

Re: Alvarado, Salvador vs. ED Tucker Distributor, Inc., a Texas corporation

Case No.: VCU290289

Date: June 2, 2022

Time: 8:30 A.M.

Dept. 1-The Honorable David C. Mathias

Motion: Defendant's Demurrer

Tentative Ruling: To sustain the demurrer; to stay this matter.

Facts

On October 29, 2021, Plaintiff Salvador Alvarado ("Plaintiff") filed his original action, Salvador Alvarado, individually, and on behalf of all others similarly situated, v. Ed Tucker Distributor, Inc., et al., Tulare County Superior Court Case No. VCU289281 (the "Class Action").

On January 31, 2022, Plaintiff filed this Complaint against the same parties, and based upon the same factual allegations (the "PAGA Action.")

Defendant points out that there are substantial similarities between the actions, though the PAGA Action advances two additional theories of liability. Defendant categorizes this as an improper attempt to "split claims" and "game the legal system." The similarities between the two suits are discussed below.

Defendant demurs pursuant to Code of Civil Procedure section 430.10(c) that states that the party against whom a complaint has been filed may object by demurrer on the grounds that "[t]here is another action pending between the same parties on the same cause of action."

The Court notes no opposition by Plaintiff has been filed.

Authority and Analysis

Defendant specially demurs on the ground of another pending action, pursuant to Code of Civil Procedure section 430.10, subdivision (c). "A single cause of action cannot be the basis for more than one lawsuit." (*Pitts v. City of Sacramento* (2006) 138 Cal.App.4th 853, 856.) A plaintiff may not "split" a cause of action by filing multiple lawsuits based on the violation of the same primary right. (*Crowley v. Katleman* (1994) 8 Cal.4th 666, 681–682.)

In accordance with the language of section 430.10(c), the demurring party must show: (1) another action is "pending;" (2) the pending action involves "the same parties;" and (3) the pending action involves "the same cause of action." If these requirements are met, abatement of the second filed action is mandatory. (*Lawyers Title Ins. Corp. v. Superior Court* (1984) 151

Cal.App.3d 455, 460.) The statutory plea of abatement rests on “narrow grounds” as it requires “absolute identity of parties, causes of action or remedies sought in the initial and subsequent actions.” (*Plant Insulation Co. v. Is Fibreboard Corp.* (1990) 224 Cal.App.3d 781, 789 (*Plant Insulation*).) “In determining whether the causes of action are the same for purposes of pleas in abatement, the rule is that such a plea may be maintained only where a judgment in the first action would be a complete bar to the second action.” (*Plant Insulation, supra*, 224 Cal.App.3d at pp. 787-788.) Whether a cause of action is identical is based on the harm suffered. (See *Bay Cities Paving & Grading, Inc. v. Lawyers’ Mut. Ins. Co.* (1993) 5 Cal.4th 854, 860, fn. 1.) To be the “same cause of action,” each complaint must allege invasion of the same “primary right.” (*Bush v. Superior Court* (1992) 10 Cal.App.4th 1374, 1384.)

Application of section 430.10(c)

First, it is undisputed that both the Class Action (VCU289281) and this PAGA case are pending.

Second, Plaintiff is named in both lawsuits. The issue is whether Plaintiff, acting individually and on behalf of all others similarly situated in the Class Action, represents the same parties in the PAGA Action. Defendant cites to *Villacres v. ABM Indus. Inc.* (2010) 189 Cal.App.4th 562, 592 (finding that the named plaintiff, not the state, was the actual plaintiff in a PAGA matter.)

This appears at odds with the California Supreme Court’s statements in *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 382: “The government entity on whose behalf the plaintiff files suit is always the real party in interest [in a PAGA case].” Additionally, in *Turrieta v. Lyft Inc.* (2021) 69 Cal.App.5th 955, 974, the appellate court noted: “[A] representative action under PAGA is not a class action. [Citation.] There is no individual component to a PAGA action because ‘every PAGA action ... is a representative action on behalf of the state.’”

The California Supreme Court has noted that the plea in abatement defense is a disfavored defense and, therefore, strictly construed against the defendant, such that the defendant must establish by “technical exactness” that the defense applies. (See *Lord v. Garland* (1946) 27 Cal.2d 840, 848-49 (“The plea is dilatory in its nature and is not favored”).)

The Court does not believe the Defendant has met the narrow requirements for a plea in abatement. However, the Court does find that there are grounds to abate this action and sustain the demurrer based on the broader exclusive concurrent jurisdiction rule and its own inherent authority.

Exclusive Concurrent Jurisdiction

Our Supreme Court has stated that the “first-filed rule in California means that when two courts of the same sovereignty have concurrent jurisdiction, the first to assume jurisdiction over a particular subject matter of a particular controversy takes it exclusively, and the second court should not thereafter assert control over that subject matter.” (*Advanced Bionics Corp. v. Medtronic, Inc.* (2002) 29 Cal.4th 697, 707.)

The statutory plea in abatement rule is similar in effect to the “exclusive concurrent jurisdiction rule,” which requires courts to abate a later-filed suit in favor of an earlier suit in a different court. The exclusive concurrent jurisdiction rule is broader, however, than the statutory plea of abatement because it does not require absolute identity of parties, causes of action, or remedies sought in the initial and subsequent action. (*Plant Insulation, supra*, 224 Cal.App.3d at p. 789.)

In *Plant Insulation*, the Court of Appeal held that:

“[i]f the court exercising original jurisdiction has the power to bring before it all the necessary parties, the fact that the parties in the second action are not identical does not preclude application of the rule. Moreover, the remedies sought in the separate actions need not be precisely the same so long as the court exercising original jurisdiction has the power to litigate all the issues and grant all the relief to which any of the parties might be entitled under the pleadings.” (*Id.* at p. 788.)

It is not unusual for a court in a class action case to also handle the issues of a PAGA claim based on the same facts. (See, *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 1128 (*Kim*).) *Kim* was a class action case that asserted causes of action for wage and hour violations. The plaintiff in that case also brought a PAGA claim with the class action. The court in that case was able to maintain jurisdiction of both the class action and the PAGA claim in the same case. (*Id.*)

As to what constitutes the same subject matter for the rule to apply, *Franklin & Franklin v. 7-Eleven Owners for Fair Franchising* (2000) 85 Cal.App.4th 1168 (*Franklin*) is instructive. There, it was enough that the attorney fees issue in two cases were the same and arose out of the same transaction for the court in the later-filed case to apply the exclusive concurrent jurisdiction rule. (*Id.* at p. 1176.)

Here, as noted by Defendant, the factual allegations are identical in this PAGA Action and in the Class Action case, Case No. VCU289281.

In the Class Action, Plaintiff is alleging that the same Defendant causes of action are for alleged: (1) unpaid minimum and straight time wages; (2) unpaid overtime wages; (3) failure to provide meal periods; (4) failure to provide required rest periods; (5) failure to pay timely final wages at termination; (6) failure to provide accurate wage statements; and (7) unfair competition.

Plaintiff’s PAGA Action asserts violations via California Labor Code section 2699: (1) were not paid all minimum and straight time wages owed; (2) were not paid all overtime owed; (3) were not provided legally mandated meal periods; (4) were not permitted to take legally compliant rest periods; (5) were not timely paid final wages; and (6) were not provided with accurate wage statements. The Second Action also asserts that Defendant did not (1) pay all earned wages twice per month, and (2) did not maintain accurate records. Defendant notes the final two theories regarding payment twice a month and maintenance of accurate records are derivative of the meal and rest break claims.

The cases are practically parallel to each other, much more so than the claims were in *Franklin*, where there was only the single attorney fee issue that was the same. This strongly supports application of the exclusive concurrent jurisdiction rule should be applied here.

Further, nothing would prevent Plaintiff from simply amending the class action complaint to include the PAGA claims asserted here.

“The rule of exclusive concurrent jurisdiction is mandatory. Thus, if the conditions are met, the issuance of a stay order is a matter of right.” (*People ex rel. Garamendi v. American Autoplan, Inc.* (1993) 20 Cal.App.4th 760, 772.) “Where a demurrer is sustained on the ground of another action pending, the proper order is not a dismissal, but abatement of further proceedings pending termination of the first action.” (*Plaint Insulation, supra*, 224 Cal.App.3d at p. 788.)

Therefore, the Court sustains the demurrer on grounds of exclusive concurrent jurisdiction, stays this matter pending resolution of the Class Action, VCU289281. This serves the underlying purpose of preventing Defendant from fighting identical claims in separate lawsuits.

If no one requests oral argument, under Code of Civil Procedure section 1019.5(a) and California Rules of Court, rule 3.1312(a), no further written order is necessary. The minute order adopting this tentative ruling will become the order of the court and service by the clerk will constitute notice of the order.