

Daily Journal

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Top Labor & Employment Lawyers 2018

Karen J. Kubin

FIRM:	CITY	SPECIALTY
Morrison & Foerster LLP	San Francisco	Class actions, wage and hour, discrimination

Kubin has defeated class certification in all of the manager misclassification cases she has defended and in all of the wage and hour actions she has defended save one. Over the last year she has gained nearly one victory a month for clients like Ralphs Grocery Co., Restoration Hardware and Staples Inc.

“Staples has been a client for nearly 10 years,” Kubin said. “I keep my Staples Easy Button by my side.”

She added that misclassification claims have proliferated in California. “These are popular with the plaintiffs’ bar,” she said. “From the time the California Supreme Court allowed certification in the Sav-on case to now.” Referring to the court’s unanimous 2004 opinion in *Sav-on Drug Store Inc. v. Superior Court*, reversing a court of appeal ruling, Kubin added, “Many in the defense bar thought that most misclassification cases would be certified. We were not willing to accept that.”

For example, Kubin last year defeated certification in a statewide class action on behalf of Staples Superstore general managers who alleged that Staples misclassified them as exempt from California overtime laws. After she and her team marshaled substantial evidence, she persuaded the court

that common issues did not predominate, a class-wide trial would not be manageable and certification was inappropriate. *Wesson v. Staples Inc.*, BC593889 (L.A. Super. Ct., filed Sept. 4, 2015).

Kubin set a pattern for challenging class certification by her work on *Dunbar v. Albertson’s Inc.*, 141 Cal.App.4th 1422, a 2006 4th District Court of Appeal ruling that agreed with the defense that in an overtime case involving allegedly misclassified grocery store managers, individualized issues of liability and damages would predominate, making a class action inappropriate.

“We haven’t had a lot of misclassification cases since,” she said. “In every one, the first thing we do is look at each matter’s unique facts and pursue them relentlessly. Be creative, tenacious and don’t assume anything. The point is that misclassification cases are singularly unsuited for class treatment. You simply can’t extrapolate from one employee to the next.”

Off duty, Kubin exits the courthouse for the opera house, where she is a member of the San Francisco Opera Association’s Board of Directors and of the Conservatory of Music’s Board of Trustees. She is a former president of the San Francisco Opera Guild. She said she is committed to the art



form and to music education for young people. “Puccini said that children are cheated if they’re not exposed to music, and I fully agree. Opera is the most complete art form we have, encompassing music and the visual arts. I love every aspect of it.”

— John Roemer