

When Numbers Count

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Normally, numerosity is something a plaintiff needs to establish in order to maintain a class claim. Turning that factor neatly on its head, JPMorgan successfully defeated conditional certification of an FLSA collection action through the overwhelming support of its workforce in a recent decision out of the Middle District of Florida. The case, *Hart v. JP Morgan Chase Bank, N.A.*, involved a debt collector who claimed that he worked about 3-4 hours a week for which he was not paid. Among other things, he claimed that he was required to arrive at work 15 minutes before the start of his shift in order to make sure his computer was up and running and that he had read relevant emails and memos before commencing work.

Seeking to obtain certification of a nationwide collective action against the company, the plaintiff provided declarations from seven employees. However, the court found that at least four of these individuals were not viable opt-in plaintiffs (their claims being either time-barred or subject to mandatory arbitration). Striking them left three potential opt-in plaintiffs to represent JPMorgan's 17 nationwide call-in centers – which the court did not regard as sufficient. Additionally, beyond the numerical issues, the court also noted that the remaining declarants complained of – what the court described as – “widely divergent” violations that differed from those alleged by the named plaintiff.

In marked contrast to the handful of insufficient declarations provided by the plaintiff, JPMorgan put forth a veritable mountain of evidence: declarations from *nearly 60 putative class members* – from a majority of the company's call centers – who attested that they were not interested in joining the lawsuit.

The takeaway from all of this? Aside from the obvious point that the overwhelming use of evidence certainly makes a splash that can be used to good advantage as this case illustrates – preparation, determination and dogged leg-work (those declarations did not write and sign themselves) are critical to the successful defense of any class or collective action.

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