CALIFORNIA COURT OF APPEAL ENDS HEADLESS PAGA ACTIONS IN LEEPER V. SHIPT

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The California Court of Appeal, Second Appellate District, in *Leeper v. Shipt*, Inc., No. B339670, 2024 WL 5251619 (Cal. Ct. App. Dec. 30, 2024) (*Leeper*) issued a significant decision benefiting employers seeking to enforce arbitration agreements in cases involving the Private Attorneys General Act (PAGA). Ever since *Balderas v. Fresh Start Harvesting*, Inc., 101 Cal. App. 5th 533 (2024) (*Balderas*), a decision concerning PAGA standing by the same appellate district, plaintiffs began to artfully plead "headless" PAGA actions, wherein they allege PAGA claims purely on behalf of the state and other employees to avoid arbitration of their individual PAGA claim. However, in *Leeper*, the court confirmed that by statute, every PAGA claim includes both an individual and representative claim and, thus, a plaintiff cannot choose to abandon the individual component to avoid arbitration.

BALDERAS V. FRESH START HARVESTING: RISE OF THE HEADLESS PAGA ACTIONS

In *Balderas*, the plaintiff's complaint alleged that she was "not suing in her individual capacity" but "solely under the PAGA, on behalf of the State of California for all aggrieved employees." 101 Cal. App. 5th at 536. *Balderas* did not involve an arbitration agreement. Nonetheless, the trial court, on its own motion and in accordance with the US Supreme Court's analysis of PAGA standing in *Viking River Cruises, Inc. v. Moriana*, 596 US 639 (2022), struck the plaintiff's complaint for lack of standing because she had not specifically and separately alleged an individual claim under PAGA. *Id*. at 536-537.

The Second District reversed and held that the trial court improperly relied on the US Supreme Court's "observations about PAGA standing," which had since been corrected by the California Supreme Court in *Adolph v. Uber Technologies*, Inc., 14 Cal. 5th 1104 (2023) (*Adolph*). *Id*. at 538-539. The Second District further noted that, under *Adolph*, "the inability for an employee to pursue an individual PAGA claim does not prevent that employee from filing a representative PAGA action." *Id*. at 537. Plaintiffs have since pointed to this language to support headless PAGA actions to circumvent arbitration of their individual PAGA claim.

LEEPER V. SHIPT

As with other headless PAGA actions, Plaintiff Christina Leeper (Plaintiff) filed a PAGA lawsuit against Shipt, Inc. (Shipt) in "a representative, non-individual" capacity only. *Leeper*, 2024 WL 5251619 at *2. Accordingly, when Shipt moved to compel Plaintiff's individual PAGA claim to arbitration, Plaintiff argued that her arbitration agreement did not apply because she did not seek any individual claims against Shipt. *Id*. Plaintiff relied on *Balderas* to argue that she can choose not to bring or abandon her own individual PAGA claim. *Id*. at *5. The trial

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court, in denying Shipt's motion, agreed and found that there were no individual claims to compel to arbitration because the “action [was] solely a representative PAGA suit without any individual causes of action.” *Id*. at *2.

The Second District reversed and confirmed that the plain language of the statute requires a PAGA action to be “brought by an aggrieved employee on behalf of the employee and other current or former employees.” *Id*. at *3 (emphasis added). The court noted that the word “and” unambiguously requires all PAGA actions to be brought on both an individual and representative basis. *Id*. at *4. The Second District further clarified that while *Balderas*, *Adolph*, and *Kim v. Reins International California, Inc*., 9 Cal. 5th 73 (2020) (*Kim*) addressed various issues of PAGA standing, they did not endorse a plaintiff's ability to excise their individual claim from PAGA actions. *Id*. at *5-6.

Leeper rejects the argument that a PAGA plaintiff may disclaim the individual component of their PAGA action to avoid arbitration. *Id*. at *6. But it does not conflict with *Balderas*. *Balderas* does not disturb the statutory requirement that an aggrieved employee must bring the PAGA action on behalf of themselves in order to do so on behalf of other employees. Rather, *Balderas* implicitly recognized that a representative complaint under PAGA includes both components, thereby eliminating the need to separately file an individual claim to maintain standing. 101 Cal. App. 5th at 538-539.

Leeper marks a pivotal moment for California employers defending PAGA claims, effectively putting an end to the “headless” PAGA cases and loophole to circumvent mandatory arbitration.

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