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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

MAXIM MARKETING CORPORATION, Plaintiff and Respondent, v. TRADER JOE'S COMPANY, Defendant and Appellant.	B258308 (Los Angeles County Super. Ct. No. BC533822)

APPEAL from an order of the Superior Court of Los Angeles County, Mark V. Mooney, Judge. Affirmed.

Mintz Levin Cohn Ferris Glovsky and Popeo, Harvey I. Saferstein, Nada I. Shamonki, Abigail V. O'Brient and Dawn Sestito, for Plaintiff and Respondent.

O'Melveny & Myers, Carla J. Christofferson, Adam G. Levine and Daniel J. Faria, for Defendant and Appellant.

This litigation concerns the purchase and sale of peanut butter filled pretzels. In about 1988, defendant Trader Joe's Corporation (Trader Joe's) began buying peanut butter pretzels from plaintiff Maxim Marketing Corporation (Maxim). Some 25 years later, in 2013, Trader Joe's ended its relationship with Maxim and began buying peanut butter pretzels directly from ConAgra Foods, Inc. (ConAgra), the company that had been manufacturing the pretzels for Maxim, and to whom Maxim allegedly had disclosed its proprietary pretzel recipe.

Maxim sued Trader Joe's and ConAgra for a variety of torts, including breach of express and implied contract, inducing breach of contract, violations of Business and Professions Code section 17200, and violations of the Cartwright Act. Trader Joe's petitioned to compel arbitration of Maxim's claims pursuant to an arbitration provision in its vendor agreement with Maxim. The trial court denied the petition to compel, finding that Maxim's claims against Trader Joe's and ConAgra were legally and factually intertwined. Trader Joe's appealed. (Code Civ. Proc., § 1294, subd. (a).)

We affirm. Code of Civil Procedure section 1281.2, subdivision (c)[1] provides that a trial court need not enforce an arbitration agreement if (1) a party to the arbitration agreement is also a party to a pending court action, (2) the actions arise out of the same or related transactions, and (3) there is a possibility of conflicting rulings on common issues of law or fact. Because the trial court did not err in concluding that the provisions of section 1281.2, subdivision (c) were met here, it did not abuse its discretion in denying Trader Joe's petition to compel arbitration.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Maxim's Complaint

Maxim filed the present action against ConAgra and Trader Joe's on January 22, 2014, and filed the operative first amended complaint (complaint) on March 19, 2014. The complaint alleges that Maxim began selling "peanut butter filled pocket pretzels" to

[1] All subsequent undesignated statutory references are to the Code of Civil Procedure.

Trader Joe's in 1988. Maxim produced the peanut butter pretzels through a series of manufacturers, including Anderson Bakery Co., Inc. (Anderson), to whom Maxim disclosed confidential manufacturing information. In connection with Maxim's disclosure of this confidential information, Anderson executed a "Confidentiality Agreement," which provided as follows:

"This Agreement is made and entered into this 22nd day of August 1995, by and between ANDERSON BAKERY (Anderson) and any and all of its agents, representatives or assignees, and MAXIM MARKETING CORPORATION, a California Corporation (Maxim).

"In consideration of Maxim disclosing certain information that is proprietary and confidential, Anderson agrees that it shall not directly or indirectly use, disclose, or publish for the benefit of Anderson or any third party, without the prior written consent of Maxim, any information relating to the manufacture or distribution of 'Pocket Pretzels' peanut butter filled pretzels.

"Anderson expressly agrees that any breach of this agreement shall constitute 'irreparable harm' for which there is no 'adequate remedy at law,' as these phrases are defined in the applicable California authorities, which will entitle Maxim to seek injunctive and monetary relief to the full extent allowed under California law. This Agreement, regardless of where entered into, shall be governed by and construed and interpreted in accordance with the laws of the State of California, and all judicial proceedings shall be heard by, and the parties agree to submit to, the jurisdiction of the Second Judicial District Court of the State of California."

In 1999, Anderson was sold to National Pretzels, Inc. (National), and in 2011, National was acquired by ConAgra. For a time, ConAgra continued to produce peanut butter pretzels for Maxim, but in June 2013, ConAgra notified Maxim that it intended to terminate the relationship, and in September 2013, Trader Joe's informed Maxim that it would no longer purchase peanut butter pretzels from Maxim. Shortly thereafter, ConAgra began selling peanut butter pretzels directly to Trader Joe's. The pretzels sold by ConAgra to Trader Joe's are alleged to be "identical to the peanut butter filled pocket

pretzels and other pretzel products that Maxim was selling to Trader Joe's, down to the exact same packaging."

As against ConAgra, the complaint alleges that ConAgra's direct sales to Trader Joe's violated the confidentiality agreement (first cause of action), an implied contract that ConAgra would not sell peanut butter pretzels directly to Trader Joe's (second cause of action), and the implied covenant of good faith and fair dealing (third cause of action). As against Trader Joe's, the complaint alleges that ConAgra's direct sales to Trader Joe's violated an implied contract that "as long as Maxim was willing and able to supply peanut butter filled pocket pretzels and other related pretzel products to Trader Joe's, Trader Joe's would purchase the peanut butter filled pocket pretzels from Maxim and would not undercut Maxim by buying directly from Maxim's contract manufacturers" (fourth cause of action), as well as the implied covenant of good faith and fair dealing (fifth cause of action). As against both defendants, the complaint alleges violations of Business and Professions Code section 17200 (sixth cause of action), intentional interference with contractual relations (seventh cause of action), intentional and negligent interference with prospective economic advantage (eighth and ninth causes of action), inducing breach of contract (tenth cause of action), violation of the Cartwright Act (Bus. & Prof. Code, §§ 16720-16728) (eleventh cause of action), and unjust enrichment (twelfth cause of action).

II.

Petition to Compel Arbitration

In April 2013, Trader Joe's moved to compel arbitration of Maxim's claims. In support, Trader Joe's attached a "Master Vendor Agreement" (MVA) executed by Trader Joe's and Maxim in February 2010, which provided in relevant part as follows:

"RECITALS

"A. TJ's desires to enter into or continue a business relationship with VENDOR (Maxim) whereby TJ's may from time to time issue purchase orders to VENDOR for certain products.

"B. TJ's and VENDOR desire to set forth herein the terms and conditions that will be applicable to any purchase orders issued by TJ's to VENDOR.

"NOW, THEREFOR, in consideration for the other's agreement to enter into this business relationship and the promises and agreements contained herein, TJ's and VENDOR agree to the following:

"1. Purchase Orders:

"(a) This Agreement shall be incorporated by reference and made a part of any purchase order hereinafter issued by TJ's to VENDOR.

"(b) Each of the terms and conditions set forth in this Agreement will apply to each purchase order unless expressly waived by TJ's or otherwise specified in the purchase order. . . .

"22. Claims and Disputes:

"(a) Any controversy or claim arising out [of] or relating to this Agreement or any purchase order issued which incorporates this Agreement, or the breach thereof, shall be settled in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Any award or decision resulting from any such arbitration proceeding will be final and binding on the parties and judgment on such award or decision may be entered in any court having jurisdiction thereof.

"(b) This Agreement and any purchase order issued which incorporates this Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding any laws regarding the conflict or choice of laws and the United Nations Convention on Contracts For the International Sale of Goods. Venue for any action or arbitration arising out of or relating to this Agreement or any purchase order issued which incorporates this Agreement, or the breach thereof, shall be in Los Angeles County, California, U.S.A. and the parties hereby consent to personal jurisdiction in said county."

Trader Joe's contended that all of Maxim's claims against it were subject to the arbitration provision of the MVA because all related to the parties' business relationship. Trader Joe's also contended that it was without significance that ConAgra was a party to

the Maxim litigation, but was not a signatory to the MVA: "Under the [Federal Arbitration Act (FAA)], even where some but not all parties to a litigation are signatories to an arbitration clause, the arbitration clause must still be enforced as to the signatories."

Maxim opposed the petition to compel. As relevant here, Maxim urged that section 1281.2 requires a court to deny a petition to compel arbitration where the claims governed by an arbitration clause are inextricably intertwined with claims against a third party with whom there is no arbitration agreement.[2]

The trial court denied the petition to compel arbitration. The court said the arbitration agreement was enforceable, but it found "very compelling [Maxim's] argument that, look, Maxim shouldn't have to do this in two forums, arbitrating against Trader Joe's and then proceed against ConAgra in this forum. They should all be in one place." It thus ordered that Maxim's claims against both defendants be litigated in court.

Maxim served notice of entry of the order denying the petition to compel arbitration on August 15, 2014. Trader Joe's timely appealed.

DISCUSSION

Trader Joe's contends the trial court erred by denying its petition to compel arbitration pursuant to section 1281.2, subdivision (c). Trader Joe's asserts: "Although the Superior Court correctly held that the MVA's arbitration clause is valid and enforceable, it went on to deny Trader Joe's motion to compel arbitration because there was a second defendant, ConAgra, who did not have an arbitration agreement with Maxim. The Superior Court's ruling was a clear error because such a broad-brush rule would effectively obviate countless negotiated and enforceable arbitration agreements whenever a plaintiff fashioned a complaint to add a party not subject to an arbitration agreement. That is not what the law requires and, indeed, it runs counter to the strong

[2] Maxim also contended the arbitration clause was facially inapplicable because it did not apply to Maxim's claims in this case, the MVA was procedurally and substantively unconscionable, and Maxim's Unfair Competition Law (UCL) claim against Trader Joe's for injunctive relief was not arbitrable.

presumptions in favor of enforcing arbitration clauses." (Internal record citations omitted.)

For the reasons that follow, we conclude that the trial court did not err in concluding that section 1281.2, subdivision (c) is applicable. The trial court properly found that (1) Maxim's actions against Trader Joe's and ConAgra arise out of the same or related transactions, and (2) trying the actions separately would create a possibility of conflicting rulings on common legal or factual issues. Accordingly, the trial court acted well within its discretion in denying the petition to compel arbitration.

I.

Governing Legal Principles

A. The California Arbitration Act Governs the Present Dispute

Although the Federal Arbitration Act (FAA) generally governs arbitration provisions in contracts that involve interstate commerce, contracting parties may agree to proceed according to state, rather than federal, arbitration rules. Where the parties have so agreed, "enforcing [state arbitration rules] according to the terms of the agreement is fully consistent with the goals of the FAA." (*Volt Info. Sciences v. Stanford Univ.* (1989) 489 U.S. 468, 479; *Mastick v. TD Ameritrade, Inc.* (2012) 209 Cal.App.4th 1258, 1263-1264 (*Mastick*).)

In the present case, the parties appear to concede that the California Arbitration Act (CAA) governs their dispute. We agree. Paragraph 22(b) of the MVA provides: "This Agreement and any purchase order issued which incorporates this Agreement *shall be governed by and construed in accordance with the laws of the State of California*." (Italics added.) Because the MVA thus provides that disputes will be "governed by" California law, we look to the CAA to determine whether the trial court correctly denied Trader Joe's petition to compel arbitration.

B. Under the CAA, a trial court has discretion to deny a petition to compel arbitration in order to avoid inconsistent results

1. Section 1281.2, subdivision (c)

Under the CAA, a trial court generally is required to order a dispute to arbitration when the party seeking to compel arbitration proves the existence of a valid arbitration agreement covering the dispute. (*Laswell v. AG Seal Beach, LLC* (2010) 189 Cal.App.4th 1399, 1404-1405 (*Laswell*).) An exception exists, however, in cases where the following three elements are met:

(1) "[a] party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party,"

(2) the third-party action "aris[es] out of the same transaction or series of related transactions[,]" and

(3) "there is a possibility of conflicting rulings on a common issue of law or fact." (§ 1281.2, subd. (c).)

If all three conditions are satisfied, the trial court has discretion to either deny or stay arbitration despite an agreement to arbitrate the dispute. Specifically, the court may do any of the following: (1) "refuse to enforce the arbitration agreement and . . . order intervention or joinder of all parties in a single action or special proceeding;" (2) "order intervention or joinder as to all or only certain issues;" (3) "order arbitration among the parties who have agreed to arbitration and stay the pending court action or special proceeding pending the outcome of the arbitration proceeding;" or (4) "stay arbitration pending the outcome of the court action or special proceeding." (§ 1281.2, subd. (c); see also *Acquire II, Ltd. v. Colton Real Estate Group* (2013) 213 Cal.App.4th 959, 967-968 (*Acquire II*).)[3]

[3] Section 1281.2 provides, in full: "On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party thereto refuses to arbitrate such controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists, unless it determines that:

California courts have explained that section 1281.2, subdivision (c) is consistent with California's public policy favoring arbitration: " 'While there is a strong public policy in favor of arbitration, there is an "equally compelling argument that the Legislature has also authorized trial courts to refuse enforcement of an arbitration agreement [or to stay the arbitration] when, as here, there is a possibility of conflicting rulings." ' " (*Abaya v. Spanish Ranch I, L.P.* (2010) 189 Cal.App.4th 1490, 1497 (*Abaya*).) Thus, " ' "[s]ection 1281.2(c) is not a provision designed to limit the rights of parties who choose to arbitrate or otherwise to discourage the use of arbitration. Rather, it is part of California's statutory scheme designed to enforce the parties' arbitration agreements. . . . Section 1281.2(c) addresses the peculiar situation that arises when a

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"(a) The right to compel arbitration has been waived by the petitioner; or

"(b) Grounds exist for the revocation of the agreement.

"(c) A party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact. For purposes of this section, a pending court action or special proceeding includes an action or proceeding initiated by the party refusing to arbitrate after the petition to compel arbitration has been filed, but on or before the date of the hearing on the petition. This subdivision shall not be applicable to an agreement to arbitrate disputes as to the professional negligence of a health care provider made pursuant to Section 1295.

"If the court determines that a written agreement to arbitrate a controversy exists, an order to arbitrate such controversy may not be refused on the ground that the petitioner's contentions lack substantive merit.

"If the court determines that there are other issues between the petitioner and the respondent which are not subject to arbitration and which are the subject of a pending action or special proceeding between the petitioner and the respondent and that a determination of such issues may make the arbitration unnecessary, the court may delay its order to arbitrate until the determination of such other issues or until such earlier time as the court specifies.

"If the court determines that a party to the arbitration is also a party to litigation in a pending court action or special proceeding with a third party as set forth under subdivision (c) herein, the court (1) may refuse to enforce the arbitration agreement and may order intervention or joinder of all parties in a single action or special proceeding; (2) may order intervention or joinder as to all or only certain issues; (3) may order arbitration among the parties who have agreed to arbitration and stay the pending court action or special proceeding pending the outcome of the arbitration proceeding; or (4) may stay arbitration pending the outcome of the court action or special proceeding."

controversy also affects claims by or against other parties not bound by the arbitration agreement. The California provision giving the court discretion not to enforce the arbitration agreement under such circumstances—in order to avoid potential inconsistency in outcome as well as duplication of effort—" ' is consistent with the policy of encouraging arbitration. (*Cronus Investments, Inc. v. Concierge Services* (2005) 35 Cal.4th 376, 393.)" (*Abaya*, *supra*, at p. 1497.)

2. Standard of Review

When section 1281.2, subdivision (c) applies, "the trial court's discretionary decision as to whether to stay or deny arbitration is subject to review for abuse." (*Laswell*, *supra*, 189 Cal.App.4th at p. 1406.) The trial court's decision *whether* section 1281.2, subdivision (c) applies, however, "is reviewed under either the substantial evidence standard or the de novo standard. If the court based its decision on a legal determination, then we adopt the de novo standard. (*Laswell*, at p. 1406 [whether a party constitutes a third party under §1281.2(c) is a legal question subject to de novo review]; *Molecular Analytical* [(2010)] 186 Cal.App.4th [696,] 708-709.) If the court based its decision on a factual determination, then we adopt the substantial evidence standard of review. (*Laswell*, at p. 1406.) Whether there are conflicting issues arising out of related transactions is a factual determination subject to review under the substantial evidence standard. (*Metis* [*Development LLC v. Bohacek* (2011)] 200 Cal.App.4th [679,] 691, fn. 7.)" (*Acquire II*, *supra*, 213 Cal.App.4th at pp. 971-972, italics added.)

We note that the allegations of the parties' pleadings may constitute substantial evidence sufficient to support a trial court's finding that section 1281.2, subdivision (c) applies. (*Acquire II*, *supra*, 213 Cal.App.4th at p. 972.) One court has explained: "A party relying on section 1281.2(c) to oppose a motion to compel arbitration does not bear an evidentiary burden to establish a likelihood of success or make any other showing regarding the viability of the claims and issues that create the possibility of conflicting rulings. (*Abaya*, at pp. 1498-1499.) An evidentiary burden is unworkable under section 1281.2(c) because the question presented is whether a ' "possibility" ' of conflicting rulings exists (*Abaya*, at p. 1499) and a motion to compel arbitration is typically brought

before the parties have conducted discovery. Moreover, section 1281.2(c) prohibits a trial court from considering the merits of a party's claims when ruling on a motion to compel arbitration. (§ 1281.2(c); *California Correctional Peace Officers Assn. v. State of California* (2006) 142 Cal.App.4th 198, 205, 211.)" (*Id.* at pp. 972-973.)

Accordingly, the issues before us are whether the allegations of the parties' pleadings or other evidence in the record constitute substantial evidence to support the trial court's implied findings that (1) "[a] party to the arbitration agreement [Maxim] is also a party to a pending court action or special proceeding with a third party [ConAgra]"; (2) the third-party action between Maxim and ConAgra "aris[es] out of the same transaction or series of related transactions" as the action between Maxim and Trader Joe's; and (3) "there is a possibility of conflicting rulings on a common issue of law or fact." (§ 1281.2, subd. (c).) Because both parties appear to concede the existence of a pending action between Maxim and ConAgra, we turn now to the latter two issues.

II.

Maxim's Claims Against Trader Joe's and ConAgra Arise Out of the Same or Related Transactions and There Is a Possibility of Conflicting Rulings on Common Issues

Trader Joe's contends that the claims against it and ConAgra do not arise out of the same or related transactions because (1) Maxim's claims against ConAgra relate to breaches of the confidentiality agreements and alleged implied contracts between Maxim and ConAgra, to which Trader Joe's was not a party, and (2) Maxim's claims against Trader Joe's relate to breaches of alleged implied contracts between Maxim and Trader Joe's, to which ConAgra was not a party. Thus, Trader Joe's urges, "this action involves two separate fact patterns and two separate disputes."

We do not agree. Although Trader Joe's is correct that the first five causes of action allege breaches of the separate agreements between Maxim and ConAgra, on the one hand, and Maxim and Trader Joe's, on the other, many of the remaining causes of action allege actions taken by Trader Joe's and ConAgra *in concert*:

- Violation of Business and Professions Code section 17200 (sixth cause of action): "ConAgra, with full knowledge that there are no other manufacturers of peanut butter filled pocket pretzels that could supply Maxim's needs, breached the Confidentiality Agreement and the parties' implied-in-fact contract with the intent and purpose to acquire Maxim's customers, such as Trader Joe's, by offering and selling Maxim's products to those customers such as Trader Joe's. [¶] . . . On information and belief, *Trader Joe's encouraged and assisted ConAgra in the theft of the Trader Joe's account* and business from Maxim." (Italics added.)

- Intentional interference with contractual relations (seventh cause of action): "On information and belief, in order to increase its profits, ConAgra *induced Trader Joe's to breach its implied-in-fact contract with Maxim* and buy the peanut butter filled pocket pretzels and other related pretzel products directly from ConAgra. [¶] . . . Similarly, on information and belief, Defendant Trader Joe's knew of Maxim and ConAgra's implied-in-fact contract, which forbid[s] ConAgra from undercutting Maxim and selling the peanut butter filled pretzels and other related pretzel products directly to Maxim's customer, Trader Joe's. [¶] . . . On information and belief, in order to increase its profits, *Trader Joe's induced ConAgra to breach its implied-in-fact contract with Maxim* by having ConAgra sell the peanut butter filled pretzels and other related pretzel products directly to Trader Joe's." (Italics added.)

- Inducing breach of contract (tenth cause of action): "On information and belief, in order to increase its profits, *ConAgra intended to, and did, induce Trader Joe's to breach its implied-in-fact contract with Maxim* by causing Trader Joe's to buy the peanut butter filled pocket pretzels and other related pretzel products directly from ConAgra. [¶] . . . [¶] On information and belief, in order to increase its profits, *Defendant Trader Joe's intended to, and did, induce ConAgra to breach both its implied-in-fact contract with Maxim* and the Confidentiality Agreement by causing ConAgra to sell the peanut butter filled pretzels and other related pretzel products directly to Trader Joe's, and by causing ConAgra to use Maxim's confidential information and

specifications to undercut Maxim and manufacture and sell the peanut butter filled pocket pretzels to Trader Joe's." (Italics added.)

- Violation of Cartwright Act, Business and Professions Code sections 16720 to 16728 (eleventh cause of action): "*Defendants conspired with each other* and with third parties . . . to create or carry out restrictions in trade or commerce to limit or reduce competition in the production and distribution of a commodity and to prevent competition in manufacturing, making, transportation, or sale of a commodity in violation of California Business and Professions Code § 16720." (Italics added.)

- Unjust enrichment (twelfth cause of action): "*As a result of Defendants' unfair and illegal actions*, Defendants have increased their profits in making and/or selling peanut butter filled pocket pretzels." (Italics added.)

The above-quoted language makes clear that the alleged liability of both defendants is predicated on the very same transactions: The termination of their respective contracts with Maxim and the formation of a direct contractual relationship with one another. The trial court thus did not err in concluding that the second prong of section 1281.2, subdivision (c) applied.

The trial court also did not err in concluding that if the claims are not resolved in a single proceeding, there is a very real "possibility of conflicting rulings on a common issue of law or fact" within the meaning of the third prong of section 1281.2, subdivision (c). The alleged Cartwright Act violation provides the clearest example. The elements of [a] Cartwright Act claim are " ' " '(1) the formation and operation of [a] conspiracy, (2) the wrongful act or acts done pursuant thereto, and (3) the damage resulting from such act or acts. [Citations.]' " ' [Citations.]" (*Marsh v. Anesthesia Services Medical Group, Inc*. (2011) 200 Cal.App.4th 480, 493.) If the claims against Trader Joe's and ConAgra are not resolved in the same proceeding, one trier of fact could find that the two defendants conspired to restrain trade, while a second trier of fact finds that the two defendants did *not* so conspire. Or, even if both triers of fact were to find a conspiracy between the defendants, they could reach very different conclusions about the amount of damage resulting from such acts.

There is also a possibility of conflicting rulings with regard to the alleged Business and Professions Code section 17200 violation. The sixth cause of action alleges joint action between ConAgra and Trader Joe's—that ConAgra "systematically learned about Maxim's business for peanut butter filled pocket pretzels" in order to "acquire Maxim's customers," and that Trader Joe's "encouraged and assisted ConAgra in the theft of the Trader Joe's account and business from Maxim." If the Business and Professions Code section 17200 claims against ConAgra and Trader Joe's were to be tried in separate proceedings, the triers of fact could reach inconsistent results about the relative culpability of the parties and the degree to which they acted together.

We reach the same conclusion with regard to the causes of action for breach of contract and inducing breach of contract. The first three causes of action allege that ConAgra breached written and implied contracts between it and Maxim, and the tenth cause of action alleges that Trader Joe's induced ConAgra to breach these same contracts. Were the claims against the two defendants to be tried in separate proceedings, the triers of fact could reach different conclusions as to whether the contracts existed, what their terms were, and whether they were breached. The same is true of the fourth and fifth causes of action, which allege that Trader Joe's breached implied contracts to purchase peanut butter pretzels from Maxim so long as Maxim was able to supply them, and the tenth cause of action, which alleges that ConAgra knew of these contracts and induced Trader Joe's to breach them. If these claims are not tried in the same proceeding, there is a possibility that the triers of fact will reach conflicting results about whether the implied contracts existed, what their terms were, and whether they were breached.

The present case thus is analogous to *Mastick*, *supra*, 209 Cal.App.4th 1258. There, the Court of Appeal found the trial court did not abuse its discretion by denying a petition to compel pursuant to section 1281.2, subdivision (c) because plaintiff's claims against each defendant "are based on a single injury arising from advice given at a single meeting concerning a single transaction. As the federal district court aptly observed when it approved [a defendant's] joinder, 'If the actions proceed separately, there is a risk that the proceedings may come to inconsistent rulings—one proceeding could hold that

Plaintiff was careless in her actions, and the other proceeding could hold that there was misconduct but that the parties in the other action were more culpable. This would risk duplicative proceedings, which would be inefficient for the courts, costly for the parties, and, to the extent they could reach inconsistent results, contrary to the interests of justice.' " (*Mastick,* at p. 1265.)

We reject Trader Joe's contention that by affirming the order denying the petition to compel, we are permitting a party "who contractually commits to arbitrate to ignore that commitment and circumvent clear federal and state policies favoring arbitration simply by adding an additional defendant to a complaint." As we have explained, many of Maxim's causes of action allege joint tortious conduct by Trader Joe's and ConAgra. The existence of an arbitration agreement between Trader Joe's and Maxim does not require Maxim to litigate in two separate proceedings claims that may be tried more efficiently in one action.

We also reject Trader Joe's contention that the trial court abused its discretion by denying the petition to compel arbitration because ConAgra is willing to submit to arbitration. It is undisputed that there is no arbitration agreement between Maxim and ConAgra; thus, nothing compels Maxim to waive its right to have its claims against ConAgra resolved in a judicial forum.[4]

[4] In light of our conclusion that section 1281.2 supports the trial court's denial of the petition to compel, we do not reach Trader Joe's alternative contention that Business and Professions Code section 17200 claims are arbitrable.

DISPOSITION

The order denying Trader Joe's petition to compel arbitration is affirmed. Maxim is awarded its appellate costs.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EDMON, P. J.

We concur:

KITCHING, J.

EGERTON, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.