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Attorneys for Plaintiff,
ANA VAHID

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

ANA VAHID, an individual, on behalf
of herself and other aggrieved
employees,

Plaintiff,

v.

LANDMARK WORLDWIDE LLC, a
Delaware corporation; LANDMARK
WORLDWIDE INTERNATIONAL
HOLDINGS, INC., a California
corporation; MELANIE RILEY, an
individual; and DOES 1 through 100,
inclusive,

Defendants

Case No. 37-2022-00025576-CU-OE-CTL

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

Date: December 5, 2023

Time: 8:30 a.m.

Dept.: C-66

Judge: Hon. Kenneth J Medel

Complaint Filed: June 29, 2022

1 **I. INTRODUCTION**

2 This Action was filed in June, 2022, it involves several individual employment law claims,
3 including claims deriving from what Plaintiff alleges sexual harassment, sexual violence,
4 discrimination and wrongful termination, as well as individual wage and hour matters, and a claim
5 under the Private Attorney General Act. In November 2022, Plaintiff amended her complaint (filed her
6 First Amended Complaint) to add her claims for sexual harassment, and sexual violence and a claim for
7 penalties under the Private Attorney General Act.

8 On December 01, 2022 Defendant's filed a Motion to Compel Arbitration of Claims Asserted in
9 First Amended Complaint and Stay Proceedings.

10 The Motion to Compel was heard on February 03, 2023, and Plaintiff prevailed in opposing the
11 Motion.

12 On February 21, 2023 Defendant's filed a Notice of Appeal.

13 After the appeal was filed, Parties entered a long process of negotiating around resolution of
14 Plaintiff's individual claims. Ultimately, Parties came to terms on resolution on an individual basis

15 Plaintiff has notified the Labor and Workforce Development Agency that she intends to see
16 dismissal of her PAGA cause of action, by way of this *Ex Parte* Motion.

17 **II. STANDARD OF REVIEW**

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

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

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

26 Judicial review and approval of a settlement that compromises a PAGA claim, and thereby
27 binds the state is required by statute. Cal. Labor Code § 2699(1)(2) (courts "shall review and approve
28 any settlement of any civil action filed pursuant to [the PAGA].") The LWDA is afforded an

1 opportunity to review a proposed PAGA settlement and can submit objections. Cal. Labor Code §
2 2699(1). The notice of the proposed settlement, which is submitted online to the LWDA at the same
3 time as the application for approval is submitted to the court, must also include any legal briefing and
4 the Notice of Motion indicating when and where there will be a hearing on the proposed settlement.¹

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

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

8 Similarly, California Appellate Courts have not elaborated a standard. “California courts have
9 not determined the standards by which a trial court reviews and approves a proposed settlement.”

10 *Starks v. Vortex Indus., Inc.*, 53 Cal. App. 5th 1113, 1124 (2020).

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

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

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

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

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

24 **A. Appeal causes undue delay and obligation on the Private Attorney General**

25 This matter may be delayed for a period of years due to the appeal of the arbitration matter. The
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 nature of Plaintiff's individual case of a deeply sensitive quality, and the continued litigation would now
2 stand as a obstacle and burden to Plaintiff's healing and moving on with her life. Furthermore, if
3 Defendants are successful in compelling arbitration (through their appeal) this will required Plaintiff to
4 first arbitrate her individual claims and *individual* PAGA matter, before then returning to this civil action
5 to prosecute her representative PAGA action.

6 Plaintiff would like to move on with her life, and the delays and burdens involved in continuing
7 to act as the Private Attorney General in this matter are such that no court should oblige that she continue
8 to serve in that capacity.

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

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

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

19 **IV. CONCLUSION**

20 For all the reasons stated here Plaintiff respectfully requests her PAGA Cause of Action be
21 dismissed without prejudice.

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23 DATED: December 1, 2023

HEWGILL COBB LOCKARD, APC

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27 By: _____
Justin Hewgill, Esq
Attorney for Plaintiff.
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