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Attorneys for Defendant  
Skanska Shimmick Herzog, a Joint Venture

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MUSU BENNETT,

Plaintiff,

vs.

SKANSKA SHIMMICK HERZOG, A  
JOINT VENTURE and Does 1-10,  
inclusive

Defendants.

Case No. 15-CV-02382-NC

**STIPULATION AND ORDER FOR  
DISMISSAL OF LABOR CODE  
SECTION 226 CLAIMS AND  
REMAND OF REMAINING CLAIMS  
TO STATE COURT**

Date Removal Filed: May 28, 2015

Counsel for Plaintiff, Musu Bennett (“Plaintiff”), and Defendant Skanska Shimmick Herzog, a Joint Venture (“SSHJV”), jointly submit the following Stipulation and [Proposed] Order:

**RECITALS**

Whereas:

1. This lawsuit was initially filed against Skanska USA, Inc. in the Superior Court of California, Santa Clara County. On or around May 28, 2015, Skanska USA, Inc. removed this matter based on diversity jurisdiction on the grounds that Skanska USA, Inc. is a citizen of New York and on federal question jurisdiction based on the

1 argument that Plaintiff's Labor Code Section 226(a) claims, as pled, are preempted by  
2 Section 301 of the Labor Management Relations Act, 29 U.S.C. §185(a).

3 2. On June 18, 2015, the Parties filed a Stipulation and Order to dismiss  
4 Skanska USA, Inc. (Skanska USA Inc.) as a party and to substitute Skanska Shimmick  
5 Herzog, a Joint Venture ("SSHJV") as the defendant in this matter. SSHJV is not a  
6 diverse citizen for the purposes of this lawsuit.

7 3. An earlier filed class action and representative lawsuit entitled *Guadalupe*  
8 *Gomez v. Skanska Shimmick Herzog, a Joint Venture* that alleges, among other claims,  
9 Labor Code Section 226 violations that are same as or substantially similar to those  
10 alleged in this case is pending before the Honorable Edward J. Davila in the District  
11 Court, Northern District of California, Case No. 5:15-cv-01796.

12 4. Ms. Bennett received only one paycheck from SSHJV. The maximum  
13 penalty under Labor Code 226(e) for an allegedly defective wage statement is \$50.00  
14 per pay period. SSHJV tendered a check for \$50.00 to Plaintiff on May 18, 2015 as  
15 payment in full for the alleged penalty. SSHJV denies that it violated Labor Code  
16 Section 226 and does not concede any violation, it

17 **STIPULATION**

18 Based on these recitals, the Parties through their counsel stipulate as follows:

19 1. Plaintiff's First Cause of Action (Labor Code 226) and any other claims  
20 or causes of action that are based on alleged violations of Labor Code Section 226,  
21 including that portion of Plaintiff's Fourth Cause of Action under the Private Attorney  
22 General Act that is based on alleged violations of Labor Code Section 226 and  
23 Plaintiff's prayer for damages, penalties and attorneys' fees under Labor Code  
24 Sections 226 and 226.3 may be dismissed with prejudice with both sides bearing their  
25 own costs and fees.

26 2. Based on the substitution of SSHJV for Skanska USA, Inc. and the  
27 dismissal of the Labor Code Section 226 claims this Court lacks jurisdiction over the  
28 remaining causes of action and, therefore, Plaintiff's remaining claims should be

1 remanded to the Superior Court, County of Santa Clara and the case in this Court  
2 should be closed.

3 DATED: August 4, 2015

NIXON PEABODY LLP

4  
5 By:  /s/ Oswald Cousins  
6 Oswald Cousins  
7 Attorneys for Defendant  
8 SKANSKA SHIMMICK HERZOG, a  
JOINT VENTURE

9 DATED: August 4, 2015

POLARIS LAW GROUP

10  
11 By: \_\_\_\_\_  
12 William L. Marder  
13 Attorneys for Plaintiff  
14 MUSU BENNETT

15 **ORDER DISMISSING LABOR CODE 226 CLAIMS AND REMANDING TO STATE**  
16 **COURT**

17 Pursuant to the Parties' Stipulation and for good cause, the Court orders as  
18 follows:

- 19 (1) Plaintiff's First Cause of Action (Labor Code Section 226 and any other claims  
20 or causes of action that are based on alleged violations of Labor Code Section  
21 226, including that portion of Plaintiff's Fourth Cause of Action under the  
22 Private Attorney General Act that is based on alleged violations of Labor Code  
23 Section 226 and Plaintiff's prayer for damages, penalties and attorneys' fees  
24 under Labor Code Sections 226 and 226.3 are dismissed with prejudice with  
25 both sides bearing their own costs and fees.

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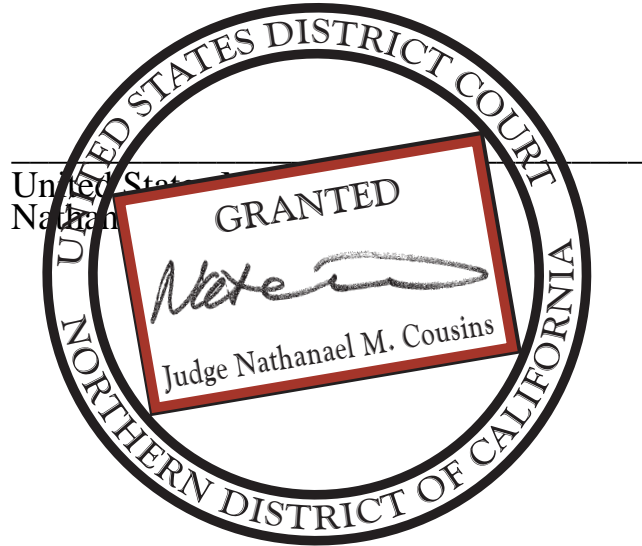
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1 (2) Plaintiff's remaining claims are hereby remanded to the Superior Court of  
2 California, Santa Clara County, and the clerk is instructed to close the case in  
3 this Court.

4 IT IS SO ORDERED.

5 DATED: August\_5\_, 2015



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