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10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12
13 **IN AND FOR THE COUNTY OF ORANGE**

14
15 TENEKA JEFFERSON, an individual;
16 BRUCE WRIGHT, an individual; on behalf
of themselves and on behalf of all persons
17 similarly situated,

18 Plaintiffs,

19 vs.

20 BOTTLING GROUP LLC, a Delaware
Company, doing business as PBG; and Does
21 1 to 10,

22 Defendants.

CASE No. **30-2009-00180102**
(Class Action)

NOTICE OF ENTRY OF ORDER
GRANTING MOTION FOR CLASS
CERTIFICATION

23 Dept.: CX-103
Judge: Hon. Ronald L. Bauer

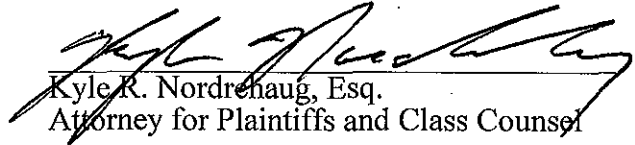
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PLEASE TAKE NOTICE that the hearing regarding Plaintiffs' Motion for Class Certification was held on August 30, 2010. After considering the arguments of both parties, the Hon. Ronald L. Bauer of Department CX103, in the Superior Court of the State of California for the County of Orange County, Civil Complex Center, entered an order granting Plaintiffs' Motion for Class Certification.

A true and correct copy of the order of the Court granting Plaintiffs' Motion for Class Certification is attached hereto as Exhibit #1, and is incorporated in full herein by this reference.

Dated: September 9, 2010

BLUMENTHAL, NORDREHAUG & BHOWMIK

By: 

Kyle R. Nordrehaug, Esq.
Attorney for Plaintiffs and Class Counsel

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

3 I, Kyle R. Nordrehaug, am employed in the County of San Diego, State of California. I am over
4 the age of 18 and not a party to the within action. My business address is 2255 Calle Clara, La Jolla,
5 California 92037.

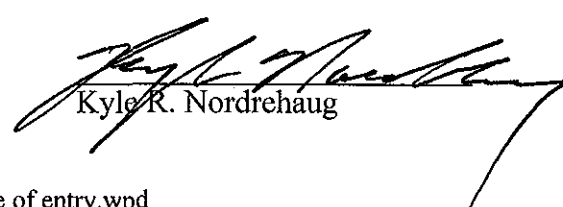
6 On September 9, 2010, I served the document(s) described as:

7 (1) NOTICE OF ENTRY OF ORDER GRANTING MOTION FOR CLASS CERTIFICATION

8
9 X (BY MAIL): I caused each such envelope, with postage thereon fully prepaid, to be placed in
10 the United States mail at San Diego, California. I am readily familiar with this firm's business
11 practice for collection and processing of correspondence for mailing with the U.S. Postal
12 Service pursuant to which practice the correspondence will be deposited with the U.S. Postal
13 Service this same day in the ordinary course of business (C.C.P. Section 10139a); 2015.5):

12 Guy N. Halgren
13 Samantha Hardy
14 SHEPPARD, MULLIN, RICHTER & HAMPTON
15 501 West Broadway, 19th Floor
16 San Diego, CA 92101-3598
17 Attorney for Defendant Bottling Group LLC

18 X (State): I declare under penalty of perjury under the laws of the State of California that the
19 above is true and correct. Executed on September 9, 2010, at La Jolla, California.

17
18 
19 Kyle R. Nordrehaug

20 K:\D\NBB\Jefferson v. Pepsi\Class Certification\p-notice of entry.wpd

EXHIBIT #1

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER
MINUTE ORDER**

Date: 09/07/2010

Time: 07:45:00 AM

Dept: CX103

Judicial Officer Presiding: Ronald L. Bauer

Clerk: Janet E Frausto

Reporter/ERM: None

Bailiff/Court Attendant: None

Case No: **30-2009-00180102-CU-OE-CXC** Case Init. Date: 03/06/2009

Case Title: **Jefferson vs. Bottling Group Inc**

Case Category: Civil - Unlimited

Case Type: Other employment

APPEARANCES

The Court, having taken the above-entitled matter under submission on 8/30/2010, now makes the following ruling:

30 2009 00180102 JEFFERSON VS BOTTLING GROUP INC.

No appearances.

Plaintiffs move for certification of a class action brought by and on behalf of certain employees of defendant Bottling Group LLC ("Pepsi"). In particular, plaintiffs contend that Pepsi has improperly classified the Production Supervisors and Product Availability Supervisors working at its California bottling facilities as executive or managerial workers. As a consequence, these employees have not been paid overtime wages, although they regularly work more than forty hours per week.

The principal dispute raised in this motion centers on the question of the similarity, or lack thereof, of the work performed by the 174 (or thereabouts; the papers have several numbers) putative class members. Plaintiffs contend that these employees were essentially automatons required to follow strict instructions set forth in "Playbooks" issued by Pepsi. The motion was accompanied by the declarations of seven employees, who robotically reported that their working time was dominated by nondiscretionary physical activities such as walking through the workplace monitoring the labors of others. Plaintiffs also presented, to no effect, the Declaration of Miles Locker, an attorney experienced in the litigation of workplace disputes. Locker consumed seventeen pages to convey his core message: "This motion should be granted." As such, this constituted extended points and authorities, replete with citations and argument, in violation of the rule limiting such material to twenty pages. In total, the plaintiffs submitted 37 pages of argument, which perhaps should have been stricken in their entirety. See California Rules of Court rules 3.764(c)(2), 3.1113(g), and 3.1300(d). The court gave no weight to the Locker Declaration.

Not surprisingly, the defendant paints its workplaces in different tones. Fifty declarations submitted in opposition to this motion came from putative class members describing the discretion and decision-making they exercise on the job. In addition, Pepsi argued that a wide variety and disparity of job activities among these 174 workers make this case unsuitable for class treatment. Pepsi urged that there are many inconsistencies between the plaintiffs' declarations and the defendant's declarations;

Date: 09/07/2010

MINUTE ORDER

Page: 1

Dept: CX103

Calendar No.:

between the plaintiffs' declarations and their deposition testimony; between work done by the same worker at different locations at different times; and between different people doing the same job at the same location. All of this, in Pepsi's view, renders the entire case an unmanageable hodgepodge.

Each side cited a variety of appellate cases as supporting their respective positions. (Shock!) The lesson of these cases seems to be that the trial court is vested with significant discretion to determine the suitability of an action for class treatment. A recent case emphasized by Pepsi's counsel is *Arenas v. El Torito Restaurants, Inc.* (2010) 183 Cal. App. 4th 723, where the court of appeal affirmed the trial court's denial of class certification in a case that bears some similarities to the present action. It is hard to read that opinion, however, and not conclude that the granting of class certification would also have been affirmed. That court repeatedly emphasized the trial court's broad discretion. For example; "Trial courts are afforded great discretion on class certification issues because they are better situated to evaluate the efficiencies and practicalities of permitting a group action." *Id.* at 731. This court might prefer a simple and strict rule, against which the present motion could be measured. Exercise of the wide discretion often cited in these appellate cases may well be above this court's pay grade. Nevertheless . . .

This is not the time to determine the merits of this case. No rule is clearer in this context, but no rule is more frustrating to the litigants. Here, the defendant is quite avid in its conviction that all the putative class members regularly perform significant, time-consuming executive functions. Although Pepsi's principal argument must be that there is no discernible pattern in the workplace, it finds it irresistible to imply that everyone is an executive, and that's the end of the matter! In its brief, we are told that "all of the Supervisors are expected to [exercise discretion as to matters of significance.]" Page 2, lines 6-7. and that any Supervisor who simply followed a prescribed pattern and did not "make the necessary decisions to run their operations" would be relieved of duty. Page 14, lines 18-21. In fact, to be true to the "no merits" rule, it would be appropriate to certify a class that bore all the requisite indicia, including commonality, even if that clear pattern would lead to no relief for the class, as Pepsi contends.

This court's review of the evidence presented for this motion has led to the conclusion that there is substantial evidence supporting all the requisite elements for class certification. On most of these criteria, there is no genuine dispute. On the vigorously contested issue of commonality, the "Playbooks" for these employees (Exhibit 15 in the motion for the Product Availability Supervisors and Exhibit 19 for the Production Supervisors) constitute directives given to all such personnel. Likewise, the governing job descriptions (Exhibit 8 for Product Availability Supervisors and Exhibit 9 for Production Supervisors) are a common tie. As it happens, the minute details of the Playbooks suggest that this employment might be nonexempt, while the lofty job descriptions bring to mind the executive's mahogany desk mentioned by the court. But, again, this is not the time to weigh that evidence.

In addition, the court finds that the variations so fervently cited by Pepsi in the many declaration and depositions are significantly the result of "spin," interpretation, and context. A trier of fact can weigh competing evidence and reach reasoned neutral conclusions about the nature of this work. The fact that the evidence can now be seen in different lights cannot mandate the denial of this motion, as the defendant would like.

A case of this nature would be expected to have an accepted list of job duties and activities and would require a trial to determine which of those are managerial and how often each was performed. These factual issues might be in controversy, but a trial would resolve those disputes. This case can proceed toward that goal. The motion is granted.

CLERK'S CERTIFICATE OF MAILING: I certify I am not a party to this cause, over age 18, and a copy of this document was mailed first class postage, prepaid in a sealed envelope addressed as shown, on 9/8/2010, at Santa Ana, California.

ALAN CARLSON/Executive Officer & Clerk Of The Superior Court, by: Janet Frausto deputy.

Norman B. Blumenthal



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