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Attorneys for Plaintiff, Kenneth Smith

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN JOAQUIN

KENNETH SMITH, and Individual,	)	CASE NO. STK-CV-UOE-2022-0008238
	)	
Plaintiff,	)	DECLARATION OF MATTHEW
vs.	)	SCHOECH IN SUPPORT OF
	)	DISMISSAL OF PAGA CLAIMS;
IC INK IMAGE CO., INC., dba LEGENDS	)	PROPOSED ORDER DISMISSING
APPAREL, MUDVILLE RAGS, and	)	PAGA CLAIMS WITHOUT
HARBOR SIGNS, TOM SOUSA, and DOES	)	PREJUDICE
1-100, Inclusive,	)	
	)	
Defendant.	)	UNLIMITED CIVIL ACTION
	)	

I, MATTHEW R. SCHOECH, declare:

1. I am an attorney duly licensed to practice law in the courts of California. I am the attorney of record for Plaintiff's in the above-captioned action. I have personal knowledge of the matters stated herein, and if called upon to testify to their authenticity, I could and would competently do so.

2. On September 15, 2022, Plaintiff filed a Complaint which included causes of action

1 for failure to pay minimum wage, failure to pay earned wages and overtime compensation, failure
2 to provide rest breaks, failure to indemnify for work related expenditures, failure to provide
3 accurate pay stubs, retaliation, and unfair business practices.

4 3. On or about July 26, 2022, Plaintiff sent a letter by certified mail to Defendants and
5 the California Labor Workforce Development Agency ("LWDA") alleging labor code violations.
6 A First Amended Complaint which added the Representative Action for Penalties Pursuant to the
7 Labor Code Private Attorneys General Act of 2004 (Labor Code § 2698, et seq.) ("PAGA") cause
8 of action was filed on November 21, 2022. This cause of action sought statutory penalties in a
9 representative capacity for the wage and hour violations included in the original complaint.
10

11 4. The parties in this action have exchanged extensive written discovery including
12 Form Interrogatories-General, Form Interrogatories-Employment, Requests for Production of
13 Documents, Requests for Admissions, and Special Interrogatories. Additionally, Plaintiff's
14 deposition was taken on February 12, 2024.
15

16 5. After completion of the above referenced discovery, it was concluded that Plaintiff
17 was not similarly situated to Defendants' other employees and therefore could not be considered
18 an "aggrieved employee" that represents Defendants' other employees. Plaintiff did not work in
19 Defendants' various storefronts, did not utilize the same timekeeping system, did not report to
20 work in the same manner, did not record time the same way, and had distinctly different job duties.
21 Plaintiff acted as an agricultural worker and handyman for various rental properties and ranches
22 owned by Defendants. As such, Plaintiff determined that his claims are not representative of
23 Defendants' other employees.
24

25 6. After fully analyzing the claims with the discovery obtained, Plaintiff determined
26 that there was not a viable PAGA claim and that he would not be entitled to recover any penalties
27
28

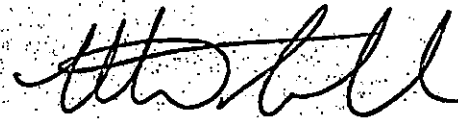
on behalf of Defendants' other employees.

7. Plaintiff has agreed to settle his individual claims against Defendants and is not receiving any compensation for the dismissal of the PAGA claims as they are being dismissed without prejudice.

8. Given the circumstances and the lack of prejudice to any potential aggrieved employee – because they can still pursue the claims dismissed without prejudice we believe that good cause exists to dismiss the PAGA claims.

9. I uploaded this declaration and request for dismissal of the PAGA claims to the LWDA website on April 17, 2024, thereby providing the LWDA notice.

10. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 17, 2024, at Sacramento, California.



MATTHEW R. SCHOECH

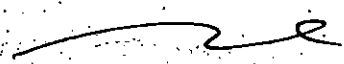
ORDER

The Court having considered the above declaration and all of the papers filed in this action,

IT IS HEREBY ORDERED:

The PAGA claims asserted in the eighth cause of action in the First Amended Complaint filed on November 21, 2022, are hereby dismissed from this action without prejudice.

DATED: 4/18/24


The Honorable Judge of the
Superior Court of San Joaquin County

SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN JOAQUIN		FOR COURT USE ONLY
TITLE OF CASE (Abbreviated): Kenneth Smith v. IC Ink Image Co., Inc, et al.		
ATTORNEY(S) NAME and ADDRESS Matthew R. Schoech, Esq. SCHOECH LAW GROUP, PC 3511 Del Paso Road, Ste 160, PMB 227 Sacramento, CA 95835	TELEPHONE Tel: (916) 569-1940 Fax: (916) 569-1939	
ATTORNEY(S) FOR: Plaintiffs	HEARING: DATE-TIME-DEPT:	CASE NUMBER STK-CV-UOE-2022-0008238

DECLARATION OF SERVICE
[CCP §§ 1013; 1013a; 2015.5]

I, the undersigned, declare: I am, and was at the time of service of the papers herein referred to, over the age of eighteen years, and not a party to the action; I am employed in the County of Sacramento, State of California, within which county the subject mailing occurred. My business address is 3511 Del Paso Road, Ste 160, PMB 227, Sacramento, California 95835. I served the documents named below on the parties in this action as follows:

**DOCUMENTS SERVED: Declaration of Matthew Schoech In Support of Dismissal of PAGA Claims;
[Proposed] Order Dismissing PAGA Claims Without Prejudice**

SERVED UPON: See attached Service List.

- ☐ **BY MAIL:** I am readily familiar with the firm's practice for collection and processing documents for mailing with the U.S. Postal Service. I caused such documents to be placed in a sealed envelope, addressed to the person(s) on whom it is to be delivered pursuant to the attached service list, with postage thereon fully prepaid, to be deposited with the United States mail at Sacramento, California that same day in the ordinary course of business. [CCP §1013]
- ☐ **BY FACSIMILE:** I caused the document(s) described herein to be transmitted from facsimile number (916) 569-1939 to the facsimile number(s) for each party indicated on the attached service list. [CCP §1013(e)]
- ☐ **BY OVERNIGHT MAIL:** I am readily familiar with the firm's practice for collection and processing of documents for mailing via overnight delivery. I caused such document(s) to be placed in a sealed envelope designated by the overnight service carrier, addressed to the person(s) on whom it is to be served pursuant to the attached service list, and deposited said envelope in a box or other facility regularly maintained by the overnight service carrier with delivery fees paid or provided for. [CCP §1013(c)]
- ☒ **BY ELECTRONIC MAIL:** Based on a court order or an agreement of the parties to accept electronic service, caused the document(s) described herein to be transmitted to the electronic service addresses for each party indicated on the attached service list. [CCP Section 1010.6]

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct and that this declaration was executed on **April 17, 2024**, at **Dixon, California**.

Brenda L. Graham

Brenda L. Graham,

Kenneth Smith, v. IC Ink Image Co., Inc., et al.

San Joaquin County Superior Court Case No.: STK-CV-UOE-2022-0008238

Our File No. 2207021

Service List

Updated on April 17, 2024

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