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Court of Appeal Upholds Denial of Class Certification Because Issues Specific to Each Predominate

Recently, the California Court of Appeal has upheld the denial of class certification for employees because individual issues – not common issues – among those employees would determine the outcome of the lawsuit. In *Tien v. Tenet Healthcare Corporation*, --- Cal. App. 4th ---- (2011), the Court of Appeal has affirmed the denial of class certification based on the analysis previously put forth by *Brinker Restaurant Corporation v. Superior Court*, 165 Cal. App. 4th 25 (2008) and *Brinkley v. Public Storage, Inc.*, 167 Cal. App. 4th 1278 (2008). In *Tien*, the hourly employees of Tenet alleged that they, and other class members, had not been paid for legally mandated additional wages for missed meal periods and rest breaks. Specifically, the employees brought their lawsuit as a class action and sought certification for: (i) missed meal periods; (ii) missed break periods; (iii) waiting time penalties; and (iv) pay stub violations.

The trial court had initially granted certification but, following the Court of Appeal's *Brinker* and *Brinkley* decisions, granted Tenet's motion for reconsideration and denied certification on all issues.

The Court of Appeal affirmed the denial of certification. In doing so, the Court held that individual issues and questions of proof pre-dominated the determination of each of the four alleged areas of violations. Because of these individual issues that would determine liability on an employee-by-employee basis, class certification was unwarranted.

The Court of appeal then rejected the employees' argument that the trial court could not rely upon *Brinkley* because it had been depublished while the Supreme Court heard its, and *Brinker's*, appeals. The trial court had relied upon *Brinker* prior to depublication and the trial court's analysis was sound. The Court also rejected the employees' arguments that the trial court's analysis was unsound.

What does this mean for employers? The *Tien* court is a clear victory for employers. The decision's holding, that issues such as missed meal periods and break periods are fact-specific to the individual, sets the bar very high for employees trying to assemble a class action. Ultimately, the Supreme Court's decisions for *Brinker* and *Brinkley* will decide whether *Tien* is good law for the future defense of employers.