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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF VENTURA**

ADAM GUTIERREZ, an individual,

Plaintiff,

vs.

THOMPCO INC., and DORI DAWNE
THOMPSON, an individual; and DOES 1-
20 inclusive,

Defendants.

CASE NO. 56-2020-00547283-CU-OE-VTA
[Consolidated with 56-2021-00550949-CU-
OE-VTA]

**DECLARATION OF DANIEL J. BASS
PURSUANT TO CAL. RULE OF COURT
3.770**

DECLARATION OF DANIEL J. BASS

I, Daniel J. Bass declare as follows:

1. I am an attorney duly licensed to practice in all courts of the State of California. I am employed as an attorney at Makarem & Associates APLC, and I am counsel of record for plaintiff ADAM GUTIERREZ (“Plaintiff”) in this matter. If called to testify to the within facts, I would and could competently do so.

2. On behalf of plaintiff and pursuant to California Rule of Court 3.770, I submit this declaration in support of Plaintiff’s request that the Court dismiss the class claims and PAGA claims in the Plaintiff’s Complaints without prejudice and Plaintiffs’ individual claims with prejudice, because Plaintiff’s individual claims have been settled and there is no compelling reason to prosecute this matter on a class or representative basis, as set forth below.

3. Plaintiff brought this case number 56-2021-00550949-CUOE-VTA on behalf of himself and all other employees of Defendants Thompco Inc and Dori Dawne Thompson (“Defendants”) (“Plaintiffs” and “Defendants” collectively “the Parties”). Plaintiff asserted claims for (1) Failure to pay overtime wages; (2) Failure pay minimum wages; (3) Failure to provide meal periods; (4) Failure to provide rest periods; (5) Failure to furnish accurate wage statements; (6) Failure to pay all wages earned; (7) Failure to maintain required records; (8) Failure to pay earned wages upon termination, (9) Failure to indemnify for necessary business expenses; and (10) Unfair Competition. Additionally, in Case No. 56-2020 -00547283-CU-OE-VTA, Plaintiff sought recovery for Violation of the Private Attorney General Act of 2004, California Labor Code §2698 et seq. (PAGA). The two lawsuits were then consolidated by this court and have been resolved together.

4. After significant law and motion practice, engaging discovery and exchanging information, including discussion of Defendants’ operations and finances the Parties agreed to evaluation of the feasibility of continued pursuit of class or representative claims.

5. Plaintiff and Defendants arrived at a settlement of Plaintiff’s individual claims, contingent upon the Court’s dismissal without prejudice of the class claims and with prejudice of the Plaintiff’s individual claims pursuant to this application. Plaintiff’s request for dismissal is supported

1 by this declaration as required by Rule of Court 3.770. In settlement of his individual claims, Plaintiff
2 received confidential individual settlement payments, in amounts less than calculated by Plaintiff's
3 counsel as Plaintiff's individual damages and bore his own attorney's fees and costs from this
4 settlement amount, which represents the only consideration, direct or indirect, supporting this request
5 for dismissal.

6 6. With the confidential information provided to Plaintiff's counsel during settlement
7 discussions, including Defendants' affirmative defenses arguing that the Department of
8 Transportation regulations and/or oil and gas regulations involving hazmat hot oil trucks, and the
9 ability of Plaintiff to represent other employees of Defendants in other positions, Plaintiff and his
10 counsel determined it would be impractical to continue to litigate the matter as a putative class action
11 given, even if Plaintiff succeeded in certifying the proposed class and a judgment was obtained, other
12 employees would not necessarily be entitled to wages and assets may not be available to satisfy a
13 judgment. The effort and expense necessary to pursue this matter as a putative class action simply
14 does not make sense at this point given changes to the Department of Transportation's regulations,
15 oil and gas transportation regulations, and the pandemic's impact on the oil and gas industry.

16 7. No class has been certified in this matter and the putative class members remain free
17 to bring their own individual claims against Defendants through counsel of their choosing.
18 Accordingly, I do not believe that the putative class members will suffer any prejudice by having the
19 class allegations dismissed without prejudice. In fact, the class members likely have received some
20 benefit from this matter in that the applicable statutes of limitations may have been tolled on the
21 claims asserted in the complaint. *See Hildebrandt v. Staples the Office Superstore, LLC* (2020) 58
22 Cal.App.5th 128, 141-145 (holding prior class action that was not certified tolled the statute of
23 limitations for later class action raising same claims); *Crown, Cork & Seal Co. v. Parker* (1983) 462
24 U.S. 345, 350 (extending American Pipe tolling to putative class members who later filed individual
25 suits and separate actions); *see also China Agritech, Inc. v. Resh* (2018) 138 S. Ct. 1800 (same).

26 8. Since the putative class members have not received any formal notice of this matter,
27 nor has counsel for Plaintiff notified the putative class or representative action through informal
28

1 means, I do not believe there is any necessity of notifying the absent, putative class members that the
2 class allegations or PAGA claims in this matter are being dismissed. Similarly, my office is unaware
3 of any press releases, news articles, publicity, media coverage, or any other communications by any
4 of the Parties, their counsel, or any third parties, to the unnamed members of the putative class.

5 9. There is no reason to believe that any absent class member is relying on this case to
6 vindicate his or her individual rights, or that any absent class member has foregone filing his or her
7 own case in reliance on this matter. Moreover, even in the event that an unnamed class member did
8 rely on the current class claims, no statute of limitations issues should run shortly for any unnamed
9 class members' hypothetical claims, as any such statute of limitations should have been tolled while
10 the current case was pending.

11 10. This is Plaintiff's first request for a dismissal. Plaintiff and his counsel join in
12 requesting that the Court dismiss the class and representative PAGA claims without prejudice to the
13 class and, contingent on Court granting this request, also request a dismissal of Plaintiff's individual
14 claims with prejudice.

15 11. Concurrently with its submission to the Court, a copy of this declaration and request
16 for dismissal will be uploaded to the Labor and Workforce Development Agency.

17 I declare under penalty of perjury under the laws of the State of California that the
18 foregoing is true and correct. Executed this 11th day of October 2024, at Los Angeles, California.

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20 *Daniel Bass*

21 Daniel J. Bass
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