

Daily Journal

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TOP VERDICTS

THE LARGEST & MOST SIGNIFICANT VERDICTS AND APPELLATE REVERSALS IN CALIFORNIA IN 2020

TOP DEFENSE RESULTS

Ray et al. v. California Department of Social Services et al.



HASHMALL



TOKORO



WHITE



SANCHIRICO

When plaintiffs' attorneys brought their motion for partial summary judgment on behalf of 12,000 in-home caregivers seeking up to \$50 million in unpaid overtime from Los Angeles County, they might well have believed they had a surefire winner. After all, the 9th U.S. Circuit Court of Appeals had ruled in favor of caregivers on a similar issue in 1983.

Instead, U.S. District Judge Percy Anderson reconstrued the defense opposition to the motion as a motion itself, and on Oct. 27 last year he granted full summary judgment to the county. *Ray v. California Department of Social Services*, 2:17-cv-04239, filed June 7, 2017.

To achieve that turnabout, the defense team, led by Miller Barondess LLP partners J. Mira Hashmall and Jason H. Tokoro, relied on the same 9th Circuit

precedent cited by the plaintiffs.

The dispute arose from a U.S. Department of Labor regulation in January 2015 allowing overtime for in-home caregivers. In L.A. County, however, those working under the state's In-Home Supportive Services program didn't begin receiving the extra pay till February 2016.

In their lawsuit for 13 months of overtime against the county, plaintiffs pointed to *Bonnette v. Cal. Health & Welfare Agency*, 704 F.2d 1465 (9th Cir. 1983), which held that three Northern California counties were joint employers of program caregivers along with the state.

The Miller Barondess team responded that L.A. County operated its IHSS program differently from those counties and so only the state was the local caregivers' employer — under factors set out by the *Bonnette* decision.

Those factors included who

hired and fired caregivers, set their pay and kept their records. That was the state, Hashmall and Tokoro said.

During discovery, the named plaintiffs stipulated that the state issued their timesheets, paychecks and tax forms, according to Tokoro.

"We took a deep dive into the legal standard and applied the facts and took the position that not only should plaintiffs not win the issue but that the county should win the issue as a matter of law," Hashmall said.

Anderson agreed. He ruled the county was not the caregivers' employer and therefore not liable for overtime.

Hashmall said the judge's decision is important because all of California's 58 counties have IHSS programs. In fact, she said, "I think employers across the state would look at how the standard for employer is being applied."

case INFO

Wage and hour, Failure to pay overtime
Northern District of California
Central District of California
U.S. District Judge Percy Anderson

Defense Lawyers: Miller Barondess LLP, J. Mira Hashmall, Jason H. Tokoro, Jeffery B. White, Emily A. Rodriguez-Sanchirico

Plaintiff's Lawyers: Nichols Kaster LLP, Matthew C. Helland, Daniwel S. Brome; Rosen Marsili Rapp LLP, Jason C. Marsili; Bohrer Brady LLC, Philip Bohrer

The plaintiffs have appealed Anderson's decision. Matthew Helland of Nichols Kaster LLP declined to discuss the case further.

— Don DeBenedictis