

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

<b>Case No.</b>	5:17-cv-00603-RGK-AJW	<b>Date</b>	June 05, 2018
<b>Title</b>	<i>Davidson v. O'Reilly Enterprises, LLC</i>		

<b>Present: The Honorable</b> R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE		
Sharon L. Williams	Not Reported	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiff:	Attorneys Present for Defendant:	
Not Present	Not Present	

**Proceedings:** (IN CHAMBERS) Order Re: Defendant's Motion for Partial Summary Judgment (DE 69); Defendant's Motion for Judgment on the Pleadings (DE 70)

**I. INTRODUCTION**

On March 29, 2017, plaintiff Kia Davidson ("Davidson") filed a putative wage-and-hour class action complaint against defendant O'Reilly Auto Parts Enterprises, LLC ("O'Reilly"). In her Second Amended Complaint ("SAC"), Davidson alleges five claims: (1) failure to provide rest periods in violation of California Labor Code §§ 226.7 and 1198; (2) non-compliant wage statements and failure to maintain payroll records in violation of California Labor Code §§ 226(a), 1174(d), and 1198; (3) various violations of the California Labor Code brought under the Private Attorney General Act of 2004 ("PAGA"); (4) unlawful business practices in violation of California Business & Professions Code §§ 17200, *et seq.*, also known as the California Unfair Competition Law ("UCL"); and (5) unfair business practices in violation of the UCL.

O'Reilly now moves for partial summary judgment and judgment on the pleadings as to Davidson's PAGA claim. For the reasons below, the Court **GRANTS** O'Reilly's Motion for Partial Summary Judgment (DE 69), and **DENIES AS MOOT** O'Reilly's Motion for Judgment on the Pleadings (DE 70).

**II. FACTUAL BACKGROUND**

O'Reilly is a Delaware Corporation doing business in California, with its principal place of business in Missouri. O'Reilly operates a national chain of retail stores selling automotive parts. Within California, O'Reilly is estimated to own or run 523 locations and employ over 6000 persons. O'Reilly maintains its company headquarters, a centralized Human Resources department, and its payroll department in Springfield, Missouri.

From June 2016 to July 2017, Davidson worked full-time at the O'Reilly store location in San Bernardino, California as an hourly-paid, non-exempt delivery driver.

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During the time she was employed with O'Reilly, Davidson alleges that she was denied meal breaks, rest periods, and overtime pay in violation of the California Labor Code. Accordingly, Davidson brings a PAGA claim based upon O'Reilly's alleged violations of the Labor Code with respect to (a) denial of overtime pay; (b) minimum wage violations; (c) meal break violations; (d) rest period violations; and (e) derivative claims for failure to maintain accurate records. Davidson brings her PAGA action along with other absent "aggrieved employees" on behalf of the state of California to collect civil penalties under the Labor Code.

### **III. JUDICIAL STANDARD**

#### **A. Motion for Partial Summary Judgment**

Pursuant to Federal Rule of Civil Procedure 56(c), summary judgment is proper only where "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the [moving party] is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). On issues where the moving party does not have the burden of proof at trial, the moving party is required only to show that there is an absence of evidence to support the non-moving party's case. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 326 (1986). Upon such showing, the court may grant summary judgment "on all or part of the claim." Fed. R. Civ. P. 56(a)-(b).

To defeat a summary judgment motion, the non-moving party may not merely rely on its pleadings or on conclusory statements. Fed. R. Civ. P. 56(e). Nor may the non-moving party merely attack or discredit the moving party's evidence. *Nat'l Union Fire Ins. Co. v. Argonaut Ins. Co.*, 701 F.2d 95, 97 (9th Cir. 1983). The non-moving party must affirmatively present specific evidence sufficient to create a genuine issue of material fact for trial. *See Celotex Corp.*, 477 U.S. at 324. The materiality of a fact is determined by whether it might influence the outcome of the case based on the contours of the underlying substantive law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Disputes over such facts amount to genuine issues if a reasonable jury could resolve them in favor of the nonmoving party. *Id.*

#### **B. Motion for Judgment on the Pleadings**

A motion for judgment on the pleadings under Fed. R. Civ. P. 12(c) is "functionally identical" to a motion to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6). *Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989). The same judicial standard applies to motions brought under either rule. *Cagasso v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1054 n.4 (9th Cir. 2011). The only significant difference is that a Rule 12(c) motion is brought after an answer has been filed, but early enough not to delay trial, whereas a 12(b)(6) motion must be filed before an answer. Fed. R. Civ. P. 12(b)-(c).

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In ruling on a Rule 12(c) motion, courts must assume the allegations in the challenged complaint are true, and must construe the complaint in the light most favorable to the non-moving party. *See Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337–38 (9th Cir. 1996); *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009). A motion for judgment on the pleadings is “properly granted when, taking all the allegations in the pleadings as true, the moving party is entitled to judgment as a matter of law.” *Nelson v. City of Irvine*, 143 F.3d 1196, 1200 (9th Cir. 1998). Dismissal “is appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory.” *Mendondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). A court should grant leave to amend upon granting a motion for judgment on the pleadings, unless it determines the complaint cannot be cured by the allegation of other facts. *Knappenberger v. City of Phoenix*, 566 F.3d 936, 942 (9th Cir. 2009).

#### **IV. DISCUSSION**

##### **A. Motion for Partial Summary Judgment**

O'Reilly moves for partial summary judgment on Davidson's PAGA claim, arguing that (1) Davidson has failed to introduce any evidence as to other aggrieved employees; and (2) without evidence as to those other aggrieved employees, Davidson cannot pursue an individual PAGA claim. The Court agrees on both counts.

Under PAGA, an “aggrieved employee” may bring an action against an employer “on behalf of himself or herself and other current or former employees” to recover civil penalties for violations of the California Labor Code. Cal. Lab. Code § 2699(a); *Iskanian v. CLS Transp. L.A.*, 327 P.3d 129, 146 (Cal. 2014). An “aggrieved employee” is an employee “against whom one or more of the alleged violations was committed.” § 2699(c). Accordingly, to prevail on a PAGA claim, the plaintiff must “prove Labor Code violations with respect to each and every individual on whose behalf plaintiff seeks to recover civil penalties.” *Zayers v. Kiewit Infrastructure West Co.*, No. 16-cv-06405-PSG-PJW, 2017 WL 7058141, at \*8 (C.D. Cal. Nov. 9, 2017) (citing *Hibbs-Rines v. Seagate Techs., LLC*, No. C-08-05430-SI, 2009 WL 513496, at \*4 (N.D. Cal. Mar. 2, 2009)).

Here, Davidson offers only evidence of Labor Code violations against herself. For example, she puts forth evidence that she frequently had to work an additional 30 to 45 minutes without pay after clocking out; that O'Reilly denied her meal breaks; and that O'Reilly prevented her from taking rest periods because the workplace was too busy. Davidson does not, however, offer any evidence that O'Reilly violated any provision of the Labor Code with respect to anyone else. As a result, Davidson “lacks the evidence to proceed with litigation on behalf of other aggrieved employees.” (Pl.'s Opp'n 12:8–9, ECF No. 71.)



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Davidson appears to contend that she can nonetheless pursue her PAGA claim as a single individual aggrieved employee. But the PAGA statute provides that plaintiffs can recover penalties through a civil action brought “on behalf of himself or herself *and* other current or former employees.” § 2699(a) (emphasis added). In other words, a PAGA action *must* include the plaintiff *and* “other current or former employees.” *Machado v. M.A.T. & Sons Landscape, Inc.*, No. 2:09-cv-00459-JAM-JFM, 2009 WL 2230788, at \*3 (E.D. Cal. July 23, 2009). Because PAGA is a representative action undertaken on behalf of the state to enforce the Labor Code, a plaintiff cannot bring a PAGA claim on an individual basis. *Williams v. Superior Court*, 188 Cal. Rptr. 3d 83, 87–88 (Ct. App. 2015) (citing *Reyes v. Macy’s, Inc.*, 135 Cal. Rptr. 3d 832, 835–36 (Ct. App. 2011)); *see also Valdez v. Terminix Int’l Co. Ltd. P’ship*, No. CV-14-09748-DDP-Ex, 2015 WL 12861156, at \*8 (C.D. Cal. July 16, 2015). Consequently, because Davidson cannot bring a PAGA claim as a single aggrieved employee, and because she cannot show evidence of Labor Code violations against “aggrieved employees” other than herself, Davidson cannot prevail on her PAGA claim as a matter of law.

As such, the Court **GRANTS** O’Reilly’s Motion for Partial Summary Judgment as to Davidson’s third cause of action under PAGA.

**B. Motion for Judgment on the Pleadings**

O’Reilly also moves for judgment on the pleadings, arguing that Davidson cannot under PAGA recover wages under Labor Code sections 558 and 1197.

Because the Court has already concluded, however, that O’Reilly is entitled to judgment as a matter of law on Davidson’s PAGA claim, O’Reilly’s arguments are moot.

The Court therefore **DENIES AS MOOT** O’Reilly’s Motion for Judgment on the Pleadings.

**V. EVIDENTIARY OBJECTIONS**

To the extent the parties have objected to any of the evidence relied upon by the Court, those objections are overruled for purposes of this Order.

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VI. **CONCLUSION**

For the reasons above, the Court **GRANTS** O'Reilly's Motion for Partial Summary Judgment (DE 69) and **DENIES AS MOOT** O'Reilly's Motion for Judgment on the Pleadings (DE 70). Davidson's third cause of action pursuant to PAGA is **dismissed**.

**IT IS SO ORDERED.**

Initials of Preparer

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