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19 Attorneys for Defendants

20 DDA LEUCADIA, INC. dba LE PAPAGAYO

21 and DARRIN CAMPBELL, JR.

22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

23 **FOR THE COUNTY OF SAN DIEGO – NORTH COUNTY**

24 HUMBERTO CASTILLO and ALEX
25 AGUILAR,

26 *Plaintiff,*

27 vs.

28 DDA LEUCADIA INC. d/b/a LE
PAPAGAYO, a California corporation;
DARRIN CAMPBELL JR., an individual; and
DOES 1 to 50, inclusive,

Defendants.

FILED

Clerk of the Superior Court

9/24/2024 4:29:46 PM

By C. Terriquez

Case No.: 37-2023-00038363-CU-OE-NC

**STIPULATION AND ~~PROPOSED~~
ORDER TO DISMISS PLAINTIFFS'
PAGA CLAIMS WITHOUT PREJUDICE**

Judge: Hon. Cynthia A. Freeland
Dept.: N-27

CMC: 1/17/2025, 9:00 a.m.
Trial date: Not Set

Complaint filed: 09/06/2023

1 Plaintiffs HUMBERTO CASTILLO and ALEX AGUILAR (hereinafter "Plaintiffs")
2 and Defendants DDA LEUCADIA INC. d/b/a LE PAPAGAYO and DARRIN CAMPBELL JR.,
3 (hereinafter "Defendants") (collectively "the Parties"), hereby stipulate, through their respective
4 counsel, to the following:

5 WHEREAS, on September 6, 2023, Plaintiffs filed a Complaint in the Superior Court
6 of the State of California, North County of San Diego, Case No. 37-2023-00038363-CU-OE-
7 NC, entitled *Castillo, et al; v. DDA Leucadia Inc., et al.*, asserting individual claims for (1) failure
8 to pay all wages earned, (2) failure to provide rest breaks, (3) failure to provide meal periods, (4)
9 failure to indemnify; (5) failure to provide accurate itemized wage statements, (6) failure to pay
10 wages when employment ends, (7) failure to pay wages owed every pay period, (8) civil penalties
11 pursuant to California's Private Attorneys General Act of 2004 ("PAGA"), (9) retaliation under
12 Labor Code section 1102.5, (10) wrongful termination in violation of public policy, and (11)
13 unfair competition pursuant to Business & Professions Code § 17200 *et seq.* (the "Action");
14

15 WHEREAS, on July 23, 2024, the Parties participated in a mediation before experienced
16 mediator, Glenn Lerman, Esq., and reached a settlement as to Plaintiffs' individual claims. Prior
17 to mediation, Defendants provided a sampling of time and payroll records as to the PAGA group,
18 demographics for the PAGA group, Plaintiffs' personnel, payroll, and time records, and forms
19 completed by the PAGA group including examples of meal period waiver forms, arbitration
20 agreements, relevant policies, and time attestation forms;

21 WHEREAS, Plaintiffs no longer wishes to pursue the PAGA cause of action;

22 WHEREAS, Plaintiffs did not receive any discovery to identify other aggrieved
23 employees or notify other aggrieved employees as to this lawsuit;

24 WHEREAS, Plaintiffs have not sought the express consent of other aggrieved employees
25 to pursue this lawsuit on their behalf;

26 WHEREAS, Plaintiffs have not provided other aggrieved employees the opportunity to
27 opt-out of Plaintiffs' representation in this matter;

28 WHEREAS, this Stipulation to dismiss the PAGA claim, without prejudice, shall be

1 served to the California Labor and Workforce Development Agency (“LWDA”) after court
2 approval;

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

19
20 **THE PARTIES THEREFORE** stipulate and jointly request that the Court dismiss
21 Plaintiffs’ Eighth Cause of Action in the Complaint for PAGA penalties, without prejudice, as
22 to any potentially aggrieved employee, and with prejudice, as to Plaintiffs only.

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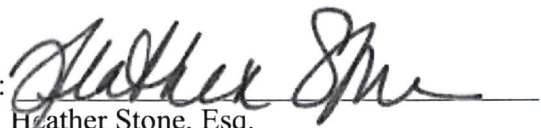
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1 **IT IS SO STIPULATED.**

2 DATED: September 11, 2024

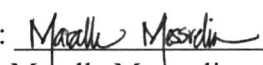
LAGASSE BRANCH BELL + KINKEAD LLP

3
4 BY: 

5 Heather Stone, Esq.
6 Danielle Montero, Esq.
7 Attorneys for Defendants,
8 DDA LEUCADIA INC. d/b/a LE PAPAGAYO
9 and DARRIN CAMPBELL JR

10 DATED: September 11, 2024

MM LAW, APC

11 BY: 

12 Maralle Messrelan, Esq.
13 Attorneys for Plaintiffs,
14 HUMBERTO CASTILLO and ALEX AGUILAR

15
16 **[PROPOSED] ORDER**

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

19 **IT IS HEREBY ORDERED** that:

20 1. Plaintiffs' Eighth Cause of Action under California's Private Attorneys General
21 Act of 2004, Labor Code sections 2699, *et seq.*, is dismissed, without prejudice, as to any
22 potentially aggrieved employee; and

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

25 **IT IS SO ORDERED.**

26 Dated: September 24, 2024

27 
28 Hon. Cynthia A. Freeland
Judge of the Superior Court