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11 [Additional counsel information
on signature page]

12 **UNITED STATES DISTRICT COURT**
 13 **NORTHERN DISTRICT OF CALIFORNIA**
 14

15 ANGEL LUNA, individually, and on behalf of
16 all others similarly situated,

17 Plaintiff,

18 v.

19 DAVEY TREE SURGERY COMPANY, a
20 Delaware Corporation, and DOES 1 through
100, inclusive,,

21 Defendants.

Case No. 5:23-cv-00822

**STIPULATION AND ORDER
 DISMISSING FIRST THROUGH SEVENTH CAUSES OF ACTION
 WITHOUT PREJUDICE AND
 REMANDING ACTION TO STATE
 COURT**

Action Filed: January 6, 2023

1 Plaintiff Angel Luna (“Plaintiff”) and Defendant Davey Tree Surgery Company (“Davey
2 Tree”) (together, the “Parties”), by and through their undersigned counsel of record, respectfully
3 stipulate as follows:

4 WHEREAS, on January 6, 2023, Plaintiff filed a class action complaint in Santa Cruz
5 County Superior Court of the State of California, captioned *Luna v. Davey Tree Surgery Company,*
6 *et al.*, Case No. 23CV00040, alleging the following eight causes of action: (1) failure to pay wages
7 for all hours worked in violation of California Labor Code §§ 204, 218, 1194, and 1194.2; (2)
8 failure to pay overtime wages in violation of California Labor Code §§ 218, 510, and 1194; (3)
9 failure to provide mandatory meal-and-rest breaks in violation of California Labor Code §§ 226.7
10 and 512; (4) failure to reimburse business expenses in violation of California Labor Code § 2802;
11 (5) failure to provide accurate wage statements in violation of California Labor Code §§ 226 and
12 1174; (6) waiting time penalties under California Labor Code §§ 201-203; (7) violation of
13 California Business & Professions Code § 17200, et seq. (“UCL”); and (8) violation of California
14 Labor Code §§ 2698, et seq. (“PAGA”).

15 WHEREAS, Plaintiff filed the first seven causes of action on behalf of himself and
16 members of a putative class of “all individuals (a) who are currently or formerly employed by
17 Defendants and performed work in California as non-exempt hourly employees or similar job
18 position, job title, job code, job classification, or job description, and (b) who were subject to
19 Defendants’ illegal policies and practices as alleged herein during the Class Period,” defined as
20 “the four years prior to the filing of the original Complaint to the present including tolling.” *Id.* ¶
21 38.

22 WHEREAS, on February 23, 2023, Davey Tree removed the action to this Court pursuant
23 to 28 U.S.C. §§ 1332(d), 1441, 1446, and 1453, and specifically the Class Action Fairness Act of
24 2005, based on the first through seventh causes of action.

25 WHEREAS, the parties met and conferred and agree that Plaintiff signed arbitration
26 agreements on April 29, 2019 and December 27, 2021, in which Plaintiff agreed to arbitrate—in
27 his individual capacity and not as a plaintiff or class member in any purported class or
28 representative proceeding—all claims against Davey Tree for wages, benefits, or other

1 compensation due and all claims against Davey Tree for any violation of any federal, state, or other
2 governmental law, statute, regulation or ordinance (the “Arbitration Agreements”).

3 WHEREAS, Plaintiff agrees that the Arbitration Agreements cover the first through
4 seventh causes of action asserted in his Complaint (both in terms of Plaintiff’s individual claims
5 and the putative class claims).

6 WHEREAS, Plaintiff accordingly seeks to dismiss his first through seventh causes of
7 action without prejudice as to both his alleged individual claims and the alleged claims of the
8 unnamed putative class members.

9 WHEREAS, Defendant agrees with such dismissal.

10 WHEREAS, to date, no class has been certified in this Action nor has any notice been
11 provided to other current or former employees of Davey Tree regarding Plaintiff’s putative class
12 claims.

13 WHEREAS, to date, the court has not entered any judgment following final approval of a
14 settlement.

15 WHEREAS no consideration, direct or indirect, is being provided to Plaintiff for the
16 dismissal.

17 WHEREAS, the Parties dispute the impact of the Arbitration Agreements on Plaintiff’s
18 remaining cause of action (the eighth cause of action) seeking to represent alleged “aggrieved
19 employees” under PAGA in the wake of the U.S. Supreme Court’s decision in *Viking River*
20 *Cruises, Inc. v. Moriana*, 142 S. Ct. 1906 (2022) (“*Viking River*”), the pending California Supreme
21 Court decision in *Adolph v Uber Technologies, Inc.* (2022) (Aug. 1, 2022, S274671) [2022 Cal.
22 Lexis 5021].), and the recent Appellate Court decision in *Galarsa v. Dolgen California LLC*, 2023
23 WL 2212196 (Cal.App. 5 Dist., 2023) (decision after remand in light of *Viking River*).

24 WHEREAS, Davey Tree expressly reserves the right to file a motion to compel arbitration
25 as to the claims asserted in the Complaint, if necessary, and Plaintiff agrees that he will not argue
26 or assert that Davey Tree has waived any right to arbitration with respect to the claims asserted in
27 the Complaint (including the PAGA claims asserted in the eighth cause of action) by entering into
28 this stipulation or removing the case to federal court.

1 WHEREAS, the Parties further met and conferred and agree that, upon dismissal of the
2 first through seventh causes of action (leaving only Plaintiff's PAGA claim), the operative
3 complaint will no longer meet the jurisdictional requirements of the CAFA, making it appropriate
4 to remand this case back to state court.

5 WHEREAS, Davey Tree accordingly stipulates to remand this action back to Santa Cruz
6 County Superior Court, and the Parties jointly request that the Court issue an order regarding the
7 same.

8 **NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED UPON**
9 **THAT:**

10 1. Plaintiff's first through seventh causes of action are dismissed without prejudice to the
11 extent they are brought on an individual basis;

12 2. Plaintiff's first through seventh causes of action are dismissed without prejudice to the
13 extent they are brought on behalf of a putative class;

14 3. Upon dismissal of Plaintiff's first through seventh causes of action, the entire action
15 should be remanded back to the Superior Court of the State of California, County of Santa Cruz,
16 where it was originally filed.

17 **IT IS SO STIPULATED.**

18 [signatures follow on next page]
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Dated: February 28, 2023

MAYER BROWN LLP

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Attorneys for Defendant
DAVEY TREE SURGERY COMPANY

Dated: February 28, 2023

BISNAR | CHASE LLP /
ALPERS LAW GROUP, INC.

By: /s/ Ian M. Silvers
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Attorneys for Plaintiff

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ORDER

The Court, having read and considered the Stipulation, and finding good cause, hereby orders as follows:

IT IS HEREBY ORDERED that:

1. Plaintiff’s first through seventh causes of action are dismissed without prejudice to the extent they are brought on an individual basis;
2. Plaintiff’s first through seventh causes of action are dismissed without prejudice to the extent they are brought on behalf of a putative class; and
3. The entire Action is remanded back to the Superior Court of the State of California, County of Santa Cruz.

Dated: February 28, 2023

