

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JUDITH COLVIN,
Plaintiff,
v.
CITIGROUP GLOBAL MARKETS, INC.,
Defendant.

No. C 09-00238 CW
ORDER DENYING
PLAINTIFF'S MOTION
TO VACATE COURT'S
CASE MANAGEMENT
ORDER

In this case, Plaintiff Judith Colvin charges that Defendant Citigroup Global Markets (CGMI) improperly classified her as exempt under California law and denied her overtime pay, meal and rest breaks and business expense reimbursements. On November 10, 2008, Plaintiff Judith Colvin filed her complaint in California Superior Court for the County of San Mateo. On January 16, 2009, Defendant removed the case to the United States District Court for the Northern District of California. On February 6, 2009, the Court related this case to Bahramipour v. Citigroup Global Markets Inc., No. C 04-04440 CW. Bahramipour was a class action that involved the same causes of action that Plaintiff asserts in the present case. The parties settled Bahramipour and the Court approved the settlement agreement on March 18, 2008. As a class member in that case, Plaintiff submitted a claim and has been paid her portion of

1 the settlement.

2 On April 28, 2009, the Court conducted an initial case
3 management conference for the present case. At the conference, the
4 Court noted Plaintiff's involvement in the Bahramipour case and
5 indicated that it would initially limit discovery to Plaintiff's
6 individual claims and permit the parties to file motions for
7 summary judgment on those claims prior to proceeding with pre-class
8 certification discovery. Specifically, the Court allowed 120 days
9 for the parties to conduct discovery.

10 Plaintiff moves to vacate the Court's case management order,
11 arguing that the order improperly allows a merits determination
12 prior to class certification. Contrary to Plaintiff's assertion,
13 Ninth Circuit law is clear that a district court may rule on the
14 merits before ruling on a motion for class certification. Wright
15 v. Schock, 742 F.2d 541, 544 (9th Cir. 1984). "Where the defendant
16 assumes the risk that summary judgment in his favor will have only
17 stare decisis effect on the members of the putative class, it is
18 within the discretion of the district court to rule on the summary
19 judgment motion first." Id. The judgment will not be res judicata
20 as to other individual plaintiffs or other members of any class
21 that may be certified. Id. The Court concludes that "early
22 resolution of [the] motion for summary judgment seems likely to
23 protect both the parties and the court from needless and costly
24 further litigation." Id.

25 Plaintiff's reliance on Eisen v. Carlisle & Jacqueline, 417
26 U.S. 156 (1974), is misplaced. In that case, the district court
27 held a preliminary hearing to determine whether the plaintiffs were
28 likely to prevail on the merits, and on that basis it allocated

1 ninety percent of the costs of class notice to the defendants. The
2 Court held that such a hearing was not provided for under Federal
3 Rule of Civil Procedure 23. However, the Court did "not say that a
4 court may never consider the merits of a suit prior to a class
5 determination." Wright, 742 F.2d at 545. The Court merely
6 prohibited "preliminary inquiry into the merits of a suit in order
7 to determine whether it may be maintained as a class action."
8 Eisen, 417 U.S. at 177.

9 The discovery allowed in the present case is geared towards a
10 hearing on motions for summary judgment. The Court will not use a
11 Rule 56 determination as a vehicle for deciding whether a class
12 action is maintainable. Accordingly, Plaintiff's motion is denied.
13 The Court vacates the hearing scheduled for June 18.

14 IT IS SO ORDERED.

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16 Dated: 6/11/09



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CLAUDIA WILKEN
United States District Judge