

HEWGILL COBB & LOCKARD, APC

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Attorneys for Plaintiff,
ANDREW WARGO

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO – CENTRAL DIVISION**

ANDREW WARGO, an individual,

Plaintiff,

v.

QUALITY EAST COUNTY, INC. a
California Corporation; QUALITY
CENTRAL, INC. a California Corporation;
RODI INVESTMENTS, INC., a California
Corporation; ANGIES TOWING, INC. a
California Corporation; SUZANNE
ALSADIK, an Individual; and DOES
1 through 25, Inclusive,

Defendants.

Case No. 37-2020-00017367-CU-OE-CTL

**NOTICE OF MOTION AND MOTION TO
DISMISS PAGA ACTION WITHOUT
PREJUDICE; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
THEREOF**

Date: August 8, 2022

Time: 8:30 a.m.

Dept.: C-67

Judge: Hon. Eddie C Sturgeon

Complaint Filed: May 26, 2020

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD; AND ALL
INTERESTED PARTIES:**

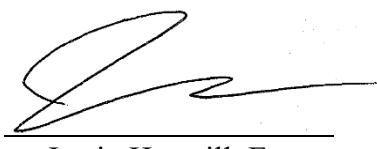
PLEASE TAKE NOTICE that on **August 8, 2022, at 8:30 a.m.**, or as soon thereafter as the
matter may be heard in Department 67, of the above-entitled Court, Plaintiff ANDREW WARGO, an

1 individual, ("Plaintiff"), individually and on behalf of all similarly situated individuals, will and hereby
2 do move this Court for entry of an Order dismissing claims under the Private Attorney General Act (COA
3 9 to the First Amended Complaint) without prejudice.

4 This motion is based upon this notice and motion; the Memorandum of Points and Authorities
5 submitted herewith; the Hewgill Declaration; the other records and pleadings filed in this action; and
6 upon such other documentary and oral evidence or argument as may be presented to the Court at the
7 hearing of this motion.

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9 DATED: August 2, 2022

HEWGILL COBB LOCKARD, APC

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12 By: 

13 Justin Hewgill, Esq.
14 *Attorney for Plaintiff.*
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1 **I. INTRODUCTION**

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3 This Action was filed in May 2020, it involves several individual employment law claims,
4 including claims deriving from what Plaintiff alleges is an illegal termination (disability discrimination
5 and Workers Compensation retaliation), as well as individual wage and hour matters, and a claim under
6 the Private Attorney General Act (PAGA). In February, 2021, Plaintiff amended his complaint (filed
7 his First Amended Complaint) to add a claim for Negligence, in this instance an uninsured employer
8 claim Labor Code §§ 3706, et seq. Hewgill Decl. ¶ 2.

9 The Parties have come to global settlement of all individual causes of action. Hewgill Decl. ¶ 4

10 It is however Plaintiff and counsel's position that the PAGA matter should be dismissed without
11 prejudice. This is because the PAGA group is very small – the employer only employs six (6) tow truck
12 drivers, which is the category of employees making up the Aggrieved Employee group. Hewgill Decl.
13 ¶ 6. Furthermore, Defendants have shared financial information and documents with Plaintiff's counsel
14 in informal discovery which show an inability to pay a significant sum to resolve a PAGA matter, as
15 such the most appropriate course of action is to leave the state's rights with enforcement of the Labor
16 Code intact, by dismissing the PAGA COA without prejudice. Hewgill Decl. ¶¶ 3, 5.

17 **II. STANDARD OF REVIEW**

18 **A. Judicial Required Under the Private Attorney General Act**

19 Judicial review and approval of the PAGA claim settlement is required by statute. Cal. Labor
20 Code § 2699(1)(2) (courts "shall review and approve any settlement of any civil action filed pursuant to
21 [the PAGA].") The LWDA is afforded an opportunity to review a proposed PAGA settlement and can
22 submit objections. Cal. Labor Code § 2699(1). The notice of the proposed settlement, which is
23 submitted online to the LWDA at the same time as the application for approval is submitted to the
24 court, must also include any legal briefing and the Notice of Motion indicating when and where there
25 will be a hearing on the proposed settlement.

26 **B. No Standard Provided by the Act**

27 The PAGA statute, however, does not set forth an express standard for settlement approval nor
28 have courts extensively discussed the standard.

1 Similarly, California Appellate Courts have not elaborated a standard. “California courts have
2 not determined the standards by which a trial court reviews and approves a proposed settlement.”
3 *Starks v. Vortex Indus., Inc.*, 53 Cal. App. 5th 1113, 1124 (2020).

4 Generally, speaking PAGA does not follow class action requirements, and as such, those
5 standards cannot be simply imported into PAGA. See *Arias v Superior Court* (2009) 46 Cal 4th 969 for
6 a detailed discussion and holding that PAGA actions are not subject to class action requirements such
7 as representation and commonality, etc. More specifically, the review and approval provisions of the
8 code clearly call for a more limited inquiry (i.e., not the individual aspects of a settlement – to the
9 degree those provisions could be peeled off of the PAGA provisions for analysis).

10 **C. California Courts Review for Reasonableness or Fairness, generally.**

11 “PAGA settlements are subject to trial court review and approval, ensuring that any negotiated
12 resolution is fair to those affected.” *Williams v. Superior Court*, (2017) 3 Cal. 5th 531, 549.

13 **D. No Authority On Whether or Dismissal Without Prejudice Requires Court Approval**

14 Counsel is not aware of authority one way or the other on the position of whether a motion to
15 dismiss a PAGA claim, such as this motion needs Court approval akin to approval of settlement.
16 However, with an abundance of caution Plaintiff Proceeds as if it were required.

17 **III. IT IS REASONABLE TO DISMISS THE PAGA CLAIM HERE**

18 Here is reasonable to dismiss the PAGA claim for two reasons. First if affects a very small number
19 of employees. The employer only ever employed as much as six full time tow truck drivers at a given
20 time, making the PAGA Aggrieved Employee group no more than a couple dozen workers. It does not
21 financial sense for the matter to be litigated for such a small number of effected employees and alleged
22 Labor Code violations.

23 Second, the Defendant, although recently profitable, does not have the financial wherewithal to
24 pay a meaningful amount to a PAGA resolution. As such, to litigate the PAGA claims further would put
25 the individual resolution in this matter at jeopardy with likely no or little benefit to the Aggrieved
26 employees or the State.

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2 **IV. CONCLUSION**

3 For all the reasons stated here Plaintiff respectfully requests his 9th Cause of Action for Civil
4 Penalties under the Private Attorney General Act be dismissed without prejudice.

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6 DATED: August 2, 2022

HEWGILL COBB LOCKARD, APC

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10 By: _____
11 Justin Hewgill, Esq
12 *Attorney for Plaintiffs.*
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