

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

MANUEL ACOSTA, on behalf of )  
himself and all other similarly situated )  
individuals, LUIS MONTOYA, on behalf )  
of himself and all other similarly situated )  
individuals, and MARTIN HINOJOSA, )  
on behalf of himself and all other )  
similarly situated individuals, )

8:08CV86

Plaintiffs, )

MEMORANDUM AND ORDER

v. )

TYSON FOODS, INC., )

Defendant. )

This matter is before the court on the objections, Filing No. [72](#), to the findings and recommendation of the magistrate judge, Filing No. [71](#), granting the motion to certify the class, Filing No. [61](#). Plaintiffs, current and former employees of the defendant, filed this case pursuant to the Fair Labor Standards Act of 1938 (“FLSA”), [29 U.S.C. § 201](#), as well as federal and state wage and hour laws. Plaintiffs allege violations of FLSA for pre- and post-production activities which include donning, doffing, and other job-related activities.

Plaintiffs filed this case requesting class certification for all those similarly situated. Defendant objects. Defendant contends that the magistrate judge failed to conduct a rigorous analysis to determine if the requirements of Fed. R. Civ. P. 23 are satisfied.<sup>1</sup> The court has carefully reviewed the objections and finds they are without merit. The

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<sup>1</sup>Defendant argues that currently before the United States Supreme Court is a case entitled *Dukes v. Wal-Mart Stores, Inc.*, 603 F.3d 571, 594 (9th Cir.), cert granted, in part, 2010 U.S. Lexis 9588 (U.S. Dec. 6, 2010) that could change how the court analyzes the facts in a class certification decision. If, when the Supreme Court files its decision in this case, the defendant believes it changes the outcome of this ruling, defendant is free to file a motion and mini-brief with the court.

magistrate judge wrote a thorough order analyzing the request for class certification and determined that such request should be granted. Filing No. [71](#). The court has carefully reviewed the objections, the findings and recommendation, the law, and the entire record and finds the decision of the magistrate judge should be adopted in its entirety.

THEREFORE, IT IS ORDERED:

1. Plaintiffs' motion to certify the class, Filing No. [61](#), is granted;
2. Defendant's objections, Filing No. [72](#), are overruled; and
3. The findings and recommendation of the magistrate judge, Filing No. [71](#), is adopted in its entirety.

DATED this 30<sup>th</sup> day of March, 2011.

BY THE COURT:

s/ Joseph F. Bataillon  
Chief United States District Judge

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