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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

FILED
ALAMEDA COUNTY

JUL 15 2005

CLERK OF THE SUPERIOR COURT

By Wesen Mengiste Deputy

ANDREA SAVAGLIO, JAMES DAVIS,
JERRILYN NEWLAND, and CHARLOTTE
JOHNSON, on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

WAL-MART STORES, INC., a Delaware
corporation, SAM'S WEST, INC., a California
corporation, GEORGE RODRIGUEZ, VINCENT
MARTINEZ, and DOES 1 through 100,

Defendants.

Case No.: C-835687

ORDER DENYING DEFENDANTS'
MOTION FOR SUMMARY
ADJUDICATION OF PLAINTIFFS'
INJUNCTIVE AND DECLARATORY
CLAIMS.

DATE: July 15, 2005

TIME: 9:00 am

DEPT: 22

The motion of Defendants Wal-Mart et al for summary adjudication of the claims for injunctive and declaratory relief came on regularly for hearing on July 15, 2005, in Department 22, the Honorable Ronald M. Sabraw, presiding. The Court issued a tentative decision and the parties submitted to the tentative decision.

IT IS HEREBY ORDERED that defendants' motion for summary adjudication, or in the alternative, judgment on the pleadings is DENIED.

The motion concerns the meal period claims, the rest break claims and the off the clock claims. Because this is a motion for summary adjudication, Defendants must prove these on the basis of undisputed facts.

Defendants argue that they are entitled to summary adjudication of all claims for injunctive relief on four grounds: (1) Plaintiffs possess an adequate remedy at law and

1 that equitable relief is therefore unavailable; (2) Plaintiffs seek overbroad injunctive
2 relief; (3) Wal-Mart's express policies are lawful; and (4) Plaintiffs cannot factually
3 establish that its practices cause the alleged violations at issue.

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PLAINTIFFS MAY NOT HAVE AN ADEQUATE REMEDY AT LAW.

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Wal-Mart argues that Plaintiffs possess an adequate remedy at law for the
8 misconduct asserted and that injunctive relief, necessarily equitable in nature, is therefore
9 unavailable. The remedy at law for each class member is the right to bring an
10 administrative claim at the DLSE and the right to bring a civil action for damages for the
11 allegedly missed meal periods and rest breaks as well as the alleged off the clock work.

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The Court considers (1) whether monetary compensation would afford adequate
relief, (2) whether it would be extremely difficult to ascertain the amount of
compensation that would afford adequate relief, and (3) whether an injunction is
necessary to prevent a multiplicity of judicial proceedings. Civil Code § 3422. The
possibility of monetary relief does not in itself mean that monetary relief will necessarily
be adequate in the context of this case. Classwide injunctive relief can be well suited to
circumstances where, as here, the small-dollar-value claims for the loss of meal periods
and rest breaks and off the clock work may never find their way to an administrative
hearing and therefore would have no deterrent effect on Wal-Mart's policies and
practices. In addition, the adequacy of the DLSE remedy to redress individual monetary
claims does not speak to the question whether Plaintiffs as a group are entitled to Court-
ordered restraints upon Defendants' future behavior.

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1 Therefore, Plaintiffs are not barred from seeking injunctive relief by the
2 availability of administrative proceedings and court proceedings to recover wages
3 allegedly due.
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5 PLAINTIFFS ARE NOT REQUIRED TO DEFINE THE PROPOSED INJUNCTIVE
6 RELIEF WITH CERTAINTY.
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8 Wal-Mart argues that a court may not issue a broad injunction to simply obey the
9 law in the future. Such an injunction could unfairly, “subject[] a person to contempt
10 proceedings for committing at any time in the future some new violation unrelated to the
11 original allegations.” *City of Redlands v. County of San Bernardino*, 96 Cal. App. 4th
12 398, 416 (2002). Wal-Mart points out, correctly, that the injunctive relief requested in the
13 Complaint is vague.
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15 The Court may, however, enjoin *types* of unlawful behavior. The *Redlands* court,
16 while confirming the prohibition against generic injunctions to “obey the law,” also
17 affirmed the trial court’s grant of an injunction “to restrain the person from committing
18 similar or related unlawful activity” in the future. *Id.* In this case more specifically, the
19 Court may, after trial and if it deems such relief appropriate, fashion its own injunctive
20 remedy. See *Abbott Laboratories v. Mead Johnson & Co.* (7th Cir. 1992) 971 F.2d 6, 22-
21 23 (cautioning trial courts against focusing upon the most drastic remedies requested by
22 plaintiffs to the exclusion of less severe remedies and reminding the trial courts that they
23 retain a great deal of flexibility when fashioning equitable relief and can develop
24 remedies of their own).
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1 Plaintiffs' Opposition proposes several examples of narrow injunctions that might
2 redress some of their alleged wrongs on a prospective basis. Opp. at 13-17. The Court
3 does not make any decision on the propriety of any of those specific proposals.

4 Plaintiffs are thus not prevented from seeking *any* form of injunctive relief merely
5 because *certain* types of such relief are unavailable as a matter of law.
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8 PLAINTIFFS' CLAIMS ARE NOT LIMITED TO THE LEGALITY OF WAL-MART'S
9 EXPRESS POLICIES.

10 Wal-Mart argues that its express written policies are within the law. The Court
11 does not make any finding regarding the lawfulness of Wal-Mart's express written
12 policies. The Court finds that Plaintiffs' claims concern both the lawfulness of Wal-
13 Mart's express written policies and the lawfulness of how Wal-Mart applies or
14 implements those policies. As stated in the class certification Order, "[i]f Wal-Mart's
15 policies as written or implemented discouraged employees from taking their full rest
16 breaks or routinely failed to ensure that they took their meal breaks, the Court could order
17 appropriate injunctive relief to ensure that Wal-Mart complied with the requirements of
18 the Wage Orders."
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21 Wal-Mart argues that the DLSE has proposed new regulations to the effect that
22 employers are not required to *ensure* their employees take mandated meal periods. DLSE
23 decisions, although informative, are not binding on the Court. *Bell v. Farmers Ins. Exch.*
24 (2001) 87 Cal. App. 4th 805, 815 (DLSE opinions, "while not controlling upon the courts
25 by reason of their authority, do constitute a body of experience and informed judgment to
26 which courts and litigants may properly resort for guidance.") The Court will not revisit
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1 the issue of whether Wal-Mart must compel its employees to take meal periods in the
2 future based on the existence of proposed DLSE regulations. Additionally, even if the
3 proposed DLSE meal break regulations were adopted as final, the Court could still issue
4 an injunction with regard to the meal period and rest break policies as applied.

5 The Court will not rule out injunctive relief at this stage of the proceedings on the
6 strength of Wal-Mart's express policies and ongoing regulatory developments at DLSE.
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9 PLAINTIFFS HAVE PRESENTED TRIABLE ISSUES OF FACT AS TO THE *EFFECT*
10 OF WAL-MART'S POLICIES AS IMPLEMENTED

11 Summary adjudication is proper where "there is no triable issue as to any material
12 fact and...the moving party is entitled to judgment as a matter of law." Cal. Code Civ.
13 Proc § 437c(c).
14

15 Wal-Mart argues that there is no evidence that presents a triable issue of fact as to
16 whether Wal-Mart's policies resulted in missed breaks and off-the-clock work. Plaintiffs
17 present statistical evidence of meal and rest break violations at Wal-Mart. Pls. Exh. 3A in
18 support of their Motion for Class Certification ("Drogin Report"). Plaintiffs also present
19 internal Wal-Mart audits and other documents that could be interpreted to show both that
20 off-the-clock and break period violations were widespread and that Wal-Mart had reason
21 to know of the problem. Exhs. 2, 7, 11, 13, 14, 15, 23 attached to Declaration of Jessica
22 L. Grant in Support of Plaintiffs' Opposition ("Grant Decl."). Some internal Wal-Mart
23 documents could be interpreted as drawing a connection between staffing practices,
24 overtime targets, and employees' inability to take proper breaks. Exh. 28 attached to
25 Grant Decl. Plaintiffs also suggest that at trial they will introduce expert testimony
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1 elaborating upon the nature of what they call “Wal-Mart’s class-wide wrongful conduct.”

2 Opp. at 5.

3 Wal-Mart replies that Plaintiffs have introduced no evidence tending to show
4 understaffing “for any purpose on a state-wide basis compared to staffing levels at similar
5 companies.” Plaintiff have, however, presented evidence about the effects of Wal-Mart’s
6 staffing policies in the form of declarations and logs of employee complaints. Exh. 28
7 attached to Grant Decl. In addition, it is unclear as a matter of law whether the staffing
8 practices at other companies are authority for the lawfulness of Wal-Mart’s conduct
9 toward its hourly employees.
10

11 With regard to its overtime policy, Wal-Mart contends that Plaintiffs have
12 introduced no evidence tending to show that it has precluded or unreasonably restricted
13 overtime. Mem. at 16-17. There is evidence that Wal-Mart sets definite targets for
14 overtime pay. Although this is not in itself unlawful, a trier of fact could reasonably infer
15 that such a target, combined with the alleged understaffing, would have had the effect of
16 increasing pressure on employees to work off the clock or not to take the breaks to which
17 they were entitled.
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19 Drawing reasonable inferences from Plaintiffs’ evidence, as it must on a motion
20 for summary judgment, the Court concludes that a triable issue of fact exists as to
21 whether Wal-Mart’s policies led to a pattern of labor code violations for which injunctive
22 or declaratory relief might be an appropriate remedy.
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1 EVIDENCE.

2 The Court has considered all the evidence submitted. See *City of Long Beach v.*
3 *Farmers & Merchants Bank of Long Beach* (2000) 81 Cal.App.4th 780. The Court's
4 consideration of the evidence is limited to this motion only and is not to be construed as
5 an indication of admissibility in future motions or at trial.
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8 Dated: July 15 2005


Judge Ronald M. Sabraw

CLERK'S CERTIFICATE OF MAILING

I certify that I am not a party to this cause and that I caused a true copy of the foregoing ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION OF PLAINTIFFS' INJUNCTIVE AND DECLARATORY CLAIMS to be mailed, first-class, postage pre-paid, in a sealed envelope, addressed as shown below. Executed, deposited and mailed in Oakland, California on July 15, 2005.

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