Filed 2/15/17 Blair v. Dole Food Co. CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

BRIGETTE BLAIR, Plaintiff and Appellant, v. DOLE FOOD COMPANY, INC., Defendant and Respondent.	B263695 (Los Angeles County Super. Ct. No. BC536197)

APPEAL from a judgment of the Superior Court of Los Angeles County, Kenneth R. Freeman, Judge. Affirmed in part; reversed in part and remanded.

Polaris Law Group, William L. Marder; Diversity Law Group and Larry W. Lee for Plaintiff and Appellant.

Lewis Brisbois Bisgaard & Smith, Jeffry A. Miller, Lann G. McIntyre, John L. Barber and Tracy Wei-Costantino for Defendant and Respondent.

An exempt, salaried employee filed this a putative wage and hour class action alleging that her former employer violated Labor Code section 226 by failing properly to identify employees on their wage statement, and failed to identify an accurate hourly pay rate for exempt employees when those employees were paid accrued vacation wages. The parties agreed to submit two issues to the trial court in a tailored summary adjudication procedure designed to adjudicate nondispositive issues. The trial court summarily adjudicated the stipulated issues in favor of the employer. However, the court then went further, addressed an issue the parties had not agreed to have adjudicated, and granted summary judgment in favor of the employer. The employee maintains the trial court erred in every respect.

We find no error as to the trial court's grant of summary adjudication on the two stipulated issues. However, the court erred in granting summary judgment as to the entire action. Accordingly we will remand the matter for further proceedings on the remaining issues, and affirm the court's ruling in all other respects.

BACKGROUND

Plaintiff and appellant, Brigette Blair (Blair) was employed by defendant and respondent Dole Food Company, Inc. (Dole), from September 2012 until her employment was terminated on January 21, 2014. She was an exempt employee, paid on a salaried basis.

After providing notice to the California Labor and Workforce Development Agency (LWDA),[1] Blair filed this putative class action, alleging that Dole violated the Labor Code by failing to maintain proper payroll records, and by failing to identify the accurate rate of pay on wage statements. Specifically, Blair alleged that wage statements Dole provides its employees violate Labor Code section 226, subdivision (a),[2] in that they fail to include the last four digits of an employee's social security number or an employee identification number (employee ID number), and fail to identify accurate pay rates when exempt salaried employees are paid vacation, flex time off (FTO) or paid time off (PTO) wages. (§ 226, subds. (a)(2) & (9).) Blair sought damages and penalties pursuant to the Private Attorney General Act (PAGA). (§§ 226, subd. (e), 2699, subd. (a).)

---

1 On January 23, 2014, Blair provided written notice to the LWDA and to Dole of her contention that the company's wage statements violated section 226, and identified facts and legal argument in support of her allegations. (See § 2699.3, subd. (a)(1).) The LWDA did not notify Blair that it intended to investigate her allegations within 33 days, freeing her to file this putative class action. (See § 2699.3, subd. (a)(2)(A).)

PAGA permits an aggrieved employee to pursue a representative civil action "on behalf of himself or herself and other current or former employees" to recover civil penalties for violations of the Labor Code that could otherwise be assessed and collected by the LWDA. (§ 2699, subd. (a).) An aggrieved employee is one "who was employed by the alleged violator and against whom one or more of the alleged violations was committed." (§ 2699, subd. (c).)

2 Undesignated statutory references are to the Labor Code.

Dole answered the complaint and asserted various affirmative defenses, including that it had not "knowingly and intentionally" failed to provide accurate wage statements.

In due course, Dole filed a motion seeking summary judgment or, in the alternative, summary adjudication. The parties stipulated to have the court summarily adjudicate specific non-dispositive issues pursuant to a then extant provision of Code of Civil Procedure section 437c, subdivision (s)(7).[3] The court agreed to adjudicate whether Blair's claim for violation of section 226, subdivision (a) failed as a matter of law because: (1) Dole's use of a unique payroll identification number satisfied the requirements of section 226, subdivision (a)(7), and (2) section 226, subdivision (a) does not require an employer to list the hourly rate of vacation pay and/or paid time off on wage statements for exempt employees when vacation wages are paid.

Following oral argument in February 2015, the court took Dole's motion under submission. The court issued a written ruling in March 2015 finding that Dole had not violated section 226. And, although the issue was not encompassed within the scope of the parties' stipulation, the court also found that Dole's failure to include Blair's payroll identification number on her final wage statement—which had been generated outside the company's standard payroll cycle and procedures at the time of Blair's termination—was inadvertent, and granted

---

[3] This provision expired in December 2014, but the current statute also provides for a similar procedure. (See Code Civ. Proc., § 437c, subd. (t).)

summary judgment.[4] Blair appeals from the judgment entered on March 13, 2015.

DISCUSSION

By this putative class action, Blair contends that Dole violated its obligation under California law to provide accurate itemized wage statements. Blair also contends that the trial court erred in exceeding the bounds of the parties' stipulation under former Code of Civil Procedure section 437c, subdivision (s) by granting summary judgment. We conclude that only Blair's latter contention has merit.

1. *Summary Adjudication and the Standard of Review*

The standard governing summary judgment and summary adjudication motions is settled: "First, and generally, from commencement to conclusion, the party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law. . . . There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of the fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850 (*Aguilar*).) The movant bears the initial burden of production to show

---

[4] The court did not address the PAGA claim, the viability of which rests on the strength of Blair's section 226 claims.

the nonexistence of a triable factual issue, and if he does so, the burden switches to the opposing party to make a prima facie showing that such an issue exists. (*Ibid.*) "[H]ow the parties moving for, and opposing, summary judgment may each carry their burden of persuasion and/or production depends on *which* would bear *what* burden of proof at trial." (*Id.* at p. 851.) Thus, a defendant moving for summary judgment based on an affirmative defense bears the initial burden of producing evidence to establish a prima facie showing of the nonexistence of any triable issue of material fact as to each element of the affirmative defense. (*Id.* at p. 850; *Rosas v. BASF Corp.* (2015) 236 Cal.App.4th 1378, 1388; § 437c, subds. (o)(2), (p)(2).) If the defendant satisfies this burden, the plaintiff must produce evidence showing the existence of a triable issue of material fact. (*Aguilar, supra,* 25 Cal.4th at p. 850; § 437c, subd. (p)(2).)

In ruling on a summary judgment motion, the court does not decide the merits of the issues, but only whether issues of material fact exist. (*Aguilar, supra,* 25 Cal.4th at p. 853, fn. 19.) The court must consider all evidence and inferences reasonably drawn from that evidence, and determine what that evidence or inference could show or imply to a reasonable factfinder. (*Id.* at p. 856.) Thus, "if any evidence or inference therefrom shows or implies the existence of the required element(s) of a cause of action [or defense], the court must deny a . . . motion for summary judgment or summary adjudication because a reasonable trier of fact could find for the [opposing party]." (*Smith v. Wells Fargo Bank, N.A.* (2005) 135 Cal.App.4th 1463, 1474; *Saelzler v.*

Advanced Group 400 (2001) 25 Cal.4th 763, 768.) We independently review an order granting a motion for summary judgment or adjudication. (*Mooney v. County of Orange* (2013) 212 Cal.App.4th 865, 872; *Smith, supra,* at p. 1471.) The same principles govern a motion brought under Code of Civil Procedure section 437c, subdivision (s)(7), which proceeds as a summary judgment motion "in all procedural respects."

2. *Labor Code Section 226*

During the relevant period here, section 226, subdivision (a),[5] required employers provide employees with wage statements containing the following information: "(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime . . . , (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions . . . may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and . . . *only* the last four digits of his or her social security number *or an employee identification number other than a social security number . . . ,* (8) the name and address of . . . the employer, and (9) *all applicable hourly*

---

5 Substantively, section 226, subdivision (a) remains largely unchanged as a result of amendments which became effective in January 2017.

*rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employe*e." (Italics added.)

"An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with [section 226, subdivision (a)] is entitled to" specified damages. (§ 226, subd. (e).) "An employee 'is deemed to suffer injury . . . if the employer fails to provide accurate and complete information as required by . . . subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone' the information required to be provided pursuant to section 226(a). . . . § 226(e)(2)(B). Promptly and easily 'means a reasonable person would be able to readily ascertain the information without reference to other documents or information.'" (*Garnett v. ADT LLC* (E.D.Cal. 2015) 139 F.Supp.3d 1121, 1131.) The statute also requires that an employer's violation of section 226, subdivision (a) be "knowing and intentional." (See *Willner v. Manpower Inc*. (N.D.Cal. 2014) 35 F.Supp.3d 1116, 1130–1131.) On this factual issue, however, courts have "set the bar rather low" to prove injury, and a "very modest showing will suffice." (*Id*. at p. 1131 ["the determination of whether a violation of [§ 226, subd. (a)] was 'knowing and intentional' is a factual one"]; *Jaimez v. DAIOHS USA, Inc*. (2010) 181 Cal.App.4th 1286, 1306 [allegations that employer provided inaccurate paystubs in violation of § 226, subd. (a) are sufficient to establish injury for purposes of class certification]; *Elliott v. Spherion Pacific Work, LLC* (C.D.Cal. 2008) 572 F.Supp.2d 1169, 1181 [among other things, employee's confusion whether he received wages owed, difficulty and expense involved in

reconstructing pay records and need to perform mathematical computations to analyze whether he was fully compensated, constitute sufficient injury to satisfy § 226, subd. (e)]; *Garnett v. ADT LLC, supra,* 139 F.Supp.3d at p. 1133; *Wang v. Division of Labor Standards Enforcement* (1990) 219 Cal.App.3d 1152, 1156–1157.)

a. *Dole Satisfied the Requirements of Section 226, Subdivision (a)(7) by Identifying Employees Using a Unique Personal ID Number on Wage Statements*

Blair first asserts that Dole violated section 226, subdivision (a)(7) by failing to include on its wage statements the last four digits of each employee's social security number or an employee identification number other than the employee's social security number. Notably, there is no precise definition of what the Legislature meant by the term "*an employee identification number*." For each new employee Dole hires in California, ADP, the outside contractor that processes Dole's payroll, automatically generates and assigns two unique numbers.

The first is an employee identification number (employee ID number), used by Dole for internal purposes, payroll, and to access employee records, etc. This number never changes during an individual's employment with Dole. The employee ID number is not provided to an employee as a matter of course, but it is displayed if the employee logs into Dole's E-Time system.

The second number ADP generates when an employee is hired is a personal ID number reflecting his or her tax profile (marital status, number of tax exemptions, etc.). This unique personal ID number is

listed on each wage statement (pay stub) each employee receives. This second number may be changed for payroll purposes if an employee changes jobs, moving from one Dole–owned entity, or cost center, to another. No two employees share the same employee or personal ID numbers.

b. *The Motion for Summary Adjudication*

Dole's motion was supported primarily by testimony by Mel Venable, its long-term corporate payroll manager. Venable declared that Dole contracts with ADP to process Dole's payroll, including the issuance of employee wage statements every bi–weekly pay period. ADP assigns a unique personnel "file" or "personal identification number" to each Dole employee for the purpose of issuing employee wage statements. No two employees' personal ID numbers are the same, and each employee's unique personal ID number is placed on his or her wage statement under the heading "File."

Blair takes issue with this characterization, arguing that the "file" number ADP assigned did not qualify as a unique "employee identification number" under section 226, subdivision (a)(7), and is nothing but a number ADP employs for its own internal use. That is because, in addition to generating a personal ID number for payroll, ADP also generates an employee ID number for the company's new hires. According to Venable, an employee ID number is used as an employee's "primary identifier" if Dole needs to run a report or generate

a status change form, and the Employee ID number also "drive[s]" the personal ID number ADP creates for every new employee.

Dole presented evidence that demonstrates that the personal ID number listed on each employee's wage statement is used for payroll and other purposes. The following exchange occurred when Venable, designated by Dole as the person most knowledgeable on the issues relevant to the pending summary adjudication motion, was deposed by Blair's counsel:

> "Q. Do you know what is the purpose of the file [personal] ID number?
> "A. The purpose of the file ID number is the same as the employee ID number except that ADP utilizes that on the mainframe. Some of the ADP clients can have both being the same. But with the number of employees [Dole has], it's impossible to do so. It is ADP's unique identifier for paying the employees, but once we transmit the new–hire to them that information becomes part of their ID on ADP's mainframe.
> "Q. So in other words, the file ID number is an internal number that ADP uses to identify the respective employee?
> "A. That's correct.
> "Q. The file ID number is not used by Dole for HR purposes?
> "A. It is not used by Dole for HR purposes, but is used by Dole for payroll purposes. I can plug in a file number, and it will bring up the employee. Or I can plug in an info ID, and it will bring up the employee.
> "Q. Right. [¶] It's used by Dole for payroll purposes to communicate with ADP regarding employees?
> "A. That's correct.
> "Q. Any other purposes for the file ID number other than what you've just explained?
> "A. Yes. It's a unique identifier per company. [Dole has] multiple pay groups. Each pay group represents a company. Like, Dole Food Company, Dole Fresh Fruit. These identifiers are per company. So if we were to transfer an individual from one

company to another, they'd receive a new file number, but they'd retain their original employee ID number."

Blair contends that section 226, subdivision (a)(7) requires that Dole use only the unique employee ID number an employee is assigned upon hiring (which may or may not be known by an employee), and not an equally unique personal ID number simultaneously created for tax and payroll purposes. We disagree.

In construing a statute, we begin with the language of the statute, giving the words a commonsense interpretation. "'Our fundamental task . . . is to determine the Legislature's intent so as to effectuate the law's purpose. We examine the statutory language, giving it a plain and commonsense meaning.'" (*Watkins v. County of Alameda* (2009) 177 Cal.App.4th 320, 336; *Esther B. v. City of Los Angeles* (2008) 158 Cal.App.4th 1093, 1099 [to determine the Legislature's intent, the court starts with the language of the statute, and if its terms are unambiguous, presumes lawmakers meant what they said and the plain meaning governs].)

Section 226, subdivision (a)(7), plainly requires that an employer who does not use the last four digits of an employee's social security number on wage statements to identify an employee, must instead use "an employee identification number" other than the employee's whole social security number. An "identification number" is simply a "unique numerical digit assigned to an individual . . . to differentiate [him or her] from . . . others." (Bus. Dictionary, http://www.businessdictionary.com/definition/identification-

number.html>.)[6] Personal ID numbers assigned to Dole's employees are unique to each employee and, as Blair concedes, appear on each employee's wage statements. Thus, it is clear that there is at least one unique employee/personal ID number assigned to each Dole employee. The statute requires nothing more. Nothing in section 226, subdivision (a)(7) prohibits an employer's use of a unique personal ID or file number, so long as the number chosen consistently appears on the employee's wage statement. The label attached to the number is not material.

Nor has our research revealed anything in the legislative history for the statute to indicate that the personal ID number Dole includes on wage statements must also be the number it uses for its employees for all other purposes. Rather, the one clear purpose underlying the language in question was to provide more protection for employees whose employers previously had used their full social security numbers on their wage statements. (See Stats. 2004, ch. 860, Sen. Bill No. 1618, Letter from Sen. Battin to Sen. Pro Tem. John Burton, August 19, 2004

---

6 See also Penal Code section 530.55, subdivision (b), defining "personal identifying information" as, among other things, any "taxpayer identification number, . . . identification number . . . , employee identification number, professional or occupational number . . . , or an equivalent form of identification."

[stating that purpose of change to § 226 is to "give employees greater protection from identity theft"].)[7]

The trial court correctly found that Blair's purported dispute with the numbering system, based on her contention that "ADP does not assign unique 'payroll identification numbers,' but rather 'File' numbers" that "ADP uses . . . for its own internal purposes," did not "create a triable issue as to whether [Dole] complied with §226(a)(7)."

c. *Section 226, Subdivision (a)(9)*

The second issue the parties agreed to have adjudicated was whether section 226, subdivision (a) requires Dole to state the hourly rate of vacation pay and/or FTO on the wage statements of exempt employees when vacation wages are paid out (typically, at termination). Blair maintains that Dole violated section 226 by failing to do so.

---

[7] Other portions of the legislative history make this goal even more clear. For example, in 2005, Senator Jim Battin, the author of Senate Bill No. 1618 (enacted in 2004 as § 226, subd. (a)(7)), introduced Senate Bill No. 101 to clarify language in Senate Bill No. 1618, to ensure that employers understood they were free to create new employee identification numbers in order to efficiently retool their payroll systems to prepare for the 2008 implementation of section 226, subdivision (a). (See Stats. 2005, ch. 103, Sen. Bill No. 101, [4/13/05, Bill Analysis, Sen. Comm. on Labor & Ind. Relations; July 12, 2005 Letter from Sen. Jim Battin to Gov. Schwarzenegger; July 25, 2005 Enrolled Bill Memorandum to Governor [Sen. Bill No. 101 contains "clean up" language to fix drafting errors in Sen. Bill No. 1618 which, as written, implied employers may not create new employee numbering systems, a restriction that "could be unnecessarily limiting and is not necessary to accomplish the goal of limiting the use of [social security numbers]."].)

Again, relevant provisions of section 226, require the following information be included on an employee's wage statement: "(2) total hours worked . . . , *except for any employee* whose compensation is solely based on a salary and *who is exempt* from payment of overtime . . . , and (9) all *applicable hourly rates* in effect during the pay period and the *corresponding number of hours worked at each hourly rate* by the employee." (§ 226, subd. (a)(2) & (9), italics added.)

At all relevant times while employed by Dole, Blair was an exempt employee. Her wage statements never reflected any overtime or premium payments. With the exception of her final wage statement, Blair's pay stubs listed her gross earnings at $2,500 and stated she worked 80 hours per pay period, even though she was a non-hourly employee. The wage statements Dole issued to Blair are representative of wage statements the company provided to its exempt employees during the relevant period.

Wage statements include a line item for "Vacation" or "Vacation/FTO" under a heading entitled "Earnings." All but Blair's final wage statements list "Vacation" and/or "Vacation/FTO" hours, year to date "Vacation" hours taken and a remaining FTO balance. Dole maintains that it includes a summary of accrued vacation and/or FTO hours on an exempt employee's wage statements so the employee can track used vacation and FTO time.

By its motion, Dole argued that because section 226, subdivision (a)(2), does not require an employer to list hours worked for salaried employees like Blair, it follows that section 226, subdivision (a)(9)'s

requirement to identify the hourly rate in effect during a given pay period and the number of hours an employee has worked at that rate is inapplicable to an exempt employee, who does not work on such a basis, even when he or she is paid vacation or FTO wages. The trial court agreed, as do we.

First, nothing in section 226, subdivision (a)(9) requires an employer to list an hourly rate of vacation pay or FTO when such wages are paid. Blair acknowledges that, as an exempt, salaried employee, she was paid "her normal salary based on a pre-determined salary amount." Further, although California law defines vacation pay as "wages" (*Rhea v. General Atomics* (2014) 227 Cal.App.4th 1560, 1570 (*Rhea*)), it is not the same as "hours worked" at one's regular rate. (29 C.F.R. § 779.18.) In California, "hours worked" is the amount of time that an employee is subject to an employer's control, including the time he or she is permitted to work, whether or not required to do so. (*Morillion v. Royal Packing C*o. (2000) 22 Cal.4th 575, 582.) Accrued vacation or FTO wages, on the other hand, are not hours worked. This is previously earned but deferred compensation owed for services already performed that have vested throughout one's employment. (*Rhea, supra,* 227 Cal.App.4th at p. 1570; *Suastez v. Plastic Dress-Up Co*. (1982) 31 Cal.3d 774, 780.) Clearly, vacation time is not time when an employee is on call, subject to an employer's control or required to remain at the workplace. The wage statement generated by Dole in the course of its regular pay cycles satisfies the facial disclosure requirements of section 226, subdivision (a).

Further, section 226 requires employers to state the number of hours worked at a given hourly rate in non-exempt employees' wage statements. It contains no such requirement with respect to "any employee whose compensation is solely based on a salary and who is exempt from payment of overtime." (§ 226, subd. (a)(2).) During her employment with Dole, Blair received a gross salary of $2,500 for 80 hours every two weeks, even when she took vacation or FTO. For exempt employees like Blair, Dole calculates a vacation wage payout using this 80–hour, bi–weekly pay period, as standardized by the California Division of Labor Standards Enforcement, which adopted the federal Department of Labor standard "workweek" for a salaried employee of five days per week, eight hours per day. (See DLSE Opinion Letter 2002.05.01.)[8] This calculation for an exempt employee is only applied in the case of an accrued wage payout. On those occasions, Dole employs the same formula it used to calculate Blair's vacation wage payout, dividing the exempt employee's salary for a given pay period by 80 hours to arrive at an assumed "hourly rate," then multiplying that rate by the number of accrued vacation hours to calculate a total payout. Blair insists that because Dole was able to calculate how much accrued vacation pay she was owed upon termination on an "hourly basis," there must, by definition, be some

---

8 We take judicial notice of and guidance from this authorized public agency interpretation. (See *Zelasko-Barrett v. Brayton-Purcell, LLP* (2011) 198 Cal.App.4th 582, 592, fn. 6.)

"hourly rate of pay" within the meaning of subdivision (a)(9). Accordingly, she maintains that section 226 requires Dole to state that hourly rate of vacation pay in the wage statement of exempt employees upon termination. We disagree.

Section 226, subdivision (a)(2), expressly relieves employers of the obligation to itemize the number of number of hours worked by exempt employees on a wage statement. If the number of hours worked need not be itemized on an exempt employee's wage statement, there is no "applicable hourly rate" for an employer to furnish. Exempt, salaried employees are compensated based on the value of their work, not how much time is devoted to a task. (*Abshire v. County of Kern* (9th Cir. 1990) 908 F.2d 483, 486, overruled on other grounds by *Auer v. Robbins* (1997) 519 U.S. 452, 460–462.)

Even if we assume section 226, subdivision (a)(9) required an employer to list an hourly pay rate for vacation or FTO pay when those wages are paid to non-exempt employees, such a requirement could not be applied to exempt employees. We are required to synthesize subdivisions (a)(2) and (a)(9) if at all possible. Such an interpretation would not do so. On the contrary, it would nullify section 226, subdivision (a)(2), which does not require employers to list total hours worked for exempt employees. Accordingly, we agree with the trial court that, as a matter of law, section 226, subdivision (a) does not require that Dole identify an hourly rate of vacation and/or paid time off

on wage statements for exempt employees when vacation wages are paid, and that Blair failed to raise a triable factual issue on this point.[9]

3. *The Trial Court Exceeded the Scope of its Authority Under Former Code of Civil Procedure section 437c, subdivision (s) by Granting Summary Judgment*

This appeal stems from a ruling made under a statute that enabled the parties to seek "summary adjudication of a legal issue or a claim for damages other than punitive damages *that does not completely dispose of a cause of action, an affirmative defense, or an issue of duty*." (Former Code Civ. Proc., § 437c, subd. (s), italics added.) Blair maintains that the trial court exceeded the scope of its authority when it granted summary judgment because the question whether Dole inadvertently failed to include her unique personal ID number on her final paycheck was not within the scope of the issues the court was tasked to adjudicate. We agree.

The language of the statute makes it clear that Code of Civil Procedure section 437c, subdivision (s) was not designed as a vehicle to extinguish an entire claim or action. Its purpose was to resolve targeted issues where the court was convinced that resolution of those

---

[9] Blair's remaining contentions rely on pure speculation. For example, she asks what an employer's responsibility would be if it agreed to pay a salaried employee an hourly rate to work on a holiday. But Blair never raised this or her other remaining contentions below. Moreover, there is no indication in the appellate record that she, as the sole representative of the putative class, has or could obtain, evidence to create a triable factual issue.

issues would preserve judicial resources. (See former Code Civ. Proc., § 437c, subd. (s)(2).) Here, the parties stipulated and the court agreed to decide only: "(1) whether . . . section 226(a) requires [Dole] to list the hourly rate of vacation pay and/or paid time off on wage statements for exempt employees when vacation wages are paid; and (2) whether [Dole's] use of a unique payroll identification number complies with the requirements under . . . section 226(a)(7)."

Although the question is closely related, whether the final paystub provided to Blair satisfied the requirements of section 226 was not within the ambit of the issues before the trial court. The trial court exceeded the scope of its authority under Code of Civil Procedure section 437c, subdivision (s) when it found that Dole's failure to include a payroll identification number on Blair's final wage statement was inadvertent. Dole insists that, even though the issue was not included in the parties' stipulation, their briefs in support of and in opposition to the summary adjudication motion did address Dole's affirmative defense of "inadvertence." The record reflects otherwise.

Dole's brief in support of its summary adjudication motion made a single passing reference to its claim that a clerical error caused Blair's personal ID number to be omitted from her final wage statement, but that no harm resulted in any event because her online wage statement was "made available" to Blair at some unspecified time.

In her opposition, Blair claimed she never knew a wage statement was available online and never agreed to receive it that way. Blair also argued that it would not matter because an employer's post-termination

provision of a wage statement would not satisfy section 226, which requires that an accurate wage statement be provided "at the time of each payment of wages," and the one she received upon termination lacked that information.

Not until it filed its reply did Dole develop its argument that its failure to furnish Blair a statutorily compliant wage statement at termination was inadvertent, because the wage statement was generated outside the usual payroll cycle using new software.

At the hearing, Blair's counsel complained that Dole raised this new argument in its reply, to which Blair had no opportunity to respond.[10] The court said it would not rule on an issue not addressed in the separate statement. Nevertheless, the court later issued a ruling by which it found that Dole's omission of a personal ID number on Blair's final wage statement was "inadvertent," and Blair failed to raise a

---

[10] The following colloquy took place between the court and Blair's counsel:
"MR. LEE: Your Honor, . . . [Dole's counsel] raised . . . a brand new issue. . . . On the inadvertence issue, that was not part of what we agreed upon to be adjudicated here. That was not in their moving papers. We didn't brief it. For them to raise it [at the] very end of . . . oral argument is unfair. And . . . , if the Court is going to rely upon that, then we request . . . supplemental briefing . . . .
"THE COURT: Well, I rely on the separate statement. . . .
"MR. LEE: . . . It wasn't in there.
"THE COURT: . . . if your argument relates to something that's in the separate statement of the facts, that's one thing, or if you've got a triable issue that you want to raise at this point in time.
"MR. LEE: I just want to argue that that was not part of the briefing.
"THE COURT: All right."

triable factual issue as to whether Dole's omission of the required information had been knowing and intentional.

The trial court erred when it ruled on an issue not encompassed within the scope of the parties' stipulation, and not briefed until Dole's reply. Its ruling deprived Blair of the ability to attempt to make a case for violation of section 226 or PAGA with respect to her final wage statement. Accordingly, because Blair was not on notice and did not agree that this issue would be addressed in Dole's motion, the order granting summary judgment must be reversed and the matter remanded to permit her an opportunity to present evidence to address this remaining issue. (See *Maryland Casualty Co. v. Reeder* (1990) 221 Cal.App.3d 961, 974, fn. 4 [where only certain claims or defenses are raised, the trial court lacks the power to adjudicate others]; Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2016) ¶ 10:86, p. 10–35; cf., Code Civ. Proc., § 437c, subd. (m)(2) [reviewing court may remand to allow party to present additional evidence or conduct discovery on an issue]; *Adams v. Pacific Bell Directory* (2003) 111 Cal.App.4th 93, 100-101.)[11]

---

11 The notice of motion for summary adjudication and separate statement must specify the "specific cause of action, affirmative defense, claims for damages, or issues of duty" sought to be adjudicated. (Cal. Rules of Court, rule 3.1350(b).) We are aware that one court has found that specification of a claim or defense to which the motion is directed does not require the movant to identify specific facts or issues within that claim or defense. (See *Sequoia Ins. Co. v. Superior Court* (1993) 13 Cal.App.4th 1472, 1478.) But that case has never since been relied on in a published decision. In any event, no such

DISPOSITION

The judgment is affirmed to the extent the trial court adjudicated in Dole's favor the two issues submitted under former Code of Civil Procedure section 437c, subdivision (s), and concluded that Dole's use of a unique payroll identification number satisfied the requirements of section 226, subdivision (a)(7), and that section 226, subdivision (a) does not require an employer to list the hourly rate of vacation pay and/or paid time off on wage statements for exempt employees when vacation wages are paid. The judgment is reversed insofar as the trial court adjudicated in Dole's favor its affirmative defense of inadvertence and found no triable issue as to Blair's claim that Dole's failure to include information required by Labor Code section 226 on Blair's final wage statement violated section 226 and PAGA. The matter is remanded for further proceedings on that claim. Each party shall bear her or its own costs of appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, Acting P. J.

We concur:

MANELLA, J. COLLINS, J.

---

result may obtain where, as here, the very motion at issue seeks adjudication of narrowly tailored, nondispositive issues.