

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENTLEGAL SECTION
455 Golden Gate Avenue, Room 3168
San Francisco, CA 94102
(415) 703-4150*MULTIPLICITY OF ACTIONS*H. THOMAS CADELL, JR., *Chief Counsel*

1995.04.19

April 19, 1995

W. Bartley Anderson
1030 East El Camino Real, Suite 295
Sunnyvale, CA 94087

Re: Jurisdiction of State Agency

Dear Mr. Anderson:

This is intended to respond to your letter of March 4, 1995, wherein you take issue with the position of the Division of Labor Standards Enforcement which precludes one from proceeding with a claim before the Labor Commissioner which covers the same issues raised in a court action.

The cases which you have cited in support of your contention that one may file a wage claim with the Labor Commissioner and file an action to recover those same wages with a Municipal court are inapposite. Each of the cases you cite address the situation where one has a common law claim and a statutory claim which are separate and the statutory claim may only be pursued in a civil action after exhaustion of the administrative remedy. As you point out, Labor Code § 218 specifically provides that one does not have to exhaust the administrative remedies available through the Labor Commissioner before filing an action in court.

As to the rationale for the rule adopted by the Labor Commissioner, your attention is directed to the fact that under the Labor Code the Labor Commissioner exercises quasi-judicial authority. (See Labor Code § 98(a) et seq.) A claim filed with the Labor Commissioner may be sent to a hearing; the result of that hearing (an order, decision or award) will, unless appealed by either party, become a judgment. Thus, it would be possible for the parties to have two conflicting judgments or two concurrent judgments covering the same issues and facts. Obviously, this would lead to chaos.

In order to avoid chaos the Labor Commissioner will not entertain claims which are already before the courts or, in the event the claimant files an action in the courts seeking the same remedies as those sought in the claim before the Labor Commissioner, the Labor Commissioner will dismiss the claim.

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I hope this adequately explains the position of the Labor
Commissioner's office in this regard.

Yours truly,

H. Thomas Cadell, Jr.
H. THOMAS CADELL, JR.
Chief Counsel

c.c. ~~Nance Steffen~~
Frank Padres