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21 Attorneys for Plaintiffs, MARISOL GOMEZ and IGNACIO OSORIO

22 **UNITED STATES DISTRICT COURT**  
 23 **EASTERN DISTRICT OF CALIFORNIA**

24 MARISOL GOMEZ and IGNACIO	)	Case No.: 1:15-cv-01489 AWI-BAM
25 OSORIO, on behalf of themselves and all	)	
26 others similarly situated;	)	<b>STIPULATION AND ORDER</b>
27	)	<b>CONSTRUING IT AS A</b>
28 Plaintiffs;	)	<b>STIPULATION TO AMEND THE</b>
	)	<b>FIRST AMENDED COMPLAINT</b>
v.	)	<b>TO OMIT THE PAGA CLAIMS</b>
	)	<b>(Doc. 159)</b>
J JACOBO FARM LABOR	)	
CONTRACTOR, INC.; and DOES 1 through	)	
20, inclusive,	)	
	)	
Defendants.	)	

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1 THE PARTIES, BY AND THROUGH THEIR RESPECTIVE ATTORNEYS OF  
2 RECORD, HEREBY STIPULATE AS FOLLOWS:

3 1. On September 9, 2015, Plaintiff, MARISOL GOMEZ, filed a Complaint in this  
4 action. Among other things, the Complaint included representative claims under the California  
5 Private Attorney General Act of 2004 (Ninth Cause of Action). (Labor Code §§ 2698 et. seq.)

6 2. On August 28, 2018, Plaintiffs, MARISOL GOMEZ and IGNACIO OSORIO,  
7 filed a First Amended Complaint in this action. Among other things, the First Amended  
8 Complaint included representative claims under the California Private Attorney General Act of  
9 2004. (Labor Code §§ 2698 et. seq.)

10 3. Plaintiffs wish to dismiss the State of California claims without prejudice to and  
11 their personal PAGA claims with prejudice.

12 NOW THEREFORE, Plaintiffs and Defendant hereby stipulate and agree that the  
13 State's PAGA claims are dismissed without prejudice. Plaintiffs individual PAGA claims are  
14 dismissed with prejudice.

15 **MALLISON & MARTINEZ**

16 Dated: February 17, 2023

17 By: /s/Heather Hamilton  
18 Stan S. Mallison,  
19 Heather Hamilton  
20 Attorney for Plaintiffs

21 **MICHAEL J.F. SMITH, APC**

22 Dated: February 17, 2023

23 By: /s/John L. Migliazzo  
24 John L. Migliazzo,  
25 Attorney for Defendant

26 **ATTESTATION**

27 Concurrence in the filing of this document has been obtained from each of the  
28 individual(s) whose electronic signature is attributed above.

Dated: February 17, 2023

By: /s/John L. Migliazzo  
John L. Migliazzo,  
Attorney for Defendant

1 **ORDER**

2 On proof made to the satisfaction of the Court and good cause appearing, the Court

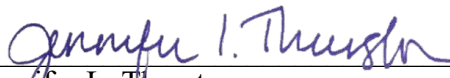
3 **ORDERS:**

4 1. The stipulation (Doc. 159) is construed as a joint request to amend the First  
5 Amended Complaint under Fed.R.Civ.P. Rule 15, to delete the PAGA claims and all references  
6 to it.<sup>1</sup>

7 2. As construed, the Court **GRANTS** the stipulation (Doc. 159) and **deems** the  
8 First Amended Complaint (Doc. 95) to be amended to delete the PAGA claim set forth in the  
9 Ninth Claim for Relief and to delete all references to PAGA made throughout the complaint.

10 3. The operative answers to the First Amended Complaint are deemed responsive  
11 to the amendments described above.

12 Dated: November 28, 2023

  
Jennifer L. Thurston  
U.S. District Judge

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28 <sup>1</sup> Although the stipulation does not invoke a Federal Rule of Civil Procedure, the Court assumes the parties intended it to be a Rule 41(a)(1)(A)(ii) stipulated dismissal of certain claims. However, Rule 41(a) is not the appropriate mechanism to dismiss claims from a case, where other claims remain against the same defendants. *See Gen. Signal Corp. v. MCI Telecommunications Corp.*, 66 F.3d 1500, 1513 (9th Cir. 1995) (“[W]e have held that Rule 15, not Rule 41, governs the situation when a party dismisses some, but not all, of its claims.”). The Court does not suggest that how it has addressed the stipulation here is an ideal model, but takes this action in the interest of expediency.