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Electronically Filed
1/18/2023
Superior Court of California
County of Stanislaus
Clerk of the Court
By: Yukari Williams, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF STANISLAUS

12 **VIVIANA BARAJAS**, an individual, on
13 behalf of herself and all other similarly
14 aggrieved employees and the State of
15 California,

16 Plaintiff,

17 vs.

18 **KELLERMEYER BERGENSONS**
19 **SERVICES, LLC**, a Delaware Limited
20 Liability Company; and **DOES 1-50**,

21 Defendants.

Case No.: CV-21-005312

[Assigned for All Purposes to Hon. Stacy P.
Speiller, Dept. 22]

REQUEST FOR DISMISSAL;
~~PROPOSED~~ ORDER

Date Action Filed: September 27, 2021
Trial Date: Not Yet Set

REQUEST FOR DISMISSAL; [PROPOSED] ORDER

1 **REQUEST FOR DISMISSAL**

2 TO THE COURT, THE LABOR WORKFORCE AND DEVELOPMENT AGENCY,
3 ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

4 Plaintiff Viviana Barajas (“Plaintiff”), individually and on behalf of the State of California
5 and Aggrieved Employees, hereby requests that the Court dismiss her complaint for civil penalties
6 under the Private Attorneys General Act of 2004 (“PAGA”) as follows: *with prejudice* as to her
7 individual PAGA claims and *without prejudice* as to the representative PAGA claims on behalf of
8 all other aggrieved employees.¹

9 On September 27, 2021, Plaintiff filed a complaint against Defendant Kellermeier
10 Bergensons Services, LLC (“Defendant”) to recover civil penalties under PAGA for violations of
11 Labor Code sections 432.5, 226, 1198.5, 432 and subsection 7 of the Industrial Wage
12 Commission’s Wage Order 5-2001.

13 Pursuant to a stipulation by the parties to stay all proceedings in this action pending the
14 United States Supreme Court’s decision in *Viking River Cruises Inc. v. Moriana*, the Court stayed
15 this action on May 2, 2022. On June 15, 2022, the Supreme Court issued its ruling in *Viking River*,
16 finding that a PAGA plaintiff has an individual claim separate from a representative claim under
17 PAGA and that the individual PAGA claim may be compelled to arbitration. The Supreme Court
18 further held that the plaintiff, Moriana, would lack standing to pursue the representative claims
19 after he arbitrated his individual PAGA claim.

20 In light of the arbitration agreement entered into between the parties to this case, Defendant
21 intended to compel arbitration of Plaintiff’s individual PAGA claim and seek dismissal of her
22 representative PAGA action pursuant to *Viking River*.

23 However, during the meet and confer process on Defendant’s proposed motion, the parties
24 _____

25 ¹ This is a PAGA-only complaint. There are no class claims. Thus, the procedural requirements of
26 California Rule of Court 3.770 are not triggered by Plaintiff’s Request for Dismissal. Plaintiff is
27 providing a copy of this Request to the California Labor and Workforce Development Agency
28 (“LWDA”) concurrently with this filing and Plaintiff will provide a copy of the signed Order to
the LWDA pursuant to Section 2699(l)(3) of PAGA.

1 reached an agreement to settle Plaintiff's individual claims and to dismiss the representative PAGA
2 action currently pending before this Court.

3 Accordingly, Plaintiff requests that the Court dismiss her complaint *with prejudice* as to
4 her individual PAGA claim and *without prejudice* as to the representative PAGA claim on behalf
5 of all other aggrieved employees.

6 Respectfully submitted,

7 Dated: January 6, 2023

MOSS BOLLINGER LLP

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9 By: 

Jeremy F. Bollinger

Attorneys for Plaintiff Viviana Barajas

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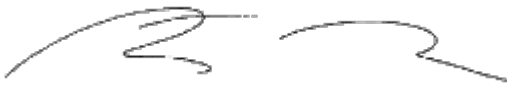
[PROPOSED] ORDER

Consent to the above dismissal is hereby given. The complaint is dismissed *with prejudice* as to Plaintiff Viviana Barajas’ individual PAGA claims and *without prejudice* as to the representative PAGA claims on behalf of all other aggrieved employees.

IT IS SO ORDERED.

1/13/23

Dated: _____



Judge of the Superior Court
Stacy P. Speiller

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF STANISLAUS
BARAJAS v. KELLERMEYER BERGENSONS SERVICES, LLC
CASE NO. CV-21-005312

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 15300 Ventura Boulevard, Suite 207, Sherman Oaks, CA 91403.

On January 6, 2023, I served the document(s) described as **REQUEST FOR DISMISSAL; [PROPOSED] ORDER** on the interested parties in this action by sending ☐ the original ☒ a true copy thereof ☒ to interested parties as follows ☐ as stated on the attached service list:

David R. Ongaro (dongaro@ongaropc.com)
Carey A. James (cjames@ongaropc.com)
Mojdeh F. Bowers (mbowers@ongaropc.com)
Ongaro PC
333 S. Hope Street
Los Angeles, CA 90071
Counsel for Defendant KELLERMEYER BERGENSONS SERVICES, LLC

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

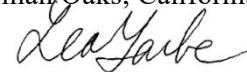
☒ **BY ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent to the respective e-mail address(es) of the party(ies) as stated above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the offices of the addressee(s) named herein.

☐ **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed January 6, 2023 at Sherman Oaks, California.

Lea Garbe
Type or Print Name


Signature