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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

CELESE M. COOK et al.,

Plaintiff and Respondent,

v.

UNITED INSURANCE COMPANY OF  
AMERICA,

Defendant and Appellant.

A139456

(Contra Costa County  
Super. Ct. No. MC-10-00425)

United Insurance Company of America (United) appeals following the denial, in part, of its motion to compel arbitration. This appeal raises a single issue. Did the trial court correctly deny United’s petition to compel arbitration of plaintiff Celeste Cook’s cause of action filed pursuant to Labor Code section 2698, et seq. (the Private Attorney General Act (PAGA))? Because our Supreme Court has held that an arbitration agreement requiring an employee to relinquish the right to bring a representative PAGA action in any forum is contrary to public policy, the trial court was correct to deny arbitration. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348 (*Iskanian*)). We affirm.

## BACKGROUND

In a third amended complaint, plaintiffs<sup>1</sup> alleged that United failed to reimburse business expenses, and pay wages and commissions due its sales representatives or agents. This class action complaint alleged seven causes of action. The first four were brought under provisions of the Labor Code governing payment of wages and reimbursement of expenses. The fifth cause of action sought collection of unpaid wages and the imposition of civil penalties under PAGA. The sixth cause of action alleged unlawful or unfair business practices. The seventh cause of action was labeled declaratory relief.

United moved the superior court for an order compelling the plaintiffs to arbitrate their claims, and to dismiss or stay the action pending the outcome of arbitration.

The motion was premised upon an express agreement between United and the plaintiffs to arbitrate on an individual basis all disputes arising out of the plaintiffs' employment. The agreements read, in part, "United . . . and Employee agree that all disputes related to Employee's employment . . . or the termination of that employment . . . shall be settled by arbitration administered by the American Arbitration Association . . . [¶] Employee and Employer also agree that this Agreement does not permit any class action proceedings (or joinder or consolidation with the claim(s) of any other person) in arbitration without the written consent of both Employee and Employer."

The trial court ruled that, pursuant to the agreement to arbitrate, plaintiffs were required to submit all of their claims to arbitration except the PAGA claim. The court determined that a PAGA claim cannot be subject to a mandatory arbitration agreement. United has appealed the denial of the motion to compel arbitration on the PAGA cause of action.

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<sup>1</sup>Plaintiff Celese Cook died before the third amended complaint was filed. The third amended complaint adds plaintiffs Victor Cintron, Cuauhtemoc Gonzalez, Marjorie Peterson and Claudia Silva as plaintiffs on their own behalf and others similarly situated.

## DISCUSSION

In *Iskanian, supra*, 59 Cal.4th at page 360, our Supreme Court held that “an arbitration agreement requiring an employee as a condition of employment to give up the right to bring representative PAGA actions in any forum is contrary to public policy. In addition, we conclude that the [Federal Arbitration Act’s] goal of promoting arbitration as a means of private dispute resolution does not preclude our Legislature from deputizing employees to prosecute Labor Code violations on the state’s behalf. Therefore, the FAA does not preempt a state law that prohibits waiver of PAGA representative actions in an employment contract.” This holding, almost a year after the trial court ruling, addresses and defeats Union’s arguments on appeal.

## DISPOSITION

The order is affirmed.

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Siggins, J.

We concur:

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McGuinness, P.J.

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Pollak, J.