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Attorney for Plaintiff
JOHNSON NWOGU

**SUPERIOR COURT OF THE STATE OF CALIFORNIA,
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

JOHNSON NWOGU, an individual,

Plaintiff,

v.

SKY POWER SECURE SOLUTIONS, INC., a
California corporation; MICHAEL NDINWA, an
individual; and DOES 1 through 20, inclusive,

Defendants.

Case No.: 23STCV16477

*Assigned for all purposes to the Hon. Timothy
Patrick Dillon, Dept. 73*

**PLAINTIFF JOHNSON NWOGU'S NOTICE
OF MOTION AND MOTION TO DISMISS
PAGA CLAIMS; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF MAE-ELAINE Q.
DELOS SANTOS AND [PROPOSED] ORDER**

[Concurrently herewith, Notice of Motion and
Motion being served on California Labor and
Workforce Development Agency]

RES ID: 783273295583

Date: November 26, 2024
Time: 8:30 am
Dept: 73

Action filed: June 23, 2023
Trial date: None set

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, on November 26, 2024, at 8:30 am., or as soon thereafter as
this matter may be heard in Department 73 of the above-entitled court, located at 111 N Hill St., Los

1 Angeles, CA 90012, Plaintiff Johnson Nwogu will and hereby does move for an order dismissing the
2 PAGA Claims without prejudice.

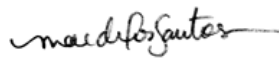
3 This motion will be, and hereby is, made because Plaintiff Johnson Nwogu no longer wishes to
4 pursue this claim and requests dismissal without prejudice.

5 The motion shall be based on this notice, the memorandum of points and authorities, declaration
6 of Mae-Elaine Q. Delos Santos, and on all records on file in this case, and on such other evidence as
7 may properly come before the Court at or before the time of the hearing of this motion.

8
9 DATED: October 14, 2024

DOWNTOWN LA LAW GROUP LLP

10
11 By:



Liliuokalani Martin, Esq.
Mae-Elaine Q. Delos Santos, Esq.
Attorneys for Plaintiff,
JOHNSON NWOGU



Make a Reservation

JOHNSON NGOWU vs SKY POWER SECURE SOLUTIONS, INC, A CALIFORNIA CORPORATION COMPANY, et al.

Case Number: 23STCV16477 Case Type: Civil Unlimited Category: Wrongful Termination
Date Filed: 2023-07-14 Location: Stanley Mosk Courthouse - Department 73

Reservation	
Case Name: JOHNSON NGOWU vs SKY POWER SECURE SOLUTIONS, INC, A CALIFORNIA CORPORATION COMPANY, et al.	Case Number: 23STCV16477
Type: Motion re: (NOTICE OF MOTION AND MOTION TO DISMISS PAGA CLAIMS; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF MAE-ELAINE Q. DELOS SANTOS AND [PROPOSED] ORDER)	Status: RESERVED
Filing Party: Johnson Nwogu (Plaintiff)	Location: Stanley Mosk Courthouse - Department 73
Date/Time: 07/19/2024 8:30 AM	Number of Motions: 1
Reservation ID: 088977646899	Confirmation Code: CR-VBGC2FI4TXVCUK89G

Fees			
Description	Fee	Qty	Amount
Motion re: (name extension)	0.00	1	0.00
TOTAL			\$0.00

Payment	
Amount: \$0.00	Type: NOFEE
Account Number: n/a	Authorization: n/a
Payment Date: 1969-12-31	

 Print Receipt

 Reserve Another Hearing

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND STATEMENT OF FACTS**

3 Plaintiff Johnson Nwogu (hereinafter “Plaintiff”) brought this action asserting multiple Labor
4 Code violations and a cause of action under the Private Attorney General Act (“PAGA”), against his
5 former employers: Sky Power Secure Solutions, Inc. and Mihcael Ndinwa (“Defendants”). [Delos
6 Santos Decl., ¶ 2.]

7 After effectuating service upon both Defendants, they have failed to appear to litigate this matter.
8 Plaintiff entered default against both Defendants. [Delos Santos Decl., ¶ 3.]

9 Plaintiff no longer wishes to pursue the PAGA cause of action. Plaintiff is unable to conduct
10 any discovery to identify other aggrieved employees or notified other aggrieved employees as to this
11 lawsuit. Plaintiff has not sought the express consent of other aggrieved employees to pursue this
12 lawsuit on their behalf. Plaintiff has not given other aggrieved employees the opportunity to opt-out
13 of plaintiff’s representation in this matter. [Delos Santos Decl., ¶ 4.]

14 This motion to dismiss the PAGA claims shall be served to the California Labor Workforce
15 (“LWDA”) at the same time that it is submitted to this Court. [Delos Santos Decl., ¶ 5.] The court did
16 not waive court fees and costs for a party in this case. [Delos Santos Decl., ¶ 6.]

17 Plaintiff respectfully requests that this Court grant this motion and dismiss the PAGA cause of
18 action without dismissal.

19 **II. PLAINTIFF MAY DISMISS HIS PAGA CLAIMS.**

20 The court has inherent authority to dismiss an action. Code of Civ. Proc. ¶ 583.150. PAGA
21 permits an aggrieved employee to sue an employer for civil penalties associated with the employer’s
22 alleged violation of various California Labor Code provisions. Lab. Code §2699(a). Notably, an
23 employee who complies with the PAGA pre-filing requirements *may* also seek penalties on behalf of
24 other aggrieved employees, *but is not obligated to*, and may instead seek the penalties on the employee’s
25 sole behalf. Lab. Code §2699(g)(1) [“an aggrieved employee *may* recover the civil penalty ... in a civil
26 action... on behalf of himself or herself and other current or former employees against whom one or
27 more of the alleged violations was committed”]; see *Howard Jarvis Taxpayers Assn. v. City of San*
28 *Diego* (2004) 120 Cal.App.4th 374, 386 [“the word ‘may’ is also used in the state Constitution to

1 indicate the existence of a right, but not an obligation”]; *Compton College Federation of Teachers v.*
2 *Compton Community College Dist.* (1982) 132 Cal.App.3d 704, 711 [“The ordinary meaning of ‘shall’
3 or ‘must’ is of mandatory effect, while the ordinary meaning of ‘may’ is purely permissive in
4 character”].

5 In that manner, Plaintiff no longer wishes to pursue the PAGA cause of action. Seeking approval
6 of a PAGA settlement is similar to a plaintiff seeking approval of a class action settlement, where the
7 plaintiff who initially brought the action in a representative capacity is permitted, at any time prior to
8 certification, to decline to continue acting in a representative capacity, and may settle his or her own
9 claims. *See* Cal. Rules of Court, Rule 3.770(a). In such a case, the court may permit dismissal of class
10 allegations without notice to any class members (who have not even been provided notice of the
11 proceeding), upon determining that their rights will not be prejudiced. Cal. Rules of Court, Rule
12 3.770(c). *See, e.g., Pirjada v. Superior Court* (2011) 201 Cal.App.4th 1074, 1086 [in class action
13 plaintiff settled individual claims with employer, dismissal permitted without notice to putative class
14 members or discovery as to their identities was not abuse of discretion].

15 Here, this Court may determine that the rights of other aggrieved employees will not be
16 prejudiced for two significant reasons.

17 *First*, unlike class actions where the class plaintiff prosecutes the action on behalf of the putative
18 class members, Plaintiff here did *not* prosecute the action on behalf of the similarly-aggrieved
19 employees. In PAGA claims, the plaintiff employee prosecutes on behalf of the Labor Commission; the
20 similarly-aggrieved employees have no private right of action in those penalties and no entitlement to
21 them. *Rope v. Auto-Chlor System of Washington, Inc.* (2013) 220 Cal.App.4th 635, 650¹ [“In PAGA,
22 the Legislature created an enforcement mechanism for aggrieved employees to file representative
23 actions to recover penalties in cases in which there is no private cause of action as an alternative to
24 enforcement by the Labor Commissioner”]; *Arias v. Superior Court* (2009) 46 Cal.4th 969, 980–987, 95
25 Cal.Rptr.3d 588, 209 P.3d 923 [PAGA suit is a representative action and need not be brought as a class
26 action].

27
28 ¹ Superseded by statute on unrelated ground.

1 Second, there has been no discovery as to the identities of other aggrieved employees, nor has
2 notice of this action been provided to other aggrieved employees. Thus, Plaintiff is not aware of any
3 other aggrieved employees who have any expectations of recovery of any kind in this case, and to the
4 extent any of them wish, in the future, to pursue their own claims, they have the right to do that.

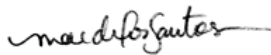
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6 **III. CONCLUSION**

7 Plaintiff respectfully requests that this Court grant this motion and dismiss the PAGA cause of
8 action without prejudice.

9
10 DATED: October 14, 2024

DOWNTOWN LA LAW GROUP LLP

11
12 By:



Liliuokalani Martin, Esq.
Mae-Elaine Q. Delos Santos, Esq.
Attorneys for Plaintiff,
JOHNSON NWOGU

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1 **[PROPOSED] ORDER**

2 The Court, having considered the moving papers requesting the Court's approval to dismiss
3 Plaintiff's claims under California Labor Code Private Attorney General Act of 2004 ("PAGA")
4 (California Labor Code §§2699 et seq.), and good cause appearing therefor, it is hereby:

5 1. **ORDERED** that Plaintiff's PAGA cause of action is dismissed without prejudice.

6 2. **ORDERED** that a copy of this Court Order shall be submitted to the Labor and
7 Workforce Development Agency within 10 days after entry of this order.

8 3. It is further **ORDERED** _____
9 _____
10 _____
11 _____.

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13 **IT IS SO ORDERED.**
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18 DATED: _____

19 _____
20 HON. TIMOTHY PATRICK DILLON
21 JUDGE OF SUPERIOR COURT
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Make a Reservation

JOHNSON NGOWU vs SKY POWER SECURE SOLUTIONS, INC, A CALIFORNIA CORPORATION COMPANY, et al.

Case Number: 23STCV16477 Case Type: Civil Unlimited Category: Wrongful Termination
Date Filed: 2023-07-14 Location: Stanley Mosk Courthouse - Department 73

Reservation

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Case Number:
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Status:
RESERVED

Filing Party:
Johnson Nwogu (Plaintiff)

Location:
Stanley Mosk Courthouse - Department 73

Date/Time:
07/19/2024 8:30 AM

Number of Motions:
1

Reservation ID:
088977646899

Confirmation Code:
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n/a

Authorization:
n/a

Payment Date:
1969-12-31

 Print Receipt

 Reserve Another Hearing

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 612 S. Broadway, Los Angeles, CA 90014

On October 14, 2024, I served the foregoing document described as **PLAINTIFF JOHNSON NWOGU'S NOTICE OF MOTION AND MOTION TO DISMISS PAGA CLAIMS; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF MAE-ELAINE Q. DELOS SANTOS AND [PROPOSED] ORDER** on the interested parties in this action as follows:

SKY POWER SECURE SOLUTIONS, INC, a California corporation company
2530 W Florence Ave
Los Angeles, CA 90043-5144

MICHAEL NDINWA, an individual
2530 W Florence Ave
Los Angeles, CA 90043-5144

<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>
California Labor & Workforce Development Agency
800 Capitol Mall, Suite 5000 (MIC-55)
Sacramento, CA 95814

☒ BY MAIL:

☐ I deposited each envelope in the mail at Los Angeles, California, with postage thereon fully prepaid.

☒ I am "readily familiar" with the firm's practice for collection and processing correspondence for mailing with the U.S. Postal Service. Under that practice, and in the ordinary course of business, correspondence would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at our business address in Los Angeles, California. Each of the above envelopes was sealed and placed for collection and mailing on that date following ordinary business practices.

Executed on October 14, 2024, at Los Angeles, California.

☒ STATE I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Gabriela Diaz

Gabriela Diaz