



# Appellate Reports

## Supreme Court holds that plaintiffs do not lose standing to pursue PAGA claims against their employer by settling their individual claims

By **JEFFREY I. EHRLICH**

*Kim v. Reins International California, Inc.* (2020) \_\_ Cal.5th \_\_ (Cal. Supreme)

### Who needs to know about this case?

Lawyers litigating PAGA claims.

**Why it's important:** Holds that employees who settle and dismiss their individual claims against their employer for Labor Code violations do not lose standing to pursue a PAGA claim.

Reins operates restaurants in California and employed Kim as a "training manager," a position it classified as exempt from overtime laws. Kim later sued Reins in a putative class action, claiming that he and other training managers had been misclassified. His complaint stated claims under the Labor Code for failure to pay wages and overtime, failure to provide meal and rest breaks, failure to provide accurate wage statements, waiting-time penalties, and unfair competition. In addition, it sought civil penalties under PAGA.

The trial court granted Reins's motion to compel arbitration on the individual claims, dismissed the class-action allegations, and stayed the PAGA claim until the arbitration was concluded. Several months later, Reins offered to settle all of Kim's "individual claims" for \$20,000, attorney's fees and costs. Kim accepted, dismissed his individual claims, leaving only the PAGA claim for resolution.

Reins then successfully moved for summary adjudication of the PAGA claim in the trial court on the ground that Kim lacked standing. Reasoning that Kim's

rights had been "completely redressed" by the settlement and dismissal of his own claims, the court concluded Kim was no longer an "aggrieved employee" with PAGA standing. Judgment was entered for Reins and affirmed on appeal. The Supreme Court granted review to determine whether Kim's settlement of individual Labor Code claims extinguished his PAGA standing. Held: It did not.

The plain language of Labor Code section 2699(c) has only two requirements for PAGA standing. The plaintiff must be an aggrieved employee, that is, someone "who was employed by the alleged violator" and "against whom one or more of the alleged violations was committed." (§ 2699(c).) Both requirements were satisfied here. Kim was employed by Reins and alleged that he personally suffered at least one Labor Code violation on which the PAGA claim is based. Kim was thus an "aggrieved employee" with standing to pursue penalties on the state's behalf.

Reins conceded that Kim had PAGA standing when he sued but contended that his standing ended when he settled his claims for individual relief. Reins argued PAGA standing is premised on a plaintiff's injury, which was redressed by the settlement. The Court found the logic in this argument "elusive." It explained that the Legislature defined PAGA standing in terms of violations, not injury. Kim became an aggrieved employee, and had PAGA standing, when one or more Labor Code violations were committed against him. (See § 2699(c).) Settlement did not nullify these violations. The *remedy* for a Labor Code violation, through settlement or

other means, is distinct from the *fact* of the violation itself. For example, employers can pay an additional hour of wages as a remedy for failing to provide meal and rest breaks, but the Court has held that payment of this statutory remedy "does not *excuse* a section 226.7 violation." (*Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, 1256.)

Further, Reins's assertion that a PAGA plaintiff is no longer "aggrieved" once individual claims are resolved is at odds with the Legislature's explicit definition. Section 2699(c) defines an "aggrieved employee" as "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed." It does not require the employee to claim that any economic injury resulted from the alleged violations.

Reins's interpretation would add an expiration element to the statutory definition of standing. It would expand section 2699(c) to provide that an employee who accepts a settlement for individual damage claims is no longer aggrieved. But the Legislature said no such thing.

PAGA claims are different from conventional civil suits. Under PAGA, aggrieved employees are authorized to pursue civil penalties on the State's behalf, with 75% of the penalties recovered going to the State's Labor and Workforce Development Agency (LWDA). Accordingly, a PAGA claim is an enforcement action between the LWDA and the employer, with the PAGA plaintiff acting on behalf of the government. The state can deputize anyone it likes to pursue its claim, including a plaintiff who



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has suffered no actual injury. Moreover, civil penalties recovered on the state's behalf are intended to "remediate present violations and deter future ones," not to redress employees' injuries.

Although it is representative in nature, a PAGA claim is not simply a collection of individual claims for relief, and so is different from a class action. In a class action, the representative plaintiff still possesses only a single claim for relief – the plaintiff's own. Hence, if a representative plaintiff voluntarily settles her claim, she no longer has an interest in the class action and may lose the ability to represent the class. By contrast, there is no individual component to a

PAGA action because *every* PAGA action is a representative action on behalf of the state. Plaintiffs may bring a PAGA claim *only* as the state's designated proxy, suing on behalf of *all* affected employees. Reins's injury-based view of standing would deprive many employees of the ability to prosecute PAGA claims, contrary to the statute's purpose to ensure effective code enforcement.

Reins also argued that principles of claim preclusion and retraxit barred Kim from litigating the PAGA claim after the settlement. The Court rejected this contention. Kim's settlement specifically excluded the pending PAGA claim. And claim preclusion applies to

bar a "second lawsuit" on the same claim; not to claims brought within the same lawsuit.

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