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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

RAUL MICHAEL PEDROZA, JR., Plaintiff and Appellant, v. CSK AUTO, INC., Defendant and Respondent.	B287788 (Los Angeles County Super. Ct. No. BC475210)

APPEAL from a judgment of the Superior Court of Los Angeles County, Gail R. Feuer, Judge. Affirmed in part and reversed in part.

Capstone Law, Ryan H. Wu, John E. Stobart and Robert Drexler for Plaintiff and Appellant.

Higgs Fletcher & Mack, John Morris, James M. Peterson, Jason C. Ross and Rachel E. Moffitt for Defendant and Respondent.

Appellant Raul Pedroza sued his employer under various theories for alleged Labor Code violations. The primary question presented is whether appellant's voluntary dismissal with prejudice of an individual cause of action alleging suitable seating violations under the Labor Code precludes him from proceeding on those same allegations included in a cause of action brought under Labor Code[1] section 2698, the Private Attorneys General Act (PAGA).

We agree with Pedroza that, notwithstanding the voluntary dismissal, the suitable seating violation allegations in his PAGA cause of action remain viable, conferring standing on him as an aggrieved employee to pursue that cause of action. Pedroza's dismissal of his individual cause of action for suitable seating violations and the striking of the same suitable seating violation allegations from his cause of action under Business and Professions Code section 17200 (the UCL cause of action) do not operate as a determination on the merits of the PAGA claim.

The second primary question is whether the trial court erroneously found no meal break violations or misapplied the law in making such a finding. We find substantial evidence supports the court's factual findings. Applying the law to these facts, we reach the same conclusion as the trial court: defendant employer committed no meal break violations. We find no error in the trial court's application of those findings to the motion for judgment on the pleadings.

The trial court erred in granting judgment on the pleadings of the PAGA claim with respect to the suitable seating violation

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[1] Further undesignated statutory references are to the Labor Code.

allegations. That judgment is reversed. On remand, Pedroza may proceed with his PAGA claim on those allegations only. Pedroza has not shown error in the trial court's ruling on his meal break claim and he may not pursue his PAGA claim on that basis.

BACKGROUND

This case began in December 2011 as a combined wage and hour class action and a PAGA representative action brought by Robert Owens, Jr., against O'Reilly Automotive Stores, Inc., and CSK Auto, Inc. In February 2013, a Second Amended Complaint (SAC) was filed substituting Raul Pedroza as plaintiff and dismissing O'Reilly Automotive Stores, Inc., as defendant. Defendant CSK employed Pedroza as an hourly worker from March to May 2012.

The SAC originally contained seven causes of action: five individual causes of action[2] which alleged CSK committed violations of the Labor Code against Pedroza; the UCL cause of action; and the PAGA cause of action. As relevant on this appeal, one individual cause of action was for failure to provide suitable seating (§ 1198 and the applicable wage order); the UCL cause of action included allegations of failure to provide suitable seating and failure to provide meal break periods (§ 512); and the PAGA cause of action included allegations of seating and meal break violations.

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[2] The SAC also contained class action allegations, but in 2014, the trial court denied class certification and Pedroza does not seek review of that ruling on this appeal. We refer to these claims here as individual claims.

In December 2015, the trial court set a trial date of September 27, 2016. Thereafter, the trial date was continued to March 28, 2017. In September 2016, CSK filed a motion to bifurcate the trial. CSK sought to try Pedroza's individual claims in the first phase and to proceed to the PAGA claim only if Pedroza prevailed on his individual claims. Pedroza opposed the motion, arguing that a proof of standing requirement on PAGA claim was not permitted. In November 2016, the trial court denied the motion to bifurcate without prejudice.

In February 2017, Pedroza sought to continue the trial date because he had not yet received certain court-ordered discovery from CSK. While considering the request for a continuance, the court, over Pedroza's objection, ordered the individual causes of action tried before the UCL and PAGA causes of action. The court expressed its belief that "I am not, in any manner, breaking up the PAGA claim."

One month later, on March 17, 2017, the court ordered the UCL cause of action to be tried with the individual causes of action and before the PAGA cause of action. Pedroza then stated his intention to dismiss with prejudice the fifth cause of action for suitable seating violations, explaining that "when we filed the complaint, it wasn't clear how these seating claims were being alleged. The case law has developed since then, its's not a stand-alone cause of action. It's entirely under . . . a PAGA cause of action[,] so we'd be dismissing it, if that's necessary."[3] CSK pointed out that there was also a suitable seating violation

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[3] As we explain in more detail below, Pedroza was correct that a suitable seating violation claim must be pursued in a PAGA cause of action.

allegation in the UCL cause of action and asked that the allegation be stricken. Pedroza agreed, and it was stricken.

On March 28, 2017, the bench trial began on the individual and UCL causes of action. On June 19, 2017, the court issued a final statement of decision. The court found Pedroza had failed to prove any of the remaining claimed violations by a preponderance of the evidence, including the allegation in the UCL cause of action that he was denied 30-minute meal breaks.

In September 2017, Pedroza moved to compel discovery, particularly with respect to the suitable seating violation allegations in the PAGA cause of action. In its order continuing the hearing on the motion to compel, the court noted defendant had a pending motion for judgment on the pleadings. It indicated plaintiff would "need to address in its future briefing on CSK's motion for judgment on the pleadings how his dismissal of his claim that he individually suffered a seating violation affects his ability to bring a PAGA claim as an 'aggrieved employee.' " The court noted that plaintiff's UCL claim included alleged seating violations, "but he also failed to pursue that claim at trial."

At the hearing on CSK's motion for judgment on the pleadings, the court and the parties did not refer to plaintiff's alleged suitable seating violations. The trial court's ruling on the motion mentions the seating allegations only in passing. The ruling states plaintiff "alleged five separate causes of action for violations of the Labor Code, including . . . (5) failure to provide seating" and noted plaintiff's PAGA cause of action alleged "as predicate violations all of the above—including failure to provide seating." The ruling also notes three times that plaintiff dismissed his fifth cause of action for seating violations with prejudice; the dismissal was on March 17, 2017. The ruling does

not discuss the effect of that dismissal on plaintiff's PAGA cause of action. Ultimately, the court granted CSK's motion for judgment on the pleadings and this appeal followed.

DISCUSSION

A motion for judgment on the pleadings operates like a general demurrer, with the court determining whether a party is entitled to judgment as a matter of law based on pleadings and judicially noticed matters. (*Bezirdjian v. O'Reilly* (2010) 183 Cal.App.4th 316, 321–322.) Judgment on the pleadings should not be granted where there are material factual issues that require evidentiary resolution. (*Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205, 1216.) However, "[i]ssues adjudicated in earlier phases of a bifurcated trial are binding in later phases of that trial and need not be relitigated." *(Arntz Contracting Co. v. St. Paul Fire & Marine Ins. Co.* (1996) 47 Cal.App.4th 464, 487 (*Arntz*).)

A trial court's order granting judgment on the pleadings is subject to independent review. (*Gerawan Farming, Inc. v. Lyons* (2000) 24 Cal.4th 468, 515.) The order "resolves a mixed question of law and fact that is predominantly one of law, viz., whether or not the factual allegations that the plaintiff makes are sufficient to constitute a cause of action. [Citation.] The resolution of a question of this sort calls for examination de novo." (*Ibid.*)

A. Pedroza's Voluntary Dismissal of His Individual Seating Violation Cause of Action Did Not Preclude Him from Prosecuting His PAGA Cause of Action Based on the Same Allegation.

PAGA allows an aggrieved employee who is "affected by at least one Labor Code violation committed by an employer–to pursue penalties for all the Labor Code violations committed by that employer." (*Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 751.) An aggrieved employee under PAGA is "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed." (§ 2699, subd. (c).) There is no "heightened preliminary proof requirement" to qualify as an aggrieved employee. (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 546.) Violation allegations are sufficient. (*Ibid*.)

Pedroza contends the trial court erred in impliedly finding that his voluntary dismissal with prejudice of the individual cause of action for seating violations (and the consensual striking of his seating violation allegations from the UCL cause of action) barred him from using those same allegations to show he was an aggrieved employee under PAGA. We agree.

Pedroza dismissed his individual cause of action alleging suitable seating violations and agreed to have stricken the same allegations in his UCL cause of action because he believed that the law permitted an employee to seek redress for seating violations *only* through a PAGA claim. Pedroza was correct.

The requirement of suitable seating for workers is found in a wage order issued by the Industrial Welfare Commission.[4] An employee "may enforce the protections of [a] wage order in court only by bringing a claim under the Labor Code." (*Cortez v. Doty Bros. Equipment Co.* (2017) 15 Cal.App.5th 1, 14; *Flowers v. Los Angeles County Metropolitan Transportation Authority* (2015) 243 Cal.App.4th 66, 74 [there is no private right of action to enforce wage order; employee must rely on Labor Code sections that require compliance with the wage order to enforce its terms]; see *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1132 (*Thurman*) ["Only the Legislature, through enactment of a statute, can create a private right of action to directly enforce an administrative regulation, such as a wage order"], disapproved on another round by *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 196, fn. 8.)

Section 1198 renders violations of the suitable seating wage order unlawful. (*Bright v. 99¢ Only Stores* (2010) 189 Cal.App.4th 1472, 1479.) However, "no civil penalty for such conduct is 'specifically provided' in section 1198 or elsewhere. Accordingly, violations of this type are subject to the default remedy stated in section 2699, subdivision (f) [of the PAGA]" (*Home Depot U.S.A., Inc. v. Superior Court* (2010) 191 Cal.App.4th 210, 218 (*Home Depot*).)

CSK argues that *Home Depot* and *Bright* do not suggest that PAGA is the only vehicle by which an aggrieved employee can assert a seating claim. The court in *Home Depot* does suggest

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[4] The most recent wage order on this topic is Wage Order 7-2001, sometimes also referred to as Wage Order 7, subdivision 14. (Cal. Code Regs., tit. 8, § 11070, subd. 14.)

just that. The court explained that "the legislative history shows that PAGA was enacted to provide a civil remedy to employees for Labor Code violations previously enforceable only through administrative or criminal actions, including violations of section 1198 arising from labor conditions prohibited in a wage order." (*Home Depot*, *supra*, 191 Cal.App.4th at p. 223.) The court reiterated that prior to PAGA, "violations of section 1198 arising through 'conditions of labor prohibited' by a wage order . . . were enforceable only through administrative activity or criminal actions. . . . [V]iolations of this type fell within the enforcement gap that PAGA was intended to close." (*Id*. at p. 224.)

CSK does not contend that additional remedies were authorized by the Legislature (or recognized by the courts) after PAGA was enacted. Instead, CSK argues that Pedroza's attempt to pursue other civil remedies proves that there are other civil remedies. This is disingenuous at best. It is the Legislature which determines whether a plaintiff has a private right of action to enforce a wage order, not the plaintiff himself. (*Thurman*, *supra*, 203 Cal.App.4th at p. 1132.) The Legislature has not provided an individual cause of action for suitable seating violations.

Even if it were possible to assert individual causes of action for seating violations apart from a PAGA cause of action, Pedroza's dismissal with prejudice of those non-PAGA causes of action still would not bar his pursuit of the PAGA cause of action as CSK contends.[5]

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[5] CSKs sometimes states Pedroza dismissed his UCL cause of action, but this is not accurate. That cause of action alleged defendants violated state law in at least seven different ways, including by "[f]ailing to provide suitable seating." The trial

CSK maintains Pedroza had only one primary right, the right to suitable seating, and his dismissal with prejudice of two of the causes of action based on that primary right barred further litigation of the remaining PAGA cause of action based on the same primary right. In this discussion we will assume for the sake of argument that the three causes of action all involved the same primary right.

The primary right theory is the foundation of the res judicata doctrine in California. (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 904 (*Mycogen Corp.*) ["California's res judicata doctrine is based upon the primary rights theory."].) The theory "has a fairly narrow field of application. It is invoked most often when a plaintiff attempts to divide a primary right and enforce it in two suits. The theory prevents this result by either of two means: (1) if the first suit is still pending when the second is filed, the defendant in the second suit may plead that fact in abatement [citations]; or (2) if the first suit has terminated in a judgment on the merits adverse to the plaintiff, the defendant in the second suit may set up that judgment as a bar under the principles of res judicata [citation]. The latter application of the primary right theory appears to be most common: numerous cases hold that when there is only one primary right an adverse judgment in the first suit is a bar even though the second suit is based on a different theory [citation] or

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court struck only the allegations of seating violations, leaving six other violations to support the cause of action. For purposes of this appeal and simplicity of discussion, however, we will refer to Pedroza's striking of the seating violation allegations in his UCL cause of action as a dismissal of that cause of action.

seeks a different remedy [citation]." (*Crowley v. Katleman* (1994) 8 Cal.4th 666, 682, fn. omitted (*Crowley*).)

In the trial court CSK acknowledged that "[t]he res judicata/collateral estoppel doctrines – which address the legal effect of outcomes from a prior suit on a subsequent suit – do not apply." The primary right doctrine, as described above by our Supreme Court, is virtually indistinguishable from the res judicata/collateral estoppel doctrine which CSK previously disavowed.[6] CSK does not explain its change of position on appeal, and does not cite any legal authority applying the primary rights doctrine to causes of action which are, as here, in a single lawsuit.

Because this case involves a single lawsuit, dismissal of two of three causes of action based on the same primary right did not implicate the most common application of the primary rights theory, that is, to bar any attempt to enforce the same primary right in two separate lawsuits.

Thus, separated from its res judicata role, the primary right theory is simply "a theory of code pleading that has long been followed in California." (*Crowley*, *supra*, 8 Cal.4th at p. 681.) "The most salient characteristic of a primary right is that it is indivisible: the violation of a single primary right gives rise to but a single cause of action. [Citation.] A pleading that states the violation of one primary right in two causes of action contravenes the rule against 'splitting' a cause of action." (*Ibid.*)

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[6] The only apparent difference is that the primary rights doctrine may apply in a second lawsuit while the first lawsuit is still pending, while res judicata requires a final judgment in the first lawsuit.

Pedroza's three causes of action based on the denial of suitable seating may have violated the primary right theory of pleading by splitting his cause of action, but they are, at bottom, simply a pleading violation. CSK's reasoning would require us to punish Pedroza harshly for the technical pleading violation of splitting a primary right into multiple causes of action in the same lawsuit: CSK would bar Pedroza from seeking recovery on that primary right under any cause of action. In CSK's view, once a plaintiff dismisses the impermissibly pled causes of action with prejudice, plaintiff cannot proceed on the single remaining PAGA cause of action in the lawsuit because his dismissal of the extraneous multiple causes of action is a determination on the merits, barring the single remaining PAGA cause of action. CSK has not cited and we are not aware of any legal authority imposing such a sanction. Nothing in the history or purpose of the primary right theory remotely warrants such a draconian outcome.[7]

CSK attempts to justify its proposed outcome by pointing out the "derivative" nature of a PAGA cause of action. CSK is correct that a PAGA cause of action must contain allegations that the employer has violated the Labor Code, and that absent a Labor Code violation a PAGA claim fails. There is no

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[7] Historically, the primary right doctrine has been used to assist, not hinder, a plaintiff during the pendency of his action: "before the adoption of the modern rule that a complaint may be amended after the statute of limitations has run provided recovery is sought 'on the same general set of facts' [citation], the primary right theory was invoked to determine when such an amendment was permissible because it did not state 'a different cause of action.' " (*Crowley*, *supra*, 8 Cal.4th at p. 682, fn. 10.)

requirement, however, that a plaintiff allege a separate individual cause of action for a Labor Code violation in addition to his PAGA claim based on the same violation. (See, e.g. *Williams v. Superior Court* (2015) 237 Cal.App.4th 642, 644 [plaintiff "filed a single-count representative action pursuant to the Labor Code Private Attorneys General Act of 2004" alleging the defendant "violated various provisions of the Labor Code."]; *Home Depot*, *supra,* 191 Cal.App.4th at p. 215 [amended complaint "asserts a single claim under PAGA"].) Further, there is no "preliminary proof requirement" to qualify as an aggrieved employee under PAGA. (*Williams v. Superior Court*, *supra*, 3 Cal.5th at p. 546.) Thus, there is no reason to punish a plaintiff who elects to dismiss an unnecessary, and in CSK's view, improperly split cause of action.[8]

A more appropriate remedy for pleading a split cause of action is to require plaintiff to eliminate the extraneous causes of action in the lawsuit, as occurred here, or combine them into one cause of action. While it is theoretically possible for a plaintiff to dismiss the extraneous causes of action without prejudice, the better choice is a dismissal with prejudice, as it eliminates any

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[8] CSK's reliance on *Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 is misplaced. In that case, there were merits-based findings against plaintiff on the underlying Labor Code violations. The only dismissal in that case occurred after the trial court sustained without leave to amend a demurrer to one cause of action and granted a motion to strike related allegations in the other cause of action. (*Id.* at p. 1140.)

attempt to assert the dismissed causes of action in a subsequent lawsuit. This is consistent with and promotes judicial economy.[9]

Our conclusions are reinforced by *Steele v. Litton Industries, Inc.* (1968) 260 Cal.App.2d 157 (*Steele*), which considered the effect of a dismissal with prejudice of a "split" cause of action alleged to seek an alternate remedy. That is Pedroza's situation, and it is a common reason for splitting a cause of action. " 'The violation of one primary right constitutes a single cause of action, though it may entitle the injured party to many forms of relief.' " (*Crowley*, *supra*, 8 Cal.4th at p. 682.) Nevertheless, " 'the relief is not to be confounded with the cause of action, one not being determinative of the other.' " (*Ibid.*)

In *Steele*, the court considered the effect of plaintiff's "dismissal with prejudice of the equity counts." (*Steele*, *supra*, 260 Cal.App.2d at p. 171.) As the court explained: "The cause of action is the obligation sought to be enforced. The same cause of action may be stated variously in separate counts. In California the phrase 'cause of action' is often used indiscriminately to mean what it says and to mean counts which state differently the same

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[9] "A clear and predictable res judicata doctrine promotes judicial economy. Under this doctrine, all claims based on the same cause of action must be decided in a single suit; if not brought initially, they may not be raised at a later date. ' "Res judicata precludes piecemeal litigation by splitting a single cause of action or relitigation of the same cause of action on a different legal theory or for different relief " ' [Citation.] A predictable doctrine of res judicata benefits both the parties and the courts because it 'seeks to curtail multiple litigation causing vexation and expense to the *parties* and wasted effort and expense in *judicial administration*.' [Citation.]" (*Mycogen Corp.*, *supra*, 28 Cal.4th at p. 897.)

cause of action." (*Id.* at p. 172.) Thus, a plaintiff who "sets forth alternative remedies in separate counts in his complaint may abandon or dismiss one count without prejudice to his right to proceed on the other. . . . The dismissal of these alternative remedies [does] not constitute a dismissal of plaintiff's entire cause of action."[10] (*Ibid.*) As the court explained, "[s]uch a construction does not compel a defendant to contest in a trial the same cause of action twice. For if the trial proceeds to judgment on one alternative remedy such judgment would constitute a bar to the trial in a subsequent action on the obligation which plaintiff seeks to enforce, but on a different theory." (*Ibid.*)

Pedroza sought different relief in each of the three causes of action at issue. " '[T]he relief is not to be confounded with the cause of action, one not being determinative of the other.' " (*Crowley*, *supra*, 8 Cal.4th at p. 682.) Like plaintiff in *Steele*, Pedroza was free to dismiss his causes of action for alternate relief without losing his entire cause of action.

B. **Pedroza Is Not Entitled To Prosecute The Meal Break Violation Allegations In His PAGA Cause of Action.**

Pedroza alleged violations of the meal break provisions of section 512 in his UCL cause of action and sought restitution of unpaid meal break premium wages for those violations. He also alleged violations of section 512 in his PAGA cause of action and sought civil penalties for those violations. The UCL cause of

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[10] The opinion is clear that plaintiff's equity counts were dismissed with prejudice. The court's subsequent use of the term "without prejudice" is somewhat confusing, but in context the court meant the dismissal did not prejudice plaintiff's right to proceed on his other counts.

action was tried to the court, which found in favor of CSK. The court then took judicial notice of its findings about meal breaks and granted CSK's motion for judgment on the pleadings as to the sole remaining PAGA cause of action.

Pedroza contends he alleged two different types of meal break violations in his complaint: "a UCL meal break violation" and a PAGA meal break violation. In Pedroza's view, the difference between the two claims lies in the relief he sought and the time frame in which the violations occurred. He contends the UCL violations occurred in the April 20 to June 9, 2012 time period and he sought unpaid meal premium wages for those violations, while the PAGA violations occurred during his June 12, 13, 18 and 21, 2012 shifts and he sought only civil penalties for those violations, as he had received meal break premium wages for those dates. The complaint itself does not attach any specific or different dates to the meal break violations.

Pedroza argues because the two types of violations are different, the trial court erred in taking judicial notice of its factual finding on the UCL cause of action to grant the motion for judgment on the pleadings on the PAGA cause of action. Pedroza additionally claims the trial court, in so applying the findings contrary to law, "implicitly found that an employer's payment of meal break premiums eliminated the violation for missed meal breaks." Pedroza further contends there is undisputed evidence that he suffered at least one PAGA meal break violation, and that he is therefore an aggrieved employee for PAGA purposes. We disagree.

1. *An Employer Is Required to Provide an Employee With the Opportunity to Take a 30-Minute Break But Not Ensure the Employee Takes the Break.*

Section 512 specifies that an employer must provide one 30-minute meal break to an employee who works between five and 10 hours in a day. (§ 512, subd. (a).)[11] Section 226.7 elaborates that an employer "shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute" and provides that if an employer "fails to provide an employee a meal or rest or recovery period in accordance with a state law, . . . the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided." (§ 226.7, subds. (b) & (c).) This additional hour of pay is often referred to as the meal break premium or meal break penalty.

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[11] Section 512, subdivision (a), provides in full: "An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived."

As our Supreme Court has explained, "Nonpayment of wages is not the gravamen of a section 226.7 violation." (*Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, 1256.) "The 'additional hour of pay' provided for in subdivision (b) is the legal remedy for a violation of subdivision (a), but whether or not it has been paid is irrelevant to whether section 226.7 was violated." (*Ibid.*) "An employer's failure to provide an additional hour of pay does not form part of a section 226.7 violation, and an employer's provision of an additional hour of pay does not excuse a section 226.7 violation. The failure to provide required meal and rest breaks is what triggers a violation of section 226.7. Accordingly, a section 226.7 claim is not an action brought for nonpayment of wages; it is an action brought for nonprovision of meal or rest breaks." (*Kirby,* at pp. 1256–1257.)

"[O]ff-duty meal periods are . . . defined by actually relieving an employee of all duty: doing so transforms what follows into an off-duty meal period, whether or not work continues. [¶] Proof an employer had knowledge of employees working through meal periods will not alone subject the employer to liability for premium pay; employees cannot manipulate the flexibility granted them by employers to use their breaks as they see fit to generate such liability. On the other hand, an employer may not undermine a formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks." (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1039–1040, fn. omitted (*Brinker*).) "An employer satisfies its obligation with respect to meal breaks "if it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does not impede or

discourage them from doing so." (*Id*. at p. 1040.) "[T]he employer is not obligated to police meal breaks and ensure no work thereafter is performed. Bona fide relief from duty and the relinquishing of control satisfies the employer's obligations, and work by a relieved employee during a meal break does not thereby place the employer in violation of its obligations." (*Id*. at pp. 1040–1041.)

2. *The Trial Court Found Pedroza Was Not Denied the Opportunity for a Full 30-Minute Meal Break on Any Day of His Employment.*

During trial, it became clear that the evidence showed both Pedroza and CSK behaved differently in the April-June 9 time period and then in the June 12–21 time period. Pedroza's time sheets showed he clocked out for full meal breaks during the April–June 9 period, but Pedroza claimed that he worked during that clocked-out period at his supervisor's request. His time sheets for the June 12–21 period showed that he clocked back in early from one or more meal break, which he claimed was at his supervisor's request so he could work. CSK paid Pedroza a meal break premium for those days he clocked back in early, but not for days on which his time sheet showed he clocked out for a full break.

These time-keeping differences were not reflected in Pedroza's complaint: he did not allege any specific dates for the meal break violations, and he alleged in both his UCL claim and his PAGA claim that CSK had failed to pay premium meal break wages. Thus, Pedroza's complaint indicated he was seeking relief for all meal break violations in his UCL cause of action. Further, the evidence at trial showed that the April–June 9 violations and the June 12–21 violations were essentially part of the same

course of conduct. Pedroza had essentially the same supervisors for both time periods and claimed that the supervisors asked him to work during his meal break in both time periods.[12] Thus, the court properly considered Pedroza's claims about meal break violations for the combined period of April 20 to June 21 when deciding his UCL cause of action. The court found Pedroza did not prove that CSK had failed to provide him with the opportunity for a 30-minute meal break at any time during his employment.

Beginning with the trial court's issuance of its tentative statement of decision and continuing through this appeal, Pedroza has maintained that the trial court's finding of no meal break violations is premised on the court's mistaken belief that when the employer pays the meal break premium wage, no violation occurs. However, the trial court repeatedly made clear that the premium payments were not the basis of its findings.

In its statement of decision the court found that "Pedroza has not met his burden to show by a preponderance of the evidence that he worked off-the-clock during meal breaks or that he was denied 30-minute meal breaks during the time periods at issue." The court acknowledged that "Pedroza's time records reflected on Exhibit 135 show meal break penalties on June 12, 2012, June 13, 2012, June 18, 2012 and June 21, 2012." However, as the court had previously noted, CSK's Division Human Resources manager testified that "If an employee does not take [a] meal break, the system will automatically add one

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[12] Pedroza's supervisor Taylor left in April, and thereafter Pedroza reported to Melgar, Renteria and Silva, each of whom asked him to work during his meal breaks.

hour of pay for a penalty. If an employee takes a short lunch, the system will also add a penalty."

In a section of the statement of decision entitled "**Failure to Provide Full Meal Periods**," the court explained that an employer is required to provide employees with an opportunity to take a 30-minute meal break but not to police that break and ensure no work is performed. The court then concluded: "Because this court finds that Pedroza has not met his burden to show that he was denied a 30-minute meal break on any day during his employment, the UCL claim cannot be based on this basis."

Pedroza was unhappy with the court's tentative Statement of Decision and requested the court modify that decision to make a finding that CSK's payment of a meal break penalty for June 13, 2012 was proof that a violation had occurred. The court denied the request.

As the trial court later noted in its ruling on the motion for judgment on the pleadings, "At the hearing, Pedroza [again] argued that this court failed to make a ruling that CSK violated the Labor Code for meal breaks that were not provided but for which a meal break penalty was paid." The court stated that "this issue was in fact . . . decided by this court." The court noted that Pedroza had previously requested the court to modify its tentative Statement of Decision to make a finding that CSK's payment of a meal break penalty for June 13, 2012 was proof that a violation had occurred and that the court should modify its statement to reflect such a violation. The court explained that it had denied the request because "the court did specifically make a finding on this issue in that it found that 'Pedroza has not met his burden to show that he was denied a 30-minute meal break

on any day during his employment, the UCL claim cannot be based on this basis.' (Statement of Decision at p. 26.) If CSK did not deny Pedroza the opportunity to take a 30-minute break on any day during his employment, then the fact he was paid a meal break penalty does not mean that CSK violated Section 512."

The court's findings were even more detailed than this summary suggests. The court found not credible much of Pedroza's testimony about working during meal breaks. The court pointed out that Pedroza had not called "a single witness to support his assertion that he (or anyone at CSK) worked off-the-clock during their meal breaks, or were denied a full 30-minute meal break. To the contrary, [other witnesses] testified that they never observed Pedroza working off-the-clock during meal breaks or were aware of this happening at CSK."

Having reviewed the record de novo, we conclude the trial court did make a finding that CSK did not deny Pedroza the opportunity to take a full break on any day of his employment; we further conclude the trial court did not base its finding of no meal break violations on CSK's payments of meal break premium wages. The trial court identified substantial evidence which supports its finding that Pedroza was not credible: inconsistencies and gaps in Pedroza's testimony, a lack of evidence to corroborate his testimony, and evidence contradicting his testimony. Absent Pedroza's testimony, there is no evidence he was denied the opportunity for a full meal break on any day of his employment.

On appeal, Pedroza contends there *was* "undisputed" evidence at trial of at least one meal break violation from the June 12–21 period: (1) CSK paid him a meal break premium on June 13, 2012; (2) the only indication of a meal break for Pedroza

on June 13, 2012 was when he clocked out for 29 minutes; and (3) CSK's time recording system would not allow any employee to clock back in early without a supervisor's approval. Pedroza contends this evidence taken together "defeats CSK's defense that it is 'not obligated to police meal breaks and ensure no work thereafter is performed.' Based on CSK's own policies, management had to play an active role in shortening their employee's meal break." Thus, Pedroza argues, there is conclusive evidence of a knowing violation for purposes of the PAGA cause of action.

We fail to follow the logic of this argument. Requiring CSK to refrain from authorizing an employee to clock back in early from a meal break is requiring CSK to police its employees' meal breaks and ensure no work is performed. An employer has no such duty. "Bona fide relief from duty and the relinquishing of control satisfies the employer's obligations, and work by a relieved employee during a meal break does not thereby place the employer in violation of its obligations." (*Brinker*, *supra*, 53 Cal.4th at pp. 1040–1041.) There is no requirement that the employer be ignorant of the work performed to escape liability. (*Id.* at p. 1040 ["Proof an employer had knowledge of employees working through meal periods will not alone subject the employer to liability"].)

3. *The Trial Court Properly Considered Its Findings from the Trial in Deciding the Motion for Judgment on the Pleadings.*

In deciding the motion for judgment on the pleadings, the court compared the UCL and PAGA causes of action, and concluded they "assert the same violations as to meal periods. In Pedroza's UCL claim, he alleges that CSK violated state law

by '[f]ailing to provide meal periods to Plaintiff and Class Members and failing to pay premium wages for missed meal periods in violation of California Labor Code section 512(a) and the applicable Industrial Welfare Commission Wage Order, as herein alleged.' (SAC ¶ 90, subd. (c).) As to the PAGA claim, Pedroza similarly alleged that CSK violated Labor Code sections 226.7 and 512 for failure to provide meal and rest periods to Plaintiff and other aggrieved employees and failure to pay premium wages for missed meal and rest periods as herein alleged. (SAC ¶ 81, subd. (c).) The court concluded that the UCL claim for missed meal breaks "is the same claim asserted under PAGA as to all aggrieved employees." Therefore, because the court had ruled against Pedroza on his UCL claim, Pedroza "cannot show that he is an 'aggrieved employee' entitled to represent a PAGA class in this matter."

Reviewing this issue de novo, we reach the same conclusion. The allegations are the same.

It is well established that "[i]ssues adjudicated in earlier phases of a bifurcated trial are binding in later phases of that trial and need not be relitigated. [Citations.] No other rule is possible, or bifurcation of trial issues would create duplication, thus subverting the procedure's goal of efficiency. [Citation.] '[D]uplication of effort is the very opposite of the purpose of bifurcated trials.' " *(Arntz*, *supra*, 47 Cal.App.4th at p. 487.)

The trial court did not err in applying on its findings after trial to the motion for judgment on the pleadings of the PAGA claim as to the same alleged meal break violations. Nor did it err in granting the motion.

DISPOSITION

The trial court's order granting judgment on the pleadings of the PAGA cause of action, and the judgment thereon, are reversed as to the suitable seating violation allegations only. This matter is remanded to permit Pedroza to prosecute his PAGA cause of action based on those allegations only. The judgment is otherwise affirmed in all other respects.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

STRATTON, J.

We concur:

BIGELOW, P. J.

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WILEY, J., Dissenting:

Paul Pedroza appeals a seating issue he did not argue to the trial court. The trial judge wrote out a long and thorough motion ruling. She mentioned nothing about seating because no one argued it to her or gave her any pertinent legal authority.

Parties should argue an issue in the trial court before they appeal it. This promotes fairness and efficiency, especially in civil cases.

I would affirm.

WILEY, J.