SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 04/23/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV2003539

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: MARIO BARRERA, ET AL and DEFENDANT: APPLE AMERICAN GROUP, LLC, ET AL	

NATURE OF PROCEEDINGS: MOTION – OTHER: VACATE ARBITRATION AWARD

RULING

Plaintiff Mario Barrera's motion to vacate arbitration award is granted.

Procedural Background

On December 31, 2020, Plaintiffs Mario Barrera and Francisco Varguez filed their original Complaint against Defendants, asserting a claim for civil penalties for violations of PAGA. Plaintiffs filed a First Amended Complaint on April 16, 2021. On September 14, 2021, Defendants demurred to the First Amended Complaint, arguing that the case was required to be abated under Code of Civil Procedure Sections 430.10(c) and 597, the doctrine of exclusive concurrent jurisdiction, and/or the court's inherent jurisdiction due to similar actions pending in Los Angeles Superior Court, *Chiemi Maningas-Ng v. Apple American Group LLC*, Case No. 20-STCV-31468 ("*Maningas-Ng*") as well as another case pending in Placer County Superior Court. The Court overruled the demurrer on November 16, 2021.

In April 2022, the court in *Maningas-Ng* granted approval of a settlement and ordered a broad release of any kind of PAGA claim by "Aggrieved Employees" against "Releasees". (RJN, Exh. B, 3:16-19.) "Aggrieved Employees" was defined as "all persons who are or were employed by Apple American Group LLC or Apple American Group II LLC and who hold or held job positions that they classified as 'non-exempt' employees in the State of California during the period from April 6, 2019 to the date the Settlement Agreement is approved by the Court." (RJN, Exh. B, 1:16-19; Exh. C, Ex. 1, p. 1.) "Releasees" was defined as ""Defendant [Apple American Group, LLC], Apple American Group II LLC, Flynn Restaurant Group LP, and each of their respective present and former parents, subsidiaries, divisions, affiliates, acquired companies, and each of their respective present and former officers, directors, employees, partners, shareholders, agents, trustees, representatives, attorneys, insurers,

predecessors, successors, assigns, affiliated companies and entities, and any individual or entity that could be jointly liable with any of the foregoing." (RJN, Exh. B, 2:6, fn. 1.)

In early 2022, Defendants in this case moved to compel arbitration and to stay the proceedings, or alternatively to stay pending the Supreme Court's decision in *Viking River*. Defendants' motion was denied, and Defendants appealed. On August 21, 2023, after *Viking River* was decided, the Court of Appeal reversed in part and affirmed in part, concluding that Plaintiffs were required to arbitrate their claims that sought to recover civil penalties for Labor Code violations committed against Plaintiffs, but not their claims that sought to recover for Labor Code violations committed against employees other than Plaintiffs. On January 25, 2024, the parties filed a Stipulation and Order to compel Plaintiffs' individual PAGA claims to arbitration and to stay Plaintiffs' non-individual PAGA claims pending arbitration.

Arbitration Proceedings

The parties proceeded in arbitration on Plaintiffs' individual PAGA claims in AAA Case No. 01-23-0004-4727, before arbitrator Linda H. McPharlin (the "Arbitration"). Defendants/Respondents filed a motion for judgment on the pleadings as to Plaintiff/Claimant Varguez's claim, arguing among other things that Varguez's PAGA claim was barred by res judicata based on a final settlement in *Maningas-Ng* and that Varguez's individual, non-PAGA claims were barred by the statute of limitations. In his Opposition, Varguez conceded the PAGA claims were barred except for the suitable seating claim. (Declaration of Kevin Sullivan ("Sullivan Decl."), Exh. 4 ["Though the *Maningas-Ng* settlement and judgment precludes several of Claimant's individual PAGA claims – as was already known before this matter was sent to arbitration – it does not preclude Claimant's claim for the failure to provide suitable seating, because that claim is not based on any of the factual predicates alleged in *Maningas-Ng*, nor does it pertain to any of the same primary rights addressed in *Maningas-Ng*"].) Varguez also argued that the statute of limitations had not lapsed because his claims related back to his December 31, 2020 Complaint in this case.

On September 19, 2024, the arbitrator issued an Order on Motion for Judgment on the Pleadings (the "Varguez Arbitration Order"), concluding that Varguez's PAGA suitable seating claim was precluded by the *Maningas-Ng* settlement. (Sullivan Decl., Exh. 5.) The arbitrator found that *Maningas-Ng* involved the same real parties in interest and the same causes of action as the causes of action alleged by Varguez, the *Maningas-Ng* judgment released Respondents/Defendants from PAGA claims, and Varguez was a part of the plaintiff class in that action. The arbitrator also found that Varguez's non-PAGA claims were time-barred because they were not brought to arbitration within three years following Varguez's termination as required under the parties' arbitration agreement. (*Id.*)

On October 22, 2024, Respondents/Defendants requested that the Varguez Arbitration Order be applied equally to the arbitration involving Claimant/Plaintiff Barrera. (Sullivan Decl., Exh. 6.) Barrera filed a supplemental Opposition on November 15, 2024. (Sullivan Decl., Exh. 7.) The arbitrator granted Respondents/Defendants' request in an Order dated December 6, 2024 (the "Barrera Arbitration Order") and dismissed Barrera's claims. (Sullivan Decl., Exh. 8.)

Barrera now moves for an Order from this Court vacating the Barrera Arbitration Order.

Applicable Law

The parties dispute whether California or federal law applies to Plaintiff's motion to vacate. Plaintiff argues that California law applies, while Defendants contend that federal law applies. Under California law, a court shall vacate an arbitration award if it determines that the arbitrator "exceeded [her] powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted." (Code Civ. Proc. § 1286.2(a)(4).) An arbitrator does not ordinarily exceed her power by reaching an erroneous conclusion on a contested issue of law or fact. (*Richey v. AutoNation, Inc.* (2015) 60 Cal.4th 909, 916-917.) Under federal law, a court may vacate an arbitration award "where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." (9 U.S.C. § 10(a)(4).) The court may also vacate an award based on "manifest disregard of the law". (*Comedy Club, Inc. v. Improv W. Assocs.*, 553 F.3d 1277, 1290 (9th Cir. 2009).)

Unless an arbitration agreement specifically states otherwise, California courts do not apply federal vacatur provisions when determining whether to vacate an arbitration award. (*Cable Connection, Inc. v. DIRECTV, Inc.* (2008) 44 Cal.4th 1334, 1351 and fn. 2, 12; *Countrywide Financial Corp. v. Bundy* (2010) 187 Cal.App.4th 234, 246; *Valencia v. Smyth* (2010) 185 Cal.App.4th 153, 173-174, 177; *Siegel v. Prudential Insurance Co. of America* (1998) 67 Cal.App.4th 1270, 1290.) Here, Plaintiff's arbitration agreement provides that the "Federal Arbitration Act shall govern the interpretation, enforcement and proceedings" under the agreement. (Sullivan Decl., Exh. 1.)

In *Cable Connection, supra*, the court found that federal law did not apply where the language provided only that "any arbitration conducted hereunder shall be governed by the United States Arbitration Act", which the court found "call[ed] only for the arbitration itself to be governed by the federal statute, not postarbitration proceedings in court." (*Cable Connection*, 187 Cal.App.4th at n. 12.) In *Countrywide, supra*, the agreement included similar language but also included additional language stating that an arbitration would be "adjudicated in accordance with the state or federal law which would be applied by a United States District Court." (*Countrywide*, 187 Cal.App.4th at p. 248.) The court there found that the parties agreed federal law would apply.

The issue is whether use of the word "enforcement" in the parties' agreement here, without additional language such as that included in the agreement in *Countrywide*, is sufficient to find the parties elected to have federal law apply to motions to vacate. The Court concludes it is not. (See *FCM Investments, LLC v. Grove Pham, LLC* (2023) 96 Cal.App.5th 545 n. 6 ["The Purchase Agreement provides that '[e]nforcement of this agreement to arbitrate shall be governed by the Federal Arbitration Act [(FAA)].' But the FAA's sections on judicial review 'do not apply in state court.' Instead 'the procedural provisions of the [California Arbitration Act] apply in *California* courts by default'" [citations omitted].) The Court finds that the word "enforcement" in the context of the parties' agreement in this case refers to enforcement of the agreement, e.g., the filing of a motion to compel in order to require arbitration of claims. Because the case law requires the parties to expressly state they intend federal law to apply to procedural issues such as vacatur and there is no express statement that Sections 9 or 10 of the

FAA apply in the parties' agreement, the Court does not read "enforcement" in this context to also encompass enforcing an arbitration *order* after it is issued by the arbitrator.

Standard of Review

Barrera argues that because this case involves a mandatory employment arbitration agreement and unwaivable statutory rights, under California law, the Court must review the Barrera Arbitration Order de novo, applying "particular scrutiny". Barrera fails to show that the standard of review by this Court is de novo, as this is not supported by the *Pearson Dental* or *Armendariz* decisions he cites.[1]

However, *Pearson Dental* does allow for a "clear legal error" standard of review under California law, in addition to the standard set forth in Section 1286.2(a)(4). In *Pearson Dental*, the court concluded that an arbitrator's award should have been vacated where there was a "clear legal error" that deprived the employee claimant of a hearing on the merits of his unwaivable statutory employment claims. The clear legal error in that case was the arbitrator's misapplication of the tolling provision under Civil Code Section 1281.12 and erroneous grant of summary judgment on that basis. The court stated:

> Here, as a result of the arbitrator's clear legal error, plaintiff's claim was incorrectly determined to be time-barred. Indeed, the legal error misconstrued the procedural framework under which the parties agreed the arbitration was to be conducted, rather than misinterpreting the law governing the claim itself. [FN 4]. It is difficult to imagine a more paradigmatic example of when 'granting finality to an arbitrator's decision would be inconsistent with the protection of a party's statutory rights' than the present case, in which, as a result of allowing the procedural error to stand, and through no fault of the employee or his attorney, the employee will be unable to receive a hearing on the merits of his FEHA claims *in any forum* . . . We therefore hold that when, as here, an employee subject to a mandatory employment-arbitration agreement is unable to obtain a hearing on the merits of his FEHA claims, or claims based on other unwaivable statutory rights, because of an arbitration award based on legal error, the trial court does not err in vacating the award . . . an arbitrator whose legal error has barred an employee subject to a mandatory arbitration agreement from obtaining a hearing on the merits of a claim based on such right has exceeded his or her powers within the meaning of Code of Civil Procedure section 1286.2, subdivision (a)(4), and the arbitrator's award may properly be vacated.

(*Pearson Dental Supplies, Inc. v. Superior Court* (2010) 48 Cal.4th 665, 679-680 [citation omitted] [emphasis in original].) Barrera argues that the right to bring a PAGA cause of action

[1] A de novo standard applies to an appellate court's review of a trial court's denial of a motion to vacate an arbitration award. (See *Castelo v. Xceed Financial Credit Union* (2023) 91 Cal.App.5th 777, 789.)

is an unwaivable statutory right. (See *Iskanian v. CLS Transportation* (2014) 59 Cal. 4th 348, 382, abrogated in part on other grounds in *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639.)

The *Pearson Dental* "clear legal error" standard applies here. The arbitrator's decision regarding the application of res judicata was based on her interpretation of the release in *Maningas-Ng*, as well as the application of the statute of limitations. Both determinations had the same effect, i.e., the arbitrator ruled in favor of Defendants/Respondents without reaching the merits of Barrera's claims. (See *Castelo*, 91 Cal.App.5th at pp. 788-789 [applying clear legal error standard].)

Request for Judicial Notice

Defendants' unopposed request for judicial notice of the (1) Order Granting Stipulation Regarding Minor Adjustment to the Court's Order and Judgment Granting Approval of PAGA Settlement, filed April 18, 2022 with the Los Angeles County Superior Court in *Maningas-Ng v. Apple American Group, LLC*, Case No. 20STCV31468 (Exhibit A); (2) Order and Judgment Granting Approval of PAGA Settlement, filed February 9, 2022 with the Los Angeles County Superior Court in *Maningas-Ng v. Apple American Group, LLC*, Case No. 20STCV31468 (Exhibit B); (3) Declaration of Marcus J. Bradley in Support of Motion for Approval of PAGA Settlement, filed January 18, 2022 with the Los Angeles County Superior Court in *Maningas-Ng v. Apple American Group, LLC*, Case No. 20STCV31468 (Exhibit C); and (4) Electronic mail confirmation from the Labor and Workforce Development Agency regarding submission the Los Angeles County Superior Court's Order and Judgment in *Maningas-Ng v. Apple American Group, LLC*, Case No. 20STCV31468, dated April 19, 2022 (Exhibit D) is granted. (Evid. Code §§ 452, 453.)

Discussion

Citing Labor Code Sections 1194 and 206.5, Barrera argues that he has an unwaivable right to be free of Labor Code violations and, for this reason, the arbitrator's award which dismissed his PAGA claims must be vacated. This argument is without merit as it would make any PAGA arbitration award unfavorable to an employee automatically subject to vacatur. This is not supported by the case law. The award itself must violate a law or public policy in order to be vacated by a court; the fact that the case involves unwaivable rights, alone, is not enough. (See *Richey*, 60 Cal.4th at p. 916.) For example, in the *Brown* case cited by Barrera, the court found that an arbitrator's order allowing a void agreement under Section 16600 to be enforced violated the claimant's unwaivable statutory rights or explicit public policy. (See *Brown v. TGS Management Company, LLC* (2020) 57 Cal.App.5th 303, 319-320.) In *Ling*, also cited by Barrera, the court upheld the trial court's correction of an arbitration award that awarded attorney's fees prohibited by Labor Code Section 1194. (See *Ling v. PF Chang's* (2016) 245 Cal. App.4th 1242, 1247, disapproved of on other grounds by *Naranjo v. Spectrum Sec. Servs., Inc.* (2022) 13 Cal.5th 93).) In both cases, the award itself violated a specific statute.

For Barrera to prevail on his motion to vacate, he must show either clear legal error or that the arbitrator "exceeded [her] powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted". Under the clear legal error standard, the mere fact that an employee's claim is dismissed by the arbitrator on a procedural ground, before reaching the merits, is insufficient to support a motion to vacate. The court must find that the arbitrator's order dismissing the claims was based on clear legal error. (See *Castelo*, 91 Cal.App.5th at p. 795.)

Res Judicata

Barerra argues that that the arbitrator erred in her res judicata ruling because his suitable seating claim is based on a different factual predicate as the settled claims in *Maningas-Ng*. In the *Amaro* case cited by Barrera, the court found that a PAGA settlement release was overbroad to the extent it covered "potential claims . . . in any way relating to the" facts pleaded in the complaint. The court concluded that this language impermissibly extended the settlement to claims outside the scope of the complaint. (See *Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 535-538.) The court explained: "To illustrate, suppose a class member filed a lawsuit alleging AAM retaliated against her for reporting to a government agency that AAM was breaking the Labor Code by failing to provide employees meal and rest breaks during the release period. This retaliation claim is not based on the same factual predicate as Amaro's complaint. The crux of the claim – retaliation – is completely absent from the pleading. Nor can it be inferred from the complaint's allegations. But since this retaliation claim tangentially relates in *some* way to Amaro's meal and rest period allegations, it appears to have been released by the settlement." (*Id.* at pp. 537-538 [citation omitted] [emphasis in original].)

In the Varguez Arbitration Order, the arbitrator distinguished *Amaro* and found that res judicata applied:

> Claimant asserts that the seating claim is not based on any of the factual predicates on which the PAGA Judgment was based, nor does it pertain to any of the same primary rights addressed by that Judgment . . .
>
> Respondents contend that the claim for failure to provide suitable seating is based solely on IWC Wage Order 5, which may only be pursued under Labor Code section 1198. (*Home Depot U.S.A., Inc. v. Superior Court* (2010) 191 Cal.App.4th 210, 218 [holding that "an employer's failure to provide seating under wage order No. 7-2001 is unlawful under section 1198"].) Claims under Wage Order 5 and Labor Code section 1198 are specifically included in the PAGA Judgment release. Claimant asserts that none of the authorities cited by Respondent concern seating claims. Claimant cites *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 538, to support his assertion that a prior settlement may not release claims "outside the scope of the allegations in the complaint." Here, however, his suitable seating claim does relate to the claims released in the PAGA Judgment

> because they arise from and relate to alleged violations of the employment conditions listed in the Labor Code and IWC Wage Order 5. Unlike the example of a retaliation claim proffered in Amaro, the claim for suitable seating, a condition of labor prohibited by Wage Order 5, is based on the same wage order and facts as the meal and rest period claims involved in the PAGA Judgment release.

(Varguez Arbitration Order, pp. 2-3.) In the Barrera Arbitration Order, the arbitrator included additional analysis, relying on two cases, *Villacres* and *Shine*:

> As to the seating-based claim, it involves the same primary right afforded under Labor Code section 1198, that is, the right to seek penalties based on allegedly being required to work under "conditions of labor prohibited by" IWC Wage Order 5. "If the matter was within the scope of the action, related to the subject matter and relevant to the issues, so that it could have been raised, the judgment is conclusive on it despite the fact that it was not in fact expressly pleaded or otherwise urged." (*Villacres v. ABM Industries Inc.* (2010) 189 Cal.App.4th 562, 576.); *Shine v. Williams-Sonoma, Inc.* (2018) 23 Cal.App.5th 1070, 1077 [holding that a claim for reporting time pay was barred by res judicata because even though it was not expressly alleged in an earlier case, the prior case involved the same primary right of seeking payment of wages due]). A claim for failure to provide suitable seating is solely based on IWC Wage Order 5, which may only be pursued under Labor Code section 1198. Claims under that section were released in the PAGA Judgment. Claimant's seating-based claim is no different from that asserted in Varguez; res judicata applies in both cases.

(Barrera Arbitration Order, p. 5.)

In *Villacres*, the defendant employer entered into a settlement in a class action brought by employees alleging failure to pay overtime, failure to pay wages for a split shift, and violation of Section 17200, and seeking civil penalties under the Labor Code. Two days after the court approved the settlement, the plaintiff, a member of the prior class, filed an action against the same employer seeking civil penalties under PAGA for alleged failure to pay overtime, furnishing employees with complete wage statements, providing meal and rest periods, indemnifying employees for business expenses and losses, and paying wages on a timely basis. The court found that the plaintiff's claims were barred by res judicata, stating: "A court-approved settlement in a prior suit precludes subsequent litigation on the same cause of action. Res judicata bars not only issues that were raised in the prior suit but related issues that could have been raised. Here, plaintiff attempted a second time to recover civil penalties for alleged Labor Code violations. But he could have sought to expand the scope of the prior action to include his additional penalty claims. In the alternative, he could have opted out of the class. Instead he reaped the benefits of the settlement in the prior action and then promptly filed this

suit, seeking more penalties." (*Villacres*, 189 Cal.App.4th at p. 569.) In *Shine*, the defendant employer settled a wage and hour class action brought by employees alleging violations regarding overtime pay, meal period premiums, rest period premiums, minimum wages, final wages, payment of all wages earned, failure to provide proper wage statements, failure to keep proper payroll records, failure to reimburse business expenses, relief under PAGA, and relief under Section 17200. Shortly thereafter, the plaintiff in *Shine*, who was a member of the settlement class, filed a class action against the employer alleging violations regarding reporting-time pay as required under Wage Order 7-2001, failure to pay all wages earned at termination, failure to provide accurate wage statements, and Section 17200. The court found that Shine's complaint was barred by res judicata, stating: "In the present action, Mr. Shine seeks reporting-time pay for on-call shifts that were canceled in early 2013, within the period covered by the *Morales* settlement agreement. Because reporting-time pay is a form of wages, a claim for reporting-time pay could have been raised in the [earlier] action. The fact that no claim for reporting-time pay was alleged in [that action] does not alter our determination that the same primary right, to seek payment of wages due, was involved in both [cases]." (*Shine*, 23 Cal.App.5th at p. 1077 [citations omitted].)

While some courts have distinguished *Villacres* and/or *Shine* and one has called *Villacres* into question, neither case has been overruled or abrogated and therefore could be considered by the arbitrator in reaching her decision. However, the arbitrator failed to address the First District Court of Appeal's recent decision in *LaCour v. Marshalls of California, LLC* (2023) 94 Cal. App. 5th 1172, discussed by Barrera in his supplemental Opposition, which limits the "court have" alleged analysis in cases where the new claims were not identified to the Labor and Workforce Development Agency ("LWDA") in the earlier, settled case. In *LaCour*, the court held that the plaintiff's PAGA claims were not barred by a settlement in an earlier PAGA action (*Rodriguez*) because the evidence showed the plaintiffs in the earlier action could not have alleged the new PAGA claims due to their failure to identify those claims in their letter to the LWDA. The court reasoned:

> Looking at the operative complaint in *Rodriguez*, the only Labor Code violations embraced by the pleaded PAGA claims in that action focus narrowly on compensation for off-the-clock work during time employees spent undergoing an anti-theft bag check procedure at the end of their shifts. That is the "injury" Paulino allegedly suffered and the hook for her PAGA claim as an "aggrieved employee" on behalf of other Marshalls employees. While the claim preclusive effect of the *Rodriguez* judgment may extend beyond Paulino's pleaded claims to claims she could have brought if we were to define the "injury" suffered more broadly as her right to be free from any and all Labor Code violations in the course of her employment with Marshalls, one problem Marshalls faces in arguing for such broad preclusive effect is that Paulino's LWDA notice letter tracks her complaint. It, too, is limited to off-the-clock work at the end of shifts.

For us to say that, because Paulino "could have" alleged a broader set of PAGA claims in *Rodriguez*—encompassing the raft of additional wage-and-hour violations LaCour seeks to pursue in this case under the principle that they arise out of the same legal "injury"—and thus that the claim preclusive effect of the *Rodriguez* judgment bars this case, we would need proof that Paulino was deputized by the LWDA to file suit on the broader set of PAGA claims that LaCour subsequently brought. Nothing in the record shows that Paulino had that authority.

. . . "As a condition of suit, an aggrieved employee acting on behalf of the state and other current or former employees must provide notice to the employer and the responsible state agency 'of the specific provisions of [the Labor Code] alleged to have been violated, *including the facts and theories to support the alleged violation.*' Thus, for a PAGA plaintiff to obtain authorization to sue as a proxy for the state, she must provide notice to the LWDA of at least minimal "facts and theories" to support a proposed PAGA claim.

Without such a minimal showing, the LWDA, as the responsible enforcement agency, has no basis to determine whether it may wish to take direct enforcement action. "Put another way, 'something more than bare allegations of a Labor Code violation' is necessary to constitute adequate notice. [Citation.] Mere code section references with prose excerpting or rephrasing the statutory language are 'insufficient because they simply paraphrase[ ] the allegedly violated statutes.' [Citation.] Instead, 'the plain meaning' of the phrase '"facts and theories to support [the] alleged violation"' indicates that plaintiffs are 'required to put forward sufficient facts to support their claims of labor violations.'"

Because Paulino's LWDA notice letter identified nothing more than failure to compensate employees for off-the-clock work at the end of shifts, it is impossible to say she "could have" sued for other violations. [FN8] Whether she could have obtained broader authorization is pure speculation. In analyzing the identity of claims requirement for claim preclusion, the trial court overlooked this problem by taking the view that "[w]here a claim has been settled, the scope of claim preclusion changes from a claim preclusion analysis of the 'harm suffered' to a contract analysis of the scope of the release." That assumes the answer to the legal question at hand. Rather than assess what was or could have been properly *pleaded* in *Rodriguez*, which was required in order to analyze the primary rights issue, the trial court focused on what was released. The two inquiries are not the same.

> . . . the underlying issue of LWDA authorization-to-sue is inextricably bound up with the identity of claims analysis here. If she purports to settle PAGA claims that are not the subject of an adequate LWDA notice letter, a PAGA plaintiff exceeds her authority to act on behalf of the LWDA and to that extent cannot bind the LWDA to a judgment, at least not one that will have claim preclusive effect against a PAGA claimant authorized to litigate a broader set of PAGA claims. By skipping over this issue, the trial court's focus on the scope of the *Rodriguez* release relieved Marshalls of the burden to show that Paulino actually pleaded or could have pleaded the same PAGA claims that LaCour now seeks to pursue.
>
> . . . in the PAGA context, where the interests of nonparties are implicated, we must proceed cautiously in analyzing res judicata. A settlement release exceeding the plaintiff's LWDA authorization will limit the claim preclusive effect of a judgment in binding nonparties, since it will prevent a defendant who later seeks to interpose a res judicata defense from meeting the identity of claims requirement necessary to trigger preclusion.
>
> . . . If a PAGA claimant's pre-suit notice, for example, fails to list a particular Labor Code section that might apply to the factual showing made in the claimant's LWDA notice, the notice would still be adequate to support a release of claims resting on that unlisted violation; the unlisted claim, in that scenario, would be nothing more than an alternative legal theory to justify recovery for the same injury. But that is not the case we have here. Because Paulino made *no* factual showing beyond her end-of-shift theory to support any of the various statutes on the menu of Labor Code sections she mentioned in a footnote to her LWDA notice letter, we cannot say that the doctrine of claim preclusion applies.
>
> . . . on the record before us, where a PAGA claimant agreed to entry of judgment resolving a variety of claims for which she provided no factual basis to the LWDA—and thus failed to give LWDA an opportunity to investigate—we hold that the prior judgment does not extinguish unlisted PAGA claims in litigation brought by other authorized PAGA plaintiffs because such claims do not arise from violations of the same primary rights Paulino was authorized to pursue.

(*Id.* at pp. 1192-1194 [citations omitted].)

The letter to the LWDA in *Maningas-Ng*, attached to Barrera's supplemental Opposition, outlines a number of alleged specific PAGA violations (failure to pay for all hours worked, failure to provide compliant meal breaks, failure to provide compliant rest breaks, failure to

provide proper wage statements, failure to reimburse business-related expenses, failure to pay wages within 7 days under Labor Code Section 204) but does not mention suitable seating. (Sullivan Decl., Exh, 7.)

The Court concludes that the arbitrator committed clear legal error with respect to her ruling that Barrera's PAGA claim was barred by res judicata. Defendants/Respondents had the burden of showing that the claims were barred by res judicata. (*Hong Sang Market, Inc. v. Peng* (2018) 20 Cal.App.5th 474, 489.) As the *Amaro* and *LaCour* cases show, this includes a showing that the suitable seating claim was or could have been raised in the complaint in the earlier settled action. Here, Defendants did not submit the *Maningas-Ng* complaint to the arbitrator to establish the claims that were made or could have been made in that action.[2] Not only did the arbitrator make her ruling without reviewing the *Maningas-Ng* complaint, she failed to address the LWDA letter in *Maningas-Ng* which did not reference a suitable seating claim or include language broad enough to encompass a suitable seating claim. This letter supported a finding that res judicata did not apply under *LaCour*, a case not addressed in the arbitrator's ruling. As the arbitrator's ruling prevented a hearing on the merits Barrera's suitable seating PAGA claim, the court will vacate the Barrera Arbitration Order for clear legal error as to this claim under *Pearson Dental* and *Castelo, supra.*

Statute of Limitations

Barrera argues that the arbitrator also erred with her ruling that Barrera's non-PAGA claims were barred by the statute of limitations. In the Varguez Arbitration Order, the arbitrator ruled that these claims (unpaid overtime, unpaid minimum wages, failure to provide meal periods, failure to authorize and permit rest periods, non-compliant wage statements and failure to maintain payroll records, wages not timely paid upon termination, failure to timely pay wages during employment, and unreimbursed business expenses) were barred because they were not brought to arbitration until October 11, 2023, more than three years after Varguez's termination. The parties' arbitration agreement required that all claims be filed within the controlling statute of limitations. The arbitrator rejected Varguez's argument that his claims were not untimely because they related back to the filing of his Complaint in this action in December 2020, nine months after his employment ended. The arbitrator relied upon *Platt Pacific, Inc. v. Andelson* (1993) 6 Cal.4th 307, 310–311, 313) for the proposition that "[t]he courts of this state have held that 'where a contract provides that arbitration may be demanded within a stated time, failure to make demand within that time constitutes a waiver of the right to arbitrate.'" The arbitrator then stated that Varguez failed to submit any authority that the relation back doctrine "may save time-barred claims that are filed in one forum when claims involving the same alleged facts were pursued in a different forum." The arbitrator made the same ruling in the Barrera Arbitration Order.

Barrera argues that the arbitrator's ruling is directly contrary to Code of Civil Procedure Section 1281.12, which provides: "If an arbitration agreement requires that arbitration of a

[2] Neither party has submitted a copy of the operative *Maningas-Ng* complaint in connection with the instant motion. Defendants have submitted a declaration filed in connection with the motion for approval of the settlement in *Maningas-Ng*, which shows that the causes of action asserted in the *Maningas-Ng* complaint are the same as those outlined in the *Maningas-Ng* LWDA letter. (RJN, Exh. C.)

controversy be demanded or initiated by a party to the arbitration agreement within a period of time, the commencement of a civil action by that party based upon that controversy, within that period of time, shall toll the applicable time limitations contained in the arbitration agreement with respect to that controversy, from the date the civil action is commenced until 30 days after a final determination by the court that the party is required to arbitrate the controversy, or 30 days after the final termination of the civil action that was commenced and initiated the tolling, whichever date occurs first."

However, neither Varguez nor Barrera relied on Section 1281.12 in their Oppositions to Defendants/Respondents' motion for judgment on the pleadings in the arbitrations. Barrera's supplemental Opposition did not address the statute of limitations specifically, and instead merely stated it incorporated Varguez's Opposition. Varguez, citing *Hutcheson v. Superior Court* (2022) 74 Cal. App. 5th 932, 940, argued only that the claims he asserted in arbitration related back to the claims asserted in the Complaint. He did not cite Section 1281.12 and did not discuss tolling. Thus there was no clear legal error based on Section 1281.22 where Plaintiffs/Claimants did not even present this authority to the arbitrator.

Barrera's argument that the arbitrator erred because *Platt* is distinguishable and she instead should have followed the rationale of *Hutcheson* in this context is not enough to show clear legal error. The arbitrator distinguished *Hutcheson* and concluded that the relation back doctrine did not apply to arbitration claims where the earlier claims were asserted in a different forum. The arbitrator did not ignore any applicable authority argued by the parties, or any relevant evidence, when reaching her decision and therefore her analysis and conclusion are not clearly erroneous.

Same Result under Federal Law

The Court notes that even if it applied federal law to this motion, it would reach the same result. Under the FAA, a court may vacate the arbitration award "where the arbitrators exceeded their power[.]" (9 U.S.C. § 10(a)(4).) This standard is met when an arbitrator's decision "constitutes manifest disregard of the law". (*Comedy Club,* 553 F.3d at p. 1288.) Here, the arbitrator's decision regarding res judicata constituted a manifest disregard of the law as she ignored the recent *LaCour* decision raised by Barrera which would have resulted in a contrary ruling on this issue. The arbitrator's decision regarding the statute of limitations issue did not constitute a manifest disregard of the law and the arbitrator did not exceed her power with respect to her determination on this issue.

Order for Rehearing

"A court may vacate only an *entire* arbitral award, not some portion of it, even if the basis for vacatur affects only one aspect of the award." (*VVA-TWO, LLC v. Impact Development Group, LLC* (2020) 48 Cal.App.5th 985, 998 [emphasis in original].) "If the award is vacated, the court may order a rehearing before new arbitrators. If the award is vacated on the grounds set forth in paragraph (4) or (5) of subdivision (a) of Section 1286.2, the court with the consent of the parties to the court proceeding may order a rehearing before the original arbitrators." (Code Civ. Proc. § 1287.) Here, the Court vacates the award under the clear legal error standard of

Pearson Dental. The rehearing of Barrera's claims shall be before a new arbitrator pursuant to Section 1287.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for April, 2025 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1615487764?pwd=Ob4B5J7LLKcpnkxzJjjEOSHNzEGafG.1
Meeting ID: 161 548 7764
Passcode: 502070

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: https://www.marin.courts.ca.gov

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 04/23/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV2200213

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: SHOSHANA SKLARE vs. DEFENDANT: KAISER FOUNDATION HOSPITAL, INC., ET AL	

NATURE OF PROCEEDINGS: MOTION – DEPOSITION; DISCOVERY FACILITATOR PROGRAM

RULING

Appearances required.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for April, 2025 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1615487764?pwd=Ob4B5J7LLKcpnkxzJjjEOSHNzEGafG.1
Meeting ID: 161 548 7764
Passcode: 502070

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: https://www.marin.courts.ca.gov

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 04/23/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0004985

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: JULIA VAN DER RYN and DEFENDANT: DARIO MARCHETTI/VAN DER RYN FAMILY TRUST, ET AL	

NATURE OF PROCEEDINGS: DEMURRER

RULING

Defendant MICAH VAN DER RYN demurred to Plaintiff Julia Van Der Ryn's second, third, fourth and fifth cause of action on the basis that they failed to state a cause of action in that the Probate Court has exclusive jurisdiction over these causes of action. Defendant requested that the court sustain the demurrer without leave to amend. Plaintiff was served with a copy of these pleadings and did not file an opposition. A failure to oppose a motion may be deemed a consent to the granting of the motion. (Cal. Rules of Court, rule 8.54, subd. (c).)

In light of the non-opposition, the court sustains Defendant's demurrer as to the second, third, fourth and fifth causes of action without leave to amend. Defendant shall file an answer to the remaining cause of action within thirty (30) days of entry of this order.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for April, 2025 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1615487764?pwd=Ob4B5J7LLKcpnkxzJjjEOSHNzEGafG.1
Meeting ID: 161 548 7764
Passcode: 502070

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: https://www.marin.courts.ca.gov

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 04/23/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0005168

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PETITIONER: PRESERVE ROSS VALLEY and RESPONDENT: COUNTY OF MARIN	

NATURE OF PROCEEDINGS: 1) MOTION – PRELIMINARY INJUNCTION
2) DEMURRER – REAL PARTY MARIN CATHOLIC HIGH
3) CASE MANAGEMENT CONFERENCE

RULING

Continued to April 30, 2025.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for April, 2025 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1615487764?pwd=Ob4B5J7LLKcpnkxzJjjEOSHNzEGafG.1
Meeting ID: 161 548 7764
Passcode: 502070

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: https://www.marin.courts.ca.gov