

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 27 2025

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NIKOLA LOVIG, on behalf of himself, all
others similarly situated,

Plaintiff - Appellant,

v.

BEST BUY STORES, LP, a Virginia
limited partnership; MN BEST BUY CO.,
INC.,

Defendants - Appellees.

No. 24-6046

D.C. No.

4:18-cv-02807-PJH

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Phyllis J. Hamilton, District Judge, Presiding

Submitted October 21, 2025**
San Francisco, California

Before: OWENS and BUMATAY, Circuit Judges, and LIBURDI, District
Judge.***

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision
without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Michael T. Liburdi, United States District Judge for
the District of Arizona, sitting by designation.

Nikola Lovig appeals the district court’s grant of summary judgment for his former employer, Best Buy Stores, LP, on Lovig’s claim under the California Private Attorneys General Act (“PAGA”). We affirm.

The district court granted summary judgment after concluding that issue preclusion barred Lovig from relitigating whether he was an “aggrieved employee” under PAGA. We review de novo an order granting or denying summary judgment. *Barton v. Off. of Navajo*, 125 F.4th 978, 982 (9th Cir. 2025). We similarly review de novo the district court’s ruling on the availability of issue preclusion. *Sec. & Exch. Comm’n v. Stein*, 906 F.3d 823, 828 (9th Cir. 2018).

1. The district court correctly concluded that issue preclusion bars relitigating whether Lovig was an aggrieved employee. California issue preclusion law does not include an “identical capacity” requirement. *See Adolph v. Uber Techs., Inc.*, 532 P.3d 682, 692–93 (Cal. 2023); *Johnson v. Lowe’s Home Ctrs., LLC*, 93 F.4th 459, 465 (9th Cir. 2024). Only an “aggrieved employee” may bring a PAGA claim. Cal. Lab. Code § 2699(a). An “aggrieved employee” is one who has “personally suffered” an alleged Labor Code violation. *Id.* § 2699(c)(1). When a court “give[s] effect” to an arbitration ruling that the alleged labor code violations did not occur, the plaintiff “is not an aggrieved employee” and any subsequent PAGA claims fail “due to lack of standing.” *Adolph*, 532 P.3d at 692–93.

An arbitrator determined that Lovig did not personally suffer any of the Labor

Code violations he alleged in his First Amended Complaint. The district court confirmed that arbitration order in a final judgment. So when the district court considered the PAGA claim, there was already a final judgment concluding that Lovig did not “personally suffer[]” the Labor Code violations and was thus not an “aggrieved employee.” Cal. Lab. Code § 2699(c)(1). Applying California issue preclusion law, *see NTCH-WA, Inc. v. ZTE Corp.*, 921 F.3d 1175, 1180 (9th Cir. 2019), the district court properly concluded that Lovig cannot relitigate whether he is an aggrieved employee. Only aggrieved employees can bring a PAGA claim, and because Lovig is not an aggrieved employee, summary judgment was proper.

2. Lovig next argues that his PAGA claim should proceed because a time-barred Labor Code violation can serve as the basis of his PAGA claim. But he never raised this issue when opposing summary judgment. And he admits that he raises it for the first time on appeal. Because we “will not hear an issue raised for the first time on appeal,” the issue is forfeited. *Yamada v. Nobel Biocare Holding AG*, 825 F.3d 536, 543 (9th Cir. 2016) (simplified).

3. Whether a viable individual PAGA claim is a prerequisite to bringing a representative PAGA claim has no bearing here. The district court did not base its summary judgment decision on Lovig not having a viable individual PAGA claim. Rather, it granted summary judgment because its prior final judgment had conclusively determined that Lovig was not, by definition, an “aggrieved

employee.” The district court was correct.

AFFIRMED.