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Employees Lose on PAGA Claims in Court Following Loss in Arbitration

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Earlier this month, the California Court of Appeal (2d Dist.) ruled that issue preclusion bars a derivative Private Attorneys General Act (PAGA) claim where the plaintiff litigates individual Labor Code claims in arbitration and loses. *Rocha v. U-Haul Co. of Cal.*, 2023 WL 1462594 (Cal. Ct. App. Feb. 2, 2023) (certified for publication). *Rocha*, while at odds with a prior decision from the 4th Dist., has important implications for the closely watched *Adolph v. Uber Technologies, Inc.* case, in which the California Supreme Court is poised to rule on a critical question following last summer's blockbuster U.S. Supreme Court decision in *Viking River Cruises*.

The plaintiffs in *Rocha* filed a lawsuit against their direct employer and multiple co-defendants, including their alleged joint employer, U-Haul. The complaint alleged whistleblower retaliation under Labor Code Section 1102.5 and other non-wage/hour claims. When the defendants moved to compel arbitration, the plaintiffs moved to amend their complaint to add a PAGA claim against U-Haul for the alleged Section 1102.5 violation. The trial court denied leave to amend on the grounds that the plaintiffs lacked standing and compelled arbitration. The arbitrator ruled against the plaintiffs on all claims, and the trial court confirmed the award.

On appeal, the court rejected the plaintiffs' argument that the trial court abused its discretion by denying leave to amend to add the PAGA claim against U-Haul, finding that issue preclusion destroyed their standing. Because the arbitrator ruled against the plaintiffs on all of their claims—including the Section 1102.5 claim—the "arbitrator's finding addressed the same issue the [plaintiffs] want to relitigate in connection with PAGA standing: whether U-Haul . . . retaliated against the [plaintiffs] in violation of section 1102.5." *Rocha*, 2023 WL 1462594, at *11. The arbitrator's conclusion that they experienced no violation therefore bound them in court and meant they were not "aggrieved employees."

In applying issue preclusion, *Rocha* expressly disagreed with *Gavriiloglou v. Prime Healthcare Mgmt., Inc.*, 83 Cal. App. 5th 595 (2022). In *Gavriiloglou*, after the plaintiff lost on several individual Labor Code claims in arbitration, the Court of Appeal (4th Dist.) concluded that issue preclusion did *not* apply to a subsequent PAGA action alleging the same Labor Code violations. Citing Code of Civil Procedure Section § 1909(a)(2) and three earlier cases, *Gavriiloglou* concluded that the plaintiff must act in the "same capacity" in the two proceedings for issue preclusion to apply, and the plaintiff "was acting in different capacities in the arbitration and in the litigation of the PAGA claim." *Id.* at 601. *Rocha* criticized this holding, explaining that the authorities *Gavriiloglou* relied on apply only to *claim preclusion* and found no "basis in the case law or log for creating an identical capacity requirement for issue preclusion[.]" *Rocha*, 2023 WL 1462594, at *13.

The *Rocha* decision may provide some respite for employers if the California Supreme Court rules for the employee in *Adolph*, where the employee argues that a PAGA plaintiff should be able to pursue a non-individual PAGA claim in court even if the individual component of that PAGA claim is severed and sent to arbitration. If the California Supreme Court adopts this rule, the employer could still defeat the entire PAGA claim under *Rocha* by proving in arbitration that the plaintiff suffered no Labor Code violation. The arbitrator's finding would then bind plaintiffs in court, precluding them from proving that they are "aggrieved employees." *Gavriiloglou* would not seem to suggest a different result, because both in arbitration and in court, the plaintiff acts in the "same capacity" of a private attorney general representing the State of California. Therefore, *Rocha* may provide some valuable insurance to employers in the event of a bad outcome in *Adolph*.

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