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## **EMPLOYMENT ATTORNEYS WIN APPEAL AND SECURE RIGHT TO RECOVER 100% OF UNPAID WAGES AND STATUTORY PENALTIES FOR CALIFORNIA EMPLOYEES**

**Los Angeles, November 28, 2005:**

In a published opinion, the California Court of Appeal, Second District ruled Monday, in *Caliber Bodyworks, Inc., et al., Petitioners v. The Superior Court of Los Angeles County, Respondent, Hector R. Herrera, et al., Real Parties in Interest*, that employees in a class action seeking unpaid wages and statutory penalties for Labor Code violations are entitled full recovery of these wages and penalties whether or not these employees exhaust the administrative pre-filing requirements stipulated in §2699.

Enacted in 2004, the Labor Code Private Attorneys General Act (§2699) allows aggrieved employees to initiate private civil actions on behalf of himself or herself and other current or former employees to recover civil penalties if the Labor and Workforce Development Agency (LWDA) fails to do so. But in order to initiate such actions, aggrieved employees must first satisfy the requirements listed in §2699.3(a) including pre-filing claims with the LWDA. Under §2699 the State and/or LWDA are entitled to 75% of whatever the employee(s) recover.

Caliber Bodyworks, Inc. attempted to argue that Labor Code §2699 applies not only to civil penalties but unpaid wages and statutory penalties as well. "If the Court were to agree with Caliber then any employee seeking statutory and unpaid wages would only be entitled to 25% of those recovered funds and would only be able to seek these funds after first exhausting the pre-filing requirements of the LWDA," commented Stephen Swedlow, co-counsel for the plaintiff employees.

The employees acknowledged that they had failed to exhaust the pre-filing requirements stipulated in §2699 for its causes of action that sought civil penalties. However, they contended that legislators did not draft §2699 to apply to unpaid wages as a whole or statutory penalties. Thus, Herrera's causes of action relating to Labor Code Violations that warrant unpaid wages and statutory penalties are still actionable and the trial court was correct in denying the motion to dismiss the case should have been denied.

In the opinion, the Appellate Court properly denied the portions of Caliber's demurrer that illogically grouped civil penalties, unpaid wages and statutory

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penalties together under Section 2699. In other words, the Court delineated Section 2699 and its pre-filing requirements apply *only* to civil penalties. Therefore, Herrera's causes of action relating to civil penalties were demurred for failure to exhaust these pre-filing requirements. However, all of Herrera's causes of action asserting unpaid wages and penalties are actionable because there is nothing in §2699 requiring notification to the State for these penalties.

"The appellate court did a good thing for employees today," said Anthony Luti, also co-counsel for the plaintiff employees. Luti argued the opinion before the Court of Appeals. "If Caliber's argument was persuasive, it would have basically eradicated for California employees to recoup 100% of the wages and penalties they are owed by employers when those employers violate California's wage and hour laws. Such a ruling would have effectively eliminated the employee right to up to 75% of their wages and penalties for these violations. The Court saw through this."

The decision is published at 137 Cal. App.4th 365, 36 Cal. Rptr.3d 31 (Cal. App. 2 Dist. Jul 12, 2005). Both Mr. Swedlow and Mr. Luti are available to comment on this matter. Mr. Luti can be reached at (323) 960-2600. Mr. Swedlow can be reached at (312) 899-5063. A full copy of the appellate court opinion can be provided upon request.

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