WAGE AND HOUR CASE NOTES

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MINIMUM WAGE DOES NOT APPLY TO PRETRIAL DETAINEES IN JAILS

***Ruelas v. County of Alameda*, 15 Cal. 5th 968 (2024)**

Aramark, a private, for-profit company, contracts with Alameda County to provide meals to inmates and staff in county jails. Armida Ruelas and other plaintiffs were pretrial and otherwise non-convicted detainees confined in county jails. They worked for Aramark free, preparing and packaging meals in the industrial kitchens within the jails that Aramark used to provide the services for which they contracted. They sometimes worked more than eight hours in a day or 40 hours in a week, and sometimes worked six or seven days a week.

The plaintiffs sued the county and Aramark in federal court, alleging nine causes of action—including claims for minimum wage and overtime violations.[1] The county filed a motion to dismiss, and the Ninth Circuit eventually certified the following question to the California Supreme Court: "Do non-convicted incarcerated individuals performing services in county jails for a for-profit company to supply meals within the county jails and related custody facilities have a claim for minimum wages and overtime under section 1194 of the California Labor Code in the absence of any local ordinance prescribing or prohibiting the payment of wages for these individuals?"

The California Supreme Court held they have no valid claim.

California Penal Code section 4019.3 creates a discretionary scheme for counties to pay wage credits to county jail inmates. It specifies: "The board of supervisors may provide that each prisoner confined in or committed to a county jail shall be credited with a sum not to exceed two dollars ($2) for each eight hours of work done by him in such county jail." The court observed that this wage credit, which has remained unchanged since 1975, is far below the state minimum wage for other workers.

It also held that the broad language of section 4019.3 covered Ruelas and other inmates who were detained following an arrest, but had not been convicted. The court relied on an attorney general opinion from 1974 reaching the same conclusion, as well as the legislative history of the statute. It held that section 4019.3 applied to public-private work programs such as Aramark's because its application does not turn on the identity of the employer.

Even though Alameda County had not actually adopted an ordinance pursuant to section 4019.3 providing for the payment of pretrial detainees confined to its jails, the court ruled this did not mean the California Labor Code would apply. The court reasoned that a county could not simultaneously comply with section 4019.3, which imposes a cap of $2 for eight hours of work, and the labor code, which imposes a far higher minimum wage for each hour worked. It also rejected the plaintiffs' argument that Proposition 139, the Prison Inmate Initiative of 1990,[2] imposed any obligation on local governments or private entities to comply with the labor code's minimum wage requirements, noting that the measure affected only state prisoner labor programs, not programs involving county facilities.

The court observed that there were important public policy reasons on both sides. Inmates who have been convicted of crimes and perform work while incarcerated in state facilities have the right to be paid comparably to non-inmates, and it is not fair that detainees who have not been convicted of any crimes have no comparable rights. Plaintiffs also pointed out that jail detainees would lose income and potentially their jobs during incarceration, and thus the ability to support themselves and their families.

On the other side, the defendants emphasized the benefits of jail work programs—including

that inmates acquire job and training skills that would assist them in obtaining jobs post-incarceration. They argued that imposing minimum wage requirements could decrease the availability of such programs and divert resources.

The court, however, declined to base its ruling on these policy arguments, stating that the legislature was free to adjust its approach to paying wages to pretrial detainees. Significantly, the court noted that its holding applied only to work that inmates performed inside jail facilities, and it expressed no view as to whether a different rule would apply to pretrial detainees working for a for-profit company outside the county jail.

NO COMPELLED ARBITRATION WHERE AGREEMENT EXCLUDED PAGA CLAIMS

***Mondragon v. Sunrun Inc.*, 101 Cal. App. 5th 592 (2024)**

Sunrun required its employee, Angel Mondragon, to sign an arbitration agreement. The agreement stated it covered all disputes between Sunrun and Mondragon, including wage and hour claims, but also specified it did *not* cover "claims brought by employee in state or federal court as a representative of the state of California as a private attorney general under the PAGA."[3]

Mondragon sued Sunrun, alleging a single claim under PAGA for labor code violations involving him and other employees. Sunrun moved to compel arbitration of Mondragon's individual PAGA claims based on *Viking River Cruises, Inc. v. Moriana*.[4] The trial court denied the motion because the arbitration agreement unambiguously excluded PAGA claims, and did not differentiate between individual PAGA claims and claims on behalf of others.

The court of appeal affirmed. First, it rejected Sunrun's argument that the arbitrator, not the court, should have decided the arbitrability question. Courts presume that the parties intended courts to decide arbitrability absent a "clear and unmistakable" delegation of the issue to the arbitrator. Although Sunrun's arbitration agreement incorporated the rules of the American Arbitration Association (AAA), which purport to vest the arbitrator with authority to rule on jurisdiction—including the scope of an arbitration agreement—the agreement did not contain a clear and unmistakable delegation of the arbitrability decision to the arbitrator. The court here found the mere incorporation of AAA's rules was insufficient to delegate the arbitrability question to the arbitrator.

Next, the court held that Sunrun's arbitration agreement contained an explicit carve-out for PAGA claims, and reiterated that it did not differentiate between individual PAGA claims and PAGA claims on behalf of others. Under ordinary contract interpretation principles, this meant that Mondragon could not be compelled to arbitrate *any* of his PAGA claims. The court distinguished *Viking River*, noting that the arbitration agreement there had a broad coverage provision requiring employees to arbitrate *all* disputes; there was no carve-out for PAGA claims. It observed that "nothing in *Viking River* suggests a party must arbitrate individual PAGA claims where, as here, the arbitration agreement specifically carves out PAGA claims and does not distinguish between individual and non-individual claims."

***NOTE**: This case is also summarized in the discussion of alternative dispute resolution, on page **31**.*

GOOD FAITH BELIEF THAT WAGE STATEMENTS WERE CORRECT PRECLUDES § 226 PENALTIES

***Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056 (2024)**

Spectrum provides security services to federal agencies. Gustavo Naranjo worked as a security guard for Spectrum. He was subject to Spectrum's on-duty meal policy, and fired for leaving his post for a meal break.

Naranjo sued, alleging that Spectrum violated California's meal break laws. He sought an hour of premium pay for each day employees suffered a meal break violation. He also alleged derivative penalty claims under California Labor Code section 226, which requires accurate wage statements, and section 203, which requires employers to pay final wages to separating employees in a timely manner. Section 226 authorizes courts to impose penalties up to $4,000 for violations that are "knowing and intentional;" section 203 authorizes penalties equaling up to 30 days of pay for violations that are "willful."

The trial court initially granted summary judgment for Spectrum, ruling that Naranjo was required to pursue his claims in a federal administrative proceeding. The appellate court reversed. On remand, the trial court held a three-part trial. First, the court rejected Spectrum's defense that California's meal break provisions did not apply because class members were performing federal functions on federal property—the "federal enclave" defense.

Second, the court ruled that Spectrum did not have a valid on-duty meal break agreement with class members from 2004 to 2007, and directed a verdict in favor of the class.

Third, the court issued a split ruling on Naranjo's penalty claims. It concluded that meal premiums are "wages" that should be reported on a wage statement, and awarded

section 226 penalties on a finding that Spectrum's failure to report the premiums was "knowing and intentional and not inadvertent." It denied section 203 penalties, however, finding that Spectrum's failure to pay meal premiums was not "willful" because Spectrum's defenses, while unsuccessful, were presented in good faith, were not unreasonable, and were not unsupported by the evidence.

The court of appeal reversed. It held that employees could not base either form of statutory penalty on meal break violations because meal premiums are penalties, not "wages." In 2022, the California Supreme Court reversed, holding that employees may seek section 226 and 203 penalties based on the employer's failure to pay meal premium wages.[5] It remanded to the court of appeal to determine whether penalties were warranted.

On remand, the court of appeal affirmed the trial court's denial of section 203 penalties, agreeing that Spectrum's failure to pay timely meal premiums to separating employees was not "willful" because it had asserted the federal enclave defense in good faith. It then held that the trial court erred in awarding 226 penalties, reasoning that section 203's "willfulness" standard and 226's "knowing and intentional" standard are virtually identical, so the finding that Spectrum asserted a good faith defense to 203 penalties should also preclude 226 penalties.

The California Supreme Court affirmed, holding: "If an employer reasonably and in good faith believed it was providing a complete and accurate wage statement in compliance with the requirements of section 226, then it has not knowingly and intentionally failed to comply with the wage statement law."

The court began its analysis by observing the split of authority among state and federal courts regarding the "knowing and intentional" standard for imposing section 226 penalties. A minority of lower courts have concluded that a violation is "knowing and intentional" if the employer is aware of the "factual predicate" underlying the violation, and the violation was not the product of a clerical error or inadvertent mistake. Naranjo argued that Spectrum's 226 violations were knowing and intentional because it knew it did not provide guards with off-duty meal breaks, it did not pay meal premiums for missed breaks, and it did not report meal premiums on wage statements.

A majority of lower courts have concluded that an employer's good faith belief that it is not violating the California Labor Code precludes a finding of a "knowing and intentional" violation. Spectrum argued it had a good faith belief that it did not owe premium pay for missed breaks and, in any event, was not required to report missed break premium pay on wage statements. Even though both of these issues were ultimately decided against Spectrum, it contended penalties were unwarranted because it had a reasonable basis at the time for believing the law was otherwise.

The California Supreme Court agreed with Spectrum, rejecting the "factual predicate" standard and adopting the same "good faith" standard applicable to 203 penalties. The court reasoned that the purpose of imposing civil penalties is not to compensate, but to deter and punish. Employers who proceed on a reasonable, good faith belief that they have followed the law do not need to be deterred from repeating their mistake.

The court also noted that the "knowing and intentional" language appears not in the liability provision of section 226(h), which authorizes injunctive relief, attorneys' fees, and costs for an employer's noncompliance, but rather in the penalty provision—suggesting that something greater than mere noncompliance is required. When a statute imposes a two-tier remedial structure, with steeper penalties based on a knowing and intentional violation, it is reasonable to infer that the legislature intended for the provision to target those who intentionally flout the law, not those who have made "good faith mistakes about what the law requires."

The court observed that employees routinely allege section 203 and 226 penalty claims that derive from the same code violations, so it makes sense to apply the same standard to both types of claims. There is no reason the legislature would have wished to withhold penalties for nonpayment when the employer disputes an employee's claim for wages in good faith, but would have wished to impose penalties for failing to document those same unpaid wages on an itemized wage statement.

Finally, the court forcefully rejected Naranjo's claim that excusing employers from good faith mistakes of law would excuse ignorance of the law. Where the law is clear and can be easily ascertained, knowledge of the law may be fairly imputed to the employer. Moreover, courts in the section 203 context uniformly focus on whether the employer's basis for disputing liability was "objectively reasonable." The court underscored that employers will not escape liability for section 226 penalties where the employer's position was "clearly erroneous" or "based on an unexcused failure to ascertain the law."

NOTE: *This case is also summarized in the discussion of California employment law notes, on page* ***11.***

EMPLOYEE WITHOUT INDIVIDUAL PAGA CLAIM HAD STANDING TO PURSUE CLAIM ON BEHALF OF OTHERS

***Balderas v. Fresh Start Harvesting, Inc.*, 101 Cal. App. 5th 533 (2024)**

Lizbeth Balderas worked for Fresh Start Harvesting, Inc. She filed a complaint alleging a single cause of action under the Private Attorneys General Act (PAGA)[6] for missed meal and rest breaks, among other things. She alleged that she was "not suing in her individual capacity," but rather was proceeding "solely under the PAGA, on behalf of the state of California for all aggrieved employees." Fresh Start filed a motion to compel arbitration. The trial court *sue sponte* issued an order striking Balderas' complaint, holding that because she had not filed an individual action seeking PAGA for herself, she lacked standing to pursue a "non-individual" claim on behalf of others.

The appellate court reversed. Relying on the California Supreme Court's analysis in *Adolph v. Uber Technologies, Inc.*,[7] the court reasoned that an employee who brings a PAGA action acts as a proxy of the state, and that standing to bring a PAGA action does not require the employee to bring her own individual claims. The court observed that *Adolph* corrected the U.S. Supreme Court's mistaken construction of PAGA standing in *Viking River Cruises, Inc. v. Moriana*,[8] which wrongly held that once an employee's individual claim for relief under PAGA is pared away from the claim on behalf of others, the employee loses standing and the claim on behalf of others must be dismissed.

In light of *Adolph*, Balderas was only required to allege two things to have standing to bring a PAGA claim on behalf of others:

1. That she was an "aggrieved" employee of Fresh Start; and

2. That she was subject to one or more Fresh Start violations.

Because she alleged these two things in her complaint, she had standing to pursue a PAGA claim on behalf of all of Fresh Start's aggrieved employees and the trial court erred in striking her complaint.

***NOTE:** This case is also summarized in the discussion of California employment cases, on page **14**.*

EMPLOYER THAT DELAYED WAIVED RIGHT TO ARBITRATION OF INDIVIDUAL PAGA CLAIM

***Semprini v. Wedbush Sec. Inc.*, 101 Cal. App. 5th 518 (2024)**

Wedbush is a securities broker-dealer firm that classifies its financial advisors as exempt from overtime. Joseph Semprini was a financial advisor who brought individual and class claims against Wedbush for various labor code violations, as well as a PAGA[9] claim. In 2015, the parties stipulated that Semprini's individual claims would be resolved by arbitration, and his class and PAGA claims would be litigated in court.

The class and PAGA actions were heavily litigated. Semprini successfully moved for class certification, and notice was sent to class members. A second named plaintiff, Bradley Swain, joined the action. The trial court held a bench trial and ruled in Wedbush's favor, but that ruling was reversed by the appellate court. On remand, the parties did additional discovery on a new defense Wedbush asserted.

In June 2022, while the parties were engaged in discovery, the U.S. Supreme Court issued its ruling in *Viking River Cruises, Inc. v. Moriana*,[10] which held that employers could require employees to arbitrate their individual PAGA claims and then seek a dismissal in court of the non-individual PAGA claims for lack of standing.[11] Wedbush asked its employees to sign a new arbitration agreement requiring employees to arbitrate all individual claims, including individual PAGA claims, and to waive their rights to bring non-individual PAGA claims. Swain and several other class members signed the new arbitration agreement in September and October 2022.

Wedbush did not immediately seek to enforce the new arbitration agreement. Instead, it filed a motion to decertify the class and propounded additional discovery. In March 2023, Wedbush filed a motion, seeking to:

- Compel Semprini and Swain to arbitrate their individual PAGA claims and dismiss the remaining non-individual PAGA claims for lack of standing; and
- Compel other class members who signed the new arbitration agreements to arbitration.

The trial court denied the motion and Wedbush appealed.

The court of appeal affirmed, holding that Wedbush waived its right to compel arbitration. It first observed that prior

to *Viking River*, Wedbush had no ability to seek to compel arbitration of the plaintiffs' individual PAGA claims. A prior appellate court held that an employer that failed to move to compel arbitration of the plaintiffs' individual PAGA claims until the U.S. Supreme Court granted certiorari in *Viking River* did not waive its right to arbitrate as a matter of law.[12]

In the instant case, Wedbush waited nine months after *Viking River* to move to compel arbitration. During that time, the employer engaged in conduct inconsistent with an intent to compel arbitration, including motion practice and discovery. This nine-month delay, coupled with Wedbush's conduct, resulted in a waiver.

NOTE:** This case is also summarized in the discussion of alternative dispute resolution, on page **30.

ENDNOTES

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1. Cal. Lab. Code § 1194.
2. Cal. Const., art. XIV, § 5.
3. *Supra*, note 1.
4. *Supra*, note 3.
5. *See Naranjo v. Spectrum Sec. Servs., Inc.*, 13 Cal. 5th 93 (2022).
6. Cal. Lab. Code §§ 2698-2699.5.
7. *Adolph v. Uber Techs., Inc.*, 14 Cal. 5th 1104 (2023).
8. *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639 (2022).
9. *Supra*, note 1.
10. *Supra*, note 3.
11. The Court's standing ruling was later overturned by *Adolph v. Uber Techs., Inc., supra* note 7.
12. *See Piplack v. In-N-Out Burgers*, 88 Cal. App. 5th 1281 (2023).