

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  
SAN JOSE DIVISION

JOSE RAMIREZ PAZ,  
Plaintiff,  
v.  
BEIJIN BEST, INC., et al.,  
Defendants.

Case No.: C 10-01720 PSG  
**ORDER SOLICITING BRIEFING ON CLASS  
CERTIFICATION PROCEDURES**

On September 21, 2010, the parties appeared before Magistrate Judge Patricia V. Trumbull for a case management conference. At the case management conference, Judge Trumbull set a schedule for trial, final pretrial conference, and various pretrial deadlines including the last day for hearing Plaintiff’s motion for class notification<sup>1</sup> and the last day for hearing Defendants’ motion to decertify class.<sup>2</sup> Although Plaintiff indicated in the Joint Case Management Conference Statement that he intends to seek certification of a class under California law, no dates were set for any motion for class certification under Federal Rules of Civil Procedure 23.<sup>3</sup> A review of recent case law

---

<sup>1</sup> See *Hoffmann La Roche, Inc. v. Sperling*, 493 U.S. 165 (1989) (approving trial court’s authorization of notice to potential class members under 29 U.S.C. section 216(b)).

<sup>2</sup> See, e.g., *Leuthold v. Destination Am., Inc.*, 224 F.R.D. 462, 467 (N.D. Cal. 2004) (describing two-tier approach to class certification in FLSA class actions).


<sup>3</sup> See *Leuthold.*, 224 F.R.D. at 469-70 (denying certification of class under Rule 23 in Fair Labor Standards Act case based on evaluation of “superiority” factors set forth in Rule 23(b)).

ORDER

1 suggests that both a Fair Labor Standards Act “opt-in” class and a Rule 23 “opt-out” class may be  
2 certified in the same case.<sup>4</sup> Therefore,

3 IT IS HEREBY ORDERED that, no later than February 14, 2011, the parties shall submit  
4 briefs of not more than five pages setting forth their positions with regard to whether it is appropriate  
5 in the present case for the court to set deadlines for class certification motions under *both* the FLSA  
6 “opt-in” class procedures and the Rule 23 “opt-out” class procedures.

7 Dated: *February 11, 2011*

8   
9 PAUL S. GREWAL  
United States Magistrate Judge

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

---

28 <sup>4</sup> See, e.g., *Harris v. Vector Marketing Corp.*, --- F.Supp.2d ----, Case No. C-08-5198 EMC, 2010 WL 4588967, at \*19-20 (N.D. Cal. Nov. 5, 2010), and *Murillo v. Pacific Gas & Elec. Co.*, 266 F.R.D. 468, 471-73 (E.D.Cal. Mar 05, 2010).