

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAMES BRADY, et al.,
Plaintiffs,

v.

DELOITTE & TOUCHE LLP,
Defendant.

Case No. [08-cv-00177-SI](#)

**ORDER DENYING PLAINTIFFS'
MOTION FOR CLASS
CERTIFICATION**

Re: Dkt. Nos. 281, 285, 301

On August 28, 2015, the Court held a hearing on plaintiff's motion for class certification. For the reasons set forth below, the Court DENIES the motion. The Court GRANTS plaintiffs' request for leave to file a statement of recent decision.

DISCUSSION

Now before the Court is plaintiffs' renewed motion for class certification. In an order filed March 23, 2010, this Court originally certified a class of Deloitte's unlicensed accountants. However, in light of the Ninth Circuit's opinion in *Campbell v. PricewaterhouseCoopers, LLP*, 642 F.3d 820 (9th Cir. 2011), this Court granted Deloitte's subsequent motion to decertify in an order filed March 27, 2012. The Ninth Circuit affirmed this Court's decertification order in a memorandum disposition filed October 9, 2014. *Brady v. Deloitte & Touche LLP*, 587 Fed. Appx. 363 (9th Cir. 2014). Plaintiffs now seek to certify a narrowed class of unlicensed accountants, and they contend that certification is supported by authority that post-dates the Court's decertification order, as well as new evidence that was not before the Court in 2012.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Plaintiffs seek certification of the following class:

[A]ll persons employed by Defendant in California as exempt employees in Defendant’s Audit line of service who worked as a First and/or Second Year Staff (positions referred to by Defendant at various times as “Audit Assistant” and “Audit Senior Assistant”) at any time within four years of the filing of this complaint to the conclusion of this action but who were not licensed by the State of California in the practice of accounting and were not paid overtime for hours worked in excess of 8 hours in a day or 40 hours in a week.

Defendant claims that these unlicensed accountants are exempt under the professional and administrative exemptions set forth in California Wage Order No. 4-2001. Plaintiffs contend that the issues of whether the proposed class members are properly classified as exempt can be litigated on a class wide basis. While defendant has the burden of proof on the merits of its affirmative defenses, plaintiffs have the burden of proof in regard to satisfying Rule 23. *Marlo v. UPS*, 639 F.3d 642, 647 (9th Cir. 2011) (in motion for decertification, although employer has the burden of proof regarding applicability of wage and hour exemption, the plaintiff “bears the burden of demonstrating that the requirements of Rules 23(a) and (b) are met”).

After careful consideration of the parties' arguments and the new evidence submitted by plaintiffs, the Court concludes that plaintiffs have not demonstrated that common issues predominate. The Court agrees with plaintiffs that whether Deloitte’s requirements for class member positions satisfy the specialized knowledge requirement of the learned professions prong of the professional exemption can be litigated on a class-wide basis. However, for the same reasons articulated in the decertification order, plaintiffs have not shown that the balance of the professional exemption analysis is amenable to common proof. To the extent that the factfinder is required to analyze the job duties and work performed by class members to determine whether they are apprentices and/or trainees, the record before the Court shows, as it did when the Court granted defendant's motion for decertification, that there is wide variation in the job duties and work experiences of class members.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

With regard to the administrative exemption, plaintiffs cite, *inter alia*, the same Deloitte policies, professional standards and statutes that the Court addressed in the decertification order. Plaintiffs assert that these policies, standards and statutes preclude class members from engaging in work that is qualitatively administrative. However, while those policies and rules prevent class members from performing specific tasks such as signing engagement letters, they do not necessarily preclude class members from engaging in work that is "directly related to management policies or general business operations of his/her employer" or its customers. Wage Order 4-2001, 1(A)(2)(a)(i). Plaintiffs also assert, citing these same policies and rules as well as *Harris v. Superior Court*, 53 Cal. 4th 170, 182 (2011), that all class members are prevented from performing administrative work because they do not "advise" management. However, *Harris* did not hold that "advising" management was necessary for the administrative exemption to apply. *See id.* (stating "administrative operations include work done by 'white collar' employees engaged in servicing a business. Such servicing *may* include, as potentially relevant here, advising management, planning, negotiating, and representing the company.") (emphasis added). Finally, the evidence before the Court shows that class members are subject to differing degrees of supervision and exercise varying degrees of discretion and independent judgment, factors that are relevant to both exemptions.

For the foregoing reasons, the Court hereby DENIES plaintiffs' motion for class certification. In light of the disposition of the motion, the Court finds it unnecessary to rule on defendant's motion to strike the Ueltzen declaration.

IT IS SO ORDERED.

Dated: September 4, 2015



SUSAN ILLSTON
United States District Judge