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EMPLOYMENT LAW UPDATE

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## JUDICIAL

### California

### In *Cacho v. Eurostar, Inc.*, California Appellate Court Denies Class Certification in Favor of Employer Accused of Wage & Hour Violations, Where Facially Non-Compliant or Non-Exhaustive Written Policies Issued

In the recent decision *Cacho v. Eurostar, Inc.*, a California Court of Appeal ruled that a class action lawsuit brought by two former retail workers for wage and hour violations did not meet class certification requirements. This ruling affirmed a trial court's denial of class certification because the named plaintiffs' claims were not typical of the proposed class and common questions of law or fact did not predominate. This case is notable because facially non-compliant and inexhaustive written policies were not dispositive on the question of class certification.

Eurostar, Inc. ("Eurostar") operates approximately 69 retail shoe stores in California. The named plaintiffs, David Cacho and Regina Silva ("Plaintiffs"), worked as non-exempt employees at several of the stores. Cacho's roles varied by store. Silva held several positions at two stores. Both Cacho and Silva worked together, and Cacho supervised Silva when they worked together. Cacho oversaw the enforcement the company's policies as applied to Silva. Eventually, they were both discharged and later brought a class action lawsuit alleging various wage and hour claims on behalf of themselves and other non-exempt retail store employees.

Plaintiffs sought class certification for a series of subclasses, including subclasses for alleged meal break violations, rest break violations, and off-the-clock work. The written meal break policy only mentioned the need for "at least" one thirty-minute meal break when working over five hours. Eurostar's policy was otherwise silent on the timing of additional breaks and that the first meal break must occur within the first five hours. Plaintiffs alleged that the meal break policy was therefore unlawful for failing to address all circumstances where an employee would be entitled to a meal break. Eurostar's written rest break policy required employees to maintain a "professional atmosphere," and Plaintiffs argued for the first time on appeal that the policy effectively required on-duty rest breaks. An older version of the rest break policy authorized a rest break after four hours of work and failed to expressly authorize a third ten-minute rest break for shifts beyond ten hours; Plaintiffs argued that these policies were uniformly unlawful. Lastly, Eurostar's employee handbook strongly discouraged off-the-clock work, but Plaintiffs alleged that they occasionally had to work before a shift, after a shift, or during meal breaks.

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Relying on the class certification requirements articulated in *Sav-On Drug Stores, Inc. v. Superior Court*, the trial court found that the putative class members met most class certification requirements. The proposed classes were ascertainable, sufficiently numerous, and adequately represented. However, Plaintiffs did not present sufficient evidence that common questions of law or fact predominated. The trial court rejected the argument that Eurostar broke the law by failing to articulate every situation or circumstance entitling an employee to a meal break. Although the older rest break policy was unlawful as written, the trial court denied certification because there was no evidence of an actual practice of denying rest breaks and the policy was corrected in 2013. Further, the company's policy prohibiting off the-the-clock work was lawful, and there was no contradictory evidence that Eurostar pressured or required off-the-clock work. The trial court also found Plaintiffs' experiences to be atypical of the class because most alleged violations occurred during Plaintiffs' time working together at only two stores.

The court of appeal affirmed the trial court's denial of class certification in light of the requirements articulated in *Brinker Restaurant Corp. v. Superior Court*. In *Brinker*, the California Supreme Court established that class certification may be proper when a plaintiff's theory of liability asserts that an employer consistently applied a uniform, unlawful policy to a group of employees. This type of theory of liability can help establish the class certification requirement that common issues of fact or law must predominate. The Court of Appeal in *Cacho* emphasized that trial courts may look to evidence at the class certification stage to determine whether common issues of fact or law predominate and whether Eurostar's liability can be shown through common proof.

Here, Eurostar's liability was not subject to common proof for the meal break, rest break, or off-the clock work subclasses. Eurostar's written meal break policy was not expressly unlawful, and Eurostar was able to provide evidence of the company's compliance with wage order requirements. Testimony showed that meal break violations depended on the actions of individual managers rather than company-wide policies. For the purposes of class certification of rest break subclasses, the court noted that facially unlawful written policies do not automatically necessitate subclass certification. Indeed, Plaintiffs were unable to show that Eurostar actually denied rest breaks for shifts between three and a half and four hours. Separately, because the issue was not originally raised when requesting class certification on the trial court level, the court on appeal rejected Plaintiffs' argument that requiring employees to maintain a "professional atmosphere" during rest breaks constituted an unlawful on-duty rest break. Finally, Eurostar's off-the-clock work policy was facially lawful, and there was no evidence that employees were pressured to work off-the-clock.

This decision's lengthy analysis of California class certification requirements offers valuable insights for California employers with regard to written policies and handbooks. Even though Eurostar's written handbook did not articulate every instance of a particular policy's applicability, that did not automatically constitute a wage order violation or guarantee certifiability. Further, where Eurostar's old, facially unlawful rest break policy was subsequently amended and did not lead to wage order violations in practice, class certification was denied. Employers considering review of their written policies should

consider reviewing this case to better understand the ramifications of vague wording in employee handbooks.

**In Newest Safeway Wage Decision, Court of Appeal Examines Distinction Between Exempt and Nonexempt Tasks Performed by Managers**

In the recent of a series of wage and hour lawsuits against Safeway ("Safeway Wage and Hour Cases"), a class of former managers of Safeway stores including William Cunningham ("Appellant") filed suit seeking unpaid overtime wages, claiming they had been misclassified as exempt executives under regulations applicable to the mercantile industry. At trial, the jury found that Appellant was an exempt employee and was therefore not entitled to overtime pay. He appealed the decision and challenged the trial court's instruction based on the language in *Batze v. Safeway, Inc*. and *Heyen v. Safeway Inc*. The court of appeal upheld the jury's decision but clarified the proper jury instruction, explaining that a task does not become exempt merely because the manager undertakes it in order to contribute to the "smooth functioning" of the store.

Under Wage Order 7-2001, which is applicable to the mercantile industry, to qualify for the executive exemption, a California employee must be primarily engaged in duties that meet the test of an executive position. "Primarily engaged" means that an employee spends more than one-half of his or her work time engaged in those duties. As to the nature of the work, Wage Order 7-2001 provides that exempt and nonexempt work are to be construed in the same manner as under the Fair Labor and Standards Act. The principal dispute at trial concerned how Appellant spent the majority of his time. The jury was presented with two starkly contrasting factual scenarios – Appellant claimed that he spent most of his work time stocking shelves and checking out customers (nonexempt work), while Safeway contended that he spent most of his time performing managerial tasks such as supervising, training and disciplining employees, assessing store conditions, and filling out financial reports (exempt work).

Federal regulations recognize a category of exempt tasks that may not be so easily identifiable as exempt – work "directly and closely related" to the management of a department and the supervision of employees. The Safeway Court examined the exemption standards of the federal regulations as laid out in *Batze* and *Heyen*. Both cases involved Safeway assistant managers who claimed that they had spent more than half of their time performing nonexempt work and were thus entitled to overtime pay. In *Heyen*, the court held that the trier of fact must separately classify each task as either exempt or nonexempt, and where employees engage in the concurrent performance of exempt and nonexempt work, categorization of that time depends on their purpose in undertaking the activity. The *Heyen* court advised that identical tasks may be exempt or nonexempt based on the purpose they serve within the organization or department: "a task performed because it is helpful in supervising the employees or contributes to the smooth functioning of the department is exempt, even though the identical task performed for a different nonmanagerial reason would not be exempt." However, "work of the same kind performed by a supervisor's nonexempt employees generally is 'nonexempt' even when that work is performed by the supervisor." These principals were repeated in *Batze*, where the court of appeal concluded: "while both managers and their subordinates could engage in the seemingly identical work of

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scanning out-of-stocks, the managers' periodic performance of this task served a different function that was 'directly and closely related' to the management and supervision of their stores." However, the *Batze* Court also noted that the applicable federal statute advised that in large retail settings, restocking or making sales to customers is nonexempt unless done for training or demonstration purposes.

Appellant argued that it was an error for the trial court to instruct the jury that "[a] task performed because it is helpful in supervising employees in the store or because it contributes to the smooth functioning of the store or any subdivision of the store is exempt . . . ." and claimed that the instruction was too broad. The court acknowledged that without the surrounding context of the regulations and the governing principles acknowledged in *Heyen* and *Batze*, the language of the instructions may be confusing to a jury. The court held that an instruction on the consideration of the manager's purpose, where appropriate, must inform the jury of relevant limiting principles outlined in the applicable regulations by the court's prior decisions. However, the court also held that the trial court's instruction did not affect the jury's verdict, as the principal dispute at trial concerned how Appellant spent the majority of his time, not the proper categorization of the tasks he performed.

Notably, the court clarified the proper role of the purpose inquiry: "The consideration of a manager's purpose in performing a particular task is intended to capture the narrow category of work that is not inherently managerial but is 'directly and closely related' to management and the supervision of employees." This category may include certain time spent concurrently performing exempt and nonexempt work. However, a trial court need not instruct the jury to consider the manager's purpose unless the employer's defense theory invokes the "work directly and closely related" category and substantial evidence supports its application. The court also noted that when an instruction on the "work directly and closely related" category is appropriate, the court should not instruct a jury that *any task* is exempt if the manager undertakes it because it "contributes to the smooth functioning" of the store.

In light of the court's ruling, it is important for employers to ensure that their managers are spending at least half of their work time conducting managerial or exempt tasks in order to avoid payouts for accrued overtime pay. A careful audit of the various duties performed by managers and the time spent on each activity should be undertaken if there is any question as to the proper classification, and remedial action should be taken expediently if needed.

**Court of Appeal Affirms Summary Judgment in Favor of Employer Against Employee's Disability Discrimination and Harassment Claims**

In *John Doe v. Department of Corrections and Rehabilitation.*, a California court of appeal affirmed a trial court's decision granting summary judgment against a psychologist who alleged disability discrimination, retaliation, and harassment and failure to accommodate under the California Fair Employment and Housing Act ("FEHA"), against his former employer, a California state prison, finding that there were no triable issues of material fact .

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Plaintiff John Doe ("Employee") was employed as a permanent psychologist by the California Department of Corrections and Rehabilitation ("CDCR") at the Ironwood State Prison. One year into Employee's employment, he submitted an accommodation request for a quieter workspace for a learning disorder not otherwise specified ("LD NOS"). CDCR requested medical documentation showing the nature and extent of his limitations. Employee provided a general doctor's note that did not specify a disability or the extent of his limitations. CDCR explained to Employee that all mental health clinicians would soon be transferred to quieter offices, pursuant to a new model that the prison was implementing. Employee thought this was not sufficient. Employee took a three-month medical leave due to stress. Upon his return, he was given a quieter, less distracting office.

Employee later filed a second request for accommodation for: (1) permission to stay in his current office; (2) a thumb drive; (3) a small recorder; and (4) voice dictation computer software to assist with his asthma and LD-NOS. However, a thumb drive and recorder were considered contraband at the prison. CDCR installed the voice dictation software on Employee's computer. Employee admitted at his deposition that he was unable to figure out how to use the software because he had a different version on his home computer. Employee subsequently took a second medical leave of absence for twelve weeks.

The court of appeal found that Employee's discrimination and retaliation claims failed because there was no adverse employment action. Employee argued that his supervisor subjected him to adverse employment actions by criticizing his work during an interrogation-like meeting, ordering a wellness check on him when he was out sick, suspecting him of bringing a cell phone into work, and assigning him the primary crisis person on the same day as a union meeting. The court found such conduct to be minor and did not threaten to materially affect the terms, conditions, or privileges of his job, or result in any formal or informal discipline or demotion in Employee's job responsibilities.

Employee further argued that the fact that he took medical leave on two occasions when he did not receive his requested accommodations constitutes an adverse employment action. The Court of Appeal rejected this argument because Employee requested permission for his medical leaves, both of which CDCR granted. Further, no court has held that a failure to reasonably accommodate an employee's disability can qualify as an adverse action for a discrimination or retaliation claim.

The court of appeal also found that Employee's harassment claim failed because there was no evidence that the supervisor's conduct rose to the level of harassment under the FEHA. The allegedly harassing conduct (assigning and reviewing work, approving time-off requests, and enforcing workplace rules) were all personnel decisions that were within his scope of duties as Employee's supervisor. Employee's perception that these actions were malicious does not transform his conduct into harassment.

Finally, Employee's claims for failure to accommodate and engage in the interactive process failed because CDCR presented evidence that Employee was responsible for the breakdown in accommodation discussions and Employee failed

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to present any evidence to the contrary. The information and doctor's notes that Employee provided were vague and did not specify that he suffered from asthma or dyslexia. Instead the descriptions were generalized references to "an underlying medical condition," "LD-NOS," "migraine headaches," etc. They also failed to provide the extent of his disabilities and what work limitations they caused.

Thus, the court of appeal found no issues of triable fact and affirmed the trial court's judgment in favor of the CDCR.

**Court of Appeal Provides Guidance on Using Acronyms, Abbreviations, and Fictitious Business Names on Wage Statements to Comply with Labor Code Provisions**

A California court of appeal ruled in *Noori v. Countrywide Payroll & HR Solutions, Inc.* that listing an employer's unregistered acronym or trade name on a wage statement may be noncompliant under the California Labor Code, even when the employer's registered name is correctly listed on the paychecks.

Mohammed Noori ("Appellant") sued his former employer, Countrywide Payroll & HR Solutions, Inc. ("Countrywide") for violations of the Labor Code relating to mandated information on itemized wage statements. After Appellant began working for Countrywide in 2015, Countrywide furnished him wage statements that listed the employer of record as "CSSG." "CSSG" stood for "Countrywide Staffing Solutions Group," which is not a name listed with the California Secretary of State but is a fictitious business name for Countrywide Payroll Solutions, Inc. used in some states outside of California. Countrywide Staffing Solutions Group, Inc. operated under the fictitious business name of "Countrywide HR" or "CWHR" in California. Appellant claimed that he thought he was working for Restoration Hardware, whose worksite he reported to during his employment. As such, he alleged that he and other employees "were unable to promptly and easily determine" their actual employer's name from their wage statements.

Labor Code section 226(a) requires employers to issue wage statements with certain information, including "the name and address of the legal entity that is the employer." Additionally, it provides: "a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, 'copy' includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision." An employee suffering injury as a result of an employer's knowing and intentional failure to comply with subdivision (a) is entitled to recover statutory damages, court costs and attorney's fees; injunctive relief is also available.

Appellant filed suit alleging that Countrywide violated Labor Code section 226(a) by: (1) providing wage statements bearing an acronym instead of the full legal name of the employer as required by section 226(a)(8); and (2) failing to maintain copies of accurate itemized wage statements. He also sought penalties for these claims under the Private Attorneys General Act ("PAGA"). Countrywide filed a demurrer, arguing that neither of the causes of action stated a claim. The

trial court sustained Countrywide's demurrer, and ruled that "CSSG" satisfied the statutory name requirement. It noted that truncated names have been held to suffice, and unlike cases where violations had been found, Countrywide's wage statements included both a name and an address. Also, because "CSSG" had not violated section 226(a)(8), the claim for failure to maintain records – itself grounded on the failure to state the employer's name – also failed. The trial court noted those failures rendered the PAGA claims moot. Appellant appealed the trial court's ruling.

The court of appeal ruled that the trial court erred in its ruling, determining that the use of the acronym "CSSG" did not satisfy section 226(a)(8) as a matter of law. In reaching its conclusion, the court pointed out that section 226 does not expressly require that the name registered with the California Secretary of State be included on the wage statement, nor that the employer's complete name be included. Additionally, minor truncations of an employer's name have been found to comply with the statute. The court further noted that a fictitious business name does not create a separate legal entity, and therefore, fictitious business names can satisfy the statute. However, the court also pointed out that more severe truncations or alterations of the employer's name can violate the statute, particularly where confusion might ensue. The court pointed out that in the instant case, while it saw no reason why the use of an out-of-state fictitious business name would violate the statute, the use of an unregistered acronym of the fictitious name is another matter. The court also cautioned that an employer using a shortened name or abbreviation that renders the name confusing or unintelligible may be violating section 226(a)(8). Additionally, the court stated that even though "Countrywide Staffing Solutions Group" appeared on paychecks attached to wage statements, the paycheck is not "part of" the wage statement. The court therefore reversed the order sustaining the demurrer as to the failure to furnish claim and remanded for further proceedings.

Separately, the court held that the trial court properly sustained Countrywide's demurrer to the failure to maintain records claim. Appellant had argued the documents Countrywide provided in response to his request for payroll records did not include the employer's name and address. Thus, he claimed that he adequately alleged injury because section 226's standard for determining when an employee is deemed to suffer injury also applies to a failure to maintain records claim. The court disagreed, holding that the provision deeming injury applies only to claims related to the failure to furnish claims, and not to a claim for failure to maintain copies of wage records.

Apart from the issues regarding the listed name on the wage statements, the court rejected a challenge to the adequacy of Appellant's notice in advance of bringing PAGA claims, specifically concerning the statutory sections that were at issue. The court concluded Appellant satisfied the notice requirement for seeking PAGA penalties even though he cited the wrong section, and that he was not required to give notice to the employer that the violation may be cured.

The takeaways of this case are two-fold. First, employers must ensure that their wage statements correctly list the required information pertaining to the employer's name, particularly if trade names, abbreviations, or acronyms are used. Second, employers should be careful when receiving PAGA claim notices to

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carefully evaluate the contents, and to determine remedial action and potential opportunities to cure, even if the statutory grounds listed are ambiguous or incomplete.

**Parent Companies Beware**

In *Jeremiah Mathews v. Happy Valley Conference Center, Inc. et al.*, a California Court of Appeal held substantial evidence existed to affirm jury findings of: (1) a defendant church entity and its subsidiary affiliate qualifying as a single employer; (2) the subsidiary's breach of an implied-in-fact contract with plaintiff constituting a breach also by the church entity; and (3) whistleblowers' entitlement to all forms of relief granted to civil litigants generally, including punitive damages. The appeals court however did reverse on the trial court's finding that the defendants waived and/or were estopped from asserting the religious entity exemption under California's Fair Employment and Housing Act ("FEHA") when they did not raise the exemption during an Equal Employment Opportunity Commission ("EEOC") investigation.

Plaintiff Jeremiah Mathews ("Plaintiff") worked as a maintenance supervisor and cook for defendant Happy Valley Conference Center, Inc. ("Happy Valley"), a California non-profit community center that hosts groups for seminars, retreats, and camps on a 30-acre area. Happy Valley is also a subordinate affiliate of co-defendant Community of Christ ("the Church"), a Missouri non-profit corporation. The Church is separated geographically into Mission Centers, with Sierra Pacific Mission Center ("SPMC") covering Happy Valley's property.

A male Happy Valley employee informed Plaintiff that a Happy Valley female executive director was allegedly sending him sexually inappropriate text messages. Plaintiff passed on the accusations to a Happy Valley director and the Church's general counsel, and less than one month later, Plaintiff's employment was terminated. He filed an administrative complaint and subsequently sued in federal civil court. A jury heard a multiple-week trial and in less than one day of deliberation found for Plaintiff on all causes of action, ordering the defendants to pay nearly $900,000.00, including $500,000 in punitive damages, and an additional $1 million in attorneys' fees. The defendants appealed.

Court of Appeal Analysis for its Affirmed Rulings

a. Common ownership and management, interrelated operations, and/or centralized control of labor could qualify your parent-subsidiary to be a jointly liable, single employer.

Courts will consider two corporations a single employer, jointly responsible for the actions of one another, if their business relationship satisfies a four-factor test known as the Integrated Enterprise Test – common ownership or financial control; common management; interrelated operations; and centralized control of labor. All factors are to be considered, but courts routinely deem centralized control of labor relations to be the most important. In *Mathews*, the appeals court found substantial evidence existed to show the Church and Happy Valley fulfilled all four factors and were properly treated as a single employer.

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Common ownership was naturally inferred by the parent-subsidiary context of defendants and the Church maintained reasonable financial control over Happy Valley as trial testimony revealed when it audited Happy Valley's financial statements. Common management was evidenced by Happy Valley Board members consisting of some individuals who held management positions with the SPMC and high-positioned members of the Church holding positions on Happy Valley's executive committees. Defendants exhibited interrelated operations by allowing Happy Valley employees to enjoy the Church's health insurance, Happy Valley's bylaws expressly stating it is an integral subordinate unit and part of the Church that is accountable to General Church Officers and the SPMC, and the Church's general counsel testifying that the Church's Mission Centers are the church with no legal distinction between them and it would be the same at their campgrounds, including Happy Valley's campgrounds.

The final and most important factor was deemed evidenced by Happy Valley's consistent reporting to the Church about sexual harassment reports, the Church's possession of Plaintiff's personnel file for no independent reason, and the extensive involvement of the Church's liaison with Happy Valley in the ultimate decision to terminate Plaintiff's employment. The liaison specifically voiced to Happy Valley high personnel that he found Plaintiff's claims were "crap," his actions "out of control," and that action needed to be taken.

b. Two corporations can be liable for the breach of only one of the corporation's implied-in-fact contracts if the corporations are deemed a single employer.

On appeal, the Church argued it should be relieved of liability for breach of contract because Plaintiff asserted the terms of the Happy Valley Employee Handbook, an implied-in-fact contract, were breached, not the terms of any Church contract. However, a finding that Defendants represented a single employer permitted a determination of breach of the contract to subject the Church to liability as well; furthermore, witnesses testified that the Church reviewed a draft of Happy Valley's handbook without providing feedback, which the court interpreted to infer tacit acceptance of its terms.

c. Two corporations deemed a single employer are subject to payment of punitive damages for violations of Labor Code section 1102.5 and their combined net-worth shall be the basis for considering appropriate recovery amounts.

Defendants contended Plaintiff could not seek punitive damages under Labor Code section 1102.5 because the code does not expressly state what damages Plaintiff may recover. But the appeals court ruled punitive damages recoverable under the statute as Labor Code section 1105, subdivision (f), states that nothing shall prevent an injured employee from recovering damages for a violation of Labor Code section 1102.5 and Labor Code section 1102.5, subdivision (f), states that the penalty specified therein is to be imposed in addition to other penalties.

Defendants also attempted to argue a $500,000.00 punitive damages award was disproportionate to Happy Valley's ability to pay given its low net worth. However, the court concluded Defendants' proper treatment as a single employer

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evidenced Defendants' joint net worth was over $179 million, making the punitive damages award not unconstitutionally excessive.

Court of Appeal Analysis for its Reversed Rulings

a. Failure of a religious entity to assert the religious entity exemption during an EEOC investigation and/or having employee handbook language similar to statutory language under the FEHA does not automatically waive or estop the exemption.

While the FEHA prohibits retaliation by any employer, non-profit religious associations or corporations are exempt from the FEHA's definition of "employer." In *Mathews*, Plaintiff sought to argue that Defendants were liable as otherwise exempt religious entities for retaliation under the FEHA because the statutory scheme prohibits retaliation by "any employer, labor organization, employment agency, or person." (Gov. Code, § 12940, subd. (h).) He further claimed Defendants waived their right to raise the exemption because they did not stand on the exemption in the EEOC investigation and Happy Valley's Employee Handbook referenced state or local law; included prohibitions regarding discrimination, harassment, and retaliation; and suggested employees file a complaint with a local state agency if they feel harassed or retaliated against for resisting or complaining. Plaintiff otherwise contended Defendants should be estopped from relying on the exemption because Plaintiff detrimentally relied on Defendants' silence about the exemption in pursuing his claims and expending his resources in litigation. The appeals court disagreed with each of Plaintiff's positions.

Plaintiff's strict textual interpretation was deemed deficient. The appeals court noted Plaintiff pointed to nothing in the text or legislative history of the FEHA suggesting a legislative intent to limit the religious entity exemption or effectively eliminate it in the context of retaliation. Nor did it find legislative history indicating the legislature also intended by the addition of "or person," to allow an employee fired by a religious entity employer to circumvent the religious entity exemption by characterizing the employer as a "person" for purposes of a retaliation suit.

Defendants actions during the EEOC investigation and their employee handbook language did not constitute as waivers of the religious entity exemption. Upon fully analyzing Happy Valley's Employee Handbook the appeals court deduced it was comprised of boilerplate prohibitions that made no promises that Defendants would be bound by the FEHA and that it expressly refers to being bound by "applicable" laws. And the FEHA is not applicable to religious entities under the religious entity exemption. Additionally, the appeals court held the EEOC notice issued after Plaintiff's filing only stated it would be investigating a potential Title VII violation, not a FEHA violation. This made Defendants' failure to assert the religious entity exemption reasonable.

Lastly, the appeals court did not hold Plaintiff's asserted detrimental reliance to be sufficient to prove estoppel. Firstly, it reaffirmed that California limits equitable estoppel for defensive use and Plaintiff asserted here offensively. Secondly, even if the court permitted offensive estoppel, it concluded Plaintiff was at least constructively informed that Defendants intended to assert the exemption

because they filed a general denial, effectively contesting Plaintiff's request for declaration that Defendants were covered by the FEHA.

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