

12/02/2024

Chad Flake, Executive Officer / Clerk of the Court

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Attorneys for Defendant
PET FOOD EXPRESS, LLC

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

CHADWICK BALL, individually, and on behalf
of all others similarly situated,

Plaintiff,

v.

PET FOOD EXPRESS, LLC, a California
limited liability corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No. 23CV049405

**STIPULATION TO DISMISS PLAINTIFF'S
CLASS ACTION CLAIMS AND
REPRESENTATIVE PAGA CLAIM
WITHOUT PREJUDICE, DISMISS
PLAINTIFF'S INDIVIDUAL PAGA CLAIM
WITH PRJEUDICE, AND STAY THIS CASE
PENDING INDIVIDUAL ARBITRATION**

FAC Filed: April 12, 2024

**STIPULATION TO DISMISS PLAINTIFF'S CLASS ACTION CLAIMS AND REPRESENTATIVE PAGA
CLAIM WITHOUT PREJUDICE, DISMISS PLAINTIFF'S INDIVIDUAL PAGA CLAIM WITH
PRJEUDICE, AND STAY THIS CASE PENDING INDIVIDUAL ARBITRATION**

1 Plaintiff CHADWICK BALL ("Plaintiff") and Defendant PET FOOD EXPRESS, LLC ("Defendant")
2 (collectively, the "Parties"), through their respective attorneys of record, stipulate as follows:

3 **WHEREAS**, on October 31, 2023, Plaintiff filed the instant putative class action against
4 Defendant, alleging: (1) Failure to Pay Minimum and Straight Time Wages; (2) Failure to Pay Overtime
5 Wages; (3) Failure to Provide Meal Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Failure
6 to Timely Pay Final Wages at Termination; (6) Failure to Provide Accurate Itemized Wage Statements;
7 (7) Failure to Indemnify Employees for Expenditures; and (8) Unfair Competition in Violation of
8 Business & Professions Code Section 17200, *et seq.* Plaintiff's Complaint defined the putative Class as:
9 "All persons who worked for any Defendants as an hourly-paid or non-exempt employee at any time
10 during the period beginning four years and 178 days before the filing of the initial complaint in this
11 action and ending when notice to the Class is sent."

12 **WHEREAS**, on April 12, 2024, Plaintiff amended the complaint to include a single cause of action
13 under the Private Attorney's General Act of 2004 ("FAC").

14 **WHEREAS**, Defendants contend that Plaintiff entered into an enforceable Mutual Agreement to
15 Arbitrate ("Arbitration Agreement") on June 30, 2022 that requires arbitration of any employment-
16 related claims on an individual basis only and expressly contains a class action waiver and PAGA
17 individual action requirement.

18 **WHEREAS**, the Parties met and conferred regarding Defendant's intention to file a motion to
19 compel arbitration of Plaintiff's individual claims, dismissal of his class claims, and stay his PAGA
20 claims pending completion of arbitration.

21 **WHEREAS**, during the meet and confer process, Defendant also made Plaintiff aware of *Holmes*
22 *v. Pet Food Express*, Alameda Superior Court Case No. 23CV049405, a PAGA-only action filed in this
23 court ("*Holmes*"). *Holmes* is fully settled and adjudicated; covers the PAGA claims alleged in this
24 matter; and the settlement and judgment subsumes Plaintiff's employment.

25 **WHEREAS**, Defendant contends that Plaintiff's individual PAGA claim is fully released by the
26 *Holmes* settlement.

WHEREAS, in light of the *Holmes* settlement, the Parties agree that Plaintiff's individual PAGA action should be dismissed with prejudice.

WHEREAS, in light of the Arbitration Agreement, and in accordance with Code of Civil Procedure section 1280, *et seq.*, the Parties agree to submit Plaintiff's remaining individual claims to final and binding arbitration on an individual basis pursuant to the terms of the Arbitration Agreement and to dismiss the class claims without prejudice.

WHEREAS, this Court has authority to order a stay of all remaining proceedings pending completion of arbitration pursuant to the Federal Arbitration Act, 9 U.S.C. section 3, and Code of Civil Procedure section 1281.4.

WHEREAS, the Parties agree to use a neutral arbitrator from AAA as set forth in the Arbitration Agreement

THEREFORE, subject to approval of this Court, it is stipulated and agreed that:

1. The class action claims alleged in the FAC are dismissed without prejudice to individual members of the putative class other than Plaintiff.

2. Plaintiff's individual PAGA claim alleged in the FAC as to Plaintiff is dismissed with prejudice.

3. The representative PAGA claim alleged in the FAC as to the allegedly aggrieved employees other than Plaintiff is dismissed without prejudice.

4. The remaining Civil Action, comprising solely of Plaintiff's individual wage and hour claims, are stayed pending completion of the arbitration or some other resolution.

5. All dates currently set in the Civil Action shall be vacated and a post-arbitration status conference should be set for a date no earlier than July 18, 2025.

IT IS SO STIPULATED.

1
2 Dated: November 22, 2024

WILSHIRE LAW FIRM

3
4 By: /s/ Justin Marquez

Justin Marquez, Esq.

5 Benjamin H. Haber, Esq.

6 Attorneys for Plaintiff

7 CHADWICK BALL

8
9 Dated: November 22, 2024

LITTLER MENDELSON, P.C.

10 By: /s/ Robert M. Geiger

11 Elizabeth Staggs Wilson, Esq.

12 Robert M. Geiger, Esq.

13 Attorneys for Defendant

14 PET FOOD EXPRESS, LLC

PROPOSED ORDER

On stipulation of the Parties, and **GOOD CAUSE APPEARING THERETO, IT IS HEREBY ORDERED** as follows:

1. The class action claims alleged in the First Amended Complaint are dismissed without prejudice to individual members of the putative class other than Plaintiff;

2. Plaintiff's representative, non-individual PAGA claim alleged in the in First Amended Complaint as to the allegedly aggrieved employees other than Plaintiff is dismissed without prejudice;

3. Plaintiff's individual PAGA claim alleged in the First Amended Complaint as to Plaintiff is dismissed with prejudice;

4. The Parties are ordered into binding contractual arbitration of all of Plaintiff's remaining individual claims alleged in the FAC pursuant to the provisions contained within the Arbitration Agreement entered into by and between the Parties;

5. The remaining Civil Action, comprising solely of Plaintiff's individual wage and hour claims, are stayed pending completion of the arbitration or some other resolution pursuant to the Federal Arbitration Act, 9 U.S.C. section 3 and Code of Civil Procedure section 1281.4.

~~6. 4.~~ All other dates currently pending in this Court for the above-captioned action are hereby vacated and the Court sets a post arbitration status conference for _____ in Dept. _____ of this Court at _____ a.m./p.m.

7. ~~5.~~ This Court shall retain jurisdiction to enforce this Stipulation or confirm, correct, or vacate any arbitration award pursuant to Code of Civil Procedure sections 664.6 or 1285, *et seq.*, as appropriate.

IT IS SO ORDERED.

Dated: 12/02/2024



THE HONORABLE NOEL WISE
Judge of the Alameda County Superior Court
Noel Wise / Judge

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA		Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Hayward Hall of Justice 24405 Amador Street, Hayward, CA 94544		FILED Superior Court of California County of Alameda 12/02/2024 Chad Finke, Executive Officer / Clerk of the Court By: <u>Daniel Labrecque</u> Deputy D. Labrecque
PLAINTIFF/PETITIONER: Chadwick Ball		
DEFENDANT/RESPONDENT: Pet Food Express, LLC, a California limited liability corporation		
CERTIFICATE OF MAILING		CASE NUMBER: 23CV049405

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the attached document upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Hayward, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

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Dated: 12/02/2024

Chad Finke, Executive Officer / Clerk of the Court

By:

Daniel Labrecque

D. Labrecque, Deputy Clerk

CERTIFICATE OF MAILING