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PERSPECTIVE

Mediating PAGA claims: Estrada changes everything, or does it?

By Barry M. Appell

When the California Supreme Court issued its recent ruling in *Estrada v. Royalty Carpet Mills, Inc.* (No. S274340, 2024 WL 188863 (Cal. Jan. 18, 2024)), the initial take was that it appeared to remove any chance for defendants to avoid claims under the California Private Attorneys General Act (PAGA), Labor Code Section 2698 on the grounds of manageability. As it resolved a split among appellate courts, the state's highest court ruled that trial courts lack inherent authority to dismiss PAGA claims solely for manageability reasons.

The ruling appears, at first blush, to deprive employers of a potentially potent tool for defending against PAGA claims while it encourages plaintiffs to broaden such claims. So, was *Estrada* the end of the road for those defending against PAGA claims? Will it give plaintiffs free rein to include as many claims as possible in their PAGA actions? The answers, following a review of the court's decision, are no and no.

A close reading of the court's decision should actually give defendants some comfort while providing an incentive for parties to settle their PAGA cases through mediation.

The *Estrada* holding

The employer in *Estrada* had sought the dismissal of the plaintiffs' PAGA claim, arguing that it was unmanageable. The company contended that there were simply too many individualized issues and that litigating them all would require testimony from too many individuals.



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It asked the court to use the same tools that are used to limit or strike class action lawsuits, where plaintiffs are required to show a predominance of common issues across all claimants.

The California Supreme Court summarily rejected this argument. Class action claims, it said, "differ significantly from PAGA claims in ways that make it inappropriate to impose a class action-based manageability requirement on PAGA actions." There is no requirement under PAGA, the justices said, for the plaintiff to establish predominance of common issue, nor must an employee personally experience every alleged violation to have standing to bring a PAGA action. To insert a class action manage-

ability requirement into PAGA claims would "frustrate legitimate legislative policy" (citing *People v. Municipal Court (Runyan)* (1978) 20 Cal.3d 523 at p. 528).

The state's high court quoted from the U.S. Supreme Court's decision in *Viking River Cruises, Inc. v. Moriana* ((2022) 142 S.Ct. 1906 at p. 1920): "A class-action plaintiff can raise a multitude of claims because he or she represents a multitude of absent individuals; a PAGA plaintiff, by contrast, represents a single principal, the [Labor and Workforce Development Agency] LWDA, that has a multitude of claims."

Lack of manageability, the court concluded, was not sufficient reason to dismiss the claim. "[W]hile trial courts may use a vast variety

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of tools to efficiently manage PAGA claims, given the structure and purpose of PAGA, striking such claims due to manageability concerns – even if those claims are complex or time-intensive – is not among the tools trial courts possess.”

Due process matters

But this is far from the end of the line for Royalty and other employer defendants facing PAGA claims. In its brief, as well as amici curiae briefs filed in support of its position, the defense argued that employers in class or representative actions have a due process right to present an affirmative defense.

The California Supreme Court agreed. Citing *Duran v. U.S. Bank National Assn.* ((2014) 59 Cal.4th 1 at p. 38) the court noted that with respect to class actions, “defendants must have an opportunity to present proof of their affirmative defenses.” Such defendants do not, however, “have an unfettered right to present individualized evidence in support of a defense” or “to litigate an affirmative defense as to each individual class member.” As long as defendants are permitted to introduce evidence “both to challenge the plaintiffs’ showing and to reduce overall damages,” courts may use discretion in deciding how to adjudicate such defenses.

Responding to the defendant’s claim that trial courts have inher-

ent authority to strike a PAGA claim to protect a defendant’s due process rights, the court acknowledged that there may be circumstances under which courts may need to intercede in PAGA cases for this purpose. The characteristics of some PAGA claims could, in fact, “present trial courts with challenges in ensuring that a defendant’s due process rights are preserved.” But the justices went on to clarify that “we express no opinion as to the hypothetical questions of whether, and under what circumstances, a defendant’s right to due process might ever support striking a PAGA claim.”

In footnote 5 of the *Estrada* opinion, the court spells out its position: “[W]e also conclude that defendant Royalty Carpet Mills, Inc. (Royalty) has not demonstrated any potential violation of its right to due process occasioned by the Court of Appeal’s reversal of the trial court’s striking of plaintiffs’ representative PAGA claim. However, we do not decide the hypothetical questions of whether a defendant’s right to due process can ever support striking a PAGA claim, and if so, the circumstances under which such striking would be appropriate.”

A rose by any other name

Ultimately, due process concerns in PAGA cases could be just another way of saying that a case raises manageability concerns. An overly

broad PAGA case could present many of the same challenges that arise when a defendant is seeking to present evidence in support of its position but is facing due process challenges.

In mediations of PAGA claims, Defendants still have the ability to raise arguments that the PAGA claims alleged by the plaintiff are not manageable, and plaintiffs still bear the risk that the trial court could limit - even severely limit - the scope of the PAGA claims, or potentially strike the claims on due process concerns.

Estrada makes it clear that plaintiffs must still ensure that their PAGA trials are manageable. Their claims may no longer be stricken entirely on this ground, but trial courts have a range of tools at their disposal to address any situation in which a plaintiff is pursuing a broad PAGA claim that presents manageability concerns. According to the California Supreme Court, these tools “can be used to manage complex cases generally, and PAGA cases in particular, that do not involve striking a PAGA claim. All those case management tools remain undisturbed by our decision in this case.” Courts can thus limit witness testimony as well as other potential plaintiff evidence, thereby limiting the number of violations and penalties potentially available to PAGA plaintiffs.

Trial courts can also issue substantive rulings, including on demurrer, summary judgment or judgment notwithstanding the verdict when a plaintiff pleads claims in such an overbroad or unspecific manner that the plaintiff is unable to prove liability as to all or most employees.

Why mediate PAGA claims

The *Estrada* court left completely open questions regarding what circumstances could support striking PAGA claims so as to preserve a defendant’s due process rights. This leaves parties with uncertainties as they litigate PAGA claims and contemplate going to trial.

Defendants still have the ability to raise arguments that the PAGA claims alleged by the plaintiff are not manageable, and plaintiffs still bear the risk that a trial court could limit - even severely limit - the scope of their PAGA claims, even potentially striking the claims because of due process concerns.

Such risks should prompt parties in PAGA cases to seriously weigh the risks of continuing to litigate those cases, especially when they include a broad scope of alleged violations. Ultimately, *Estrada* doesn’t change much for parties in PAGA actions. The uncertainty reflected in the California Supreme Court’s decision should continue to motivate them to mediate all such cases post-*Estrada*.