

## **Starbucks Not Daddy Warbucks: California Court of Appeal Permits Writ Relief from Denial of Summary Judgment in Class Action**

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In an unusual move, the California Court of Appeal, in *Starbucks Corporation v. Superior Court (Lords)*, Case No. G039700, issued on December 10, 2008, a peremptory writ of mandate vacating an order denying summary judgment in a class action alleging Starbucks' employment application contained an illegal question about prior marijuana convictions.

The court found that writ relief from the order was necessary, because Starbucks, faced with great monetary risk in continuing to litigate, would be pressured to settle. This was a valid concern of widespread interest, justifying an early appellate review by the court.

### **Case Overview**

Starbucks, one of several employers targeted by plaintiffs in a series of similar lawsuits, had a "one-size fits all" employment application which included a question asking, "Have you been convicted of a crime in the last seven (7) years?" The application explained that "If Yes, list convictions that are a matter of public record (arrests are not convictions). A conviction will not necessarily disqualify you for employment."

Under California Labor Code §432.7, employers cannot ask applicants to disclose certain convictions for marijuana-related misdemeanors that are more than two years old. Aware of this rule, Starbucks included a disclaimer for California applicants advising them that they could "omit any convictions for the possession of marijuana (except for convictions for the possessions of marijuana on school grounds or possession of concentrated cannabis) that are more than two (2) years old, and any information concerning a referral to, and participation in, any pretrial or post trial diversion program."

The disclaimer was located in a large paragraph in 8-point boldface type along with disclaimers for other states.

The three named plaintiffs filed a class action lawsuit on behalf of an estimated 135,000 Starbucks job applicants who sought jobs at over 1,500 Starbucks in California, contending the convictions question was illegal. The plaintiffs sought to recover actual damages or \$200, whichever was greater, under California Labor Code §§432.7(c) and 432.8. Damages were estimated at over \$26 million.

The named plaintiffs, none of whom had a marijuana arrest or conviction, applied for jobs at Starbucks, completed the application, and were not hired. Each admitted that he had read the disclaimer language.

The trial court certified a class of all California applicants who had submitted an employment application to Starbucks with the convictions question and denied Starbucks' motion for summary judgment.

Starbucks filed a petition for writ of mandate for the order denying summary judgment and declaring that, "given the size of the class, the litigation posed such great monetary risk to Starbucks that it may be forced to settle rather than risk an adverse judgment."

## **The Court's Decision**

### The Writ

In accepting Starbucks' writ, the Court of Appeal observed that an appeal would be an inadequate remedy because (1) Starbucks might suffer irreparable harm; and (2) the matter was of widespread interest. Starbucks argued, and the court agreed, that to wait until the end of the case might have been too late and forced Starbucks to settle rather than continue litigating. As the court opined, "The civil justice system is not well-served by turning Starbucks into a Daddy Warbucks."

### The Application

Agreeing with the trial court, the Court of Appeal found that the general disclaimer was improperly placed away from the general convictions question. If the disclaimer had been placed next to the convictions question on the application, it would have been legally correct, the court said.

However, the court found that none of the named plaintiffs had a marijuana conviction. Second, all had read the allegedly hidden disclaimer language. Third, none was denied employment because of a wrongfully disclosed conviction. Because the named plaintiffs were not members of a legally protected group, the court refused to "turn the statute into a veritable financial bonanza for litigants like plaintiffs who had no fear of stigmatizing marijuana convictions." The case was sent back to the trial court to issue an order granting the motion for summary judgment.

## What This Means for Employers

While this case is a reminder to all California employers that it is more prudent to have state-specific employment applications rather than a national application, it represents a rare victory for employers. The court recognized the class action for what it was – a “lawyer bounty hunter” lawsuit meant to exact a payoff where there is no relationship to a true public interest. More importantly, in granting Starbuck’s petition, the Court found that summary judgment is a fair and efficient way of resolving class actions on the merits and appellate intervention where the monetary risks are high is appropriate.

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