



## **MOTION TO STRIKE**

Defendants Original Mike's Enterprises, LLC ("OME"), Michael Harrah, SAS Investments, L.P. ("SAS"), and O.M. Restaurant Management, LLC's ("OMRM") motion to strike Plaintiff Rachel Segui's motion for class certification is DENIED as untimely. The motion was filed on October 11, 2019, only 10 court days before it was set for hearing on October 25. Generally speaking, motions must be filed at least 16 court days in advance of the scheduled hearing. (CCP § 1005(b).) However, the Court will exercise its discretion to consider the motion to strike as an opposition to Plaintiff's motion for class certification.

## **MOTION FOR CLASS CERTIFICATION**

Segui's motion for class certification is GRANTED. The following class is certified as to each of the six causes of action remaining in Segui's FAC:

All employees of Original Mike's employed in non-overtime exempt positions from December 16, 2012 through December 16, 2016.

The Court appoints Segui as the class representative and Segui's counsel as class counsel. Defendants' unopposed request for judicial notice of various records from OMRM's bankruptcy case (ROA 200) is GRANTED. (Evid. Code § 452(d).)

### **. - I. Factual and Procedural Background**

This matter involves employees of Original Mike's, a restaurant and bar in Santa Ana. As the Court previously explained in detail in a statement of decision in the related case of *Beasley v. Original Mike's Enterprises, LLC*, No. 14-725006, OMRM operates Original Mike's restaurant. OMRM is a single-member LLC whose sole member is SAS, a limited partnership; Harrah is OMRM's non-member manager. The general partner of SAS, in turn, is non-party Southwest Property Management, Inc., and the limited partner is non-party Michael F. Harrah Trust. Harrah is the president and sole shareholder of Southwest Property Management, Inc. OME, which holds Original Mike's liquor license, is also a single-member LLC whose sole member is SAS, with Harrah as the non-member manager. (See Reply (ROA 204), Ex. 1, at p. 2.)

### **. - A. Procedural History**

Segui, along with Leah York and Laura Beasley, filed a complaint in this Court against Defendants (and Juan Orozco, who is not a defendant here) in 2014. That action was titled *Beasley v. Original Mike's Enterprises, LLC*. In *Beasley*, the plaintiffs brought wage-and-hour claims alongside individual sex discrimination and sexual battery claims. The *Beasley* matter was set for trial in October 2015. On the eve of trial, OMRM filed for bankruptcy. (See *Beasley* ROA 207.)

Beasley, York, and Segui filed a proof of claim against OMRM in the bankruptcy matter on February 3, 2016. (Defs.' RJN, Exh. C.) They withdrew their claim on July 26, 2016. (*Id.* Ex. D.) OMRM proposed a Chapter 11 reorganization plan on September 19, 2016, and the bankruptcy court confirmed the plan on December 14, 2016. (*Id.* Exhs. A-B.)

Meanwhile, the *Beasley* matter continued to be litigated among the remaining defendants (excluding Orozco, who had also declared bankruptcy). In November 2016, the Court ordered the *Beasley* matter severed on the grounds that the plaintiffs' individual claims arose from different alleged acts, making the case too unwieldy to manage. (See *Beasley* ROA 375.) Pursuant to the severance order, Segui filed the present case on December 16, 2016. (ROA 2.) She filed the operative FAC on February 8, 2017,

bringing both class wage-and-hour claims and individual sex discrimination/sexual battery claims. (ROA 23.) Segui subsequently settled her individual claims, and only her class claims remain. (ROA 154.)

. - **B. Facts Relating to Putative Class Claims**

Defendants do not contest the facts Segui sets forth in her moving papers relating to the putative class claims, nor do they offer their own evidence or counter-declarations. Instead, their opposition (captioned as a “motion to strike”) focuses exclusively on the timing of the present motion and issues arising from the OMRM bankruptcy. The Court therefore accepts the following unrebutted facts, supported by evidence included with Segui’s moving papers, as true.

Orozco, the general manager of Original Mike’s during the relevant time frame, had complete control over the wages and hours of all Original Mike’s employees. (Orozco Depo. (Spencer Decl., Ex. 1), 105:13-19.) He received no training on rules and regulations relating to employee pay, such as whether overtime was required. (*Id.* at 103:9-104:6.) Orozco admitted that during the class period, hourly employees were not paid overtime. (*Id.* at 95:3-96:16, 113:10-114:6.) Although Orozco was a general manager, he did not know the difference between exempt and non-exempt employees. (*Id.* at 114:16-23.)

Similarly, Orozco received no training on rules and regulations relating to meal and rest breaks. (*Id.* at 120:18-25.) Because he did not know the relevant law, he was unable to ensure Original Mike’s employees took required breaks. (*Id.* at 123:21-124:4.) Furthermore, Original Mike’s had no system in place to ensure employees took required breaks. (*Id.* at 119:22-120:17.) Orozco admitted that employees who did not receive meal and rest breaks were not paid the statutory one-hour premium. (*Id.* at 124:6-10, 124:23-125:15, 126:5-24.)

Orozco was aware, however, that Original Mike’s was required by law to provide accurate itemized wage statements to employees. (*Id.* at 219:5-13.) Despite this awareness, he could not say why the three *Beasley* plaintiffs (including Segui) failed to receive such statements. (*Id.* at 219:15-20.) At deposition, Orozco agreed that he was “above the law, that [he] didn’t have to follow the law in paying wages.” (*Id.* at 219:22-220:3.)

Original Mike’s labor practices apparently changed during the OMRM bankruptcy. According to Douglas Harrington, the restaurant’s bookkeeper, it started paying overtime sometime in 2016. (Harrington Depo. (Spencer Decl., Ex. 2) at 10:23-11:1, 332:6-24.) Lori Ensley, who oversaw Original Mike’s during the bankruptcy, changed meal and rest break policies to make sure employees took required breaks. (Ensley Depo. (Spencer Decl., Ex. 3) at 163:25-165:9.) However, at least as of December 16, 2016 (the end of the proposed class period), Original Mike’s time records show employees who worked shifts longer than five hours but did not take meal breaks. (Spencer Decl. ¶ 5.)

Segui worked at Original Mike’s as a bartender during the class period as a non-exempt employee paid on an hourly basis. She worked overtime hours, but was not paid overtime compensation. She was not paid premiums for missed meal or rest breaks. Finally, she was not paid all wages owed at termination of employment, nor was she furnished accurate wage statements. (Segui Decl., ¶¶ 3-8.)

. - **II. Analysis**

. - **A. Timing of Motion**

Defendants, in their “motion to strike,” argue the Court should not reach the merits of the present motion because it was untimely filed. Defendants correctly note this motion was filed 33 months after the original complaint in this action and more than five years after the original complaint in *Beasley*. Relying on various California and federal cases dealing with long-pending, uncertified class actions, they urge the Court to reject the present motion on the grounds that Segui took too long to seek certification instead of

moving “when practicable” as required by Cal. Rules of Court, Rule 3.764(b).

This argument is without merit inasmuch as Segui’s motion is timely. In a minute order dated March 18, 2019, the Court set a deadline of September 18, 2019 for Segui to file her certification motion. (ROA 183.) Her motion was filed on that date in compliance with the Court’s order.

. - **B. Merits of Motion**

A plaintiff seeking class certification is required to “demonstrate the existence of an ascertainable and sufficiently numerous class, a well-defined community of interest, and substantial benefits from certification that render proceeding as a class superior to the alternatives. In turn, the community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.” (*Brinker Restaurant Corporation v. Superior Court* (2012) 53 Cal.4th 1004, 1021 [internal quotes and citations omitted].) These elements are typically referred to as (1) ascertainability; (2) numerosity; (3) commonality; (4) typicality; (5) adequacy; and (6) superiority.

Defendants do not dispute ascertainability, numerosity, commonality, or superiority, and the Court is satisfied, from an independent review of the moving papers and supporting evidence (in particular Orozco’s testimony establishing his complete control over pay and hours, his lack of familiarity with governing rules and regulations, Original Mike’s lack of any systems to ensure employees took breaks, and his admitted failure to pay overtime and meal/rest break premiums) that these elements are satisfied.

Defendants’ sole merits argument is that Segui is an inadequate, atypical representative. The basis for this argument is her filing and subsequent withdrawal of a claim in OMRM’s bankruptcy. Defendants claim that because Segui withdrew her claim and a Chapter 11 plan was subsequently confirmed, her claims against OMRM were discharged. (See 11 U.S.C. § 1141.) Because she has no claim, Defendants argue, she is an inadequate and atypical representative of absent class members.

This argument fails for two reasons. First, because bankruptcy discharge is a defense equally applicable to every member of the class, Segui is not atypical. OMRM’s Chapter 11 plan was confirmed on December 14, 2016, and the class period only runs to December 16, 2016. The class, as defined, appears to consist entirely of persons whose claims against OMRM arguably were discharged in bankruptcy. The bankruptcy discharge defense can be adjudicated on a classwide basis.

Second, whether claims against OMRM have been discharged in bankruptcy has no effect on the remaining Defendants’ liability. This is particularly true as regards the operations of Original Mike’s: in the *Beasley* action, the Court found that OME, Harrah, and SAS were alter egos of OMRM and were themselves liable for OMRM’s acts, regardless of whether OMRM’s own liability was discharged. (See Reply, Ex. 1.) The Court has made no finding of alter ego status in this matter, but should the parties wish to litigate the question rather than adopting the Court’s holding in *Beasley*, it is a common legal question applicable to all class members.

A Status Conference is scheduled for 12/17/2019 at 08:30 AM in Department CX104.

A Joint Status Conference Statement is to be filed on or before 12/10/2019.

Court orders Defendant to give notice.