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AND LUIS ROMERO

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

RICHARD CANO, as an individual, and on
behalf of Aggrieved Employees,

Plaintiffs,

vs.

ELS OF FLORIDA, INC., WHICH WILL
DO BUSINESS IN CALIFORNIA AS ELSF,
INC., an Illinois corporation, LENNAR
HOMES OF CALIFORNIA, INC., a
California corporation, TOLL BROTHERS,
INC., a Delaware corporation, and LUIS
ROMERO, an individual, and DOES 1
through 10 inclusive,

Defendants.

) Case No. HG21088886

) **STIPULATION AND JOINT**
) **REQUEST TO LIFT STAY AND**
) **DISMISS ACTION; ~~PROPOSED~~**
) **ORDER**

) Complaint filed: January 26, 2021
) First Am. Compl.: March 17, 2021

FILED
ALAMEDA COUNTY

AUG 04 2022

CLERK OF THE SUPERIOR COURT
By  Deputy

1 Plaintiff RICHARD CANO ("Plaintiff") and Defendants ELS OF FLORIDA, INC.
2 ("Labor Finders"), TOLL BROTHERS, INC. ("Toll Brothers") and LUIS ROMERO
3 ("Romero") (Labor Finders, Toll Brothers, and Romero are herein referred to as "Defendants")
4 (Plaintiff and Defendants collectively herein referred to as the "Parties") hereby jointly move this
5 Court for an order lifting the stay in this action, and dismissing the action without prejudice as
6 set forth below. This request is based upon the following stipulated facts.

7 **STIPULATION**

8 The Parties stipulate, by and through their respective counsel, as follows:

9 1. Plaintiff Richard Cano was an hourly, non-exempt employee of Labor Finders and
10 Toll Brothers, Inc.

11 2. On March 17, 2021, Plaintiff filed a first amended PAGA complaint in Alameda
12 County Superior Court alleging the following fifteen (15) causes of action: (1) failure to provide
13 meal periods; (2) failure to provide rest periods; (3) failure to pay overtime; (4) failure to pay
14 minimum wage; (5) failure to maintain required payroll/time records; (6) failure to provide
15 accurate wage statements; (7) failure to indemnify employees for business expenses; (8) failure
16 to pay wages due upon termination; (9) unfair business practices; (10) wrongful termination in
17 violation of public policy; (11) violation of Cal. Labor Code § 1102.5 (whistleblower
18 protections); (12) negligent hiring, supervision, or retention of his supervisor; (13) assault; (14)
19 intentional infliction of emotional distress ("IIED"); and (15) a claim for civil penalties under the
20 Private Attorneys General Act ("PAGA"). A true and correct copy of Plaintiff's First Amended
21 Complaint ("FAC") is attached to the concurrently submitted Declaration of Plaintiff's counsel
22 Andranik Tsarukyan ("Tsarukyan Declaration") as **Exhibit A**.

23 3. Plaintiff's FAC asserts wage and hour causes of action as an individual and as an
24 aggrieved employee on behalf of himself and other current and former non-exempt employees in
25 California of Defendants. (FAC, ¶ 4.) The FAC also asserts individual causes of actions for
26 wrongful termination, negligent hiring, assault, and IIED. (See FAC.)

27 4. Pursuant to the Arbitration Agreement Plaintiff entered into with Labor Finders,
28 on May 5, 2021, the Parties stipulated that all of Plaintiff's claims other than his PAGA claim

1 would proceed in arbitration.

2 5. On May 24, 2021, the Court entered an order staying Plaintiff's PAGA claim until
3 the completion of arbitration of Plaintiff's other claims. The Joint Stipulation and Order are
4 attached to the Tsarukyan Declaration as **Exhibit B**. Thereafter, the Parties proceeded with
5 arbitration as to Plaintiff's First through Fourteenth causes of action before Arbitrator Lisbeth
6 Hasse of JAMS (JAMS Ref. No. 110001111753).

7 6. On June 29, 2022, the Parties participated in a successful full-day mediation with
8 Mediator Jason Marsili of Marsili Mediation.

9 7. As to the PAGA claim, the Parties agreed to jointly seek dismissal of that claim in
10 light of the recent change in law brought about by the U.S. Supreme Court decision in *Viking*
11 *River Cruises, Inc. v. Moriana* (2022) 596 U.S. ____, and based on the enforceable arbitration
12 agreement Plaintiff entered into in this case, which includes a representative action waiver that
13 would prevent the claim from proceeding as filed. A true and correct copy of the Arbitration
14 Agreement is attached as **Exhibit C** to the Tsarukyan Declaration.

15 8. As to Plaintiff's individual claims pending in arbitration, the Parties reached a
16 settlement at the June 29, 2022 mediation that will result in a release and dismissal of Plaintiff's
17 individual claims, with prejudice.

18 9. The Parties now jointly request the Court to lift the stay in this case and dismiss
19 the only remaining cause of action before this Court—the PAGA claim—without prejudice.

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1 **JOINT REQUEST FOR LIFT OF STAY AND DISMISSAL OF ACTION**

2 The Parties hereby request that the Court lift the stay in this Action and dismiss the only
3 remaining cause of action—the PAGA claim—without prejudice, based upon the facts stated in
4 the above stipulation and in the accompanying declaration of Plaintiff’s counsel, Andranik
5 Tsarukyan.

6 **A. Legal Authority**

7 Court approval is required for dismissal of a class action. (CA Rule of Court [“CRC”]),
8 Rule 3.770(a).) The request for dismissal must be accompanied by a declaration setting forth the
9 facts on which the party relies, which describes the consideration being given for the dismissal.
10 (*Id.*) The Court may grant the request without a hearing. (CRC Rule 3.770(b).) Where the class
11 has not been certified, notice of the dismissal need not be given to the putative class members
12 where the court finds that the dismissal will not prejudice them. (CRC Rule 3.770(c).)

13 **B. The Settlement Does Not Prejudice the Putative Class Members**

14 As set forth in the above stipulation and in the accompanying Declaration of Plaintiff’s
15 counsel, Andranik Tsarukyan, the Parties agreed to a settlement of Plaintiff’s individual claims
16 and a release and dismissal with prejudice of those claims. The Parties agreed as to the PAGA
17 claim that it should be dismissed without prejudice based on the application of the U.S. Supreme
18 Court’s recent decision in *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. ____, and on
19 enforceable arbitration agreement Plaintiff entered into in this case, which includes a
20 representative action waiver preventing Plaintiff from proceeding with a representative PAGA
21 claim. (See Declaration of Plaintiff’s counsel Andranik Tsarukyan, attaching Plaintiff’s
22 Arbitration Agreement as Exhibit 1.)

23 As the requested dismissal of the PAGA claim is without prejudice, it will not impact any
24 other individual’s ability to pursue their own claims.

25 **C. Conclusion**

26 Based on the foregoing, the Parties jointly request that the Court enter an order as
27 follows:

- 28 1. Lifting the stay in this Action;

1 2. Dismissing, with prejudice, Plaintiff's individual claims, which are Causes of
2 Action numbers 1-14; and

3 3. Dismissing the PAGA claim, which is Cause of Action number 15, without
4 prejudice as to any other individual's right to pursue such claim.

5 By executing below, the Parties stipulate to the facts stated above, and jointly move for
6 the relief requested herein.

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8 Dated: July 7, 2022

GORDON REES SCULLY MANSUKHANI,
LLP

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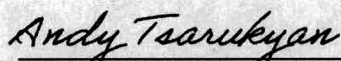
11 By:

Mollie M. Burks
Seth Weisburst
Elizabeth Y. Mu
Attorneys for Defendants
ELS of Florida, Inc., Toll
Brothers, Inc., and Luis Romero

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15
16 Dated: July 7, 2022

REMEDY LAW GROUP LLP

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19 By:


Andranik Tsarukyan
Attorney for Plaintiff Richard
Cano

1 **[PROPOSED] ORDER**

2 Having considered the Parties' Stipulation and Joint Request to Lift Stay and Dismiss
3 Action, and good cause appearing therefor, the Court orders as follows:

- 4 1. The stay in this Action is lifted;
- 5 2. This Action is dismissed in its entirety as follows:
- 6 i. Plaintiff's individual claims, which are Causes of Action numbers. 1-14,
7 are dismissed with prejudice.
- 8 ii. Plaintiff's PAGA claim, which is Cause of Action number 15, is dismissed
9 without prejudice as to any other individual's right to pursue such claim.

10 **IT IS SO ORDERED.**

11 Dated: **AUG 04 2022**

12 
13 Superior Court Judge