

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**TOMERY DARLING and ANA JARA**, on  
behalf of themselves and all others similarly  
situated,

Plaintiff,

v.

**DIGNITY HEALTH; DIGNITY  
COMMUNITY CARE; DIGNITY  
HEALTH MEDICAL GROUP, ETC.**,

Defendants.

**Case No.: 4:20-CV-06043-YGR**

**ORDER GRANTING MOTION TO  
DISMISS**

Dkt. No. 125

Plaintiffs Tomery Darling and Ana Jara move to voluntarily dismiss this action. (Dkt. No. 125.)<sup>1</sup> For the reasons given herein, the motion is granted.<sup>2</sup> Plaintiff Darling brings claims for violations of California labor law on behalf of a putative class. Plaintiff Jara brings claims for violations of Nevada labor laws on behalf of a putative class and for violation of the Fair Labor Standards Act (“FLSA”), 29 USC section 207. The FLSA opt-in class has been conditionally certified. (Dkt. No. 54.)

Plaintiffs brought claims for violation of California and Nevada law, which they sought to bring on behalf of classes of similarly situated workers. The classes have not been certified. As such, dismissal of these claims is appropriate under Rule 41(a)(1). *Lee v. CVS Pharmacy, Inc.*, No.

---

<sup>1</sup> On November 29, 2022, this Court requested supplemental briefing on several issues related to dismissal of the FLSA claims. Plaintiffs timely responded and the Court has incorporated the information provided in this Order.

<sup>2</sup> The Court has reviewed the papers submitted in connection with the instant motion and has determined that the motion is appropriate for decision without oral argument, as permitted by Civil Local Rule 7-1(b) and Federal Rule of Civil Procedure 78. *See Lake at Las Vegas Investors Group, Inc. v. Pacific Malibu Dev. Corp.*, 933 F.2d 724, 729 (9th Cir. 1991).

320CV01923BENDEB, 2021 WL 308283, at \*2 (S.D. Cal. Jan. 28, 2021); § 6:1. Voluntary dismissal, 2 McLaughlin on Class Actions § 6:1 (19th ed.).

Dismissal of Jara's FLSA claim is also appropriate. In the Ninth Circuit, "FLSA claims may not be settled without approval of either the Secretary of Labor or a district court." *Seminiano v. Xyris Enter., Inc.*, 602 F. App'x 682, 683 (9th Cir. 2015). However, the Court is unaware of any authority regarding whether Court approval is necessary to approve dismissal without prejudice of FLSA claims on behalf of a conditionally approved class.

To the extent such approval is required, the Court finds dismissal appropriate here. The parties have agreed to a 45-day tolling period in which opt-ins may bring their own claims. Plaintiffs' counsel provided notice to opt-ins on October 31, 2022, that plaintiffs had settled their individual claims and that opt-ins would have 45 days from the date this Court enters its order of dismissal to bring their own action. (Dkt. No. 125-2, Ex 1, "Notice.") Thus, opt-ins will have over three months of notice to bring their own actions.

Further, as the allegations underlying Jara's FLSA claim is subsumed within her state wage claims, release of those claims automatically precludes her FLSA claim, which is the "direct federal law counterpart[]" of the state claims. (Dkt. No. 32, Second Amended Complaint at ¶¶ 27-30 and 48-72 (stating that FLSA claim based on failure to provide 1.5 times pay for hours worked over 40 hours a week and that state law claims based on same, in addition to other injuries)); *Rangel v. PLS Check Cashers of California, Inc.*, 899 F.3d 1106, 1110 (9th Cir. 2018) ("Even where there are multiple legal theories upon which recovery might be predicated, one injury gives rise to only one claim for relief.").

Accordingly, plaintiffs' motion to dismiss is granted. Their individual claims are dismissed with prejudice. Those who have opted into the FLSA class have 45 days from this order in which to bring their own claim. The clerk of court is directed to close this case.

This terminates docket number 125.

**IT IS SO ORDERED.**

Date: January 18, 2023

  
YVONNE GONZALEZ ROGERS  
UNITED STATES DISTRICT COURT