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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION

SALVADOR CANAVA, individually and on behalf of others similarly situated,

Plaintiffs,

v.

RAIL DELIVERY SERVICES, INCORPORATED AND GREG P. STEFFLRE, JUDI GIRARD STEFFLRE,

Defendants.

Case No. 5:19-cv-00401-JGB (KKx)
Honorable Jesus G. Bernal
Courtroom 1

DEFENDANTS' NOTICE OF MOTIONS AND MOTION TO STRIKE PLAINTIFF'S CLASS ALLEGATIONS (FED. R. CIV. P. 12(F), 23(d)(1)(D)), AND TO COMPEL ARBITRATION OF PLAINTIFF'S SECOND, SIXTH, SEVENTH AND EIGHTH CAUSES OF ACTION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; [PROPOSED] ORDER

(Filed Concurrently with Declaration of Greg P. Stefflre; and [Proposed] Order)

Hearing Date:	September 16, 2019
Time:	9:00 a.m.
Location:	U.S. Courthouse 3470 Twelfth Street Riverside, CA 92501
Courtroom:	1

Complaint filed: March 4, 2019

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TO THE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD:

Notice is hereby given that on September 16, 2019 at 9:00 a.m., before the Honorable Jesus G. Bernal, in Courtroom 1 of the United States Courthouse for the Central District of California, Eastern Division, located at 3470 Twelfth Street Riverside, CA 92501, Defendants Rail Delivery Services, Incorporated, Greg P. Stefflre, and Judi Girard Stefflre (collectively "Defendants"), will and hereby do make the following motions:

1. Motion to Strike

Defendants move to strike the class and collective action claims and allegations of Plaintiff's First Amended Complaint [Dkt. 31], specifically:

(1) Paragraph 5, "on behalf of himself and the above similarly situated Drivers";

(2) Paragraphs 6, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 26 in their entirety;

(3) Paragraph 92, "the members of the Rule 23 class";

(4) Paragraph 96, "Rule 23 class members";

(5) Paragraph 97, "during which members of the Rule 23 Class";

(6) Paragraph 98, "the members of the Ruler 23 Class";

(7) Paragraph 102, "Rule 23 Class members";

(8) Paragraph 103, "members of the Rule 23 Class";

(9) Paragraph 104, "the members of the Rule 23 Class";

(10) Paragraph 107, "members of the Rule 23 Class";

(11) Paragraph 108, "Rule 23 Class";

(12) Paragraph 111, "members of the Rule 23 Class";

(13) Paragraph 112, "Members of the Rule 23 Class";

(14) Paragraph 114, "members of the Rule 23 Class";

(15) Paragraph 115, "the Rule 23 Class";

(16) Paragraph 117, "members of the Rule 23 Class";

(17) Paragraph 121, "members of the Rule 23 Class";

(18) Paragraph 123, "on behalf of himself and the above similarly situated Truck Drivers and in a representative capacity";

(19) Paragraph 123a, "similarly situated Truck Drivers";

(20) Paragraph 123b, "similarly situated Truck Drivers";

(21) Paragraph 123c, "similarly situated Truck Drivers";

(22) Paragraph 123d, "similarly situated Truck Drivers";

(23) Paragraph 123e, "similarly situated Truck Drivers";

(24) Paragraph 123f, "similarly situated Truck Drivers";

(25) Paragraph 125, "on behalf of himself and other current and former Truck Drivers;

(26) Page 23, Paragraph 1b, "Approving this action as a collective action";

(27) Page 24, Paragraph 1d, "and similarly situated represented parties for their…";

(28) Page 24, Paragraph 2a, "Certifying this action as a class action;"

(29) Page 24, Paragraph 2b, Designating Plaintiff Canova as the Class Representative;

(30) Page 24, Paragraph 2c, "Designating the undersigned counsel as class counsel"; and,

(31) For any other class and/or collective action allegation appearing in the First Amended Complaint and not identified above.

2. Motion to Compel Individual Arbitration

Defendants further move for an order compelling individual arbitration of Plaintiff's Second Cause of Action for Unconscionable Agreements, Sixth Cause

of Action for Failure to Pay Wages upon Termination, Seventh Cause of Action for Failure to Provide Accurate Wage Statement and Eighth Cause of Action for Violation of California Labor Code §§ 221 & 2802, pursuant to a valid arbitration clause mandating arbitration of these claims. Related to this motion, Defendants also seek a stay of the court proceedings as to the First and Third Causes of Action for wage claims and Tenth Cause of Action asserting Private Attorneys General Act ("PAGA") violations.

Pursuant to Local Rule 7-3, counsel for the parties held a conference by telephone on June 11, 2019, to discuss the motions. Counsel were unable to reach a resolution of the matter that would have avoided the filing of this motion but did agree upon a briefing schedule and hearing date for this motion which was submitted to the Court in a Joint Stipulation and proposed order and entered by the Court on June 13, 2019. [Dkt. 33 and 33-1.]

These Motions are based upon this Notice, the accompanying Memorandum of Points and Authorities, the Declaration of Greg P. Stefflre in Support of Defendants' Motions to Dismiss, to Strike, And To Compel Individual Arbitration, all pleadings and papers on file in this action, and upon such additional oral and/or written argument as the Court may permit at the time of the hearing.

Dated: June 28, 2019

By: /S/ *Victor J. Cosentino*
Victor J. Cosentino, Esq.,
Gloria G. Medel, Esq.
Attorneys for Defendants,
RAIL DELIVERY SERVICES, INCORPORATED, GREG P. STEFFLRE, AND JUDI GIRARD STEFFLRE

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTIONS TO STRIKE AND TO COMPEL INDIVIDUAL ARBITRATION

I. INTRODUCTION

This is a wage and hour class action filed by Salvador Canava ("Plaintiff") against Rail Delivery Services, Incorporated ("RDSI"), Greg P. Stefflre, and Judi Girard Stefflre (collectively "Defendants").

RDSI is a logistics company that handles warehousing, transloading, and consolidation of freight along with motor carrier services. With its motor carrier operation, it is involved in the interstate hauling of containerized rail cargo from rail yards in Southern California and providing trucking services throughout all of California, Nevada, and Arizona. Plaintiff was a commercial truck driver who provided a commercial motor vehicle ("CMV"), specifically a 2008 Freightliner Tractor, and driver services for RDSI for eight months pursuant to a written agreement in which he represented himself as an independent contractor. Plaintiff now claims that all along he was an employee and alleges misclassification. Moreover, he claims that not only was he misclassified but also every other owner-operator that working with RDSI was wrong about his or her status as an independent contractor.

Based on the essential theory that he was misclassified, Plaintiff's First Amended Complaint ("FAC") [Dkt. 31] alleges ten causes of action for:

(1) Fair Labor Standards Act Minimum Wage Violations (29 U.S. Code § 206);

(2) Unconscionable Agreements;

(3) California Minimum Wage Violations (Cal. Labor Code §§ 1194, 1182.12);

(4) Failure to Provide Meal Periods or Compensation in Lieu Thereof

(Cal. Labor Code § 226.7);

(5) Failure to authorize or Permit Rest Periods or Compensation in Lieu Thereof (Cal. Labor Code § 226.7);

(6) Failure to Pay Wages upon Termination or Quit (Cal. Labor Code §203);

(7) Failure to Provide Accurate Wage Statements (Cal. Labor Code §226);

(8) Violation of Labor Code §§ 221 & 2802;

(9) Violation of Business and Professions Code § 17200; and

(10) Claims under the Private Attorneys General Act of 2004 ("PAGA").

Plaintiff brings this action and seeks to represent similarly situated individuals on a class and collective basis even though he and Defendant RDSI entered in an agreement that expressly provided for arbitration on an individual basis of all claims. Plaintiff should not be allowed to circumvent his contractual obligations under the binding arbitration agreement.

Accordingly, Defendants now move to compel arbitration of Plaintiff's Second, Sixth, Seventh and Eighth Causes of Action on an individual basis pursuant to the California Arbitration Act, Cal. Code Civ. Proc. §§ 1280 *et seq*. ("CAA"). Defendants also move to strike all the class and representative allegations contained in Plaintiff's First Amended Complaint (except the PAGA claim) pursuant to Rules 12(f) and 23(d)(1)(D) of the Federal Rules of Civil Procedure.

Along with the order to compel arbitration, Defendants request the Court to stay the proceedings as to Plaintiff's First Cause of Action for Fair Labor Standards Act Minimum Wage Violations (29 U.S. Code § 206) and the Third Cause of Action for California Minimum Wage Violations (Cal. Labor Code §§ 1194, 1182.12) (which in any event should proceed only on an individual basis).

These causes of action are not subject to a motion to compel arbitration brought under the CAA and should be stayed. *Cal. Labor Code* §229; *Muller v. Roy Miller Freight Lines, LLC,* 34 Cal.App.5th 1056, 1070 (2019). Similarly, the Tenth Cause of Action (PAGA) also should be stayed while the parties arbitrate. *Iskanian v. CLS Transportation Los Angeles, LLC,* 59 Cal.4th 348(2014).

Concurrently herewith, Defendants have filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure Rule 12(b)(6). The motion seeks dismissal of Plaintiff's Fourth and Fifth causes of action for violations of California's meal and rest break laws, under Cal. Labor Code 226.7 and IWC Wage Order No. 9, because those laws are preempted by federal regulation as determined by the Federal Motor Carrier Safety Administration. *California's Meal and Rest Break Rules for Commercial Motor Vehicle Drivers; Petition for Determination of Preemption*, 83 Fed. Reg. 67470 (Dec. 28, 2018).

The only cause of action in the FAC not directly subject to a defense motion is the Ninth, for violation of Business and Professions Code § 17200. This derivative claim arises, if at all, under each of the substantive FLSA or Labor Code claims. Therefore, its treatment follows that of the substantive causes of action.

II. STATEMENT FACTS

RDSI is a motor carrier engaged in the interstate shipment of freight. (FAC ¶ 31, lines 2-3.) Greg P. Stefflre and Judi Girad Stefflre are officers of RDSI. (FAC ¶¶ 28-29.) Plaintiff is a California based truck driver engaged in Commercial Motor Vehicle transportation of property in interstate commerce. (FAC ¶ 1, lines 14-16.) Plaintiff entered into an Independent Contractor Agreement ("ICA") and Truck Lease with RDSI in September 2017. (FAC ¶ 36-37, lines 11-17; (See Declaration of Greg P. Stefflre in Support of Defendants' Motions to Dismiss, to Strike, And to Compel Individual Arbitration ("Stefflre

Dec."), Exhibit 1 (ICA) and Exhibit 2 (Truck Lease)).[1] The ICA and Truck Lease states that California substantive law applies to the parties. (FAC ¶ 78.)

Plaintiff was engaged as a contracted truck driver by RDSI from September 2017 through April 2018. (FAC ¶ 38, lines 18-20.) Plaintiff was engaged in interstate commerce while driving for Defendant RDSI pursuant to the Truck Lease and ICA. During the time he provided services for RDSI Canava drove a "big-rig" commercial motor vehicle, specifically a 2008 Freightliner. (See Stefflre Dec. Ex. 2, p. 7.)

The ICA contains an arbitration clause and a class action waiver. Section XIII of the ICA states, in part:

> Contractor and Carrier expressly intend and agree that class action and representative action procedures shall not be asserted, nor will they apply, in any arbitration pursuant to this Agreement. Contractor and Carrier agree that each will not assert class action or representative action claims against the other in arbitration or otherwise; and each of Contractor and Carrier shall only submit their own, individual claims in arbitration and will not seek to represent the Interests of any other person. … Accordingly, contractor and carrier agree that any disputes arising under or in connection with this Agreement or services rendered in connection with same shall be arbitrated pursuant to this arbitration agreement and any proceedings thereunder shall be governed by the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-16. (See Stefflre Dec. Ex. 1, p. 22, ¶ XIII.)

On March 4, 2019, Plaintiff filed his Class Action Complaint alleging that Plaintiff was an employee of RDSI rather than an independent contractor and

[1] For purposes of clarity, the Truck Lease referenced by Plaintiff's FAC is actually entitled Commercial/Business Use Vehicle Rental Agreement. (See Stefflre Dec., Ex. 2, p. 1.)

asserting the first nine causes of action shown above. [Dkt. 1] On May 22, 2019, Plaintiff filed a FAC adding a tenth cause of action, Private Attorneys General Act of 2004 ("PAGA"). [Dkt. 31] Defendants deny that Plaintiff was an employee and deny the substance of the allegations in the FAC.

III. LEGAL ARGUMENT

A. The California Arbitration Act Mandates Arbitration Where a Valid Arbitration Agreement Exists

Under the California Arbitration Act, subject to a few limited exceptions, courts must compel arbitration where there is a valid agreement to arbitrate and one party to the agreement refuses to arbitrate at another's request. *Cal. Civ. Proc.* § 1281.2 ("Section 1281.2 generally mandates arbitration of all claims that are subject to an enforceable arbitration agreement.").[2] Without regard to the substantive merit of a petitioner's contentions, *Code of Civil Procedure* §1281.2, mandates a court to order arbitration if it determines that an arbitration agreement exists. *Sauter v. Superior Court,* 82 Cal.Rptr. 395, 396 (1969).

"California law, like federal law, favors enforcement of valid arbitration agreements." *Armendariz v. Foundation Health Psychcare Servs., Inc*., 24 Cal. 4th 83, 97 (2000). California courts have continuously found arbitration as the preferred forum for resolution of parties' disputes, even in those cases where some doubt exists about the obligation to arbitrate: "Doubts as to whether an arbitration clause applies to a particular dispute are to be resolved in favor of sending the parties to arbitration." *United Transp v. Southern Calif. Rapid Transit Dist*., 9 Cal.Rptr. 2d 702, 703 (1992).

[2] The Federal Arbitration Act ("FAA") does not apply here because of the U.S. Supreme Court ruling in *New Prime v. Oliviera*, 193 S. Ct. 532 (2109), which found that all truck drivers operating in interstate commerce fell within the exemption set forth in 9 U.S.C. § 1. The FAA "provides a limited exemption from FAA coverage to 'contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.' (9 U.S.C. § 1.)" *Muller, supra*, 34 Cal.App.5th at 1062.

Given the liberal reach of arbitration agreements, there is no doubt that Plaintiff's claims as alleged against Defendants fall squarely under the parties' arbitration agreement. Here, there can be no serious dispute that the parties entered into an agreement to arbitrate when each signed the ICA. In doing so the parties agreed to forego litigation through compulsory arbitration. There also can be no serious that Plaintiff's claims arise out of the relationship established by the ICA and therefore the claims in the FAC are subject to mandatory arbitration.

B. Under California Contract Law, the Parties Agreed to Arbitrate All Claims Arising While They Were Signatories to the Arbitration Agreement

Under California contract law, "if the language [of a contract] is clear and explicit, and does not involve an absurdity" the language must govern the contract's interpretation. *Cal. Civ. Code* § 1638. When a contract is written, "the intention of the parties is to be ascertained from the writing alone, if possible." *Cal. Civ. Code* § 1639. When examining the scope of an arbitration agreement, "the parties' intentions control, but those intentions are generously construed as to issues of arbitrability." *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626 (1985); *Cal Civ. Code* § 1641.

The language of the ICA establishes that the parties agreed "that any disputes arising under or in connection with this Agreement or services rendered in connection with same shall be arbitrated pursuant to this arbitration agreement." (See Stefflre Dec. Ex. 1, p. 22, ¶ XIII.) The language of the Lease Agreement also contains an arbitration clause. (See Stefflre Dec. Ex. 2, p.5, ¶ 17.) Such agreements establish an intent to arbitrate disputes which should be enforced. *Coast Plaza Doctors Hosp. v. Blue Cross of CA*, 83 Cal.App.4th 677, 684 (2000) ("It is clear that the parties agreed to arbitrate 'any problem or dispute' that arose

under or concerned the terms of the Service Agreement. That contractual language is both clear and plain. It is also very broad.").

The arbitration provisions of the ICA and Lease Agreement plainly defined the intent of the parties when they became signatories. Under the terms of the ICA provision, "any disputes arising under or in connection with this Agreement" are subject to compulsory arbitration. (See Stefflre Dec. Ex. 1, p.22, ¶ XIII.) Under the terms of the Lease Agreement the parties agreed to arbitrate "[d]isputes arising under or by reason of the transaction reflected in this agreement." (See Stefflre Dec. Ex. 2, p.5, ¶ 17.)

In this instance, Plaintiff alleges claim arising out of the ICA and Lease Agreement that occurred between September 2017 and April 2018. Thus, at the time of the alleged dispute, the parties were subject to two arbitration agreements. As a result, Canava's claims accrued at the time the parties were signatories to the arbitration agreements, making any such claims subject to compulsory arbitration. See *Coast Plaza Doctors Hosp*., 83 Cal.App.4th at 684.

C. Plaintiff's Claims Must Be Compelled to Arbitration on an Individual Basis

Plaintiff and Defendant RDSI entered in an agreement that expressly waived class actions and provided for arbitration on an individual basis of all claims. (See Stefflre Dec. Ex. 1, p.22, ¶ XIII.) The agreement specifically provides, in pertinent part, as follows:

> Contractor and Carrier expressly intend and agree that class action and representative action procedures shall not be asserted, nor will they apply, in any arbitration pursuant to this Agreement. Contractor and Carrier agree that each will not assert class action or representative action claims against the other in arbitration or otherwise; and each of Contractor and Carrier shall only submit their own, individual claims in arbitration and will not seek to

represent the interests of any other person. (See Stefflre Dec. Ex. 1, p.22, ¶ XIII.)

The ICA's "class action waiver" language requires that claims be brought in the parties' individual capacity and not as a plaintiff or class member in any purported class or representative capacity. The ICA's explicit and unambiguous class waiver demonstrates that parties' agreement to waive class claims.[3]

Despite clear and unequivocal language, Plaintiff brings the instant matter as a class action. Plaintiff must not be allowed to ignore the express terms of the agreement he entered into. The "class action waiver" of the ICA should be enforced according to its terms.

D. Defendants Cannot Be Forced into Class Arbitration

The United States Supreme Court, the Ninth Circuit Court of Appeals and California Courts have made clear that a valid arbitration agreement must be enforced in accordance with the agreed upon terms contained in the agreement and courts must not impose class-wide arbitration unless agreed to by the parties. *Stolt-Nielsen S.A. v. AnimalFeeds International Corp*., 559 U.S. 662, 668 (2010). The *Stolt-Nielsen* case involved an arbitration agreement which did not contain a class action waiver or any other provision regarding the handling of class claims. *Id*. at 668. Defendant AnimalFeeds tried to compel *Stolt-Nielsen* into class arbitration. The Supreme Court, reversing an initial determination made by an arbitration panel, held that "a party may not be compelled under the FAA to submit to class

[3] While individual Defendants Greg P. Stefflre and Judi Girad Stefflre are not named individuals on the ICA or Lease Agreement, any claims sent to arbitration should be done as to all Defendants. Plaintiff alleges that "All actions and omissions described in this complaint were made by Defendants directly or through their supervisory employees and agents." (FAC ¶ 35.) Plaintiff also attributes all substantive violations to Defendants throughout the FAC but does not distinguish between any actions taken by the individuals compared to the corporation. Realistically, the individual defendants are sued for the *in terrorem* effect of being personally named. They have committed no independent acts other than owning and running RDSI. It would be highly incongruous and inequitable for RDSI to arbitrate with Plaintiff on an individual basis while Mr. and Mrs. Stefflre were forced to defend the class allegations in court.

arbitration unless there is a contractual basis for concluding that the party agreed to do so. *Id*. at 684.

The Ninth Circuit Court of Appeals and District Courts in California have recognized that "nonconsensual class arbitration was . . . prohibited under *Stolt-Nielsen. Coneff v. AT&T Corp.*, 673 F.3d 1155, 1161 (9th Cir. 2012); see also, *Kaltwasser v. AT&T Mobility LLC*, 812 F.Supp.2d 1042, 1046 (N.D. Cal. 2011). Similarly, California Courts have held that where the arbitration agreement references only two parties and makes no reference to litigation including third parties, there is no contractual basis for class arbitrations. *Kinecta Alternative Financial Solutions, Inc. v. Sup Ct.*, 205 Cal.App.4th 506, 517 (2012) (disapproved on other grounds) And, in *Nelsen v. Legacy Partners Residential, Inc.*, 207 Cal.App.4th 1115 (2012), the California appellate court explained that under *Stolt-Nielsen* "intent to agree to class arbitrations must be expressly stated in the arbitration agreement" in order to compel class arbitration. *Id*. at 1128-1131.

Here, the arbitration agreement between Plaintiff and Defendant RDSI not only does not authorize class wide arbitration or representative actions, it expressly prohibits them: "Contractor and Carrier expressly intend and agree that class action and representative action procedures shall not be asserted, nor will they apply, in any arbitration pursuant to this Agreement. Contractor and Carrier agree that each will not assert class action or representative action claims against the other in arbitration or otherwise; and each of Contractor and Carrier shall only submit their own, individual claims in arbitration and will not seek to represent the Interests of any other person." (See Stefflre Dec. Ex. 1, p.22, ¶ XIII.) Specifically, and similar to *Kinecta* and *Nelsen*, the arbitration agreement at issue only provides for claims to be arbitrated between Plaintiff and RDSI.

While the claims which are the subject of this motion are not subject to the FAA, California Courts often look to federal law when deciding arbitration issues under state law. *Tiri v. Lucky Chances*, 226 Cal.App.4th 231, 240 (2014), citing

Dream Theater, Inc. v. Dream Theater, 124 Cal.App.4th 547, 553 (2004). "In most important respects, the California statutory scheme on enforcement of private arbitration agreements is similar to the [FAA]; the similarity is not surprising, as the two share origins in the earlier statutes of New York and New Jersey (citation omitted)." *Tiri, supra*, 226 Cal. App. 4th at 239-240, citing *Rosenthal v. Great Western Fin. Securities Corp*. 14 Cal. 4th 394, 413 (1996). "[B]oth the FAA and the CAA provide that pre-dispute arbitration agreements are valid, enforceable and irrevocable, save upon such grounds as exits for the revocation of any contract." *Id*. Following the reasoning of *Stolt-Nielsen*, California courts have explained that a contractual "intent to agree to class arbitrations must be expressly stated in the arbitration agreement" in order to compel class arbitration. *Nelsen v. Legacy Partners Residential, Inc.* 207 Cal.App.4th 1128-1131 (2012).

The arbitration agreement between Plaintiff and RDSI references only Plaintiff and RDSI and makes no reference to third parties, the parties did not agree to class action arbitration, and in fact expressly rejected it. Under such circumstances, class arbitration is not available. *Kinecta, supra,* 205 Cal.App.4th at 518, (disapproved on other grounds).

E. All of Plaintiff's Class Claims and Allegations (Except for PAGA) Should Be Stricken from the Complaint

Because California law does not allow arbitration of wage claims, Defendants are only seeking arbitration of Plaintiff's non-wage claims. However, Defendants' motion to strike the class and collective action allegations is targeted at every cause of action in the First Amended Complaint other than the PAGA claim.[4]

[4] California court have held that class waivers are not enforceable as to PAGA claims. *Iskanian*, 59 Cal.4th 348.

i. The Court has the power to strike defective allegations

The Court is authorized to strike class allegations. Specifically, Rule 23(d)(1)(D) of the Federal Rules of Civil Procedure allows the Court to require that the pleadings be amended to eliminate allegations about representation of absent persons. Fed. R. Civ. P. 23(d)(1)(D).[5] *Rehberger v. Honeywell Int'l, Inc.*, 2011 U.S. Dist. LEXIS 19616 (M.D. Tenn. 2011); see also Fed. R. Civ. P. 12(f) (permits the Court to strike any "redundant, immaterial or scandalous matter from a pleading).

ii. Plaintiff's class claims and allegations cannot be maintained and should be stricken from the First Amended Complaint

As set forth above, the agreement between Plaintiff and Defendant RDSI does not authorize class wide arbitration or representative actions. The agreement states that "Contractor and Carrier agree that each will not assert class action or representative action claims against the other in arbitration *or otherwise*;" (See Stefflre Dec. Ex. 1, p.22, ¶ XIII.) Further, it clarifies that "each of Contractor and Carrier shall only submit their own, individual claims in arbitration *and will not seek to represent the interests of any other person*." (See *Id*. (emphasis added).) There is nothing contained in the agreement which provides that Plaintiff can represent others or that the parties agreed; expressly or otherwise, to litigate or arbitrate class claims. As a result, Plaintiff cannot escape the clear and unequivocal provisions of the contractual agreement that he entered into. Plaintiff cannot escape his agreement to arbitrate his individual claims. Plaintiff cannot pursue on a class

[5] The Advisory Committee Notes to Rule 23 explain that "[a] negative determination [as to class certification] means that the action should be stripped of its character as a class action." *Narwick v. Wexler*, 912 F.Supp. 342, 344 (N.D. Ill. 1995) (granting motion to strike class allegations brought under FRCP 23(d)(1)(D)); see also, FRCP 12(f) and 23(c)(1)(A).

and/or representative basis his claims for the Second, Sixth, Seventh, and Eighth Causes of Action causes of action in court or in arbitration proceedings.

Accordingly, this Court should enforce the express terms of the arbitration agreement that Plaintiff entered into with Defendant RDSI, namely that the parties agree to resolve their respective claims against the other *individually*. Because the parties here did not agree to class arbitration, there is no contractual basis for the Court to impose class arbitration. Plaintiff's class allegations and claims cannot survive in this Court or in an arbitration forum. All of Plaintiff's class and collective action allegations should be stricken from the Complaint.

F. The Court Can Sever Any Offending Term of the Agreement

Even if Plaintiff can show a provision of the arbitration agreements is unconscionable or unenforceable, the appropriate remedy is severance of the provision, not refusal to otherwise enforce the entirety of the agreement the parties bargained for and entered into. This Court retains and should exercise its power to simply strike any provisions it deems to be unenforceable, if any.

In *Little v. Auto Stiegler, Inc.*, the California Supreme Court determined that one of the arbitration agreement's provisions was unconscionable. *Little v. Auto Stiegler, Inc.*, 29 Cal.4th 1064, 1075 (2003). The plaintiff argued the entire agreement should be void. The Court rejected this argument, reasoning that "[t]here is only a single provision that is unconscionable, the one-sided arbitration appeal. And no contract reformation is required – the offending provision can be severed and the rest of the arbitration agreement left intact." *Id*. This Court can likewise sever any provision it finds unconscionable, if any.

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G. Plaintiff's Wage and PAGA Claims Should Be Stayed Pending Arbitration

i. California law requires that a plaintiff's claims seeking individualized relief be severed from PAGA claims

Where a Complaint seeks both civil penalties under PAGA, and damages that a party could pursue in his or her own right, the private claims seeking damages are arbitrable. *Esparza v. KS Indus., L.P.*, 13 Cal.App.5th 1228, 1245-1246 (2017). If an employee intends to pursue claims seeking individual relief, such as damages, those claims must be arbitrated, and the trial court must decide whether to stay the lawsuit until the arbitration is completed. *Id*.

Here, Plaintiff's First, Third and Eighth causes of action clearly seek individual damages for unpaid wages and unreimbursed expenses, as opposed to civil penalties in which the state has a direct financial interest. Further, Plaintiff's Second, Sixth, Seventh and Eighth Causes of Action are subject to arbitration on an individual basis pursuant to the California Arbitration Act, Cal. Code Civ. Proc. §§ 1280 et seq.[6]

ii. PAGA penalties are not available unless and until Plaintiff prevails on his underlying claim for Labor Code violations

A Plaintiff's standing to pursue a claim is jurisdictional prerequisite under both federal and California law. See *Scott v. Thompson*, 184 Cal.App.4th 1506, 1510 (2010). PAGA does not create any independent legal obligation. Rather, the statute merely provides "aggrieved" employees with standing to seek civil

[6] Plaintiff's Fourth and Fifth state law claims for failure to provide meal and rest periods or compensation in lieu thereof under Labor Code §§ 226.7 and 512 and IWC Wage Order No. 9 preempted by federal regulations as determined by the Federal Motor Carrier Safety Administration. See Federal Motor Carriers Safety Administration, *California's Meal and Rest Break Rules for Commercial Motor Vehicle Drivers; Petition for Determination of Preemption*, 83 Fed. Reg. 67470 (Dec. 28, 2018). See Defendants' Motion to Dismiss filed concurrently herewith. Accordingly, Plaintiff's First and Third Causes of action cannot form the basis of the PAGA claim.

penalties for violations of the Labor Code, when previously only the Labor Code Commissioner had standing to do so. See Cal. Labor Code §2699. An "aggrieved employee' means any person . . . against whom one or more of the alleged violations was committed." Cal. Labor Code § 2699(c); See *Amalgamated Transit Union, Local 1756 v. Superior Court* (2009) 46 Cal.4th 993, 1001.

The question of whether Plaintiff suffered injury as a result of alleged violations of the Labor Code is the precise question that will be pending before and decided by the arbitrator assigned to resolve Plaintiff's claims as set forth in the Complaint. To prove that he is "aggrieved" for purposes of PAGA, Plaintiff will have to first prove that he has suffered violations of the Labor Code. The foundational question as to whether Plaintiff suffered any Labor Code violations is reserved exclusively for the arbitrator, pursuant to the arbitration agreement. Thus, only the arbitrator is permitted to make the determination which will support or defeat Plaintiff's alleged standing to recover under PAGA. Forcing Defendants to litigate the PAGA claim now, before resolution of Plaintiff's other claims, essentially denies Defendants of the right to arbitrate the underlying claims. Arbitration of Plaintiff's Second, Sixth, Seventh and Eighth Causes of Action should precede litigation of the PAGA claim, and therefore the Court should stay the PAGA claim.

iii. The Court has inherent authority to stay the remaining claims in the interest of judicial efficiency

It is well settled that when there are multiple actions addressing the same issues, as California court has the discretion to stay an action. *Caiafa Professional Law Corp. v. State Farm Fire & Casualty Co*., 15 Cal.App.4th 800, 804(1993); *Thompson v. Continental Insurance Co*., 66 Cal.2d 738, 746-47 (1967). Here, compelling arbitration of only some claims, as is required under the CAA, creates multiple actions. Staying the PAGA claim would cause Plaintiff no prejudice;

conversely, denying this Motion would create a great burden on Defendants. In *Reyes v. Macy's, Inc*., the Court of Appeals affirmed a trial court's order staying Plaintiff's PAGA claims pending the arbitration of underlying claims. *Reyes v. Macy's, Inc.*, 202 Cal. App. 4th 1119, 1122 (2011). As *Reyes* makes clear, PAGA is a mechanism intended to "create a means of 'deputizing' citizens as private attorneys general to enforce the Labor Code. *Id at 1123.* On the other hand, arbitration is a mechanism intended to provide parties with an efficient, expedited and economic forum for resolution of private disputes. Both goals can be satisfied here only if the PAGA claim is stayed.

Similarly, because the wage claims raised in the First and Third Causes of Action (which survive the motion to strike only as individual claims) cannot be compelled to arbitration as a result of Labor Code § 229, they should be stayed. *Muller*, 34 Cal.App.5th 1056, 1070 ("Section 229 renders the parties' arbitration agreement ineffective on Muller's cause of action for unpaid wages. The trial court therefore correctly stayed the prosecution of Muller's unpaid wages cause of action pending the arbitration of his other claims.").

The Court should grant Defendants' request to Stay Plaintiff's wage and PAGA claims as part of the motion to compel individual arbitration.

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IV. CONCLUSION

For the reasons discussed above, Defendants respectfully request that this Court strike the class and collective action allegations contained in Plaintiff's First Amended Complaint (excluding the PAGA claims), compel Plaintiff to submit his individual non-wage claims (the Second, Sixth, Seventh, and Eighth Causes of Action) to arbitration and stay the proceedings as to Plaintiff's First and Third Cause of Action for wage claims and Tenth Cause of Action under PAGA whle Plaintiff and Defendants to arbitrate.

Dated: June 28, 2019

By: /S/ *Victor J. Cosentino*
Victor J. Cosentino, Esq.,
Gloria G. Medel, Esq.
Attorneys for Defendants,
RAIL DELIVERY SERVICES, INCORPORATED, GREG P. STEFFLRE, AND JUDI GIRARD STEFFLRE

Salvador Canava v. Rail Delivery Services, Incorporated, et al
United States District Court, Central District of California
Case No.: 5:19-cv-00401-JGB (KKx)

CERTIFICATE OF SERVICE

I, Nicole Padget, declare as follows:

I am over the age of eighteen years and not a party to the case. I am employed in the County of Los Angeles, California. My business address is: 200 S. Los Robles Avenue, Suite 530, Pasadena, CA 91101.

On the date below I electronically filed with the Court through its CM/ECF program and served through the same program the following document(s):

On the interested parties in said case addressed as follows: **DEFENDANTS' NOTICE OF MOTIONS AND MOTION TO STRIKE PLAINTIFF'S CLASS ALLEGATIONS (FED. R. CIV. P. 12(F), 23(d)(1)(D)), AND TO COMPEL ARBITRATION OF PLAINTIFF'S SECOND, SIXTH, SEVENTH AND EIGHTH CAUSES OF ACTION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; [PROPOSED] ORDER**

[ ] (BY E-MAIL) I caused such document(s) to be electronically served addressed to all parties appearing on the electronic service list for the above-entitled case.

[X] (ELECTRONICALLY) Pursuant to the CM/ECF System, registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities. The Court's CM/ECF system sends an email notification of the filing to the parties and counsel of record listed above who are registered with the Court's CM/ECF system.

[X] (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury, under the laws of the United States of America that the foregoing is true and correct.

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I declare under penalty under perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 28, 2019, at Pasadena, California.

/S/
Nicole Padget