

Miller v. City of Los Angeles, U.S.C.A. 9th, DAR p. 15764

Government: Social Security Appeals Council improperly rejects doctor's psychiatric evaluation, which concerned assessment of mental health since applicant's disability onset date. *Taylor v. Commissioner of Social Security Administration*, U.S.C.A. 9th, DAR p. 15760

Torts: Motorcyclist may not recover for injuries suffered during organized group motorcycle ride where he assumed risk in activity, which organizer did not increase. *Amezcuca v. Los Angeles Harley-Davidson*, C.A. 2nd/8, DAR p. 15773

CRIMINAL LAW

Criminal Law and Procedure:

Jury instruction does not violate due process clause where it stated that finding defendant committed prior sexual offenses by preponderance of evidence is insufficient to prove commission of crimes. *Schultz v. Tilton*, U.S.C.A. 9th, DAR p. 15747

Criminal Law and Procedure:

Appeal of habeas petition is moot where it did not challenge commitment as sexually violent predator for indeterminate term based on proceeding that was legitimate. *Seeboth v. Mayberg*, U.S.C.A. 9th, DAR p. 15746

Criminal Law and Procedure:

Defendant is guilty of advertising distribution of child pornography, even if he did not personally produce images, because he knowingly distributed images. *U.S. v. Williams*, U.S.C.A. 9th, DAR p. 15750

Criminal Law and Procedure:

MDMA qualifies as 'controlled substance' because chemical name of substance contains 'methamphetamine,' which is defined as controlled substance. *People v. Davis*, C.A. 2nd/4, DAR p. 15725

Wal-Mart class action shrinks

Number of plaintiffs pared, discrimination claims remain

By Jill Redhage
Daily Journal Staff Writer

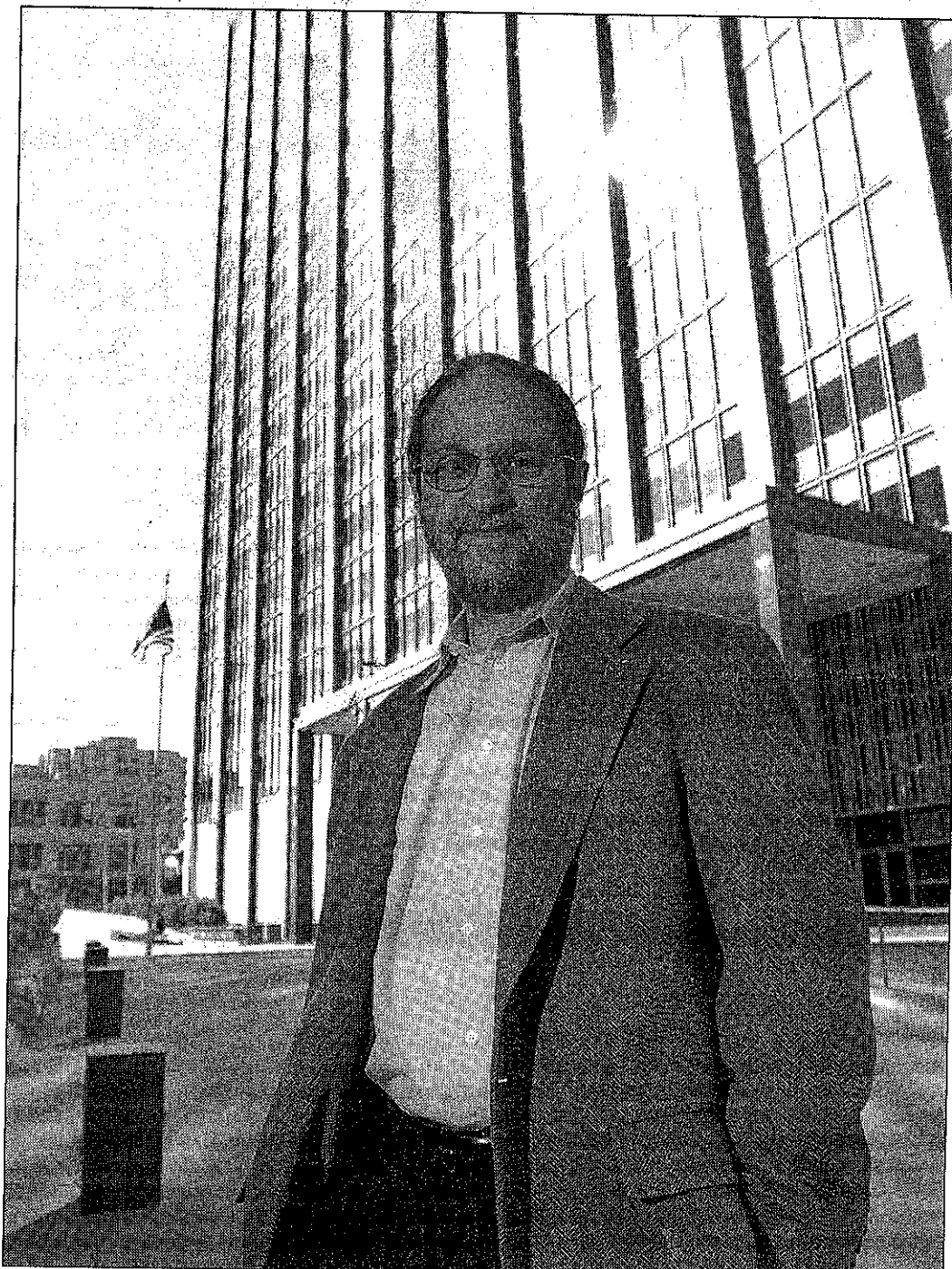
SAN FRANCISCO — The largest gender discrimination class action in history, which was struck down by the U.S. Supreme Court in June, is back in a smaller, more targeted form.

Lawyers for the plaintiffs filed their fourth amended complaint against Wal-Mart Stores Inc. in the Northern District Thursday, again alleging systematic sexual discrimination. But instead of encompassing the claims of 1.5 million women nationwide, the suit is filed on behalf of approximately 95,000 current and former female employees in the retailer's California stores. *Betty Dukes et al. v. Wal-Mart Stores Inc.*, 01-CV-2252 (N.D. Cal, June 8, 2001).

"We are back after our trip to the Supreme Court because the facts are the same," said plaintiffs' co-counsel Arcelia Hurtado during a press conference Thursday. Hurtado, who is executive director of San Francisco-based Equal Rights Advocates, was joined in the announcement by several other lawyers on the suit and three of its five name plaintiffs — Betty Dukes of Pittsburg, Edith Arana of Duarte and new plaintiff Patricia Surgeson of Sacramento.

The plaintiffs' lawyers — a coalition of seven law firms and legal organizations — said the California suit is the first in "an armada" of smaller lawsuits they expect to file in federal courts across the country in the next three to six months.

A Northern District judge certified the class in its previous iteration in 2004. The 9th U.S. Circuit Court of Appeals affirmed, but the Supreme Court overturned



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the certification in a historic ruling.

Berkeley-based plaintiffs' co-counsel Brad Seligman of The Impact Fund said the amended complaint meets the new standards established by the Supreme Court because it relies on evidence about decision-making at Wal-Mart's regional and district levels, including statistics and interviews with hundreds of women, instead of focusing on nationwide numbers and fact patterns.

Wal-Mart's lead lawyer, Theodore J. Boutros, Jr. of Gibson, Dunn & Crutcher LLP, dismissed the plaintiffs' attempts as a publicity stunt.

"The Supreme Court rejected these very same class action theories when it reversed the plaintiffs' lawyers' last effort in June," Boutros wrote in an email. "The plaintiffs' lawyers do not come close to meeting the standards for obtaining class certification and their arguments still rely on the same incor-

rect and discredited theories that the Supreme Court repudiated."

Employment law experts were split on whether the new complaint sufficiently addresses the Supreme

reviewed at the regional level. The suit also modifies the laws under which it requests monetary and injunctive relief.

But David D. Kadue, a manage-

Mart," he said. "I would say that the class is still way too large to justify commonality."

Specifically, the women allege that from 1998 to the present, Wal-Mart denied them equal pay for hourly retail store positions and for salaried management positions and equal opportunities for promotion to management track positions.

They are asking for monetary compensation, including backpay and punitive damages. The current Wal-Mart employees have also requested injunctive relief.

"I'm very excited about today's filing," said Dukes, who has been a name plaintiff in the suit for 11 years. "Personally for myself, I'm very, very confident that ... we will be victorious."

The case remains with U.S. District Judge Charles R. Breyer in San Francisco.

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— Arcelia Hurtado

Court's concerns.

UC Irvine School of Law Professor Catherine Fisk said she expects the new complaint to pass the class certification stage.

The important changes, she said, were that it's a much smaller, more focused group, and the plaintiffs establish common issues of law and fact by alleging that pay and promotion decisions were ultimately

ment-side attorney at Seyfarth Shaw LLP in Los Angeles, said the main problem with the plaintiffs' claims — that they don't identify a common policy that caused the alleged pay disparities — remains.

"They're regrouping and they've scaled back, but even here it's a real stretch for them to demonstrate commonality across California given the size and complexity of Wal-

Artists see new royalty deals as Sirius threat

Satellite radio service Sirius has reached out to record labels about signing direct royalty agreements.

By Erica E. Phillips
Daily Journal Staff Writer

Two musicians' unions are trying to keep satellite radio service Sirius XM Radio Inc. from going rogue.

The American Federation of Musicians and the American Federation of Television and Radio Artists circulated a memo Wednesday encouraging members to demand their record labels reject direct licensing deals offered by the satellite radio service. The unions say the deals — in which Sirius pays royalties directly to record labels and the labels in turn pay the artists their share — are dangerous for artists and could lower their royalty payments by reducing transparency

and their labels. Fifty percent goes to the label, 45 percent to the featured performer and 5 percent to a fund distributed among nonfeatured singers and instrumentalists.

But Sirius has begun reaching out, first to independent labels, in what appears to be an attempt to cut out the middleman and reduce its royalty obligation.

'We're afraid labels will use the royalty money payable to the artists to recoup whatever the artist owes to the label.'

— Ray Hair

In a statement on its website Thursday, SoundExchange pointed out that it has recently been petitioning the Copyright Royalty Board, the entity that sets the statutory royalty rate, for a higher rate.

matter, the company told reporters. "We've had a mutually beneficial partnership with the music industry for years and we welcome the opportunity to strengthen that relationship by entering into direct licenses with all record labels regardless of size."

According to AFM President Ray Hair, Sirius is offering an even lower overall royalty rate in its direct licenses with labels than the current statutory 7.5 percent. Hair added that it's likely the labels wouldn't allocate any of those royalties to background musicians.

And there are other problems.

"We're afraid labels will use the royalty money payable to the artists to recoup whatever the artist owes to the label," he said. "We want to make sure that our members who are recording artists and background musicians know what's at stake."

Phillips, Erlewine & Given LLP partner David Given, who represents a group of artists currently trying to recoup unpaid royalties from major record label UMG Recordings Inc., said the direct licensing deals go against the spirit of the 1995