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6 Attorneys for Plaintiff Edwin Garcia

7 UNITED STATES DISTRICT COURT  
 8 NORTHERN DISTRICT OF CALIFORNIA  
 9 SAN JOSE DIVISION

11 EDWIN GARCIA;  
 12 PLAINTIFF,  
 13 V.  
 14 MOHAMMAD MORTAZAVI AND  
 15 PINNACLE GROUP CORP,  
 16 Defendants.

Case No. 3:16-cv-05913-MEJ

**NOTICE OF DISMISSAL WITHOUT  
 PREJUDICE; REQUEST THAT MATTER  
 BE DISMISSED AND THAT CLERK  
 CLOSE FILE; ~~PROPOSED~~ ORDER**

**Complaint Filed: March 6, 2015**

18 TO THE COURT AND ALL PARTIES TO THIS ACTION:

19 NOTICE IS HEREBY given that Plaintiff EDWIN GARCIA hereby requests that  
 20 Defendants MOHAMMAD MORTAZAVI AND PINNACLE GROUP CORP be Dismissed  
 21 **without** prejudice. This notice is accompanied by the declaration of counsel and proposed order.  
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1 Dated: March 15, 2017

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3 //s//Tomas E. Margain//s//  
4 Tomas E. Margain  
5 Huy Tran  
6 JUSTICE AT WORK LAW GROUP  
7 Attorneys for Plaintiff  
8 EDWIN GARCIA

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13 **DECLARATION OF TOMAS E. MARGAIN**

14 I, Tomas E. Margain, declare as follows:

15 1. I am the attorney of record for Plaintiff EDWIN GARCIA in this case. I have  
16 personal knowledge of the facts set forth in this declaration, and, if called as a witness, I could and  
17 would testify thereto.

18 2. Plaintiffs wish the matter dismissed without prejudice so that he may file in State  
19 Court being the San Mateo County Superior Court. The reason for the dismissal is that the claims  
20 arise primarily out of State law causes of action, and while there are some potential FLSA violations,  
21 the bulk of the claims have to do with Plaintiff's status as an independent contractor and claims  
22 under the Private Attorney General Act.

23 3. I apologize to the Court for submitting this after the Court's Ordered deadline of  
24 March 9, 2017 for Plaintiff to submit a status report. (DKT 11)

25 4. I had delayed in submitting a Status Report as I was waiting for counsel for  
26 Defendants to get back to me on a demand letter. Counsel never got back to me and given the delays  
27 in this case my preference is to file this in San Mateo County Superior Court.

28 I declare under penalty of perjury pursuant to the laws of the United States that the foregoing  
is true and correct, executed on March 15, 2017 in San Jose, California.

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//s// Tomas Margain  
Tomas E. Margain

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**ORDER**

Based on GOOD CAUSE shown and upon the Notice and Declaration of Plaintiff's counsel Tomas E. Margain, the Court orders as follows:

The matter is Dismissed **without** Prejudice as to all parties. All calendared dates are hereby vacated and the Clerk is directed to close the file.

**IT IS SO ORDERED.**

DATED: APRIL 13, 2017

By:



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THE HONORABLE MARIA-ELENA JAMES  
United States Magistrate Judge