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Alert | Labor & Employment

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Impersonators Beware: Claim Preclusion of Copycat PAGA Lawsuits

In August 2020, the California Court of Appeal issued two wins for California employers facing multiple simultaneous representative actions under the Labor Code Private Attorneys General Act of 2004 (PAGA) (Lab. Code § 2698 et seq.) in *Robinson v. Southern Counties Oil Company* and *Starks v. Vortex Industries, Inc.*

In *Robinson*, the Court of Appeal held that under the claim preclusion doctrine, also known as *res judicata*, settlement of a prior PAGA action in one matter bars a plaintiff from bringing identical successive PAGA actions in a new matter.

In *Robinson*, plaintiff Robinson worked for defendant Southern Counties until June 14, 2017. After filing his requisite notice with the California Labor Workforce Development Agency (LWDA), the plaintiff filed a PAGA action in August 2018 against the defendant for various violations of the Labor Code.

In February 2019, the San Diego County Superior Court approved a settlement in a class action that sought individual damages as well as civil penalties under PAGA for the same alleged Labor Code violations (the *Gutierrez* Settlement) asserted by Robinson. The release covered persons employed by the defendant between March 17, 2013, and Jan. 26, 2018.

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Robinson and other class members opted out of the class settlement. Robinson then amended the allegations of his complaint to limit his action to: employees of the defendant who also opted out of the *Gutierrez* Settlement, and persons employed by defendant from Jan. 27, 2018, to present.

In light of the *Gutierrez* Settlement, the defendant filed, and the trial court sustained without leave to amend, a demurrer to Robinson's amended complaint. The trial court held that Robinson was barred from bringing a PAGA action asserting the same claims that were settled in the *Gutierrez* Settlement and that he lacked standing to bring a representative action on behalf of those employed after his employment with the defendant terminated on June 14, 2017. Robinson appealed.

The Court of Appeal affirmed the trial court's decision to sustain the demurrer. Building on *Kim v. Reins International California, Inc.*, and *Villacres v. ABM Industries Inc.*, the court determined that plaintiff's action involved PAGA claims based on the same alleged violations of the Labor Code released in the *Gutierrez* Settlement, and thus were precluded.

Importantly, the court held that even though Robinson opted out of the *Gutierrez* Settlement, there is no mechanism for opting out of the judgment entered on the PAGA claim. The prior *Gutierrez* Settlement and Judgment finally resolved the LWDA's claims with respect to violations alleged in that action and the LWDA was the real party in interest.

The court further held that the claim preclusion by the *Gutierrez* Settlement of plaintiff's claims for the period when he was employed by the defendant deprived him of standing to assert claims arising only after his termination, because he was not affected by any of those alleged violations.

Just a couple of weeks later, another Court of Appeal decision came to a similar conclusion in *Starks v. Vortex Industries, Inc.* In *Starks*, two plaintiffs, Starks and Herrera, each acting as the LWDA's agent, separately filed substantially identical PAGA actions against their former employer, defendant Vortex Industries. Plaintiffs pursued PAGA penalties for the same alleged Labor Code violations but relied on different facts in support of their claims. Defendant Vortex settled the *Starks* PAGA action, the settlement was approved by the court, the court entered judgment thereon, and the LWDA accepted its share of the civil penalties.

Hererra learned of the *Starks* settlement and judgment, and moved to vacate the judgment and intervene in the *Starks* action. The trial court denied Herrera's motions and granted Vortex's summary judgment motion. Herrera appealed.

The Court of Appeal affirmed the trial court's decisions and held that although courts have held that different aggrieved employees may be simultaneously deputized by the LWDA to pursue PAGA actions concurrently against the same employer, a judgment obtained in one action will bar other PAGA actions against the employer under the doctrine of *res judicata*.

According to the court, the power deputizing Herrera for the LWDA to commence his lawsuit or even to maintain it concurrently with the *Starks* PAGA action notwithstanding, such power did not imbue him with the right to challenge a judgment in another action when the government agency and real party for whom he purported to act — the LWDA — had accepted the benefits of that judgment and was itself precluded from making such a challenge.

The Court of Appeal reasoned that the judgment in a PAGA action encompasses only *civil* penalties to which aggrieved employees had no right or interest. Thus, neither Herrera nor any other aggrieved

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employee had standing, even as aggrieved employees, to challenge the PAGA judgment entered for that time period by the *Starks* action.

Finally, because the LWDA was barred from challenging the *Starks* judgment after its acceptance of the benefits of the judgment when it secured its share of civil penalties, Herrera, as the LWDA's proxy and agent, also could not dispute the judgment.

These decisions represent a win for employers, especially employers facing multiple PAGA suits for the same time period. Further, employers may potentially obtain dismissal of copycat PAGA claims at the pleadings stage, reducing the settlement value of such lawsuits.

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