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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 ELIZABETH BARKER and YADIRA
12 ESQUEDA, individually and on behalf of
13 all others similarly situated,

Plaintiff,

14 v.

15 U.S. BANCORP

16 Defendants.
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Case No.: 3:15-cv-1641-CAB-WVG

**ORDER ON MOTION TO DISMISS
PAGA CLAIM**

[Doc. No. 84]

19 This matter is before the Court on Defendant’s motion to dismiss or strike the
20 representative action pursuant to California’s Private Attorney General Act (“PAGA”) that
21 Plaintiff Yadira Esqueda asserted in the operative first amended complaint (“FAC”).
22 Defendant argues for dismissal of the PAGA action because it does not satisfy the class
23 action requirements of Federal Rule of Civil Procedure 23 and because it would be
24 unmanageable. Both of these issues are unsettled in the Ninth Circuit, but the Court need
25 not address them here. Instead, the Court declines to exercise supplemental jurisdiction
26 over the PAGA claims and dismisses them on that ground.
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1 **I. Background**

2 Defendant U.S. Bancorp (“USB”) operates bank branches located within grocery
3 stores in California. Plaintiffs Elizabeth Barker and Yadira Esqueda are former In-Store
4 Branch Managers (“IBMs”) at these in-store banking locations. USB classified Plaintiffs
5 and other IBMs as exempt employees, meaning that were not paid overtime. Plaintiffs
6 allege that their exempt classification was improper because they spent more than half of
7 their time performing non-managerial duties similar to those of a “Universal Banker,”
8 which is a non-exempt position.

9 In the operative first amended complaint (“FAC”), Plaintiffs asserted two claims as
10 a putative collective action under the federal Fair Labor Standards Act (“FLSA”) and four
11 claims on behalf of a putative Rule 23 class for California labor code violations attributable
12 to USB’s alleged misclassification of IBMs as exempt employees. In addition, in the
13 seventh claim for relief in the FAC, Esqueda (but not Barker) alleged that she is an
14 “aggrieved employee” pursuant to PAGA and brought a PAGA representative action for
15 the same California labor code violations alleged elsewhere in the FAC.

16 The Court has since denied Plaintiffs’ motion for class certification and decertified
17 a collective action under the FLSA. Thus, all that remains of this lawsuit are Plaintiffs’
18 individual claims for FLSA and California labor code violations, and Esqueda’s PAGA
19 representative claims. Defendant now moves to dismiss the PAGA representative claims.

20 **II. Discussion**

21 The FAC asserts three grounds for this Court’s subject matter jurisdiction: (1) federal
22 question jurisdiction pursuant to 28 U.S.C. § 1331 based on the FLSA claims; (2)
23 jurisdiction under 28 U.S.C. § 1332(d) pursuant the Class Action Fairness Act (“CAFA”);
24 and (3) supplemental jurisdiction pursuant to 28 U.S.C. § 1367. Although the FAC’s
25 threadbare recitation that the amount in controversy exceeds \$5 million is insufficient,
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1 without more, to establish the Court’s subject matter jurisdiction under CAFA,¹ for the
2 purposes of this order, the Court assumes that CAFA jurisdiction over the four Rule 23
3 class claims exists.

4 CAFA, however, “provides no basis for federal jurisdiction” over a PAGA action.
5 *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1119 (9th Cir. 2014). Thus, the only
6 basis for subject matter jurisdiction over the PAGA representative claims based on the
7 allegations in the FAC is supplemental jurisdiction under 28 U.S.C. § 1367. *See generally*
8 *Wright Transp., Inc. v. Pilot Corp.*, 841 F.3d 1266, 1273 (11th Cir. 2016) (noting that
9 “[s]upplemental jurisdiction does have a role in CAFA cases, but only in those that also
10 have state-law claims that were never subject to CAFA jurisdiction.”) (internal quotation
11 marks omitted); *Thompson v. Target Corp.*, No. EDCV1600839JGBMRWX, 2016 WL
12 4119937, at *12 (C.D. Cal. Aug. 2, 2016) (noting “given that the Court finds it has original
13 jurisdiction over Plaintiff’s class claims under CAFA, the Court may exercise supplemental
14 jurisdiction over Plaintiff’s PAGA claims.”).

15 Section 1367 provides in pertinent part that: “district courts shall have supplemental
16 jurisdiction over all other claims that are so related to claims in the action within such
17 original jurisdiction that they form part of the same case or controversy under Article III
18 of the United States Constitution.” 28 U.S.C. § 1367(a). Even when claims are so related
19 to claims within the original jurisdiction that they form part of the same case or controversy,
20 federal district courts are not always required to entertain them. To that end, the statute
21 expressly provides that district courts may decline to exercise supplemental jurisdiction
22 under any of the following circumstances:

- 23 (1) The claim raises a novel or complex issue of State law;
- 24 (2) The claim substantially predominates over the claim or claims over which
the district court has original jurisdiction;
- 25 (3) The district court has dismissed all claims over which it has original
26 jurisdiction; or

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28 ¹ *See Kachi v. Natrol, Inc.*, No. 13cv0412 JM (MDD), 2014 WL 2925057, at *6 (S.D. Cal. Jun. 19, 2014).

1 (4) In exceptional circumstances, there are other compelling reasons for
2 declining jurisdiction.

3 28 U.S.C. § 1367(c). However, “[w]hile discretion to decline to exercise supplemental
4 jurisdiction over state law claims is triggered by the presence of one of the conditions in §
5 1367(c), it is informed by the *Gibbs*² values ‘of economy, convenience, fairness, and
6 comity.’” *Acri v. Varian Assocs., Inc.*, 114 F.3d 999, 1001 (9th Cir. 1997) (*en banc*)
7 (citations omitted). A district court is not required to articulate any reasons for dismissing
8 state-law claims pursuant to 28 U.S.C. section 1367(c)(1)-(3). *San Pedro Hotel Co., Inc.*
9 *v. City of L.A.*, 159 F.3d 470, 478–79 (9th Cir. 1998).

10 Here, having denied certification of a Rule 23 class or FLSA collective, all that
11 remains aside from the PAGA representative action are Plaintiff’s individual FLSA and
12 California labor code claims. It is indisputable that these PAGA representative claims
13 substantially predominate over the named Plaintiffs’ individual claims. Indeed, Plaintiffs
14 even concede that the underlying theory for recovery with respect to the PAGA
15 representative claims is identical to the underlying claims for the putative Rule 23 class
16 and FLSA collective. Thus, just as the individualized inquiries as to USB’s liability to the
17 employees Esqueda seeks to represent in the PAGA action would predominate over
18 questions common to the putative class and collective, such inquiries would also
19 predominate over Plaintiffs’ individual California labor code and FLSA claims, which are
20 all that remain in this case.³

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22 ² *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715 (1966).

23 ³ It is also questionable whether Esqueda has Article III standing to assert PAGA claims outside of the
24 Rule 23 class action context. *Compare Taylor v. W. Marine Prods., Inc.*, No. C 13-04916 WHA, 2014
25 WL 1248162, at *3 (N.D. Cal. Mar. 26, 2014) (granting leave to amend to assert a PAGA claim but
26 holding that if “Rule 23 certification is ultimately denied in this case, the PAGA violations will be limited
27 to those proven for our plaintiffs named herein—unless, somehow, plaintiffs can show they have Article
28 III standing to pursue violations as to others.”) *with Varsam v. Lab. Corp. of Am.*, 120 F.Supp. 3d 1173,
1182 (S.D. Cal. 2015) (holding that plaintiffs bringing PAGA representative actions have Article III
standing under the theory that PAGA actions are like *qui tam* lawsuits for which plaintiffs have standing
under an assignment theory). In declining to exercise supplemental jurisdiction, the Court need not
address this standing issue.

1 **III. Conclusion**

2 In light of the foregoing, the Court declines to exercise supplemental jurisdiction
3 over the PAGA representative claims in the FAC. Accordingly, those claims are
4 **DISMISSED** without prejudice to re-filing in state court. USB's motion is therefore
5 **DENIED AS MOOT.**

6 It is **SO ORDERED**

7 Dated: January 9, 2018



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Hon. Cathy Ann Bencivengo
United States District Judge

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