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**FOCUS ON
CALIFORNIA:
WAGE AND
HOUR**



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**CA SUPREME COURT HANDS WAGE AND HOUR VICTORY TO
EMPLOYERS**

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Last week, the California Supreme Court in *Duran v. U.S. Bank National Association* noted wage and hour class actions that proceed to trial are “exceedingly rare beast[s]” and affirmed class certification is not appropriate when individualized defenses exist.

Plaintiffs argued U.S. Bank misclassified 260 loan officers as exempt from overtime. Under California law, to be exempt, an employee must perform exempt duties more than 50 percent the time. U.S Bank argued this necessarily required an individualized inquiry into whether a given individual actually worked more or less than 50 percent on exempt duties, thus precluding class status.

The trial court created its own trial plan to determine liability based on the testimony of 19 “randomly selected” class members and two named class representatives. The court refused to allow U.S. Bank to present the testimony of others who would testify they spent more than fifty percent of their time on exempt duties. Based on the testimony of the sample group only, the court determined U.S. Bank had misclassified every class member. The court then approved damages based in part on plaintiffs’ expert’s calculations, which were extrapolated from the sample group. The court denied U.S. Bank’s objections to the modeling approach, in part finding U.S. Bank’s lack of records precluded a contrary analysis. The court awarded \$9 million in overtime pay to the class. Interest brought the total to \$15 million.

The Supreme Court found the trial court’s method “profoundly flawed” and stated it resulted in a “manifest” injustice to U.S. Bank. The Court held that a trial court must assure itself that any liability methodology used is actually reliable. The Court directed trial courts to consider – preferably during the certification briefing process – whether a workable and reliable trial management plan can actually be developed. The Court further suggested trial courts must be willing to reconsider whether certification remains appropriate as the case develops, should the necessity of individualized inquiries become apparent.

The opinion provides some positive guidance for employers facing wage and

hour class actions in California:

- Employers must identify – as early as possible –factual issues specific to individual class members and inform the trial court of the issues.
- Employers should ensure their written policies are consistent with California wage and hour laws. A written policy or uniform practice that violates the law is a common argument made by plaintiffs to skirt individualized inquiry issues.
- Employers should have job descriptions that clearly state the exempt duties the employee is expected to perform **and** the amount of time the employee is expected to spend performing those duties, *i.e.*, more than 50 percent.
- Employers should request the court re-visit any class decision as the case progresses and challenge any sampling proposal that eliminates individual inquiry.

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