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**PRESS RELEASE REGARDING MAJOR CALIFORNIA SUPREME COURT DECISION
IN *AYALA v. ANTELOPE VALLEY PRESS***

This morning the California Supreme Court issued a major decision that will impact companies' ability to treat their workers as "independent contractors" rather than as employees for purposes of complying with work place laws and regulations.

The case, *Ayala v. Antelope Valley Newspapers, Inc.*, involves hundreds of newspaper carriers in Southern California who delivered Antelope Valley Press newspapers under form agreements that designated them as "independent contractors" rather than as employees of the newspaper publisher. The three plaintiffs that brought the case alleged that Antelope Valley Newspapers misclassified its carriers as independent contractors. They argued that the company had the right to control the newspaper carriers' work to such a degree that they worked as employees and not as independent contractors. If shown to be employees, the carriers would be entitled to various work place protections under California's Labor Code.

Because Antelope Valley Newspapers considered its carriers to be "independent contractors," it paid no payroll taxes, did not provide workers compensation coverage, and required the carriers to bear their own costs for delivering the newspapers. Carriers complained that they were not reimbursed for using their own vehicles on the job and for purchasing supplies. If a court was to find the carriers were employees of the newspaper, then they would be entitled to reimbursement for such out-of-pocket expenses under California's Labor Code, said Aaron Kaufmann, an Oakland-based attorney who argued a portion of the case to the Supreme Court as *amicus curiae* or "friend of the court" on behalf of the California Employment Lawyers' Association, a workers' rights advocacy group.

At issue in the California Supreme Court was whether the plaintiffs could proceed to trial as a class action, in which a court could rule whether hundreds of current and former carriers had been misclassified as "independent contractors," or whether each carrier would have to proceed with his or her own claims on an individual basis. The trial court had denied plaintiffs' request for class action status, but a three justice panel of the California Court of Appeals in Los Angeles reversed and ordered the case to proceed as a class action. The Supreme Court affirmed the intermediate appellate court, ruling that the carriers' employment status could be decided on class wide basis.

In ruling for the carriers, the Supreme Court noted that the primary test for whether a worker serves as the hiring party's employee or as an independent contractor is to what degree the hiring party retains the right of control over how the work is performed. Here Antelope Valley Newspapers had its carriers sign form contracts, from which a court could determine how much right of control the company had over the carriers, ruled the Supreme Court. Because all the carriers signed the same contract, a court could decide the issue for all carriers in one case rather than making each carrier file a separate lawsuit and proceed individually.

“This is a major victory for workers who have been misclassified as independent contractors and are denied essential work place protections,” said Mr. Kaufmann explained, “the overarching question before the Supreme Court was whether a company can at once use a form independent contractor agreement that, in effect, categorically carves out an entire segment of its workforce from coverage of California’s statutory worker protections, but nonetheless avoid class-wide judicial review of the lawfulness of that arrangement by claiming that its relationship with each worker is somehow unique.”

Plaintiffs, who were represented by Scott Nelson, an attorney in Santa Ana, argued the carriers’ employment status will turn almost entirely on an analysis of the terms of Antelope Valley’s standardized form contract and the company’s uniform policies and procedures governing the home delivery of its newspapers. Because the carriers all perform the same job under identical terms and conditions, plaintiffs argued the employment status of all carriers could be decided on a class-wide basis in one lawsuit.

The newspaper opposed having the case proceed on behalf of all carriers, arguing that the carriers varied in how they performed their deliveries and thus their employment status would turn on individual circumstances.

The Supreme Court decided in plaintiffs’ favor, holding that the form contract would be key in deciding whether the carriers served as employees or not. Now the case will proceed on behalf of hundreds of current and former Antelope Valley Newspapers’ carriers.

Misclassification of employees as independent contractors has been a growing concern of taxing authorities and other governmental agencies responsible for worker protections, as such misclassification can cost the states and the I.R.S. billions in lost payroll taxes and avoidance of workplace protection laws.

“All too often, companies misclassify segments of their workforce as a way of opting out of the important work place protections that our state demands,” said Kaufmann. “Misclassified workers are cheated out of wages, made to bear the company’s expenses, told they can’t sue for discrimination, and, worse of all, told they can’t file a workers’ compensation claim when injured on the job,” said Kaufmann.

“It is important that these misclassifications be challenged on a group basis, because individuals often fear retaliation if they come forward on their own or they don’t have the resources to take on their employer by themselves,” said Kaufmann.

According to Kaufmann, private enforcement through class action lawsuits has been an important check on companies who try to opt out of paying payroll taxes, providing workers compensation coverage, and complying with other employment laws. “This decision will make it easier to prosecute misclassification cases on a group basis, which is a much more effective and efficient way to resolve these issues,” said Kaufmann.

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