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Attorneys for Plaintiff GERARDO BENITEZ, as an individual and on behalf of all similarly situated employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES-CENTRAL DISTRICT
SPRING STREET COURTHOUSE

GERARDO BENITEZ, as an individual and on behalf of all similarly situated employees,

Plaintiff.

v.

CALIFORNIA COMBINING CORPORATION; and DOES 1 through 50, inclusive,

Defendant(s).

Case No.: 20STCV24786

**DECLARATION OF KEVIN MAHONEY
IN SUPPORT OF PLAINTIFF'S
REQUEST FOR DISMISSAL OF CLASS
AND PRIVATE ATTORNEYS GENERAL
ACT OF 2004 CLAIMS WITHOUT
PREJUDICE SO THAT ONLY HIS
INDIVIDUAL CLAIMS REMAIN IN
THIS ACTION**

Assigned to for all purposes:
Hon. Maren Nelson, Dept. 17

Action Filed: June 26, 2020
Trial Date: Not Set

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I, Kevin Mahoney, declare as follows:

1. I am an attorney admitted to practice before all courts in the State of California and before this Court. I am an attorney at Mahoney Law Group, APC, and counsel of record for Plaintiff GERARDO BENITEZ (“Plaintiff”) in the instant matter, *Gerardo Benitez v. California Combining Corporation*, Los Angeles Superior Court, case number 20STCV24786 (“Action”). I am informed and believe that the matters set forth below are true, and if called as a witness, I could and would testify truthfully thereto.

2. This declaration is submitted in support of Plaintiff's Request for Dismissal of Plaintiff's class and Private Attorneys General Act of 2004 ("PAGA") claims so that only his individual claims remain in this Action.

3. Pursuant to rule 3.770, subdivision (a) of the California Rules of Court, a dismissal of an entire class action, or of any party or cause of action in a class action, requires court approval. The court may not grant a request to dismiss a class action, if the court has entered judgment following final approval of a settlement. Requests for dismissal must be accompanied by a declaration setting forth the facts on which the party relies. The declaration must clearly state whether consideration, direct or indirect, is being given for the dismissal and must describe the consideration in detail. Rule 3.770, subdivision (b) allows the Court to grant the dismissal without a hearing. Pursuant to rule 3.770, subdivision (c), putative class claims may be dismissed prior to class certification without notice to the class members if the Court finds dismissal will not prejudice them.

4. On June 29, 2020, Plaintiff filed this Action alleging failure to pay wages, failure to provide meal and rest periods, failure to pay all wages upon termination, failure to provide accurate itemized wage statements, failure to reimburse for necessary expenses, unfair business practices and seeking derivative penalties and claims. The complaint was filed on behalf of all non-exempt employees of Defendant. On August 31, 2020, Plaintiff filed a First Amended Complaint to add a PAGA claim.

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1 5. The Court designated this Action as complex pursuant to California Rules of
2 Court, Rules 3.400 *et seq.*

3 6. On September 30, 2020 Plaintiff's counsel received a call and a letter from Alan
4 I Nahmias represented himself as an insolvency counsel for Defendant California Combining
5 Corporation, who informed that California Combining Corporation was no longer operating
6 starting from August 1, 2020. Defendant's insolvency counsel also represented that Defendant
7 had few assets, substantial debt and in near future was planning to formalize winddown of its
8 affairs through insolvency process. Defendant's insolvency counsel also represented that
9 Defendant had no funds to retain an attorney to represent Defendant in the instant Action.

10 7. On October 19, 2020, Defendant's insolvency counsel sent a letter to Plaintiff
11 indicating that California Combining Corporation was insolvent, had no liquid assets to satisfy
12 any judgment obtained in this Action. Attached to the letter dated October 19, 2020, Defendant
13 also presented a declaration from the agent for service, bookkeeper and Secretary/Treasurer of
14 Defendant Kathy Diaz attesting to the same.

15 8. Defendant's insolvency counsel also informed that Defendant was not willing to
16 allow any of the documents to be openly filed with the Court such they would become part of
17 the public records, but was willing to provide those documents to the Court for in camera
18 review, if requested or to allow documents to be filed with the Court under seal.

19 9. Plaintiff and his counsel reviewed and evaluated the documents presented by
20 Defendant and a declaration on insolvency and believe that Plaintiff's class and PAGA claims
21 have to be dismissed leaving only his individual claims.

22 10. Due to the class causes of Action are being dismissed without prejudice, any
23 current or former employee of Defendant still has the ability to pursue a class and PAGA claims
24 in a subsequent litigation. Further, there has been no class certification and no published or
25 widely disseminated notice to the potential class members of this pending Action. For the
26 aforementioned reasons, Plaintiff has determined that it is in the best interests of the class to
27 dismiss the class allegations preserving the individual claims of putative class
28 members/aggrieved employees.

1 11. Per Rules of Court, rule 3.770, subdivision (c), there is no requirement to give
2 notice to class members regarding the dismissal, because the Court has not certified the class
3 and notice of pendency of the action has not been provided to class members and dismissal of
4 the class claims will in no way prejudice any class members. Since the class claims are being
5 dismissed without prejudice, any current or former employee of Defendants still has the ability
6 to pursue their individual or class claims in subsequent litigation. I am not aware of any putative
7 class member that will be prejudiced by the dismissal. As such, there is no prejudice to the
8 putative class and no notice to the purported class is required.

9 12. Plaintiff and his counsel have not received consideration for dismissal of his
10 class and PAGA claims without prejudice.

11 13. A Proposed Order Granting the Request for Dismissal will be filed concurrently
12 with this declaration. Plaintiff respectfully requests that the Court enter the concurrently filed
13 Proposed Order and grant the voluntary dismissal of Plaintiff's class and PAGA claims against
14 Defendants without prejudice, so that only his individual claims remain in this Action.

15 I declare under penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct. Executed on October 28, 2020, at Long Beach, California.

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Kevin Mahoney

PROOF OF SERVICE
Code of Civ. Proc. § 1013a, subd. (3)

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 249 East Ocean Boulevard, Suite 814, Long Beach, California, 90802.

On **October 28, 2020**, I served true copies of the following document(s): **DECLARATION OF KEVIN MAHONEY ISO PLAINTIFF'S REQUEST FOR DISMISSAL OF CLASS AND PRIVATE ATTORNEYS GENERAL ACT OF 2004 CLAIMS WITHOUT PREJUDICE SO THAT ONLY HIS INDIVIDUAL CLAIMS REMAIN IN THIS ACTION**. I served the document(s) on the person(s) below as follows:

Cathy Diaz 5607 S. Santa Fe Ave. Los Angeles, CA 90058	Agent for Service for Defendant CALIFORNIA COMBINING CORPORATION
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The document(s) were served by the following means:

☒ **By Mail:** I enclosed the document(s) in a sealed envelope or package addressed to the person(s) at the addresses above. I then placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am employed in the county where the mailing occurred. The envelope or package was placed in the mail at Long Beach, CA.

☒ **By messenger service:** I served the document(s) by placing them in an envelope or package addressed to the persons at the addresses listed above, or by electronically transmitting the document(s) and instructing the messenger to deliver to the persons at the addresses listed above, and providing them to a messenger service for service.

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

Executed on **October 28, 2020**, at Long Beach, California.



Gilbert Martinez