

2006 WL 3626295
Superior Court, Alameda County, California.

Andrea SAVAGLIO, James Davis, Jerrilyn Newland, and Charlotte Johnson, on behalf of themselves and all others similarly situated, Plaintiffs,

v.

WAL-MART STORES, INC., a Delaware corporation, Sam's West, Inc., a California corporation, George Rodriguez, Vincent Martinez, and Does 1 through 100, Defendants.

No. C-835687. | Dec. 6, 2006.

Opinion

ORDER (1) DENYING MOTION OF DEFENDANT FOR JUDGMENT NOTWITHSTANDING THE VERDICT AND (2) DENYING MOTION OF DEFENDANT FOR NEW TRIAL.

SABRAW, J.

*1 The motions of Defendant Wal-Mart for judgment notwithstanding the verdict and for new trial came on regularly for hearing on December 4, 2006, in Department 22, the Honorable Ronald M. Sabraw, presiding. Plaintiffs and Defendants appeared at the hearing through counsel of record. IT IS HEREBY ORDERED: (1) the motion of Defendant Wal-Mart for judgment notwithstanding the verdict is DENIED; (2) the motion of Defendant Wal-Mart for new trial is DENIED.

MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT.

The Defendant's Motion for Judgment Notwithstanding the Verdict is DENIED.

The issues raised in the motion for JNOV reprise issues that have been addressed on a number of earlier occasions in this litigation. As the parties observed at the hearing, many of these issues are matters of first impression and have not been the subject of explication or resolution in the appellate courts. Despite the compelling and divergent views of the parties on these issues throughout the long history of this litigation, the Court will not reverse field in its rulings at this late stage of the proceedings.

For the Court to grant a JNOV under C.C.P. § 629, the Court must find that there is no substantial evidence supporting the verdict, or law requires that judgment in favor of the moving party. See *Gunnell v. Metrocolor Lab., Inc.* (2001) 92 Cal.App. 4th 710. The party in whose favor the judgment was rendered is "entitled to the benefit of every favorable inference which may reasonably be drawn from the evidence and to have all conflicts resolved in his favor." *Fountain Valley Chateau Blanc HOA v. Dept. of Veteran's Affairs* (1998) 67 Cal.App. 4th 743. Indulging these inferences in favor of the verdict as required by law, the Court finds the verdict is supported by substantial evidence. The Court will not recite chapter and verse the copious evidence received by the jury over the course of a nearly four month long trial.

Defendant asserts that there was no legally sufficient evidence of "actual injury" to support an award of punitive damages as a matter of law. There was substantial evidence of "actual injury." The right to a timely, full and uninterrupted meal period is a long established part of California's public policy to protect the health and safety of hourly employees. See Labor Code § 512 and Wage Order ¶ 11. See also *California Manufacturers Assn. v. Industrial Welfare Com.* (1980) 109 Cal.App.3d 95, 114-115 (indicating that a 30 minute meal period is one of "the most basic demands of an employee's health and welfare"). Therefore, the loss of a meal period required under Labor Code 512 and the health and safety benefits of attendant to that meal period is arguably a loss separate and independent of the failure to receive a meal period payment under Labor Code 277.6. The jury found these allegations to be true and constitute "actual injury" beyond the failure to receive meal period premiums.

*2 Wal-Mart asserts that it was not given notice that it could be subjected to punitive damages in addition to the Labor Code

226.7 payments. The Court previously determined that Wal-Mart could have reasonably discerned its obligations under California law by referencing the Wage Orders and the DLSE manuals on this subject. Wal-Mart was reasonably on notice that willful failure to comply with the Labor Code might subject it to punitive damages. Wal-Mart cannot base a “fair notice” argument on an expectation that it could willfully fail to comply with California law and its damages would be capped at the Labor Code 226.7 payments.

There was substantial evidence of “oppression, fraud, or malice.” Civil Code 3294(a). Defendant argues that upholding a punitive damages award based merely on bad intent and a violation of a statutory or common law right would provide every prevailing party in a lawsuit the opportunity to recover punitive damages. *Mother Cobb’s Chicken Turnovers, Inc. v. Fox* (1937) 10 Cal.2d 203, states that mere “evil thoughts or acts, barren of result, are not the subject of exemplary damages.” There is substantial evidence that Defendant did more than fail to comply with California’s meal period laws. If a violation is inadvertent or negligent, then there is no basis for punitive damages. If, however, a defendant is aware of a violation of a statutory or common law right and consciously elects not to remedy the violation and thereby knowingly causes cruel and unjust hardship, then the defendant’s actions can amount to oppression. Civil Code 3294(c)(2). There was substantial evidence that Defendant was aware of the Labor Code violations, consciously elected not to remedy the violations for a period of time, and in doing so knowingly caused cruel and unjust hardship to the classmembers by depriving them of the health and safety benefits of meal periods.

There was substantial evidence that Wal-Mart did not provide meal periods to class members.

Wal-Mart was provided constitutional notice about the meaning of the term “provide.” See Order of 7/20/04. The Court adds that Labor Code 226.7 payments are certainly not criminal penalties that implicate ex post facto concerns and trigger the heightened need for legislative clarity in imposing standards of conduct and appropriate punishment. *Greenbaum v. State Bar* (1987) 43 Cal.3d 543, 550.

MOTION FOR NEW TRIAL.

The Defendant’s Motion for New Trial is DENIED.

Motions for new trial are disfavored. The standard for granting a new trial is whether the grounds stated by the moving party have been established and, if so, whether those grounds “materially affect the substantial rights” of the moving party. C.C.P. § 657. The errors at trial must have resulted in a “miscarriage of justice.” Cal. Const. Art. VI, § 13. The Court does not find, in light of the complexities of the legal issues and the breadth of the factual disputes between the parties, that the outcome of this trial has resulted in a miscarriage of justice.

***3** The Court’s “actual injury” instruction and the evidence in support of the jury’s findings in this regard, and Defendant’s assertion of error, was discussed as part of the Defendants Motion for JNOV and will not be repeated here.

The Court’s determination of what it means to “provide” a meal period under Labor Code § 512 has been previously addressed by the Court in its ruling on class certification and in its ruling on Defendant’s motion for summary adjudication. The jury was adequately instructed on the definition of “provide.”

The Court does not find the Defendant’s arguments about the fairness of the jury verdict or Defendant’s list of evidentiary objections warrant a new trial. Regarding the use of derogatory terms in reference to defense witnesses at trial, the Court admonished Plaintiff’s counsel and gave curative instructions. Similarly, Defendant’s argument that Plaintiff’s counsel repeatedly violated the Court’s pre-trial in limine orders does not warrant a new trial. The Court admonished Plaintiff’s counsel on a number of occasions and also instructed the jury repeatedly in those instances where Plaintiff’s counsel stepped over the line. The Court finds these issues did not result in a miscarriage of justice in the trial of this matter.

The Court further finds that the jury’s punitive damage award was not excessive based upon the standard announced by the United States Supreme Court in *State Farm v. Campbell* (2003) 538 U.S. 408. The Court observed that single digit multipliers of punitive damages to compensatory damages are more likely to comport with due process. Here the multiplier of 2 to 1 is within reason.

The Court finds a remittitur of the punitive and compensatory damage awards in this case is not warranted. The Court finds that the jury was properly instructed on the weight to be given expert witnesses and that jury considered the testimony of Defendant’s expert, Dr. Martin, and the Plaintiff’s expert, Dr. Shapiro. Counsel for the parties argued the issues surrounding

the reliability of the time clock records of the Defendant and the jury made its findings in this regard. Nothing in the record suggests the Court should reduce the compensatory or punitive awards in this case.

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the Alameda County Superior Court and not a party to this cause. I served this ORDER (1) DENYING MOTION OF DEFENDANT FOR JUDGMENT NOTWITHSTANDING THE VERDICT AND (2) DENYING MOTION OF DEFENDANT FOR NEW TRIAL by placing copies in envelopes addressed as shown below and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

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Parallel Citations

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