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HUMBERTO PRADO

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

HUMBERTO PRADO, an individual,

Plaintiff,

v.

PROBUILD COMPANY, LLC, and DOES 1
through 25, Inclusive,

Defendants.

Case No. 37-2021-00032916-CU-OE-CTL

**MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
OF DISMISSAL OF PAGA COA WITHOUT
PREJUDICE**

Date: December 7, 2023

Time: 8:30 a.m.

Dept.: C-75

Judge: Hon. James A. Mangione

Complaint Filed: August 02, 2021

1 **I. INTRODUCTION**

2 This Action was filed in August, 2021, it involves several individual employment law claims,
3 including claims deriving from what Plaintiff alleges wrongful termination, as well as individual wage
4 and hour matters, and a claim under the Private Attorney General Act. In February 2023, Plaintiff
5 amended his complaint (filed his First Amended Complaint) to add his claims for civil penalties under
6 the Private Attorney General Act.

7 Plaintiff has notified the Labor and Workforce Development Agency that he intends to see
8 dismissal of his PAGA cause of action, by way of this *Ex Parte* Motion.

9 **II. STANDARD OF REVIEW**

10 **A. Code of Civil Procedure Supports the Plaintiff's Right to Dismiss Action without**
11 **Judicial Review**

12 The Code of Civil Procedure, at 581(c) grants the Plaintiff the unilateral right to dismiss any
13 cause of action any time prior to the commencement of trial. Counsel is not aware of authority which
14 limits this for a PAGA claim (as is the case for Class claims after certification). However, with an
15 abundance of caution Plaintiff provides the Court an explanation for why dismissal is appropriate here.

16 **B. Judicial Review Required Under the Private Attorney General Act, to**
17 **Compromise PAGA claims.**

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

25 **C. No Standard Provided by the Act**

26
27 ¹ Given that Plaintiff is moving *Ex Parte*, we actually took the step of notifying the LWDA a few
28 days in advance of this filing. See the Declaration of Justin Hewgill at ¶¶ 7-8.

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

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

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

12 **D. California Courts Review for Reasonableness or Fairness, generally.**

13 “PAGA settlements are subject to trial court review and approval, ensuring that any negotiated
14 resolution is fair to those affected.” *Williams v. Superior Court*, (2017) 3 Cal. 5th 531, 549; *Moniz v.*
15 *Adecco USA, Inc.* (2021) 72 Cal.App.5th 56. Here however, no rights have been resolved under the
16 Private Attorney General Act.

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

18 Here it is reasonable to dismiss the PAGA claim for two reasons.

19 **A. The PAGA Group is Small and Varied**

20 The PAGA group in this action was only 35 contractors at the time Parties completed the Belaire
21 West process. Additionally, when Plaintiff’s counsel contacted these contractors there was wide variance
22 in both the structure of the contractor relationship – many of the contractors in the PAGA group appear
23 to be companies who employ drivers, as opposed to individual drivers categorized as independent
24 contractors (as Plaintiff is). Additionally, the experiences of wage and hour and time recording policies
25 these contractors (including the individual contract drivers) reported appears to vary widely across time,
26 and which yard the divers worked with.

27 Accordingly, this group would require a complicated trial for what would likely be an
28 insignificant outcome. Alternatively, Plaintiff could limit the group to only individual contract drivers,

1 who report similar violations – but that would reduce the PAGA group to a size where the procedural
2 device of PAGA would not be worth the effort.

3 **B. The Rights of the State are not Compromised.**

4 The interests of the State, which are what is at issue in a PAGA action, are not compromised by
5 the PAGA cause of action being dismissed without prejudice. The state has been given notice of the
6 Plaintiff's allegations and of his intent to dismiss, and should the Division of Labor Standards decide the
7 allegations merit investigation and potential enforcement action, nothing in this dismissal without
8 prejudice would prevent them from doing so.

9 Furthermore, under *Hutcheson v Superior Court*, an alternative aggrieved employee could raise
10 the same allegations brought in this action, should such an individual avail themselves of separate action.
11 See *Hutcheson v Superior Court*, (2022) 74 Cal. App. 5th 932, for the principal of relation back allows
12 one aggrieved employee to replace another in bringing the claims alleged in the first's PAGA notice.

13 **IV. CONCLUSION**

14 For all the reasons stated here Plaintiff respectfully requests his PAGA Cause of Action be
15 dismissed without prejudice.

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17 DATED: December 06, 2023

HEWGILL COBB LOCKARD, APC

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21 By: _____
22 Justin Hewgill, Esq
23 *Attorney for Plaintiff.*
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