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### **California Supreme Court Decides *Sav-On*: No Change in Overtime Class Action Cases**

Today, the California Supreme Court handed down its long-awaited and much-anticipated decision in *Sav-On Drugstores vs. Superior Court*. Many employers had hoped that today's decision would make it more difficult for plaintiffs' lawyers to file overtime class action lawsuits. Unfortunately, there is little in the *Sav-On* decision to make employers happy. While the Supreme Court stated that it was only following well-established principles, the practical effect of the decision may well be to affirm that overtime class actions are relatively simple to file and get certified. The Supreme Court's analysis will require many employers to rethink their litigation strategy for opposing class certification motions.

The gist of plaintiffs' claims was that Sav-On had misclassified as exempt from the overtime laws its Operating Managers and Assistant Managers. The trial court granted plaintiffs' motion for class certification, finding that based on the evidence before it, there were predominant common questions of fact and law.

The employer appealed to the Court of Appeal which reversed the trial court decision. Looking at the same evidence that had been before the trial court, the Court of Appeal decided that because the actual activities performed by the OMs and AMs and the amount of time spent by each OM and AM on exempt activities varied significantly from store to store, and individual to individual, no meaningful generalizations about the employment circumstances about the managers could be made. In contrast, the Supreme Court concluded that the actual duties or tasks performed by the employees was not disputed. What was disputed was the amount of time the various managers spent performing those duties, and whether the duties themselves were exempt duties. The Supreme Court concluded that the trial court had acted within its discretion in deciding that the case could be determined on a class wide basis.

In its decision today, the Supreme Court did not take on the broader issue of overtime laws and regulations. Instead, the Supreme Court only addressed the narrower issue of whether the trial court had abused its discretion in certifying the class action. Reasoning that trial courts are ideally situated to evaluate the efficiencies of permitting a class action, the Supreme Court emphasized that trial courts are afforded great discretion in granting or denying certification. The Supreme Court cautioned Courts of Appeal against simply second-guessing trial courts, unless the trial court uses an improper criteria or makes erroneous legal assumptions. The tenor of the *Sav-On* decision is that normally class actions should be allowed to proceed, with the understanding that if unanticipated or unmanageable individual issues arise, the trial court retains the option of decertification. Of course, even if a class is certified, an employer can still prevail on the merits.

The *Sav-On* decision once again reaffirms the importance of correctly classifying employees in order to avoid costly class action lawsuits. Employers should also take particular note that both the trial court and

Supreme Court considered the evidence that Sav-On had reclassified all Assistant Managers from exempt to non-exempt during the class period with "no change in the job descriptions or job duties" to be evidence that the employees had been misclassified as exempt. Therefore, it would be prudent for employers that are considering making any changes in exempt versus nonexempt classifications to consult with their labor counsel in order to avoid having those decisions used against them in later litigation.

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For more information about this issue, please contact a member of the Labor and Employment Practice Group in one of our offices.

<b>Los Angeles</b>	<b>San Diego</b>	<b>San Francisco</b>
Charles F. Barker (213) 617.4168	David B. Chidlaw (619) 338.6614	Douglas J. Farmer (415) 774.2906
Elicia N. Bernstein (213) 617.5582	John D. Collins (619) 338.6613	Rachelle Hong (415) 774.2980
Geoffrey D. DeBoskey (213) 617.5547	Julie A. Dunne (619) 338.6510	Lara Villarreal Hutner (415) 774.2903
David Fishman (213) 617.4118	Guy N. Halgren (619) 338.6605	Otis McGee, Jr. (415) 774.3249
Jason R. Gasper (213) 617.5499	Samantha D. Hardy (619) 338.6640	Kevin D. Reese (415) 774.2989
Douglas R. Hart (213) 617.5497	Stacey E. James (619) 338.6581	Michael W. Scarborough (415) 774.2963
Derek R. Havel (213) 617.5424	A. Andrew Peterson (619) 338.6624	
Kelly L. Hensley (213) 617.5441	Kim Snyder (619) 338.6506	<b>Del Mar Heights</b>
Tracey A. Kennedy (213) 617.4249	Mary P. Snyder (619) 338.6503	Richard M. Freeman (858) 720.8909
Melissa P. Lopez (213) 617.4290	William V. Whelan (619) 338.6588	Matthew S. McConnell (858) 720.8928
Richard L. Lotts (213) 617.4119	Tara L. Wilcox (619) 338.6608	Carole M. Ross (858) 720.8925
Daniel McQueen (213) 617.4270		
Kristine Moon (213) 617.5523	<b>Orange County</b>	<b>Santa Barbara</b>
Richard J. Simmons (213) 617.5518	Heather Clark (714) 424.2820	Jeffrey Dinkin (805) 879.1828
Dianne Baquet Smith (213) 617.4265	Greg S. Labate (714) 424.2823	Deborah Martin (805) 879.1838
Beth S. Sonnenklar (213) 617.4187	Mary E. Lynch (714) 424.2826	
Brandyn Stedfield (213) 617.5514	Ryan D. McCortney (714) 424.2830	<b>Washington, D.C.</b>
Natalie C. Trask (213) 617.4229		Mary E. Pivec (202) 772.5310
Jennifer B. Zargarof (213) 617.4243		Julia H. Perkins (202) 772.5316

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP			
LOS ANGELES 213-620-1780	SAN FRANCISCO 415-434-9100	ORANGE COUNTY 714-513-5100	SAN DIEGO 619-338-6500
SANTA BARBARA 805-568-1151	WASHINGTON, D.C. 202-218-0000	CENTURY CITY 310-228-3700	DEL MAR HEIGHTS 858-720-8900
<a href="http://www.sheppardmullin.com">www.sheppardmullin.com</a>			