

1 **II. BACKGROUND**

2 **A. Statement of Facts**

3 Plaintiff alleges she was employed my GetWellNetwork as a Tier 2 Client Support
4 Specialist from May 20, 2019 until February 20, 2020. ECF No. 1-2 at 3:5-9.¹ She further
5 alleges that GetWellNetwork unlawfully discharged from her employment in retaliation
6 for requesting a reasonable accommodation in the form of a stand-up desk for her
7 diagnosed medical back condition and reporting acts of wage software updates made
8 without notice or prior approval of GetWellNetwork’s customers. *Id.* at 2:20-26, 8:2-15.

9 **B. Procedural History**

10 On October 2, 2020, Plaintiff filed a class action complaint in the Superior Court
11 of California, alleging causes of action against GetWellNetwork for: (1) Failure to Engage
12 in the Interactive Process, Cal. Gov’t Code § 12940(n); (2) Failure to Provide Reasonable
13 Accommodation, Cal. Gov’t Code § 12940(m); (3) Disparate Treatment – Wrongful
14 Termination, Cal. Gov’t Code § 12940(a); (4) Wrongful Termination in Violation of
15 Public Policy; (5) Breach of Implied Covenant of Good Faith and Fair Dealing; (6) Failure
16 to Pay Regular and Overtime Wages in Violation of the California Labor Code; (7) Failure
17 to Provide Meal Periods and Rest Periods in Violation of California Labor Code §§ 226.7
18 and 512; (8) Failure to Pay All Wages Owed Upon Termination in Violation of California
19 Labor Code § 203; (9) Failure to Properly Itemize Wage Statements in Violation of
20 California Labor Code § 226; and (10) Unlawful and Unfair Violations of California
21 Business and Professions Code § 17200 *et. seq.* See ECF No. 1-2. Only the sixth through
22 tenth causes of action are pled as class claims. ECF No. 8 at 2:11-12.

23 On November 12, 2020, GetWellNetwork removed the case to the Southern
24 District of California and filed an answer to the complaint. ECF Nos. 1, 2. To date,
25 Defendant Sean Thompson has not been served or appeared in the case. ECF No. 8 at
26 2:9-10.

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28 ¹ Unless otherwise indicated, all page number references are to the ECF generated
page number contained in the header of each ECF-filed document.

1 On December 16, 2020, Magistrate Judge Barbara Major filed an order confirming
2 that the parties had settled this case. ECF No. 7. On December 23, 2020, the Parties filed
3 a Joint Motion to Dismiss this case advising that they (1) had reached a settlement; (2)
4 desired to dismiss the class claims *without prejudice*; and (3) wished to retain Plaintiff’s
5 individual claims, which they would seek to dismiss later once the conditions of the
6 settlement agreement have been met. ECF No. 8 at 2: 24-28.

7 On January 28, 2021, the Parties filed a Joint Motion to Continue the Settlement
8 Disposition Conference in this matter, indicating that “[p]ursuant to the Parties’
9 Agreement, Defendants are not obligated to make the settlement payment until the Court
10 enters dismissal of the class action claims.” ECF No. 9 at 2, ¶ 5. They also indicate the
11 Parties will only request dismissal of Plaintiff’s individual claims when the Court
12 dismisses the “class action claims.” *Id.* at 2, ¶ 5. Thus, “[t]he Parties request a
13 continuance of the Settlement Disposition Conference in order to provide time for the
14 Court to enter dismissal of the class claims without prejudice, and thereafter, to request
15 dismissal of the remaining claims in the action. *Id.* at 2, ¶ 6.

16 **III. LEGAL STANDARD**

17 Rule 41(a) of the Federal Rules of Procedure (“Rule 41(a)”) governs voluntary
18 dismissal of lawsuits. If a plaintiff wants to dismiss a case without a court order, the
19 plaintiff may do so pursuant to Rule 41(a)(1), “[s]ubject to Rules 23(e), 23.1(c), 23.2, and
20 66 . . . by filing” either (1) “a notice of dismissal before the opposing party serves either an
21 answer or a motion for summary judgment” or (2) “a stipulation of dismissal signed by all
22 parties who have appeared.” FED. R. CIV. P. 41(a)(1). Where a plaintiff does not proceed
23 by filing a notice or stipulation of dismissal, “an action may be dismissed at the plaintiff’s
24 request only by court order, on terms that the court considers proper.” FED. R. CIV. P.
25 41(a)(2). Unless the order states otherwise, dismissal under Rule 41(a)(2) is without
26 prejudice. *Id.*

27 A dismissal without a court order under Rule 41(a)(1) is subject to Rule 23(e) of the
28 Federal Rules of Civil Procedure (“Rule 23(e)”), governing dismissal of class actions. Rule

1 23(e) provides that any claims arising out of either a (1) “certified class” or (2) “class
2 *proposed to be certified for purposes of settlement* . . . may be settled, voluntarily
3 dismissed, or compromised only with the court’s approval.” FED. R. CIV. P. 23 (emphasis
4 added); *see also In re Syncor ERISA Litigation*, 516 F.3d 1095, 1100 (9th Cir. 2008) (“The
5 purpose of Rule 23(e) is to protect the unnamed members of the class from unjust or unfair
6 settlements affecting their rights.”). The result of Rule 23(e) is that certified class claims
7 or claims proposed for certification for settlement purposes cannot be dismissed under Rule
8 41(a)(1) because Rule 41(a)(1): (1) allows for dismissals without a court order and (2) is
9 subject to Rule 23(e), which requires a court order for dismissal.

10 **IV. DISCUSSION**

11 In ordinary non-class litigation, “parties are free to settle their disputes on their own
12 terms, and plaintiffs may voluntarily dismiss their claims without a court order.” *Frank v.*
13 *Gaos*, 139 S. Ct. 1041, 1046 (2019) (citing FED. R. CIV. P. 41(a)(1)(A)). In a class action,
14 however, whether court approval is required depends on whether case has been certified.
15 *Compare id.* at 1046 (“By contrast, in a class action, the ‘claims, issues, or defenses of a
16 certified class—or a class proposed to be certified for purposes of settlement—may be
17 settled, voluntarily dismissed, or compromised only with the court’s approval.’”) (citing
18 FED. R. CIV. P. 23(e)) *with Employers-Teamsters Local Nos. 175 & 505 Pension Tr. Fund*
19 *v. Anchor Capital Advisors*, 498 F.3d 920, 923-24 (9th Cir. 2007) (holding that putative
20 class members of a non-certified class lack standing to appeal an order appointing the lead
21 plaintiff who voluntarily dismissed the case before certification because without a certified
22 class, only the parties to the case have standing).

23 Previously, Rule 23 was written in such a manner that it was unclear whether court
24 approval was required for dismissal of individual claims in a case that was originally filed
25 as a class action, even if the settlement and dismissal did not pertain to the putative class
26 claims. *See, e.g., Diaz v. Tr. Territory of Pac. Islands*, 876 F.2d 1401, 1408 (9th Cir. 1989)
27 (interpreting the previous version of Rule 23 to require court approval even before
28 certification of a class). However, in 2003, Congress revised Rule 23 to make clear that

1 court approval is only required in a putative class action where the plaintiff seeks to
2 approve a settlement of both individual and class claims. *See, e.g., Gesberg v. LinkUs*
3 *Enterprises, Inc.*, No. 208CV02428MCECMK, 2009 WL 10690922, at *1-2 (E.D. Cal.
4 Mar. 27, 2009) (noting that the current version of Rule 23(e) reflects amendments resolving
5 the ambiguity over whether the previous rule’s requirement of court approval for class
6 action settlements extended “to require court approval of settlements with putative class
7 representatives that resolved only individual claims”) (citing FED. R. CIV. P. 23, Advisory
8 Committee’s notes (2003 amendment)). In such a case, the Court must certify the class
9 prior to approving the settlement and dismissal of the class claims. *Id.* However, where
10 the settlement and dismissal only pertain to the class representative’s individual claims,
11 court approval is not required to dismiss the individual claims as the putative class claims,
12 having not yet been certified, have not come into existence; thus, there is nothing to
13 dismiss. *Ripley v. Bridgestone Retail Operations, LLC*, No. C09-1482 RSM, 2010 WL
14 11684294, at *2 (W.D. Wash. Sept. 2, 2010) (providing that “*prior* to certification, the
15 named plaintiffs may dismiss class claims without approval” because “Rule 23(e) does not
16 provide the district court with any supervisory authority over such dismissals, nor does it
17 require notice to the absent class members”) (citing MOORE’S FEDERAL
18 PRACTICE 3d, § 23.64[2][a], pp. 23-316:16 – 23-316:17 (2007)).

19 In this case, the Parties jointly seek to dismiss the putative class claims under Rule
20 41(a)(2) *without prejudice*. ECF No. 8 at 2:1-5. This case is in the initial stages, and thus,
21 Plaintiff has not sought certification. Thus, “[t]his is a putative class action, but no class
22 has been certified, nor is certification being proposed for purposes of settlement.” *Allred*
23 *v. Chicago Title Co.*, No. 19CV2129-LAB (AHG), 2020 WL 5847550, at *1 (S.D. Cal.
24 Oct. 1, 2020) (“Although the motion seeks dismissal of all claims with prejudice, the Court
25 construes this as a request to dismiss Plaintiffs’ own claims with prejudice, and putative
26 class claims without prejudice.”) (citing FED. R. CIV. P. 23(e)). “[B]ecause no class has
27 been certified in this case, Rule 23 does not mandate either Court approval of the instant
28 settlement or notice to putative class members.” *Id.* As a result, the Court finds the Joint

1 Motion moot given that with no class claims having come into existence, there are no class
2 claims for the Court to dismiss. *See, e.g., Tur v. YouTube, Inc.*, 562 F.3d 1212, 1214 (9th
3 Cir. 2009) (concluding “that an issue is moot when deciding it would have no effect within
4 the confines of the case”); *see also Lee v. CVS Pharmacy, Inc.*, No. 320CV01923BENDEB,
5 2021 WL 308283, at *3 (S.D. Cal. Jan. 28, 2021) (Benitez, J.) (denying a joint motion to
6 dismiss putative class claims as moot because “with no certified class claims having come
7 into existence, any dismissal will not affect putative class members’ claims”).

8 **V. ORDER**

9 Pursuant to Rule 41(a)(2), the Parties jointly move to dismiss this action *without*
10 *prejudice* as to the putative class claims. Having read and considered the Joint Motion
11 submitted by Plaintiff and Defendants, and good cause appearing, the Joint Motion is
12 **DENIED** as moot. Although this case was filed as a putative class action, Plaintiff did not
13 seek class certification, and as such, the Court did not certify the class. Therefore, with no
14 certified class claims having come into existence, any dismissal would not affect putative
15 class members’ claims. The Parties may seek dismissal of the only claims currently alive
16 in this case (e.g., Plaintiff’s individual claims) by either a court order, pursuant to Rule
17 41(a)(2), or without a court order, pursuant to Rule 41(a)(1).

18 **IT IS SO ORDERED.**

19 DATED: February 8, 2021

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22 **HON. ROGER T. BENITEZ**
23 United States District Judge
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