

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 07/16/2020

TIME: 10:30:00 AM

DEPT: 904

JUDICIAL OFFICER PRESIDING: Kevin A. Enright

CLERK: Robin Smith

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: **JCCP5083**

CASE INIT.DATE: 01/08/2020

CASE TITLE: **Charter Communications Wage and Hour Cases JCCP5083 [E-FILE]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

EVENT TYPE: Hearing on Petition

MOVING PARTY: Michael Marcelino

CAUSAL DOCUMENT/DATE FILED: Petition - Other Petition for Coordination, 01/08/2020

APPEARANCES

Matthew Righetti, counsel, present for Plaintiff(s) telephonically.

James R Hawkins, counsel, present for Plaintiff(s) telephonically.

Jean-Claude Lapuyade, counsel, present for Petitioner, Plaintiff(s) telephonically.

Max C Fischer, counsel, present for Defendant(s) telephonically.

Jennifer Pirozzi, counsel, present telephonically for Defendant(s).

The Court discloses he is familiar with Attorney Righetti in that he has appeared before this court. The Court states it will not affect its ability to be fair and impartial. There are no objections by counsel.

The Court hears oral argument and confirms the tentative ruling as follows:

The Petition for Coordination filed by Plaintiff Michael Marcelino is granted.

The following actions are ordered coordinated for all purposes: (1) *Michael Marcelino, et al. v. Charter Communications, LLC, et al.*, San Diego Superior Court Case No. 37-2019-00016478-CU-OE-CTL, filed 3/28/19 ("*Marcelino*"); (2) *Sean Kareem Paredes, et al. v. Charter Communications, LLC, et al.*, Los Angeles Superior Court Case No. 19STCV11536, filed 4/4/19 ("*Paredes*"); (3) *Ruben Trejo, et al. v. Charter Communications, LLC, et al.*, Los Angeles Superior Court Case No. 19STCV28173, filed 8/13/19 ("*Trejo*"); and (4) *Justin M. Sonico, et al. v. Charter Communications, et al.*, San Diego Superior Court Case No. 37-2019-00055875-CU-OE-CTL, filed 10/21/19 ("*Sonico*").

Per Code of Civil Procedure section 404, the court first finds the actions are complex. A complex action is one that requires exceptional judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs reasonable, and promote effective decision making by the court, the parties, and counsel. (Cal. Rules of Ct., Rule 3.400). In determining whether an action is complex, the court must consider, among other things, whether the action involves (a) the management of a large number of witnesses or substantial documentary evidence, (b) numerous pretrial

motions raising difficult or novel issues, (c) management of a large number of separately represented parties, and (d) coordination with related actions pending in one or more courts in other counties. (*Id.*) Upon consideration of the factors set forth in Rule 3.400, the court finds the *Marcelino*, *Paredes*, *Trejo*, and *Sonico* actions are complex.

The court next finds that coordination of the actions will promote the ends of justice, taking into consideration the factors set forth in Code of Civil Procedure section 404.1. In determining the issue of coordination, the coordination motion judge is vested with substantial discretion. (See *Pesses v. Superior Court* (1980) 107 Cal.App.3d 117, 126; *McGhan Medical Corp. v. Superior Court* (1992) 11 Cal.App.4th 804, 811-12).

The court finds common questions of fact or law predominate. All four actions involve similar claims against Defendant for wage and hour violations. The relevant time periods in each action also overlap.

Marcelino alleges Defendant committed wage and hour violations, including: "a. Failure to pay the correct rate of pay for all overtime worked; b. Failure to pay the correct rate of pay for missed meal and rest period premiums; c. Failure to provide compliant meal and rest periods; d. Failure to pay all minimum, regular and overtime wages; e. Failure to provide accurate itemized wage statements; and f. Failure to timely pay wages due during, and upon termination of employment.) (ROA 3 at ¶ 4). The *Marcelino* action is brought on behalf of: "all of DEFENDANTS' current and former non-exempt California employees who suffered one or more of the Labor Code violations enumerated in Labor Code § 2698 et seq. ("AGGRIEVED EMPLOYEES") and who worked for DEFENDANTS between March 26, 2018 and the present ("PAGA PERIOD")." (ROA 3 at ¶ 3.)

Similarly, *Sonico* alleges: "Defendants implemented policies and practices which led to unpaid wage resulting from Defendant's: (a) failure to accurately pay overtime wages, (b) failure to pay minimum wages (c) failure to provide meal periods for every work period exceeding more than ten (10) hours per day and failure to pay an additional hour's [sic] of pay or accurately pay additional hour's [sic] of pay in lieu of providing a meal period; (d) failure to provide rest breaks for every four hours or major fraction thereof worked and failure to pay an additional hour's [sic] of pay or accurately pay an additional hour's [sic] of pay in lieu of providing a rest period; (e) failing to pay all wages earned and owed upon separation from Defendant's employ, and (f) failing to provide accurate itemized wage statements." (ROA 2 at ¶ 2). The *Sonico* action is brought: "on behalf of all current and former California Non-Exempt Employees of Defendants." (ROA 2 at ¶ 49).

The *Paredes* action alleges: "Plaintiff was not paid the wages due and owing to him, including overtime wages for all hours/overtime hours worked, wages from missed meal and rest breaks owed pursuant to LC 226.7 for meal periods not provided and/or rest breaks not authorized and permitted, and unlawful deductions from his commissions. Additionally, Plaintiff did not receive accurate, itemized wage statements, and did not receive payment for all wages earned and owed at the time of separation of employment." (ROA 7 at ¶ 12). The *Paredes* action is brought: "on behalf of Sean Kareem Paredes (hereinafter "Plaintiff") and all other persons who are 1) non-exempt employees who performed retail sales work as employees of Defendants, 2) worked overtime, and 3) earned commission and/or bonus pay ("Time Warner Employees") seeking civil penalties and reasonable attorneys' fees and costs under the California Private Attorneys General Act ("PAGA")." (ROA 7 at ¶ 1). "The time period for this case is designated as the time from one year preceding the LWDA notification (i.e. on or about Jan. 24, 2018) through the date of trial." (ROA 7 at ¶ 17).

Although a class action, the *Trejo* action alleges similar claims against Defendant for failing to pay all

wages owed, failing to properly calculate overtime pay, failing to provide meal periods and meal period pay, and failing to pay all wages owed at the time of termination from employment. (ROA 6 at ¶¶ 4-7). The class in *Trejo* is alleged to include: "non-exempt employees who are not parties to an arbitration agreement with Defendant and who performed retail sales work as employees of Defendants, worked overtime and earned commission and/or bonus pay within the four years preceding the filing of this lawsuit ("the California Class")." (ROA 6 at ¶ 4.)

While Defendant argues there is a distinction between the Field Technician cases filed in San Diego and the Retail Sales cases filed in Los Angeles, this distinction is not borne out by the pleadings. As the Petition points out, the *Marcelino* action is not brought on behalf of Field Technicians, only. Instead, the action incorporates "all of DEFENDANT'S **current and former non-exempt California employees . . .**" (ROA 3 at ¶ 3) (emphasis added). Thus, *Marcelino* is being brought on behalf of both the non-exempt Retail Sales Associates and the non-exempt Field Technicians. In addition, the *Sonico* Complaint also alleges it is being brought on behalf of "**all current and former California Non-Exempt Employees of Defendants.**" (ROA 2 at ¶ 49) (emphasis added).

Thus, while the Los Angeles actions are limited to Retail Sales Associates, the San Diego actions are being pursued on behalf of all of Defendant's non-exempt employees. Based on the above, the court finds that common questions of law and fact predominate.

In addition, the court finds convenience of the court, parties, witnesses and counsel will be served if the actions are coordinated before a single judicial officer. Coordination will promote efficiency and prevent overlapping or conflicting legal rulings and case management decisions. Coordination of the actions will also serve to promote a global settlement of all claims alleged in the actions. Further, all four cases are still in the early stages of litigation.

Based on the above factors, the court finds that coordination of the actions will promote the ends of justice and allow for the efficient utilization of judicial facilities.

The court recommends that the San Diego County Superior Court serve as the site of the coordinated court proceedings. (Cal. Rules of Ct., Rule 3.530). The first-filed case is the *Marcelino* action. Defendant has filed an answer to the operative complaint in that action, and written discovery has commenced. Defendant has not yet filed an answer in the other three actions. In addition, counsel for Plaintiffs in each of the four actions have not objected to the coordinated action proceeding in San Diego. As Defendant's counsel is the only one opposed to the action proceeding in San Diego, the location of counsel is not a decisive factor. Under the circumstances, the court recommends that the San Diego County Superior Court serve as the site of the coordinated court proceedings.

The court selects the Fourth District Court of Appeal, Division One as the reviewing court having appellate jurisdiction of this action. (Code Civ. Proc., § 404.2).

Pursuant to Code of Civil Procedure section 404.5 and California Rules of Court, Rule 3.529(b), these cases remain stayed on the same terms until further order of an appropriate court.

Petitioner shall file the order granting coordination in each of the coordinated actions, serve it on each party appearing in the coordinated actions, and submit it to the Chair of the Judicial Council. (Cal. Rules of Ct., Rule 3.529).

The minutes are the order of the Court. No formal order is required.

IT IS SO ORDERED.

K.A. Enright

Judge Kevin A. Enright