

S246711

SUPREME COURT COPY

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May 24, 2019

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MAY 28 2019  
CLERK SUPREME COURT

Honorable Chief Justice Tani G. Cantil-Sakauye  
Honorable Associate Justices  
Supreme Court of California  
350 McAllister Street, Suite 1295  
San Francisco, California 94102

Re: *ZB, N.A., et al. v. Superior Court (Kalethia Lawson, RPI)*  
Case No. S246711  
**(Oral Argument Date: June 5, 2019)**

To the Honorable Chief Justice and Associate Justices:

Pursuant to Cal. Rules of Court 8.254 and 8.520(d), Real Party in Interest Kalethia Lawson submits two recent Court of Appeal decisions bearing on the issues addressed in Real Party's briefs.

First, *Correia v. NB Baker Electric, Inc.* (4th DCA, Feb. 25, 2019) 32 Cal.App.5th 602, 615-25, holds that: (1) *Epic [Systems Corp. v. Lewis]* (2018) 138 S.Ct. 1612 did not overrule *Iskanian [v. CLS Transportation Los Angeles, LLC]* (2014) 59 Cal.4th 348; (2) "an employee's predispute arbitration agreement to arbitrate PAGA claims is not enforceable without the state's consent"; and (3) "a single representative [PAGA] claim cannot be split into an arbitrable individual claim and a nonarbitrable representative claim". See Answering Brief of Real Party in Interest Kalethia Lawson, at 10-11, 19-22, 48-50; Real Party in Interest Kalethia Lawson's Answer to Amicus Briefs, at 12-15, 32-34.

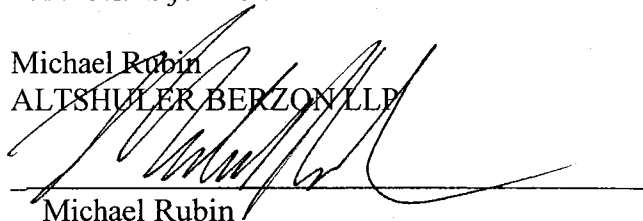
Second, *Zakaryan v. The Men's Wearhouse, Inc.* (2nd DCA March 28, 2019) 33 Cal.App.5th 659, 671, 675, 676, holds that "splitting a PAGA claim in this manner ["with the claim for underpaid wages under section 558 being shunted to arbitration while the claim for the further \$50 and \$100 per-pay-period penalties under section 558 remaining in court"] is both (1) legally impermissible and (2) inconsistent with labor and arbitration law" because it "runs afoul

of the primary rights doctrine,” ignores that “section 558 . . . does not create two separate remedies [but] defines two components of a singular ‘civil penalty’ that is recoverable in a PAGA action,” and improperly “sends the chief issue underlying a PAGA claim -- . . . whether the employer violated labor law . . . – to arbitration” and “offends *Iskanian*’s reasons for barring arbitration because it effectively allows the employee, by contract, to bind the agency to arbitration.” See Answering Brief of Real Party in Interest Kalethia Lawson, at 22-31, 36-39. Real Party in Interest Kalethia Lawson’s Answer to Amicus Briefs, at 9-12, 16-26. *But cf. Zakaryan*, 33 Cal.App.5th at 674-75 (also holding that in a PAGA action, the unpaid wages portion of the section 558 civil penalty remedy must be allocated 75% to the LWDA and 25% to the aggrieved employees).

Respectfully submitted,

Edwin Aiwazian  
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LAWYERS *for* JUSTICE PC

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**PROOF OF SERVICE**

**Case:** LAWSON v. ZB, N.A., Case No. S246711  
Fourth App. Dist., Division One, Nos. D071279 & D071376 (Consolidated)  
San Diego County Superior Court; 37-2016-00005578-CU-OE-CTL

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to the within action; my business address is 177 Post Street, Suite 300, San Francisco, California 94108. On May 24, 2019, I served the following document(s):

**Real Party in Interest Kalethia Lawson's  
Letter to the Court re: Recent Court of Appeal Decisions, dated May 24, 2019**

on the parties, through their attorneys of record, by placing true copies thereof in sealed envelopes addressed as shown below for service as designated below:

By First Class Mail: I am readily familiar with the practice of Altshuler Berzon LLP for the collection and processing of correspondence for mailing with the United States Postal Service. I placed the envelope, sealed and with first-class postage fully prepaid, for collection and mailing following our ordinary business practices. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Mail Postal Service in San Francisco, California, for collection and mailing to the office of the addressee on the date shown herein.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this May 24, 2019 at San Francisco, California.

J. Perley  
Jean Perley