



## Court of Appeals Spices Up Class Certification "Death Knell" Laws For Chipotle

July 7, 2015

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**Executive Summary:** In a case of first impression, the California Court of Appeals recently held that, unlike cases where only class allegations are asserted, California's "death knell" doctrine does not apply to cases where class certification is denied and representative claims under California's Private Attorney General Act (PAGA) move forward. See *Munoz v. Chipotle Mexican Grill, Inc.*, Los Angeles Superior Court Case No. BC447232 (June 30, 2015). The court's decision means the plaintiffs cannot appeal the denial of class certification until after litigation of their representative PAGA claims.

### **Background**

In *Munoz*, a group of former nonexempt, hourly employees brought a putative class action against Chipotle, primarily claiming Chipotle failed to reimburse them and other similarly-situated employees for out-of-pocket purchases of nonslip work shoes, and failed to provide accurate, itemized wage statements. They also made derivative representative claims under PAGA. The plaintiffs asked the trial court to certify two subclasses: (1) an unpaid wages subclass of Chipotle nonexempt California employees for failure to reimburse out-of-pocket expenses for nonslip work shoe purchases and for unpaid minimum wages resulting from wage deductions to cover those purchases, and (2) a noncompliant wage statement subclass for Chipotle nonexempt California employees. The plaintiffs did not seek to certify their PAGA claim. The trial court denied the plaintiffs' class certification motion, and the plaintiffs appealed the order under California's "death knell" doctrine.

### **Denial of Class Certification Is Only Appealable When Individual Claims Remain**

In appealing the order denying class certification, the plaintiffs argued that California's "death knell" doctrine applied, rendering the order readily appealable. Unlike typical intermediate appeals, which require a court order permitting appellate review, the "death knell" doctrine permits immediate review of denials of class certification motions. The underlying premise of this doctrine is that such appeals must be permitted because otherwise the plaintiffs would have no financial incentive to pursue the case to final judgment for the sake of preserving the right to appeal denial of class certification after final adjudication of the entire case. Essentially, denial of class certification is "in legal effect a final judgment" and readily appealable, even pending litigation.

Prior to *Munoz*, no Court of Appeal had looked at whether the "death knell" doctrine applied when the plaintiff brought both class claims and representative claims under PAGA. In a case of first impression, the Court of Appeals in *Munoz* found that even though the trial court denied certification on all class claims, the remaining representative PAGA claims precluded application of the "death knell" doctrine. The appellate court reasoned that because the plaintiffs still sought to prosecute their action under PAGA on behalf of all current and former



"aggrieved" employees—all of whom were putative class members prior to the class certification ruling—the plaintiffs' individual claims were not the only claims left in the case and, as such, the plaintiffs still had an incentive to continue litigation. Accordingly, the Court of Appeal dismissed plaintiffs' appeal as procedurally defective, although it did not rule on the merits of the appeal itself, and awarded costs to the defendant.

### **Bottom Line for Employers**

The *Munoz* opinion essentially precludes intermediate appeals of class certification denials when PAGA claims are still in play, requiring plaintiffs to move forward with their case rather than delaying the case mid-litigation and forcing employers to spend significant time and money on appeals.

If you have any questions regarding this decision or other labor or employment issues impacting employers in representative actions in California, please feel free to contact the authors of this Alert, [David L. Cheng](mailto:dcheng@fordharrison.com), [dcheng@fordharrison.com](mailto:dcheng@fordharrison.com), or [Alexandria M. Witte](mailto:awitte@fordharrison.com), [awitte@fordharrison.com](mailto:awitte@fordharrison.com), who are attorneys in our Los Angeles office. You may also contact the FordHarrison attorney with whom you usually work.