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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA**

TATASHYA BROOKS, individually, and on
behalf of other aggrieved employees pursuant
to the California Private Attorneys General
Act;

Plaintiff,

v.

DEWITT & ASSOCIATES BEHAVIORAL
SERVICES, INC., a California corporation;
JUVE VELA, individually; and DOES 1
through 100, inclusive;

Defendants.

Case No. MSC21-02441

*Assigned for All Purposes to the Hon. Charles
S. Treat, Dept. 12*

**NOTICE OF ENTRY OF ORDER
APPROVING PAGA SETTLEMENT AND
ENTERING JUDGMENT**

Complaint Filed: November 16, 2021
Trial Date: Not Set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on June 7, 2024, the Honorable Chales S. Treat, in
3 Department 12 in the above-entitled Court, at the Wakefield Taylor Courthouse, located at 725
4 Court Street, Martinez, California 94553, executed the Proposed Order Granting Plaintiff's
5 Motion for Approving Settlement Pursuant to California Labor Code Private Attorneys General
6 Act and Entering Judgment. Attached hereto as **Exhibit A** is a true and correct copy of the Final
7 Order and Judgment which was executed on June 7, 2024.

8 DATED: June 12, 2024

PROTECTION LAW GROUP, LLP

9
10 By: 
11 Heather Davis
12 Amir Nayebdadash
13 D. Luke Clapp
14 *Attorneys for Plaintiff*

Exhibit A

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA**

TATASHYA BROOKS, individually, and
on behalf of other aggrieved employees
pursuant to the California Private Attorneys
General Act;

Plaintiff,

vs.

DEWITT & ASSOCIATES BEHAVIORAL
SERVICES, INC., a California corporation;
JUVE VELA, individually; and DOES 1
through 100, inclusive,

Defendants.

Case No.: MSC21-02441

*Assigned For All Purposes To: Hon. Charles S.
Treat, Department 12*

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR ORDER
APPROVING SETTLEMENT PURSUANT
TO CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT
AND ENTERING JUDGMENT**



1 Having reviewed and considered Plaintiff Tatashya Brooks' ("Plaintiff") Motion for Order
2 Approving Settlement Pursuant to California Labor Code Private Attorneys General Act and
3 Entering Judgment, and good cause appearing for the same, it is hereby **ORDERED, ADJUDGED,**
4 **and DECREED:**

5 1. The Court hereby approves the Private Attorneys General Act Settlement Agreement
6 and Release attached as Exhibit 2 to the Declaration of Heather Davis ("Settlement Agreement" or
7 "Settlement") as a fair, reasonable, and adequate resolution of the PAGA claims alleged in the
8 Action for the reasons set forth in the Court's tentative ruling attached hereto as Exhibit A. Further,
9 having reviewed the Declaration of D. Luke Clapp Regarding the Escalation Clause, and in light of
10 the increase in pay periods represented by Defendant and as contemplated under the Settlement
11 Agreement, the Court also approves the revision of the "Settlement Period" and the increase of the
12 "Total Settlement Amount". The revised Settlement Period shall apply between September 9, 2020,
13 and March 16, 2024. The Total Settlement Amount shall be increased \$15,400.00 for a Total
14 Settlement Amount of \$515,400.00

15 2. The Settlement Agreement is hereby deemed incorporated herein as if expressly set
16 forth. Final judgment is hereby entered in conformity with the Settlement. All terms used herein
17 shall have the same meaning as defined in the Settlement Agreement except as otherwise set forth
18 in this order.

19 3. This Court has jurisdiction over the subject matter of this Action, and over all Parties
20 to this Action, including Plaintiff, the State of California, and all "PAGA Members."

21 4. The Court designates Phoenix Settlement Administrators ("Phoenix") as the third-
22 party Settlement Administrator for mailing the PAGA Members' explanatory letters, calculating the
23 payments to the PAGA Members, distributing the settlement payments approved by the Court from
24 the Total Settlement Amount, and other duties set forth in the Settlement. Pursuant to the terms of
25 the Settlement, and having reviewed the Declaration of D. Luke Clapp regarding the representations
26 by Defendant that the escalation clause within the Agreement has been triggered, within 30 days of
27 "Final Judgment" Defendant Dewitt & Associates Behavioral Services, Inc. shall deposit with the
28 Settlement Administrator the Total Settlement Amount of \$515,400.00 and shall provide to the
Settlement Administrator a list of the PAGA Members that identifies for each PAGA Member their

1 full name, social security number, last known address, last known telephone number(s), and the
2 number of pay periods for each PAGA Member during the Settlement Period.

3 5. Within ten (10) calendar days after receipt of the list of PAGA Members from
4 Defendant Dewitt & Associates Behavioral Services, Inc., the Settlement Administrator shall
5 distribute the Total Settlement Amount of \$515,400.00 as provided in the Settlement Agreement
6 and set forth below:

- 7 a. One Hundred Sixty Six Thousand Six Hundred Sixty Six Dollars and Sixty Seven
8 Cents (\$166,666.67) to Plaintiff's Counsel for attorneys' fees and attorneys' costs in
9 the amount of Thirteen Thousand and Forty Dollars and Seventy-Nine Cents
10 (\$13,040.79), from the Total Settlement Amount as final payment for and complete
11 satisfaction of any and all attorneys' fees and costs incurred by and/or owed to
12 Plaintiff's Counsel related to the Action. Ten Percent (10%) of the attorneys' fees
13 awarded (\$16,666.66) shall be withheld by the Settlement Administrator pending the
14 compliance hearing;
- 15 b. Five Thousand Dollars (\$5,000.00) to Plaintiff Tatashya Brooks ("Plaintiff's Service
16 Payment") from the Total Settlement Amount, to compensate her for her services in
17 prosecuting the Action and performing work in support of the Action;
- 18 c. Five Thousand Seven Hundred Fifty Dollars (\$5,750.00) to the Settlement
19 Administrator, Phoenix Settlement Administrators, ("Settlement Administrator
20 Payment") from the Total Settlement Amount for administration expenses incurred
21 by the Settlement Administrator; and
- 22 d. The Net Settlement Amount remaining after deducting the attorney's fees and costs,
23 Plaintiff's Service Payment, and the Settlement Administrator Payment
24 (\$324,942.54) shall be distributed to the California Labor and Workforce
25 Development Agency ("LWDA") and PAGA Members. 75% of the Net Settlement
26 Amount (\$243,706.90) shall be distributed to the LWDA. 25% of the Net Settlement
27 Amount (\$81,235.64) shall be distributed to the PAGA Members on a pro rata basis
28 based on the number of Pay Periods worked by each PAGA Member during the
Settlement Period. The Settlement Administrator shall mail each PAGA Member

1 their Individual Settlement Payment check along with the PAGA Notice explanatory
2 letter attached to the Declaration of Heather Davis as Exhibit 5.

3 7. All checks to the PAGA Members shall remain valid and negotiable for 180 days
4 from the date of their issuance to the PAGA Members. If any checks are not cashed within 180 days
5 of mailing, those funds shall be transmitted to the Controller of the State of California to be held
6 pursuant to the Unclaimed Property Law, California Code of Civil Procedure § 1500, *et seq.* in the
7 names of those PAGA Members who did not cash their checks until such time they claim their
8 property.

9 8. As of the Effective Date Plaintiff, the PAGA Members, and the LWDA fully and
10 finally release Defendants, and each of them, and each of its past, present and future agents,
11 employees, servants, officers, directors, partners, trustees, representatives, shareholders,
12 stockholders, attorneys, parents, subsidiaries, equity sponsors, related or affiliated
13 companies/corporations and/or partnerships (defined as a company/corporation and/or partnership
14 that is, directly or indirectly, under common control with Defendants or any of its parents and/or
15 affiliates), divisions, assigns, predecessors, successors, insurers, consultants, any actual or alleged
16 joint employers, and alter egos, and all of their respective past, present and future employees,
17 directors, officers, agents, attorneys, stockholders, fiduciaries, parents, subsidiaries, insurers, and
18 assigns (collectively, the “Released Parties”), from all “Released Claims,” as defined herein.
19 “Released Claims” means any and all claims alleged in the Action, and all claims arising out of or
20 in connection with the facts, alleged in the PAGA Notice, Amended PAGA Notice to the LWDA
21 and the operative Complaint in the Action, and which arose during the Settlement Period. The
22 Released Claims include all claims under PAGA associated with all claims for or arising in
23 connection with: failure to pay minimum wages; failure to pay straight time compensation, including
24 COVID-19 paid sick leave, overtime compensation, double-time compensation, reporting time
25 compensation, and/or interest; missed, late, short or interrupted meal and/or rest periods, including
26 any claim for any alleged failure to pay premiums for missed, late, short or interrupted meal or rest
27 periods, or to pay such premiums at the regular rate of compensation, inaccurate or otherwise
28 improper wage statements and/or failure to keep or maintain accurate records; claims for off the
clock work including, but not limited to waiting to be relieved following the end of their shift or

1 working off the clock prior to the start of their shift; claims for failing to provide suitable seats;
2 failure to reimburse for business-related expenses, including but not limited to for use of personal
3 vehicle, cellular phone use, and personal protective equipment; any claim for penalties arising out
4 of, arising in connection with, or related to any or all of the aforementioned facts and claims,
5 including, but not limited to, recordkeeping penalties, wage statement penalties, minimum-wage
6 penalties, liquidated damages, and waiting-time penalties; and attorneys' fees and costs. For
7 purposes of clarification, the claims released by the PAGA Members and the LWDA include any
8 and all claims under PAGA that reasonably arise out of the facts alleged in the Action, and any
9 claims which could have reasonably been asserted in the Action arising from the alleged facts, to
10 the fullest extent permitted by law. Without limitation by any other language in this Agreement, the
11 release includes any and all claims under PAGA alleging violation of the Wage Orders of the
12 California Industrial Welfare Commission that could have been alleged based on the facts in the
13 PAGA Notice, Amended PAGA Notice and the operative Complaint in the Action, whether alleged
14 or not alleged, and specifically includes allegations regarding violations of California Labor Code
15 §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 551, 552, 558, 1174, 1174.5, 1182.12,
16 1194, 1194.2, 1197, 1197.1, 1198, 2698, et seq., 2800, and 2802. The release of the "Released
17 Claims" is explicitly limited to those claims that arose during the Settlement Period. Further this
18 release does not release any individual's non-PAGA claims, except for Plaintiff as explained below.

19 9. As of the Effective Date, in addition to the release for penalties arising under PAGA,
20 Plaintiff Tatashya Brooks, on behalf of herself only, shall release all claims, whether known or
21 unknown, under federal, state and/or local law, including, but not limited to claims arising from or
22 related to Plaintiff's employment with Released Parties. ("Plaintiff's Released Claims") Plaintiff
23 further waives the provisions of California Civil Code § 1542. This release by Plaintiff is not
24 intended to release any claims that cannot be waived or released as a matter of law, including
25 specifically, without limitation, any claim for unemployment insurance, state disability insurance,
26 social security, and workers' compensation.

27 10. The Court finds that Plaintiff gave notice to the California Labor Workforce and
28 Development Agency ("LWDA") and to Defendants of her intention to pursue claims for civil
penalties under PAGA arising out of the facts and legal theories alleged in the Complaint, that the

1 LWDA did not give notice that it intended to investigate these claims within 65 days of receiving
2 Plaintiff's notice, and that Plaintiff is therefore authorized to pursue these claims on behalf of the
3 LWDA. The Court further finds that Plaintiff gave notice of this proposed settlement of those claims
4 under PAGA to the LWDA in accordance with Labor Code section 2699(1)(2), and that the LWDA
5 has not expressed any objection to the proposed settlement. Accordingly, this Judgment also bars
6 the LWDA, or any other agency of the State of California, or any person acting on its behalf, from
7 collecting any penalties due to any of them, or any unpaid wages due to PAGA Class Members, to
8 the extent those penalties or unpaid wages arise out of the PAGA Released Claims or the facts giving
9 rise to those claims. *Arias v. Super. Ct.*, 46 Cal.4th 969, 985-86 (2009).

10 11. PAGA Counsel are directed to submit a copy of this Order and Judgment to the
11 California Labor and Workforce Development Agency within ten (10) calendar days of entry of the
12 Judgment.

13 12. The Court sets a compliance hearing date regarding the distribution of the settlement
14 funds for April 17, 2025, at 9:00 a.m. Plaintiff's Counsel is directed to file a compliance statement
15 with the Court one week prior to the hearing.

16 13. Without affecting the finality of this Order and Judgment, the Court shall retain
17 continuing jurisdiction over this Action and the Parties, and over all matters pertaining to the
18 implementation and enforcement of the terms of the Settlement Agreement pursuant to the Civil
19 Procedure section 664.6. Except as provided to the contrary herein, any disputes or controversies
20 arising with or with respect to the interpretation, enforcement, or implementation of the Settlement
21 Agreement shall be presented to the Court for resolution.

22 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

23
24 DATED: JUN 07 2024

25 
JUDGE OF THE SUPERIOR COURT

26 **CHARLES S. TREAT**

Exhibit A

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 12
JUDICIAL OFFICER: CHARLES S TREAT
HEARING DATE: 05/30/2024

***HEARING ON MOTION IN RE: ORDER RE APPROVING SETTLEMENT**

FILED BY: BROOKS, TATASHYA

TENTATIVE RULING:

Plaintiff Tatashya Brooks moves for approval of the settlement of her PAGA suit against defendants Dewitt & Associates Behavioral Services, Inc. and its owner, Juve Vela. Defendant is in the business of providing support and assistance to adults with intellectual disabilities and behavioral challenges but who live independently. Plaintiff was employed by defendant during the relevant time period as a personal attendant. Plaintiff also moves for approval of her attorney's fees, litigation costs, administration costs, and representative payment.

The motion is **granted**.

A. Background of the Case and Terms of Settlement

This a PAGA case (not a class action), alleging a variety of violations of the Labor Code concerning failure to provide rest and meal breaks, failure to pay minimum wages and overtime, and cascading derivative violations. In particular, plaintiff asserts alleged violations for overtime violations and non-reimbursement of work-related personal expenses.

This case was first filed on November 16, 2021.

The total settlement payment is \$500,000. Out of this is to come attorney's fees of \$166,667 (one-third of the recovery); \$13,041 in litigation costs, and up to \$5,750 in costs to the settlement Administrator. The plaintiff will be paid a service payment of \$5,000 for her efforts in this litigation.

The remaining amount, \$309,543, is allocated as PAGA penalties. Those penalties are apportioned 75% to the LWDA and 25% to the aggrieved employees.

The settlement covers all non-exempt employees between September 9, 2020 and now. There are an estimated 511 covered employees. The payments from the employee share of the penalty (\$77,386) will be distributed among the employees based on the number of pay periods each individual worked during the released period. The average employee share will be about \$151, though this will vary from employee to employee based on the pay-period allocation formula.

Plaintiff's counsel attests that informal discovery was undertaken, and the settlement was reached after a session with an experienced mediator.

Plaintiff provided required notices to the LWDA of the initial claims and of the proposed settlement.

The settlement provides a process for mailing the notices to the aggrieved employees, who will not have to submit a claim, along with a process for following up on returned mail. Information for mailing will be provided within 30 days after Final Approval. The settlement amount will be paid to the administrator within 30 days after final approval.

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MARTINEZ, CA
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The settlement provides that the value of checks uncashed after 180 days shall be remitted to the State Controller's Office, Unpaid Property Division.

Specified PAGA claims, and any claims which could have been pleaded under the PAGA based on the factual allegations in PAGA Complaint and the LWDA Letter, would be released. It also provides that the parties intend to fully resolve all PAGA claims for the full PAGA Period.

A. Standards for Review of a PAGA Settlement

Recently, the Court of Appeal's decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the "fair, reasonable, and adequate" standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.) The Court also held that the trial court must assess "the fairness of the settlement's allocation of civil penalties between the affected aggrieved employees". (*Id.*, at 64-65.)

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, "The court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter." (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because "Where the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutary purpose." (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 46, 63.)

B. Application to This Settlement

Plaintiff indicates that the settlement is fair, and was evaluated by counsel based on adequate information and arms-length negotiation. In response to plaintiff's allegations, defendant asserted that it paid employees for all recorded time; that off-the-clock time was undocumented and unknown to defendant; and that employees were paid meal time premiums or signed waivers. Plaintiffs' counsel has provided a detailed declaration analyzing the potential strengths and weaknesses of plaintiffs' claims and defendants' potential defenses. A particularly important issue in the case, and in the settlement, was whether the covered employees fall within the "personal attendant exception" to Wage Order 15, which turned on the percentage of their time spent on non-attendant duties such as general housekeeping; the facts of that issue were not easily determined. The Court is satisfied with the analysis.

Of course, some reduction must be made for the strength of the case, and the time and expense of obtaining recovery. Even assuming success on the merits of each claim, PAGA gives the court discretion to reduce penalties for a variety of reasons, including where "based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory." (Labor Code § 2699(e)(2).) Moreover, recent decisions may make it

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MARTINEZ, CA
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difficult for PAGA plaintiffs to recover statutory penalties, as opposed to actual missed wages. (See, e.g., *Naranjo v. Spectrum Security Services, Inc.* (2024) 2024 Cal.Lexis 2438.) These factors make the result hard to predict.

Labor Code § 2699(g)(1) provides that a prevailing employee in a PAGA action may recover attorney's fees. Plaintiff seeks one-third of the total settlement amount as fees, relying on the "common fund" theory. Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: "If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." (*Id.*, at 505.) Although *Lafitte* concerns a class action, not a PAGA-only case, but this Court views the use of a lodestar cross-check as appropriate here. Plaintiffs' counsel have provided a breakdown and documentation of their lodestar figure of \$264,695, which exceeds the fee requested; thus, the lodestar multiplier is approximately 0.63. This appears appropriate in light of the risks of the case and the results achieved.

The requested representative payment of \$5,000 for the named plaintiff is approved. Criteria for evaluation of such requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-07. Plaintiff has provided a declaration in support of her request. She points out that she executed a broader release than the class as a whole, but does not identify any particular claims of value that she may have. She also risks damage to her reputation and more difficulty in obtaining employment.

Litigation costs of \$13,041 (mostly mediation, filing, and expert fees) are reasonable and are approved. This is significantly less than was allowed for such costs in the settlement.

The settlement administrator's costs of \$5,750 are reasonable and are approved.

The statute does not expressly address how the 25% plaintiff's share of the penalties is to be allocated among all of the aggrieved employees. (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 382.) One court has held, however, that the entire 25% share of penalties could not be awarded to the named plaintiff. (*Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742-43.) In *Moorer*, the plaintiff had claim worth about \$9,500, yet was collecting penalties of \$148,000, and keeping the entire employee share, causing the court to be concerned that the plaintiff had lost sight of the fact that the purpose of the action is to benefit the public, not private parties. Allocation based on pay periods is reasonable here.

C. Conclusion

The proposed settlement is approved. Counsel are directed to prepare an order including the Court's ultimate order, the other provisions submitted in the proposed order, and a corresponding judgment. The order would include a compliance hearing for a suitable date chosen in consultation with the

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Department's clerk. One week before the compliance hearing, counsel shall file a compliance statement. Ten percent of the attorney's fees shall be withheld by the Administrator pending the compliance hearing. Counsel will also be expected to update and document the actual litigation costs to be reimbursed.

15. 9:00 AM CASE NUMBER: MSC21-02516
CASE NAME: JINCY JOY VS. RED DOOR RESTORATION, INC A CALIFORNIA CORPORATION
*HEARING ON MOTION FOR DISCOVERY RE FURTHER RESPONSES TO REQUEST FOR ADMISSIONS
FILED BY: JOY, JINCY
TENTATIVE RULING:

This motion should not be on calendar. It was taken **off calendar** (along with a couple of companion motions) on February 15, pending a motion to compel arbitration. The latter motion was granted on March 7, and all proceedings (including discovery) are now in the arbitration forum.

16. 9:00 AM CASE NUMBER: MSC21-02543
CASE NAME: OLIVAREZ VS RAMOS
*HEARING ON MOTION IN RE: LEAVE TO FILE 3RD AMENDED COMPLAINT
FILED BY: OLIVAREZ, JERARDO
TENTATIVE RULING:

Plaintiff's motion for leave to file a third amended complaint is **granted**. Plaintiff may serve and file the proposed TAC, as a freestanding pleading, by June 7. The grant of leave, however, is without prejudice to any demurrers or similar motions that defendants may file in response.

Defendants raise a number of grounds for denial, none of which is convincing. The least insubstantial, perhaps, is their pointing out that in prior verified pleadings, plaintiff had identified JR National Floral Network, **LLC** as the entity buying and owning Jory's Flowers, while now plaintiff identifies JR National Floral Network, **Inc.** as the buyer and owner. But on multiple occasions in the course of this litigation, defendants themselves have made a point of establishing that the LLC entity cannot have been the buyer, as it did not exist as a legal entity at the time of the prior sale. And as the Court pointed out in its demurrer ruling of January 25, 2024, it appears that all parties agree that the correct entity that was the buyer and owner of Jory's Flowers was indeed the Inc. corporation. Plaintiff did get this wrong in his prior pleadings, but the TAC is simply correcting the error and conforming to what everyone has agreed all along to have been the actual historical fact.

The Court also commented in its January 25 ruling that plaintiff's existing pleading asserted no claims connected with the formation or business of the Inc. entity, such as inappropriate conduct in its formation or funding, or claims concerning plaintiff's ouster from the business. It stated that if plaintiff wished to pursue any claims along that line he would need leave of court to amend. That is precisely what he is now seeking.