

PAGA Penalties Cannot be Aggregated for Diversity Jurisdiction Purposes

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Under California's Private Attorney General Act (PAGA) statute, employees are given a private right of action against employers, on behalf of themselves, and on behalf of current and former employees, in order to collect penalties for alleged wage and hour violations. Prevailing employees can recover up to \$100 per pay period for an initial violation, and \$200 per pay period for each subsequent violation, not to mention potential recovery of attorney's fees and costs.

In this case, the employee worked for a pest control services company from 2005 to 2010. After leaving the company, he filed a representative action under PAGA alleging claims that he and other nonexempt employees were deprived of meal period, overtime, vacation wages, and itemized wage statements. The employer removed the matter to federal court on the basis of diversity jurisdiction, based on the argument that the aggregate dollar amount of all the employees' penalty claims would exceed the \$75,000 diversity threshold. The district court acknowledged a divergence of opinion among the courts, but allowed the aggregation of the claims, and thus allowed the case to remain in federal court. The employee appealed. The Ninth Circuit Court of Appeals reversed the district court and held that the PAGA claims were individually held claims, not group claims, and therefore could not be aggregated to exceed the \$75,000 threshold. The U.S. Supreme Court previously held that claims of class members can only be aggregated to meet the jurisdictional amount requirement only when they "unite to enforce a single title or right in which they have a common and undivided interest." Here, the Ninth Circuit held all the rights held by the employees were held individually, as an employee suffers a unique injury that can be redressed with the involvement of other employees. Therefore, PAGA penalties cannot be aggregated for diversity jurisdiction purposes.

For more information read [Urbino v. Orkin Services, Inc., No. 11-56944 \(9th Cir., August 13, 2013\)](#).

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