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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA

VANESSA MIGUEL, an individual, and
MELISSA MARICICH, an individual and in a
representative capacity on behalf of the State of
California and other Aggrieved Employees,

Plaintiffs,

vs.

CONGREGATION B'NAI SHALOM OF
CONTRA COSTA COUNTY, a California
nonprofit religious corporation, and DOES 1-
15

Defendants.

Case No. C24-02737

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' REQUEST FOR
DISMISSAL OF ENTIRE ACTION**

*[Filed concurrently with Notice of Motion
and Motion Requesting Dismissal of Entire
Action; Declaration of Kaitlin Martinez,
Esq. In Support of Plaintiffs' Request for
Dismissal of Entire Action; [Proposed]
Order Dismissing Entire Action]*

Complaint Filed: October 11, 2024
Trial Date: Not yet set

Hearing Date: September 24, 2026
Time: 9:00 AM
Dept: 10
Hon. Julia Campins

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1 **I. INTRODUCTION**

2 On October 11, 2024, Plaintiffs filed the above-entitled action against Defendant alleging
3 violations of the California Labor Code including: 1) Failure to Provide Rest Periods; 2) Failure to
4 Provide Meal Periods; 3) Failure to Pay All Minimum Wages; 4) Failure to Pay Overtime Wages;
5 5) Failure to Reimburse Business Expenses; 6) Failure to Provide Accurate Itemized Wage
6 Statements; 7) Failure to Pay Wages Upon Termination; 8) Failure to Pay All Wages; and 9)
7 Violation of the Private Attorneys General Act, Labor Code §2698, *et seq.* Declaration of Kaitlin
8 Martinez (“Martinez Decl.”) ¶ 3.

9 After the Parties participated in mediation and reached a PAGA Settlement Agreement, the
10 parties submitted a Motion for PAGA Approval to this Court. Martinez Decl. ¶ 4. On July 2, 2026,
11 the Court denied Plaintiffs’ Motion for Approval of PAGA Settlement and directed the parties to
12 settle on an individual basis. Martinez Decl. ¶ 5.

13 Between July and August, the parties negotiated a settlement of Plaintiffs’ individual claims
14 only. Martinez Decl. ¶ 6. Although Plaintiffs will receive consideration in exchange for their
15 dismissal, with prejudice, of their individual wage and hour claims and individual PAGA claim,
16 Plaintiffs did not and will not receive consideration for the dismissal of the representative PAGA
17 claim. Martinez Decl. ¶ 6.

18 Dismissal of the representative PAGA claim is warranted in light of the parties’ discussions at
19 mediation and impact of settlement to the aggrieved employees. Martinez Decl. ¶ 7. Pursuant to
20 Labor Code § 2699(s), Plaintiff seeks the Court’s approval of dismissal of the PAGA claim as the
21 Parties did not settle the representative claim.

22 **II. FACTUAL BACKGROUND**

23 **A. FACTUAL ALLEGATIONS**

24 Between July and August, the parties negotiated a settlement of Plaintiffs’ individual claims
25 only. Martinez Decl. ¶ 6. Although Plaintiffs will receive consideration in exchange for their
26 dismissal, with prejudice, of their individual wage and hour claims and individual PAGA claim,
27 Plaintiffs did not and will not receive consideration for the dismissal of the representative PAGA
28 claim. Martinez Decl. ¶ 6.

1 Dismissal of the representative PAGA claim is warranted in light of the parties' discussions at
2 mediation and impact of settlement to the aggrieved employees. Martinez Decl. ¶ 7.

3 Defendant argued that many of the PAGA class members were not teachers (the position both
4 Plaintiffs were employed as during the PAGA period) and worked four-hour shifts, such that they
5 would not be entitled to meal breaks, second rest breaks, or overtime. Martinez Decl. ¶ 8. Therefore,
6 Defendant argued that Plaintiffs' claims were unique and individualized from that of the rest of the
7 Aggrieved Employees. Martinez Decl. ¶ 8. Defendant additionally maintained meal waivers for its
8 hourly employees thereby removing liability for meal period violations when employees worked
9 shifts that were six hours or less. Martinez Decl. ¶ 8.

10 Because of Defendant's position that Plaintiffs' claims were not representative of the Aggrieved
11 Employees, Plaintiffs' demand for their individual damages maintained a strong position due to the
12 documentary evidence in their possession and provided at mediation which supported their claim
13 for individual damages. Martinez Decl. ¶ 9. This included paper reports Plaintiffs made to Defendant
14 that they were unable to timely take meal periods, evidence of off the clock work to create lesson
15 plans for their classes and communications responding to parents' messages on the school portal
16 about their child/student. Martinez Decl. ¶ 9. These issues were unique to Plaintiffs' position as
17 teachers compared to other positions such as aides or office assistants who did not have similar job
18 requirements or expectations. Martinez Decl. ¶ 9.

19 Plaintiffs did not have evidence to disprove Defendant's contention that the other Aggrieved
20 Employees were not subject to similar constraints and did not suffer similar violations as a result of
21 their position. Martinez Decl. ¶ 10.

22 Defendants additionally made representations about their operations and financial stress.
23 Martinez Decl. ¶ 11. While Defendants initially leased the property the school operated at, the
24 successor school was unexpectedly shutting down effective 9/30/25. Martinez Decl. ¶ 11. This
25 impacted Defendants anticipated income from being able to lease the subject property. Martinez
26 Decl. ¶ 11. At the time of mediation and the subsequent settlement negotiations, Defendants showed
27 a loss of \$70,000.00 so far that year, with projected losses of \$150k-\$200k in the coming years.
28 Martinez Decl. ¶ 11. Taking Defendants' financial difficulties into consideration would avoid the

possibility of Defendants declaring bankruptcy which would result in the State of California and the other Aggrieved Employees receiving nothing at all. Martinez Decl. ¶ 11. Unfortunately, Plaintiffs' counsel has experienced similar situations in which after reaching a settlement agreement the defendant files for bankruptcy. Martinez Decl. ¶ 11.

Defendant has shown Plaintiffs' alleged complaints were individualized and therefore not likely capable of satisfying a PAGA judgment. Martinez Decl. ¶ 12. Therefore, taking the Court's direction into consideration, the Parties have agreed to a settlement of only Plaintiffs' individual claims and include a release of Plaintiffs' ability to stand as a PAGA representative. Martinez Decl. ¶ 12.

B. PROCEDURAL HISTORY

On October 11, 2024, Plaintiffs filed the above-entitled action against Defendant alleging violations of the California Labor Code including: 1) Failure to Provide Rest Periods; 2) Failure to Provide Meal Periods; 3) Failure to Pay All Minimum Wages; 4) Failure to Pay Overtime Wages; 5) Failure to Reimburse Business Expenses; 6) Failure to Provide Accurate Itemized Wage Statements; 7) Failure to Pay Wages Upon Termination; 8) Failure to Pay All Wages; and 9) Violation of the Private Attorneys General Act, Labor Code §2698, *et seq.* Declaration of Kaitlin Martinez ("Martinez Decl.") ¶ 3.

On July 21, 2025, the Parties participated in an all-day mediation with Mr. Mark Lemke, a well-regarded and experienced mediator of wage-and-hour and PAGA actions, who managed the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. Martinez Decl. ¶ 4. After mediation, Mr. Lemke continued to work with the Parties until November 20, 2025, when the Parties reached an agreement in principle, which was later memorialized in a PAGA Settlement Agreement. Martinez Decl. ¶ 4.

On July 2, 2026, the Court denied Plaintiffs' Motion for Approval of PAGA Settlement and directed the parties to settle on an individual basis. Martinez Decl. ¶ 5.

Between July and August, the parties negotiated a settlement of Plaintiffs' individual claims only. Martinez Decl. ¶ 6. Although Plaintiffs will receive consideration in exchange for their dismissal, with prejudice, of their individual wage and hour claims and individual PAGA claim, Plaintiffs did not and will not receive consideration for the dismissal of the representative PAGA

1 claim. Martinez Decl. ¶ 6.

2 Dismissal of the representative PAGA claim is warranted in light of the parties' discussions at
3 mediation and impact of settlement to the aggrieved employees. Martinez Decl. ¶ 7. Pursuant to
4 Labor Code § 2699(s), Plaintiff seeks the Court's approval of individual settlement and dismissal of
5 the PAGA claim as the Parties did not settle the representative claim.

6 At the same of this filing, Plaintiff provided the LWDA with notice of this Request for Dismissal
7 hearing by submitting a copy of this Motion and all corresponding documents to the LWDA website.
8 Martinez Decl. ¶ 15; Ex. A to Martinez Decl.

9 III. LEGAL ANALYSIS

10 Under PAGA, an aggrieved employee may bring a civil action personally and on behalf of
11 other current or former employees to recover civil penalties for Labor Code violations. *Iskanian v.*
12 *CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380. A judgment [or Court-approved
13 settlement] in a PAGA action binds all those, including nonparty aggrieved employees, who would
14 be bound by a judgment in an action brought by the government. *Id.* at 381.

15 Based on the California Supreme Court's holdings in *Arias v. Superior Court* (2009) 46
16 Cal.4th 969 and *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, there is
17 no requirement under PAGA for Plaintiff to establish the requirements of class certification (i.e.,
18 numerosity, typicality, commonality, and adequacy) nor is there the usual two-step preliminary and
19 final approval process as found in class actions. Rather, a PAGA settlement merely requires a one-
20 step review and approval by the Court. *Id.*

21 Under Labor Code § 2699(s), the Parties must obtain approval of their PAGA settlement
22 from the Court. Pursuant to Labor Code Section 2699(e)(1), the Court has wide discretion regarding
23 the amount of the PAGA penalty (See also *Thurman v. Bayshore Transit Management* (2012) 203
24 Cal.App.4th 1112, 1136 [standard of review is abuse of discretion].) The primary objective of a
25 PAGA action "is to supplement enforcement actions by public agencies, which lack adequate
26 resources to bring all such actions themselves." *Arias v. Superior Court* (2009) 46 Cal.4th 969, 980-
27 981, 986. "Restitution is not the primary object of a PAGA action, as it is in most class actions."
28 *Franco v. Athens Disposal Co., Inc.* (2009) 171 Cal.App.4th 1277, 1300 (emphasis added). Rather,

1 a PAGA action is “fundamentally a law enforcement action designed to protect the public and
2 penalize the employer for past illegal conduct.” *Id.* Prior to the enactment of PAGA, the California
3 Legislature determined that it lacked adequate financing to enforce California labor laws and in
4 order “to achieve maximum compliance with state labor laws,” it declared that it was in the public
5 interest to allow employees, acting as private attorneys general, to recover civil penalties that
6 otherwise would have been assessed and collected by the LWDA. *Arias*, 46 Cal.4th at 980-981.

7 Labor Code § 2699(s) provides that the Superior Court shall review and approve any
8 settlement of any civil action filed pursuant to the PAGA. Although PAGA actions bear a superficial
9 resemblance to a type of class action, there are several factors distinguishing representative PAGA
10 actions and class actions. First a representative action under PAGA is fundamentally a law
11 enforcement action designed to protect the public and penalize the employer for past illegal conduct.
12 See *Franco v. Athens Disposal Co., Inc.*, (2009) 171 Cal. App. 4th 1277, 1300. The purpose is not
13 to collect damages on behalf of other employees or provide restitution to victims of Labor Code
14 violations. *Id.* (“Restitution is not the primary object of a PAGA action, as it is in most class
15 actions.”). Moreover, there is no requirement that the Court apply the same level of scrutiny in
16 approving a PAGA settlement as it does with class actions. Indeed, the California Supreme Court
17 has held that an employee who sues an employer under the PAGA need not satisfy class action
18 requirements. *Arias*, 46 Cal. 4th at 974. For example, “PAGA has no notice requirements for
19 unnamed aggrieved employees, nor may such employees opt out of a PAGA action.” *Baumann v.*
20 *Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1122 (9th Cir. 2014).

21 **A. THE PARTIES DID NOT SETTLE THE REPRESENTATIVE PAGA CLAIM**

22 Defendants have shown Plaintiffs’ alleged complaints were individualized and therefore not
23 likely capable of satisfying a PAGA judgment. Martinez Decl. ¶ 12. Therefore, taking the Court’s
24 direction into consideration, the Parties have agreed to a settlement of only Plaintiffs’ individual
25 claims and include a release of Plaintiffs’ ability to stand as a PAGA representative. Martinez Decl.
26 ¶ 12.

27 Defendant argued that many of the PAGA class members were not teachers (the position both
28 Plaintiffs were employed as during the PAGA period) and worked four-hour shifts, such that they

1 would not be entitled to meal breaks, second rest breaks, or overtime. Martinez Decl. ¶ 8. Therefore,
2 Defendant argued that Plaintiffs' claims were unique and individualized from that of the rest of the
3 Aggrieved Employees. Martinez Decl. ¶ 8. Defendant additionally maintained meal waivers for its
4 hourly employees thereby removing liability for meal period violations when employees worked
5 shifts that were six hours or less. Martinez Decl. ¶ 8.

6 Because of Defendant's position that Plaintiffs' claims were not representative of the Aggrieved
7 Employees, Plaintiffs' demand for their individual damages maintained a strong position due to the
8 documentary evidence in their possession and provided at mediation which supported their claim
9 for individual damages. Martinez Decl. ¶ 9. This included paper reports Plaintiffs made to Defendant
10 that they were unable to timely take meal periods, evidence of off the clock work to create lesson
11 plans for their classes and communications responding to parents' messages on the school portal
12 about their child/student. Martinez Decl. ¶ 9. These issues were unique to Plaintiffs' position as
13 teachers compared to other positions such as aides or office assistants who did not have similar job
14 requirements or expectations. Martinez Decl. ¶ 9.

15 Plaintiffs did not have evidence to disprove Defendant's contention that the other Aggrieved
16 Employees were not subject to similar constraints and did not suffer similar violations as a result of
17 their position. Martinez Decl. ¶ 10. Defendants additionally made representations about their
18 operations and financial stress. Martinez Decl. ¶ 11. While Defendants initially leased the property
19 the school operated at, the successor school was unexpectedly shutting down effective 9/30/25.
20 Martinez Decl. ¶ 11. This impacted Defendants anticipated income from being able to lease the
21 subject property. Martinez Decl. ¶ 11. At the time of mediation and the subsequent settlement
22 negotiations, Defendants showed a loss of \$70,000.00 so far that year, with projected losses of
23 \$150k-\$200k in the coming years. Martinez Decl. ¶ 11. Taking Defendants' financial difficulties
24 into consideration would avoid the possibility of Defendants declaring bankruptcy which would
25 result in the State of California and the other Aggrieved Employees receiving nothing at all.
26 Martinez Decl. ¶ 11. Unfortunately, Plaintiffs' counsel has experienced similar situations in which
27 after reaching a settlement agreement the defendant files for bankruptcy. Martinez Decl. ¶ 11.

28 Although Plaintiff will receive consideration in exchange for his dismissal, with prejudice, of

1 his individual wage and hour claims and individual PAGA claim, Plaintiff did not and will not
2 receive consideration for the dismissal of the representative PAGA claim. Martinez Decl. ¶ 8;

3 No notice to any allegedly aggrieved employees Plaintiff purports to represent has been
4 provided. Martinez Decl. ¶ 13. Accordingly, the Court may dismiss the Action without notice to any
5 purported aggrieved employees if the Court finds that the dismissal will not prejudice them.
6 Martinez Decl. ¶ 13. No prejudice will result to any allegedly aggrieved employee or the State of
7 California in the absence of notice. Martinez Decl. ¶ 14. No consideration, direct or indirect, is
8 being given for the dismissal of the representative claims, without prejudice. Martinez Decl. ¶ 14.

9 **B. PLAINTIFF SUBMITTED THIS MOTION TO THE LWDA**

10 At the same of this filing, Plaintiff provided the LWDA with notice of this Request for
11 Dismissal of Entire Action hearing by submitting a copy of this Motion and all corresponding
12 documents to the LWDA website. Martinez Decl. ¶ 15; Ex. A to Martinez Decl.

13 **C. GOOD CAUSE EXISTS TO DISMISS THE REPRESENTATIVE PAGA CLAIM**

14 Defendants provided evidence that Plaintiffs' alleged complaints were individualized and
15 therefore not likely capable of satisfying a PAGA judgment. Martinez Decl. ¶ 12. Further, the court
16 has rejected the parties' proposed PAGA Settlement and directed the parties to settle on an
17 individual basis. Martinez Decl. ¶ 5. Therefore, the Parties have agreed to a settlement of only
18 Plaintiffs' individual claims and include a release of Plaintiffs' ability to stand as a PAGA
19 representative. Martinez Decl. ¶ 16.

20 Plaintiffs' individual Settlement Payment is fair and reasonable considering the probability
21 of recovery in this matter and merits of Plaintiffs' individual claims only. Martinez Decl. ¶ 16. Here,
22 both Parties' counsel have extensive experience in employment and wage and hour litigation and
23 conducted an extensive investigation of the factual allegations involved in this case. Martinez Decl.
24 ¶ 16. Each side has apprised the other, informally of their respective factual contentions, legal
25 theories and defenses, resulting in extensive arms-length negotiations taking place among the
26 Parties. Martinez Decl. ¶ 16.

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