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9 and SUSAN SAKA

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

LINDA SNAVELY, DIANNE ATWOOD,
AUDREY JUNOR, DANIEL MCCARTAN,
and SUSAN SAKA,

Plaintiffs,

v.

DIGNITY HEALTH, a California corporation;
ST. MARY MEDICAL CENTER, a business
entity form unknown; and DOES 1 through
100, inclusive,

Defendants.

CASE NO. 20STCV32925

[Assigned for all purposes to the Honorable
Elihu M. Berle]

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION TO DISMISS THEIR
PAGA CLAIM; MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: March 29, 2023

Time: 10:00 a.m.

Judge: Honorable Elihu M. Berle

Dept.: 6

Action Filed: August 27, 2020

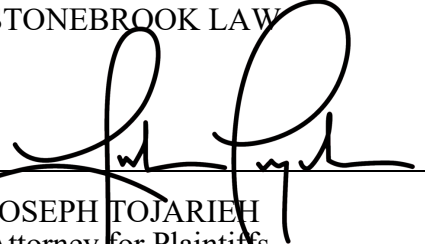
Trial Date: No trial date set

1 TO THE COURT, THE CALIFORNIA LABOR & WORKFORCE DEVELOPMENT
2 AGENCY, AND ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE THAT on March 29, 2023 at 10:00 a.m., or as soon thereafter
4 as the matter may be heard, in Department 6 of the above-entitled Court, located at 312 N Spring
5 St., Los Angeles, CA, 90012, Plaintiffs Linda Snavely, Dianne Atwood, Audrey Junor, Daniel
6 McCartan, and Susan Saka will and hereby do move for an Order granting approval of the
7 parties' settlement and dismissing their individual claims brought under the Private Attorneys
8 General Act of 2004 (Labor Code §2698 *et seq.*) ("PAGA").

9
10 Dated: February 17, 2023

STONEBROOK LAW

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12 By: 

13 JOSEPH TOJARIEH
14 Attorney for Plaintiffs
15 LINDA SNAVELY, DIANNE ATWOOD,
16 AUDREY JUNOR, DANIEL MCCARTAN, and
17 SUSAN SAKA
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND STATEMENT OF FACTS

On August 27, 2020, Plaintiffs filed this action (the “Snively Action”) in Los Angeles Superior Court against Defendant Dignity Health for alleged wage and hour violations. Plaintiffs alleged the following causes of action on behalf of themselves only: (1) Failure to Pay State Minimum Wage, (2) Failure to Pay Overtime Compensation, (3) Failure to Pay Meal Period Compensation, (4) Failure to Pay Rest Period Compensation, (5) Failure to Furnish Timely and Accurate Wage Statements, (6) Waiting Time Penalties, and (7) Unfair Competition.

On August 27, 2020, Plaintiffs filed a PAGA claim notice via electronic submission with the California Labor and Workforce Development Agency (“LWDA”) (LWDA Claim No. LWDA-CM-804242-20), which provided the factual and legal basis for Plaintiffs’ alleged claim under PAGA. To date, the LWDA has not contact Plaintiffs or their counsel in response to the aforementioned notice.

On December 21, 2020, Plaintiffs filed a supplemental PAGA claim notice with the LWDA, which further clarified the factual and legal basis for Plaintiffs’ alleged claim under PAGA.

On March 3, 2021, Plaintiffs filed a First Amended Complaint adding Plaintiffs’ eighth cause of action under PAGA.

On November 30, 2020, several months prior to Plaintiffs filing their PAGA cause of action, a non-party Plaintiff, Elaine Godwin, filed a Complaint for damages against Defendant in Los Angeles Superior Court that included a PAGA cause of action, seeking to recover civil penalties on behalf of herself and other allegedly aggrieved employees (the “Godwin Action”).

On March 9, 2021, a non-party Plaintiff, Aaron Lagman, filed a PAGA-only Complaint for damages against Defendant in Los Angeles Superior Court, seeking to recover civil penalties on behalf of himself and other allegedly aggrieved employees (the “Lagman Action”).

On April 28, 2022, the Snively Action was deemed related to the Godwin Action.

On May 6, 2022, the Lagman Action was deemed related to the Godwin Action.

The Godwin Action is currently pending in Los Angeles Complex, Department 6, before

1 the Hon. Elihu M. Berle as Case No. 20STCV45671.

2 The Lagman Action is currently pending in Los Angeles Complex, Department 6, before
3 the Hon. Elihu M. Berle as Case No. 21GDCV00347.

4 The Godwin Action and the Lagman Action both seek to recover civil penalties under
5 PAGA on behalf of aggrieved employees who worked for Defendant.

6 On February 2, 2022, the Parties in the Snively Action participated in a full-day private
7 mediation with Hon. Jackson Lucky (Ret.) at JAMS. However, they were unable to reach a
8 settlement.

9 After nearly two years of litigation, the Parties in the Snively Action were able to ultimately
10 reach a confidential settlement through informal negotiations.

11 Pursuant to the settlement agreement, Plaintiffs are to release their individual wage and
12 hour claims under the California Labor Code and release and request dismissal of their individual
13 PAGA cause of action without prejudice as to any other potentially aggrieved employees.

14 The confidential settlement agreement does not attribute any portion of the settlement
15 proceeds to PAGA penalties, nor is there any consideration, direct or indirect, being given for the
16 release and dismissal of Plaintiffs' individual PAGA cause of action.

17 The confidential settlement will not prejudice any other alleged aggrieved employee
18 because dismissal of the PAGA claim in the Action is without prejudice as to any other potentially
19 aggrieved employee. Therefore, it will not have any effect whatsoever on the PAGA claims
20 asserted in the Godwin Action or the Lagman Action, or any other PAGA claims asserted against
21 Defendant. In addition, both the Godwin Action and Lagman Action, which are currently pending,
22 seek PAGA penalties on behalf of other aggrieved employees who worked for Defendant.

23 There has been no discovery as to the identities of other aggrieved employees, nor has
24 notice of this Action been provided to other aggrieved employees. The parties are not aware of any
25 other aggrieved employees who have any expectations of recovery of any kind in this Action.

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II. PLAINTIFFS MAY DISMISS THEIR PAGA CLAIMS

PAGA permits an aggrieved employee to sue an employer for civil penalties associated with the employer's alleged violation of various California Labor Code provisions. (Lab. Code §2699(a).) Notably, an employee who complies with the PAGA pre-filing requirements *may* seek penalties on behalf of other aggrieved employees, *but is not obligated to*, and may instead seek the penalties on the employee's sole behalf. (Lab. Code §2699(g)(1) ["an aggrieved employee *may* recover the civil penalty...in a civil action... on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed"]; see *Howard Jarvis Taxpayers Assn. v. City of San Diego* (2004) 120 Cal.App.4th 374, 386 ["the word 'may' is also used in the state Constitution to indicate the existence of a right, but not an obligation"]; *Compton College Federation of Teachers v. Compton Community College Dist.* (1982) 132 Cal.App.3d 704, 711 ["The ordinary meaning of 'shall' or 'must' is of mandatory effect, while the ordinary meaning of 'may' is purely permissive in character"].)

In that manner and upon further consideration, Plaintiffs no longer wish to pursue civil penalties under PAGA. Seeking approval of a PAGA settlement is similar to a plaintiff seeking approval of a class action settlement, where the plaintiff who initially brought the action in a representative capacity is permitted, at any time prior to certification, to decline to continue acting in a representative capacity, and may settle his or her own claims. (See Cal. Rules of Court, Rule 3.770(a).) In such a case, the court may permit dismissal of class allegations without notice to any class members (who have not even been provided notice of the proceeding), upon determining that their rights will not be prejudiced. (Cal. Rules of Court, Rule 3.770(c). See, e.g., *Pirjada v. Superior Court* (2011) 201 Cal.App.4th 1074, 1086 [in class action plaintiff settled individual claims with employer, dismissal permitted without notice to putative class members or discovery as to their identities was not abuse of discretion].)

Here, the rights of other aggrieved employees will not be prejudiced for two significant reasons. First, unlike class actions where the class plaintiff prosecutes the action on behalf of the putative class members, Plaintiffs here did *not* prosecute the Action on behalf of the similarly aggrieved employees. In PAGA claims, the plaintiff employee prosecutes on behalf of the Labor

Commission; the similarly aggrieved employees have no private right of action in those penalties and no entitlement to them. (*Rope v. Auto-Chlor System of Washington, Inc.* (2013) 220 Cal.App.4th 635, 650 [“In PAGA, the Legislature created an enforcement mechanism for aggrieved employees to file representative actions to recover penalties in cases in which there is no private cause of action as an alternative to enforcement by the Labor Commissioner”]; *Arias v. Superior Court* (2009) 46 Cal.4th 969, 980-987, 95 Cal. Rptr.3d 588, 209 P.3d 923 [PAGA suit is a representative action and need not be brought as a class action].)

Second, there has been no discovery as to the identities of other aggrieved employees, nor has notice of this action been provided to other aggrieved employees. Thus, Plaintiffs are not aware of any other aggrieved employees who have any expectations of recovery of any kind in this case, and to the extent any of them wish, in the future, to pursue their own claims, they have the right to do that. Moreover, both the Godwin Action and Lagman Action, which are currently pending, seek PAGA penalties on behalf of other aggrieved employees who worked for Defendant.

III. CONCLUSION

Plaintiffs respectfully request that this Court grant this motion and dismiss Plaintiffs’ PAGA cause of action.

PROPOSED ORDER

Having reviewed Plaintiffs' motion to dismiss their PAGA claim and good cause having been shown, the Court finds, adjudges and orders as follows:

1. Plaintiffs' Eighth Cause of Action under PAGA is DISMISSED with prejudice as to Plaintiffs but without prejudice as to any other aggrieved employees.

2. Plaintiff shall give notice to the California Labor and Workforce Development Agency of this ruling.

IT IS SO ORDERED.

Dated: _____ By: _____

JUDGE OF THE SUPERIOR COURT

1 **PROOF OF SERVICE**

2 I am a resident of, or employed in, the County of Los Angeles. I am over the age of 18
3 and not a party to this action. My business name and address is Stonebrook Law, 10250
Constellation Boulevard, Suite 100, Los Angeles, California 90067.

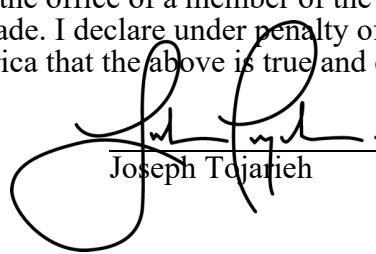
4 On February 17, 2023, I served the document(s) entitled PLAINTIFFS' NOTICE OF
5 MOTION AND MOTION TO DISMISS THEIR PAGA CLAIM; MEMORANDUM OF
POINTS AND AUTHORITIES by the following method(s):

- 6 ☐ **U.S. MAIL.** By enclosing the above document(s) in a sealed envelope, with postage fully
7 prepaid, addressed as per the attached Service List, for collection and mailing from my
8 above business address. I am readily familiar with my firm's practice of collection and
9 processing correspondence for mailing. Under that practice, the document is deposited
10 with the U.S. Postal Service on the same day as it is collected and processed for mailing
11 in the ordinary course of business.
- 12 ☐ **OVERNIGHT DELIVERY.** By delivering the above document(s) in a sealed envelope
13 designated by the express service carrier, with delivery fees paid, addressed as per the
14 attached Service List, to a facility regularly maintained by the express service carrier or to
15 a courier authorized by the express service carrier to receive documents.
- 16 ☐ **PERSONAL SERVICE.** By personally delivering the above document(s) to the:
17 ☐ **person(s) identified** on the attached Service List.
18 ☐ **person(s) in charge** at the office address(es) listed on the attached Service List or, if
19 no one is in charge, leaving the document(s) in a conspicuous place in the office(s).
20 ☐ **person(s) of suitable age and discretion who reside(s)** at the address(es) listed on
21 the attached Service List.
- 22 ☒ **ELECTRONIC SERVICE.** Pursuant to court order or agreement by the parties, by
23 electronically transmitting the above document(s) via:
24 ☒ **electronic mail** to the person(s) at the electronic mail address(es) listed on the
25 attached Service List. To my knowledge, the transmission was completed without
26 error.
27 ☐ **an electronic filing service provider**, named LexisNexis File & ServeXpress, to the
28 person(s) listed on the attached Service List. To my knowledge, the transmission was
completed without error. (See Cal. R. Ct. R. 2.253, 2.255, 2.260.)
- ☐ **FAX.** Pursuant to court order or agreement by the parties, by transmitting the above
document(s) via fax to the person(s) at the fax number(s) listed on the attached Service
List. To my knowledge, the transmission was completed without error.

Executed on February 17, 2023 at Los Angeles, California.

☒ **STATE.** I declare under penalty of perjury and under the laws of California and the
United States of America that the foregoing is true and correct.

☐ **FEDERAL.** I declare that I am employed in the office of a member of the Bar of this
court at whose discretion the service was made. I declare under penalty of perjury
under the laws of the United States of America that the above is true and correct.


Joseph Tojarieh

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Labor and Workforce Development Agency

Online submission