Appellate Review

Cal Supreme Court says discovery in PAGA actions is governed by normal standards of civil litigation; supports broad view of the right to discovery in all civil cases

By Jeffrey I. Ehrlich

Williams v. Superior Court (Marshalls of CA)

(2017) __ Cal.5th __ (Cal. Supreme)

Who needs to know about this case? Lawyers handling PAGA cases.

Why it's important. Holds that discovery in PAGA actions is governed by the normal standards that govern discovery in civil litigation; rejects restrictions imposed by the Court of Appeal, which required the plaintiff in a PAGA action to make a heightened showing of need to obtain discovery; allows plaintiff to obtain discovery of the contact information of other potentially aggrieved employees. The opinion also supports a broad view of the right to discovery in *all* civil actions.

Synopsis: PAGA authorizes an employee who has been the subject of particular Labor Code violations to file a representative action on behalf of himself or herself and other aggrieved employees. (Lab. Code, § 2699.) Williams brought a PAGA claim on behalf of employees of Marshalls stores, alleging that they had been denied meal and rest breaks as required by the Labor Code.

Early in discovery, Williams issued two special interrogatories asking Marshalls to supply the name, address, telephone number, and company employment history of each nonexempt California employee in the period March 2012 through February 2014, as well as the total number of such employees. Marshalls responded that there were approximately 16,500 employees, but refused to provide their information. It contended the request for contact and employment information statewide was overbroad because it extended beyond Williams' particular store and job classification; unduly burdensome because Williams sought private information without first demonstrating he was aggrieved or that others were aggrieved; and an invasion of the privacy of third parties under California Constitution, article I, section 1. Williams moved to compel responses.

The trial court granted in part and denied in part Williams' motion. The court ordered Marshalls to provide employee contact information, but only for the Costa Mesa store where Williams worked, subject to a *Belaire-West* notice designed to ensure protection of third-party privacy rights and an equal sharing of costs by the parties. For the company's other approximately 130 stores, Williams was willing to accept information from a representative sample of 10 to 20 percent of employees, but the court denied the motion to compel. The court left open the door to a renewed motion for discovery but required as a condition of any motion that Williams "appear for at least six productive hours of deposition." Finally, the court specified that in opposing a renewed motion for discovery, Marshalls could rely on any portion of the deposition that it believed showed the complaint was substantively meritless. Recognizing the discovery motion forced it to render a decision in an uncharted area of law, the trial court certified its order for immediate review and requested appellate guidance.

Williams sought writ relief from the denial of access to employee contact information for all but one store. The Court of Appeal denied relief. It held that, as the party seeking to compel discovery, Williams must "set forth specific facts showing good cause justifying the discovery sought" (Code Civ. Proc., § 2031.310, subd. (b)(1)) but had failed to do so. In the alternative, the Court of Appeal concluded that because third-party privacy interests were implicated, Williams "must demonstrate a compelling need for discovery" by showing "the discovery sought is directly relevant and essential to the fair resolution of the underlying lawsuit." The Supreme Court granted review and reversed.

In the absence of contrary court order, a civil litigant's right to discovery is broad. "[A]ny party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action ... if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." (Code Civ. Proc., § 2017.010.) Discovery is not limited to admissible evidence. The right to discovery includes an entitlement to learn "the identity and location of persons having knowledge of any discoverable matter." (§ 2017.010) Section 2017.010 and other statutes governing discovery must be construed liberally in favor of disclosure unless the request is clearly improper by virtue of well-established causes for denial. This means that disclosure is a matter of right unless statutory or public policy considerations clearly prohibit it.

A party may use interrogatories to request the identity and location of those with knowledge of discoverable matters. (Code Civ. Proc., § 2030.010.) A litigant is entitled to demand answers to its interrogatories, as a matter of right, and without a prior showing, unless the party on

whom those interrogatories are served objects and shows cause why the questions are not within the purview of discovery under the Code. While the party propounding interrogatories may have the burden of filing a motion to compel if it finds the answers it receives unsatisfactory, the burden of justifying any objection and failure to respond remains at all times with the party resisting an interrogatory.

> Accordingly, Williams was presumptively entitled to an answer to his interrogatory seeking the identity and contact information of his fellow Marshalls employees. Marshalls had the burden of establishing cause to refuse Williams an answer. The trial court was limited to determining whether, for any objections timely interposed, Marshalls had carried that burden.

On its face, the complaint alleges Marshalls committed Labor Code violations, pursuant to systematic company-wide policies, against Williams and others among its nonexempt employees in California, and seeks penalties and declaratory relief on behalf of Williams and any other injured California employees. The disputed interrogatory seeks to identify Marshalls' other California employees, inferentially as a first step to identifying other aggrieved employees and obtaining admissible evidence of the violations and policies alleged in the complaint. The Courts of Appeal have, until the decision in this case, uniformly treated such a request as clearly within the scope of discovery permitted under Code of Civil Procedure section 2017.010.

In a particular case there may be special reason to limit or postpone a representative plaintiff's access to contact information for those he or she seeks to represent, but the default position is that such information is within the proper scope of discovery, an essential first step to prosecution of any representative action.

The Court rejected Marshalls' arguments that these principles should not apply to PAGA actions. The fact that, as a condition of filing suit under PAGA, an aggrieved employee must provide notice to the employer and the relevant state agency of the specific Labor Code provisions alleged to have been violated, together with an explanation of the facts and theories to support the alleged violation, does not indicate any Legislative intent to limit discovery in PAGA cases. Likewise, PAGA's standing provision, which restricts standing to an "aggrieved employee," does not imply any heightened standard for seeking discovery.

While the differences between a class action and a PAGA action bear minimal relation to the reasons fellow employee contact information is discoverable, the similarities between these forms of action directly pertain. In a class action, fellow class members are potential percipient witnesses to alleged illegalities, and it is on that basis their contact information becomes relevant. Likewise in a PAGA action, the burden is on the plaintiff to establish any violations of the Labor Code, and a complaint that alleges such violations makes any employee allegedly aggrieved a percipient witness and his or her contact information relevant and discoverable.

Next, absent fellow employees will be bound by the outcome of any PAGA action, just as absent class members are bound. To allow broad discovery of contact information in class actions but not in PAGA representative actions would impose unique hurdles in PAGA actions that inhibit communication with affected employees, and would enhance the risk those employees will be bound by a judgment they had no awareness of and no opportunity to contribute to or oppose.

Last, overlapping policy considerations support extending PAGA discovery as broadly as class-action discovery has been extended. California public policy favors the effective vindication of consumer protections. State regulation of employee wages, hours and working conditions is remedial legislation for the benefit of the state's workforce. Discovery of fellow consumer or employee contact information can be an essential precursor to meaningful classwide enforcement of consumer and worker protection statutes.

The Court also rejected Marshalls' "undue burden" justification for resisting discovery. A trial court "shall limit the scope of discovery if it determines that the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence." (Code Civ. Proc., § 2017.020, subd. (a).)

However, as with other objections in response to interrogatories, the party opposing discovery has an obligation to supply the basis for this determination. An objection based upon burden must be sustained by evidence showing the quantum of work required. Marshalls failed to offer any evidence in this regard, beyond the number of employees affected.

In lieu of evidence, Marshalls contended that Williams should be required to submit proof of his case before being allowed statewide discovery. Accepting this argument, the trial court effectively held the pleading of a statewide PAGA claim is insufficient to support discovery of statewide fellow employee contact information without a further showing of cause. The Code of Civil Procedure, however, does not authorize a trial court to interpose a proof of the merits requirement before ordering responses to interrogatories in the absence of any evidence of the burden responding would entail, and trial courts lack discretion to augment the limitations on discovery established by the Legislature.

California law has long made clear that to require a party to supply proof of any claims or defenses as a condition of discovery in support of those claims or defenses is to place the cart before the horse. The Legislature was aware that establishing a broad right to discovery might permit parties lacking any valid cause of action to engage in "fishing expedition[s]," to a defendant's inevitable annoyance. It granted such a right anyway, comfortable in the conclusion that "[m]utual knowledge of all the relevant

facts gathered by both parties is essential to proper litigation.

> That the eventual proper scope of a putative representative action is as yet uncertain is no obstacle to discovery; a party may proceed with interrogatories and other discovery methods precisely in order to ascertain that scope.

The Court also rejected Marshalls' attempt to resist discovery based on the privacy rights of its employees. In wage and hour collective actions, fellow employees are not to be expected to want to conceal their contact information from plaintiffs asserting employment law violations. The state policies in favor of effective enforcement of these laws weigh on the side of disclosure, and any residual privacy concerns can be protected by issuing so-called *Belaire-West* notices affording notice and an opportunity to opt out from disclosure.

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