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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

VERA CALHOUN et al.,

Plaintiffs and Appellants,

v.

KAISER FOUNDATION HEALTH
PLAN, INC.,

Defendant and Respondent.

A132490

(San Francisco City & County
Super. Ct. No. CGC-10-501257)

I. INTRODUCTION

The trial court entered summary judgment against plaintiffs Vera Calhoun and LaMode Greene, and in favor of their former employer, defendant Kaiser Foundation Health Plan, Inc. (Kaiser), on plaintiffs' claims that they were entitled to receive retention bonuses. The court concluded that plaintiffs, by signing separation and release agreements after the termination of their employment, released any claims they may have had to receive retention bonuses.

On appeal, plaintiffs argue that (1) the trial court incorrectly interpreted the separation agreements; and (2) triable issues of fact exist as to whether plaintiffs had a right to receive retention bonuses, based either on contractual or promissory estoppel principles. Kaiser responds that the trial court correctly interpreted the releases. Kaiser also argues that this court may affirm the judgment on the alternative grounds that plaintiffs never had an enforceable right to receive retention bonuses, and that Kaiser cancelled the bonus plan before plaintiffs became eligible to receive bonuses.

We affirm the judgment, because we conclude that the releases bar plaintiffs' claims. We do not reach the parties' arguments as to whether plaintiffs had viable claims for retention bonuses prior to executing the separation agreements.

II. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs began working for Kaiser in May 2006, as business application coordinators (BAC's) on the Inpatient Phase 2 portion of Kaiser's HealthConnect project. Plaintiffs state that the supervisor who interviewed them for the positions, and a recruiter who later spoke to them, orally represented that plaintiffs would receive retention bonuses if they worked to the end of the Inpatient Phase 2 project. In April 2006, after these alleged oral representations and before starting work, both plaintiffs received and signed written offer letters specifying the terms of their employment. The letters did not mention retention bonuses.

In late 2005 or early 2006, Kaiser management developed a retention bonus program for the HealthConnect project. Among other conditions, the plan required employees to work on the project for at least 12 months to receive the smallest payment under the plan. Kaiser submitted evidence that the governing plan document (entitled "Northern California KP Health Connect Retention Bonus Plan"), which was finalized in March 2006, reserved to Kaiser management the right to cancel or suspend the retention bonus program at any time. Kaiser states that, in or about August 2006, it e-mailed information about the program to affected employees in the form of a frequently asked questions (FAQ) document, entitled "Northern California Retention Bonus." Plaintiffs contend that the March 2006 document is inadmissible, and that the governing plan document is the one Kaiser refers to as the FAQ document; that document (which plaintiffs call the NCRB or "Northern California Retention Bonus") does not state that Kaiser management retains the right to cancel or suspend the program.

In October 2006 (five months after plaintiffs began working on HealthConnect), Kaiser management suspended the retention bonus program. Kaiser submitted evidence that it provided notification of the suspension to employees in October 2006, by sending an e-mail to members of the Inpatient Phase 2 team and by conducting question and

answer sessions. Plaintiffs contend some of this evidence is inadmissible. Plaintiffs testified they did not recall receiving notification of the suspension in October 2006.

In late 2009, Kaiser management notified members of the Inpatient Phase 2 team that their project would end in or about April 2010. An unidentified BAC sent an e-mail on January 1, 2010, demanding payment of retention bonuses. On January 6, 2010, Deborah Szoke, a Kaiser manager involved in the HealthConnect project, conducted a series of employee meetings in which she addressed the anonymous e-mail and explained that no retention bonuses would be paid to the Inpatient Phase 2 team at the end of the project. Each plaintiff attended one of these meetings, and thus understood, as of January 2010, that Kaiser's position was that it would not pay any retention bonuses.

The Inpatient Phase 2 project ended on April 20, 2010, and all BAC's on the project, including plaintiffs, were laid off effective that day. Plaintiffs received their final paychecks (including salary and unused paid time off (PTO)) at that time.

On May 28, 2010, each plaintiff executed an identical separation agreement. Paragraph 1 of the agreement notes that the plaintiff was terminated effective April 20, 2010, and that, "[u]pon his or her termination, [plaintiff] will receive payment of all accrued wages and unused [PTO], to the date of termination and may also be eligible for various payments under the terms of applicable benefit and pension plans." Other provisions of the agreement state that Kaiser will provide specified separation benefits (including separation pay, access to an employee assistance program, and outplacement career services), in exchange for the plaintiff's release of "all employment-related claims" against Kaiser, including "all claims for compensation" The release provision (paragraph 4) specifies exceptions—the release "does not affect vested retirement benefits, any benefits to which [plaintiff] is entitled under COBRA, any claims for workers' compensation benefits or any claims which cannot be released as a matter of law." The agreement confirms, just above the signature line, that the plaintiff has signed the agreement "knowingly and voluntarily and as a complete release and waiver of any and all claims."

In July 2010, plaintiffs filed a purported class action complaint against Kaiser. In their sole cause of action (unfair competition), plaintiffs claim that they and a putative class of BAC's are entitled to receive retention bonuses. Kaiser moved for summary judgment on three grounds, contending that (1) plaintiffs never had an enforceable right to receive retention bonuses; (2) Kaiser cancelled the bonus plan before plaintiffs became eligible to receive bonuses; and (3) in any event, plaintiffs released any claims they might have had to receive retention bonuses. Plaintiffs opposed the motion and filed written objections to some of the evidence submitted by Kaiser.

After a hearing, the trial court granted the motion, concluding that plaintiffs had released any claims for retention bonuses. The court did not reach Kaiser's alternative grounds for summary judgment, and did not address plaintiffs' evidentiary objections.

The court subsequently entered judgment for Kaiser. Plaintiffs timely appealed.

III. DISCUSSION

A. Standard of Review

"The rules of review are well established. If no triable issue as to any material fact exists, the defendant is entitled to a judgment as a matter of law. [Citations.] In ruling on the motion, the court must view the evidence in the light most favorable to the opposing party. [Citation.] We review the record and the determination of the trial court de novo. [Citations.]" (*Shin v. Ahn* (2007) 42 Cal.4th 482, 499; accord, *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 860.) The trial court's stated reasons for granting summary relief are not binding on the reviewing court, which reviews the trial court's ruling, not its rationale. (*Kids' Universe v. In2Labs* (2002) 95 Cal.App.4th 870, 878.)

B. The Release Bars Plaintiffs' Claims

1. Principles of Contract Interpretation

"When a dispute arises over the meaning of contract language, the court must decide whether the language is 'reasonably susceptible' to the interpretations urged by the parties. [Citation.] ' . . . Whether the contract is reasonably susceptible to a party's interpretation can be determined from the language of the contract itself [citation] or from extrinsic evidence of the parties' intent [citation].'" [Citations.] [¶] If the contract is

capable of more than one reasonable interpretation, it is ambiguous [citations], and it is the court's task to determine the ultimate construction to be placed on the ambiguous language by applying the standard rules of interpretation in order to give effect to the mutual intention of the parties [citation]. When ambiguities . . . cannot be dispelled by application of the other rules of contract interpretation, they are resolved against the drafter. [Citations.] [¶] Interpretation of a contract is solely a question of law unless the interpretation turns upon the credibility of extrinsic evidence. [Citations.]” (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 798-799.)

2. The Release Encompasses Plaintiffs' Claims

Paragraph 4 of the separation agreement provides that the plaintiff releases “any and all claims of any kind, known and unknown, related to [plaintiff's] employment with [Kaiser] or the termination of his or her employment.” The released claims include “all claims based in tort or contract, or under any federal, state, or local statutes, ordinances, regulations . . . or common law,” as well as “all claims for compensation, vacation, insurance, and/or benefits.” As the trial court correctly concluded, this broad, express release of compensation claims necessarily encompasses plaintiffs' claims as to the disputed retention bonuses.

Plaintiffs do not argue that their retention bonus claims are not claims for compensation. They contend, however, that other language in the agreement preserves their claims. As we explain below, we disagree, and we conclude that the release unambiguously bars plaintiffs' claims.

3. Paragraph 1 of the Agreement Does Not Limit the Scope of the Release

In support of their position that the release does not bar their claims, plaintiffs' sole argument in the trial court (and their primary argument in their opening appellate brief) is that the reference in paragraph 1 of the agreement to payment of plaintiffs' “accrued wages” states an exception to the release, and permits plaintiffs to pursue claims for “accrued wages,” including retention bonuses. We conclude that the agreement is not reasonably susceptible to plaintiffs' proposed construction.

Paragraph 1 states: “[Plaintiff]’s] employment with [Kaiser] terminated effective April 20, 2010. Upon his or her termination, [plaintiff] will receive payment of all accrued wages and unused [PTO], to the date of termination and may also be eligible for various payments under the terms of applicable benefit and pension plans.” Whatever the scope of the term “accrued wages,” paragraph 1 does not except any compensation claims from the release in paragraph 4. Paragraph 1 does not refer to the release. Moreover, paragraph 4 itself specifies both the scope of, and the exceptions to, the release. Paragraph 4, after stating that plaintiffs release “*all* employment-related claims,” including “*all* claims for compensation, vacation, insurance, and/or benefits,” specifies that “[t]his release does not affect vested retirement benefits, any benefits to which [plaintiff] is entitled under COBRA, any claims for workers’ compensation benefits or any claims which cannot be released as a matter of law.” (Italics added.) As the trial court noted, paragraph 4 does not refer to paragraph 1, nor does it state that claims for “accrued wages” or retention bonuses are excepted from the release.

Contrary to plaintiffs’ suggestion, paragraph 1 does not state that, after the signing of the separation agreement, Kaiser will make a future payment of accrued wages. Instead, paragraph 1 specifies that, “[u]pon his or her termination,” each plaintiff “will receive payment of all accrued wages and unused [PTO]” Plaintiffs were terminated on April 20, 2010, and they received their final paychecks (including salary and PTO) at that time. They did not sign the separation agreements until May 28, 2010. In light of the explicit release of all compensation claims in paragraph 4, the reference in paragraph 1 to the payment of accrued wages upon plaintiffs’ termination (i.e., in April 2010) is not reasonably susceptible to the construction that plaintiffs are entitled to any future (i.e., post-May 28, 2010) payment of accrued wages. The only reasonable construction, as the trial court recognized, is that paragraph 1’s reference to payment of accrued wages is a reference to the final paychecks that plaintiffs received upon termination.

Plaintiffs contend that, to give paragraph 1 “force and effect,” the court “must construe it as entitling [plaintiffs] to their retention bonuses as part of the consideration Kaiser agreed to give them in exchange for executing the [separation agreement].” We

disagree. Paragraph 2 of the agreement expressly enumerates the items Kaiser will provide in consideration for plaintiffs' execution of the agreement. Paragraph 2 states: "In return for the promises [plaintiff] makes by signing and not revoking this Agreement and Release and fully complying with all its terms, [Kaiser] will provide the following to [plaintiff]:" (1) eight weeks of separation pay, calculated according to a formula, and totaling a specified amount, to be paid "in a single lump sum"; (2) continued access to the employee assistance program; and (3) outplacement career services. Paragraph 4 then specifies that plaintiffs release all claims "[i]n consideration of the payment and benefits described in paragraph 2 above." Neither paragraph 2 nor paragraph 4 states that a future payment of a retention bonus or accrued wages will be provided in exchange for plaintiffs' execution of the agreement.

Contrary to plaintiffs' assertion, declining to read paragraph 1 as entitling plaintiffs to a future retention bonus payment does not render paragraph 1 a "nullity." Payment of plaintiffs' accrued wages and PTO was an important term of their separation from Kaiser. As the trial court noted at the summary judgment hearing (and as we discuss further in pt. III.B.4. *post*), to the extent Kaiser owed plaintiffs *undisputed* amounts as wages, it was required by law to pay those amounts unconditionally, and could not require plaintiffs to execute a release to receive them; the parties could, however, compromise and release any *disputed* compensation claims. (See Lab. Code,¹ §§ 206, subd. (a), 206.5, subd. (a); *Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App.4th 796, 799-802 (*Chindarah*); accord, *Watkins v. Wachovia Corp.* (2009) 172 Cal.App.4th 1576, 1586-1587 (*Watkins*).) The fact that Kaiser provided the final paychecks upon plaintiffs' termination in April 2010 did not preclude the parties from referring to this payment in the separation agreement, and did not make paragraph 1 a nullity.

Plaintiffs' remaining arguments are unpersuasive. Plaintiffs note that the agreement, at different times, uses the singular term "payment" and the plural term

¹ All statutory references are to the Labor Code unless otherwise stated.

“payments” to refer to the consideration for the release. Paragraph 2 provides that each plaintiff will receive a specified amount of “separation pay” in “a single lump sum,” as well as nonmonetary benefits. Paragraph 3, entitled “No Other Separation,” states: “[Plaintiff] understands that [Kaiser] is providing these payments and benefits to him or her solely in return for his or her entering into this Agreement and Release and that by electing to receive these separation benefits, he or she is not eligible for any additional separation benefits under any other separation policies” Paragraph 4 states that the release is required “in consideration of the payment and benefits described in paragraph 2 above.” Paragraph 5, providing for the release of unknown claims, states that “the payments and benefits provided by [Kaiser] under this Agreement and Release are also for the release of those unknown claims.”

Plaintiffs contend that, because paragraph 2 provides for separation pay in “a single lump sum,” the term “payments” in paragraphs 3 and 5 refers to that payment *and* some other payment (i.e., a future retention bonus payment). The agreement is not reasonably susceptible to this interpretation. Paragraphs 2 and 4 clearly describe the consideration for the release (a separation payment, plus nonmonetary benefits); in light of the structure of the agreement, paragraphs 3 and 5 (while using the phrase “payments and benefits”) unambiguously refer to the items of consideration listed in paragraphs 2 and 4. First, because paragraphs 2 and 3 address separation benefits, it is clear that the phrase “payments and benefits” in paragraph 3 refers to the separation benefits listed in paragraph 2. Indeed, paragraph 3 itself specifies that the “payments and benefits” to which it refers are the “separation benefits” provided to plaintiffs—under paragraph 3, each plaintiff “understands that [Kaiser] is providing *these payments and benefits* to him or her solely in return for his or her entering into this Agreement and Release and that by electing to receive *these separation benefits*, he or she is not eligible for any additional separation benefits under any other separation policies” (Italics added.) Second, paragraphs 4 and 5 address the release of claims, with paragraph 5 specifying that the consideration provided for the release (i.e., the consideration described in paragraph 4) is also for the release of unknown claims. Neither paragraph 3 nor paragraph 5 is

reasonably susceptible to the interpretation that plaintiffs retained the right to receive future payments or pursue future claims against Kaiser.

Plaintiffs next assert that, because paragraph 3 only specifies that plaintiffs are not eligible for any additional “separation benefits,” they retained their right to receive retention bonuses. This is incorrect. The release in paragraph 4 is not limited to claims for separation pay or benefits; it bars all claims related to plaintiffs’ employment with Kaiser, including all claims for compensation.

Plaintiffs argue that general principles of contract interpretation support their claim that the reference to “accrued wages” in paragraph 1 is an exception to the release in paragraph 4. Plaintiffs rely on the rule that, when a general and a specific contractual provision are inconsistent, the specific provision prevails. (See Code Civ. Proc., § 1859; Civ. Code, § 3534; *Prouty v. Gores Technology Group* (2004) 121 Cal.App.4th 1225, 1235.) Plaintiffs also contend that, because Kaiser drafted the separation agreement, any ambiguities that cannot be resolved by application of other principles should be construed in plaintiffs’ favor. (See Civ. Code, § 1654; *Badie v. Bank of America, supra*, 67 Cal.App.4th at p. 798; see also Code Civ. Proc., § 1864.) These principles do not apply here. As discussed above, paragraph 1 (providing for payment of accrued wages upon termination) and paragraph 4 (providing for the release of employment-related claims in exchange for separation pay and other benefits) are not inconsistent, nor is the agreement ambiguous.

Finally, plaintiffs contend that, if the agreement is not construed to allow plaintiffs to pursue their retention bonus claims, it will be unlawful because it will exculpate Kaiser from its statutory obligation to pay wages due. (See §§ 201, subd. (a), 206.5, subd. (a); Civ. Code, §§ 1643 [“[a] contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done without violating the intention of the parties”], 1668; *Powers v. Dickson, Carlson & Campillo* (1997) 54 Cal.App.4th 1102, 1111.) We disagree. The release specifies that it does not include claims that cannot be released as a matter of law. To the extent plaintiffs may possess such unreleasable claims, they are not affected by the separation

agreement. However, as we discuss in part III.B.4., *post*, plaintiffs' retention bonus claims are releasable, so they do not fall within this exception to the release.

4. The Release of Plaintiffs' Claims Is Not Prohibited by Law

On appeal, in addition to renewing their argument based on paragraph 1 of the separation agreement, plaintiffs contend their claims fall within the exception in paragraph 4 for "claims which cannot be released as a matter of law." Specifically, plaintiffs argue that section 206.5, subdivision (a), which bars the release of wage claims in certain circumstances, prohibited the release of their retention bonus claims.²

Plaintiffs did not raise this argument in opposing summary judgment in the trial court. In response to Kaiser's contention that the release entitled it to summary judgment, plaintiffs' only argument was that the reference to "accrued wages" in paragraph 1 saved their retention bonus claims. Plaintiffs thus have forfeited their argument based on section 206.5. (See *DiCola v. White Brothers Performance Products, Inc.* (2008) 158 Cal.App.4th 666, 676-677 [in summary judgment context, " 'possible theories that were not fully developed or factually presented to the trial court cannot create a "triable issue" on appeal' "]; *Saville v. Sierra College* (2005) 133 Cal.App.4th 857, 872-873.)

In any event, plaintiffs' argument based on section 206.5 fails on the merits. Section 206.5 is to be read in light of section 206's requirement that employers unconditionally pay all wages *conceded to be due*. (*Chindarah, supra*, 171 Cal.App.4th at pp. 799-802; accord, *Watkins, supra*, 172 Cal.App.4th at pp. 1586-1587.) In *Chindarah*, after analyzing the legislative history of section 206.5, prior decisions

² Section 206.5, subdivision (a), provides in part: "An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee."

A related provision, section 206, subdivision (a), specifies that: "In case of a dispute over wages, the employer shall pay, without condition and within the time set by this article, all wages, or parts thereof, conceded by him to be due, leaving to the employee all remedies he might otherwise be entitled to as to any balance claimed."

construing both statutes, and federal cases, the appellate court concluded that section 206.5 only prohibits employers from coercing settlements by withholding wages “ ‘concededly due.’ ” (*Chindarah, supra*, 171 Cal.App.4th at pp. 799-802; accord, *Watkins, supra*, 172 Cal.App.4th at pp. 1586-1587.) Accordingly, “wages are not considered ‘due’ and unreleasable under [section 206.5], unless they are required to be paid under [section 206]. When a bona fide dispute exists, the disputed amounts are not ‘due,’ and the bona fide dispute can be voluntarily settled with a release and a payment—even if the payment is for an amount less than the total wages claimed by the employee.” (*Watkins, supra*, 172 Cal.App.4th at p. 1587.)

The dispositive issue, therefore, is whether a bona fide dispute existed when plaintiffs signed the separation agreements. (See *Watkins, supra*, 172 Cal.App.4th at p. 1587.) In *Watkins*, the appellate court found that the evidence indisputably established the existence of a bona fide dispute, because, when the plaintiff’s employment was terminated, she “(1) received all wages [the employer] conceded were due to her (based on the timesheets she had submitted); (2) believed she possessed a claim for further overtime pay; and (3) voluntarily elected to receive enhanced severance benefits in exchange for releasing her claims against [the employer].” (*Ibid.*)

These elements are present here as well. Plaintiffs submitted declarations stating that, “at all times,” including when they signed the separation agreements, they believed they were entitled to receive retention bonuses. Moreover, like the employee in *Watkins*, plaintiffs were aware during their employment that there was a disagreement between Kaiser and its employees about the payment of retention bonuses. (See *Watkins, supra*, 172 Cal.App.4th at p. 1587.) In January 2010, each plaintiff attended a meeting at which Deborah Szoke, a manager on their project, explained that Kaiser would not be paying retention bonuses.³ In April 2010, plaintiffs’ employment ended, and they received their

³ At the summary judgment hearing, the trial court noted: “It’s clear that at the time the release was signed everybody knew that [Kaiser’s] position was that there was no retention bonus owed.” At the hearing and in its written order, the court referred to the bonus claims as “disputed” and “contested.”

final paychecks (including the salary and PTO that Kaiser conceded were due). Plaintiffs voluntarily signed the separation agreements on May 28, 2010, electing to receive separation benefits in exchange for releasing all their employment-related claims against Kaiser.⁴ The undisputed evidence thus establishes that, when plaintiffs signed the separation agreements, there was a bona fide dispute as to whether retention bonuses were owed.

We reject plaintiffs' arguments to the contrary. In their opening brief, plaintiffs contend that the trial court, while referring to the retention bonuses as disputed, "failed to identify the facts underlying its conclusion that the parties had a 'good faith dispute' over whether Kaiser owed" retention bonuses. But plaintiffs did not contend in the trial court that their bonus claims were unreleasable under section 206.5, so the trial court understandably did not address that issue expressly. In any event, we review the court's ruling, not its reasoning. (*Kids' Universe v. In2Labs, supra*, 95 Cal.App.4th at p. 878.)

Plaintiffs also contend that there are triable issues as to whether the dispute was bona fide, because plaintiffs presented evidence raising factual disputes as to the merits of their claims (such as the viability of their promissory estoppel theory, and whether Kaiser properly cancelled the bonus program in 2006). But any factual disagreements about plaintiffs' entitlement to bonuses only underscore that the parties disputed this issue, and confirm that the bonuses were not concededly due.

Finally, in their reply brief, plaintiffs urge this court to reject the *Watkins* court's approach to analyzing whether a bona fide dispute exists (i.e., an approach that focuses on the employee's awareness that there was a disagreement and the voluntariness of his or her decision to accept a settlement). (See *Watkins, supra*, 172 Cal.App.4th at p. 1587.) Plaintiffs appear to contend that this court should instead determine whether a dispute is bona fide by focusing on whether admissible evidence supports the employer's position

⁴ In their reply brief, plaintiffs suggest that they did not "voluntarily" release their retention bonus claims. But plaintiffs do not dispute that they voluntarily entered the separation agreements; they raise only a question of contract interpretation, i.e., whether the release encompasses their retention bonus claims.

in the dispute. Plaintiffs argue that, applying that standard, triable issues exist as to whether the dispute was bona fide, because Kaiser did not present admissible evidence that it cancelled the bonus program in 2006.

We need not address this contention, because plaintiffs did not raise it in their opening brief. (*Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 764.) In any event, assuming evidence of the 2006 suspension or cancellation of the bonus program is a prerequisite to a finding of a bona fide dispute, the record contains such evidence—the declaration and deposition testimony of Thea Giboney, who served as the business program manager for KP HealthConnect from 2004 to 2007. In portions of her declaration to which plaintiffs did not object, Giboney states that (1) Kaiser management formulated the retention bonus plan in late 2005 or early 2006; and (2) in October 2006, Giboney personally conducted question and answer sessions at which she explained to employees that the retention bonus plan had been suspended indefinitely. In the excerpts of her deposition testimony in the record (to which plaintiffs also did not object), Giboney testified she was involved both in the decision to create the retention bonus program, and in communications about the cancellation of the bonus plan. Giboney also testified about the terms of the bonus program, including the decision to reserve to Kaiser management the right to cancel or suspend the program.

Assuming, without deciding, that Kaiser was required to present evidence supporting its position in the dispute to show the dispute was bona fide, the above testimony satisfies that requirement.⁵ Kaiser’s position that it suspended the bonus program in October 2006 (before plaintiffs had worked 12 months on the project, which Kaiser contended was a requirement to recover the minimum payment under the program) is a defense that “ ‘would, if successful, preclude any recovery for’ ” plaintiffs. (See *Chindarah, supra*, 171 Cal.App.4th at p. 802, quoting *Reynov v. ADP Claims Services Group, Inc.* (N.D.Cal., Apr. 30, 2007, No. C 06-2056 CW) 2007 WL 5307977,

⁵ We thus need not address plaintiffs’ objections to other portions of Giboney’s declaration, such as her authentication of the October 2006 e-mail about the suspension of the bonus program.

p.*3.) Accordingly, a bona fide dispute existed, and the retention bonuses were not concededly due. (See *Chindarah, supra*, 171 Cal.App.4th at p. 802.) Plaintiffs' retention bonus claims were releasable under section 206.5.

IV. DISPOSITION

The judgment is affirmed. Kaiser shall recover its costs on appeal.

Reardon, J.

We concur:

Ruvolo, P.J.

Rivera, J.