

Canela v. Costco (2020) 2020 DJDAR 7120

Lawsuits filed under California's Private Attorney General Act (PAGA) are not "class actions" for purposes of federal subject matter jurisdiction under the Class Action Fairness Act (CAFA)

FACTS: Liliana Canela (P) sued her employer, Costco (D), claiming that Costco violated the Labor Code by failing to provide "suitable seating" to its employees. Because Labor Code violations confer a cause of action California's Private Attorney General Act (PAGA), Canela's sole claim against Costco arose under PAGA. Canela's complaint referred to the lawsuit as a class action and featured a cover page that described the filing as a "Class Action Complaint."

- Nearly a year after Costco removed the case to federal court based on the federal diversity statute, Canela notified the district court that she did not intend to pursue class certification for her PAGA claim.
- Costco then moved for partial summary judgment, arguing that Canela could not represent unnamed "aggrieved employees" in federal court because the class action requirements under Rule 23 of the Federal Rules of Civil Procedure were not satisfied.

PROCEDURAL POSTURE: The Northern California Federal District Court denied Costco's motion for partial summary judgment. The court explained that because Canela styled her lawsuit as a "class action" and had pursued class status on her PAGA claim prior to her case being removed from state court, the district court retained Class Action Fairness Act (CAFA) jurisdiction over the case even though Canela later elected not to seek class certification. Costco filed an interlocutory appeal, raising two questions: whether a PAGA plaintiff in federal court 1) has Article III standing to represent absent aggrieved employees absent class standing; and 2) can represent absent such employees without qualifying for class certification under Rule 23.

HOLDING: The Ninth Circuit Court of Appeals vacated the District Court's judgement for Plaintiff and remanded the case to state court.

DISCUSSION: The Ninth Circuit panel held that the District Court lacked subject matter jurisdiction over the action because the amount in controversy requirement was not met at the time when Costco removed it to federal court. The court stated that Canela's pro-rata share of civil penalties, attorney's fees included, fell \$69,000 below the jurisdictional threshold. The court explained that under *Urbino v. Orkin Services of California, Inc.* (2013), Canela could not aggregate the claims of other Costco employees with her own.

The court added that even if Canela met the amount in controversy requirement, the District Court still lacked diversity jurisdiction because Canela's stand-alone PAGA claim was not – and could not have been – filed under a state rule equivalent to Rule 23 of the Federal Rules of Civil Procedure. The panel stated that its decision in *Bauman v. Chase Investment Services Corp.* (2014) was controlling. In *Bauman*, the Ninth Circuit held that "PAGA actions are [] not sufficiently similar to Rule 23 class actions to trigger CAFA jurisdiction."

Finally, the Ninth Circuit panel rejected Costco's "formalistic" argument that Canela's initial pursuit of class status determined whether her case was filed as a class action within the meaning of CAFA. The court explained that the "substance and essentials" of the complaint determine whether a state cause of action is filed under a state law analogous to a "class action" under CAFA. It added that here, Canela's action - like other state law claims arising under PAGA - "is a type of *qui tam* action" that cannot be equated to a CAFA "class action" claim. Because Canela's lawsuit never qualified as a class action under CAFA, the District Court never had subject matter jurisdiction over the claim when it was removed from state to federal court.