

S246911

SUPREME COURT  
FILED

SEP 25 2018

No. S246911

Jorge Navarrete Clerk

**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

Deputy

JUSTIN KIM,  
*Plaintiff and Appellant*

vs.

REINS INTERNATIONAL CALIFORNIA, INC.  
*Defendant and Respondent*

Appeal Upon a Decision of the Court of Appeal  
Second Appellate District, Division Four  
Case No. B278642

Appeal from a Judgment of the Superior Court of Los Angeles County  
Case No. BC539194

Honorable Kenneth R. Freeman, Judge Presiding

**MOTION FOR JUDICIAL NOTICE**

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Attorneys for Respondent  
Reins International California, Inc.

**TO THE COURT, APPELLANT JUSTIN KIM, AND HIS ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that pursuant to California Evidence Code Sections 451, 452, 453 and 459, as well as California Rules of Court, Rules 3.1113(l), 8.520(g) and 8.252, Respondent Reins International California, Inc. (“Reins”) hereby requests this Court take Judicial Notice of the following exhibits in support of Reins’ Answering Brief:

1. Senate Bill No. 796 (2003-2004 Reg. Sess.) as introduced February 21, 2003 (a true and correct copy of which is attached to the Declaration of Jan S. Raymond as “**Exhibit A**”);

2. Senate Judiciary Committee’s Report on Senate Bill No. 796 (2003-2004 Reg. Sess.) as amended April 22, 2003, prepared for the April 29, 2003 Hearing, from the bill file of the Senate Committee on Judiciary (a true and correct copy of which is attached to the Declaration of Jan S. Raymond as “**Exhibit B**”);

3. Assembly Committee on Judiciary’s Report on Senate Bill No. 796 (2003-2004 Reg. Sess.) as amended May 12, 2003, prepared for the June 26, 2003 Hearing, from the author’s bill file of Senator Dunn (a true and correct copy of which is attached to the Declaration of Jan S. Raymond as “**Exhibit C**”);

4. Senate Committee on Labor and Industrial Relations’ Report on Senate Bill No. 796 (2003-2004 Reg. Sess.) as amended March 26,

2003, prepared for the April 9, 2003 Hearing, from the bill file of the Senate Committee on Labor and Industrial Relations (a true and correct copy of which is attached to the Declaration of Jan S. Raymond as “**Exhibit D**”); and

5. Senate Rules Committee, Office of Senate Floor Analyses’ Report on Senate Bill No. 1809 (2003-2004 Reg. Sess.) as amended July 27, 2004, prepared for the July 29, 2004 Senate Floor Hearing, from the bill file of the Office of Senate Floor Analyses (a true and correct copy of which is attached to the Declaration of Jan S. Raymond as “**Exhibit F**”).<sup>1</sup>

The motion is based upon the records in this case, the attached Memorandum of Points and Authorities, and the attached Declaration of Jan S. Raymond and supporting exhibits.

Respectfully submitted,

Dated: September 24, 2018

OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.

By:  \_\_\_\_\_

Spencer C. Skeen  
Tim L. Johnson  
Jesse C. Ferrantella  
Jonathan H. Liu

Attorneys for Respondent  
Reins International California, Inc.

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<sup>1</sup> The Court of Appeal did take judicial notice of Exhibit E.

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT  
OF MOTION FOR JUDICIAL NOTICE**

Respondent Reins International California, Inc. (“Reins”) hereby respectfully requests this Court take Judicial Notice of the following exhibits in support of Reins’ Answer Brief on the Merits:

1. Senate Bill No. 796 (2003-2004 Reg. Sess.) as introduced February 21, 2003 (a true and correct copy of which is attached to the Declaration of Jan S. Raymond as “**Exhibit A**”);

2. Senate Judiciary Committee’s Report on Senate Bill No. 796 (2003-2004 Reg. Sess.) as amended April 22, 2003, prepared for the April 29, 2003 Hearing, from the bill file of the Senate Committee on Judiciary (a true and correct copy of which is attached to the Declaration of Jan S. Raymond as “**Exhibit B**”);

3. Assembly Committee on Judiciary’s Report on Senate Bill No. 796 (2003-2004 Reg. Sess.) as amended May 12, 2003, prepared for the June 26, 2003 Hearing, from the author’s bill file of Senator Dunn (a true and correct copy of which is attached to the Declaration of Jan S. Raymond as “**Exhibit C**”);

4. Senate Committee on Labor and Industrial Relations’ Report on Senate Bill No. 796 (2003-2004 Reg. Sess.) as amended March 26, 2003, prepared for the April 9, 2003 Hearing, from the bill file of the Senate Committee on Labor and Industrial Relations (a true and correct

copy of which is attached to the Declaration of Jan S. Raymond as “**Exhibit D**”); and

5. Senate Rules Committee, Office of Senate Floor Analyses’ Report on Senate Bill No. 1809 (2003-2004 Reg. Sess.) as amended July 27, 2004, prepared for the July 29, 2004 Senate Floor Hearing, from the bill file of the Office of Senate Floor Analyses (a true and correct copy of which is attached to the Declaration of Jan S. Raymond as “**Exhibit F**”).

Appellate courts have the same power as trial courts to take judicial notice of all matters properly subject to such notice. (Cal. Evid. Code § 459; *Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal. App. 4th 471, 482-83.) California Evidence Code section 459, subdivision (a) provides: “The reviewing court may take judicial notice of any matter specified in Section 452.”

Pursuant to California Evidence Code section 452, subdivision (c), courts may take judicial notice of “[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.” (Evid. Code, § 452, subd. (c).) This encompasses a broad range of legislative materials, including committee reports and correspondence. (*See Post v. Prati* (1979) 90 Cal. App. 3d 626, 634.)

Here, Respondent requests that this Court take notice of legislative materials relating to Senate Bill Nos. 796 (2003-2004 Reg. Sess.) and 1809 (2003-2004 Reg. Sess.), which were the enacting legislation that eventually

became the Private Attorneys General Act (“PAGA”). The matters requested to be judicially noticed are relevant to the instant appeal because they demonstrate the Legislature intended to prevent individuals without claims and/or injury from pursuing PAGA claims.

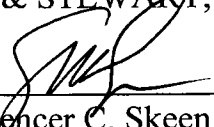
For the foregoing reasons, Respondent respectfully requests that the Court take judicial notice of Exhibits A through D and Exhibit F, which are attached Declaration of Jan S. Raymond.

Respectfully submitted,

Dated: September 24, 2018

OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.

By: \_\_\_\_\_

  
Spencer C. Skeen  
Tim L. Johnson  
Jesse C. Ferrantella  
Jonathan H. Liu

Attorneys for Respondent  
Reins International California, Inc.

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2 **DECLARATION OF JAN S. RAYMOND**

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4 I, Jan Raymond, declare:

5       1. I am an attorney licensed to practice by the California State Bar, State Bar number  
6 88703, and admitted to practice in the United States Federal Court for the Eastern District of  
7 California. My business is researching the history and intent of legislative and regulatory  
8 enactments and adoptions; I have over 30 years experience in research and analysis of  
9 legislative and regulatory intent.

10       2. The attached documents are documents located in the course of research on Senate  
11 Bills 796 of 2003 and 1809 of 2004 affecting Labor Code Sections 2698 and 2699.

12       3. Individual documents may appear in multiple locations or files. We endeavor to  
13 obtain only one copy of the document. Where it is clearly important, we endeavor to note each  
14 source of the document in this declaration. But some documents for which we cite a single  
15 source may in fact have been found in multiple locations. Where this raises an issue important  
16 in individual circumstances, all source locations of particular documents can be identified upon  
17 request.

18       4. All documents included are true and correct copies of the original documents. Unless  
19 otherwise noted in this declaration, all documents were obtained at one of the following sources:  
20 legislative offices at the State Capitol, the California State Library, the California State Archives,  
21 or libraries at the University of California at Davis. References to "bill file" as used in this  
22 declaration refer to files maintained regarding the legislation that is the subject of the document  
23 collection. Some documents copied from microfilm originals may be of poor quality; all copies  
24 included with this report are the best available copies. The following listed documents that  
25 accompany this declaration are true and correct copies:  
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2003 Chapter 906

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**Exhibit A:** Senate Bill 796 of 2003 as Introduced on February 21, 2003 Page 1

**Exhibit B:** Senate Judiciary Committee Analysis prepared for the April 29, 2003 Hearing, from the bill file of the Senate Committee on Judiciary, eight pages. Page 4

**Exhibit C:** Assembly Judiciary Committee Analysis prepared for the June 26, 2003 Hearing, from the author's bill file of Senator Dunn, seven pages. Page 12

**Exhibit D:** Senate Labor and Industrial Relations Committee Analysis prepared for the April 9, 2003 Hearing, from the bill file of the Senate Committee on Labor and Industrial Relations, nine pages. Page 19

2004 Chapter 221

**Exhibit F:** Senate Rules Committee Analysis prepared for the July 29, 2004 Senate Floor Hearing, from the bill file of the Office of Senate Floor Analyses, eight pages. Page 28

This collection ends with page 35

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I declare under penalty of perjury the foregoing is true and correct.

Executed at Sacramento, California, October 27, 2017.

  
Jan Raymond



Introduced by Senator Dunn

February 21, 2003

An act to add Part 13 (commencing with Section 2698) to Division 2 of the Labor Code, relating to employment,

LEGISLATIVE COUNSEL'S DIGEST

SB 796, as introduced, Dunn. Employment.

Under existing law, the Labor and Workforce Development Agency and its departments, divisions, commissions, boards, agencies, or employees may assess and collect penalties for violations of the Labor Code.

This bill would allow aggrieved employees to bring civil actions to recover these penalties, if the agency or its departments, divisions, commissions, boards, agencies, or employees do not do so. The penalties collected in these actions would be distributed 50% to the General Fund, 25% to the agency for education, to be available for expenditure upon appropriation by the Legislature, and 25% to the aggrieved employee. In addition, the aggrieved employee would be authorized to recover attorney's fees and costs. For any violation of the code for which no civil penalty is otherwise established, the bill would establish a civil penalty.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following;

1 (a) Adequate financing of essential labor law enforcement  
2 functions is necessary to achieve maximum compliance with state  
3 labor laws in the underground economy and to ensure an effective  
4 disincentive for employers to engage in unlawful and  
5 anti-competitive business practices.

6 (b) Although innovative labor law education programs and  
7 self-policing efforts by industry watchdog groups may have some  
8 success in educating some employers about their obligations under  
9 state labor laws, in other cases the only meaningful deterrent to  
10 unlawful conduct is the vigorous assessment and collection of civil  
11 penalties as provided in the Labor Code.

12 (c) Staffing levels for state labor law enforcement agencies  
13 have, in general, declined over the last decade and are likely to fail  
14 to keep up with the growth of the labor market in the future.

15 (d) It is therefore in the public interest to provide that civil  
16 penalties for violations of the Labor Code may also be assessed and  
17 collected by aggrieved employees acting as private attorneys  
18 general, while also ensuring that state labor law enforcement  
19 agencies' enforcement actions have primacy over any private  
20 enforcement efforts undertaken pursuant to this act.

21 SEC. 2. Part 13 (commencing with Section 2698) is added to  
22 Division 2 of the Labor Code, to read:

23  
24 **PART 13. THE LABOR CODE PRIVATE ATTORNEYS**  
25 **GENERAL ACT OF 2004**  
26

27 2698. This part shall be known and may be cited as the Labor  
28 Code Private Attorneys General Act of 2004.

29 2699. (a) Notwithstanding any other provision of law, any  
30 provision of this code that provides for a civil penalty to be  
31 assessed and collected by the Labor and Workforce Development  
32 Agency or any of its departments, divisions, commissions, boards,  
33 agencies, or employees, for a violation of this code, may, as an  
34 alternative, be recovered through a civil action.

35 (b) For all provisions of this code except those for which a civil  
36 penalty has already been established, there is established a civil  
37 penalty for a violation of these provisions, as follows:

38 (1) If no criminal penalty amount has been established for a  
39 violation of the provision, the civil penalty is one hundred dollars  
40 (\$100) per employee per pay period for the initial violation and

1 two hundred dollars (\$200) per employee per pay period for each  
2 subsequent violation. If the person does not employ one or more  
3 employees, the civil penalty is five hundred dollars (\$500).

4 (2) If a criminal penalty has been established for a violation of  
5 the provision, the civil penalty is the amount of the criminal  
6 penalty, or one hundred dollars (\$100) per employee per pay  
7 period for the initial violation and two hundred dollars (\$200) per  
8 employee per pay period for each subsequent violation, whichever  
9 is greater. If the person does not employ one or more employees,  
10 the civil penalty shall be the amount of the criminal penalty or five  
11 hundred dollars (\$500), whichever is greater.

12 (c) An aggrieved employee may recover the civil penalty  
13 described in subdivision (b) in a civil action filed on behalf of  
14 himself or herself or others. Any employee who prevails, in whole  
15 or in part, in any action shall be entitled to an award of reasonable  
16 attorney's fees and costs. Nothing in this section shall operate to  
17 limit an employee's right to pursue other remedies available under  
18 state or federal law, either separately or concurrently with an  
19 action taken under this section.

20 (d) No action may be maintained under this section by an  
21 aggrieved employee if the agency or any of its departments,  
22 divisions, commissions, boards, agencies, or employees, on the  
23 same facts and theories, cites a person for a violation of the code  
24 and initiates proceedings to collect applicable penalties.

25 (e) Civil penalties recovered by aggrieved employees shall be  
26 distributed as follows: 50 percent to the General Fund, 25 percent  
27 to the Labor and Workforce Development Agency for education  
28 of employers and employees about their rights and responsibilities  
29 under this code, available for expenditure upon appropriation by  
30 the Legislature, and 25 percent to the aggrieved employees.

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**SENATE JUDICIARY COMMITTEE**

**Martha M. Escutia, Chair  
2003-2004 Regular Session**

SB 796	S
Senator Dunn	B
As Amended April 22, 2003	
Hearing Date: April 29, 2003	7
Labor Code	9
CJW	6

**SUBJECT**

Employment

**DESCRIPTION**

This bill would allow employees to sue their employers for civil penalties for employment law violations, and upon prevailing, to recover costs and attorneys' fees. The bill is intended to augment the enforcement abilities of the Labor Commissioner by creating an alternative "private attorney general" system for labor law enforcement.

This analysis reflects author's amendments to be offered in Committee.

**BACKGROUND**

California's Labor Code is enforced by the state Labor and Workforce Development Agency (LWDA) and its various boards and departments, which may assess and collect civil penalties for specified violations of the code. Some Labor Code sections also provide for criminal sanctions, which may be obtained through actions by the Attorney General and other public prosecutors.

In 2001, the Assembly Committee on Labor and Employment held hearings about the effectiveness and efficiency of the enforcement of wage and hour laws by the Department of Industrial Relations (DIR), one of four subdivisions of the LWDA. The Committee reported that in fiscal year 2001-2002, the Legislature appropriated over \$42 million to the State Labor Commission for the enforcement of over 300 laws under its jurisdiction. The DIR's authorized staff numbered over 460, making it the largest state labor law enforcement organization in the country.

Nevertheless, evidence received by the Committee indicated that the DIR was failing to effectively enforce labor law violations. Estimates of the size

California's "underground economy" - businesses operating outside the state's tax and licensing requirements - ranged from 60 to 140 billion dollars a year, representing a tax loss to the state of three to six billion dollars annually. Further, a U.S. Department of Labor study of the garment industry in Los Angeles, which employs over 100,000 workers, estimated the existence of over 33,000 serious and ongoing wage violations by the city's garment industry employers, but the DIR was currently issuing fewer than 100 wage citations per year for all industries throughout the state.

As a result of these hearings, the Legislature enacted AB 2985 (Ch. 662, Stats. of 2002), requiring the LWDA to contract with an independent research organization to study the enforcement of wage and hour laws, and to identify state and federal resources that may be utilized to enhance enforcement. The completed study is to be submitted to the Legislature by December 31, 2003.

This bill would propose to augment the LWDA's civil enforcement efforts by allowing employees to sue employers for civil penalties for labor law violations, and to collect attorneys' fees and a portion of the penalties upon prevailing in these actions, as specified below.

#### CHANGES TO EXISTING LAW

Existing law authorizes the LWDA (comprised of the DIR, the Employment Development Department, the Agricultural Labor Relations Board, and the Workforce Investment Board) to assess and collect civil penalties for violations of the Labor Code, where specified. [Labor Code Secs. 201 et seq.]

Existing law authorizes the Attorney General and other public prosecutors to pursue misdemeanor charges against violators of specified provisions of the code. [Labor Code Sec. 215 et seq.]

Existing law authorizes an individual employee to file a claim with the Labor Commissioner alleging that his or her employer has violated specified provisions of the code, and to sue the employer directly for damages, reinstatement, and other appropriate relief if the Commissioner declines to bring an action based on the employee's complaint. [Labor Code Sec. 98.7.]

Existing law further provides that any person acting for itself, its members, or the general public, may sue to enjoin any unlawful, unfair, or fraudulent business act or practice, and to recover restitution and disgorgement of any profits from the unlawful activity. [Bus. & Prof. Code Sec. 17200 et seq.]

This bill would provide that any Labor Code violation for which specific civil penalties have not previously been established shall be subject to a civil penalty of \$100 for each aggrieved employee per pay period for an initial violation, and



\$200 for each aggrieved employee per pay period for continuing violations. (The penalty would be \$500 per violation for a violator who is not an employer.)

This bill further would provide that, for any Labor Code violation for which the LWDA does not pursue a complaint, any aggrieved employee may sue to recover civil penalties in an action brought on behalf of himself or herself or other current or former employees.

This bill would define "aggrieved employee" as "any person employed by the alleged violator within the period covered by the applicable statute of limitation against whom one or more of the violations alleged in the action was committed."

This bill further would provide that an aggrieved employee who prevails in such an action shall be entitled to an award of reasonable attorney's fees and costs.

This bill further would provide that any penalties recovered in an action by an aggrieved employee shall be distributed as follows: 50 percent to the General Fund, 25 percent to the LWDA for employer education, and 25 percent to the aggrieved employees. (Penalties recovered against a violator who is not an employer, which under this bill could be pursued only by a public prosecutor or the LWDA, would be divided evenly between the General Fund and the LWDA.)

This bill further would provide that nothing in this section shall limit an employee's right to pursue other remedies available under state or federal law.

This bill further would provide that no action may be maintained by an aggrieved employee under this section where the LWDA initiates proceedings against the alleged violator on the same facts and under the same section or sections of the Labor Code.

#### COMMENT

##### 1. Stated need for legislation

The California Labor Federation, co-sponsor, states that this bill would "attack the underground economy and enhance our state's revenues" by allowing workers to crack down on labor violators:

In the last decade, as California has grown to become one of the world's largest economies, state government labor law enforcement functions have failed to keep pace. . . . The state's current inability to enforce our existing labor laws effectively is due to inadequate staffing and to the continued growth of the underground economy. This inability coupled

with our severe state budget shortfall calls for a creative solution that will help the state crack down on those who choose to flout our laws.

The California Rural Legal Assistance (CRLA) Foundation, also a co-sponsor, states that violations of minimum or overtime wage violations are common, and many other violations for which only rarely enforced criminal penalties exist are increasing. For example, "company store" arrangements in which workers are required to cash their checks with their employer, for a fee, allegedly are widespread in the agricultural industry. The CRLA Foundation notes that the bill's proposed penalty structure is "nominal" and is based on existing provisions of the Labor Code.

Protection & Advocacy, Inc., which supports the rights of people with disabilities, asserts that SB 796 will assist disabled employees "by providing some mechanism by which to get an employer to comply with the Labor Code."

2. SB 796 would attach civil penalties to existing provisions

The sponsors state that many Labor Code provisions are unenforced because they are punishable only as criminal misdemeanors, with no civil penalty or other sanction attached. Since district attorneys tend to direct their resources to violent crimes and other public priorities, Labor Code violations rarely result in criminal investigations and prosecutions.

Accordingly, this bill would attach a civil penalty of \$100 for each aggrieved employee per pay period (increasing to \$200 for each aggrieved employee per pay period for continuing violations) to any Labor Code provision that does not already contain a financial penalty for its violation. The sponsors state that this proposed penalty is "on the low end" of existing civil penalties attached to other Labor Code provisions, but should be significant enough to deter violations.

3. The bill would allow "aggrieved employees" to bring private actions to recover the civil penalties

The sponsors state that private actions to enforce the Labor Code are needed because LWDA simply does not have the resources to pursue all of the labor violations occurring in the garment industry, agriculture, and other industries.

Although the Unfair Competition Law (UCL), Section 17200 of the Business & Professions Code, permits private actions to enjoin unlawful business acts, the sponsors assert that it is an inadequate tool for correcting Labor Code violations. First, the UCL only permits private litigants to obtain injunctive relief and restitution, which the sponsors say is not a sufficient deterrent to

labor violations. Second, since the UCL does not award attorneys' fees to a prevailing plaintiff, few aggrieved employees can afford to bring an action to enjoin the violations. Finally, since most employees fear they will be fired or subject to hostile treatment if they file complaints against their employers, they are discouraged from bringing UCL actions.

Generally, civil enforcement statutes allow civil penalties to be recovered only by prosecutors, not by private litigants. Private plaintiffs who have been damaged by a statutory violation usually are restricted to traditional damage suits, or where damages are difficult to prove, to "statutory damages" in a specified amount or range. [See, e.g., Unruh Civil Rights Act, Civ. Code Sec. 51 et seq., allowing statutory damages in a minimum amount of \$4,000 per violation to prevailing private litigants in actions alleging denial of equal access or other forms of discrimination.]

In this bill, allowing private recovery of civil penalties as opposed to statutory damages would allow the penalty to be dedicated in part to public use (to the General Fund and the LWDA) instead of being awarded entirely to a private plaintiff, as would occur with a damage award. Recovery of civil penalties by private litigants does have some precedent in existing law: The Unruh Civil Rights Act allows either the victim of a hate crime or a public prosecutor to bring an action for a civil penalty of \$25,000 against the perpetrator of the crime. (Civ. Code Secs. 51.7, 52.)

#### 4. Opponents' concerns

The employer groups opposing the bill argue that SB 796 will encourage private attorneys to "act as vigilantes" pursuing any and all types of Labor Code violations on behalf of different employees, and that this incentive will be increased by allowing employees to recover both attorneys' fees and a portion of the penalties. A representative letter states:

There is a major concern that this type of statute could be abused in a manner similar to the legal community's abuse of Business and Professions Code Section 17200 when it sued thousands of small businesses for minor violations and demanded settlements in order to avoid costly litigation.

The California Chamber of Commerce argues that, since the bill would award attorneys' fees to prevailing employees, but not to employers when they prevail, SB 796 would clog already-overburdened courts because there would be no disincentive to pursue meritless claims.

The California Employment Law Council states that the the Labor Code contains "innumerable penalty provisions, many of which would be

applicable to minor and inadvertent actions." Under current law, however, the prospect of excessive penalties is mitigated by prosecutorial discretion, which would disappear under SB 796:

If, for example, a large employer inadvertently omitted a piece of information on a paycheck, a "private attorney general" could sue for penalties that could reach staggering amounts if . . . the inadvertent deletion of information on a paycheck went on for some time.

5. Sponsors say bill has been drafted to avoid abuse of private actions

The sponsors are mindful of the recent, well-publicized allegations of private plaintiff abuse of the UCL, and have attempted to craft a private right of action that will not be subject to such abuse. First, unlike the UCL, this bill would not open private actions up to persons who suffered no harm from the alleged wrongful act. Instead, private suits for Labor Code violations could be brought only by an "aggrieved employee" - an employee of the alleged violator against whom the alleged violation was committed. (Labor Code violators who are not employers would be subject to suit only by the LWDA or by public prosecutors.)

Second, a private action under this bill would be brought by the employee "on behalf of himself or herself or others" - that is, fellow employees also harmed by the alleged violation - instead of "on behalf of the general public," as private suits are brought under the UCL. This would dispense with the issue of res judicata ("finality of the judgment") that is the subject of some criticism of private UCL actions. An action on behalf of other aggrieved employees would be final as to those plaintiffs, and an employer would not have to be concerned with future suits on the same issues by someone else "on behalf of the general public."

Third, the proposed civil penalties are relatively low, most of the penalty recovery would be divided between the LWDA (25 percent) and the General Fund (50 percent), and the remaining 25 percent would be divided between all identified employees aggrieved by the violation, instead of being retained by a single plaintiff. This distribution of penalties would discourage any potential plaintiff from bringing suit over minor violations in order to collect a "bounty" in civil penalties.

Finally, the bill provides that no private action may be brought when the LWDA or any of its subdivisions initiates proceedings to collect penalties on the same facts and under the same code provisions.

6. Author's amendments

In order to address concerns that the bill might invite frivolous suits or impose excessive penalties, and pursuant to discussions between the sponsors and Committee staff, the author has agreed to accept the following amendments to clarify the bill's intended scope of its private right of action and the assessment and distribution of its civil penalties:

- (a) To clarify who would qualify as an "aggrieved employee" entitled to bring a private action under this section, the author will define the term as follows (at page 2, line 38):

"For purposes of this part, an aggrieved employee means any person employed by the alleged violator within the period covered by the applicable statute of limitations against whom one or more of the violations alleged in the action was committed."

The bill would further be amended to reflect that any civil penalty recoverable by the LWDA under existing law may be recovered through a civil action "brought by an aggrieved employee on behalf of himself or herself or other current or former employees" (at page 2, lines 31-36).

- (b) To clarify that civil penalties would be assessed only with respect to the number of employees aggrieved by the violation, as opposed to the total number of an alleged violator's employees, the author will amend the bill to reflect that penalties will be determined "for each aggrieved employee" instead of "per employee" (at page 3, lines 7 and 8).

- (c) To allay opponents' concerns that res judicata issues may arise if all known potential plaintiffs are not included in the private action, the author will amend the bill as follows (at page 3, lines 11-13):

"An aggrieved employee may recover the civil penalty described in subdivision (b) in a civil action filed on behalf of himself or herself or others other current or former employees for whom evidence of a violation was developed during the trial or at settlement of the action."

- (d) To conform its attorney's fees provision with similar provisions in existing law, the author will amend the bill to delete the phrase "in whole or in part" from the provision allowing attorney's fees to be awarded to a prevailing plaintiff (at page 3, lines 13-14).

**Support:** American Federation of State, County and Municipal Employees (AFSCME); California Conference Board of the Amalgamated Transit Union; California Council of Machinists; California Independent Public Employees Legislative Council; California State Pipe Trades Council; California State Association of Electrical Workers; California Teamsters; Engineers and Scientists of California, Local 20; Hotel Employees, Restaurant Employees International Union; Professional and Technical Engineers, Local 21; Protection & Advocacy, Inc.; Region 8 States Council of the United Food & Commercial Workers; Western States Council of Sheet Metal Workers

**Opposition:** Associated General Contractors of California; California Apartment Association; California Chamber of Commerce; California Employment Law Council; California Landscape Contractors Association; California Manufacturers and Technology Association; Civil Justice Association of California (CJAC); Construction Employers' Association; Motion Picture Association of America; Orange County Business Council

#### HISTORY

**Source:** California Labor Federation AFL-CIO; CRLA Foundation

**Related Pending Legislation:** None Known

**Prior Legislation:** AB 2985 (Committee on Labor and Private Employment) (Ch. 662, Stats. of 2002) (requires Labor and Workforce Development Agency to contract with independent research organization to study most effective ways to enforce wage and hour laws, and to identify all available state and federal resources available for enforcement; completed study to be submitted to Legislature by December 31, 2003)

**Prior Vote:** Senate Labor & Industrial Relations Committee 5-3

\*\*\*\*\*



Date of Hearing: June 26, 2003

ASSEMBLY COMMITTEE ON JUDICIARY  
Ellen M. Corbett, Chair  
SB 796 (Dunn) - As Amended: May 12, 2003

As Proposed to be Amended

SENATE VOTE: 21-14

SUBJECT: LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004

KEY ISSUES:

- 1) SHOULD CIVIL PENALTIES BE ESTABLISHED, AS SPECIFIED, FOR THE VIOLATION OF LABOR CODE PROVISIONS FOR WHICH THERE IS NO CURRENT CIVIL PENALTY?
- 2) SHOULD AGGRIEVED EMPLOYEES BE EMPOWERED TO ENFORCE EXISTING LABOR CODE OBLIGATIONS BY PRIVATE ACTIONS FOR CIVIL PENALTIES TO BE DISTRIBUTED PRIMARILY TO THE STATE?

**SYNOPSIS**

*This bill, co-sponsored by the California Labor Federation, AFL-CIO and the California Rural Legal Assistance Foundation, is designed to improve enforcement of existing Labor Code obligations. The first part of the bill prescribes a civil penalty for those existing Labor Code sections for which a civil penalty has not otherwise been established. The second part of the bill provides that an aggrieved employee may bring a private action on behalf of himself or herself and other current or former employees to enforce civil penalties for employer violations of the Labor Code, if the Labor and Workforce Development Agency (LWDA) does not issue a citation for a violation of the same sections on the same facts and theories. Seventy-five percent of the civil penalties imposed by a court would be distributed to the General Fund and to the LWDA for education of employers and workers regarding labor law obligations; 25% would go to the aggrieved employee(s). Prevailing employees would be permitted to recover attorneys' fees in these cases. Opponents representing employers argue that the bill will foster frivolous litigation, and lawsuits for minor or technical violations of the law, and accordingly will drive up the cost of doing business.*

SUMMARY: Enacts the Labor Code Private Attorneys General Act of 2004. Specifically, this bill:

- 1) Provides that any Labor Code violation for which specific civil penalties have not otherwise been established shall be subject to a civil penalty of \$100 for each aggrieved employee per pay period for an initial violation, and \$200 for each aggrieved employee per pay period for continuing violations. The penalty would be \$500 per violation for a violator who is not an employer.



- 2) Provides that an aggrieved employee may sue to recover civil penalties under the Labor Code, as well as attorneys' fees and costs, in an action brought on behalf of himself or herself and other current or former employees. However, no private action may be maintained where the state labor agency (LWDA) issues a citation against the alleged violator on the same facts and under the same section or sections of the Labor Code.
- 3) Provides that any penalties recovered in an action by an aggrieved employee shall be distributed as follows: 50 percent to the General Fund, 25 percent to the LWDA for employer education, and 25 percent to the aggrieved employee(s). In the case of penalties recovered against a violator who is not an employer, which under this bill could be pursued only by a public prosecutor or the LWDA, the funds would be divided evenly between the General Fund and the LWDA.

EXISTING LAW:

- 1) Authorizes the LWDA (composed of the Department of Industrial Relations (DIR), the Employment Development Department, the Agricultural Labor Relations Board, and the Workforce Investment Board) to assess and collect civil penalties for violations of the Labor Code, where specified. (Labor Code section 201 et seq. All further statutory references are to this code unless otherwise noted.)
- 2) Authorizes the Attorney General (AG) and other public prosecutors to pursue misdemeanor charges against violators of specified provisions of the code. (Section 215 et seq.)
- 3) Authorizes an individual employee to file a claim with the Labor Commissioner alleging that his or her employer has violated specified provisions of the code, and to sue the employer directly for damages, reinstatement, other appropriate relief and attorneys' fees if the Commissioner declines to bring an action based on the employee's complaint. (Section 98.7.)
- 4) Provides that the AG, other prosecutors and any person acting for him or herself, members of a group or the general public, may sue to enjoin any unlawful, unfair, or fraudulent business act or practice, and that a court may make any orders or judgments as may be necessary to prevent the use or employment by any entity of any practice which constitutes unfair competition, including issuing an injunction or appointing a receiver, and may order restitution of any money or property which may have been acquired by means of the unfair competition. (Business and Professions Code sections 17203 and 17535.)

FISCAL EFFECT: The bill as currently in print is keyed fiscal.

COMMENTS: In support of this measure, the author states: "This bill is critical to the enforcement of worker's rights. California has some important worker protections in statute -- some of the strongest in the nation. However, these laws are meaningless if they are not enforced. Workers must be able to seek redress against employers who break the law."

Co-sponsor California Labor Federation states that this bill would "attack the underground economy and enhance our state's revenues" by allowing workers to crack down on labor violators. The California Rural Legal Assistance (CRLA) Foundation, also a co-sponsor, states

that violations of minimum or overtime wage violations are common, and many other violations for which only rarely enforced criminal penalties exist are increasing.

This Bill Provides Specified Civil Penalties for Violations of Existing Labor Code Provisions.

The Labor Code is enforced by the LWDA, which may assess and collect civil penalties for specified violations of the code. Some Labor Code sections also provide for criminal sanctions, which may be obtained through actions by the AG and other public prosecutors. As the author notes, however, some provisions of the Labor Code have criminal penalties but no civil penalties. The sponsors state that many Labor Code provisions are unenforced because they are punishable only as criminal misdemeanors, with no civil penalty or other sanction attached. Since district attorneys tend to direct their resources to violent crimes and other public priorities, supporters argue, Labor Code violations rarely result in criminal investigations and prosecutions. As a result, supporters state, employers may violate the law with impunity.

This bill would attach a civil penalty of \$100 for each aggrieved employee per pay period (increasing to \$200 for each aggrieved employee per pay period for subsequent violations) for any Labor Code provision that does not otherwise specify a civil penalty for its violation. ~~The sponsors state that this proposed penalty is "on the low end" of the range of existing civil penalties for violation of other Labor Code provisions, but should be significant enough to deter violations.~~ Indeed, serious safety and health violations are punishable by civil penalties up to \$25,000. (Section 6428.) Civil penalties collected in any such action would be distributed as follows: 50 % to the General Fund, 25 % to the LWDA for education of employers and workers regarding labor law obligations, and 25 % to the aggrieved employee(s). If the defendant is not an employer (e.g., a labor contractor who violates licensing obligations), the entire civil penalty recovery would be distributed to the General Fund and the LWDA.

The Bill Would Allow Aggrieved Employees To Bring Private Actions To Recover Civil Penalties.

The author states: "Unfortunately, creating a civil penalty is not enough. As we face a budget crisis of epic proportions, the enforcement staff of state labor law enforcement agencies is being cut. A civil penalty is meaningless to an injured worker if there is no mechanism to collect the penalty. This bill allows the employee to seek redress directly where the state has not done so on the employee's behalf. Additionally, SB 796 helps generate revenues to the state at a time when we need them."

According to the California Labor Federation, in the last decade, as California has grown to become one of the world's largest economies, state government labor law enforcement functions have failed to keep pace. The state's current inability to enforce our existing labor laws effectively is due to inadequate staffing and to the continued growth of the underground economy. This inability coupled with our severe state budget shortfall calls for a creative solution that will help the state crack down on those who choose to flout our laws.

The sponsors state that private actions to enforce the Labor Code are needed because LWDA simply does not have the resources to pursue all of the labor violations occurring in the garment industry, agriculture, and other industries. Although the Unfair Competition Law (UCL), Section 17200 of the Business & Professions Code, permits private actions to enjoin unlawful business acts, the sponsors assert that it is an inadequate tool for correcting Labor Code violations. First, the UCL permits private litigants to obtain only injunctive relief and restitution, which the sponsors say is not a sufficient deterrent to some labor violations. Second, since the UCL does not award attorneys' fees to a prevailing plaintiff, few aggrieved employees can afford

to bring an action to enjoin the violations. Finally, since most employees fear they will be fired or subject to hostile treatment if they file complaints against their employers, they are discouraged from bringing UCL actions.

Generally, civil penalties are recoverable only by prosecutors, not by private litigants, and the monies are paid directly to the government. However, recovery of civil penalties by private litigants does have precedent in the law. For example, the Unruh Civil Rights Act allows the victim of a hate crime to bring an action for a civil penalty of \$25,000 against the perpetrator of the crime. (Civil Code sections 51.7, 52.) In this bill, allowing private recovery of civil penalties as opposed to statutory damages would allow the penalty to be dedicated in part to public use (to the General Fund and the LWDA) instead of being awarded entirely to a private plaintiff.

Labor Code violators who are not employers would be subject to suit only by the LWDA or by public prosecutors under this bill, not by private parties.

Current Law Allows Private Actions for Injunctive Relief For Violations of the Labor Code, As Well As Money Damages For Some Labor Code Violations. Under the UCL, employers may be sued by employees and other private parties for injunctive relief for violation of any provision of the Labor Code. In addition, some Labor Code provisions allow for private actions for money damages, including attorneys' fees. As noted above, employers are also subject to civil penalties and criminal prosecution for some Labor Code violations. Thus, the primary change effected by this bill would be to add the specified civil penalties to private actions for violations of the Labor Code.

Only Persons Who Have Actually Been Harmed May Bring An Action to Enforce The Civil Penalties. Mindful of the recent, well-publicized allegations of private plaintiff abuse of the UCL, the sponsors state that they have attempted to craft a private right of action that will not be subject to such abuse. Unlike the UCL, this bill would not permit private actions by persons who suffered no harm from the alleged wrongful act. Instead, private suits for Labor Code violations could be brought only by an employee or former employee of the alleged violator against whom the alleged violation was committed. This action could also include fellow employees also harmed by the alleged violation. Because there is no provision in the bill allowing for private prosecution on behalf of the general public, there is no issue regarding the lack of finality of judgments against employers, as there has been with respect to private UCL actions. In addition, the bill precludes any private action when the LWDA issues a citation on the same facts and under the same code provisions. Thus, there is no prospect of public and private prosecution for the same violation.

The sponsors state that because the proposed civil penalties are relatively low and nearly all of the penalty recovery would be divided between the LWDA and the General Fund, the addition of civil penalties would discourage any potential plaintiff from bringing suit over minor violations in order to collect a "bounty" in civil penalties.

ARGUMENTS IN OPPOSITION: The employer groups opposing the bill do not contest the provision imposing new civil penalties. However, they argue that SB 796 will encourage private attorneys to "act as vigilantes" pursuing frivolous Labor Code violations on behalf of different employees, and that this incentive will be increased by allowing employees to recover both

attorneys' fees and a portion of the penalties. Opponents liken the danger of the bill to the recent abuse of the UCL by the Trevor Law Group.

The California Chamber of Commerce argues in particular against allowing recovery of attorneys' fees, contending that recovery for the aggrieved party would be minimal and secondary to attorneys' fees and cost. In addition the Chamber argues that since the bill would allow for an award of attorneys' fees to prevailing employees, but not to employers when they prevail, SB 796 would clog already overburdened courts because there would be no disincentive to pursue meritless claims. Moreover, the Chamber contends, since the bill does not contain any requirement for the employee to exhaust the administrative procedure or even file the claim with the Labor Commissioner before filing with the civil court, SB 796 is an open invitation for bounty hunting attorneys to aggressively pursue these cases.

The California Employment Law Council states that the Labor Code contains innumerable penalty provisions, many of which would be applicable to minor and inadvertent actions. Under current law, CELC argues, the prospect of excessive penalties is mitigated by prosecutorial discretion, which would disappear under SB 796. If, for example, a large employer inadvertently omitted a piece of information on a paycheck, a private attorney general could sue for penalties that could reach staggering amounts if the inadvertent deletion of information on a paycheck went on for some time, CELC argues.

The Civil Justice Association of California likewise opposes the measure, writing:

If enacted, SB 796 will expose businesses to frivolous lawsuits and create a new litigation cottage industry for unelected private attorneys performing the duties of a public agency whose staffs are responsible to the general public. It will drive up costs to businesses and taxpayers, and further California's reputation for having an unfair liability law system. ... The Legislature should find another solution to the staffing problems of state agencies rather than "deputizing" employees who would usually hire a private attorney to act as a private attorney general.

**ARGUMENTS IN SUPPORT.** In response to opposition arguments, supporters contend that this bill is consistent with other provisions of the Labor Code. With respect to attorneys' fees, supporters argue that the bill adopts the customary Labor Code approach that attorneys' fees are limited to a prevailing employee. Supporters also note that current law provides sanctions for any frivolous filings. On the issue of exhaustion of administrative procedures, supporters contend that there is no current requirement that employees file claims with the LWDA or exhaust administrative procedures prior to bringing an action for violation of their rights. As increasing the cost to business, supporters contend that it is more accurate to state that the bill will increase the cost of violating established labor standards.

**Author's Technical Amendments.** In order to clarify the intent of the bill and correct drafting errors, the author properly proposes the following amendments:

On page 3, line 4, to correct a drafting error, the bill should read:

2699. (a) Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development

Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself ~~or~~ *and* other current or former employees.

On page 3, lines 9-10, in order to avoid confusing the statute of limitations with the standing requirement, the bill should read:

(c) For purposes of this part, "aggrieved employee" means any person who was employed by the alleged violator ~~within the period of time covered by the applicable statute of limitations and against whom one or more of the alleged violations was committed.~~

On page 3, starting on line 14, to clarify the author's intent, the bill should read:

(d) For all provisions of this code except those for which a civil penalty ~~has already been established is specifically provided~~, there is established a civil penalty for a violation of these provisions, as follows:

(1) If, *at the time of the alleged violation*, the person does not employ one or more employees, the civil penalty is five hundred dollars (\$500).

(2) If, *at the time of the alleged violation*, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

On page 3, beginning on line 24, to correct a drafting error and otherwise more clearly state the author's intention, the bill should read:

(e) An aggrieved employee may recover the civil penalty described in subdivision (b-d) in a civil action filed on behalf of himself or herself and other current or former employees ~~for whom evidence of a violation was developed during the trial or during settlement of the action against whom one or more of the alleged violations was committed~~. Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs. Nothing in this section shall operate to limit an employee's right to pursue other remedies available under state or federal law, either separately or concurrently with an action taken under this section.

On page 4, line 1, in order to clarify the author's intention and improve the operation of the statute, the bill should read:

(f) No action may be maintained under this section by an aggrieved employee if the agency or any of its departments, divisions, commissions, boards, agencies, or employees, on the same facts and theories, cites a person for a violation of the same section or sections of the Labor Code under which the aggrieved employee is attempting to recover a civil penalty on behalf of himself or herself or others ~~and/or initiates a proceedings to collect applicable penalties pursuant to section 98.3.~~

On page 4, line 4, in order to correct a drafting error, "subdivision (g)" should be changed to "subdivision (h)"

Prior Related Legislation. AB 2985 (Committee on Labor and Private Employment), Chap. 662, Stats. of 2002, required the Labor and Workforce Development Agency to contract with an independent research organization to study the most effective ways to enforce wage and hour laws and to identify all available state and federal resources available for enforcement. The completed study is to be submitted to the Legislature by December 31, 2003.

REGISTERED SUPPORT / OPPOSITION:

Support

California Labor Federation, AFL-CIO (co-sponsor)  
California Rural Legal Assistance Foundation (co-sponsor)  
American Federation of State, County and Municipal Employees (AFSCME)  
California Conference Board of the Amalgamated Transit Union  
California Conference of Machinists  
California Independent Public Employees Legislative Council  
California State Association of Electrical Workers  
California State Pipe Trades Council  
California Teamsters Public Affairs Council  
Engineers and Scientists of California, Local 20  
Hotel Employees, Restaurant Employees International Union  
Peace Officers Research Association of California  
Professional & Technical Engineers, Local 21  
Protection and Advocacy Inc  
Region 8 States Council of the United Food and Commercial Workers  
Sierra Club California  
Western States Council of Sheet Metal Workers

Opposition

Associated Builders and Contractors of California  
Associated General Contractors  
Association of California Water Agencies  
California Apartment Association  
California Association of Sheet Metal and Air Conditioning Contractors  
California Chamber of Commerce  
California Employment Law Council  
California Landscape Contractors Association  
California Manufacturers and Technology Association  
California Motor Car Dealers Association  
California Restaurant Association  
Civil Justice Association of California  
Construction Employers Association  
Lumber Association of California and Nevada  
Orange County Business Council

Analysis Prepared by: Kevin G. Baker / JUD. / (916) 319-2334



Senate Committee on Labor and Industrial Relations  
Richard Alarcon, Chair

Date of Hearing: April 9, 2003      2003-2004 Regular  
Session  
Consultant: Liberty Reiter Sanchez      Fiscal: Yes  
Urgency: No

Bill No: SB 796  
Author: Dunn  
Amended: March 26, 2003

Subject: Employment

Purpose:

To establish civil penalties for violations of the Labor Code and to enable aggrieved employees to maintain a civil action when the Labor and Workforce Development Agency (including its departments, divisions, commissions, boards, agencies or employees) (Agency) does not pursue such an action.

Analysis:

(1) Existing law, authorizes the Labor and Workforce Development Agency (comprised of the Department of Industrial Relations, the Employment Development Department, the Agricultural Labor Relations Board, and the Workforce Investment Board) to assess and collect civil penalties for violations of the Labor Code, where specified.

The Attorney General is authorized to seek appropriate injunctive relief and file charges against employers for criminal violations of the Labor Code, where specified.

While many Labor Code sections provide for criminal penalties, many sections do not provide for corresponding civil penalties.



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Business and Professions Code Section 17200, also known as the "Unfair Competition Act" (UCA) authorizes aggrieved individuals to act on their own behalf in the capacity of "private attorney general" (PAG) when

*ON OWN  
is NOT  
PAG*

maintaining a claim against a business for violating the law or competing unfairly.

Individuals aggrieved by violations of the Labor Code are not expressly permitted to act in the capacity of PAG in the filing of civil actions against their employers.

(3) This Bill, entitled the "Labor Code Private Attorneys General Act of 2004", has four components:

- (a) Authorizes recovery through civil action of civil penalties provided for under the Labor Code by authorizing aggrieved employees to act as PAG on behalf of themselves or others where the Agency does not pursue such an action.
- (b) Establishes civil penalties where the Labor Code is silent in the amount of \$100 per employee per pay period for the initial violation and \$200 per employee per pay period for subsequent violations when the "person" employs one or more employees and \$500 per violation where the "person" does not employ one or more employees.
- (c) Provides for a distribution formula as follows for penalties collected by an aggrieved individual: 50% to the General Fund, 25% to the Agency and 25% to the aggrieved employee.
- (d) Provides for the award of attorneys' fees and costs to aggrieved employees who prevail, in whole or in part in these civil actions.

Comments:

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(3) "Private Attorney General" (PAG):

When individuals have a right to act in the capacity of  
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PAG such individuals are authorized to maintain a claim on their own behalf or on behalf of others. To this end, the individuals may represent themselves or may retain counsel for such representation.

(4) Business and Professions Code Section 17200 "Unfair Competition Act" (UCA):

Existing law provides for the right to act in the capacity of PAG for "unfair competition" cases. The law has been interpreted by the courts to provide broad and expansive protections to California's consumers. The law was first enacted in the 1930's to stop businesses from using unfair practices to gain advantage over competitors. Based on the underlying premise that such anti-competitive behavior creates an unfair playing field to the detriment of consumers, the law has since been used to protect consumers from instances of unfair, unlawful or fraudulent behavior.

An action under this code section may not be brought by an individual in order to vindicate his own interests, instead, such action must be brought on behalf of the general public. To that end, even if the individual bringing the action was actually harmed by the unfair business practice, the individual may not recover damages, but instead remedy is limited to injunction and restitution.

Amongst other things, this law has successfully been

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used on behalf of employees in cases where a company was found to be ignoring California's overtime laws and where an employer's policy of calculating employees' wages included deduction of losses for unidentified returns.

(5) Distinction Between Right to Act as Private Attorney  
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General Under SB 796 and

The UCA:

This PAG rights afforded individuals under this bill are separate and distinct from those afforded individuals under the UCA. While PAG rights have been interpreted to have broad applicability under the UCA, the right to act as a PAG under this bill is available to further the purposes of protecting the rights of workers under the Labor Code. Additionally, unlike the UCA, this bill entitles an individual to act in the capacity of PAG to seek remedy of a labor law violation solely because they have been aggrieved by that violation. Finally, this bill provides for a percentage share of penalties to go directly to the aggrieved worker, unlike the UCA, which does not entitle an individual claimant to obtain damages. *or penalties*

(6) Labor Law Enforcement in an Era of Limited Staff and Resources:

At issue in this bill is the appropriate role of employees in protecting their rights under the Labor Code when the government entity mandated to enforce the Labor

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Code is unable to do so due to budgetary and staff constraints. Conventional wisdom asserts that more resources should be put in place and more staff hired if existing staff and resource allotments are insufficient to effectuate the mandated duties of the government. Additional resource dedication as a remedy is, an impossibility where a budgetary deficit exists.

The bill's intent language states that "adequate financing of essential labor law enforcement functions is necessary to achieve maximum compliance with state labor laws" and that "[s]taffing levels for state labor law enforcement agencies, have, in general, declined over the last decade and are likely to fail to keep up with the growth of the labor market in the future" and that, accordingly, "[i]t is therefore in the public interest to

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provide that civil penalties for violation of the Labor Code may also be assessed and collected by aggrieved employees acting as private attorneys general."

Arguably, in a perfect world, there would be no need for the right to act as P&G, yet the fact remains that due to continuing budgetary and staffing constraints, full, appropriate and adequate labor Code enforcement is unrealizable if done solely by the Agency.

*based on - ?*

(7) Staff Comments:

(a) The term "person" is defined for the general purposes of the Labor Code to mean any "person, association, organization, partnership, business trust, limited liability company or corporation." The term "person" has a different definition for application in the "Garment Manufacturing" Part of the Labor Code. That

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Part of the Labor Code is in the same Division of the Labor Code, entitled "Employment Regulation and Supervision," in which this bill, if enacted, would be located. The term "person" is used throughout the Labor Code, often interchangeably with the term "employer," but when the term "person" is used, it is interpreted to provide a more expansive and comprehensive applicability than the term "employer." Additionally, often when the term "person" is used it is used in conjunction with the phrase "or officer or agent thereof," to provide even broader applicability. As the author is creating a new titled Part to the Labor Code, the author may wish to add a definition of "person" specifically applicable to that Part of the Labor Code.

(b) The bill specifies a formula for distribution of civil awards where an aggrieved employee has prevailed against a "person employing one or more employees," yet the bill provides no formula for instances where the Agency has prevailed against a person who does not employ one or more employees. The author may wish to

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specify whether such collected penalties should go to the General Fund, the Agency or elsewhere.

(c) The bill specifies that an action, may not be maintained by an aggrieved employee, if the Agency cites a person and initiates proceedings for a violation of the code on the same facts and theories. The author may wish to amend the bill to clarify that this prohibition would only be applicable if the Agency proceeded under the "same labor code section or sections under which the aggrieved employee is attempting to recover a civil penalty on behalf of

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himself or herself or others." Ostensibly, without this clarification an aggrieved employee might be inadvertently precluded from maintaining an action under a different Labor Code section violation which the Agency has declined to pursue, but where the basis of such action relies on the same facts and theories as the action which the Agency is pursuing.

(8) Dual Referral.

If passed by this committee, this measure will be re-referred to the Senate Committee on Judiciary.

I. Proponents, the California Labor Federation asserts that in the last decade state government labor law enforcement functions have failed to keep pace with the growth of the economy and the workforce. Additionally they note that, resources available to county district attorneys, for prosecution of Labor Code violations as crimes, are similarly lacking.

Proponents contend that the states current inability to enforce labor laws effectively is due to inadequate staffing and to the continued growth of the underground economy. This inability coupled with the states severe budgetary shortfall requires a creative solution that will help the state crack down on labor law violators.

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The California Rural Legal Assistance Foundation cites the resurgence of violations of Labor Code prohibitions against the "company store," as an example of the need for this bill. This occurs either when the employee is required to cash his check at a store owned by his

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employer and the employer charges a fee, or where the employer coerces the employee to purchase goods at that store. Currently, violations of these code sections are misdemeanors but no civil penalty is attached. Advocates are unaware of any misdemeanor prosecution having been undertaken in relation to these code sections.

2. Opponents, contend that this bill tips the balance of Labor Law protection in disproportionate favor to the employee to the detriment of already overburdened employers. Opponents cite the fact that employees are entitled to attorneys' fees and costs if they prevail in their actions under this bill, yet the bill fails to provide similar attorneys' fees and costs for prevailing employers. Additionally, opponents cite the fact that there are no requirements imposed upon employees prior to filing civil action such as preliminary claim filing with the Labor Commissioner. Furthermore, opponents complain that aggrieved employees may file on behalf of a class, but are not required to fulfill class certification requirements.

The California Manufacturers and Technology Association (CMTA) asserts that California has a formal administrative procedure to handle Labor Code violations that is both economical and efficient. According to the CMTA, in many instances the amount in dispute is so small that it would not warrant an employer going to court because the cost of legal representation would be so high. Finally, the CMTA alleges that, since there is no requirement for the employee to exhaust the administrative procedure or even file with the Labor Commissioner the bill is an "invitation for bounty hunting attorneys to aggressively pursue these cases."

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**Support:**

American Federation of State, County, and Municipal Employees  
California Applicants' Attorneys Association  
California Conference Board of the Amalgamated Transit Union  
California Conference of Machinists  
California Independent Public Employees Legislative Council  
California Labor Federation, AFL-CIO  
California Rural Legal Assistance Foundation  
California State Association of Electrical Workers  
California State Pipe Trades Council  
California Teamsters Public Affairs Council  
Consumer Attorneys of California  
Engineers and Scientist of California, IFFTE Local 20, AFL-CIO  
Hotel Employees & Restaurant Employees International Union  
Professional and Technical Engineers, IFFTE Local 21, AFL-CIO  
Region 8 State Council of the United Food & Commercial Workers  
Western States Council of Sheet Metal Workers

**Opposition:**

Associated General Contractors of California and the AGC, San Diego Chapter  
California Employment Law Council  
California Manufacturers and Technology Association  
California Chamber of Commerce  
Civil Justice Association of California

Hearing Date: April 9, 2003

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Senate Committee on Labor and Industrial Relations





**SENATE RULES COMMITTEE**

**SB 1809**

Office of Senate Floor Analyses  
1020 N Street, Suite 524  
(916) 445-6614 Fax: (916) 327-4478

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**UNFINISHED BUSINESS**

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Bill No: SB 1809  
Author: Dunn (D)  
Amended: 7/27/04  
Vote: 27 - Urgency

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**SENATE LABOR & INDUST. RELATIONS COMMITTEE: 7-1, 4/28/04**  
AYES: Alarcon, Dunn, Figueroa, Kuehl, Margett, McClintock, Romero  
NOES: Oller

**SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8**

**SENATE FLOOR: 21-13, 5/26/04**  
AYES: Alarcon, Bowen, Burton, Cedillo, Chesbro, Dunn, Escutia,  
Figueroa, Florez, Karnette, Kuehl, Murray, Ortiz, Perata, Romero, Scott,  
Soto, Speier, Torlakson, Vasconcellos, Vincent  
NOES: Aarstad, Ackerman, Ashburn, Battin, Brulte, Denham,  
Hollingsworth, Johnson, Margett, McPherson, Morrow, Oller,  
Ponchigian  
NO VOTE RECORDED: Alpert, Ducheny, Machado, McClintock, Sher,  
Vacancy

**ASSEMBLY FLOOR: 79-0, 7/28/04 - See last page for vote**

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**SUBJECT:** Labor Code Private Attorneys General Act of 2004

**SOURCE:** California Rural Legal Assistance Foundation

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**DIGEST:** This bill significantly amends "The Labor Code Private Attorneys General Act of 2004" [SB 796 (Dunn), Chapter 906, Statutes of 2003], by enacting specified procedural and administrative requirements that

LIS - 14b

CONTINUED



must be met prior to bringing a private action to recover civil penalties for Labor Code violations.

Assembly Amendments delete the prior version, however, the subject remains the same. As it left the Senate, the bill amended the Act to (1) clarify that a court has discretion to award less than the maximum civil penalty, and (2) eliminate the ability of employees to recover civil penalties for violation of "posting" or "notice" provisions.

ANALYSIS: Existing law allows employees to bring civil actions against their employers to recover penalties for violations of the Labor Code if the LWDA, or its subordinate agencies or employees do not do so. LWDA enforcement actions have primacy over any private enforcement efforts undertaken pursuant to this act. Any penalties recovered by an aggrieved employee must be distributed as follows: 50 percent to the General Fund, 25 percent to LWDA for employer education and 25 percent to the aggrieved employees.

This bill significantly amends "The Labor Code Private Attorneys General Act of 2004" by enacting specified procedural and administrative requirements that must be met prior to bringing a private action to recover civil penalties for Labor Code violations. Specifically, this bill:

Serious Labor Code Violations. Establishes a new procedure that an aggrieved employee must follow prior to bringing a civil action to recover penalties for enumerated, serious Labor Code violations (including, but not limited to, violations of wage and hour, overtime, child labor, agricultural, entertainment and garment industry labor laws, and public works laws).

1. The aggrieved employee must provide written notice of the violation to the Labor and Workforce Development Agency and employer. The Labor Agency has 30 days to decide if it will investigate the violation.
2. If the Labor Agency decides to investigate the alleged violation, it must notify the employer and the aggrieved employee within 33 days. Within 120 days of that decision, the Labor Agency may investigate the alleged violation and issue any appropriate citation.
3. If the Labor Agency fails to act, the aggrieved employee may pursue a civil action pursuant to SB 796.

CONTINUED



**Notice and Cure Procedures for Other Labor Code Violations.** Establishes Notice and Cure provisions for those Labor Code violations not enumerated in paragraph (1) above, nor subject to the Cal-OSHA provisions specified in the health and safety violations section below.

1. The aggrieved employee must give written notice to the Labor Agency and the employer of the alleged violation.
2. The employer may cure the alleged violation within 33 days and give written notice to the employee and the Labor Agency if the alleged violation is cured.
3. If the alleged violation is cured, no civil action pursuant to SB 796 may commence.
4. If the alleged violation is not cured within the 33-day period, the aggrieved employee may commence a civil action pursuant to SB 796.
5. For the aggrieved employee to dispute that the alleged violation has been cured, the employee must provide written notice to the employer and the Labor Agency. Within 17 days the Labor Agency must review the actions of the employer and provide written notice of whether the alleged violation has been cured.
6. If the Labor Agency determines that the alleged violation has not been cured or if the agency fails to provide timely or any notification, the aggrieved employee may proceed with a civil action pursuant to SB 796. If the agency has determined that the alleged violation has been cured, but the employee still disagrees, the employee may appeal that determination to the superior court.
7. No employer may avail himself or herself of the Notice and Cure provisions more than three times in a 12-month period for the same violation or violations contained in the notice, regardless of the location of the worksite.

**Health and Safety (Cal-OSHA) Violations.** Establishes a new procedure that an aggrieved employee must follow prior to initiating a civil action to recover penalties for violations of Labor Code provisions pertaining to occupational safety and health (Cal-OSHA), other than sections that are

CONTINUED



specifically enumerated in the serious Labor Code violations section above.

1. The aggrieved employee must give written notice to the Division of Occupational Safety and Health (DOSH) within the State Department of Industrial Relations (DIR) and the employer of the alleged violation.
2. DOSH must inspect or investigate the alleged violation pursuant to existing provisions of law.
3. If DOSH issues a citation, no civil action pursuant to SB 796 may commence.
4. If, by the end of the period for inspection or investigation, DOSH fails to issue a citation and the employee disputes that decision, the employee may challenge the decision in the superior court. If the court finds that DOSH should have issued a citation and orders DOSH to issue a citation, then no civil action pursuant to SB 796 may commence.
5. If DOSH fails to inspect or investigate the alleged violation within the period specified in existing law, the Notice and Cure provisions outlined above apply to the determination of the alleged violation.
6. Requires superior court review of any proposed settlement of alleged safety in employment violations to ensure that they are at least as effective as the protections or remedies provided in federal and state law.

Judicial Discretion Over Award Amounts. Authorizes a court to award a lesser amount than the maximum civil penalty amount allowed if to do otherwise would result in an award that is "unjust, arbitrary and oppressive, or confiscatory."

Exemption for Minor Violations. Provides that no action under SB 796 may be brought for any violation of a posting, notice, agency reporting, or filing requirement except where the filing or reporting requirement involves mandatory payroll or workplace injury reporting.

Prohibition on Retaliation. Prohibits an employer from retaliating against any employee that brings a civil action under SB 796 in the form of discharge or any manner of discrimination.

CONTINUED



**Funding.** Appropriates \$150,000 from the General Fund in the current year for implementation.

**Urgency.** Is an urgency measure and applies retroactively to January 1, 2004 (the date SB 796 was enacted).

#### Comments

The California Rural Legal Assistance Foundation, the bill's sponsor, argue that last year's enactment of SB 796, (Dunn), Chapter 906, Statutes of 2003, was a result of the Governor and the Legislature acknowledging that enforcement staff of the state labor law enforcement agencies had fallen drastically behind the growth in the labor force and would continue to worsen with the state budget crisis. Rather than turn a blind eye toward labor law enforcement, SB 796 was enacted, which allows employees to seek redress directly when the state has not done so on their behalf.

SB 1809 is a result of an agreement reached between the Labor Agency, business and labor representatives. SB 1809 improves SB 796 by allowing the Labor Agency to act first on more "serious" violations such as wage and hour violations and give employers an opportunity to cure less serious violations. The bill protects businesses from shakedown lawsuits, yet ensures that labor laws protecting California's working men and women are enforced – either through the Labor Agency or through the courts.

**Background.** SB 796 established an alternative "private attorneys general" system for labor law enforcement that allows employees to pursue civil penalties for employment law violations. SB 796 established a civil penalty where one was not specifically provided under the Labor Code of \$100 for each aggrieved employee per pay period for an initial violation, \$200 for each aggrieved employee per pay period for subsequent violations, and \$500 per violation where the violator did not employ any employees at the time of the violation.

SB 796 authorizes an aggrieved employee to recover civil penalties plus reasonable attorney's fees and costs in an action brought on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. SB 796 provides that no private right of action may be maintained where the Labor Agency cites the alleged violator on the same facts and theories and under the same section or sections of the Labor Code, or initiates specified proceedings.

CONTINUED



The civil penalties and private right of action established by SB 796 were intended to improve Labor Code enforcement. Under prior law, many Labor Code violations were punishable only as misdemeanors, with no civil penalty or other sanction attached. Since district attorneys tend to direct their resources to violent crimes and other public priorities, Labor Code violations rarely resulted in criminal investigations and prosecutions.

**Rationale.** Business groups and others opposed to SB 796 argue that it tips the balance of labor law protection in disproportionate favor of employees, by encouraging private attorneys to act as bounty hunters pursuing frivolous violations on behalf of employees, in the same manner in which Section 17200 of the Business and Professions Code has been abused.

This bill significantly amends the provisions of SB 796 by enacting specified procedural and administrative requirements that must be met prior to bringing a private action to recover civil penalties. Moreover, this bill provides that no action shall be brought for a posting, notice, agency reporting, or filing requirement, except as specified.

This bill also expands judicial review of SB 796 claims by requiring courts to review and approve any penalties sought as part of a proposed settlement agreement, and those portions of settlements concerning violations of health and safety laws. In addition, courts are authorized to award a lesser amount if to do so otherwise results in an award that is unjust, arbitrary and oppressive, or confiscatory.

**FISCAL EFFECT:** Appropriation: Yes Fiscal Com.: Yes Local: No

Appropriates \$150,000 from the General Fund to the Labor Agency to implement this act. The Labor Agency indicates that its costs likely will exceed this amount, and it will redirect resources as necessary to accomplish the purposes of this act.

Modifies the civil penalty distribution formula under SB 796 that applies in cases where the employer employs one or more employees, as follows:

1. Increases the amount distributed to the Labor Agency for enforcement and education from 25 percent to 75 percent, and adds a continuous appropriation for these purposes.

CONTINUED



2. Eliminates the distribution of 50 percent of these civil penalties to the General Fund.
3. Retains the current distribution of 25 percent of these civil penalties to the aggrieved employees.

Modifies the civil penalty distribution formula under SB 796 that applies in cases where the employer employs does not employ one or more employees, as follows:

1. Increases the amount distributed to the Labor Agency for enforcement and education from 50 percent to 100 percent, and adds a continuous appropriation for these purposes.
2. Eliminates the distribution of 50 percent of these civil penalties to the General Fund.

(The Labor Agency reports that most civil actions brought to date under SB 796 have been settled out of court, where these civil penalty distributions formulas do not apply. To date, the Labor Agency has only received distribution of civil penalty revenues, totaling less than \$100.)

**SUPPORT:** (Verified 7/28/04)

American Federation of Television and Radio Artists  
California Chamber of Commerce  
California Conference Board of the Amalgamated Transit Union  
California Conference of Machinists  
California Federation of Teachers  
California Labor Federation  
California Manufacturers and Technology Association  
California Restaurant Association  
California Rural Legal Assistance Foundation  
California Teamsters Public Affairs Council  
Engineers and Scientists of California  
Hotel Employees, Restaurant Employees International Union  
Jockeys' Guild  
Professional and Technical Engineers, Local 21  
Region 8 States Council of the United Food & Commercial Workers

CONTINUED





**ASSEMBLY FLOOR:**

**AYES:** Aghazarian, Bates, Benoit, Berg, Bermudaz, Bogh, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Harman, Haynes, Jerome Horton, Shirley Horton, Houston, Jackson, Keene, Kehoe, Koretz, La Malfa, La Suer, Laird, Leno, Leslie, Levine, Lieber, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nakano, Nation, Negrete McLeod, Oropeza, Pacheco, Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wolk, Wyland, Yee, Nunez

**NO VOTE RECORDED:** Maze

NC:mel 7/29/04 Senate Floor Analyses

SUPPORT/OPPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*

LEGISLATIVE INTENT SERVICE (800) 666-1917



No. S246911

**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

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JUSTIN KIM,  
*Plaintiff and Appellant*

vs.

REINS INTERNATIONAL CALIFORNIA, INC.  
*Defendant and Respondent*

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Appeal Upon a Decision of the Court of Appeal  
Second Appellate District, Division Four  
Case No. B278642

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Appeal from a Judgment of the Superior Court of Los Angeles County  
Case No. BC539194

Honorable Kenneth R. Freeman, Judge Presiding

**[PROPOSED] ORDER GRANTING MOTION FOR JUDICIAL NOTICE**

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\*Spencer C. Skeen, CA Bar No. 182216  
Tim L. Johnson, CA Bar No. 265794  
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Telephone: 858.652.3100  
Facsimile: 858.652.3101

Attorneys for Respondent  
Reins International California, Inc.

The Court hereby GRANTS Respondent Reins International California, Inc.'s request to take judicial notice, filed on September 24, 2018, and judicial notice is hereby taken of the following documents:

1. Senate Bill No. 796 (2003-2004 Reg. Sess.) as introduced February 21, 2003;
2. Senate Judiciary Committee's Report on Senate Bill No. 796 (2003-2004 Reg. Sess.) as amended April 22, 2003, prepared for the April 29, 2003 Hearing, from the bill file of the Senate Committee on Judiciary;
3. Assembly Committee on Judiciary's Report on Senate Bill No. 796 (2003-2004 Reg. Sess.) as amended May 12, 2003, prepared for the June 26, 2003 Hearing, from the author's bill file of Senator Dunn;
4. Senate Committee on Labor and Industrial Relations' Report on Senate Bill No. 796 (2003-2004 Reg. Sess.) as amended March 26, 2003, prepared for the April 9, 2003 Hearing, from the bill file of the Senate Committee on Labor and Industrial Relations; and
5. Senate Rules Committee, Office of Senate Floor Analyses' Report on Senate Bill No. 1809 (2003-2004 Reg. Sess.) as amended July 27, 2004, prepared for the July 29, 2004 Senate Floor Hearing, from the bill file of the Office of Senate Floor Analyses.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Justice of the California Supreme Court

## PROOF OF SERVICE

### JUSTIN KIM VS. REINS INTERNATIONAL CALIFORNIA, INC. Supreme Court Case No. S246911

I am and was at all times herein mentioned over the age of 18 years and not a party to the action in which this service is made. At all times herein mentioned I have been employed in the County of San Diego in the office of a member of the bar of this court at whose direction the service was made. My business address is 4370 La Jolla Village Drive, Suite 990, San Diego, California 92122.

On September 24, 2018, I served the following document(s):

#### REINS INTERNATIONAL CALIFORNIA, INC.'S MOTION FOR JUDICIAL NOTICE

#### MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR JUDICIAL NOTICE

#### DECLARATION OF JAN RAYMOND

#### [PROPOSED] ORDER GRANTING MOTION FOR JUDICIAL NOTICE

by placing  (the original)  (a true copy thereof) in a sealed envelope addressed as stated on the attached mailing list.

- BY MAIL:** I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Ogletree, Deakins, Nash, Smoak & Stewart P.C.'s practice for collecting and processing correspondence for mailing. 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 Postal Service, in a sealed envelope with postage fully prepaid.
- BY MAIL:** I deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid at 4370 La Jolla Village Drive, Suite 990, San Diego, California 92122.
- BY OVERNIGHT DELIVERY:** I placed the sealed envelope(s) or package(s) designated by the express service carrier for collection and overnight delivery by following the ordinary business practices of Ogletree, Deakins, Nash, Smoak & Stewart P.C., San Diego, California. I am readily familiar with Ogletree, Deakins, Nash, Smoak & Stewart P.C.'s practice for collecting and processing of correspondence for overnight delivery, said practice being that, in the ordinary course of business, correspondence for overnight delivery is deposited with delivery fees paid or provided for at the carrier's express service offices for next-day delivery.

**BY FACSIMILE** by transmitting a facsimile transmission a copy of said document(s) to the following addressee(s) at the following number(s), in accordance with:

the written confirmation of counsel in this action:

[State Court motion, opposition or reply only] in accordance with Code of Civil Procedure section 1005(b):

[Federal Court] in accordance with the written confirmation of counsel in this action and order of the court:

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** by **TRUEFILING:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person[s] at the e-mail addresses listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

**Addressee(s)**

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*Counsel for Plaintiff*

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**VIA OVERNIGHT MAIL**

**VIA TRUEFILING**  
**VIA OVERNIGHT MAIL**

Court of Appeal for the State of  
California  
Second Appellate District  
Division Four  
300 S Spring Street  
Los Angeles, CA 90013

Los Angeles Superior Court  
Clerk of the Court  
Stanly Mosk Courthouse  
111 North Hill Street, Rm. 102  
Los Angeles, CA 90012

**VIA U.S. MAIL**

**VIA TRUEFILING**  
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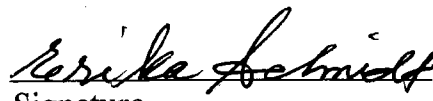
Appellate Coordinator  
Office of the Attorney General  
Consumer Law Section  
300 S. Spring Street  
Los Angeles, Ca 90013-1230

**VIA U.S. MAIL**

(State) I declare under penalty of perjury under the laws of the  
State of California that the above is true and correct.

Executed on September 24, 2018, San Diego, California.

Erika Schmidt  
\_\_\_\_\_  
Type or Print Name

  
Signature

35698350.1