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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

CHARLES BURDEN, individually and on behalf of other persons similarly situated,

Plaintiff,

vs.

SELECTQUOTE INSURANCES SERVICES, a California corporation; and DOES 1 through 10,

Defendants.

Case No: C 10-5966 SBA

**ORDER GRANTING
DEFENDANT'S
ADMINISTRATIVE MOTION TO
RE-SET HEARINGS ON
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT AND
PLAINTIFF' MOTION FOR CLASS
CERTIFICATION**

Docket 38

Plaintiff Charles Burden ("Burden" or "Plaintiff") brings the instant putative wage and hour class action, individually, and on behalf of all others similarly situated, against Defendant SelectQuote Insurance Services ("SelectQuote" or "Defendant") based its alleged failure to pay overtime to its insurance agents. The Complaint alleges violations of the California Labor Code and the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 207.

On May 25, 2011, Burden filed a Motion for Class Certification. Dkt. 28. Shortly thereafter, on May 31, 2011, SelectQuote filed a Motion for Summary Judgment. Dkt. 34. Due to the limited space on the Court's law and motion calendar, however, Burden's motion is scheduled for hearing on July 27, 2011, while SelectQuote's motion is set for September 27, 2011.

1 SelectQuote has now filed an Administrative Motion to Re-Set Hearings on
2 Defendant’s Motion for Summary Judgment and Plaintiff’s Motion for Class Certification,
3 in which it seeks to have its motion heard prior to Plaintiff’s motion. The Ninth Circuit has
4 recognized that “[u]nder the proper circumstances—where it is more practicable to do so
5 and where the parties will not suffer significant prejudice—the district court has discretion
6 to rule on a motion for summary judgment before it decides the certification issue.” Wright
7 v. Schock, 742 F.2d 541, 543-44 (9th Cir. 1984). In exercising its discretion, the court
8 should consider whether “resolution of a motion for summary judgment seems likely to
9 protect both the parties and the court from needless and costly further litigation.” Id. at
10 544.

11 The Court finds that proper circumstances are presented that militate in favor of
12 adjudicating SelectQuote’s summary judgment motion first. The gravamen of
13 SelectQuote’s motion is that Burden was properly classified as an exempt employee under
14 California law. If this is correct, all of Burden’s claims fail and his motion for class
15 certification will become moot. Notably, Burden has conceded that “there are no material
16 disputes of fact in this case,” and that “this Court can decide on a motion for summary
17 judgment, as a matter of law, whether or not insurance agents were [properly classified as]
18 exempt.” Pl.’s Mot. for Class Cert. at 7:22-27, Dkt. 28. Burden’s acknowledgement that
19 Defendant’s summary judgment motion presents only questions of law further supports the
20 Court’s conclusion that it will be more practicable and efficient to resolve SelectQuote’s
21 motion prior to reviewing Burden’s class certification motion.

22 Burden asserts that adjudicating SelectQuote’s summary judgment motion first will
23 cause him prejudice, ostensibly because it rewards SelectQuote’s “disingenuous tactics.”
24 Pl.’s Opp’n at 2, Dkt. 40. Burden surmises that SelectQuote waited to file the instant
25 motion until after he filed his motion so that it “could gain itself more time to prepare its
26 opposition to Plaintiff’s motion for class certification.” Id. However, it is unclear how
27 SelectQuote’s alleged “tactics” would result in “more time” to oppose Burden’s class
28 certification motion, given that the briefing schedule on the motion for class certification

1 had previously been set by the Court. Dkt. 27. Irrespective of any tactical motives
2 regarding the timing of the instant request, the Court finds that the interests of justice and
3 judicial efficiency favor consideration of SelectQuote's summary judgment motion prior to
4 Burden's class certification motion, and that adjudication of the pending motions in that
5 sequence will not result in significant prejudice to either party. Accordingly,

6 IT IS HEREBY ORDERED THAT:

7 1. Defendant's Administrative Motion to Re-Set Hearings on Defendant's
8 Motion for Summary Judgment and Plaintiff's Motion for Class Certification (Dkt. 38) is
9 GRANTED.

10 2. Plaintiff's Motion for Class Certification (Dkt. 28) shall be held in
11 ABEYANCE pending adjudication of Defendant's Motion for Summary Judgment (Dkt.
12 34), which shall be heard, as scheduled, on September 27, 2011.

13 3. To expedite matters, Plaintiff shall file his opposition to Defendant's Motion
14 for Summary Judgment by no later than August 2, 2011, and Defendant shall file its reply
15 by August 16, 2011. The Court may adjudicate the motion without oral argument. Fed. R.
16 Civ. P. 78(b), Civ. L.R. 7-1(b). The parties are advised to consult the Court's website to
17 determine whether an appearance on the motion is necessary.

18 4. In the event the Court denies or denies in part Defendant's Motion for
19 Summary Judgment, the Court will reschedule the hearing on Plaintiff's Motion for Class
20 Certification.

21 5. This Order terminates Docket 38.

22 IT IS SO ORDERED.

23 Dated: July 19, 2011

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25 SAUNDRA BROWN ARMSTRONG
26 United States District Judge
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