WAGE AND HOUR CASE NOTES

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NO AUTHORITY TO STRIKE 'UNMANAGEABLE' PAGA CLAIM

***Estrada v. Royalty Carpet Mills, Inc.*, 2024 Cal. LEXIS 123 (2024)**

This decision is a qualified win for Private Attorneys General Act (PAGA)[1] plaintiffs.

On one hand, trial courts may not dismiss PAGA claims with prejudice solely based on manageability concerns. On the other, they may limit the scope of unwieldy PAGA claims by limiting the evidence to be presented at trial, and may impose "minimal" penalties when a plaintiff is unable to prove PAGA claims efficiently.

Plaintiffs were employees at manufacturing facilities operated by Royalty Carpet Mills. They alleged class and PAGA claims for meal and rest period violations, with their primary claim that Royalty Carpet unlawfully required employees to remain on the premises during their 30-minute meal periods. The trial court originally certified a class, but decertified it after evidence was presented at trial. The trial court also dismissed the PAGA claims as unmanageable.

The court of appeal reversed, holding that trial courts lack the authority to dismiss PAGA claims on manageability grounds. The court of appeal in this case disagreed with another division in an earlier decision in *Wesson v. Staples the Office Superstore, LLC*,[2] which held that trial courts may dismiss PAGA claims based on unmanageability.

After the court of appeal decided *Estrada*, a second division of the appellate court, in *Woodworth v. Loma Linda University Medical Center*,[3] agreed that PAGA claims have no manageability requirement. The California Supreme Court granted review in *Estrada* and a grant and hold in the *Woodworth* case.

The supreme court resolved the split between the *Estrada* and *Wesson* approaches, unequivocally holding that trial courts may not dismiss PAGA claims based on concerns about manageability. It explained that trial courts have the inherent authority to dismiss claims with prejudice only in two narrow situations, when the plaintiff:

1. Has failed to prosecute diligently; or

2. Has no valid cause of action because the complaint is a sham.

Neither situation was present in this case. Royalty Carpet failed to identify any cases in which courts have recognized a broad inherent power to strike a claim simply to foster judicial economy. And neither California's statutes nor its rules of court provide trial courts with that authority. The supreme court was not willing to sanction a "broad new power" it had never before recognized.

The court also rejected Royalty Carpet's argument that a class action manageability requirement should be applied to PAGA cases. It noted that class actions and PAGA actions are very different.

The court explained that unlike class actions, which are procedural devices used to aggregate disparate claims, PAGA claims are enforcement actions by the state that do not involve adjudicating individual claims. It also noted that PAGA and class actions serve different purposes: PAGA actions remediate present violations and deter future ones, while class actions, under the California Labor Code, serve to redress employees' injuries. Given these fundamental differences, the court underscored that grafting a class action manageability standard onto a PAGA case would "predictably" lead to the dismissal of many cases, frustrating the legislature's purpose in passing PAGA: to augment the state's ability to enforce California's labor laws.

The court also rejected Royalty Carpet's argument that it had a due process right in a PAGA case to prove its affirmative defenses—including the right to present evidence to rebut each aggrieved employee's claims. It noted that even in the class context, defendants do not have "an unfettered right to present individualized evidence in support of a defense." Royalty Carpet failed to demonstrate why these limitations on the right to present an affirmative defense in class actions did not also apply to defending representative PAGA claims.

The supreme court ended its opinion by emphasizing that trial courts still have significant authority to manage complex cases, and that all existing case management tools remained undisturbed by its decision. It specifically endorsed the use of representative testimony, surveys, and statistical analysis to streamline the evidence presented at a PAGA trial. In the court's view, the use of statistical analysis to reveal the "generalized characteristics" of a population "may be useful to estimate the number of aggrieved employees, even if such evidence cannot demonstrate the extent of any particular injury." The court noted that trial courts could also limit witness testimony and other evidence presented at trial, and otherwise limit the scope of the PAGA claim.

Finally, the court endorsed trial courts' authority to impose only "minimal" penalties where a plaintiff alleges widespread violations, but cannot prove them in an efficient manner.

REST BREAK POLICY MERITED CLASS CERTIFICATION

***Miles v. Kirkland's Stores*, 89 F.4th 1217 (2024)**

Employers beware: If you have a policy requiring employees to remain on the work premises during rest breaks, you may be inviting a class action claim.

Ariana Miles worked as an hourly employee for Kirkland's, a chain of home décor stores. She alleged two class claims under California law, asserting that Kirkland's unlawfully required employees to:

1. Remain in the stores during rest breaks; and

2. Work off the clock by getting their bags checked after they clocked out.

The trial court denied certification of both claims. The Ninth Circuit reversed as to the rest break claim, but affirmed as to the bag check claim.

With respect to the rest break claim, Kirkland's admitted that it had a uniform handbook policy requiring employees to remain on premises during breaks unless they got permission from a supervisor to leave. The Ninth Circuit noted that the policy alone did not warrant certification, and that the plaintiff needed to submit evidence showing that the company "implemented and enforced the policy across all employees during the class period."

The court held that Miles' submission of eight declarations from employees stating they were required to remain in stores during their rest breaks was sufficient to meet this requirement. Kirkland's submission of a "smattering" of examples where employees were allowed to leave the store did not demonstrate that individualized inquiries would predominate.

Significantly, the Ninth Circuit noted that the legality of an employer's policy requiring employees to remain on its premises during a rest break is an open question, citing *Augustus v. ABM Security Services, Inc.*,[4] and an FAQ section on the Division of Labor Standards Enforcement website. The court held this question was not appropriate to resolve on a class certification motion because it delved too far into the merits, and the matter was better addressed on summary judgment or at trial.

As for the bag check claim, the Ninth Circuit agreed with the district court that the 24 declarations submitted by Kirkland's showed that the bag check policy was inconsistently applied from person to person and store to store, and that individualized inquiries would predominate. The court found that, unlike the rest break policy, which was enforced uniformly except for a few isolated examples, the evidence showed that Kirkland's enforced the bag check policy only sporadically. In some stores, the bag checks were performed on the clock; in others, only when there was "a need." This variation in enforcement of the policy precluded class certification.

***NOTE:** This case is also summarized in the discussion of California employment law, beginning on page 9.*

ARBITRATION DENIED WHERE AGREEMENT CONTAINED WHOLESALE PAGA WAIVER

***DeMarinis v. Heritage Bank of Commerce*, 98 Cal. App. 5th 776 (2023)**

Employers take note: If your arbitration agreements waive an employee's right to bring a representative action and prevent the court from severing the waiver, you may end up litigating the entire case in court.

The plaintiffs in this case sued Heritage Bank for multiple California Labor Code violations and included a claim under PAGA. After the U.S. Supreme Court decided *Viking River Cruises, Inc. v. Moriana*,[5] Heritage moved to compel arbitration, asking the court to move all labor code claims and the "individual" component of the PAGA claim to arbitration. The trial court denied the motion in its entirety, and the court of appeal affirmed.

The arbitration agreement at issue contained a "wholesale PAGA waiver" prohibiting employees from bringing representative actions, such as PAGA cases, in any forum. In *Viking River*, the Court held that *Iskanian*'s "primary rule," which prohibits the wholesale waiver of PAGA claims, remained intact and was not preempted by the Federal Arbitration Act (FAA).[6] Accordingly, Heritage's inclusion of a wholesale waiver was unlawful.

The arbitration agreement *also* contained a so-called "poison pill" provision, stating that the waiver of representative actions was material to the agreement and *could not be severed*. If the waiver was found invalid, the entire agreement was void.

The appellate court held that the wholesale PAGA waiver was unlawful, and the poison pill provision precluded it from being severed. Instead, per the agreement's clear language, the court was required to invalidate the entire agreement.

Although the *DeMarinis* court does not discuss the consequences of this holding, it means the plaintiffs will be able to avoid arbitration for all of their claims, and will be able to amend their complaint to add class action allegations because the entire agreement—including its class waiver—was invalid.

The court observed that if Heritage had simply included a waiver of representative claims without the poison pill provision, the result likely would have been the same as in *Viking River*—that is, Westmoreland's individual claims, including the individual component of her PAGA claim, would have been compelled to arbitration, while her PAGA claim on behalf of others proceeded in court. But having included the poison pill provision, Heritage had deprived itself of the option to bifurcate Westmoreland's claims between arbitration and court.

DeMarinis is the second case to reach the same conclusion on these facts; the first was *Westmoreland v. Kindercare Education, LLC*.[7]

NOTE: *This case is also summarized in the discussion of California employment law, beginning on page 9.*

ENDNOTES

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1. Cal. Lab. Code §§ 2698-1699.8.
2. *Wesson v. Staples the Off. Superstore, LLC*, 68 Cal. App. 5th 746 (2021).
3. *Woodworth v. Loma Linda Univ. Med. Ctr.*, 93 Cal. App. 5th 1038 (2023).
4. *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257 (2016).
5. *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639 (2022).
6. 9 U.S.C. §§ 1-16.
7. *Westmoreland v. Kindercare Educ.* LLC., 90 Cal. App. 5th 967 (2023).