summary adjudication of a legal issue or a claim for damages other than punitive damages that does not completely dispose of a cause of action, affirmative defense, or issue of duty pursuant to [subdivision (t)]" of CCP §437c. Here, the Court allowed Plaintiff to move (and McDonald's to cross-move) on the legal issue of McDonald's liability for failure to pay overtime wages.

[2]   The operative complaint is the Third Amended Complaint filed on 6/6/14.

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It is Plaintiffs' position that McDonald's method of calculating overtime violates Labor Code §510(a), which requires employers to pay an overtime premium of 1½ times the employee's regular rate of pay for "[a]ny work in excess of eight hours in one *workday* [defined as 'any consecutive 24-hour period commencing at the same time each calendar day'[3]]" and twice the employee's regular rate of pay for "[a]ny work in excess of 12 hours in one *day* [also defined as 'any consecutive 24-hour period commencing at the same time each calendar day'[4]]." Plaintiffs contend that "McDonald's violated this requirement because it configured its electronic timekeeping system to attribute all hours worked by a class member on a specific shift to the date on which that shift *began*, rather than the date on which the work was actually *performed*," resulting in failure to pay overtime to class members who worked an overnight shift followed by another shift the next day and who worked more than eight hours in a 24-hour period. See Motion, 2:7-13 (italics in original).

To illustrate, Plaintiffs present evidence that: Plaintiff Mendez Merino worked an overnight shift that began at 10:00 p.m. on December 28, 2013 and ended at 5:58 a.m. on December 29, 2013 (UMF No. 15) and worked another shift on December 29, 2013 that began at 1:59 p.m. and ended at 10:07 p.m.[5] (UMF No. 17); McDonald's In-Store Processor (ISP) software attributed all 7.97 hours of compensable time from the shift described in UMF No. 15 to the payroll date of December 28, 2013 (UMF No. 16) and all 7.63 hours of compensable time from the shift described in UMF No. 17 to the payroll date of December 29, 2013 (UMF No. 18); and no overtime was identified or paid to Plaintiff Mendez Merino for hours worked on December 28, 2013 or December 29, 2013 (UMF No. 19). Plaintiffs also present evidence that all class members had a similar experience. See UMF No. 20.

In its responsive separate statement, McDonald's states that it does **not** dispute that: "the data reflects that Ms. Mendez Merino recorded a punch at 10: 00 p.m. on December 28, 2013 and recorded another punch at 5:58 a.m. on December 29, 2013;" "the data reflects that the ISP attributed all 7.97 hours of compensable time from the shift described in Statement 15 to the Payroll Date of December 28, 2013;" "the data reflects that Ms. Mendez Merino recorded a punch at 1:59 p.m. on December 29, 2013 and recorded another punch at 10:07 p.m., and recorded punches in and out for one 30-minute unpaid meal period;" "the data reflects that the ISP attributed all 7.63 hours of compensable time from the shift described in Statement 17 to the Payroll Date of December 29, 2013;" and "the data reflects that no overtime hours were identified or paid to Ms. Mendez Merino for hours recorded on December 28, 2013 or December 29, 2013." See McDonald's Responses to UMF Nos. 15-19. The Court recognizes that McDonald's qualifies its responses to UMF Nos. 15-19 by "disput[ing] that the data alone establishes that Ms. Mendez Merino worked at a particular time" and/or by

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[3]   See Labor Code §500(a).

[4]   See Labor Code §500(a).

[5]   This shift included a 30-minute unpaid meal period. See Plaintiffs' UMF No. 17.

disputing Dr. Breshears' competency to testify. However, McDonald's cites no evidence to contradict the fact that Plaintiff Mendez Merino worked at the times reflected by her time punches, and McDonald's objections to Dr. Breshears' competency to testify are overruled. Thus, UMF Nos. 15-19 are effectively undisputed.

Similarly, while McDonald's states that UMF No. 20 is "[d]isputed," it nevertheless states that "[f]or purposes of Plaintiffs' Motion and McDonald's Cross-Motion only, McDonald's agrees that: Plaintiffs Mendez Merino, Cruz, and Valentin—and all Overtime Subclass members—experienced at least one week during the class period in which they recorded a shift that began on one calendar day and ended the next calendar day followed by a shift that began on the same calendar day as the overnight shift ended, and were paid regular wages for hours that McDonald's would have paid as overtime or double-time hours if McDonald's had calculated their hours by reference to a calendar date." See McDonald's Response to UMF No. 20.

McDonald's also confirms Plaintiffs' description of its method of calculating overtime for employees who work "a continuous shift that begins before the workday divide and ends after the workday divide." See McDonald's Cross-Motion/Opposition, [6] 3:20-22. McDonald's states that it does not divide shifts between workdays,[7] and instead, "[it] treats the shift as continuous, and it attributes all of the shift's hours to the workday on which the shift began." See McDonald's Cross-Motion/Opposition, 3:24-25. McDonald's further states that "[it] has calculated overtime in this way consistently throughout the class period in this case." Id., 3:25-26.

According to McDonald's, its method of calculating daily overtime complies or substantially complies with Labor Code §510(a) and its legislative purpose of promoting employee protection.[8] Id., §§III.A.1 and III.A.2.

McDonald's contends that by treating an overnight shift as a continuous shift associated with the date on which that shift begins (as opposed to splitting it between two separate dates), it ensures that employees who work shifts across the workday divide are paid overtime when they work in excess of eight hours. Id., 6:25-7:14, 9:4-19.

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[6] McDonald's submitted a single memorandum of points and authorities in support of its cross-motion for summary adjudication and its opposition to Plaintiffs' motion for summary adjudication.

[7] As McDonald's uses it in this specific instance, the term "workday" appears to mean a calendar day. As will be discussed later, McDonald's claims that its "workday" is+ from 4:00 a.m. to 3:59 a.m. See McDonald's Cross-Motion/Opposition, 7:27.

[8] As McDonald's correctly describes it, the requirement that employers pay an overtime premium for work in excess of eight hours in a workday was added to Labor Code §510(a) through passage of Assembly Bill 60 (also called the "Eight-Hour-Day Restoration and Workplace Flexibility Act of 1999." In enacting the bill, "the Legislature affirm[ed] the importance of the eight-hour workday, declare[d] that it should be protected, and reaffirm[ed] the state's unwavering commitment to upholding the eight-hour workday as a fundamental protection for working people." See 1999 Cal. Legis. Serv. Ch. 134 (A.B. 60) (WEST).

But as Plaintiffs correctly contend in the reply, this is not the extent of McDonald's obligation to pay overtime. See Reply, 6:14-19 (citing to <u>Jakosalem v. Air Serv Corporation</u> (N.D. Cal. Dec. 15, 2014, No. 13-CV-05944-SI) 2014 WL 7146672). Rather, "overtime calculations should be based on the amount of work completed by an employee *during any single twenty-four hour workday period*, regardless of whether the employee works continuously through the day divide." See <u>Jakosalem</u>, *supra*, 2014 WL 7146672, at *3 (italics supplied). Here, Plaintiffs' overtime claim is based on McDonald's failure to pay for overtime hours worked from multiple shifts in a 24-hour period, not just a single shift spanning two days.

Responding to Plaintiffs' argument that it has not established any workday for overtime calculation purposes,[9] McDonald's claims that it maintains a set workday—i.e., from 4:00 a.m. to 3:59 a.m. See McDonald's Cross-Motion/Opposition, 7:15, 7:27-28, 10:12-14. McDonald's states that the 4:00 a.m. workday start time is consistent with: (1) the time its managers were expected to run the time recorder close;[10] (2) its Labor Start of Day;[11] (3) its crew scheduling;[12] and (4) the time the breakfast "daypart" at its 24-hour restaurants begins.[13] Id., 1:6-10, 2:11-3:15, 7:27-8:12. As the workday start time is tied to these other times, it appears to be McDonald's position that the 4:00 a.m.-3:59 a.m. workday is presumptively valid. Id., 7:22-8:12 (citing to <u>Cummings v. Starbucks Corp.</u> (C.D. Cal. May 14, 2013, No. CV 12-06345-MWF FFMX) 2013 WL 2096435, at *4, which states that "there is no burden to prove a legitimate business purpose when an employer's workweek/workday designation coincides with its employees' work schedule").

Preliminarily, McDonald's is correct (and Plaintiffs agree) that a workday need not be a calendar day. See McDonald's Cross-Motion/Opposition, 7:16-18; see also Plaintiffs' Motion 5:19. "A 'workday' is not necessarily a calendar day and instead is 'any consecutive 24–hour period commencing at the same time each calendar day.' '[Labor Code] Section 500 undoubtedly affords an employer *significant flexibility* in the designation of a workweek' and workday." See <u>Cummings</u>, *supra*, 2013 WL 2096435, at *4 (emphasis in original)."

The problem, however, is that McDonald's does not calculate overtime based on a 4:00 a.m. to 3:59 a.m. workday.[14] As Plaintiffs correctly contend in the reply, McDonald's has

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[9]   See, e.g., Plaintiffs' Motion, 5:6-9.

[10]   The "time recorder close" is the process of opening and closing the ISP's time keeping function. See McDonald's UMF No. 28.

[11]   This is the workday to which employee time punches are assigned for purposes of calculating labor costs. See McDonald's UMF No. 31.

[12]   See McDonald's UMF No. 35.

[13]   See McDonald's UMF No. 36.

[14]   If McDonald's calculated overtime based on a 4:00 a.m. to 3:59 a.m. workday, under the example provided above regarding Plaintiff Mendez Merino's overnight shift spanning December 28, 2013 and December 29, 2013 (10:00 p.m. to 5:58 a.m.), all hours worked on that shift should not have been attributed to the 28th like they were. Instead, only hours worked from 10:00 p.m. to 3:59 a.m. should

expressly conceded that it does not calculate overtime based on such a workday, and that it paid less than what it would have paid class members if it split shifts at 4:00 a.m. See McDonald's Responses to UMF Nos. 11, 13 and McDonald's UMF No. 45. As Plaintiffs also point out, McDonald's never mentioned a 4:00 a.m. to 3:59 a.m. workday in discovery. For example, Plaintiff Cruz propounded a special interrogatory that asked: "Describe how YOU have defined the 'workday' for purposes of calculating overtime for COVERED EMPLOYEES during the CLASS PERIOD including any changes to that definition during the CLASS PERIOD, and if different workdays are used for different restaurants or employees describe how and by whom those workdays are established." See McDonald's Responses to Plaintiff Cruz's Special Interrogatories, Set One (attached to Murray Declaration as Exhibit L), p.12. In response, McDonald's simply referred Plaintiffs to documents already produced (particularly, a manual describing how the ISP assigns time punches to a "payroll date" based on the date the shift began). Id., p.13; see also Reply, 9:11-14.

Citing to Downtown Palo Alto Com. for Fair Assessment v. City Council (1986) 180 Cal.App.3d 384 and Hernandez v. BCI Coca-Cola Bottling Co. (C.D. Cal. Apr. 12, 2012, No. CV 11-9484 SVW SSX) 2012 WL 12272348, judgment entered, (C.D. Cal. May 9, 2012, No. CV 11-09484 SVW SSX) 2012 WL 12092593, and aff'd, (9th Cir. 2014) 554 F.App'x 661, McDonald's also contends that it substantially complied with Labor Code §510(a) and its purpose. See McDonald's Cross-Motion/Opposition, 8:23-9:3.

McDonald's substantial compliance argument is also not well-taken. Neither of the cases cited by McDonald's applies the "substantial compliance" test to an alleged violation of Labor Code §510. Downtown Palo Alto involved the notice provisions of Streets & Highways Code §36522, while Hernandez involved the wage statement statute (Labor Code §226). Further, as Plaintiffs note, the district court in Hernandez indicated that it was "aware of no decision expressly applying the 'substantial compliance' doctrine to an alleged violation of Section 226(a) (either directly or through a PAGA action)," but that "Plaintiff concedes . . . that to the extent Section 226(a)'s purpose is satisfied, 'substantial compliance' is the proper standard." See Hernandez, supra, 2012 WL 12272348, at *7 (italics supplied). As Plaintiffs put it, "[d]icta based on a party's concession in an unpublished federal decision addressing a different Labor Code section provides no support for McDonald's attempt to create a new 'substantial compliance' defense to core worker overtime protections." See Reply, 11:17-19. Absent binding precedent applying the "substantial compliance" test to the Labor Code's overtime statute, the Court will not engraft such a test here.

Finally, McDonald's states that "[i]f Plaintiffs prevail on their overtime claim, the class period for determining who is in the class and any liability for class members should

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have been attributed to the 4:00 a.m. to 3:59 a.m. workday beginning on the 28th, and hours worked from 4:00 a.m. to 5:58 a.m. should have been attributed to the 4:00 a.m. to 3:59 a.m. workday beginning on the 29th.

begin on March 20, 2010, four years preceding the date of Plaintiffs' second amended complaint (March 20, 2014), which added Plaintiffs Cruz, Mendez, and Valentin, and alleged for the first time the overtime theory certified by the Court." See McDonald's Cross-Motion/Opposition, 13:3-6. McDonald's argument is not well-taken. The certified overtime theory falls within the broader allegations of the original complaint, which sought recovery of "unpaid and illegally calculated overtime compensation" (¶4) and alleged that McDonald's "fail[ed] to pay overtime at one and one-half (1 ½) or double the regular rate of pay as provided by Labor Code §§510, 1194, and IWC Wage Order No. 5-2001, §3" and "illegally and inaccurately record[ed] time in which PLAINTIFF and CLASS MEMBERS worked (¶25). Further, as Plaintiffs correctly contend, the allegations in the second amended complaint relate back to the original complaint. See Pointe San Diego Residential Community, L.P. v. Procopio, Cory, Hargreaves & Savitch, LLP (2011) 195 Cal.App.4th 265, 276–77 ("Under 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. An amended complaint relates back to an earlier complaint if it is based on the same general set of facts, even if the plaintiff alleges a different legal theory or new cause of action."). Plaintiff Sanchez's lack of standing to assert the overtime claim does not change the result. "Even where new plaintiffs are substituted or added after the statute of limitations has run, the same [relation back] rule applies." See Jensen v. Royal Pools (1975) 48 Cal.App.3d 717, 721; see also San Diego Gas & Elec. Co. v. Superior Court (2007) 146 Cal.App.4th 1545, 1550, as modified on denial of reh'g (Feb. 21, 2007) ("An amended pleading will also relate back if it . . . substitutes a plaintiff with standing in place of a plaintiff who lacks standing.").

For all of the above reasons, Plaintiffs' motion for summary adjudication is GRANTED.

McDonald's objections to the Supplemental Breshears Declaration are OVERRULED.

McDonald's objections to the Breshears Declaration in Support of Plaintiffs' Reply are OVERRULED.

Plaintiffs' requests to strike ¶¶4-6 of the J. Lopez Declaration, ¶¶5-7 of the Lewis Declaration, and ¶¶7-15 and 18 of the White Declaration are GRANTED.

MCDONALD'S CROSS-MOTION FOR SUMMARY ADJUDICATION

As noted above, McDonald's cross-motion for summary adjudication relies upon the same arguments as its opposition to Plaintiffs' motion for summary adjudication.

McDonald's cross-motion for summary adjudication is DENIED.

MCDONALD'S MOTIONS TO SEAL

McDonald's moves to seal unredacted versions of the following documents filed by Plaintiffs in support of their motion for summary adjudication:[15]

- Hoes Deposition excerpts and Exhibit 3 thereto (portions of Exhibit A to the Murray Declaration)
- Jones Deposition excerpts and Exhibit 5 thereto (portions of Exhibit C to the Murray Declaration)
- Lewis Deposition excerpts and Exhibits 5 and 10 thereto (portions of Exhibit E to the Murray Declaration)]
- J. Lopez Deposition excerpts and Exhibit 29 thereto (portions of Exhibit H to the Murray Declaration)
- L. Lopez Deposition excerpts and Exhibits 17, 19, and 20 thereto (portions of Exhibit J to the Murray Declaration)
- Galvan Declaration Re: Class Certification and Exhibits F and G thereto (portions of Exhibit R to the Murray Declaration

McDonald's also moves to seal unredacted versions of the following documents lodged by Plaintiffs in support of their reply in support of their motion for summary adjudication:

- Lewis Deposition excerpts (Exhibit A to Murray Declaration)
- J. Lopez Deposition excerpts and Exhibit 35 thereto (Exhibit B to Murray Declaration)

California Rules of Court, rule 2.550(d) provides:

> The court may order that a record be filed under seal only if it expressly finds facts that establish:
> (1) There exists an overriding interest that overcomes the right of public access to the record;
> (2) The overriding interest supports sealing the record;
> (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
> (4) The proposed sealing is narrowly tailored; and
> (5) No less restrictive means exist to achieve the overriding interest.

According to Jesse Lopez, McDonald's Director of Operations, the documents sought to be sealed "disclose commercially sensitive information." See J. Lopez Declaration, ¶4. He further states that the information contained in the documents "would have economic value to competitors by allowing them to copy management systems and tools which McDonald's has developed for its own use through substantial effort, time, and cost," and that "[t]he release of this information would harm McDonald's by

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[15] See also J. Lopez Declaration Re: Motion to Seal, ¶3 and Earnest Declaration Re: Motion to Seal, ¶3.

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providing competitors an unfair advantage in the quick service restaurant industry." Id., ¶5.

The Court GRANTS the motion to seal the above documents. The Court finds that McDonald's has an overriding interest in protecting its business methods and processes and such overriding interest will be prejudiced by disclosure, placing McDonald's at a competitive disadvantage. The Court also finds that the proposed sealing is narrowly tailored to promote McDonald's overriding interest in these commercially sensitive materials. The Court also notes that certain of the documents have previously been ordered sealed in accordance with CRC rule 2.550(d).