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— Labor & Employment Law —
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In This Issue

- \$10 Million Wage-and-Hour Class Action Settlement for HVAC Technicians
- \$8 Million Wage-and-Hour Class Action Settlement Paid By PETCO To Reimburse Groomers For Expenses
- \$1.6 Million Jury Verdict Against Roscoe's Chicken 'N Waffles For Discrimination, Harassment and Retaliation
- Federal Judge Finds Uber Arbitration Agreements Unenforceable — Class of Drivers Expands By 1000's
- Ninth Circuit Ruling Allows EEOC Access To Private Information When It Relates To Unlawful Discrimination And Is Relevant To Charge

\$37.25 Million Settlement Of Age Discrimination Class Action Lawsuit

The U.S. Department of Energy's Lawrence Livermore National Laboratory has agreed to pay \$37.25 million to settle a 6 year old lawsuit with 129 former employees who claimed they lost their jobs due to age discrimination. The employees commenced litigation in 2009 alleging that they were unfairly terminated during workforce restructuring at the facility. The plaintiffs said the organization breached contracts when it ignored a long-standing policy of cutting temporary, contract and junior workers before terminating employees with seniority. The five representative plaintiffs were older than 50 and had worked for the lab for more than 20 years when they were laid off. Plaintiffs' alleged this layoff was the lab's way of getting rid of older employees and hiring younger people for less wages. In 2013, the claims were litigated in two separate jury trials. In the first trial, alleging breach of the employees' contracts, the five "test" plaintiffs prevailed and received a damages award of \$2.73 million. In the second trial, over the plaintiff's age discrimination claims, the lab prevailed. While both jury verdicts were on appeal, the parties engaged in a months-long mediation that resulted in the settlement.

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SEX DISCRIMINATION

The EEOC May Obtain Private Information Where Such Information Could Shed Light On Sex Discrimination Allegations

The Ninth Circuit Court of Appeals held that the Equal Employment Opportunity Commission (EEOC) may obtain evidence that relates to employment practices under Title VII and is relevant to the charge under investigation. The EEOC filed a charge against McLane Co. Inc. alleging sex discrimination based on pregnancy. Here, McLane fired Damiana Ochoa after she failed to pass a strength test after returning from maternity leave. As part of its investigation, McLane voluntarily provided certain information regarding each test taker, but refused to provide other information it deemed private, including names, social security numbers, addresses and phone numbers. The EEOC filed a subpoena for the information, but McLane refused to produce it, claiming that it was irrelevant “at this stage” of the EEOC’s investigation. The Ninth Circuit ruled that the EEOC may obtain evidence that (1) relates to employment practices made unlawful by Title VII; and (2) is relevant to the charge under investigation. The Court found that the relevance standards at the investigative stage is not so constraining and encompasses “virtually any material that might cast light on the allegations.” Here, the information sought by the EEOC was relevant and material to the investigation, as it could cast light on the sex discrimination allegation against McLane by uncovering, for example, a pattern or practice of disparate treatment or showing the sex discrimination allegations to be unfounded.

U.S. Equal Employment Opportunity Commission v. McLane Co. Inc., (2015, Ninth Circuit) ___ F.3d. ___.

DISCRIMINATION – SEX BIAS

Law Firm Settles Ex-Associate's \$20 Million Sex Bias Suit

Kaye Scholer LLP has settled a former senior associate's \$20 million lawsuit claiming the firm discriminated against her, grossly underpaid her compared to her male counterparts because of her gender and sexual orientation, and fired her for protesting. She was hired as a senior associate, and worked in a business development/rainmaking role. She contended she was fired in December 2014 for filing charges with the U.S. Equal Employment Opportunity Commission. She claimed she performed the same or similar work as straight male rainmakers but wasn't given the same support, resources, payment or respect. Her complaint added that the base salary of her male counterparts ranged from \$500,000 to more than \$1 million while she was hired at a base salary of \$75,000 and only saw an increase in 2014 to \$175,000, all while meeting or exceeding her business development goals. Her complaint alleged that she was a “well-known and highly respected leader in the LGBT community,” and alleged that her former employer violated city, state and federal employment laws against discrimination, including the Fair Labor Standards Act, and human rights laws when it fired her.

Kaye Scholer Settles Ex-Associate's \$20M Sex Bias Suit, Law360 (October 16, 2015) by Beth Winegarner.

RACIAL/SEXUAL HARASSMENT

\$1.6 Million Jury Verdict For Discrimination, Harassment, Retaliation and Wrongful Termination

A Los Angeles jury awarded a Plaintiff over \$1.6 million for retaliation for complaints of racial discrimination, racial and sex harassment, hostile work environment and retaliation. Beasley, an African-American, worked at Roscoe's Chicken and Waffles where his African-American manager considered him a good worker and elevated him to shift leader. However, when plaintiff was transferred to another restaurant, he alleged his new Hispanic manager used derogatory language in both English and Spanish, and made many negative comments about black people. Beasley also alleged that another Hispanic shift leader also used racially offensive terms and engaged in sexually offensive behavior. Plaintiff alleged this supervisor would get behind female servers and grind on them while making sexual motions and noises. Plaintiff further alleged when he regularly complained about the racial and sexual harassment, his supervisors mocked him and threatened to terminate him. Plaintiff alleged he brought his complaints to both the human resources manager as well as the CEO/owner. Ultimately, Beasley was terminated after being told that he complained too much and was causing too many problems with the shift leader. Defendant contended that Beasley never filed a single complaint, and that the alleged sexual conduct was not severe or pervasive enough throughout his 8 months of employment to amount to sex harassment or hostile work environment. Defendant also contended that his Hispanic manager not only hired him, but also gave him two raises during his short period of employment. Finally, the defendant contended that there were non-discriminatory and non-retaliatory reasons for his terminations including failure

to order supplies and erratic attendance. The jury awarded plaintiff \$1.66 million in lost earnings and past and future general damages.

Daniel Beasley v. East Coast Foods Inc. dba Roscoe's House of Chicken and Waffles, Los Angeles Superior Court, Case Number: BC 509995.

WAGE-AND-HOUR

\$5 Million Settlement Of Wage-And-Hour Class Action To Be Paid By A Supplier To Home Depot

A California federal judge preliminarily approved a \$5 million settlement Friday between home construction materials manufacturer PPG and a proposed subclass of former employees who developed business with Home Depot. The class alleged that PPG Industries Inc.'s business development representatives who worked with Home Depot Inc. in California were misclassified as exempt from overtime pay and other wage protections. The class alleged that PPG failed to pay them the required overtime and for additional hours worked. The class also alleged that PPG failed to provide the employees with meal or rest periods or with proper pay stubs and full pay upon termination. Despite being classified as exempt employees not entitled to overtime pay due to the nature of their work, the class argued they were "low-level, front-line employees" who did not run PPG's business and spent most of their days stocking, straightening and selling company product. Each of the 106 class members should receive a \$29,866 payment if they worked for PPG anytime from Sept. 3, 2009, to March 31, 2013.

Home Depot Supplier's \$5M FLSA Deal Gets Initial OK, Law360 (October 19, 2015) by Kali Hays.

WAGE AND HOUR (CONT.)

Uber Arbitration Clauses Deemed Unenforceable — Class Of Drivers Expands

A California federal judge ruled that Uber Technologies' 2014 and 2015 arbitration agreements are unenforceable, which allows thousands of drivers who signed the agreements to join the class action accusing the company of misclassifying them as independent contractors. The judge certified a subclass of drivers who signed the arbitration agreements, saying that the agreements are unenforceable as a matter of public policy. Recent rulings have found that Private Attorney General Act (PAGA) waivers in arbitration agreements are unenforceable and the judge found that the PAGA waiver in Uber's 2014 and 2015 arbitration agreements cannot be severed from the rest of the agreements. The judge stated, "the PAGA waiver sections are so inextricably linked, it is impossible to grammatically or linguistically sever the PAGA claims waiver without completely undermining arbitration itself." The judge also agreed to allow the class of 160,000 drivers that he certified in September, as well as this new subclass, to pursue claims that they were not reimbursed for essential work expenses, including costs associated with their vehicles and their phones. In his ruling, the judge's pointed out that to even access the Uber app, a smart phone and data plan is required. Thus, like a vehicle, the driver's phone expenses are plainly required for every Uber driver.

Judge Nixes Uber Arbitration Pacts, Expands Driver Class, Law360 (December 9, 2015) by Beth Winegarner.

\$4.25 Million Wage-And-Hour Settlement Paid By Costco Contractor

Club Demonstration Services, a contractor who provides in-store demonstrations of products at Costco, has agreed to settle a wage-and-hour lawsuit for \$4.25 million. The class of nearly 8,000 workers alleged the company violated rest period requirements and owed them unpaid overtime as a result. The class alleged the defendant had a "patently unlawful" rest period policy that didn't give employees a required second break when they worked shifts that were more than six hours but less than seven-and-a-half hours long. The class also alleged some employees were not paid the appropriate wages for all overtime hours they worked. The overtime calculations failed to include the various incentives workers received as part of their regular rate of pay, which resulted in "incremental underpayment" of overtime.

Costco Contractor To Pay \$4.25M To Settle Wage Suit, Law360 (October 5, 2015) by Matthew Bultman.

\$1.25 Million Wage-And-Hour Settlement After DOL Investigation

The U.S. Department of Labor said that parts distributor Fastenal Co, a federal contractor, has agreed to pay \$1.25 million to more than 8,000 African-American and female applicants to settle hiring discrimination claim. The DOL's Office of Federal Contract Compliance Programs found that Fastenal discriminated against 171 job applicants (154 African-Americans and 17 female applicants) who sought general warehouse positions at the company's distribution facilities.

The DOL also found that the company destroyed or failed to provide various employment records from both facilities in order to hinder the investigation. Fastenal agreed to ensure that the company continues to maintain all required employment records. Fastenal also agreed to discontinue its written test and to only use employment tests that are job-related to the position for which a person is applying.

Fastenal To Pay \$1.25M To Settle Hiring Discrimination Probe, Law360 (October 9, 2015) by Vin Jurrieri

State Meal, Rest And Wage Law Claims Are Not Preempted By The Federal Airline Deregulation Act

The California Court of Appeal held that state laws, which are several steps removed from “prices, routes or services,” will not be preempted by the Federal Airline Deregulation Act (FADA). Plaintiff, who worked as a security coordinator for SCIS Air Security Corporation, sought certification of a class including herself and similarly situated coworkers for their employer’s failure to provide meal and rest breaks in violation of California Wage Laws. Plaintiff alleged on behalf of the class that SCIS never relieved employees of their work during meal breaks, and did not compensate them for such breaks. California Labor Code requires employers to provide meal and rest breaks or otherwise provide an additional hour of pay. The FADA, however, prohibits states from enacting or enforcing a law “related to a price, route, or service of an air carrier.” Here, the Court found that the state laws at issue were several steps removed from and did not relate to any airline’s “price, route or service.” As a result, the Court found that plaintiff’s claims were not preempted by the

FADA, and ordered the lower court to reconsider plaintiff’s claims for class certification.

Valencia v. SCIS Air Security Corp. (2015) ___ Cal.App.4th ___.

IN THE TRENCHES

\$10 Million Wage-And-Hour Settlement Paid To HVAC Technicians

Plaintiffs filed this class action on behalf of themselves and others similarly situated against their employer. The class, who worked as hourly employees for the defendant, alleged they each worked more than 40 hours per week. Plaintiffs claimed that defendant had a policy of paying service technicians different hourly rates based on which shift was worked, and that as a result, plaintiffs were not paid overtime. Plaintiffs sued for unpaid wages and other damages under the Fair Labor Standards Act, California Labor Code and other Wage Orders. Defendants denied all of the plaintiffs’ allegations. The parties agreed to settle for \$10 million.

Lyle Galeener v. Source Refrigeration & HVAC, LA Daily Journal, Verdicts and Settlements (October 30, 2015) U.S. District Court for the Northern District of California, Case Number: 3:13-cv-04960-VC.

\$8 Million Settlement Of Wage-And-Hour Class Action Paid By Petco

Plaintiff, a pet groomer, brought this action on behalf of herself and all others similarly situated, for failure to pay minimum wage, and failure to provide paid rest periods or reimburse for business expenses. The class also alleged that Petco failed to provide itemized wage statements, and failed to

timely pay wages. Petco agreed to settle the matter for \$8 million. Members of the "grooming" class would receive on average \$2,141, with the highest individual payment expected to be in excess of \$11,200.

Jenna Matthews v. Petco Animal Supplies Stores Inc., LA Daily Journal, Verdicts and Settlements (October 23, 2015) Los Angeles Superior Court, Case Number: BC 539637.

\$4.9 Million Wage-And-Hour Class Action Settlement Paid By SimplexGrinnell

Plaintiff, on behalf of himself and others similarly situated, accused their employer, SimplexGrinnell, of failing to pay compensation owed due to misclassification of the class, and failure to pay a prevailing wage for the work they performed, testing and inspection of fire alarm and sprinkler systems. The employer argued that stand alone testing and inspection were not covered work under the California Prevailing Wage Law and that the Department of Industrial Relations had not issued a determination that the work was covered. SimplexGrinnell agreed to settle the dispute for \$4.9 million, and agreed to adopt new payment practices to be made regarding testing and inspection of fire alarms and sprinkler systems. The California Department of Industrial Relations subsequently issued a prevailing wage coverage determination concluding that such testing required payment of the prevailing wage.

Don Bennett v. SimplexGrinnell LP, LA Daily Journal, Verdicts and Settlements (October 23, 2015) U.S. District Court for the Northern District of California, Case Number: 3:11-cv-01854-JST.

\$4 Million Wage-And-Hour Settlement Paid By Macy's To Drivers And Helpers

Plaintiff filed a class action against Macy's West Stores Inc. and Joseph Eletto Transfer Inc. on behalf of drivers and/or helpers that delivered Macy's products and/or furnishings associated with Eletto. The class alleged they were misclassified as independent contractors and thereby denied benefits and protections afforded under the California Labor Code. Plaintiffs asserted claims for unpaid wages, failure to pay overtime compensation, failure to provide meal and rest periods, failure to furnish accurate wage and hour statements, waiting time penalties, indemnification, conversion and unfair competition. Both defendants denied the allegations and asserted affirmative defenses. The parties reached a \$4 million settlement.

Victor Fuentes, et al. v. Macy's West Stores, Inc., LA Daily Journal, Verdicts and Settlements (October 2, 2015) U.S. District Court for the Central District of California, Case Number: 2:14-cv-00790-ODW-FFM.

As always, please do not hesitate to contact any of our attorneys if you have any questions or comments.

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