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October 7, 2024
Clerk of the Court
Superior Court of CA
County of Santa Clara
22CV406089
By: afloresca

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA
(UNLIMITED JURISDICTION)**

SAHID MAGANA,

Plaintiff,

vs.

ZEVGOLATIO CORPORATION;
FRANCISCO TSABOUKOS; and DOES
1 to 25, inclusive,

Defendants.

CASE NO.: 22CV406089

[Unlimited Jurisdiction]

*Assigned for All Purposes to
Hon. Charles F. Adams, Department 7*

**STIPULATION AND ~~[PROPOSED]~~ ORDER
FOR DISMISSAL WITHOUT PREJUDICE
OF THE ELEVENTH CAUSE OF ACTION
FOR PRIVATE ATTORNEYS GENERAL
ACT("PAGA") CLAIMS; DECLARATION
OF PLAINTIFF'S COUNSEL IN SUPPORT
THEREOF**

Complaint Filed: 10/21/2022

Trial Date: None Set

1 **TO THE COURT, ALL INTERESTED PARTIES, AND THEIR COUNSEL OF**
2 **RECORD:**

3 **IT IS HEREBY STIPULATED** and agreed by and between Plaintiff Sahid Magana
4 (“Plaintiff”) and Defendants Zevgolatio Corporation and Francisco Tsaboukos (collectively
5 “Defendants”) (Plaintiff and Defendant will collectively be referred to as the “Parties”), by and
6 through their respective counsel of record, as follows:

7 WHEREAS, on October 21, 2022, Plaintiff filed a Complaint in the Superior Court of the
8 State of California, County of Santa Clara, Case No. , 22CV406089 entitled *Sahid Magana v.*
9 *Zevgolatio Corporation, et al*, asserting eighteen (18) individual causes of action for Failure To
10 Compensate For All Hours Worked; Failure To Pay Minimum Wages; Failure To Pay Overtime;
11 Failure To Provide Accurate Itemized Wage Statements; Failure To Pay Wages Owed Every Pay
12 Period; Failure To Pay Wages When Employment Ends; Failure To Give Rest Breaks; Failure To
13 Give Meal Breaks; Failure To Reimburse Business Expenses; Unlawful Tip Collection; Sexual
14 Harassment In Violation Of The Fair Employment And Housing Act (“Feha”); Retaliation In
15 Violation Of The Feha; Failure To Prevent Harassment And Retaliation In Violation Of The
16 Feha; Negligent Retention And Supervision; Retaliation In Violation Of Labor Code Section
17 98.6; Retaliation In Violation Of Labor Code Section 1102.5; Wrongful Termination In Violation
18 Of Public Policy; Violation Of California Business And Professions Code Section 17200 (the
19 “Action”). In addition, Plaintiff’s Complaint had an eleventh (11th) Cause of Action for PAGA
20 penalties on a representative basis.

21 WHEREAS, on June 19, 2024, the Parties participated in mediation with professional
22 neutral Kael Briski and reached an agreement to resolve Plaintiff’s individual claims for a
23 confidential amount, which does not include any resolution of Plaintiff’s Private Attorney
24 General Act (“PAGA”) claims;

25 WHEREAS, Plaintiff no longer wishes to pursue the PAGA cause of action;

26 WHEREAS, Plaintiff did not receive any discovery to identify other aggrieved employees
27 or notify other aggrieved employees as to this lawsuit;

28 WHEREAS, Plaintiff has not sought the express consent of other aggrieved employees

1 to pursue this lawsuit on their behalf;

2 WHEREAS, this Stipulation to dismiss the PAGA claim, without prejudice, shall be
3 served to the California Labor and Workforce Development Agency (“LWDA”) after court
4 approval;

5 WHEREAS, this Court may determine that the rights of other aggrieved employees will
6 not be prejudiced for two significant reasons. First, unlike class actions where the class plaintiff
7 prosecutes the action on behalf of the putative class members, Plaintiff did not prosecute the
8 action on behalf of the similarly aggrieved employees. In PAGA claims, the plaintiff employee
9 prosecutes on behalf of the Labor Commissioner, and similarly aggrieved employees have no
10 private right of action in those penalties and no entitlement to them. (*Rope v. Auto-Chlor System*
11 *of Washington, Inc.* (2013) 220 Cal.App.4th 635, 650, *superseded by statute on unrelated*
12 *grounds* – “In PAGA, the Legislature created an enforcement mechanism for aggrieved
13 employees to file representative actions to recover penalties in cases in which there is no private
14 cause of action as an alternative to enforcement by the Labor Commissioner; *Arias v. Super. Ct.*
15 (2009) 46 Cal.4th 969, 980-87 – PAGA suit is a representative action and need not be brought as
16 a class action.) Second, there has been no discovery as to the identities of other aggrieved
17 employees, nor has notice of this action been provided to other aggrieved employees. Thus, the
18 Parties are not aware of any other aggrieved employees who have any expectations of recovery
19 of any kind in this case, and to the extent any of them wish, in the future, to pursue their own
20 claims, they have the right to do so.

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1 **THE PARTIES THEREFORE** stipulate and jointly request that the Court dismiss
2 Plaintiff's Eleventh Cause of Action in the Complaint for PAGA penalties, without prejudice, as
3 to any potentially aggrieved employee, and with prejudice, as to Plaintiff only.

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5 Respectfully submitted,

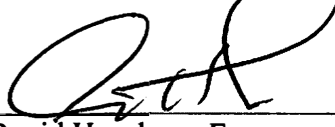
6 **MESSRELIAN LAW INC.**

7 

8 Dated: **October 4, 2024**

By _____
Harout Messrelian, Esq.
Maralle Messrelian, Esq., Of Counsel
Attorneys for Plaintiff,
SAHID MAGANA

11 **HENSHAW LAW OFFICE**

12 

13 Dated: ~~September~~ ^{October 4} __, 2024

By _____
David Henshaw, Esq.
Attorneys for Defendants,
ZEVGOLATIO CORPORATION and
FRANCISCO TSABOUKOS

[PROPOSED] ORDER

The Court, having considered the Parties' Joint Stipulation, and all legal authorities in support thereof, and good cause appearing therefore:

IT IS HEREBY ORDERED that:

1. Plaintiff's Eleventh Cause of Action under California's Private Attorneys General Act of 2004, Labor Code sections 2699, *et seq.*, is dismissed, without prejudice, as to any potentially aggrieved employee, and with prejudice as to Plaintiff only.

2. Plaintiff shall submit a copy of this Court Order to the California Labor and Workforce Development Agency within 10 days after entry of this Order.

IT IS SO ORDERED.

Dated: 10/7/2024 1:11:42 PM

By:


HON. CHARLES ADAMS
JUDGE OF THE SUPERIOR COURT