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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Kristin Sorianosos, Deputy Clerk

11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SAN DIEGO**

14 SIMONE N. ROGERS, in a Representative
15 capacity only, and on behalf of other members
16 of the general public similarly situated,

17 Plaintiff,

18 vs.

19 CONAM MANAGEMENT
20 CORPORATION, a California corporation;
21 and DOES 1 through 10, inclusive,

22 Defendants.

Case No. 37-2020-00013563-CU-OE-CTL

Related to 37-2020-00001430-CU-OE-CTL

[Assigned to the Hon. Richard S. Whitney,
Dept. 68]

**PROPOSED INTERVENORS'
OPPOSITION TO PLAINTIFF'S *EX PARTE*
APPLICATION FOR (1) REQUEST FOR
PAGA APPROVAL, AND (2) ORDER
SHORTENING TIME**

Date: July 27, 2021

Time: 8:45 a.m.

Dept.: C-68

1 **I. INTRODUCTION AND BACKGROUND**

2 Proposed Intervenor Mack Ricks (“Ricks”), Marlena Barr (“Barr”), and Christina Moore
3 (“Moore”) (collectively, “Proposed Intervenor” or “Ricks Plaintiff”) hereby oppose (1) the PAGA
4 settlement proposed by Plaintiff Simone Rogers (“Rogers”) and Defendant ConAm Management
5 Corporation (“Defendant”) (collectively, the “Parties” or “Settling Parties”); and (2) request to shorten
6 time for a hearing on the Parties’ proposed PAGA settlement.

7 This is now the **third** *ex parte* that has been filed in this matter by Plaintiff Rogers, requesting
8 approval of the Parties’ proposed PAGA settlement. Even more astonishingly, this *ex parte* was filed
9 after this Court’s June 23, 2021 Order denying Plaintiff’s *ex parte* request for approval of the same
10 Parties’ proposed PAGA settlement. In that Order, the Court clearly stated it wanted to hear the
11 Parties’ proposed PAGA settlement request via noticed motion stating in pertinent part:

12 the court's opinion the matter should be handled by way of a **noticed motion** as
13 the proposed intervenor has objected to the courts approval of the settlement. The
14 court has determined **it is only fair and proper to have the matter fully vetted**
15 **at a noticed motion** where all parties can be heard and respond in kind.

16 The court sets this matter for a noticed motion on 9/27/21 at 9:30AM in
17 Department C-68.

18 Court’s June 23, 2021 Order (emphasis added).

19 Unsatisfied with the Court’s Order, Rogers files this instant *ex parte*. This application, like the
20 prior applications filed by Rogers, fails to provide the Court with relevant background, which after
21 viewing, will provide the Court with the actual motive for this instant *ex parte* application.

22 At the Case Management Conference held on June 25, 2021, the Court stated that Proposed
23 Intervenor could conduct discovery related to the Settling Parties’ PAGA settlement. The Court
24 further instructed the Parties to meet and confer about the discovery needed and to reach an informal
25 resolution. And, only if the Parties could not reach a formal agreement, that Proposed Intervenor can
26 then seek *ex parte* relief to resolve the issues.

27 To that end, on July 9, 2021, Proposed Intervenor emailed the Settling Parties a meet and
28 confer letter outlining the type of discovery they were looking to seek from Settling Parties. (**Exhibit A**
to Declaration of Majed Dakak (“Dakak Decl.”)). Counsel for Defendant, Adam KohSweeney,
responded a week later stating “I wanted to let you know that I am still reviewing the below with my

1 client. ConAm will have a written response to you next week.” (Dakak Decl. at ¶ 3, **Exhibit B**). To
2 date, Mr. KohSweeney has not provided his client’s response to Proposed Intervenor’s July 9, 2021
3 meet and confer letter. *Id.*

4 Counsel for Rogers, Eric Yaeckel, responded to Proposed Intervenor’s meet and confer letter on
5 July 21, 2021. (Dakak Decl. at ¶ 4, **Exhibit C**). Counsel for Rogers summarily rejected any discovery
6 by Proposed Intervenor. *Id.* The next day, Proposed Intervenor responded to Mr. Yaeckel informing
7 him that “[w]e will be following the Judge’s instructions and filing an *ex parte* motion with the Court
8 in order to pursue our outlined discovery.” (Dakak Decl. at ¶ 5, **Exhibit D**). Proposed Intervenor also
9 asked Mr. Yaeckel to let Proposed Intervenor counsel know whether he would oppose Proposed
10 Intervenor’s *ex parte* motion with the Court in order to pursue our outlined discovery. *Id.*

11 Instead of responding to as to whether or not Mr. Yaeckel intended on opposing Proposed
12 Intervenor’s *ex parte* motion re discovery, Mr. Yaeckel spent this time filing this instant *ex parte*
13 application. Thus, the actual reason that Rogers sought to file his renewed *ex parte* application (that
14 was already denied twice) is because the Settling Parties wanted to prevent Proposed Intervenor from
15 conducting any helpful PAGA settlement discovery in order to aid the Court for its upcoming
16 September 27, 2021 hearing. Pursuant to this Court’s Order, Proposed Intervenor have actually
17 reserved an *ex parte* hearing date of July 28, 2021, regarding this discovery dispute. (Dakak Decl. at ¶
18 6). Thus, at the very least, the Court should hear Proposed Intervenor’s *Ex Parte* Application for an
19 Order Compelling Compliance with this Court’s Order before Plaintiffs’ premature, third *ex parte*
20 application is ruled upon.

21 **II. ARGUMENT**

22 Rogers seek approval and relief on an *ex parte* basis claiming that “within the last 2 weeks, two
23 Appellate Court opinions ... Both cases confirm that ‘objecting employees’ may not “Opt-Out” of a
24 PAGA settlement, and are bound by the settlement terms. *Johnson v. Maxim Healthcare Services, Inc.*
25 (July 21, 2021) --- Cal.Rptr.3d ----2021 WL 3075433; *Ali v. Auto Nation, Inc.* (July 14, 2021, unpub.)
26 4th Appellate Dist., 1st Div., No. D077323.”

27 First, “an opinion of a California Court of Appeal or superior court appellate division that is not
28 certified for publication or ordered published must not be cited or relied on by a court or a party in any

1 other action.” Cal. R. Ct. 8.1115. Rogers violates this Court Rule here by citing to *Ali v. Auto Nation,*
2 *Inc.* which is unpublished.

3 Moreover, both cases *Johnson v. Maxim Healthcare Services, Inc.* and *Ali v. Auto Nation, Inc.*
4 are not on point. *Johnson v. Maxim Healthcare Services, Inc.*, dealt with a standing issue: “the main
5 issue posed by the parties on appeal is whether an employee, whose individual claim is time-barred,
6 may still pursue a representative claim under PAGA ... we conclude the answer is yes.” *Johnson v.*
7 *Maxim Healthcare Servs., Inc.*, No. D077599, 2021 WL 3075433, at *2 (Cal. Ct. App. July 21, 2021).
8 No such issue exists here.

9 Rogers cites to a paragraph in *Johnson v. Maxim Healthcare Services, Inc.* to suggest that the
10 the Court found that Proposed Intervenor could not intervene in or object to the Settling Parties’
11 PAGA settlement. However, *Johnson v. Maxim Healthcare Services, Inc.*, says no such thing. The
12 paragraph cited to by Rogers relates to a discussion of a different decision where the “[t]he appellate
13 court affirmed the judgment based” on claim preclusion because there was a related PAGA claim that
14 settled resulting in Judgment. *Johnson v. Maxim Healthcare Servs., Inc.*, No. D077599, 2021 WL
15 3075433, at *4 (Cal. Ct. App. July 21, 2021). This discussion in *Johnson* thus deals with post-
16 judgment proceedings of claim preclusion on related PAGA cases. Thus, *Johnson* is not in a different
17 procedural posture.

18 *Ali v. Auto Nation, Inc.* suffers from the same defect. In that case the Court states that in
19 “[o]verlapping PAGA actions ... once the claims have been resolved by any of the PAGA plaintiffs
20 and **judgment has been entered**, the government and all nonparty aggrieved employees are bound by
21 the judgment.” *Ali v. Auto Nation, Inc.*, No. D077323, 2021 WL 2947540, at *4 (Cal. Ct. App. July 14,
22 2021) (emphasis added). Again, here Proposed Intervenor is trying to prevent the settlement from
23 being approved and judgment being entered as to the same.

24 The ultimate problem with Roger’s *ex parte* is that the case law allows for proposed
25 intervention and objection to PAGA settlement. See e.g. *Villacres v. ABM Indus. Inc.*, 189 Cal. App.
26 4th 562, 582 (2010) (noting that a non-party may object to a PAGA settlement and file a motion to
27 intervene); *Ceja-Corona v. CVS Pharmacy, Inc.*, 2014 WL 792132, at *4 (E.D. Cal. Feb. 26, 2014)
28 (granting motion to intervene, including regarding PAGA claim; “Armenta argues that there was no

1 apparent need for intervention until Defendant filed a motion for summary judgment which could
2 result in the dismissal of certain class claims, such as the PAGA claim, unless Armenta is permitted to
3 intervene.”).

4 **III. CONCLUSION**

5 For the reasons stated above, this Court should allow Proposed Intervenor’s objection to
6 Settling Parties’ PAGA settlement and Motion for Intervention be heard as ordered on September 27,
7 2021. Allowing time for Proposed Intervenor to file any supplemental brief as needed in order to
8 supports Proposed Intervenor’s motions. See Court’s June 23, 2021, Order stating that parties “[i]n the
9 event the parties want to submit additional pleadings they should be filed no less than 5 court days
10 before the noticed motion.”

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13 DATED: July 26, 2021

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14
15 By: _____



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17 Attorneys for Proposed Intervenor