

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DATE: 12/07/11

DEPT. 78

HONORABLE WILLIAM F. FAHEY

JUDGE

K. SILVY

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G. YOUNG, CA

Deputy Sheriff

NONE

Reporter

3:00 pm

BC415527

Plaintiff

Counsel

EUGINA BRIGHT

NO APPEARANCES

Defendant

Counsel

VS

99 CENTS ONLY STORES

170.6-LAVIN (PLFT)

deft. 170.6- Judge Recana

**NATURE OF PROCEEDINGS:**

**RULING ON SUBMITTED MATTER:**

Order GRANTING Defendant's Motion to Strike Representative Allegations, is filed this date and incorporated by reference.

**COURT'S ORDER RE: RELATED CASES**

The Court finds that the following cases BC415527 and BC473038 are related cases within the meaning of Los Angeles Superior Court Local Rule 7.3(f). For good cause shown, said cases are assigned to Judge William Fahey for all purposes.

Defendant to give notice to all interested parties.

**CLERK'S CERTIFICATE OF MAILING/  
NOTICE OF ENTRY OF ORDER**

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served Notice of Entry of the above minute order of 12-07-11 upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope



BRIGHT V. 99 CENTS ONLY STORES  
BC 415527  
December 7, 2011

ORDER GRANTING DEFENDANT'S MOTION TO STRIKE REPRESENTATIVE  
ALLEGATIONS

On June 11, 2009, plaintiff commenced this case as a putative "class action." Plaintiff had been a cashier at one of defendant's stores. Her case seeks a judicial determination that defendant must provide a chair to each of its cashiers at their work station based upon the California Labor Code and Wage Order 7-2001, sec. 14. The case was assigned to Judge Lavin who, on October 15, 2009, sustained without leave defendant's demurrer.

Plaintiff appealed. On March 8, 2011, the Court of Appeal reversed and remanded the case to the Superior Court. The case was re-assigned to this Court on April 26, 2011.

In her April 29, 2011 Case Management Statement, plaintiff represented that she intended to seek class certification. This representation was repeated by plaintiff's counsel at the May 13, 2011 Case Management Conference. The Court set the date of October 31, 2011 for a hearing on plaintiff's class certification motion and a trial date of January 23, 2012.

Once it became clear that plaintiff had failed timely to file a motion for class certification, defendant filed the instant Motion to Strike Plaintiff Eugina Bright's Representative Action Allegations or, in the alternative, Motion for Stay of Proceedings ("Motion"). Plaintiff filed her written Opposition to the Motion and argument was heard on December 1, 2011.

The Motion makes two primary arguments: first, plaintiff Bright is not an adequate representative; second, the proposed representative claim is unmanageable.

In support of its first argument, defendant asserts that plaintiff's interests are antagonistic to the other 99 cents employees she seeks to represent. Plaintiff has admitted that she was fired and is interested in recovering lost wages, she was solicited by her attorneys to bring this action and she has not even spoken about the claims in this case with any of the "aggrieved" employees she now seeks to represent. In addition, defendant has submitted the declarations of 376 of its employees who specifically disagree with plaintiff's demand that they be provided seats in their cashier stations. Defendant states that these declarations represent approximately ten percent of its current cashier population.

As to its second argument, defendant asserts that any trial in this case would actually require a series of mini-trials to determine whether there is a reasonable need to offer a chair based upon each individual cashier's specific duties, store-by-store, taking into account such considerations as other work responsibilities (e.g., cart retrieval, customer assistance, particularly for the elderly, and loss prevention activities). Because plaintiff here is seeking civil penalties, defendant also argues that it would be deprived of its due process rights if it were not able to defend itself on a cashier-by-cashier basis.

Plaintiff's Opposition brief focuses only on the procedural aspect of defendant's Motion. Plaintiff completely fails to provide any evidence, or even argument, as to the substantive questions of adequacy and manageability.

Plaintiff's argument that a motion to strike is an improper vehicle to test plaintiff's representative status and the manageability of this action is incorrect as a matter of law. *See, e.g., Kraus v. Trinity Management Services, Inc.*, 23 Cal. 4<sup>th</sup> 116, 138 (2000); *Bronco Wine Co. v. Frank A. Logoluso Farms*, 214 Cal. App. 3d 699, 720-21 (1989); *cf. In re BCBG Overtime Cases*, 163 Cal. App. 4<sup>th</sup> 1293 (motion to strike class allegations was proper). On the other hand, CCP 435, *et seq.*, relied upon by plaintiff, is inapposite. Nor is it persuasive for plaintiff to argue that defendant's motion to strike is akin to a motion for summary judgment, or that defendant is improperly seeking to impose class standards on this representative action.

This Court concludes that there is ample precedent for a trial court to make a determination *prior to trial* whether or not the action is "brought by a competent plaintiff for the benefit of injured parties." *Kraus* at 138. As a matter of fairness, it is far better to resolve this issue before the parties have devoted substantial time and cost to final trial preparation. As a matter of judicial efficiency, it is far better to resolve the issues of adequacy and manageability before commencing what is potentially a many week trial.

Here, the overwhelming evidence submitted by defendant shows that plaintiff is not an adequate and competent representative and that the action she now seeks to prosecute would be unmanageable.

The burden has shifted to plaintiff who has chosen not to put forth evidence of her own. Plaintiff has failed to submit her own declaration refuting the claims made in defendant's Motion or the assertions in the hundreds of declarations filed by defendants. No other declaration, deposition or written evidence supporting plaintiff has been provided. Instead, at the hearing, plaintiff's counsel for the first time requested leave to take discovery. The basis for this request was a claim that plaintiff's counsel had not received the declarations supporting the Motion until

the Motion was filed (on November 4, 2011).

As it turns out, this claim was false. Defendant has since submitted evidence, not rebutted by plaintiff, that the declarations at issue were produced to plaintiff's counsel on September 6, 2011. In fact, on September 9, 2011, plaintiff's counsel referred to these declarations during the deposition of Juan Yera in this case.

Despite the fact that plaintiff had these declarations for more than two months, her Opposition did not supply contrary declarations. Nor did her Opposition request additional time to take discovery to dispute the factual assertions in the declarations or in defendant's Motion. This approach strongly suggests that plaintiff is simply unable to provide contrary evidence. Moreover, after more than two years and with the discovery cutoff just two weeks away, it would be fundamentally unfair to delay the resolution of defendant's Motion. *See In re BCBG Overtime Cases, supra* at 1301 (proper to deny a request for discovery made for the first time at oral argument). Accordingly, good cause having been shown,

IT IS ORDERED that defendant's Motion to Strike Plaintiff Eugina Bright's Representative Action Allegations is GRANTED.

IT IS FURTHER ORDERED that the case of Pickett v. 99 Cents Only Stores, BC 473038, is deemed related to this action.

Notice by defendant.