

1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA
4

5 CATHERINE E. SULLIVAN,

No. C 08-3893 CW

6 Plaintiff,

ORDER GRANTING
PLAINTIFF'S
ADMINISTRATIVE
MOTION CONCERNING
CLASS NOTICE AND
DENYING
DEFENDANT'S
ADMINISTRATIVE
MOTION CONCERNING
CLASS NOTICE
(Docket Nos. 82
and 84)

7 v.

8 KELLY SERVICES, INC. and DOES 1 TO
9 10, inclusive,

10 Defendants.
_____ /

United States District Court
For the Northern District of California

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13 In this wage-and-hour class action, the Court has granted
14 partial summary judgment in favor of Plaintiff Catherine Sullivan
15 after concluding that, under California Labor Code § 1194, she is
16 entitled to compensation for all hours she worked by interviewing
17 with Defendant Kelly Services, Inc.'s customers. The Court has
18 also certified the following class:

19 All individuals who were or are employed by Kelly Services,
20 Inc. as a temporary employee within the State of California
21 at any time between August 14, 2004 and the date the trial
22 commences in this action, and who attended at least one
interview with a Kelly consumer.

23 "Temporary employee" is defined as a person "who worked at least
24 one day on an assignment with a Kelly customer within Kelly's
25 commercial or non-commercial divisions." Pl.'s Motion for Class
26 Certification at 1 n.3. A sub-class of class members who are no
27 longer employed by Defendant has also been certified.

28 Plaintiff now moves for an order requiring that class notice

1 be distributed no later than January 21, 2011 and that Defendant
2 pay all notice-related costs. Defendant asks the Court to defer
3 ruling on these class notice issues until after it resolves
4 Defendant's decertification motion, which is to be filed on January
5 28, 2011 and set to be heard on April 21, 2011. Defendant also
6 opposes Plaintiff's request that it be ordered to cover the costs
7 of notice.

8 Defendant does not persuade the Court that notice should be
9 delayed until after its impending decertification motion is
10 resolved. Accordingly, notice shall be disseminated no later than
11 January 21, 2011.

12 Further, Defendant shall bear the costs of notice. "The usual
13 rule is that a plaintiff must initially bear the cost of notice to
14 the class." Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 178
15 (1974). Although district courts should not stray from this
16 general rule, they have discretion to shift costs of notice to
17 defendants in certain circumstances. Hunt v. Imperial Merchant
18 Servs., Inc., 560 F.3d 1137, 1143 (9th Cir. 2009), cert. denied,
19 130 S. Ct. 154 (2009). For instance, "courts may order a class
20 action defendant to pay the cost of class notification after they
21 determine that the defendant is liable on the merits." Hunt, 560
22 F.3d at 1144; see also id. at 1143 (discussing, with approval,
23 treatise stating that "'interim litigation costs, including class
24 notice costs, may be shifted to defendant after plaintiff's showing
25 of some success on the merits, whether by preliminary injunction,
26 partial summary judgment, or other procedure'") (quoting 3 William
27 B. Rubenstein, et al., Newberg on Class Actions § 8:6 (4th ed.

1 2007)).

2 Here, as noted above, the Court has summarily adjudicated that
3 Defendant must compensate Plaintiff for the time she spent
4 interviewing with Defendant's customers. Further, the Court has
5 ruled that her circumstances are typical of class members. Thus,
6 the Court's conclusions on the parties' summary judgment motions
7 apply with equal force to the class.

8 Defendant argues that Hunt is distinguishable because, in that
9 case, the district court granted summary judgment and class
10 certification simultaneously. Defendant suggests that, based on
11 this timing, the district court ruled explicitly on the rights of
12 the class. However, the district court's summary judgment order
13 made no mention of the merits of the class action; as in this case,
14 the district court in Hunt decided the merits of the named
15 plaintiffs' claims. See generally Order of March 21, 2007 Denying
16 Defendant's Motion for Summary Judgment and Granting in Part
17 Plaintiffs' Motion for Summary Judgment, Hunt v. Check Recovery
18 Sys., Inc., No. 05-4993 MJJ (N.D. Cal.). Further, Defendant points
19 to nothing in the Ninth Circuit's decision showing that the
20 simultaneity of the district court's ruling controlled the outcome.
21 Here, as in Hunt, the shifting of costs is based on the Court's
22 ruling on Defendant's liability. Unless the law changes or the
23 facts are shown to be different, this ruling applies to the class.
24 The Court does not expect another summary judgment motion.

25 Accordingly, the Court GRANTS Plaintiff's administrative
26 motion concerning class notice (Docket No. 82) and DENIES
27 Defendant's administrative motion regarding the same (Docket No.

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1 84). Notice shall be disseminated by January 21, 2011. Because
2 the Court has ruled on the merits of Defendant's liability,
3 Defendant shall bear the costs of notice to the class.

4 IT IS SO ORDERED.

5 Dated: January 5, 2011
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CLAUDIA WILKEN
United States District Judge