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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GABE BEAUPERTHUY, et al. on behalf
of themselves and all others
similarly situated,

Plaintiffs,

v.

24 HOUR FITNESS USA, INC., a
California corporation d/b/a 24
Hour Fitness; SPORT AND FITNESS
CLUBS OF AMERICA, INC., a
California corporation d/b/a 24
Hour Fitness,

Defendants.

No. 06-715 SC

ORDER DENYING
DEFENDANTS' MOTION TO
DISMISS AND GRANTING
DEFENDANTS' MOTION
FOR A MORE DEFINITE
STATEMENT

I. INTRODUCTION

Plaintiff Gabe Beauperthuy brought this action on behalf of himself and others similarly situated ("Plaintiffs") against Defendants 24 Hour Fitness USA, Inc. and Sport and Fitness Clubs of America, Inc. ("Defendants" or "24 Hour Fitness"), alleging violations of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. ("FLSA"). Defendants now move for dismissal pursuant to Federal Rule of Civil Procedure ("FRCP") 12(b)(6) for failure to state a claim upon which relief can be granted. Defendants also move, in the alternative, for a more definite statement pursuant to FRCP 12(e). Plaintiffs have also filed a motion to compel

1 arbitration that they assert the Court should consider only in the
2 event that the Court grants Defendants' motion to dismiss. For
3 the reasons set forth herein, Defendants' motion to dismiss is
4 DENIED, Defendants' motion for a more definite statement is
5 GRANTED, and Plaintiffs' motion to compel arbitration is VACATED.

6 **II. BACKGROUND**

7 Plaintiffs formerly worked as Managers, Sales Counselors, and
8 Trainers for 24 Hour Fitness, and in that capacity were treated as
9 exempt from state and federal law mandating overtime compensation
10 for hours worked in excess of a certain number per week.

11 Complaint ¶¶ 6-7 ("Compl."). Plaintiffs claim that Defendants'
12 decision to classify them as exempt employees was unlawful, and
13 seek damages for unpaid overtime hours worked, as well as
14 liquidated damages and attorneys' fees and costs. Compl. ¶ 8.
15 Plaintiffs brought this action as a collective class under
16 § 216(b) of the FLSA, although the Court has not yet received
17 briefing or argument on the question of whether the putative class
18 should be certified. Id. ¶ 6.

19 Defendants now move for an order dismissing this matter
20 because, Defendants assert, each Plaintiff agreed to a provision
21 in the employee handbook that provided that disputes of this
22 nature would be settled via arbitration rather than in litigation
23 before a court ("Arbitration Agreement"). See Defendants' Motion
24 to Dismiss for Failure to State a Claim Upon Which Relief Can Be
25 Granted at 6 ("Defs.' Mot."). Defendants contend that because the
26 Arbitration Agreement is mandatory and no grounds exist under
27 applicable state law to invalidate it, Plaintiffs' claims must be

1 dismissed. Id. at 6-7. In the alternative, Defendants move for a
2 more definite statement pursuant to FRCP 12(e). Plaintiffs have
3 opposed Defendants' motion to dismiss, but do not appear to oppose
4 the alternative motion for a more definite statement.

5 **III. LEGAL STANDARD**

6 A motion to dismiss pursuant to Rule 12(b)(6) tests the
7 sufficiency of the complaint. Dismissal of an action pursuant to
8 Rule 12(b)(6) is appropriate only where it "appears beyond doubt
9 that the plaintiff can prove no set of facts in support of his
10 claim which would entitle him to relief." Levine v. Diamantheset,
11 Inc., 950 F.2d 1478, 1482 (9th Cir. 1991), quoting Conley v.
12 Gibson, 355 U.S. 41, 45-46 (1957). In reviewing the motion, a
13 court must assume all factual allegations to be true and construe
14 them in the light most favorable to the nonmoving party. North
15 Star Intern. v. Arizona Corp. Comm'n, 720 F.2d 578, 590 (9th Cir.
16 1993). Nevertheless, a complaint must be based on more than
17 "[c]onclusory allegations of law and unwarranted inferences" in
18 order to defeat a motion for dismissal. Parino v. FHP, Inc., 146
19 F.3d 699, 706 (9th Cir. 1999), quoting In re VeriFone Sec. Litig.,
20 11 F.3d 865, 868 (9th Cir. 1993).

21 **IV. DISCUSSION**

22 Although a party seeking to enforce an agreement to arbitrate
23 typically does so by filing a motion to compel arbitration, courts
24 have recognized that a party may choose instead to bring a motion
25 to dismiss under FRCP 12(b)(6). See Sparling v. Hoffman
26 Construction Co. Inc., 864 F. 2d 635, 637-38 (9th Cir. 1988). In
27 this case, 24 Hour Fitness has moved for dismissal, because,
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1 Defendants assert, arbitration on a collective class basis is
2 expressly disallowed by the Arbitration Agreement. See Defs.'
3 Mot. at 10.

4 The parties agree that the Arbitration Agreement provides
5 that:

6 Unless controlling legal authority requires otherwise, there
7 shall be no right or authority for any dispute to be heard or
8 arbitrated on a class action basis, as a private attorney
9 general, or on a basis involving disputes brought in a
purported representative capacity on behalf of the general
public, provided, however, that any individual claim is
subject to this agreement to arbitrate.

10 Id. at 7; Compl. ¶ 99. However, the parties vigorously dispute
11 whether "class action basis" as used in the Arbitration Agreement
12 is only meant to cover class actions brought under FRCP 23, or
13 whether it extends to collective actions brought under FLSA
14 § 216(b). That question, however, is one of contract
15 interpretation and is therefore not for this Court to decide. See
16 Green Tree Financial v. Bazzle, 539 U.S. 444, 447 (2003). Rather,
17 if the Arbitration Agreement is valid and enforceable, the
18 question of whether Plaintiffs can proceed with arbitration as a
19 collective action will be determined by the arbitrator. Id.

20 On a motion to dismiss, the Court is charged only with
21 examining the legal sufficiency of the allegations. In this
22 respect, the Court is satisfied that Plaintiffs have properly
23 alleged a claim upon which relief can be granted, and have also
24 set forth potentially valid defenses to enforcement of the
25 Arbitration Agreement. For example, Plaintiffs have alleged that
26 the Arbitration Agreements are unenforceable because they are
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1 procedurally and substantively unconscionable, and have also
2 averred that, even if enforceable, Defendants waived their right
3 to compel arbitration. See Compl. ¶¶ 100-103; Plaintiffs'
4 Opposition to Defendants' Motion to Dismiss at 23 ("Pls.' Opp.")).
5 Resolution of Plaintiffs' arguments concerning the enforceability
6 of the Arbitration Agreement will require an examination of the
7 facts surrounding formation of the contract against the governing
8 state law, see Alexander v. Anthony Intern. L.P., 341 F.3d 256,
9 264 (3d Cir. 2003), and resolution of Plaintiffs' argument with
10 respect to Defendants' purported waiver of the right to arbitrate
11 necessarily implicates an inquiry into the conduct of the parties
12 and any prejudice that may flow therefrom. See Chiron Corp. v.
13 Ortho Diagnostic Systems, Inc., 207 F.3d 1126, 1130 (9th Cir.
14 2000).

15 Whether Plaintiffs' defenses to enforcement of the
16 Arbitration Agreement hold up under scrutiny is a matter for
17 another day; at this point, the Court finds that Plaintiffs have
18 carried their burden of demonstrating that they may be able to
19 prove some set of facts that will entitle them to relief in this
20 forum. Defendants had the option of bringing a motion to compel
21 arbitration - indeed, the record demonstrates that Plaintiffs
22 consistently sought to arbitrate these claims - and given the
23 allegations in the pleadings along with the Supreme Court's
24 decision in Green Tree Financial, it is puzzling that they elected
25 instead to proceed with the instant motion. Regardless, the legal
26 standard governing motions brought under FRCP 12(b)(6) makes clear
27 that where, as here, Plaintiffs have alleged a viable claim and
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1 have asserted defenses to enforcement of the very agreement that
2 Defendants claim prevents Plaintiffs from obtaining relief in this
3 forum, the Court is bound to deny a motion to dismiss. Cf.
4 Germaine Music v. Universal Songs of Polygram, 275 F. Supp. 2d
5 1288, 1299 (D. Nev. 2003) (finding dismissal appropriate where it
6 was clear that plaintiff could prove no set of facts in support of
7 his claim that the court was the proper forum for resolution of
8 his claim).

9 With respect to Defendants' motion for a more definite
10 statement, the Court finds that Defendants have set forth
11 compelling reasons for obtaining clarification under FRCP 12(e).
12 Specifically, with respect to Plaintiffs who claim to have been
13 employed in more than one state, the Court finds that Defendants
14 are entitled to a statement delineating which state each Plaintiff
15 was working in when he or she agreed to the terms of the employee
16 handbook, including the Arbitration Agreement.¹

17 Finally, because Plaintiffs have asked the Court to consider
18 their petition to compel arbitration only in the event that the
19 Court grants Defendants' motion to dismiss, the Court will not
20 consider Plaintiffs' petition.

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26 ¹ Plaintiffs claim to have worked at Defendants' facilities in
27 Nevada, Washington, Colorado, Idaho, Kansas, California, Missouri,
28 Oregon, Nebraska, Tennessee, Montana, and Utah. Id. ¶¶ 11-68.

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V. CONCLUSION

In light of the foregoing, Defendants' motion to dismiss for failure to state a claim upon which relief can be granted is DENIED. Defendants' motion for a more definite statement is GRANTED. Plaintiffs' motion to compel arbitration is VACATED.

IT IS SO ORDERED.

April 11, 2006

UNITED STATES DISTRICT JUDGE