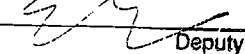




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San Francisco County Superior Court

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CLERK OF THE COURT

BY:  Deputy Clerk

DAVID L. JORDAN, SBN 203457
dljordan@grsm.com
MYLES LANZONE, SBN 257791
mlanzone@grsm.com
GORDON, REES, SCULLY, MANSUKHANI, LLP
275 Battery Street, Suite 2000
San Francisco, CA 94111
Telephone: (415) 875-3323
Facsimile: (415) 986-8054
Attorneys for Defendants
Mission Constructors, Inc. and Jaime Maciel Gonzalez

MARCO A. PALAU, SBN 242340
marco@advocatesforworkers.com
JOSEPH D. SUTTON, SBN 269951
jds@advocatesforworkers.com
ADVOCATES FOR WORKER RIGHTS
212 9th Street, Suite 314
Oakland, CA 94607
Telephone: (510) 269-4200
Attorneys for Plaintiffs Victor Hugo Acosta and Samuel Montano

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

VICTOR HUGO ACOSTA and SAMUEL MONTANO, individuals, and on behalf of themselves and other persons similarly situated,

Plaintiffs,

v.

MISSION CONSTRUCTORS, INC., a California Corporation; JAIME MACIEL GONZALEZ, an individual; and DOES 1 to 10, inclusive,

Defendants.

Case No. CGC-21-589188

*Assigned For All Purposes To
The Hon. Ethan P. Shulman*

**STIPULATION AND ~~PROPOSED~~
ORDER FOR DISMISSAL OF FIRST
AMENDED COMPLAINT**

Complaint Filed: January 20, 2021
Trial Date: Not Yet Set

RECITALS

1. On April 1, 2021, Plaintiffs Victor Hugo Acosta and Samuel Montano ("Plaintiffs") filed their First Amended Class Action Complaint ("FAC") alleging various labor code violations and a Private Attorney General Act ("PAGA") claim arising from Plaintiffs' employment with Defendant Mission Constructors, Inc. ("Mission"). Plaintiffs also named Jaime Maciel Gonzalez

1 (“Gonzalez”), who is Mission President and Chief Executive Officer, as a defendant. Together
2 Mission and Gonzalez are referred to collectively herein as “Defendants”. Plaintiffs and
3 Defendants are referred to collectively herein as the “Parties”.

4 2. On May 5, 2021 Defendants filed their Demurrer, or Alternatively, To Compel Arbitration
5 of Plaintiffs’ claims. The Demurrer argued that the Plaintiffs’ claim were preempted by federal
6 law, namely, the Labor Management Relations Act, and, to the extent not preempted, were
7 otherwise subject to individual arbitration pursuant to the terms of the applicable collective
8 bargaining agreements (“CBAs”).

9 3. On September 10, 2021 the court entered its Order granting the demurrer, in part, and
10 denying it, in part, and compelled the non-preempted claims, save for two, to individual
11 arbitration.

12 4. On October 12, 2021, having considered the stipulation of the parties, the Court ordered
13 the action be stayed pending the earlier of (1) the completion of arbitration as the first and fifth
14 through eighth causes of action (with the exception of Plaintiffs Labor Code Section 1198.5
15 theory in support of the seventh cause of action, or (2) Plaintiffs’ election to forego their
16 individual claims compelled to arbitration by this Court and to proceed only with the claims not
17 subject to arbitration.

18 5. Plaintiffs have invoked arbitration of their individual causes of action pursuant to the
19 mandatory arbitration provisions of their respective CBAs. The CBAs do not provide for class-
20 wide arbitration.

21 6. Further, pursuant to Labor Code Section 2966.6, Plaintiffs may not prosecute their ninth
22 cause of action under PAGA because they were employees in the construction industry subject to
23 CBAs which meet the requirements of Labor Code section 2699.6.

24 7. Moreover, Plaintiffs have not sought to certify a putative Class or Subclass. Plaintiff’s
25 counsel has not sent notices to any putative class plaintiffs and the Court has not ordered that any
26 putative Class or Subclass of absent plaintiffs be notified of the pendency of this civil action.

27 8. Prior to commencing arbitration, the Parties engaged in continuous and good faith
28 settlement negotiations that resulted in the Parties’ agreement to resolve all of the Plaintiffs’

1 individual claims asserted against Defendants in the FAC and the Notice of Claims (arbitration
2 demand).

3 9. Based on the foregoing, the Parties have agreed to the dismissal of their individual claims
4 with prejudice, and dismissal of the class and representative PAGA claims without prejudice. The
5 Parties further agree to bear their own costs and fees.

6 10. The Parties agree that the dismissal of individual, class, and PAGA claims in this matter
7 will dispose of the FAC. Because the dismissal of the FAC as to putative class members and non-
8 individual PAGA claims is without prejudice, the dismissal has no adverse impact on any absent
9 putative class or non-individual PAGA claims. Attached hereto as Exhibit A is a declaration of
10 Plaintiffs' Counsel submitted in compliance with Rule 3.770 of the California Rules of Court.

11 STIPULATION

12 11. Accordingly, the Parties hereby stipulate and jointly request dismissal of:

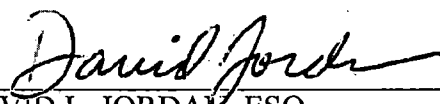
- 13 a. Plaintiffs' individual claims with prejudice;
14 b. Dismissal of the class and PAGA claim without prejudice;
15 c. Dismissal of the FAC as to Plaintiffs individually with prejudice, and without
16 prejudice as to putative class members or non-individual PAGA claims; and
17 d. The parties to each bear their own costs and fees.

18 SO STIPULATED.
19

20 For Defendant:

21
22 September 14, 2022

GORDON, REES, SCULLY, MANSUKHANI

23
24 By: 
25 DAVID L. JORDAN, ESQ.
26 Attorneys for Defendant Mission Constructors,
27 Inc. and Jaime Maciel Gonzalez
28

1 For Plaintiffs:

2 September 14, 2022

ADVOCATES FOR WORKER RIGHTS

3
4 By: Marco A. Palau

MARCO A. PALAU, ESQ.

Attorneys for Plaintiffs Victor Hugo Acosta and
Samuel Montano

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8 ~~[PROPOSED]~~ ORDER

9 Having read and considered the Stipulation entered between the Parties and good
10 cause appearing, the Court hereby Orders dismissal of the First Amended Complaint. The
11 claims asserted in the FAC by Plaintiffs individually are hereby dismissed with prejudice.
12 The claims asserted in the FAC on behalf of putative Class Members, and the PAGA claim
13 asserted on behalf of the State of California and other current or former employees, are
14 dismissed without prejudice.

15 IT IS SO ORDERED.

16
17 Dated: Oct. 10, 2022

18 Ethan P. Shulman
The Hon. Ethan P. Shulman
JUDGE OF THE SUPERIOR COURT