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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

PABLO BONILLAS,

Plaintiff and Respondent,

v.

DMSI STAFFING, LLC,

Defendant and Appellant.

E064503

(Super.Ct.No. RIC1405671)

OPINION

APPEAL from the Superior Court of Riverside County. Sharon J. Waters, Judge.

Affirmed.

David B. Simpson, under appointment by the Court of Appeal, for Defendant and Appellant.

Law Office of Neal J. Fialkow, Inc., Neal J. Fialkow and James S. Cahill for Plaintiff and Appellant.

I

INTRODUCTION

Plaintiff and respondent Pablo Bonillas (Bonillas) filed a single-count representative action under the California Private Attorney General Act, Labor Code section 2698 et seq. (PAGA),¹ seeking to recover PAGA penalties for Labor Code violations.

In *Iskanian v. CLS Transportation Los Angeles LLC* (2014) 59 Cal.4th 348, 387, the California Supreme Court held that the Federal Arbitration Act, 9 United States Code section 1 et seq. (FAA), is inapplicable to a PAGA dispute: “Simply put, a PAGA claim lies outside the FAA’s coverage because it is not a dispute between an employer and an employee arising out of their contractual relationship. It is a dispute between the employer and the *state*, . . .” (*Iskanian*, at p. 387.) In the case of *Williams v. Superior Court* (2015) 237 Cal.App.4th 642, 649, the Second District held that “a single representative PAGA claim *cannot* be split into an arbitrable individual claim and a nonarbitrable representative claim.”

Nevertheless, defendant and appellant DMSI Staffing, LLC (DMSI) seeks to compel arbitration of what it characterizes as “discrete” Labor Code violations underlying the PAGA claim. Citing *Williams*, the trial court ruled that DMSI could not compel arbitration of the PAGA claim because it is not a direct dispute between Bonillas and DMSI. Instead, it is a dispute between DMSI and Bonillas, acting on behalf of the

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

state as the real party in interest. We agree with the *Iskanian* and *Williams* decisions and the trial court's ruling and affirm the judgment.

II

FACTUAL AND PROCEDURAL BACKGROUND

In his complaint, Bonillas alleges he was hired in 2009 by DMSI, a temporary staffing company, to work as a “non-exempt, hourly paid warehouse employee” at a Ross Stores warehouse facility until he was terminated on January 14, 2014. Bonillas asserts a single-count representative action, seeking PAGA penalties against DMSI, based on Labor Code violations involving wages, meal and rest periods, and vacation and overtime pay. Bonillas alleges he has exhausted the PAGA's notice requirements and asks that the lawsuit proceed as a representative action.

The DMSI Dispute Resolution Agreement (DRA) provides: “This agreement sets forth the procedures to resolve any and all disputes arising out of, or related to your employment or termination thereof, with DMSI. . . . All such disputes will be resolved by an arbitrator through final and binding arbitration.” As in the *Williams* case, the DRA prohibited a representative PAGA claim: “. . . there will be no rights to bring any claims, hearings, or arbitration as class or collective action of any kind or nature.” (*Williams v. Superior Court, supra*, 237 Cal.App.4th at p. 646, fn. 2.)

On June 2, 2015, DMSI filed a motion to compel arbitration, requesting an order “(a) enforcing the parties' agreement to arbitrate; (b) compelling an individual arbitration with [Bonillas] of all of his pleaded and covered ‘disputes’; and (c) otherwise staying his PAGA cause of action pending the outcome of that binding arbitration.” In its motion,

DMSI asserted it was not “moving to compel an individual arbitration of [Bonillas]’s *entire* PAGA cause of action . . . ,” as would violate *Iskanian*. Instead, DMSI sought arbitration of the “individual Labor Code violation ‘disputes’ *underlying* [his] request for PAGA penalties.”

Based on the *Williams* case, which was decided on June 9, 2015, Bonillas asked DMSI to withdraw its motion. DMSI refused. Judge Sharon Waters then denied the motion to compel arbitration:

“Moving party has not established that the arbitration agreement requires plaintiff to arbitrate the issue of whether he suffered any Labor Code violations underlying the PAGA claim. Moving party’s interpretation of ‘dispute’ as used in the arbitration agreement is not reasonable. The case of *Williams v. Superior Court* (2015) 237 Cal.App.4th 642 further supports this Court’s determination that arbitration is not properly compelled in this case.”²

III

DISCUSSION

DMSI persistently argues that embedded within the PAGA claim are individual discrete disputes with Bonillas which are subject to arbitration. Based on the cases of

² The arguments in this case are similar to those made by the same lawyers in *Martina Hernandez v. Ross Stores, Inc.*, Riverside County Superior Court case No. RIC1404962, which is on appeal before this court, case No. E064026. On May 20, 2015, Judge Waters also denied the motion to compel arbitration in *Hernandez*. *Williams* had not yet been published but Judge Waters relied on *Iskanian* and ruled that “there are no individual claims or ‘disputes’ between [Hernandez] and Defendant that can be separately arbitrated.”

Iskanian and *Williams*, we hold the PAGA claim is not subject to arbitration in whole or part because the PAGA claim is not a discrete dispute between the employer and the employee. Instead, the PAGA claim is a dispute between DMSI and Bonillas—acting on behalf of the state, the real party in interest—about probable Labor Code violations.

A. *Standard of Review*

An appellate court reviews an ““arbitration agreement de novo to determine whether it is legally enforceable, applying general principles of California contract law.”” (*Baker v. Osborne Development Corp.* (2008) 159 Cal.App.4th 884, 892.)” (*Carmona v. Lincoln Millennium Car Wash, Inc.* (2014) 226 Cal.App.4th 74, 82; *Amalgamated Transit Union, Local 1277 v. Los Angeles County Metro. Transp. Auth.* (2003) 107 Cal.App.4th 673, 685.) The provisions in an arbitration agreement are “to be construed in accordance with their plain meaning.” (*Alan v. Superior Court* (2003) 111 Cal.App.4th 217, 224; Civ. Code, § 1641.)

An appellate court reviews the trial court’s factual determinations under the deferential substantial evidence test. (*Carmona v. Lincoln Millennium Car Wash, Inc.*, *supra*, 226 Cal.App.4th at p. 82; *Amalgamated Transit Union, Local 1277 v. Los Angeles County Metro. Transp. Auth.*, *supra*, 107 Cal.App.4th at p. 685.) A party must consent and cannot be compelled to submit to arbitration. (*Pinnacle Museum Tower Assn. Pinnacle Market Development (U.S.), LLC* (2012) 55 Cal.4th 223, 236.)

B. *Arbitration under the DRA*

When Bonillas was hired by DMSI, he signed a Spanish language version of the DRA providing for arbitration: “This agreement sets forth the procedures to resolve any

and all disputes arising out of, or related to your employment or termination thereof, with DMSI. . . . All such disputes will be resolved by an arbitrator through final and binding arbitration.” The DRA applies to employment-related disputes between DMSI and an employee; the state is not party to the DRA. Furthermore, the DRA excludes a representative PAGA dispute. The DRA expressly states that “there will be no rights to bring any claims, hearings, or arbitration as a class or collective action of any kind or nature, . . .”

Under DMSI’s proposed interpretation, the DRA’s requirement for arbitration should apply to the individual components of Bonillas’s PAGA claim. In other words, DMSI contends an arbitrator should decide whether there are Labor Code violations involving wages, meal and rest periods, vacation, and overtime pay. We disagree that there should be piecemeal determination of a PAGA dispute, first in arbitration and next in a subsequent judicial proceeding.

The California Supreme Court was clear in *Iskanian* that the state is the real party in interest to a PAGA claim: “It is a dispute between an employer and the *state*, which alleges directly or through its agents . . . that the employer has violated the Labor Code. . . . The fact that any judgment in a PAGA action is binding on the government confirms that the state is the real party in interest. . . . As Justice Chin correctly observes [in his concurring opinion], ‘every PAGA action, whether seeking penalties for Labor Code violations as to only one aggrieved employee — the plaintiff bringing the action — or as to other employees as well, is a representative action on behalf of the state.’”

(*Iskanian v. CLS Transportation Los Angeles LLC*, *supra*, 59 Cal.4th at pp. 386-387.)

The *Iskanian* court explained that a practical benefit of a representative PAGA action is there is final resolution as to the state civil penalty claims. It is the sole vehicle that decides the outcome and binds both the plaintiff and state in the same proceeding. (*Iskanian v. CLS Transportation Los Angeles LLC, supra*, 59 Cal.4th at p. 366.)

Most compelling is that the arguments raised in this appeal by DMSI have already been decided. In *Williams*, an employee filed a representative PAGA complaint alleging that Pinkerton, the employer, violated the Labor Code by failing to provide off-duty rest periods. Pinkerton moved for an order enforcing the employee's waiver of his right to bring a representative PAGA claim or, in the alternative for an order compelling the employee to submit the "rest period controversy" to individual arbitration pursuant to the FAA, while severing and staying the PAGA claim pending the arbitration. Plaintiff argued that he had not asserted any individual claims, only the representative cause of action, and that requiring him to arbitrate whether he suffered a violation of the Labor Code (i.e., whether he was an aggrieved employee under PAGA) "would render *Iskanian* meaningless." (*Williams v. Superior Court, supra*, 237 Cal.App.4th at pp. 645-646.)

The trial court held that the PAGA waiver was unenforceable under *Iskanian*. The employer's arbitration agreement expressly precluded bringing a representative PAGA claim in an arbitral forum. The trial court granted the employer's request to arbitrate the ""rest period controversy underlying [plaintiff's] PAGA claim"" and stayed the PAGA action pending the arbitration result—the same procedure which DMSI advocates here. (*Williams v. Superior Court, supra*, 237 Cal.App.4th at p. 646.) The *Williams* court held

that the trial court erred by splitting the employee's single representative PAGA cause of action:

“As noted, petitioner's complaint asserted only a single representative cause of action under PAGA. Nonetheless, the trial court determined that petitioner must submit the ‘underlying controversy’ to arbitration for a determination whether he is an ‘aggrieved employee’ under the Labor Code with standing to bring a representative PAGA claim. [Citation.] The trial court cited no legal authority for its determination that a single representative action may be split in such a manner; Pinkerton has identified no case so holding, and we have located none. Indeed, case law suggests that a single representative PAGA claim *cannot* be split into an arbitrable individual claim and a nonarbitrable representative claim. In *Reyes v. Macy's, Inc.* (2011) 202 Cal.App.4th 1119 (*Reyes*), the appellate court held that a PAGA claim may not be brought solely on the employee's behalf, but must be brought in a representative capacity. ‘Because the PAGA claim is not an individual claim, it was not within the scope of [the employer's] request that individual claims be submitted to arbitration’ (*Reyes*, at p. 1124.) Here, as in *Reyes*, petitioner ‘does not bring the PAGA claim as an individual claim, but “as the proxy or agent of the state's labor law enforcement agencies.”’ [Citation.] Accordingly, petitioner cannot be compelled to submit any portion of his representative PAGA claim to arbitration, including whether he was an ‘aggrieved employee.’ [¶] Pinkerton's reliance on *Bunker Hill Park Ltd. v. U.S. Bank National Assn.* (2014) 231 Cal.App.4th 1315, is misplaced. There, this court held that a broadly worded arbitration provision encompassed disputes not strictly ‘justiciable’ or ““ripe.”” (*Id.* at pp. 1326-1327.) The

case did not address representative action waivers, PAGA, or whether a single cause of action could be split into arbitrable and nonarbitrable claims.” (*Williams v. Superior Court, supra*, 237 Cal.App.4th at p. 649.)

The dispute here concerns violation of the PAGA and recovery of a civil penalty rather than a dispute for compensation of unpaid wages and damages or unfair competition seeking restitution and injunction. A PAGA dispute is inherently a representative action on behalf of the state. Compensation for a Labor Code violation serves a private interest; penalties through the PAGA serve the public interest.

DMSI cannot argue that discrete Labor Code violations underlying the PAGA claim are individual disputes which may be arbitrated. Bonillas does not seek individual wage-related claims. He alleges a single representative cause of action under the PAGA, and requests relief in the form of PAGA penalties. The parties’ rights and remedies in a PAGA dispute are fundamentally different and wholly separate from a private wage and hour or unfair competition dispute. The PAGA is a distinct statutory scheme which allows individual plaintiffs to act as private attorneys general to recover penalties on behalf of the state. (*Williams v. Superior Court, supra*, 237 Cal.App.4th at p. 649.)

PAGA does not obligate employees to pursue their other remedies or to prove that they are entitled to other remedies in order to succeed in a PAGA action. The Labor Code explicitly authorizes separate or concurrent litigation of a PAGA dispute: “Nothing in [PAGA] shall operate to limit an employee’s right to pursue or recover remedies available under state or federal law, either separately or concurrently with an action taken under this part.” (§ 2699, subd. (g)(1).)

Although DMSI characterizes PAGA as a “remedial statute,” citing *Amalgamated Transit Unit Local 1277 v. Los Angeles County Metro. Transp. Auth.*, *supra*, 107 Cal.App.4th, that case is distinguishable. In *Amalgamated Transit*, the California Supreme Court decided only that a PAGA claim was not assignable and plaintiff unions lacked standing to maintain the PAGA action. (*Id.* at pp. 1003-1005.)

The PAGA is more than a procedural statute. The filing of a PAGA claim serves the important function of protecting the public interest. In enacting section 2698 et seq. the California Legislature found: “(b) . . . the only meaningful deterrent to unlawful conduct is the vigorous assessment and collection of civil penalties as provided by the Labor Code.” (2003 Cal. Legis. Serv. Ch. 906, § 1 (S.B. 796).) As a type of qui tam action, the PAGA bestows on the aggrieved employee the substantive right to pursue a claim for relief in specified circumstances. (*Iskanian v. CLS Transportation Los Angeles LLC*, *supra*, 59 Cal.4th at p. 382.) “An employee plaintiff suing, as here, under . . . [PAGA] does so as the proxy or agent of the state’s labor law enforcement agencies. The act’s declared purpose is to supplement enforcement actions by public agencies, which lack adequate resources to bring all such actions themselves.” (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 986; *William v. Superior Court*, *supra*, 237 Cal.App.4th at p. 649.)

DMSI also relies on *Heritage Provider Networks, Inc. v. Superior Court* (2008) 158 Cal.App.4th 1146, 1152-1153, and *Collins & Aikman Prods. Co. v. Building Sys.* (2d Cir. 1995) 58 F.3d 16, 20. Both cases involved separate, overlapping, arbitrable and nonarbitrable claims and addressed when nonarbitrable claims should be severed and

stayed. Bonillas does not allege separate, overlapping, individual employment causes of action against DMSI. The text of the DRA does not support DMSI’s interpretation that the single PAGA dispute may be split into arbitral and nonarbitral parts.

Finally, *Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147-1148, does not apply here. In *Price*, other wage and hour causes of action were alleged in the same complaint on which the PAGA claim depended. When the other causes of action failed, the *Price* court held that the PAGA claim failed too. Here, no other causes of action are alleged. *Iskanian* and *Williams* are dispositive of this appeal. Based on the foregoing, Bonillas’s single-count representative action seeking PAGA penalties against DMSI for Labor Code violations involving wages, meal and rest periods, and vacation and overtime pay is not subject to arbitration.

IV

DISPOSITION

A PAGA claim asserted by an employee on behalf of the state, is not subject to a preliminary “individual bilateral arbitration” as urged by DMSI. We affirm the judgment. Bonillas, the prevailing party, shall recover his costs on appeal.

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CODRINGTON
J.

We concur:

McKINSTER
Acting P. J.

MILLER
J.