SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 7, Honorable Charles F. Adams Presiding

Maggie Castellon, Courtroom Clerk
191 North First Street, San Jose, CA95113
Telephone: 408.882.2170

To contest the ruling, call (408) 808-6856 before 4:00 P.M. or email department7@scscourt.org. Please state your case name, case number, the name of the attorney and contact number. It would also be helpful if you could identify the specific portion or portions of the tentative ruling that will be contested. Please also make sure you have notified the other side in a timely fashion that you are contesting the tentative ruling. (See R. Ct. 3.1308(a)(1); Local Rule 8.E.)

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LAW AND MOTION TENTATIVE RULINGS
DATE: MAY 16, 2024 TIME: 1:30 P.M.
PREVAILING PARTY SHALL PREPARE THE ORDER
UNLESS OTHERWISE STATED (SEE RULE OF COURT 3.1312)

SUPERIOR COURT, STATE OF CALIFORNIA
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LAW AND MOTION TENTATIVE RULINGS

LINE #	CASE #	CASE TITLE	RULING
LINE 1	23CV409907	Aranzaso v. Acadia Healthcare Company, Inc., et al. (PAGA)	See Line 1 for tentative ruling.
LINE 2	23CV418000	Mudflap, Inc. v. Sky Capital Group, LLC, et al.	See Line 2 for tentative ruling.
LINE 3	20CV366905	Dutcher v. Google LLC d/b/a YouTube, et al.	Tentative ruling provided directly to the parties.
LINE 4	22CV409283	Hughes v. Roadie Inc. (Class Action)	See Line 4 for tentative ruling.
LINE 5			
LINE 6			
LINE 7			
LINE 8			
LINE 9			
LINE 10			

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LAW AND MOTION TENTATIVE RULINGS

LINE 11			
LINE 12			
LINE 13			

Calendar Line 1

Case Name: *Rhonald Aranzaso v. Acadia Healthcare Company, Inc., et al.*
Case Nos.: 23CV409907

This is a representative action under the Private Attorneys General Act ("PAGA"). Plaintiff Rhonald Aranzaso alleges that Defendants Acadia Healthcare Company, Inc. ("Acadia"), SJBH, LLC, Sober Living By the Sea, Inc., CRC Health, LLC and Vista Behavioral Hospital, LLC (collectively, "Defendants") failed to provide compliant meal breaks, required employees to work off-the-clock, and "rounded" the actual time worked, among other Labor Code violations.

Before the Court is Acadia's motion to stay this action pending resolution of *Patricia J. Ryan v. Mission Treatment Services, Inc., et al.* in Los Angeles County Superior Court, Case No. 22STCV22280 (the "*Ryan* PAGA Action"), which is unopposed.

I. BACKGROUND

According to the allegations of the operative complaint ("Complaint"), Defendants required Plaintiff and aggrieved employees to work off-the-clock during what were supposed to be their off-duty meal breaks and had a uniform practice of rounding actual time worked to their benefit so that Plaintiff and aggrieved employees were paid less than they would have been paid for actual time worked. (Complaint, ¶ 18.) Defendants also failed to include non-discretionary incentive pay, resulting in the underpayment of overtime compensation and meal and rest break premiums to Plaintiff and aggrieved employees. (*Id*., ¶ 20.) Plaintiffs and aggrieved employees also were not provided the rest periods to which they were entitled and were not provided with accurate wage statements. (*Id*., ¶¶ 21-24.) Defendants underpaid sick wages and failed to reimburse Plaintiff and aggrieved employees for business expenses incurred by them as a direct consequence of discharging their duties. (*Id*., ¶¶ 27-32.)

Plaintiff initiated this action with the filing of the Complaint on January 13, 2023, asserting a single cause of action for penalties under PAGA based on the aforementioned violations.

II. MOTION TO STAY ACTION

A. Legal Standard

"Trial courts generally have the inherent power to stay proceedings in the interests of justice and to promote judicial efficiency." (*Freiberg v. City of Mission Viejo* (1995) 33 Cal.App.4th 1484, 1489.) The trial court's inherent power to exercise reasonable control over all proceedings connected with the litigation before it "rests upon and is limited by the exercise of sound judicial discretion." (*Bailey v. Fosca Oil Co.* (1963) 216 Cal.App.3d 813, 818.) "Granting a stay in a case where the issues in two actions are substantially identical is a matter addressed to the sound discretion of the trial court." (*Thompson v. Continental Ins. Co.* (1967) 66 Cal.2d 738, 746.)

"In exercising its discretion the court should consider the importance of discouraging multiple litigation designed solely to harass an adverse party, and of avoiding unseemly

conflicts with the courts of other jurisdictions. It should also consider whether the rights of the parties can best be determined by the court of the other jurisdiction because of the nature of the subject matter, the availability of witnesses, or the stage to which the proceedings in the other court have already advanced." (*Caiafa Prof. Law Corp. v. State Farm Fire & Cas. Co.* (1993) 15 Cal.App.4th 800, 804 [internal citation and quotations omitted].)

B. Discussion

According to Plaintiff, Acadia is currently defending the *Ryan* PAGA Action and an earlier-filed putative class action by Ms. Ryan (the "*Ryan* Class Action") in Los Angeles County Superior Court, and the alleged aggrieved employees in the instant action are subsumed within the broader set of employees represented in the *Ryan* PAGA Action (i.e., all current and former non-exempt employees of Acadia and any of its subsidiary or affiliated companies within the State of California) which would include Acadia and its subsidiaries SJBH, LLC, Sober Living By The Sea, Inc., CRC Health, LLC, and Vista Behavioral Hospital, LLC who are each named Defendants in this action (collectively referred to herein as "Defendants"). Acadia explains that both the instant action and the *Ryan* PAGA Action involve the same underlying claims for PAGA penalties regarding alleged unpaid wages and overtime, alleged denial of meal and rest breaks, alleged unreimbursed business expenses, alleged inaccurate wage statements, and alleged untimely payment of wages due upon termination, and a stay of the instant action pending resolution of the *Ryan* PAGA Action, which the parties have agreed to mediate, is appropriate in order to avoid the possibility of reaching inconsistent results and unnecessarily consuming judicial resources, among other reasons. The Court agrees.

California and federal authorities have held that "separate but similar actions by different employees against the same employer" are generally permissible under the PAGA statutory scheme.[1] (*Julian v. Glenair, Inc.* (2017) 17 Cal.App.5th 853, 866 [where one representative plaintiff had already filed a PAGA action, subsequent agreements to arbitrate PAGA claims executed by other employees were unenforceable as against those employees], citing *Tan v. GrubHub, Inc.* (N.D. Cal. 2016) 171 F.Supp.3d 998, 1012-1013.) Federal courts have accordingly denied requests to stay parallel PAGA actions based on the federal "first-to-file" rule, which is similar to California's rule of exclusive concurrent jurisdiction. (See *Tan v. GrubHub, Inc.*, *supra*, 171 F.Supp.3d at pp. 1012-1016 [noting that defendants cited no case holding that "two PAGA representatives cannot pursue the same PAGA claims at the same time" and "declin[ing] to be the first [court] to so hold"].)

In *Shaw v. Superior Court* (2022) 78 Cal.App.5th 245 (*Shaw*), the appellate court held that the trial court did not err in staying a representative suit under PAGA which arose from the *same facts and theories* as another pending PAGA action in a different superior court because the language of the Act did not demonstrate unequivocal legislative intent to abrogate the

[1] This is in contrast to the other major *qui tam* statute in California, the False Claims Act. (See Gov't Code § 12652(c)(10); *Canela v. Costco Wholesale Corporation* (N.D. Cal., May 23, 2018, No. 13-CV-03598-BLF) 2018 WL 2331877, at *7; *Gonzalez v. Corecivic of Tennessee, LLC* (E.D. Cal., Aug. 1, 2018, No. 16-CV-01891-DAD-JLT) 2018 WL 3689564, at *4 [contrasting PAGA with federal False Claims Act].)

common law doctrine of exclusive concurrent jurisdiction,[2] nor did application of the exclusive concurrent jurisdiction rule vitiate the purposes for which PAGA was enacted. Because proceeding with resolution of the case would duplicate court efforts, waste resources, and potentially produce divergent results, the appellate court explained, the trial court reasonably concluded that policy considerations supported application of the exclusive concurrent jurisdiction, i.e., the staying of the later-filed PAGA action.

Here, policy considerations support the issuance of a stay of the instant action in the vein of *Shaw*. Given that the instant action is nearly identical to the *Ryan* PAGA Action[3] (e.g., the same facts and theories of liability), there is no doubt that permitting it to be pursued simultaneous to that lawsuit "would duplicate court efforts, waste resources, and potentially produce divergent results." (*Shaw, supra,* 78 Cal.App.5th at 262.) Not to mention the potential waste of party resources with Acadia facing the prospect of duplicating its own efforts in responding to discovery, engaging in motion practice, and preparing for trial. Issuing a stay so as to prevent any of the foregoing is certainly "in the interests of justice and … promote[s] judicial efficiency." (*Freiberg v. City of Mission Viejo, supra,* 33 Cal.App.4th 1484, 1489.) Because Plaintiff has elected not to oppose this motion, he has impliedly conceded its merits. (See *DuPont Merck Pharmaceutical Co. v. Superior Court* (2000) 78 Cal.App.4th 562, 566.)

Accordingly, Acadia's motion to stay the instant action is GRANTED.

III. CONCLUSION

Acadia's motion for a stay of this action pending resolution of the *Ryan* PAGA Action is GRANTED.

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[2] Under this judge-made doctrine, when two or more courts have subject matter jurisdiction over a dispute, the court that first asserts jurisdiction assumes it to the exclusion of others. (*Franklin & Franklin v. 7-Eleven Owners for Fair Franchising* (2000) 85 Cal.App.4th 1168, 1175.) "The rule is based upon the public policies of avoiding conflicts that might arise between courts if they were free to make contradictory decisions or awards relating to the same controversy, and preventing vexatious litigation and multiplicity of suits," and is "enforced not so much to protect the rights of parties as to protect the rights of Courts of co-ordinate jurisdiction to avoid conflict of jurisdiction, confusion and delay in the administration of justice." (*Id.* at pp. 786-787, internal citations and quotations omitted.) Still, where the rule applies, "[a]n order of abatement issues as a matter of right not as a matter of discretion …." (*Plant Insulation Co. v. Fibreboard Corp.* (1990) 224 Cal.App.3d 781, 786, internal citations and quotation omitted.) Still, where the rule applies, "[a]n order of abatement issues as a matter of right not as a matter of discretion …." (*Ibid.*)

[3] Both the *Ryan* PAGA Action and the instant action seek PAGA penalties based on the following Labor Code violations: failure to pay overtime wages; failure to pay minimum wages; failure to provide meal periods; failure to provide rest periods; failure to provide all wages when due/upon termination; failure to provide accurate itemized wage statements; failure to reimburse expenses; and failure to pay sick wages. (See Declaration of Michael D. Thomas in Support of Motion for Stay, ¶ 2, Exhibit A)

The Case Management Conference scheduled for May 16, 2024, is VACATED. The Court schedules a Status Conference for **November 14, 2024, at 2:30 p.m.** No later than 10 days before the Status Conference, the parties must file a joint statement that includes an update as to the *Ryan* PAGA Action.

The Court will prepare the order.

****

LAW AND MOTION HEARING PROCEDURES

Parties may appear in person or remotely. Remote appearances must be made through Microsoft Teams, unless otherwise arranged with the Court. Please go to https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml to find the appropriate link.

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The Court does not provide court reporters for proceedings in the complex civil litigation departments. Any party wishing to retain a court reporter to report a hearing may do so in compliance with this Court's October 13, 2020 Policy Regarding Privately Retained Court Reporters.

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Calendar Line 2

Case Name: *Mudflap, Inc. v. Sky Capital Group, LLC, et al.*
Case Nos.: 23CV418000

This is an action for trade secret misappropriation. Plaintiff Mudflap, Inc. ("Plaintiff" or "Mudflap") alleges that Matthew Patterson, the former CEO of Defendant Sky Capital Group, LLC d/b/a Roady's Truck Stops ("Roady's"), and Kirkcaldy Group, LLC ("Kirkcaldy"), an entity Patterson controls, misappropriated its trade secrets.

Before the Court are the following motions: (1) Defendant Trucker Path, Inc.'s ("Trucker Path") petition to compel arbitration and stay court proceedings; and (2) Roady's motion to stay. The latter motion is opposed, while the former is not. As discussed below, Trucker Path's motion to compel arbitration and stay court proceedings is MOOT. The Court GRANTS Roady's motion to stay.

I. BACKGROUND

A. Factual

According to the allegations of the operative complaint ("Complaint"), Mudflap is the creator of a new payment ecosystem in the diesel fuel payment industry that cuts out legacy processors. This old system required truckers to use physical fuel cards and was accompanied by high payment processing costs. (Complaint, ¶ 2.) Mudflap developed both a mobile phone application, used by truckers to find and buy discounted fuel, and a tablet system, used by truck stops to process Mudflap transactions. (*Id*.)

Roady's is a for-profit trade group with approximately 250 independent truck stop members who negotiates on behalf of its members to obtain lower wholesale fuel prices from suppliers, and its members are branded using Roady's marks. (Complaint, ¶ 3.)

In 2019, Patterson (via Kirkcaldy, his personal wealth holding company) contracted with Mudflap to become an advisor on its board. (Complaint, ¶ 4.) To protect Mudflap's intellectual property, the agreement executed between the parties provided that Mudflap would own all "designs, inventions, improvements, developments, discoveries and trade secrets (collectively, 'Inventions')" that were "conceived, made or discovered by Advisor, solely or in collaboration with others . . . which relate in any manner to the business of [Mudflap]." (*Id.*) In return for his services, Patterson was given Mudflap equity. (*Id*.)

Mudflap alleges that unbeknownst to it, Patterson intended to steal its IP and use it at Roady's to develop a competing product, and in fact did so by cloning its applications and business model with a product marketed under the moniker Direct Fuel Services ("DFS"). (Complaint, ¶ 5.) Mudflap further alleges that Roady's also conspired with Trucker Path, which operates a trucker-facing navigation app, to unlawfully reverse engineer aspects of the Mudflap app by creating fake fuel transactions in violation of the Mudflap Terms & Conditions. (*Id*.)

When Mudflap learned of the foregoing, it demanded that Roady's and Trucker Path cease and desist, and both companies stopped offering DFS services. (Complaint, ¶ 6.)

However, Roady's has again integrated DFS into Trucker Path as well as two other mobile applications that are now directly and unlawfully competing with Mudflap. (*Id*.)

B. Procedural

On June 25, 2023, Mudflap initiated an arbitration against Trucker Path with JAMS. The following day, Mudflap initiated an arbitration against Patterson and Kirkcaldy with AAA and initiated this action with the filing of the Complaint on June 26, 2023, asserting the following causes of action: (1) breach of implied contract (against Roady's); (2) declaratory judgment (against Roady's); (3) tortious interference with contractual relations (against Roady's); (4) trade secret misappropriation (against Roady's); (5) unfair competition (against Roady's); and (6) breach of contract (Terms of Service Agreement) (against all defendants).

On November 17, 2023, Trucker Path filed the instant motion to compel arbitration and stay the proceedings. That same day, Roady's filed its motion to stay.

On February 15, 2024, Mudflap dismissed the sixth cause of action as to Trucker Path without prejudice.

II. TRUCKER PATH'S PETITION TO COMPEL ARBITRATION AND STAY PROCEEDINGS

Trucker Path moves to compel arbitration of the sole claim asserted against it by Mudflap, the sixth for breach of contract, arguing that Mudflap, who is currently arbitrating most of its claims against Trucker Path before JAMS, is relying on the wrong dispute resolution provision to justify its filing of the sixth cause of action in this Court. However, given that Mudflap has dismissed this claim against Trucker Path, there is no longer anything left to compel to arbitration and the instant motion is MOOT.

III. SKY CAPITAL'S MOTION TO STAY

Roady's moves to stay all proceedings in this case under Code of Civil Procedure section 1281.4 ("Section 1281.4"), which provides, in pertinent part, that when a trial court "has ordered arbitration of a controversy which is an issue involved in an action or proceeding pending before" the court, it "shall, upon motion of a party … stay the action or proceeding until an arbitration is had in accordance with the order to arbitrate." Roady's requests that this action be stayed while Mudflap pursues what it characterizes as a "closely related arbitration proceeding involving the same facts … and addressing the same claims" as this litigation, and insists that resolution of this arbitration (before AAA) "would greatly narrow if not completely resolve this litigation if the arbitration was resolved first."

In making the foregoing arguments, Roady's, who is not a party to the subject arbitration, relies primarily on *Heritage Provider Network, Inc. v. Superior Court* (2008) 158 Cal.App.4th 1146 (*Heritage Provider*).) In its opposition, Mudflap insists that, pursuant to *Leenay v. Superior Court* (2022) 81 Cal.App.5th 553 (*Leenay*), an "order" compelling arbitration is a necessary predicate to a mandatory stay pursuant to Section 1281.4, and that a "stranger," i.e., non-party, to an arbitration agreement such as Roady's cannot invoke the stay provision.

Generally, any party to a judicial proceeding "is entitled to a stay of those proceedings whenever (1) the arbitration of a controversy has been ordered, and (2) that controversy is also an issue involved in the pending judicial action." (*Marcus v. Superior Court* (1977) 75 Cal.App.3d 204, 209 (*Marcus*).) "The purpose of the statutory stay is to protect the jurisdiction of the arbitrator by preserving the status quo until arbitration is resolved." (*Federal Ins. Co. v. Superior Court* (1998) 60 Cal.App.4th 1370, 1374.) "In the absence of a stay, the continuation of the proceedings in the trial court disrupts the arbitration proceedings and can render them ineffective." (*Id*.) Importantly, "[i]t is irrelevant under [Section 1281.4] whether the movant is a party to the arbitration agreement." (*Marcus, supra*, at 290.) Thus, Mudflap's insistence that Roady's cannot invoke Section 1281.4 because it is not a party to the arbitration agreement which compelled the arbitration against Patterson and Kirkcaldy is unpersuasive.

For the purposes of Section 1281.4, a "controversy" "can be a single question of law or fact …. As such, a single overlapping issue is sufficient to require imposition of a stay." (*Heritage Provider*, *supra*, 158 Cal.App.4th at 1152-1153.) Here, Roady's argues that all of the claims at issue in this action and the arbitration arise of out Patterson's alleged conduct, i.e., misappropriating confidential information from Mudflap in order to "clone" its application and business model with an alleged "imitation product." It continues that for each claim asserted against it, Mudflap relies on the same underlying facts, with thirty-one allegations that are identical in the Complaint and Arbitration Demand against Patterson and Kirkcaldy. Roady's explains that Mudflap seeks to impute liability onto Roady's for the conduct of Patterson as the CEO of Roady's and often uses Patterson and Roady's interchangeably throughout both pleadings. Consequently, it maintains, there is considerable overlap of the issues in the instant action and the arbitration such that a stay of the former is warranted to protect the jurisdiction of the arbitrator.

Mudflap does not forcefully dispute the fact that there is considerable factual overlap between this case and the arbitration it is pursuing against Patterson and Kirkcaldy. However, it insists that there is no justification for a stay under Section 1281.4 given that this Court has not ordered it and Patterson/Kirkcaldy to arbitration. The express language of Section 1281.4 supports Mudflap's argument because it clearly and unambiguously provides that "if a court … *has ordered* arbitration of a controversy which is an issue involved in an action or proceeding pending before a court …the court … *shall*, upon motion of a party … stay the action of proceeding until an arbitration is had …." (Emphasis added.) It is undisputed this Court has *not* ordered the parties' to arbitrate some of the issues in this case; Mudflap initiated the arbitration before AAA against Patterson and Kirkcaldy itself, as well as the arbitration before JAMS against Trucker Path.

What does Roady's have to say about the absence of the Court order compelling arbitration? It does not specifically address that component of Section 1281.4 and, as indicated above, urges the Court to follow *Heritage Provider*. In that case, an independent practice association ("IPA") comprised of physicians sued a provider network after negotiations by the latter to acquire the former failed. When the negotiations broke down, several of the physicians terminated their agreements with the IPA and entered into agreements with the provider network, prompting the IPA to sue for breach of contract. In connection with the acquisition discussions, the parties had executed a confidentiality agreement which contained an arbitration provision. After the physicians successfully moved to compel arbitration of the contract claims, the trial court denied the IPA's motion to stay the litigation under Section 1281.4 *despite* finding that similar issues were involved in the arbitration and court

proceedings, reasoning that there were not *enough* similar issues to warrant a stay. The appellate court reversed, explaining that the trial court's belief that a single overlapping issue was insufficient to justify a stay under Section 1281.4 was "incorrect," and that a "controversy" for the purposes of the statute "[could] be a single question of law or fact."

Mudflap describes *Heritage Provider* as "outdated" and as having been "superseded" by *Leenay*. In *Leenay*, a trial court granted an employer's motion to stay coordinated PAGA actions under Section 1281.4 pending arbitrations of wage and hour claims against the employer. The Court of Appeal reversed, finding that because the plaintiffs were not parties to the pending arbitrations, their actions could not be stayed as a result of them. It concluded that Section 1281.4 does not authorize a stay pending conclusion of a nonparty's arbitration, consistent with the definition of "controversy" as a question arising between parties to an agreement (see Code Civ. Proc., § 1280, subd. (d)), but instead provides for a stay only when a court has ordered the parties to arbitration, the arbitrable issue arose in the pending court action, and the parties in the arbitration were also parties to the court action.

The Court does not agree that *Heritage Provider* has been superseded by *Leenay*, particularly given the latter's rejection of the defendant's reliance on *Heritage Provider* due to that case being "inapposite" because the plaintiffs were bound by an arbitration agreement with at least one defendant and had combined their arbitrable claims with claims against third parties. (*Leenay*, 81 Cal.App.5th at 570.) In other words, *Heritage Provider's* conclusion that a court may properly issue a stay under Section 1281.4 pending resolution of arbitration even where there is not complete overlap between the parties in the arbitration and the litigation is still good law. However, this fact does not take away from the merits of Mudflap's argument and reliance on *Leenay* for the proposition that a court having ordered parties to arbitrate a dispute pursuant to an agreement is a *necessary* predicate to granting a motion to stay an action involving the same parties and issues under Section 1281.4. Because this Court has not ordered arbitration, a stay under Section 1281.4 is not indicated. Despite this, the Court is persuaded that the instant action should nevertheless be stayed pursuant to its discretionary authority pending resolution of the arbitration before AAA.

"Trial courts generally have the inherent power to stay proceedings in the interests of justice and to promote judicial efficiency." (*Freiberg v. City of Mission Viejo* (1995) 33 Cal.App.4th 1484, 1489.) The trial court's inherent power to exercise reasonable control over all proceedings connected with the litigation before it "rests upon and is limited by the exercise of sound judicial discretion." (*Bailey v. Fosca Oil Co.* (1963) 216 Cal.App.3d 813, 818.) "Granting a stay in a case where the issues in two actions are substantially identical is a matter addressed to the sound discretion of the trial court." (*Thompson v. Continental Ins. Co.* (1967) 66 Cal.2d 738, 746.)

"In exercising its discretion the court should consider the importance of discouraging multiple litigation designed solely to harass an adverse party, and of avoiding unseemly conflicts with the courts of other jurisdictions. It should also consider whether the rights of the parties can best be determined by the court of the other jurisdiction because of the nature of the subject matter, the availability of witnesses, or the stage to which the proceedings in the other court have already advanced." (*Caiafa Prof. Law Corp. v. State Farm Fire & Cas. Co.* (1993) 15 Cal.App.4th 800, 804 [internal citation and quotations omitted].)

As stated above, the purpose of issuing a stay pursuant to Section 1281.4 is to "protect the jurisdiction of the arbitrator by preserving the status quo until arbitration is resolved." (*Federal Ins. Co., supra,* 60 Cal.App.4th at 1374.) Here, the Court believe the circumstances are such that a stay is warranted because allowing this action to proceed while the arbitration between Mudflap and Patterson/Kirkcaldy is pending could "distrupt[] [those] proceedings and … render them ineffective." (*Ibid*.) These circumstances include the significant overlap between the instant action and the arbitration, specifically nearly identical issues, claims, proposed remedies, and facts.[1] The overlap is such that the Court finds persuasive Roady's assertion that if Mudflap's claims against Patterson and Trucker Path in the AAA and JAMS arbitrations actions fail, then its claims against Roady's, which are largely derivative of the arbitration claims, may also fail. As a consequence of this, the Court finds no basis to conclude, as argued by Mudflap, that its claims against Roady's are entirely severable from the arbitration against Patterson/Kirkcaldy and thus can independently proceed on that basis.

Mudflap contends that if this action is stayed pending resolution of the arbitration, it will suffer harm because Roady's would be permitted to continue misusing its trade secrets "indefinitely." But this contention rings hollow since it offers no evidence of such harm and did not seek a provisional remedy to address or alleviate any misuse in any event. Even assuming that Mudflap *is* experiencing harm, that can be remedied in this litigation once the stay is lifted (i.e., damages), assuming Mudflap prevails in the arbitration.

In accordance with the foregoing, Roady's motion to stay is GRANTED.

IV. CONCLUSION

Roady's motion to stay this action pending resolution of the arbitrations is GRANTED.

The Case Management Conference scheduled for May 16, 2024, is VACATED. The Court schedules a Status Conference for **November 14, 2024, at 2:30 p.m.** No later than 10 days before the Status Conference, the parties must file a joint statement that includes an update as to the arbitration proceedings.

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

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[1] As alleged in the Complaint, Roady's development of an imitation product utilized confidential information that Patterson "learned as a Mudflap insider." (Complaint, ¶ 5.)

No court order has been issued which would allow recording of any portion of this motion calendar.

The Court does not provide court reporters for proceedings in the complex civil litigation departments. Any party wishing to retain a court reporter to report a hearing may do so in compliance with this Court's October 13, 2020 Policy Regarding Privately Retained Court Reporters.

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Calendar Line 3

Case Name:
Case No.:

- oo0oo -

Calendar Line 4

Case Name: *Jesse Hughes v. Roadie, Inc.*
Case Nos.: 22CV409283

This is a representative action under the Private Attorneys General Act ("PAGA") by Plaintiff Jesse Hughes for civil penalties based on Defendant Roadie, Inc.'s ("Roadie" or "Defendant") alleged willful misclassification of Plaintiff and Aggrieved Employees as independent contractors, thereby failing to provide them with all wages to which they are entitled, among other things.

Before the Court is Defendant's motion to stay this action pending resolution of the arbitration of Plaintiff's individual claims. As discussed below, the Court GRANTS Defendant's motion.

I. BACKGROUND

A. Factual

According to the allegations of the operative Second Amended Complaint ("SAC"), Roadie is a company that provides delivery services throughout the country utilizing a crowdsourced delivery platform. (SAC, ¶ 10.) Plaintiff has worked for Roadie since June 2022 as a delivery driver. (*Id*., ¶ 11.) Plaintiff alleges that Roadie willfully and incorrectly labels him and Aggrieved Employees as "independent contractors," when in fact they are employees for purposes of the Labor Code and IWC wage orders under California's Assembly Bill No. 5. (*Id*., ¶ 12.) Because of this misclassification, Roadie has no policies or procedures to provide employees with the meal and rest breaks to which they are entitled, nor policies or procedures to provide overtime compensation or reimburse employees for business expenses incurred in the discharging of their duties. (*Id*., ¶¶ 20-22.)

B. Procedural

Based on the foregoing, Plaintiff initiated this action with the filing of a class action complaint on December 29, 2022, asserting eight causes of action for various Labor Code violations. On February 14, 2023, Plaintiff filed a first amended class action complaint that asserted the same claims as the complaint, along with a new claim for penalties under PAGA. On October 31, 2023, Plaintiff filed a second amended class action complaint that was nearly identical to the first amended class action complaint. Plaintiff then filed "Notice of Errata Regarding the Second Amended Complaint Filing" on November 8, 2023, which explained that the version of the SAC filed on October 31, 2023 was the incorrect version and replaced that filing with the correct version of the SAC. This version asserts a single cause of action for penalties under PAGA based on the Labor Code violations described above.

In a letter dated December 27, 2022, Defendant's counsel provided opposing counsel with the arbitration agreement (the "Agreement") Plaintiff had signed in connection with his deliveries on Defendant's behalf and demanded that, pursuant to that agreement, Plaintiff submit his claims to individual arbitration. Over the next five months, the parties met and conferred over a variety of issues, including potential arbitration. Plaintiff ultimately agreed to dismiss his class claims without prejudice, submit his individual claims to binding arbitration,

and filed the operative SAC, asserting a representative action under PAGA. The parties entered into a stipulation to these effects and the Court entered a related order on September 28, 2023.

At the November 9, 2023 case management conference, Defendant advised the Court of Plaintiff's refusal to stay this action pending resolution of his individual claims (including his allegation of misclassification, and thus standing to assert a representative PAGA action) and its intent to seek a stay via a motion to compel arbitration. The parties subsequently agreed to a briefing schedule for the instant motion, and the Court issued an order on November 21, 2023.

II. MOTION TO COMPEL ARBITRATION AND STAY ACTION

In its notice of motion, Roadie moves for an order (1) compelling arbitration of Plaintiff's entire SAC, including the threshold issue of whether Plaintiff has standing to bring forth claims under the Labor Code, and (2) staying this action pending resolution of the instant motion and, if arbitration is ordered, continuing the stay until an arbitration is completed in accordance with the parties' arbitration agreements and the order compelling arbitration.

This Court has already ordered Plaintiff to arbitrate his individual claims in its September 28, 2023 order. There does not appear to be any dispute between the parties that the foregoing arbitration includes the issue of whether Plaintiff is an "employee" or "independent contractor" and thus whether he has standing to assert a representative PAGA claim on behalf of other "Aggrieved Employees." Indeed, this is the *primary* dispute underlying this lawsuit and the individual claims that Plaintiff must arbitrate. Where the dispute arises is whether this Court should stay this action pending the arbitrator's determination of Plaintiff's status.

Defendant asserts that this matter should be stayed pursuant to the Federal Arbitration Act ("FAA"), which it maintains controls the Agreement, because doing so will serve the ends of judicial economy and avoid the possibility of conflicting judgments between the arbitrator and this Court as to the issue of Plaintiff's employment status.

In opposition, Plaintiff insists that the California Code of Civil Procedure applies to the Agreement rather than the FAA, and that under Code of Civil Procedure section 1281.4, [1]the Court has discretion to not stay the representative PAGA claims. He continues that even under the FAA, the Court has discretion not to stay the representative PAGA claims, and should decline to do so because the preclusive effect of the arbitrator's ruling on Plaintiff's status alleviates the risk of conflicting rulings and, even if Plaintiff were to lose standing based on the arbitrator's decision, the representative claims could be maintained by different aggrieved employee. Finally, he maintains that a stay would prejudice his ability to investigate the merits of the State of California's claims and run counter to PAGA's goal of enforcing the Labor Code.

[1] Code of Civil Procedure section 1281.4 ("Section 1281.4") provides, in pertinent part, that when a trial court "has ordered arbitration of a controversy which is an issue involved in an action or proceeding pending before" the court, it "shall, upon motion of a party … stay the action or proceeding until an arbitration is had in accordance with the order to arbitrate."

The Court does not believe that it need resolve the issue of whether the FAA or the Code of Civil Procedure applies to the Agreement because regardless of which one does, the Court finds that a stay of this action pending conclusion of the arbitration of Plaintiff's individual claims is warranted.

Because a PAGA plaintiff who is compelled to arbitrate his or her individual PAGA claims maintains standing to assert the remaining non-individual PAGA (i.e., representative) claims in court, a "the trial court may exercise its discretion to stay the non-individual claims pending the outcome of the arbitration pursuant to section 1281.4 of the Code of Civil Procedure." (*Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104, 1123 (*Adolph*).) Defendant persuasively argues that a stay is the most appropriate action here given the central dispute over Plaintiff's standing to pursue claims under PAGA as an "aggrieved employee. In *Adolph*, the court spoke approvingly of the approach urged by Defendant here. That is, where there is a dispute over whether the plaintiff qualifies as an "aggrieved employee" under PAGA, a court can exercise its discretion and issue a stay pending the outcome of the arbitration. Following the arbitration, "[if] the arbitrator determines that" the plaintiff "is an aggrieved employee in the process of adjudicating his individual PAGA claim, that determination, if confirmed and reduced to a final judgment [], would be binding on the court, and [the plaintiff] would continue to have standing to litigate his non-individual claims." (*Adolph*, *supra*, at 1123-1124.) However, "if the arbitrator determines that [the plaintiff] is not an aggrieved employee," the court "would give effect to that finding, and [the plaintiff] could no longer prosecute his non-individual claims due to lack of standing." (*Id*. at 1124.)

It is notable that Plaintiff has not cited *any* relevant post-*Adolph* authority which supports *not* issuing a stay and allowing the representative PAGA action to proceed even where there is a dispute over the named Plaintiff's standing to pursue such an action. As such, Plaintiff's reliance on *Jarboe v. Hanlees Auto Grp*. (2020) 53 Cal.App.5th 539, 557 (*Jarboe*), in which the appellate court held that the trial court had not erred in declining to stay representative PAGA claims under Section 1281.4, does not compel a contrary conclusion because the case is inapposite. In *Jarboe*, a plaintiff brought an individual and representative (PAGA) wage and hour action against his employer (an automobile dealership), the owners of the dealership and other affiliated dealerships. (*Jarboe*, 53 Cal.App.5th at 543-544.) All but one cause of action was asserted against "all defendants" without differentiation. (*Id*. at 546.) The defendants moved to compel arbitration based on an employment agreement between the plaintiff and his direct employer. The trial court granted the motion, in part, as to the plaintiff's direct employer, while denying it as to the other defendants on the ground that only the direct employer was a party to the underlying employment agreement, and thus had the right to compel arbitration. The court also refused to stay the causes of action against those non-signatory defendants—including the PAGA claim—and allowed them to proceed in litigation pending arbitration of the plaintiff's individual claims against his direct employer. (*Id*. at 544-547.) The appellate court affirmed on several grounds, including the ground that individual and representative claims in a PAGA cause of action are not severable.

Here, as Defendant argues, unlike in *Jarboe, Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639 (*Viking River*) preempted California's prior rule that PAGA claims cannot be severed into individual and representative claims. (*Viking River* at 662.) Further, the court in *Jarboe* was confronted with numerous parties who had not signed the applicable arbitration agreement, whereas here there is only one defendant who is indisputably a signatory to the Agreement with Plaintiff.

Furthermore, the Court is not persuaded that *Balderas v. Fresh Start Harvesting, Inc.* (2024) 101 Cal.App.5th 533 (*Balderas*), a case cited by Plaintiff in a notice of new authority filed on May 14, 2024, has any impact on whether a stay should issue in this case. In *Balderas*, the trial court issued an order striking the plaintiff's complaint based on its determination that, without an individual claim for PAGA relief, she lacked standing to pursue representative PAGA claims on behalf of other employees. (*Id*. at p. 536.) The appellate court reversed, explaining that under *Adolph* (as opposed to *Viking River*), there are only two requirements for standing to bring a representative PAGA action: (1) that the plaintiff is someone who was employed by the alleged violator, and (2) that the plaintiff is someone against whom one or more violations was committed. (*Id*. at pp. 538-539.) The *Balderas* court reasoned that PAGA's statutory purpose "is furthered by extending broad standing to aggrieved employees who do not depend on the viability or strength of a plaintiff's individual PAGA claim," such that "[t]he inability for an employee to pursue an individual PAGA claim does not prevent an employee from filing a representative PAGA action." (*Id*. at p. 537.) Because the plaintiff satisfied the two-fold standing requirement, the *Balderas* court held it was error to strike her complaint even without an individual claim. (*Id.* at p. 539.)

As described, *Balderas* is a case re-emphasizing the requirements for *PAGA standing*. The Court has no quarrel with its holding on that issue, or with the premise that a representative PAGA claim can be pursued without an individual claim so long as the plaintiff meets the elements for standing. However, *Balderas* says nothing about the propriety of issuing a discretionary stay of representative PAGA claims under these circumstances: that is, when the plaintiff's standing to pursue any PAGA claims is an issue to be decided within an arbitration on his individual claim. Instead, this action mirrors *Adolph*: if the arbitrator determines that Plaintiff was an independent contractor and not an employee, then he lacks standing to pursue both his individual claim and the representative PAGA Action, and vice versa. (*Adolph, supra*, 14 Cal.5th at pp. 1123-1124.) To the extent Plaintiff suggests based on an isolated passage from *Balderas* that his standing to pursue representative claims should be examined separately or under a different rubric, he overlooks the remainder of the *Balderas* opinion. And contrary to Plaintiff's assertions, a stay of the representative claims will not be prejudicial to the State because it does not prevent other alleged employees of Defendant from filing separate PAGA actions against it.

In accordance with the foregoing, Defendant's motion is GRANTED.

III. CONCLUSION

Defendant's motion to compel arbitration and stay this action pending resolution of the arbitration is GRANTED.

The Case Management Conference scheduled for June 6, 2024, is VACATED. The Court schedules a Status Conference for **November 14, 2024, at 2:30 p.m.** No later than 10 days before the Status Conference, the parties must file a joint statement that includes an update as to the arbitration proceedings.

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

Parties may appear in person or remotely. Remote appearances must be made through Microsoft Teams, unless otherwise arranged with the Court. Please go to https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml to find the appropriate link.

State and local rules prohibit recording of court proceedings without a court order. These rules apply while in court and also while participating or listening in a hearing remotely. No court order has been issued which would allow recording of any portion of this motion calendar.

The Court does not provide court reporters for proceedings in the complex civil litigation departments. Any party wishing to retain a court reporter to report a hearing may do so in compliance with this Court's October 13, 2020 Policy Regarding Privately Retained Court Reporters.

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