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# Reporter

## Employment Law

*by Karina Sterman, Esq.*

### **Got Class? Wage and Hour Class Actions in a Post-Brinker World**

In 2012, employers awaited the California Supreme Court's decision in *Brinker Restaurant Corp. v. Superior Court* with the bated-breath anticipation of a presidential election, or an Olympic luge race. And, boy, was it worth the wait. Crowds cheered and hurrah'd upon hearing that the highest court in California went with pragmatism and reason as it announced that employers need not police meal and rest periods so long as they provided them and gave employees the freedom to take them.

In light of the *Brinker* decision, attorneys, thought-leaders and tarot readers all sounded the death knell of the wage and hour class action dragon, emphasized by the *Brinker* Court's joining with

the U.S. Supreme Court's decision in *Wal-Mart, Inc. v. Dukes*, that "what really matters to class certification is not similarity at some unspecified level of generality but, rather, dissimilarity that has the capacity to undercut the prospects for joint resolution of class members' claims through a unified proceeding." But have those predictions bore out? Has the wage and hour class action gone the way of the dinosaurs?

Hardly.

Within the less than two years of *Brinker*, no fewer than five published California appellate decisions have resoundingly resuscitated the wage and hour class action.

## **Upcoming 2014 Seminars at ECJ**

**Thursday, April 24, 2014**

Hiring Process by *Karina B. Sterman, Esq.* - 8:30 a.m. - 9:30 a.m.

Sexual Harassment Prevention Training by *Kelly O. Scott, Esq.* - 10:00 a.m. - 12:00 p.m.

Please contact Brandi Franzman at [bfranzman@ecjlaw.com](mailto:bfranzman@ecjlaw.com) for registration information.

## **Bradley v. Networkers International, LLC:**

The plaintiff class claimed that they were improperly classified and paid as independent contractors when they were in fact employees and were therefore denied their rest and meal breaks, among other rights. Class certification was deemed proper with regard to the plaintiffs' meal and rest period claims because the employer did not have meal or rest period policies in place during the class period and did not know whether the class members took meal or rest periods.

## **Faulkinbury v. Boyd & Associates:**

The plaintiff class claimed that the employer had an unlawful policy of requiring on-duty meal period agreements, no lawful policy of providing rest periods, and an unlawful practice of making deductions from overtime pay calculations. Class certification was deemed proper because all three issues constituted questions of policy, or lack thereof, which could be determined in discrete discernible sub-classes.

## **Benton v. Telecom Network Specialists, Inc.:**

The plaintiff class claimed that they did not consistently receive meal and rest breaks, and were in fact told by supervisors not to take such breaks in light of the demanding pace of work. Class certification was deemed proper because the employer could neither demonstrate that it had a California-compliant meal and rest break policy nor that it engaged in actions to ensure

employees were aware of and could take breaks in accordance with such a policy.

## **Jones, et al. v. Farmers Insurance Exchange:**

The plaintiff class claimed to have been underpaid because the employer required employees to work at home, in the form of getting on their computer and checking certain information for the day, prior to the official start of each work day. Class certification was deemed appropriate, despite disparate issues of damages, because of the employer's relatively uniform policy.

## **Martinez v. Joe's Crab Shack Holdings:**

The plaintiff class consisted of allegedly misclassified managerial employees who believed they were not truly exempt and were therefore entitled to overtime. Class certification was deemed appropriate because the trial court could focus its attention "on the policies and practices of the employer and the effect those policies and practices have on the putative class."

## THE OBVIOUS TAKEAWAY

Regardless of whether individual questions of damages predominate, the trial court is likely to grant class certification if the employer either (a) lacked an express California-compliant meal and rest break policy, or (b) demonstrably had a non-California-compliant meal and rest break policy. As we have said before, and as we will surely have occasion to say again, employers must have, must articulate and must create a practice of enforcing lawful meal and rest break policies.

*If you have any questions regarding this bulletin, please contact Karina B. Sterman, Esq., at (310) 281-6395 or [ksterman@ecjlaw.com](mailto:ksterman@ecjlaw.com) or Kelly O. Scott, Esq., Editor of this publication and Head of ECJ's Employment Law Department, at (310) 281-6348 or [kscott@ecjlaw.com](mailto:kscott@ecjlaw.com). If one of your colleagues would like to be a part of the Employment Law Reporter mailing list, or if you would like to receive copies electronically, please contact Brandi Franzman at (310) 281-6328 or [bfranzman@ecjlaw.com](mailto:bfranzman@ecjlaw.com).*