

## BLOGS

Employment

# Court Dismisses Ostensible Agency Claim on Motion for Reconsideration

A federal court in California has granted a motion for reconsideration in light of recent Ninth Circuit precedent, reversing the district court's prior decision and dismissing ostensible agency claims alleged against a franchisor. *Cruz v. MM869, Inc.*, 2020 WL 509109 (E.D. Cal. Jan. 31, 2020). Cruz, an employee of the Merry Maids franchisee and representative of a class action group, alleged that the franchisor Merry Maids and its parent organization ServiceMaster were joint employers and were liable for the franchisee's alleged violation of various wage and hour laws under California's Labor Code. The court previously dismissed Cruz's joint employer claims against ServiceMaster/Merry Maids, but left intact her claims under an ostensible agency theory of liability.

ServiceMaster/Merry Maids filed a motion for reconsideration shortly after the Ninth Circuit's ruling in *Salazar v. McDonald's Corp.*, 944 F.3d 1024 (9th Cir. 2019), which found that a franchisor could not be held liable for wage and hour violations under an ostensible agency theory pursuant to Wage Order 5- 2001. The court held that the ostensible agency theory was inconsistent with the plain terms of the Wage Order, and therefore was precluded as a matter of law. Because Cruz's claims were under the purview of the Wage Order, the district court concluded that the new Ninth Circuit ruling required dismissal of Cruz's remaining claims against ServiceMaster/Merry Maids. Lathrop GPM represented ServiceMaster and Merry Maids in this case.

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