

Harmonie Members Defeats Certification of Wage and Overtime Class Action

In a significant victory, the Burnham Brown team of Cathy Arias, Robert Bodzin, and Allyson Cook blocked the efforts by several former pizza restaurant managers to certify a class of almost 200 current and former managers throughout California who were allegedly misclassified as exempt employees under the state law. Given that misclassified exempt employees are entitled to recover lost pay for overtime, meal and rest breaks as well as a variety of other penalties going back as much as four years, the stakes involved in this litigation were quite high. The decision was issued by California Superior Court Judge David Flinn on July 31, 2007.

Class action litigation in California is particularly onerous because the state rules for certification are generally more pro-plaintiff than in federal court. Trial courts are afforded great discretion to determine whether a case should proceed as a class action. In the context of wage and hour cases brought by retail management employees, the mere fact that managers of large chain stores and restaurants followed uniform practices and procedures and had the same job description was sufficient to justify certifying a class. See Sav-On Drug Stores, Inc. v. Superior Court (Rocher), 34 Cal. 4th 319 (2004). For almost two years following the Sav-On decision, there was a strong trend towards certifying cases based on these factors.

In 2006, the California Court of Appeals upheld the denial of a putative class of Albertson's grocery managers. Dunbar v. Albertson's, Inc., 141 Cal. 4th 1422 (2006). In Dunbar, the trial court held that because the grocery manager's daily work varied significantly based on factors that included store features, geographic location, criminal element and personal style of the managers and their respective supervisors, the claims were not suitable for class treatment. Id. Dunbar emphasized that the focus of the analysis needs to be on the actual work of each manager, rather than the job description or other generalized policies that exist in the job environment.

At oral argument in Burnham Brown's case, Judge Flinn complimented the firm on the strength of their evidence and the overall presentation of their opposition brief. This evidence included declarations and deposition testimony from current and former managers, as well as top officers of the company. Judge Flinn also overruled plaintiffs' objections to statistical evidence that demonstrated significant weaknesses in the proposed class representative's claim that she spent a majority of her time performing crew rather than management duties.

With the denial of certification, Burnham Brown will defend against each individual claim on its merits. Significantly, Ms. Arias already defeated the claim of one of the putative class members which was filed with the California Labor Commission. The manager who lost this claim was represented by the same firm that was unsuccessful in its efforts to certify the class.

Ms. Arias and Mr. Bodzin are both partners at Burnham Brown, which is a Harmonie member. Ms. Arias is the chair of Burnham Brown's Employment Law Department and specializes in counseling and defending employers. Mr. Bodzin has been trying both commercial litigation and complex personal injury

cases in New York and California for almost 15 years. Allyson Cook is an associate at Burnham Brown who handles all aspects of employment litigation and counseling and complex litigation. Ms. Arias can be reached at (510) 835-6806 and carias@burnhambrown.com. Mr. Bodzin can be reached at (510) 835-6833 and rbodzin@burnhambrown.com. Ms. Cook can be reached at (510) 835-6811 and acook@burnhambrown.com.

#816948