

PROPOSED TENTATIVE

On January 9, 2024, plaintiffs Carlos Perez Alvino and Maurillo Ponce Nicolas filed a class action complaint against Eat Sweet Farms, LLC (defendant), raising the following wage and hour law violations: 1) failure to pay wages and/or overtime; 2) failure to reimburse expenses; 3) failure to provide accurate wage statements; and 4) unfair competition pursuant to Business and Professions Code, section 17200, et seq. Defendant employed plaintiffs and the representative class as nonexempt employees working in the cultivation and harvest of crops. On March 15, 2024, plaintiffs filed a first amended complaint, adding a claim for civil penalties pursuant to the Private Attorney General Act (PAGA). On May 15, 2024, defendant filed an answer.

On May 17, 2024, plaintiff filed a “Notice of Related Case,” relating this case with *Rodriguez v. Eat Sweet Farms, LLC, et al.*, Santa Barbara County Case No. 22CV00203. The two cases were ordered related on July 18, 2024. On December 23, 2024, Judge Kelly signed a judgment granting final approval of the class settlement and PAGA representative action in Case No. 22CV00203. 86 named individuals were excluded from the final judgment in that case; the named plaintiffs in this lawsuit are part of this “Exclusion List.”

On December 11, 2024, the parties filed a joint stipulation for leave to file a second amended complaint and to dismiss the class and PAGA representative claims in Case No. 24CV00180 without prejudice.

On December 16, 2024, plaintiff filed a second amended complaint in this matter. The second amended complaint dismissed the class action and PAGA representative cause of action. Eight-one individually named plaintiffs were added (bringing the total named plaintiffs to 83) (hereafter, plaintiffs), all advancing the same wage and hour violations and UCL claim. Defendant answered on March 10, 2025.

On March 6, 2026, plaintiffs filed “A Motion to Compel Bilateral Arbitration and to Stay Action” in the present action. Plaintiffs ask the court to grant the motion to compel arbitration for 73 of the 83 named plaintiffs, who all signed arbitration agreements with defendant. Plaintiffs have submitted 73 arbitration agreements in Spanish with a certified English translation in support. Plaintiffs then observe as follows: “Plaintiffs Alberto Juarez Arce, Dulce Martinez, Ismael Tiburcio Moreno, Juan Diego Morales, Margarita Vazquez Lopez and Marina Santiago Ventura anticipate moving to compel arbitration in a subsequent motion. [] Plaintiffs Jose Agustin Herrera and Juan Ponce Nicolas intend to proceed in court.” The numbers do not add up. If there are 83 named plaintiffs, 73 of whom are part of the current motion to compel, that means there are 10 remaining plaintiffs. Plaintiffs only account for eight (8) remaining plaintiffs, leaving two missing. It appears the two missing plaintiffs are Andres Olivera Moreno and Yuritzi

Villanueva Olivera. Plaintiffs should address this omission at the hearing and explain whether the two missing plaintiffs are subject to arbitration, or whether they will be voluntarily dismissed from the lawsuit.

The 73 arbitration agreements at issue in the present motion are the same. Each is signed by the individual plaintiff and defendant. All are governed by the Federal Arbitration Act (FAA). Each provides that “all disputes arising out of my employment relationship, directly or indirectly . . . shall be resolved exclusively through final and binding arbitration and not through a court action or a jury trial.” Each provides that the arbitrator “shall be selected by mutual agreement of the Company and me. Unless the Company and I mutually agree otherwise, the Arbitrator shall be an attorney licensed to practice in the state where the arbitration proceeding is conducted, or a retired federal or state judicial officer who presided in the jurisdiction where the arbitration is conducted. If, for any reason, the parties are unable to agree in the selection of an Arbitrator, either party may request that a court of competent jurisdiction with authority over the place where the arbitration is to be conducted appoint a neutral Arbitrator”

Defendant has filed a notice of nonopposition to the motions to compel arbitration filed by the 73 plaintiffs at issue. This would normally end the matter, for defendant does not oppose the motion to compel arbitration; nor does it object to plaintiffs’ request to stay the entire action pursuant to Code of Civil Procedure section 1282.4.

Defendant in its nonopposition, however, asks the court to go farther. Defendant claims that “all other named plaintiffs’ disputes should proceed in arbitration as well.” Specifically, defendant asks the court to include in the order the claims of plaintiffs Alberto Juarez Arce, Dulce Martinez, Ismael Ticurcio Moreno, Juan Diego Morales, Margarita Vazquez Lopez, and Marina Santiago,” as they anticipate filing a motion to compel arbitration. According to defendant: “It is unclear from the Motion why these six individuals did not move to compel arbitration at the same time as the other 73 Plaintiffs that did . . . Defendant does not oppose arbitration for these individuals either, and requests that their claims also be ordered to arbitration.” Additionally, defendant asks the court to order the claims advanced by plaintiffs Jose Agustin Herrera and Juan Ponce Nicolas to arbitration, even though (according to plaintiff’s counsel) “they intend to proceed in court.” Defendant argues they are subject to binding arbitration as they were provided copies of the employee handbook, which calls for binding arbitration, and each signed an acknowledgement of receipt of the dispute resolution agreement in the Employee Handbook.

The court cannot act on either request made by defendant. It is manifestly inappropriate to morph a nonopposition into a motion to compel pursuant to Code of Civil Procedure section 1281.2. More to the point, none of these plaintiffs is a party to the present motion; they have not had formal notice of defendant’s request; and have not had a meaningful opportunity to respond.

Due process cannot be sacrificed on the shoals of efficiency. The court observes also as a practical matter that as to the first six (6) plaintiffs, no order to compel is required, as the parties seem to agree that arbitration is appropriate. The parties can meet and confer and stipulate to arbitration without need for judicial intervention. As for plaintiffs Jose Agustin Herrera and Juan Ponce Nicolas, if the parties cannot meet and confer to sort out their status, it will be incumbent on defendant to file a motion to compel arbitration pursuant to Code of Civil Procedure section 1281.2 and proceed in the appropriate manner authorized by the Legislature. Nothing less will do.

Finally, defendant in nonopposition observes that consolidation or coordination of the 73 arbitration agreements should be decided by the arbitrator, not the court. There is no request by any party for the court to coordinate or consolidate these arbitrations, although even if one were made, as the matter is governed by the FAA, the law is settled. As observed in *Yuen v. Superior Court* (2004) 121 Cal.App.4th 1133, when arbitration is governed by the FAA; when language of the arbitration is silent about consolidation; and when the language in the arbitration broadly indicates that “all disputes” relating to the employment are to be submitted to arbitration; **it is for the arbitrator, not the court, to determine whether the arbitration matters should be consolidated, irrespective of Code of Civil Procedure section 1281.3.** (*Id.* at pp. 1137-1138; see *Parker v. McCaw* (2005) 125 Cal.App.4th 1494, 1504 [under existing high court authority, California courts have similarly held that consolidation is a procedural issue for the arbitrator to decide — even where the party seeking consolidation relies on Code of Civil Procedure section 1281.3, which is part of the California Arbitration Act, that act is preempted by the FAA]; see also *Meadows v. Dickey’s Barbecue Restaurants Inc.* (N.D. Cal. Dec. 21, 2016, No. 15-CV-02139-JST) 2016 WL 7386138, at *3 [it has also been determined that the question whether two arbitrations should be consolidated, in a FAA case, must be decided by the arbitrator.]. If the FAA did not apply (i.e., that is, if the California Arbitration Act applies), consolidation would generally be determined by the court pursuant to Code of Civil Procedure section 1281.3. (*Yuen, supra*, at p. 1137.)

The court is not the one to determine consolidation following *Yuen* and its progeny. Here, each arbitration agreement submitted is expressly governed by the FAA, as was true in *Yuen*. Additionally, each agreement is silent about consolidation, as was also true in *Yuen*. Finally, the language of each of the arbitration agreements at issue broadly provides that “all disputes arising out of my employment relationship, direct or indirectly . . . shall be resolved exclusively through final and binding arbitration” This is the same broad language that was present in *Yuen*. Accordingly, *Yuen* governs; it is for the arbitrator, not the court, to determine whether consolidation is appropriate.

Summary:

- Plaintiff is directed to address the status (or potential status) of the two plaintiffs named in the lawsuit but not mentioned in the motion to compel arbitration – plaintiffs Andres Olivera Moreno and Yuritz Villanueva Olivera. Plaintiffs should explain why they are not mentioned in the motion, whether they are subject to arbitration, or whether they will be voluntarily dismissed.
- The court rejects defendant’s request to order all other plaintiffs to arbitration, as requested in its nonopposition. It is inappropriate to request such relief in a nonopposition, notably as the eight (8) plaintiffs are not parties to the present motion and have had no meaningful opportunity to oppose. It appears to the court in any event that no order is required for 6 of the 8 plaintiffs, as the parties agree that arbitration is appropriate for them. The parties can sort this out without judicial intervention. As to the remaining two (2) plaintiffs, if the parties cannot agree about their status, it will be incumbent on defendant to file a motion to compel arbitration pursuant Code of Civil Procedure section 1281.2.
- Although no party asks the court to consolidate the 73 arbitrations, even if such a request were made, it would be for the arbitrator, not the court, to determine pursuant to *Yuen v. Superior Court* (2004) 121 Cal.App.4th 1133.
- The court will grant the motion to compel the 73 named plaintiffs to arbitration. The court stays the court action pursuant to Civil Code section 1281.4, with one important qualification. Even during the stay the parties may file a stipulation and/or a motion to compel arbitration for the remaining plaintiffs.
- The court will schedule future CMCs to monitor the progress of the arbitration (every 3 months or at intervals agreed to by the court and the parties).