EPSTEIN BECKER GREEN | CLIENT ALERT

California Supreme Court: Employees May Bring 'Bounty Hunter' Suits Without Satisfying Class Action Requirements

by Michael S. Kun and Aaron F. Olsen

June 2009

California employers, already besieged by wage-and-hour class actions, had better brace themselves for a new wave of representative actions under California's Private Attorneys General Act ("PAGA") after the California Supreme Court has made it easier than ever for employees to pursue such claims. In *Arias v. Superior Court of San Joaquin County (Angelo Dairy)*, No. S155965 (June 29, 2009), the California Supreme Court concluded that representative actions for alleged Labor Code violations brought under PAGA, often referred to as the "Bounty Hunter" or "Sue Your Boss" law, need not be brought as class actions. Instead, a single employee may proceed with an action on behalf of all aggrieved employees without the need to comply with class action requirements. Although the Court also held that representative actions brought under California's Unfair Competition Law ("UCL") must be brought as class actions, the ruling on the PAGA issue will likely lead to more employees and their counsel bringing PAGA lawsuits because they will not have to comply with the procedural burdens inherent in class actions.

Case Overview

Jose Arias, a former employee of Angelo Dairy, filed suit alleging a variety of violations of California's Labor Code, labor regulations and an Industrial Wage Commission wage order, including claims that he was not paid for his overtime and was denied required meal periods and rest breaks. In his suit, Arias asserted claims on behalf of himself as well as other current and former Angelo Dairy employees, doing so in his representative capacity under both the UCL and the PAGA. The UCL allows for representative actions to address business practices that are unlawful, unfair or fraudulent, and, generally, provides for the disgorgement of monies improperly obtained. The PAGA allows for representative actions to address Labor Code violations and, generally, provides for penalties of up to $100 per employee for each initial violation and $200 per employee per pay period for each subsequent

violation.

The two issues before the California Supreme Court were: (1) whether a representative claim under the UCL must satisfy class action requirements; and (2) whether a representative claim under the PAGA seeking civil penalties must satisfy class action requirements.

The California Supreme Court agreed with the Court of Appeal and held that the voters' passage of Proposition 64 in 2004 to address perceived abuses in UCL litigation requires compliance with California Code of Civil Procedure section 382, which in turn authorizes class actions. Thus, plaintiffs must comply with the class action requirements in order to maintain representative actions brought under the UCL.

At the same time, however, the California Supreme Court held that it is not necessary to comply with the class action requirements in order to maintain representative actions brought under the PAGA. Affirming the Court of Appeal's decision, the California Supreme Court rejected the arguments that to allow for representative claims seeking civil penalties under the PAGA to proceed without satisfying the class action requirements violates due process rights of the defendant employers and the nonparty employees, is not supported by the statute's legislative history, and relies on a statutory construction that leads to "absurd" results. The Court explained that defendants' due process concerns were unfounded because, with respect to civil penalties, nonparty employees as well as the government are bound by the judgment in an action brought under the PAGA. However, the Court acknowledged that there are situations in which nonparty aggrieved employees may profit in an action brought under the PAGA. The Court explained that for some Labor Code violations there are remedies in addition to civil penalties such as lost wages, work benefits and one additional hour of pay. If an employee prevails in an action under the PAGA for civil penalties by proving the employer has committed a Labor Code violation, the employer will be bound by the resulting judgment. This will allow nonparty employees to use the judgment against the employer to obtain remedies other than civil penalties. However, if the employer prevailed, the Court explained that the nonparty employees would not be bound by the judgment as to remedies other than civil penalties. Despite the potential for nonparty aggrieved employees to benefit from a favorable judgment without being bound by an adverse judgment, the Court held that this does not violate the employer's due process rights.

Looking Ahead: What Does This Case Mean To Employers?

The *Arias* decision will undoubtedly have a tremendous effect upon employers with operations in California.

First, by authorizing non-class action representative claims under the PAGA, the pre-Proposition 64 representative action that voters rejected has essentially been revived,

at least in the employment context, only with a new name.

Second, the *Arias* decision will likely lead to more employees and their counsel bringing PAGA lawsuits. The fact that they do not need to go through the stringent class action procedures, including having to file a motion seeking to have a class certified, will make PAGA claims more enticing than ever to employees and their counsel.

Third, employers could be forced to defend a series of individual actions alleging violations of the Labor Code that would be difficult to settle on a global basis. Although the California Supreme Court determined that, with respect to civil penalties, nonparty employees as well as the government are bound by the judgment in an action brought under PAGA, the Court made it clear that different plaintiffs could bring a series of individual lawsuits seeking other remedies. A proliferation of coordinated individual actions would be difficult to settle because the parties would not have the benefits of the class action settlement process. While class action settlements can oftentimes be complicated, the process is fairly well established. Class action settlements generally provide a procedure by which class members either "opt-in" to the lawsuit or "opt-out," leaving the parties with a great deal of certainty as to whom a settlement involves. That would not appear to be the case in a non-class action representative claim under PAGA.

For more information about this Client Alert, please contact:

Michael S. Kun
Los Angeles
310-557-9501
Mkun@ebglaw.com

Aaron F. Olsen
Los Angeles
310-557-9508
Aolson@ebglaw.com

* * *