

Daily Journal

JUNE 29, 2022



Top Labor & Employment Lawyers 2022

Katherine V.A. Smith

GIBSON, DUNN & CRUTCHER LLP
LOS ANGELES



Katherine V. A. Smith is co-chair of Gibson Dunn's labor and employment practice group and has extensive experience representing employers in individual, representative and class action litigation at the trial court and appellate levels.

In addition to her busy litigation practice, clients seek Smith's guidance on

nearly all aspects of employment law, including government investigations, enforcement of non-solicitation and non-competition covenants, and independent contractor/common-law employee status.

Smith was a key player in her team's victory for their client, Amazon. *Trevino v. Golden State FC LLC et al.*, case number 1:18-cv-00120, (E.D. Cal., filed Sept. 13, 2017).

On June 8, 2021, Judge Barbara A. McAuliffe of the Eastern District of California issued a report and recommendation recommending that class certification be denied on behalf of a putative class of more than 200,000 former and current non-exempt Amazon associates in California.

The court rejected six of the plaintiffs' eleven proposed classes and adopted almost all of Gibson Dunn's arguments and recommended denial of class certification for the security screening, meal break, rest break, rounding classes and related derivative claims.

"It really demonstrates how putting in the hard work to show the core, the nitty-gritty of the facts, can make all the difference," Smith said. "The plaintiffs were alleging that a class of non-exempt employees should be certified because they were allegedly required to wait in security screening lines while leaving Amazon facilities. But our team went to the facilities.

We talked to the employees, we videotaped people walking out of the security lines, and we presented all of that to the court."

There was evidence that in many cases, employees were not waiting at all.

"They were walking right through the metal detectors as quickly as you would walk through a doorway, which the court clearly found persuasive in her decision," Smith said. "We also demonstrated how much time an employee spent walking from a time clock through security to the exit was highly individualized. Some people liked to clock out and then go to the cafeteria. Some people went to their lockers before leaving. Some employees would come in and then go back out through security and then come back in before they started working. We showed all of that through our declarations and it really proves that it's so important to focus on the facts, even in these big wage and hour cases, because the facts are what are going to drive the ultimate decisions."

The parties are currently engaged in further briefing regarding the effect, if any, of the recent decision in *Olean Wholesale Grocery Cooperative, Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651 (9th Cir. 2022) (en banc).

— Douglas Saunders