

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

Bianca Minix et al
Plaintiff/Petitioner(s)
VS.
Sutter Health et al
Defendant/Respondent(s)

No. RG20061295
Date: 08/04/2022
Time: 3:30 PM
Dept: 17
Judge: Frank Roesch

ORDER re: Hearing on Motion - Other
Class Certification

The Motion for Class Certification filed by Bianca Minix on 06/09/2022 is Granted in Part.

Plaintiffs' Motion for Class Certification is GRANTED, as follows.

Plaintiffs seek certification of (1) a class seeking injunctive relief only, consisting of "all persons who were employed at Sutter Health hospitals in the state of California as environmental services staff members and whose job duties included working with OxyCide from May 15, 2016 to the present", and (2) a "negligence subclass" consisting of "all class members who experienced burning eyes, burning throat, nasal congestion, nasal irritation, chronic cough, headache, dizziness, nausea, loss of consciousness, nosebleeds, hay fever symptoms, asthma symptoms, respiratory irritation, skin burns, rashes, or reactions affecting their pulmonary or respiratory functions while working with OxyCide from May 15, 2018 to the present." (See Plaintiffs' Fifth Amended Complaint, paragraphs 57-58.) Plaintiffs' opening brief (at page 24) proposes amending the definition of the "negligence subclass" to exclude any class members pursuing claims against EcoLab (the distributor of OxyCide).

Plaintiffs no longer seek to certify the "fraudulent concealment subclass" referenced in paragraph 59 of the Fifth Amended Complaint. (See Plaintiffs' opening brief, page 13, footnote 3.)

A party seeking class certification must demonstrate the existence of an ascertainable and sufficiently numerous class, a well-defined community of interest, and substantial benefits from certification that render proceeding as a class superior to the alternatives. Whether the class members have a well-defined community of interest requires three factors: (1) predominant common questions of law or fact; (2) class representatives with claims typical of the class; and (3) class representatives who can adequately represent the class. (See *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.)

Plaintiffs have demonstrated that the proposed class and "negligent subclass" are both ascertainable and sufficiently numerous to merit class treatment. The identity of persons employed by Sutter Health hospitals in California as environmental services staff who worked with OxyCide does not appear difficult to ascertain, nor is the identity of those workers who claim negative reactions to OxyCide. Defendants do not dispute that the number of workers in the injunctive relief class is approximately 1800, nor do they dispute that approximately 60

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workers have claimed adverse reactions to OxyCide. (See opposition brief at page 17.)

The Court determines that both the injunctive relief class and the negligence subclass involve predominant common questions of law and fact. As to the injunctive relief class, the predominant common question is whether Sutter Health has a standard policy requiring all environmental service workers at its network of healthcare facilities to use OxyCide when cleaning patient areas despite its knowledge of potential harms caused by that product. Whether Sutter Health provided adequate controls of the use of OxyCide such that it has a valid defense to Plaintiffs' request for injunctive relief also appears to involve common issues of law and fact suitable to resolution on a class-wide basis.

As to the negligence subclass, Plaintiffs' claims involve common questions of whether Defendants' policies and practices concerning the use of OxyCide at its network of healthcare facilities breached a duty owed to its workers. Whether OxyCide had the capacity to cause the subclass members to suffer the injuries alleged also appears to involve common questions of fact. (See, e.g., *In re Hanford Nuclear Reservation Litigation* (9th Cir. 2002) 292 F.3d 1124, 1135.) The fact that the negligence subclass members may claim different amounts of damages for their alleged injuries (if causation is established) does not preclude class certification. (See *Bomersheim v. Los Angeles Gay & Lesbian Center* (2010) 184 Cal.App.4th 1471, 1486-1488.)

Plaintiffs assert that the five named Plaintiffs and their counsel will adequately represent the class. Defendants make no argument in response.

Defendants argue that certifying a class would bar class members from pursuing claims against EcoLab. Plaintiffs have addressed this concern by proposing an amendment to the definition of the negligence subclass, which the Court adopts.

Defendants also argue any claims against them for damages by the negligence subclass would be barred by workers' compensation exclusivity. However, Defendant Sutter Health does not claim to be the employer of any of the members of the negligence subclass. Sutter Health argues that it is protected by the doctrine of workers' compensation exclusivity because it "manages" the workers' compensation claims process for injured employees of its network of healthcare facilities, but it presents no legal authority to support that position. But in any event, if Sutter Health presents some legal theory that would entitle it to benefit from the doctrine of workers' compensation exclusivity (e.g., if it contends it is the joint employer of employees at its network of healthcare facilities), it can present such a defense on a class-wide basis.

The Court certifies the class identified in paragraph 57 of Plaintiff's Fifth Amended Complaint, consisting of "all persons who were employed at Sutter Health hospitals in the state of California as environmental services staff members and whose job duties included working with OxyCide from May 15, 2016 to the present."

The Court further certifies the "negligence subclass" identified in paragraph 58 of the Fifth Amended Complaint, modified as suggested by Plaintiffs, consisting of "all class members who experienced burning eyes, burning throat, nasal congestion, nasal irritation, chronic cough, headache, dizziness, nausea, loss of consciousness, nosebleeds, hay fever symptoms, asthma symptoms, respiratory irritation, skin burns, rashes, or reactions affecting their pulmonary or

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respiratory functions while working with OxyCide from May 15, 2018 to the present, but excluding all such class members who are pursuing or intend to pursue claims against EcoLab for those injuries.”

Dated: 08/04/2022



Frank Roesch / Judge