UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CHRISTOPHER JAMES, et al.,

Plaintiffs,

v.

UBER TECHNOLOGIES INC.,

Defendant.

Case No. 19-cv-06462-EMC

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Docket No. 56

Plaintiffs Christopher James and Spencer Verhines are current or former Uber drivers who contend that they and a putative class of approximately 4,828 other Uber drivers are Uber's employees and therefore eligible for various protections under the California Labor Code. *See* Docket No. 81 (Amended Consolidated Class Action Complaint ("Am. Compl.")) ¶ 23. Plaintiffs raise various wage-and-hour claims under California law and seek various forms of relief, including under California's Unfair Competition Law (UCL) and the federal Declaratory Judgment Act (DJA). *Id.*

Pending before the Court is Plaintiffs' motion for class certification pursuant to Federal Rule of Civil Procedure 23. *See* Docket No. 56 ("Mot."). For the following reasons, Plaintiffs' motion is **GRANTED in part** and **DENIED in part.**

I. BACKGROUND

The Court and the parties are well acquainted with the background of this case, so it is not set forth in detail here. On May 19, 2020, Plaintiffs filed the pending motion to certify Class, *see* Mot, and two days later Uber filed a motion to dismiss Plaintiffs' consolidated class action

On June 30, 2020, the Court dismissed, with leave to amend, the consolidated amended complaint's claims that Uber failed to provide paid sick leave as required by section 246 of the California Labor Code, and any UCL claims premised on violations of section 246. *See* Docket No. 74 ("Order on MTD"). The Court also dismissed Thomas Colopy as a named Plaintiff in this case without prejudice to his claims. *See id.*

On July 14, 2020, Messrs. James and Verhines (hereinafter, "Plaintiffs") filed the operative amended consolidated class action complaint (hereinafter, "Amended Complaint") alleging as follows. Plaintiffs are residents of California who drive for Uber. Am. Compl. ¶¶ 8–9, 17–18. They bring this case as a putative class action on "behalf of . . . all other individuals who have worked as Uber drivers in California who have not released all of their claims against Uber." *Id.* ¶ 10. They assert claims related to their alleged misclassification as independent contractors, including (1) failure to reimburse business expenses, (2) failure to pay minimum wage, (3) failure to pay overtime, (4) failure to provide properly itemized pay statements, (5) failure to provide paid sick leave, and (6) unlawful business practices. *See id.* Plaintiffs seek damages dating back to February 28, 2019, as well as declaratory and injunctive relief, which would require Uber to reclassify its drivers as employees. *Id.* ¶ 7.

II. LEGAL STANDARD

Although expressly authorized by Rule 23, the "class action is 'an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only.'" *Wal–Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348 (2011) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 700–01 (1979)). "In order to justify departure from that rule, 'a class representative must be part of the class and possess the same interest and suffer the same injury as [her fellow] class members.'" *Id.* (quoting *E. Tex. Motor Freight Sys., Inc. v. Rodriguez*, 431 U.S. 395, 403 (1977)).

Accordingly, before certifying a class, the Court "must conduct a 'rigorous analysis' to determine whether the party seeking certification has met the prerequisites of Rule 23." *Mazza v. Am. Honda Motor Co., Inc.*, 666 F.3d 581, 588 (9th Cir. 2012) (quoting *Zinser v. Accufix Rsch. Inst., Inc.*, 253 F.3d 1180, 1186, *amended* 273 F.3d 1255 (9th Cir. 2001)). The Supreme Court has made it clear that Rule 23 "does not set forth a mere pleading standard." *Comcast Corp. v.*

Behrend, 569 U.S. 27, 33 (2013) (quoting *Wal-Mart*, 564 U.S. at 349). Rather, the party seeking certification must "affirmatively demonstrate" her compliance with the requirements of both Rules 23(a) and 23(b). *See Wal-Mart*, 564 U.S. at 349.

Rule 23(a) permits plaintiffs to sue as representatives of a class only if (1) "the class is so numerous that joinder of all members is impracticable" ("numerosity" requirement); (2) "there are questions of law or fact common to the class" ("commonality" requirement); (3) "the claims or defenses of the representative parties are typical of the claims or defenses of the class" ("typicality" requirement); and (4) "the representative parties will fairly and adequately protect the interests of the class" ("adequacy" requirement). Fed. R. Civ. P. 23(a)(1)-(4). The purpose of Rule 23(a)'s requirements is largely to "ensure[ ] that the named plaintiffs are appropriate representatives of the class whose claims they wish to litigate," and to "effectively limit the class claims to those fairly encompassed by the named plaintiff's claims." *Wal-Mart*, 564 U.S. at 349 (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 156 (1982)).

If each of the Rule 23(a) requirements are satisfied, the purported class must also satisfy one of the three prongs of Rule 23(b). Here Plaintiffs seek certification under Rule 23(b)(3), which requires the Court to find that "questions of law or fact common to class members predominate over any questions affecting only individual members" ("predominance" requirement), and "that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy" ("superiority" requirement). Fed. R. Civ. P. 23(b).

The underlying merits of the case, while admittedly relevant at the class certification stage, should not overly cloud the Court's certification analysis—the only question presently before the Court is whether the requirements of Rule 23 are met. *See Comcast*, 569 U.S. at 33–34. The fact that certain elements of proof may favor the defendant on the merits does not negate class certification; the issue is whether the proof is amenable to class treatment. Indeed, once a class is certified, the party prevailing on the merits can benefit from certification, be it Plaintiffs or Defendant.

Moreover, "[n]either the possibility that a plaintiff will be unable to prove [her] allegations, nor the possibility that the later course of the suit might unforeseeably prove the

original decision to certify the class wrong, is a basis for declining to certify a class which apparently satisfies the Rule." *Blackie v. Barrack*, 524 F.2d 891, 901 (9th Cir. 1975). Indeed, even "after a certification order is entered, the judge remains free to modify it in the light of subsequent developments in the litigation." *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 160 (1982). Ultimately, whether or not to certify a class is within the discretion of the Court. *See Levya v. Medline Indus. Inc.*, 716 F.3d 510, 513 (9th Cir. 2013); *United Steel, Paper & Forestry, Rubber, Mfg. Energy, Allied Indus. & Serv. Workers Int'l Union, AFL–CIO CLC v. ConocoPhilips Co.*, 593 F.3d 802, 810 (9th Cir. 2010).

III. DISCUSSION

This order proceeds as follows. First, the Court will apply the Rule 23(a) criteria (numerosity, commonality, typicality, and adequacy) to Plaintiffs' claim that they are/were Uber's employees, rather than independent contractors, and for each of their five substantive law claims: failure to (1) reimburse business expenses, (2) pay minimum wage, (3) pay overtime, (4) provide properly itemized pay statements, and (5) provide paid sick leave.

Second, the Court will consider whether Plaintiffs have met their burden under Rule 23(b)(3), which requires them to establish that the employment classification question, and all of their substantive claims, can be resolved with reference to predominately common proof (predominance) and that prosecuting their claims in a class action is superior to other available methods (superiority).

A. Rule 23(a) Requirements

1. Ascertainability and Numerosity

Before analyzing numerosity under Rule 23(a)(1), courts typically require a showing that the class to be certified is ascertainable. *See Daniel F. v. Blue Shield of Cal.*, 305 F.R.D. 115, 121–22 (N.D. Cal. 2014); 7A Charles Alan Wright et al., Federal Practice and Procedure § 1760 at 142–47 (3d ed. 2005). To be ascertainable, the definition of the class must be "definite enough so that it is administratively feasible for the court to ascertain whether an individual is a member" before trial, and by reference to "objective criteria." *Daniel F.*, 305 F.R.D. at 122; *see also Newton v. Am. Debt Servs., Inc.*, No. 11-cv-3238-EMC, 2015 WL 3614197, at *5, *6 (N.D. Cal.

June 9, 2015) (discussing ascertainability requirement). Put differently, the Court must identify "the persons (1) entitled to relief, (2) bound by a final judgment, and (3) entitled under Rule 23(c)(2) to the 'best notice practicable' in a Rule 23(b)(3) action." *Daniel F.*, 305 F.R.D. at 121 (quoting Manual for Complex Litigation, Fourth § 21.222 (2004)).

Plaintiffs seek to certify a class of drivers who have driven for Uber in the state of California since February 28, 2019 and who opted out of Uber's arbitration agreement. Membership in this class is objectively ascertainable from Uber's business records. *See O'Connor v. Uber* (*O'Connor II*), No. C-13-3826 EMC, 2015 WL 5138097, at *8 (N.D. Cal. Sept. 1, 2015). Uber does not dispute that it maintains business records with respect to each of its drivers, nor is there any dispute that those records will reveal whether each putative class member drove for Uber in the state of California since February 28, 2019. In fact, Uber has already identified 4,828 putative class members,[1] which represent "all individuals who completed at least one ride on the Uber app in California between February 28, 2019 and August 31, 2020, attempted to opt out of arbitration, and have a California driver's license." Docket No. 94 (Decl. of Justin McCrary in Support of Opp'n to Mot. ("McCrary Decl.")) ¶ 11, n. 4. The ascertainability requirement is therefore satisfied here.

A plaintiff satisfies the numerosity requirement if "the class is so large that joinder of all members is impracticable." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998) (quoting Fed. R. Civ. P. 23(a)(1)). While no court has set the precise number of class members that are needed to satisfy the numerosity requirement, there is general recognition that Rule 23(a)(1) is satisfied when the proposed class contains one hundred or more members. *See, e.g.*, *Wang v. Chinese Daily News*, 231 F.R.D. 602, 607 (C.D. Cal. 2005) (recognizing there is a presumption of numerosity where the proposed class contains one hundred or more members), *reversed on other grounds by* 737 F.3d 538 (9th Cir. 2013); *Ikonen v. Hartz Mountain Corp.*, 122 F.R.D. 258, 262 (S.D. Cal. 1998) (finding a proposed class of forty members sufficient to satisfy

[1] Uber explains that this number might be an overestimation because it includes folks who attempted to opt out of the arbitration clause but might not have been eligible to opt out. McCrary

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