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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

DORA ALICIA VALLE,

Defendant and Appellant.

B271503

Los Angeles County  
Super. Ct. No. BA423675

APPEAL from a post-judgment order of the Superior Court of Los Angeles County, Edmund W. Clarke, Jr., Judge. Affirmed as modified.

James R. Bostwick, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Shawn McGahey Webb and Noah P. Hill, Deputy Attorneys General, for Plaintiff and Respondent.

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## **INTRODUCTION**

Defendant Dora Alicia Valle appeals from a post-judgment victim restitution order entered after she pled no contest to slavery and human trafficking of a minor. She contends the statute requiring criminal defendants to pay restitution for the “value of a victim’s labor as guaranteed under California Law” does not encompass liquidated damages for minimum wage violations under the Labor Code. She therefore asks us to strike the liquidated damages portion of the restitution award.

Under the plain language of Labor Code section 1194.2, trial courts may only award liquidated damages in enumerated civil wage-recovery actions. Because a criminal restitution hearing is not a civil action, we conclude liquidated damages may not be imposed in this case. We therefore modify the restitution order to reflect an award of \$55,068.12 and affirm as modified.

## **FACTUAL AND PROCEDURAL BACKGROUND**

In 2002, defendant learned that a pregnant Salvadorian woman named Maribel was willing to give up her child for adoption. Defendant arranged to pay Maribel \$150 per month for the last three months of the pregnancy. After Maribel gave birth, defendant paid other women in El Salvador \$150 per month to raise the child, Dayana G. Defendant traveled to El Salvador twice a year to visit Dayana. When Dayana turned nine, defendant paid a smuggler \$11,000 to bring her to the United States.

When Dayana arrived in this country, she was enrolled in school and put to work at a restaurant defendant managed in Pacoima. Dayana worked after school three days a week and all day on weekends. The restaurant’s owners paid her \$30 per week

plus tips, all of which she relinquished to defendant. Defendant then returned \$5 or \$10 to Dayana. Defendant told Dayana that she was taking Dayana's earnings as reimbursement for the smuggling costs. In addition to waitressing and attending school, Dayana was expected to get good grades and to do her homework, which she worked on when the restaurant wasn't busy. She also did household chores.

Over time, one of the restaurant's regular customers befriended Dayana. The customer thought Dayana seemed young to be working and eventually called the Department of Children and Family Services.

By information filed July 21, 2014, defendant was charged with one count of human trafficking of a minor (Pen. Code,<sup>1</sup> § 236.1, subd. (a); count 1) and one count of slavery (§ 181; count 2). Defendant pled not guilty. On the third day of jury trial, however, defendant withdrew her not guilty plea and entered an open plea of no contest under section 1203.03 with a five-year maximum sentence. Upon completion of the section 1203.03 diagnostic process and after a hearing, the trial court sentenced defendant to five years in state prison. The court selected count 1 (§ 236.1, subd. (a)) as the base term and sentenced defendant to the low term of five years. The court imposed the middle term of three years for count 2 (§ 181), to run concurrently.

The parties submitted detailed briefs on the question of victim restitution. Following a contested hearing, the court awarded Dayana \$93,209.56, which it calculated as follows:

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<sup>1</sup> All undesignated statutory references are to the Penal Code.

|                                |   |                    |
|--------------------------------|---|--------------------|
| Regular wages                  | 3,278 hours @ \$8/hour                                    | \$26,224           |
| OT wages                       | 772 hours @ \$12/hour                                     | \$9,264            |
| Meal & rest breaks             | 964 violations @ \$8 each                                 | \$7,712            |
| (Wages paid)                   | (96 pay periods @ \$10 each)                              | (-\$960)           |
| Interest on net wages & breaks | 10% annual pre-judgment interest                          | \$12,828.12        |
| <b>Total</b>                   |   | <b>\$55,068.12</b> |
| Liquidated damages             | 4,050 hours <sup>2</sup> @ \$8/hour<br>– \$960 wages paid | \$31,440           |
| Interest on liquidated damages | 10% annual pre-judgment interest                          | \$6,701.44         |
| <b>Total</b>                   |   | <b>\$38,141.44</b> |

Defendant filed a timely notice of appeal. (§ 1237, subd. (b); *People v. Ford* (2015) 61 Cal.4th 282, 286 [victim restitution order is a post-judgment order affecting defendant’s substantial rights].)

## DISCUSSION

Any victim who suffers “economic harm” at the hands of a defendant convicted of human trafficking is entitled to criminal restitution for “the value of [his or her] labor as guaranteed under California law ... .” (§ 1202.4, subd. (q).) Labor Code section

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<sup>2</sup> Since liquidated damages do not apply to overtime or break violations (Lab. Code, § 1194.2, subd. (a)), Dayana’s overtime hours were deemed regular working hours for this purpose. (3,278 regular hours + 772 overtime hours = 4,050 liquidated damages hours.)

1194.2 (hereafter Section 1194.2) provides that in certain civil actions for unpaid minimum wages, an employee is entitled to recover not only the unpaid wages, but also an equal amount of liquidated damages, plus interest. (Lab. Code, § 1194.2, subd. (a).) The court below ruled that the value of Dayana’s labor under the restitution statute included the liquidated damages available to civil plaintiffs under Section 1194.2.

Defendant contends that Section 1194.2 damages are a penalty that does not compensate Dayana for her economic losses. As penalties are not a proper subject of criminal restitution, she argues, the liquidated damages portion of the restitution order was unauthorized. (See *People v. Harvest* (2000) 84 Cal.App.4th 641, 648 [victim restitution is not punishment because its “primary purpose ... is to provide monetary compensation to an individual injured by crime.”].) The People contend the award was proper. In support of that view, they point us to the federal anti-trafficking statute, which contains restitution language similar to that used in California (18 U.S.C. § 1593), and to the liquidated damages provision of the Fair Labor Standards Act (29 U.S.C. § 216). The People urge us to adopt the Second Circuit’s construction of these federal statutes as well as that court’s conclusion that liquidated damages are compensatory, and as such, may be imposed here.

We hold that because Section 1194.2 unambiguously limits liquidated damages to certain enumerated civil actions, those damages cannot be applied in a criminal case.

## **1. Standard of Review**

Section 1194.2’s application to restitution awards is an issue of “statutory interpretation that we must consider de novo.” (*People v. Prunty* (2015) 62 Cal.4th 59, 71.) As with any case

involving statutory interpretation, our primary goal is to ascertain and effectuate the lawmakers' intent. (*People v. Park* (2013) 56 Cal.4th 782, 796.) To determine intent, we first examine the statutory language and give the words their ordinary meaning. (*Ibid.*) "Words and phrases must be construed according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, must be construed according to such peculiar and appropriate meaning." (§ 7, subd. (16); see *People v. Gonzales* (2017) 2 Cal.5th 858, 871, fn. 12 [because term of art "must be understood as it is defined, not in its colloquial sense," courts must assume the Legislature knew the ramifications of its word choices].)

Although we look first at the words of a statute, we do not consider the statutory language in isolation; rather, we read the statute "as a whole, harmonizing the various elements by considering each clause and section in the context of the overall statutory framework." (*People v. Jenkins* (1995) 10 Cal.4th 234, 246.) We construe all parts of a statute together, without according undue importance to a single or isolated portion. (*Cooley v. Superior Court* (2002) 29 Cal.4th 228.) "Significance should be given, if possible, to every word of an act." (*Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798.) "Conversely, a construction that renders a word surplusage should be avoided." (*Id.* at p. 799.) "If the language is unambiguous, there is no need for further construction." (*People v. Gonzales, supra*, 2 Cal.5th at p. 868.)

If the language can be interpreted to have more than one reasonable meaning, however, we may consider " 'a variety of extrinsic aids, including the ostensible objects to be achieved, the

evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part.’ [Citation.]” (*Aleman v. AirTouch Cellular* (2012) 209 Cal.App.4th 556, 568–569.)

## **2. The value of the victim’s labor as guaranteed under California law**

The California Constitution requires “that restitution must [be] imposed ‘in every case ... in which a crime victim suffers a loss.’ ” (*People v. Giordano* (2007) 42 Cal.4th 644, 655; Cal. Const., art. I, § 28, subds. (b)(13)(A)–(C).) To implement this broad mandate, the “ ‘Legislature has enacted, and frequently amended, a bewildering array of responsive statutes.’ ” (*Giordano*, at p. 652.) Typically, however, a “restitution order reimburses only for economic losses [citation], not noneconomic losses, which can be recoverable in a civil judgment.” (*Vigilant Ins. Co. v. Chiu* (2009) 175 Cal.App.4th 438, 445.)

When a defendant is convicted of human trafficking (§ 236.1), the court must “order the defendant to pay restitution to the victim in a case in which a victim has **suffered economic loss** as a result of the defendant’s conduct. The court shall require that the defendant make restitution to the victim ... in an amount established by court order, based on ... the greater of the following: [1] the gross value of the victim’s labor or services based upon the comparable value of similar services in the labor market in which the offense occurred, or [2] **the value of the victim’s labor as guaranteed under California law**, or [3] the actual income derived by the defendant from the victim’s labor or services or [4] any other appropriate means to provide reparations to the victim.” (§ 1202.4, subd. (q), emphasis added.) The statute also provides for “[i]nterest, at the rate of 10 percent

per annum, that accrues as of the date of sentencing or loss, as determined by the court.” (§ 1202.4, subd. (f)(3)(G).)

To determine the value of the victim’s labor under California law, we first address the meaning of those terms. *Labor* is “labor, work, or service” personally performed by the worker demanding payment. (Lab. Code, § 200, subd. (b).) *Wages* “includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other methods of calculation.” (*Id.*, subd. (a).) *Wages* “also include those benefits to which an employee is entitled as a part of his or her compensation, including money, room, board, clothing, vacation pay, and sick pay. [Citations.]” (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103 (*Murphy*).) The Industrial Welfare Commission (IWC) has “the power to fix minimum wages, maximum hours and standard conditions of labor for workers in California.” (*Martinez v. Combs* (2010) 49 Cal.4th 35, 52 (*Martinez*).)<sup>3</sup> It exercises its authority through a series of 18 “industry- and occupationwide wage orders ... .” (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1026.)

A *penalty*, on the other hand, is money “ ‘an individual is allowed to recover against a wrong-doer, as a satisfaction for the wrong or injury suffered, and without reference to the actual damage sustained ... .’ [Citations.] Penalties provide for ‘ ‘recovery of damages additional to actual losses incurred, such

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<sup>3</sup> Although the Legislature defunded the IWC in 2004, its wage orders are still in effect. (*Murphy, supra*, 40 Cal.4th at p. 1102, fn. 4.)



as double or treble damages ... .” ’ [Citation.]” (*Murphy, supra*, 40 Cal.4th at p. 1104.)

While section 1202.4, subdivision (q), guarantees trafficking victims unpaid *wages*, it cannot be used to recover *penalties*. A criminal “restitution order is not intended to provide the victim with a windfall; instead, a victim is entitled to reimbursement only for his or her actual loss. [Citations.] There is no requirement the restitution order ‘reflect the amount of damages that might be recoverable in a civil action.’ [Citations.]” (*Walker v. Appellate Division* (2017) 14 Cal.App.5th 651, 656–657 (*Walker*).) Indeed, an “order of restitution [in a criminal case] does not preclude the crime victim from pursuing a separate civil action based on the same facts from which the criminal conviction arose.” (*People v. Vasquez* (2010) 190 Cal.App.4th 1126, 1132.) And California provides trafficking victims with a robust civil remedy. (Civ. Code, § 52.5, subds. (a) [trafficking victim may recover actual, compensatory, and punitive damages, attorney’s fees, costs], (b) [treble damages for unpaid labor].)

The People concede this basic point, but contend that because “California law includes” Section 1194.2, the liquidated damages provided under that statute must be part of “the value of the victim’s labor as guaranteed under California law ...” (§ 1202.4, subd. (q)). Certainly, Section 1194.2 is a California law—but subdivision (q) plainly does not encompass *all* California law. We therefore turn to the language of Section 1194.2.

**3. Liquidated damages are not part of the value of the victim's labor.**

Section 1194.2, subdivision (a), provides, “**In any action under [Labor Code] Section 98, 1193.6, 1194, or 1197.1 to recover wages** because of the payment of a wage less than the minimum wage ..., an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. Nothing in this subdivision shall be construed to authorize the recovery of liquidated damages for failure to pay overtime compensation.” Subdivision (c) provides that the statute “applies only to civil actions commenced on or after” the statute’s effective date.

Section 1194.2 is clear and unambiguous. By its terms, it “applies only to civil actions” (subd. (c)) under Labor Code “Section 98, 1193.6, 1194, or 1197.1 to recover” unpaid minimum wages (subd. (a)). The statute is not self-executing. “Plaintiffs cannot recover liquidated damages under section 1194.2 unless they have a valid claim under” one of the enumerated provisions. (*Martinez, supra*, 49 Cal.4th at p. 49, fn. 11.) That is, the existence of a civil action is a condition precedent to Section 1194.2 remedies. (See *People v. Durbin* (1966) 64 Cal.2d 474, 479 [“No person has a vested right in an unenforced statutory penalty or forfeiture.”].)

The recent opinion in *Walker* is instructive. In that case, our colleagues in Division Five addressed the relationship between section 1202.4, the criminal restitution statute; Business and Professions Code section 7028, which provides that victims of unlicensed contractors are eligible to receive criminal restitution; and Business and Professions Code section 7031, which allows victims’ civil recovery of all compensation paid to an unlicensed

contractor. (*Walker, supra*, 14 Cal.App.5th 651.) The *Walker* court held that section 1202.4 did not require the unlicensed-contractor defendant to disgorge all payments as criminal restitution: compensating the victim for “actual economic loss” was sufficient. (*Id.* at pp. 656–658.) The court reasoned that under “the statutory scheme, the civil remedy of refunding ‘all compensation paid’ is intended to deter unlicensed contractors by depriving them of all monetary benefit [citation]. The restitution statute, in contrast, serves primarily to compensate victims for actual economic losses. Unlike [Business and Professions Code] section 7031, section 1202.4 ... does not provide for a full refund of all payments to an unlicensed contractor. A victim who is made whole for economic losses under ... section 1202.4 remains able to pursue the civil law remedy of a full refund. [Citation.]” (*Id.* at p. 658.)

The People nevertheless argue that because the Legislature did not explicitly *exclude* liquidated damages from the restitution provision, they may be awarded here. As there is no California authority interpreting section 1202.4, subdivision (q), the People urge us to follow *United States v. Sabhnani*, a Second Circuit case in which the court held the victim of a federal trafficking offense was entitled to liquidated damages under the Fair Labor Standards Act (FLSA).<sup>4</sup> (*United States v. Sabhnani* (2d Cir. 2010) 599 F.3d 215, 259–260 (*Sabhnani*) [restitution for “the ‘value of the victim’s labor as guaranteed under the minimum wage and overtime guarantees [of FLSA],’ ... includes the liquidated

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<sup>4</sup> We note that in the seven years since it was decided, *Sabhnani* has never been cited—in any jurisdiction—in an opinion in a criminal case.

damages mandated by [18 U.S.C.] § 216.”.) Liquidated damages, the court concluded, were “ ‘not a penalty exacted by the law, but rather compensation to the employee occasioned by the delay in receiving wages due caused by the employer’s violation of the FLSA.’ [Citation.]” (*Id.* at p. 260; cf. *Martinez, supra*, 49 Cal.4th at p. 48, fn. 8 [“The ‘liquidated damages’ allowed in section 1194.2 are in effect a penalty equal to the amount of unpaid minimum wages.”].)

The People urge that the California anti-trafficking statute was based on its federal counterpart, and as such, we should treat our state liquidated damages provision like the federal liquidated damages provision. Contrary to the People’s argument, however, federal wage and overtime statutes differ in important ways from the laws of this State. (*Martinez, supra*, 49 Cal.4th at p. 68 [“We have previously cautioned against ‘confounding federal and state labor law’ [citation] and explained ‘that where the language or intent of state and federal labor laws substantially differ, reliance on federal regulations or interpretations to construe state regulations is misplaced’ [citations].”].)

First, as the People properly concede, liquidated damages are compensatory under federal law *only* because the FLSA provides those damages *in lieu* of interest. Indeed, the Supreme Court has long warned federal courts that to “allow an employee to recover the basic statutory wage and liquidated damages, with interest, would have the effect of giving an employee double compensation for damages arising from delay in the payment of the basic minimum wages. [Citation.]” (*Brooklyn Sav. Bank v. O’Neil* (1945) 324 U.S. 697, 715–716.) Awarding both types of compensation, the Court concluded, would “produce the undesirable result of allowing interest on interest. [Citation.]”

(*Ibid.*) Thus, liquidated damages were compensatory in *Sabhnani* because without them, the victim would not have received *any* compensation for the wage delay. In this case, on the other hand, Dayana received \$12,828.12 in interest on the unpaid wages *and* \$31,440 in liquidated damages *and* \$6,701.44 in interest on the liquidated damages.

Second, *Sabhnani* emphasized that the federal provision is self-executing, which makes the provision look more like compensation and less like a penalty. (*Sabhnani, supra*, 599 F.3d at p. 259 [the “double damages provision is triggered automatically by a violation of [minimum wage laws], so that an employer who violates these provisions ‘*shall be liable* to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation ... and in an additional equal amount as liquidated damages.’ [Citation.]”].) The distinction is important, a point the California Supreme Court stressed in support of its conclusion in *Murphy* that wage and break premiums were wages rather than penalties. In that case, the Court noted that an employee is entitled to break premiums “immediately upon being forced to miss a ... [break, making the payment] akin to an employee’s immediate entitlement to payment for wages or for overtime. [Citation.] By contrast, Labor Code provisions imposing penalties state that employers are ‘subject to’ penalties and the employee or Labor Commissioner must first take some action to enforce them. The right to a penalty, unlike [pay for missed breaks] does not vest until someone has taken action to enforce it. [Citation.]” (*Murphy, supra*, 40 Cal.4th at p. 1108.)

Unlike the break premiums at issue in *Murphy*, Section 1194.2 only applies if the plaintiff or the Labor Commissioner

brings a civil action. (Lab. Code, § 1194.2, subd. (a) [“In any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of wage less than the minimum wage ..., an employee shall be *entitled to recover* liquidated damages” (emphasis added)]; *Martinez, supra*, 49 Cal.4th at p. 49, fn. 11 [“Plaintiffs cannot recover liquidated damages under section 1194.2 unless they have a valid claim under” an enumerated provision]; accord *Walker, supra*, 14 Cal.App.5th at p. 657 [disgorgement of payments to unlicensed contractors requires civil action].)

For these reasons, the court erred in awarding Dayana liquidated damages as victim restitution.

## **DISPOSITION**

The restitution order is modified as follows. The portion of the restitution award attributable to liquidated damages (\$31,440) and interest thereon (\$6,701.44) is stricken. Defendant is ordered to pay \$55,068.12 in victim restitution, consisting of \$34,528 in net wages, \$7,712 in meal and rest break premiums, and \$12,828.12 in interest. As modified, the order is affirmed.

Upon issuance of our remittitur, the trial court is directed to prepare corrected minute orders consistent with the views expressed in this opinion, amend the abstract of judgment and the victim restitution order to reflect the judgment as modified, and send a certified copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

LAVIN, J.

WE CONCUR:

EDMON, P. J.

DHANIDINA, J.\*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.