

Case No. S238941

SUPREME COURT
FILED

JUN 20 2017

**IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA**

Jorge Navarrete Clerk

Deputy

SHARMALEE GOONEWARDENE, an individual,
Plaintiff and Appellant,

vs.

ADP, LLC; ADP PAYROLL SERVICES, INC.; AD PROCESSING, LLC,
Defendants and Respondents.

On Review of a Decision of the California Court of Appeal,
Second Appellate District, Division Four, No. B267010

On Appeal from the Superior Court of California,
County of Los Angeles
The Hon. William Barry, Judge
Civil Case No. TC026406

**PETITIONERS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF
REPLY BRIEF ON THE MERITS; MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF;
DECLARATION OF ROBERT A. LEWIS; [PROPOSED] ORDER**

Robert A. Lewis* (SBN 83630)
Thomas M. Peterson (SBN 96011)
Zachary S. Hill (SBN 275886)
MORGAN, LEWIS & BOCKIUS LLP
One Market Street, Spear Tower
San Francisco, CA 94105
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Attorneys for Defendants, Respondents and Petitioners
ADP, LLC; ADP PAYROLL SERVICES, INC.; AD PROCESSING, LLC

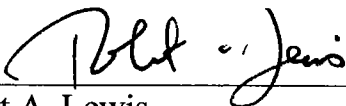
MOTION REQUESTING JUDICIAL NOTICE

Pursuant to California Evidence Code sections 452 and 459, and California Rules of Court, Rule 8.252(a), Defendants-Petitioners ADP, LLC; ADP Payroll Services, Inc.; AD Processing, LLC (“ADP”) respectfully request that this Court take judicial notice of certain proceedings in this case occurring in the Superior Court, County of Los Angeles. Specifically, ADP asks that judicial notice be taken of the Superior Court’s April 19, 2017 Minute Order adjudicating Plaintiff-Respondent Sharmalee Goonewardene’s California Labor Code, California Fair Labor Standards Act, and California Business & Professions Code section 17200 claims, presented by her against her employer Altour International, Inc.

Dated: June 20, 2017

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

By: 
Robert A. Lewis
Attorneys for Defendants, Respondents
and Petitioners ADP, LLC; ADP
PAYROLL SERVICES, INC.; AD
PROCESSING, LLC

MEMORANDUM OF POINTS AND AUTHORITIES

A reviewing court may take judicial notice of any matter specified in Evidence Code section 452. “In determining the propriety of taking judicial notice of a matter, or the tenor thereof, the reviewing court has the same power as the trial court under Section 454.” Evidence Code section 459(b).

A court may take judicial notice of the “[o]fficial acts” of the legislative and judicial branches. Evidence Code section 452(c). Judicial notice of court records is appropriate when “the records in question are relevant” to a contested issue. *Taus v. Loftus* (2007) 40 Cal.4th 683, 726. Judicial notice may properly be taken of a judgment entered after an appeal was filed, where that judgment bears on the appeal. *Palm Springs Paint Company v. Arenas* (1966) 242 Cal.App.2d 682, 687-688.

Where judgment in favor of one co-defendant renders a pending appeal “academic,” “[i]t is of no moment that [the] issue is raised for the first time on appeal.” *Saavedra v. Orange County Consolidated Transportation Service Agency* (1992) 11 Cal.App.4th 824, 828-829. In *Saavedra* the plaintiff alleged three causes of action: 1) against her prior employer and supervisor, for discrimination; 2) against her prior employer for wrongful termination; and 3) against her prior employer and supervisor for intentional infliction of emotional distress. *Id.* at 826. Saavedra’s factual allegations all concerned the actions of her prior supervisor, who was “the only individual identified” in her administrative complaint, “the only person with whom Saavedra dealt. His actions were those of” the employer-defendant. *Id.* at 827. The supervisor obtained summary adjudication of the two causes of action against him; the

court held the third cause of action was preempted by worker's compensation. *Id.* at 826. A jury determined the employer was not liable on the remaining two causes of action. *Ibid.* In the ensuing appeal of the grant of summary judgment in favor of the supervisor, the Court of Appeal held the jury "impliedly found in favor of" the supervisor in finding the employer not liable, as the plaintiff's theories of employer liability were "based solely on a respondent superior concept," so that the employer "would be liable *only* if [the supervisor] did something wrong. By finding [the employer] blameless, the jury a fortiori absolved" the supervisor. *Id.* at 829 (emphasis in the original).

Here, the judicially noticeable material tends to suggest Plaintiff's claims are (or will become) academic. That material greatly changes the complexion of the issues before the Court. Plaintiff alleges that her employer's payroll service provider should be liable on various theories because she was not paid proper amounts of overtime pay she allegedly earned. She also claims the wage statements she received with her paychecks misstated what she was owed and were defective for that reason.

While pursuing these claims on appeal, Plaintiff went to trial against her employer, Altour International, Inc. With respect to her wage-and-hour claims against her employer, including a claim for unpaid overtime, the Superior Court ruled via its April 19, 2017 Order, which states in part:

Every witness who testified at trial, including Plaintiff herself, confirmed that she regularly did not timely report her overtime. She turned in timesheets weeks, and, at times, months after she performed the work. This created what can only be interpreted as an administrative nightmare, with overtime payments spread out over multiple

paychecks. Documentary and testimonial evidence show that Defendants acted reasonably and responsibly in paying overtime. Plaintiff did not offer competent evidence that would establish a specific amount that she is actually owed. An audit of her timesheets against her actual payments, which are both in evidence, indicates errors in payment amounting to \$6,143.76. This accounts for all overtime worked at “double time” rates. Plaintiff is entitled to this amount. This relatively small underpayment was not willful or intentional. Plaintiff is not, therefore, entitled to liquidated damages under 29 U.S.C. 260 or for waiting time penalties under Cal. Lab. Code section 203.

This factual adjudication raises the likely, eventual application of both collateral estoppel¹ and the one satisfaction rule.² The trial court has found that overtime calculation errors were attributable to Plaintiff’s mistaken conduct and the court has both adjudicated issues as to overtime pay obligations and awarded to Plaintiff the only sums owed.

Apart from these considerations, judicial notice is warranted because this Court has been asked by Plaintiff to evaluate the issues raised in this case based on factual allegations that are inconsistent with what the Superior Court found based in part on

¹ “[A]ny issue necessarily decided in the litigation of a cause of action that has been finally determined by a court of competent jurisdiction is conclusively determined as to the parties or their privies if it is involved in a subsequent lawsuit on a different cause of action.” *First N.B.S. Corp. v. Gabrielsen* (1986) 179 Cal.App.3d 1189, 1194. “[C]ollateral estoppel may be raised for the first time on appeal when, as here, the judgment in the other action becomes final pending appeal and there was thus no opportunity to raise the issue in the trial court.” *Brake v. Beech Aircraft Corp.* (1986) 184 Cal.App.3d 930, 941.

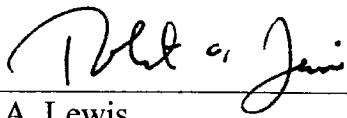
² The rule of satisfaction provides that “[a]n injured person is entitled to only one satisfaction of judgment for a single harm, and full payment of a judgment by one tortfeasor discharges all others who may be liable for the same injury.” *Fletcher v. California Portland Cement Co.* (1979) 99 Cal.App.3d 97, 99. The “rule [is] designed to prevent double recovery and never-ending litigation by dissatisfied claimants.” *Ibid.*

Plaintiff's apparent testimony that she inaccurately reported to her employer the hours she worked.

Dated: June 20, 2017

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

By: 
Robert A. Lewis
Attorneys for Defendants, Respondents
and Petitioners ADP, LLC; ADP
PAYROLL SERVICES, INC.; AD
PROCESSING, LLC

DECLARATION OF ROBERT A. LEWIS

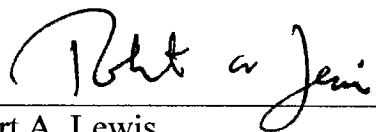
I, Robert A. Lewis, declare as follows:

1. I am an attorney licensed to practice law before the courts of this state and a partner with the law firm Morgan, Lewis & Bockius, LLP, attorneys for Petitioners-Defendants ADP, LLC; ADP Payroll Services, Inc.; AD Processing, LLC.

2. I have personal knowledge of the facts set out here. If called as a witness, I would and could testify competently thereto.

3. Attached hereto as Exhibit A is a true and complete copy of the Minute Order filed on April 19, 2017, in *Sharmalee Goonewardene v. Altour International, Inc*, Case No. TC026406, Superior Court of California, County of Los Angeles, the case from which this review proceeding arises.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct. Executed June 20, 2017, at San Francisco, California.

By: 
Robert A. Lewis

[PROPOSED] ORDER

Appellant's request for judicial notice filed June 20, 2017 is hereby GRANTED.

Dated: _____

By: _____
Presiding Justice

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 04/19/17

DEPT. SOS27

HONORABLE Ross Klein

JUDGE

B. VIOLA
R. HICKMAN, C.A.

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

NONE

Reporter

10:30 am

TC026406

Plaintiff

Counsel

SHARMALEE GOONEWARDENE

NO APPEARANCES

VS

Defendant

Counsel

ALTOUR INTERNATIONAL, INC.
REC'D CASE FROM COMPTON
ON THE 6TH AMENDED COMPLAINT

NATURE OF PROCEEDINGS:

RULING ON SUBMITTED MATTER

Please see attached ruling.

Every witness who testified at trial, including Plaintiff herself, confirmed that she regularly did not timely report her overtime. She turned in timesheets weeks, and, at time, months after she performed the work. This created what can only be interpreted as an administrative nightmare, with overtime payments spread out over multiple paychecks. Documentary and testimonial evidence show that Defendants acted reasonably and responsibly in paying overtime. Plaintiff did not offer competent evidence that would establish a specific amount that she is actually owed. An audit of her timesheets against her actual payments, which are both in evidence, indicates errors in payment amounting to \$6,143.76. This accounts for all overtime worked at "double time" rates. Plaintiff is not, therefore, entitled to liquidated damages under 29 U.S.C. 260 or for waiting time penalties under Cal. Lab. Code section 203.

Plaintiff's post-trial motion to re-open and supplement the record with additional time sheets is denied.

MINUTES ENTERED 04/19/17 COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 04/19/17

DEPT. SOS27

HONORABLE Ross Klein

JUDGE

B. VIOLA
R. HICKMAN, C.A.

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

NONE

Reporter

10:30 am

TC026406

Plaintiff

Counsel

SHARMALEE GOONEWARDENE

NO APPEARANCES

VS

Defendant

Counsel

ALTOUR INTERNATIONAL, INC.
RECV'D CASE FROM COMPTON
ON THE 6TH AMENDED COMPLAINT

NATURE OF PROCEEDINGS:

Defense is to prepare a proposed judgment for the Court's signature and give notice.

CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the minute order upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Long Beach, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: April 19, 2017

Sherri R. Carter, Executive Officer/Clerk

By: _____

B. VIOLA

<p align="center">MINUTES ENTERED 04/19/17 COUNTY CLERK</p>

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 04/19/17

DEPT. SOS27

HONORABLE Ross Klein

JUDGE

B. VIOLA
R. HICKMAN, C.A.

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

NONE

Reporter

10:30 am

TC026406

Plaintiff
Counsel

SHARMALEE GOONEWARDENE

NO APPEARANCES

VS

Defendant
Counsel

ALTOUR INTERNATIONAL, INC.
RECV'D CASE FROM COMPTON
ON THE 6TH AMENDED COMPLAINT

NATURE OF PROCEEDINGS:

Glen Broemer
135 W. 225th, #F
Bronx, NY 10463

Thomas Mackey
725 S. Figueroa St., Ste. 2500
Los Angeles, CA 90017

<p align="center">MINUTES ENTERED 04/19/17 COUNTY CLERK</p>

After a jury found in favor of Defendants Altour International, Inc. (“Defendants”) on Plaintiff Sharmalee Goonewardene’s (“Plaintiff”) claims of discrimination, Causes of Action were tried before the Court. Those causes are pursuant to the California Labor Code, the Fair Labor Standards Act (“FLSA”), and California Business & Professions Code section 17200. The parties agreed to present written briefs for closing arguments. These were timely filed and the Court took the case under submission. The Court has considered all evidence in the case and has read all filed briefs. The Court now rules.

At issue before the Court are Plaintiff’s claims for claimed missed meal and rest periods, unpaid overtime, “off-the-clock” work, and related claims for remedies under the Labor Code and FLSA. Recovery under these claims excludes time periods Plaintiff spent outside of the United States in Sri Lanka.

Plaintiff’s claim for missed meal and rest breaks fails under the seminal case of Brinker Restaurant Corp. v. Super. Ct. (2012) 53 Cal. 4th 1004. Defendants maintained a legally compliant policy that permitted Plaintiff to take meal and rest breaks. Plaintiff admitted at trial that she knew breaks were available to her. Plaintiff’s managers, whom the Court found to be credible and consistent, testified that Plaintiff’s workload (i.e., call volume) was such that she could take breaks and that call support was available to relieve her.

Plaintiff’s claim that she was not paid for “off the clock” work fails. Plaintiff worked remotely and was responsible for reporting her own hours. She admits she did not do so and did not tell anyone at Altour that she was working off the clock. Altour had neither actual nor constructive knowledge that Ms. Goonewardene was performing this work; Defendants are not liable on this claim.

Every witness who testified at trial, including Plaintiff herself, confirmed that she regularly did not timely report her overtime. She turned in timesheets weeks, and, at times, months after she performed the work. This created what can only be interpreted as an administrative nightmare, with overtime payments spread out over multiple paychecks. Documentary and testimonial evidence show that Defendants acted reasonably and responsibly in paying overtime. Plaintiff did not offer competent evidence that would establish a specific amount that she is actually owed. An audit of her timesheets against her actual payments, which are both in evidence, indicates errors in payment amounting to \$6,143.76. This accounts for all overtime worked at “double time” rates. Plaintiff is entitled to this amount. This relatively small underpayment was not willful or intentional. Plaintiff is not, therefore, entitled to liquidated damages under 29 U.S.C. 260 or for waiting time penalties under Cal. Lab. Code section 203.

Plaintiff’s post-trial motion to re-open and supplement the record with additional time sheets is denied.

CERTIFICATE OF SERVICE

I, Davace Chin, declare that I am a resident of the State of California, County of San Francisco. I am over the age of eighteen years and not a party to the within action; my business address is Morgan, Lewis & Bockius LLP, One Market Street, Spear Tower, San Francisco, California 94105.

On June 20, 2017, I caused the following document to be served:

**PETITIONERS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF
REPLY BRIEF ON THE MERITS; MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF;
DECLARATION OF ROBERT A. LEWIS; [PROPOSED] ORDER**

via Federal Express – following ordinary business practices, the envelope was sealed and placed for collection by Federal Express on this date, and would, in the ordinary course of business, be retrieved by Federal Express for overnight delivery on this date and addressed as follows:


Glen Broemer
135 West 225th Street, Apt. F
Bronx, NY 10463

and via U.S. Postal Service – by placing the document listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below:

California Court of Appeal
Second Appellate District, Division 4
300 S. Spring Street
North Tower – Second Floor
Los Angeles, CA 90013

Honorable William Barry
Los Angeles County Superior Court
200 West Compton Boulevard
Compton, CA 90220

I declare under penalty of perjury, under the laws of the United States of America and the State of California, that the above is true and correct. Executed on June 20, 2017, at San Francisco, California.

By: 

Davace Chin