

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

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| <p>DEL TACO WAGE AND HOUR CASES</p> <p>Plaintiff/Petitioner(s) VS. Del Taco, LLC Defendant/Respondent(s)</p> | <p>No. JCCP004904</p> <p>Date: 05/03/2022 Time: 10:00 AM Dept: 21 Judge: Evelio Grillo</p> <p>ORDER re: Court Order</p> |
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Re: Coordinated case Torrez VS Del Taco Wage and House Case -- 21CV000111.

The Motion for Order NOTICE OF MOTION AND MOTION FOR ORDER LIMITING SCOPE OF CLASS PERIOD AND DISMISSING CLAIMS OUTSIDE OF THE CLASS PERIOD AS TIME-BARRED filed by Del Taco Wage And Hour Cases on 04/08/2022 is Granted.

The Motion of defendant Del Taco on tolling and limiting the scope of the class is GRANTED.

FACTS

On 3/11/14, Gossette filed a complaint alleging a variety of Labor Code claims against Del Taco. The court dismissed the Gossette claims under the five year rule. (CCP 583.310.)

On 7/17/14, Tafoya filed a complaint alleging a variety of Labor Code claims against Del Taco. On 11/12/21, the court granted class certification. The court expressly did not decide issues of equitable tolling.

On 10/28/15, Chavez and Andaya filed a complaint.

On 11/9/15, Ramirez filed a complaint

On 3/2/16, Torrez filed a complaint.

On 9/22//20, Cabral and Lozano filed a complaint

PROCEDURE

The class cert order of 11/12/21 at p4 states: “The court does not decide whether equitable tolling extends the class period before 3/2/12. (Montoya v. Ford Motor Company (2020) 46 Cal.App.5th 493, 503.)” The order at p31 states: “Del Taco may file a motion for summary adjudication seeking to dismiss claims that arose before 3/2/12 based on the statute of limitation.”

Defendant argues that the Torrez class is limited to the period from 3/2/12 through 11/12/21.

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Plaintiff argues that the operation of equitable tolling based on the Gossette case extends the Torrez class back to 3/11/10.

THE LAW

Montoya v. Ford Motor Co. (2020) 46 Cal.App.5th 493, 500, states:

The equitable tolling of an individual's claim against a defendant because of a class action is a common law expansion of the United States Supreme Court, construing rules of federal class actions in both *American Pipe and Construction Co. v. Utah* (1974) 414 U.S. 538, 94 S.Ct. 756, 38 L.Ed.2d 713 (*American Pipe*) and *Crown, Cork & Seal Co., Inc. v. Parker* (1983) 462 U.S. 345, 346-347, 103 S.Ct. 2392, 76 L.Ed.2d 628 (*Crown Cork*).

The question of whether the equitable tolling made possible in *American Pipe* should extend to a second class action is a question our federal compatriots have addressed at some length, and we find ourselves in agreement with their resolution of the issue. Therefore, in this case we determine that to toll the statute of limitations during the period of a second class action contravenes the judicial economy and efficiency that *American Pipe* was trying to achieve. ... Second class action tolling multiplies litigation, rather than consolidating and reducing it.”

[End of block quotation]

Fierro v. Landry's Rest. Inc. (2019) 32 Cal.App.5th 276, 294 states:

Moreover, allowing the tolling of statutes of limitations of class claims (as encouraged by [plaintiff] Fierro) will result in theoretically endless tolling so long as a new named plaintiff is available to promptly file a new class action complaint each time class certification is denied. Nothing under California law suggests such an exception to the application of a statute of limitations for a class claim. Stated differently, there is no basis under California law for potentially unlimited tolling of statutes of limitations applicable to class action claims.

Statutes of limitations, which are the result of legislation, “ “represent a public policy about the privilege to litigate.” ... Equitable tolling of class claims under *American Pipe*, which would allow an unlimited extension of the expiration of a statute of limitations, does not serve California's stated purposes of legislating limitation periods. To the contrary, application of *American Pipe* tolling to class claims would be inconsistent with the above-described policies associated with the application of statutes of limitations.

[end of bock quotation]

APPLICATION OF LAW TO FACT

The court finds that equitable tolling does not apply to the class claims. The Torrez class action class period is not extended to include the Gossette putative class action period.

First, this conclusion is compelled by the California Court of Appeal decision in *Montoya v. Ford Motor Co.* (2020) 46 Cal.App.5th 493. The trial court must follow precedent. (Auto Equity

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Sales, Inc. v. Superior Court of Santa Clara County (1962) 57 Cal.2d 450, 455.)

The court has considered *Falk v. Children's Hospital Los Angeles* (2015) 237 Cal.App.4th 1454, where the Court of Appeal reversed the trial court's decision on summary judgment to dismiss class claims as time barred and held that American Pipe tolling could apply to class claims in successive actions. *Montoya* discussed *Falk* and supercedes *Falk*. The court will follow *Montoya* as the more recent appellate authority. The court also notes that *Montoya* has the benefit of the more recent United States Supreme Court authority of *China Agritech, Inc. v. Resh* (2018) 138 S.Ct. 1800, 1806-1809.

Second, independently considering the equities of applying equitable tolling on the facts of this case, the court would not apply equitable tolling.

Considering the members of the *Gossette* putative class, the court accepts the legal fiction that they knew of the case and relied on the pendency of the case in making a decision to not file individual cases.

Considering defendant, defendant knew of the *Gossette* case and could prepare its defense in that case.

Considering public policy, the court gives effect to both the statute of limitations and to the five year rule. (CCP 583.310.) Most case law is concerned with giving effect to the statute of limitations, which stretches back in time from the date of filing a complaint.

This case also concerns the five year rule, which runs forward from the date of the filing of a complaint. Defendant also filed a motion to dismiss the *Gossette* case under the five year rule and the court granted that motion. Defendant's motion to dismiss the *Gossette* case would have no practical effect if *Torrez* could simply assume the prosecution of the claims of the *Gossette* putative class.

It would not be equitable if the court dismissed the claims of a putative or certified class under the five year rule and then the defendant was exposed to the same asserted claims in a second class action that relied on the first class action for tolling. It would also be contrary to the public policy in the five year rule that cases must be brought to trial within five years. Class actions are complex and can take longer than regular cases. (Std Jud Admin 2.2(f) [disposition goal of two years for regular cases] and 2.2(g) [disposition goal of three years for complex cases].) That noted, the five year rule still applies to complex cases and if a case has not been brought to trial within five years and has been dismissed on that basis, it would be contrary to the legislative scheme and the judicial case management goals to use equitable tolling to revive the dismissed claims.

The court notes that this order concerns the class claims and not the claims of any individuals that might file individual claims.

A copy of this minute order will append to the following coordinated case under JCCP004904: 21CV000111.

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The Court orders counsel to obtain a copy of this order from the eCourt portal.

Dated: 05/03/2022

A handwritten signature in black ink, appearing to read 'Evelio Grillo', written in a cursive style.

Evelio Grillo / Judge