

FILED
 Superior Court of California
 County of Los Angeles
12/21/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: J. Marquez Deputy

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 N&N FUENTES, INC., GLENN FUENTES, and
 JONATHAN ANDRADE

**SUPERIOR COURT OF THE STATE OF CALIFORNIA,
 FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

SEAN GIBSON, an individual,

 Plaintiff,

v.

N&N FUENTES, INC., a California
 corporation; GLENN FUENTES, an
 individual; JONATHAN ANDRADE, an
 individual; and DOES 1 through 20, inclusive,

 Defendants.

Case No.: 21STCV12021

*[Assigned for all purposes to the Honorable Mel
 Red Recana Dept. 45]*

**JOINT STIPULATION TO DISMISS PAGA
~~PROPOSED~~ ORDER THEREON**

Action filed: March 29, 2021
 Trial date: March 27, 2023

Plaintiff Sean Gibson ("Plaintiff"), on behalf of himself, and the State of California Labor &

1 Workforce Development Agency (“LWDA”), through his attorneys of record, GUERRA & CASILLAS
2 LLP; and Defendants N&N Fuentes, Inc., Glenn Fuentes and Jonathan Andrade, (collectively
3 “Defendants”) through their attorneys of record, O’HAGAN MEYER (Plaintiff and Defendants
4 collectively referred to as the “Parties”), hereby stipulate and agree, as follows:

5 WHEREAS, Plaintiff Sean Gibson’s Complaint was filed on March 29, 2021.

6 WHEREAS, Plaintiff brought this Action against Defendants alleging the following causes of
7 action: (1) Discrimination In Violation Of Gov’t Code §§12940 et seq.; (2) Harassment In Violation Of
8 Gov’t Code §§12940 et seq.; (3) Retaliation In Violation Of Gov’t Code §§12940 et seq.; (4) Failure To
9 Prevent Discrimination, Harassment And Retaliation In Violation Of Gov’t Code §12940(k); (5) For
10 Declaratory Judgement; (6) Retaliation in Violation of Cal Labor Code §§ 98.6, 1102.6, 6300, 6400, et
11 seq; (7) Wrongful Termination In Violation Of Public Policy; (8) Failure to Pay All Wages Earned (Cal.
12 Labor Code §§200, 201, 203); (9) Failure to Pay Regular and Minimum Wages (Cal. Labor Code §§
13 1182.12, 1194, 1194.2, 1197, 1197.1); (10) Failure To Pay Overtime Compensation (Cal. Labor Code
14 §§510, 1194); (11) Failure To Provide Meal And Rest Periods (Cal. Labor Code §§226.7, 512); (12)
15 Failure To Provide Accurate Itemized Wage And Hour Statements (Cal. Labor Code §§226, et seq.);
16 (13) Waiting Time Penalties (Cal. Labor Code §§201-203); (14) Failure to Provide Safe & Healthy
17 Place Of Employment (Cal. Labor Code §§ 6300, et seq.; 6400, et seq.; 6314.5; and 6325.5); (15)
18 Penalties Pursuant To The Private Attorney General Act (Cal. Labor Code §§2699 et seq.); and (16)
19 Unfair Business Practices (Bus. & Prof. Code §§17200 et seq.).

20 WHEREAS, Defendants’ alleged violations under the California Labor Code, and the derivative
21 claims, serve as the basis for Plaintiff’s PAGA cause of action;

22 WHEREAS, Defendants deny that there is any factual or legal basis for the claims in this Action;

23 WHEREAS, the Parties agreed to mediate this case with the understanding that Plaintiff would not
24 pursue the PAGA claims and would seek only resolution of his individual claims;

25 WHEREAS, based on that early agreement, the Parties participated in a private and confidential
26 mediation on August 2, 2022;

27 WHEREAS, the Parties resolved the case at the August 2, 2022 mediation;

28 WHEREAS, the Parties negotiated the settlement based solely on Plaintiff’s claims for

1 discrimination under the FEHA, wrongful termination, and his individual claims under the Labor Code;

2 WHEREAS, Plaintiff wishes to dismiss for himself, and himself only, Plaintiff's claims for
3 discrimination under the FEHA, wrongful termination, and his individual claims under the Labor Code on
4 the terms reached after mediation;

5 WHEREAS, Plaintiff is limited to facts within his own knowledge, and Plaintiff did not pursue any
6 PAGA discovery from Defendant and will not be able to identify other aggrieved employees;

7 WHEREAS, Plaintiff has not sought the express consent of other aggrieved employees to pursue
8 this lawsuit on their behalf;

9 WHEREAS, Plaintiff has not given other aggrieved employees the opportunity to opt-out of
10 Plaintiff's representation in this matter;

11 WHEREAS, Plaintiff has agreed to relinquish his status of being an alleged "aggrieved employee"
12 pursuant to the California Labor Code Private Attorney General Act of 2004 ("PAGA"), California Labor
13 Code §§2699 et seq.;

14 WHEREAS, Plaintiff has agreed to settle his individual claims under the Labor Code and the FEHA,
15 and now wishes to dismiss with prejudice his individual wage and hour claims under the Labor Code.

16 WHEREAS, Plaintiff has thereby extinguished his status as an "aggrieved employee." Plaintiff thus
17 has no standing to further prosecute the PAGA claims. "PAGA imposes a standing requirement; to bring
18 an action, one must have suffered harm." *Williams v. Superior Court* (2017) 3 Cal.5th 531, 558.

19 WHEREAS, this stipulation to dismiss the PAGA claims without prejudice shall be served to the
20 California Labor Workforce ("LWDA") after Court approval;

21 WHEREAS, this Court may determine that the rights of other aggrieved employees will not be
22 prejudiced for two significant reasons. *First*, unlike class actions where the class plaintiff prosecutes the
23 action on behalf of the putative class members, Plaintiff here did *not* prosecute the action on behalf of the
24 similarly-aggrieved employees. In PAGA claims, the plaintiff employee prosecutes on behalf of the Labor
25 Commissioner for the State of California; the similarly-aggrieved employees have no private right of
26 action in those civil penalties and no entitlement to them. *Rope v. Auto-Chlor System of Washington, Inc.*
27 (2013) 220 Cal.App.4th 635, 650¹ ["In PAGA, the Legislature created an enforcement mechanism for
28

¹ Superseded by statute on unrelated grounds.

1 aggrieved employees to file representative actions to recover penalties in cases in which there is no private
2 cause of action as an alternative to enforcement by the Labor Commissioner”]; *Arias v. Superior Court*
3 (2009) 46 Cal.4th 969, 980–987, [PAGA suit is a representative action and need not be brought as a class
4 action]. *Second*, discovery as to the identities of other aggrieved employees was not completed based on
5 the parties’ desire to resolve the case at mediation individually, nor has notice of this action been provided
6 to other aggrieved employees. Thus, the parties are not aware of any other aggrieved employees who have
7 any expectations of recovery of any kind in this case, and to the extent any of them wish, in the future, to
8 pursue their own claims, they have the right to do that; and

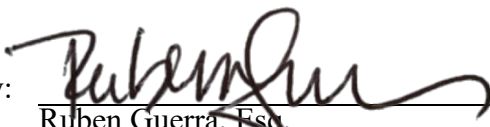
9 WHEREAS, Plaintiff wishes to dismiss his individual Labor Code-based and PAGA cause of action;

10 **NOW, THEREFORE**, the parties stipulate and jointly request that the Court dismiss Plaintiff’s
11 fourteenth cause of action under the Private Attorney General Act of 2004 (“PAGA”), Labor Code
12 §§2699 et seq., without prejudice.

13 **IT IS SO STIPULATED** between the parties.

14 DATED: November 29, 2022

GUERRA & CASILLAS LLP

16 By: 

Ruben Guerra, Esq.
Tizoc Perez-Casillas, Esq.
Attorneys for Plaintiff,
SEAN GIBSON

20 DATED: December 2, 2022

O’HAGAN MEYER

23 By: 

Clint D. Robison, Esq.
Vickie Grasu, Esq.
Attorneys for Defendants
N&N FUENTES, INC., GLENN
FUENTES, and
JONATHAN ANDRADE

1 **PROPOSED ORDER**

2 The Court, having considered the Parties' Joint Stipulation, and all legal authorities in support
3 thereof, and good cause appearing therefore,

4 **IT IS HEREBY ORDERED** that,

5 1. Plaintiff's Fifteen cause of action under the California Labor Code, Private Attorney
6 General Act, Labor Code §§ 2699, et seq., is dismissed without prejudice; and

7 2. Plaintiff will submit a copy of this Court Order to the Labor and Workforce Development
8 Agency within 10 days after entry of this order.

9
10 **IT IS SO ORDERED.**

11
12
13 DATED: 12/21/2022



A handwritten signature in black ink, appearing to read "Mel Red Recana".

Mel Red Recana / Judge
HON. JUDGE MED RED RECANA
JUDGE OF SUPERIOR COURT

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 617 South Olive Street, Suite 422, Los Angeles, California 90014.

On December 8, 2022, I served the documents described as **JOINT STIPULATION TO DISMISS PAGA [PROPOSED] ORDER THEREON** on the interested parties in this action as follows:

Clint D. Robison, Esq.
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*Attorneys for Defendants N&N Fuentes, Inc.;
Glenn Fuentes; and Jonathan Andrade*

☒ (VIA ELECTRONIC TRANSMISSION) I caused a copy of the document(s) listed above to be sent via electronic transmission either through email or through an electronic delivery service to the persons at the e-mail addresses listed above on this day. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Executed on December 8, 2022, at Los Angeles, California.

☒ STATE: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Nadia Chavez

