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CA Appeals Court Clarifies that a Nonprofit Can Have Volunteers

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Until December 17, 2021, when a California appellate court published its ruling in *Woods v. American Film Institute, Case No. B307220 (Cal. Ct. App. Dec. 17, 2021),* it wasn't entirely clear under the labor laws of this state whether a tax-exempt charitable organization could have *unpaid* help; that is, true volunteers that work without pay.

Let that sink in.

The Lawsuit

For over 50 years, the Los American-based Film Institute (AFI) has carried out its "mandate to champion the moving image as an art form." In the late 1960's, this 501(c)(3) organization "launched the first comprehensive history of American film and sparked the movement for film preservation in the United States. It also "opened the doors of the AFI Conservatory, a graduate-level program to train narrative filmmakers."

Since 1987, this prestigious organization has hosted an annual film festival – the AFI-Fest – showcasing "the best films from across the globe." For eight days, there is "a diverse and innovative slate of programming" that includes "screenings, panels and conversations, featuring both master filmmakers and new voices." During this exciting week, AFI also schedules "tributes" honoring "influential artists and icons."

Ahead of the AFI-Fest in November 2017, a paralegal named Laurie Woods was among those who eagerly signed on to volunteer for a few days of the glittering festival.

Surely AFI officials were perplexed when, a few months later, they were served with a class-action lawsuit brought by Ms. Woods for compensation for her four days of participation. A three-judge panel of California's Second Appellate District, Division Two, unanimously affirmed the trial judge's ruling in favor of the American Film Institute.

"A "*Relatively Novel*" *Theory*

Ms. Woods filed the action on behalf of herself and "[a]ll persons who worked at the AFI Festival from March 20, 2014 through the date of class certification who were not paid for their work." The demand was for regular pay (i.e., at least minimum wage) for the hours worked, for overtime, and for compensation in lieu of missed meal and rest breaks.

Her primary legal reasoning was that she and the other purported volunteers "were actually employees because AFI is not permitted to use unpaid labor under California law."

More particularly, "[a]n exemption" from California's hour-and-wages laws and rules "for non-profit organizations that use volunteers is inapplicable, Woods contended, because (1) AFI is not a "religious or charitable" organization that helps the "needy or suffering"; and (2) a film festival does not serve a 'public service, religious, or humanitarian objective.'" She described this renowned arts-education and film-preservation organization as little more than a "marketing arm of the motion picture industry."

This position both misstates applicable law and also seriously misrepresents the mission and activities of AFI. We'll get back to that in a minute.

Why did Laurie Woods pursue legal action at all? One of her *secondary* arguments may shed light on it. See *Class Certification Properly Denied in Action Against AFI* (December 20, 2021), *Metropolitan News-Enterprise*.

Her First Amended Complaint, filed in June 2018, included these allegations:

Through websites, social media and other means of advertising, Defendants recruited thousands of Volunteer Employees to work at their events. Instead of paying Volunteer Employees for their work, Defendants provided volunteers only with free admission to the event a volunteer employee would work. However, the value of this 'free admission' was highly overstated and essentially worthless, as volunteers spent the majority of their time performing duties under the direction and control of Defendants.

In light of work shifts "which often lasted over 12 hours," she claimed, "the promise of free admission was illusory."

The jurist who authored the unanimous appellate ruling, apparently surmised that "Wood's contentions reflect an expectation of receiving something of value—free admission—which, if illusory, could give rise to a claim to some other form of recompense, observing that "allegations of promised compensation, if proved, might support contract or estoppel theories of employment."

It would not, though, constitute a legitimate expectation of compensation (ahead of showing up at the event) for services rendered. (In any event, Ms. Woods admits that neither she nor any of the few other volunteers who submitted declarations expected to be paid "wages.") So her disappointment at not receiving enough "value" in return for her four days of participation would not translate into a violation of California's wage and hour laws.

The Class-Action Issue

The motivation for proceeding with this lawsuit being largely irrelevant, we turn back to the reasons why the lawsuit failed.

First, ahead of the critical *substantive* ruling by the appellate court on the merits of the Labor-Code-violations asserted here, there is a long and important discussion on the threshold class-action-certification issue. The trial court's ruling, affirmed on appeal, was that the *individual* issues predominate over the "common" ones that could apply to all members of the proposed class. Accordingly, the statutory requirements for class-action certification are not met. See pages 7-15.

It's not unusual for a wage-and-hour litigant to ask to be certified as the representative of a large class of persons "similarly situated." The maximum possible damages recovery for any single person – even with generous Labor Code penalties and the possibility of attorney fees in a few instances – may be quite small. But – win or lose – the class-action determination can eat up lots of time as well as attorney fees and costs to defend.

The Key Ruling

Second, we turn to the substantive issue on the merits of this case involving what the appellate justices described as a "relatively novel" theory.

Concluding that the "… Labor Code does not provide a direct answer to the question whether the minimum standards that protect employees under California law must be extended to those who volunteer their time for nonprofit organizations," they plodded through the deep thickets of the wage-and-hour statutes and beyond into administrative interpretations including Wage Order 12 that "governs wages, hours, and working conditions in the motion picture industry."

After thoroughly considering the matter, they ruled against Laurie Woods's claim. For anyone inclined to understand the nuts-and-bolts of the court's reasoning, the discussion at pages 15-27 of the December 17, 2021, is the place to go.

For everyone else, there's helpful commentary including *Volunteers May Work For Nonprofits Without Compensation* (January 3, 2022) Sehreen Ladak, Esq., & Anthony Oncidi, Esq., *Proskauer California Employment Law Update* ["The California Court of Appeal has definitively resolved an issue that was until now somewhat ambiguous: Can volunteers in fact volunteer their time for nonprofit organizations without receiving pay or other forms of compensation? The answer is YES."]. See also *Class Certification Properly Denied in Action Against AFI* (December 20, 2021), *Metropolitan News-Enterprise*; and *Akin Gump Obtains Denial of Class Certification Against American Film Institute* (December 21, 2021), press release by the Los Angeles law firm that successfully defended the

American Film Institute on a pro-bono basis.

Conclusion

Justice Elwood Lui of the Second District's Division Two explained the compelling policy reason for the outcome of this litigation.

"Other than her strained interpretation of [a] DLSE Opinion Letter," he wrote, "Woods does not provide any support for her argument that only organizations serving the needy may use volunteers under California law. Consider the implications. Under Woods's interpretation, local community theatre organizations, community orchestras, and other cultural nonprofit entities would be required to treat all their workers as employees, even if those workers were dedicated to the mission of the organization and wished to volunteer their time. Such a rule would have unforeseen and potentially devastating financial implications for such groups."

Or, as the trial judge so aptly observed: "…[U]nder Woods's interpretation of law, 'volunteerism in California would grind to a halt overnight.'"

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