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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FIVE

**ZEP INC. et al.,**  
**Petitioners,**

**v.**

**THE SUPERIOR COURT OF  
ALAMEDA COUNTY,**

**Respondent;**

**KEITH BRITTO et al.,**

**Real Parties in Interest.**

**A136686**

**(Alameda County  
Super. Ct. No. VG10553718)**

THE COURT:\*

Petitioners seek writ relief from an order granting permissive intervention in this employment dispute. We grant the petition by way of this memorandum opinion because “[t]he Courts of Appeal should dispose of causes that raise no substantial issues of law or fact by memorandum or other abbreviated form of opinion.” (Cal. Stds. Jud. Admin., § 8.1; see also *People v. Garcia* (2002) 97 Cal.App.4th 847.)

At the outset of this action, real parties in interest Keith Britto and Justin Cowan (real parties) sought to represent a class of current and former sales representatives of petitioners, asserting that petitioners failed to reimburse necessary job-related expenses

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\* Before Jones, P.J., Needham, J. and Bruiniers, J.

and made illegal deductions from wages, in violation of Labor Code sections 221 and 2802, Business and Professions Code section 17200 et seq., and Labor Code section 2698 et seq. (the Private Attorneys General Act, or PAGA). The superior court subsequently denied real parties' motion for class certification.

Real parties then brought a motion for leave to file a complaint in intervention, by which they sought to add 54 plaintiffs, described as current and former employees of petitioners who maintain that petitioners failed to reimburse legitimate business expenses and made unlawful deductions from wages. The proposed complaint in intervention included a cause of action not contained in real parties' operative complaint, alleging a failure to provide accurate itemized wage statements in violation of Labor Code section 226.<sup>1</sup> Over petitioners' strenuous opposition, the superior court granted real parties' motion, finding that the circumstances warranted an exercise of the court's discretion to grant permissive intervention. We review that ruling under the abuse of discretion standard. (*Reliance Ins. Co. v. Superior Court* (2000) 84 Cal.App.4th 383, 386 (*Reliance*).

“Upon timely application, any person, who has an interest in the matter in litigation, or in the success of either of the parties, or an interest against both, may intervene in the action or proceeding.” (Code Civ. Proc., § 387, subd. (a).) “. . . T]he trial court has discretion to permit a nonparty to intervene where the following factors are met: (1) the proper procedures have been followed; (2) the nonparty has a direct and immediate interest in the action; (3) the intervention will not enlarge the issues in the litigation; and (4) the reasons for the intervention outweigh any opposition by the parties presently in the action. [Citation.]” (*Reliance, supra*, 84 Cal.App.4th at p. 386; see also *Lindelli v. Town of San Anselmo* (2006) 139 Cal.App.4th 1499, 1504-1505.)

The superior court's order acknowledges that the intervention will enlarge the issues in this case, and in this court, real parties concede the point. Interveners' assertion of a cause of action under Labor Code section 226 does, in fact, enlarge the issues in this

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<sup>1</sup> Real parties Britto and Cowan had previously unsuccessfully sought to amend the complaint to add a cause of action under Labor Code section 226.

case, as real parties' operative complaint did not include such a claim.<sup>2</sup> However, the device of permissive intervention is not appropriately applied where the intervention will result in an enlargement of the issues in the litigation. (*Reliance, supra*, 84 Cal.App.4th at p. 386.) Consequently, we are compelled to grant writ relief from the order granting permissive intervention.<sup>3</sup>

Additionally, it is questionable whether interveners established that they have a direct and immediate interest in real parties' claims. (*Reliance, supra*, 84 Cal.App.4th at p. 386.) "To support permissive intervention, it is well settled that the proposed intervener's interest in the litigation must be direct rather than consequential, and it must be an interest that is capable of determination in the action. [Citations.] The requirement of a direct and immediate interest means that the interest must be of such a direct and immediate nature that the moving party "will either gain or lose by the direct legal operation and effect of the judgment." [Citation.] [Citations.] "A person has a direct interest justifying intervention in litigation where the judgment in the action *of itself* adds to or detracts from his legal rights without reference to rights and duties not involved in the litigation. [Citation.] [Citation.] Conversely, "An interest is consequential and thus insufficient for intervention when the action in which intervention is sought does not directly affect it although the results of the action may indirectly benefit or harm its owner." [Citation.]" (*City and County of San Francisco v. State of California* (2005) 128 Cal.App.4th 1030, 1037.)

It is apparent that a judgment on real parties' individual reimbursement and deduction-related wage claims will not directly affect the interveners.<sup>4</sup> In their briefing in

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<sup>2</sup> Indeed, real parties had failed in their attempt to amend the complaint to allege a cause of action under Labor Code section 226. (See fn. 1, *infra*.)

<sup>3</sup> We are unpersuaded by real parties' arguments urging us to reach a contrary conclusion.

<sup>4</sup> Since the resolution of interveners' individual reimbursement and deduction-related wage claims will not rise or fall on the determination of real parties' individual claims, the permissive intervention order impermissibly operated to enlarge the issues in the litigation in this additional respect. (*Reliance, supra*, 84 Cal.App.4th at p. 386; see also

this court concerning the direct and immediate interest requirement, real parties attempt to defend the superior court's intervention order as it relates to the PAGA claim.

Although it is unnecessary for us to decide whether real parties are correct on this point, we observe that the superior court's intervention order was not limited to the PAGA claim.

In accordance with our prior notification to the parties that we might do so, we will direct issuance of a peremptory writ in the first instance. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 177-180.) Petitioners' right to relief is obvious, and no useful purpose would be served by issuance of an alternative writ, further briefing and oral argument. (*Ng v. Superior Court* (1992) 4 Cal.4th 29, 35; see also *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1236-1237, 1240-1241; *Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 Cal.4th 1233, 1240-1244.)

Let a peremptory writ of mandate issue directing respondent superior court to vacate its July 30, 2012 order granting real parties' motion for leave to file a complaint in intervention, and to enter a new and different order denying that motion. To prevent further delays in the superior court proceedings, this decision shall be final as to this court three court days after its filing. (Cal. Rules of Court, rule 8.490(b)(3).) The previously issued stay shall dissolve upon issuance of the remittitur. (Cal. Rules of Court, rules 8.490(c), 8.272.) Petitioners shall recover their costs. (Cal. Rules of Court, rule 8.493(a)(1)(A).)

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*Sanders v. Pacific Gas & Elec. Co.* (1975) 53 Cal.App.3d 661, 669 [intervention generally not allowed where it will require further evidence].)