PROPOSED TENTATIVE

On October 2, 2025, plaintiff Erick Giovanne Galeana-Carillo (plaintiff) filed a class action complaint against defendants All About Produce Co. (dba Berry Man Inc., SLO), and the Berry Man, Inc., raising eight (8) causes of action, as follows: failure to pay minimum and straight-time wages; failure to pay overtime wages; failure to provide meal periods; failure to authorize and permit rest periods; failure to timely pay final wages at termination; failure to provide accurate itemized wage statements; failure to indemnify employees for expenditures; and unfair business practices (UCL). According to the operative pleading, plaintiff worked for all named defendants between June 2022 and March 2025. At all times, according to the operative pleading, each named defendant directly or indirectly employed plaintiff and exercised the same control over plaintiff, as the principal, agent, partner, joint venturer, joint employer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor-in-interest and/or predecessor-in-interest of the some or all of the other Defendants, and was engaged with some or all of the other defendants in a joint enterprise for profit. (¶ 14 of the Complaint.)

On November 19, 2025, defendants (that is, All About Produce Co. (dba Berry Man, Inc., SLO) and The Berry Man, Inc.) filed a motion to compel arbitration pursuant to Code of Civil Procedure[1] section 1281.2 (motion). The motion includes a memorandum of points and authorities, as well as two declarations. The first declaration is from Les Clark, the President of All About Produce Corp, declaring that plaintiff was employed as a driver and in connection with his employment, plaintiff executed a "Mutual Agreement to Arbitrate," which is included as Exhibit A. Exhibit B to Les Clark's declaration is a separate document entitled "Acknowledgement of Execution of Mutual Agreement to Arbitration," and consists of eleven (11) attestations, to which plaintiff placed his initials and ultimately signed separately from the "Mutual Agreement to Arbitrate" agreement. The second declaration is from Tyler Johnson, defendants' counsel, including two exhibits (Exhibit A, which contains correspondence indicating defendants' attempts to inform plaintiff of a binding arbitration agreement, which never received a response; and Exhibit B, which is a copy of the American Arbitration Association "Employment/Workplace Arbitration Rules and Mediation Procedures," which are referenced in the arbitration agreement signed by plaintiff).

The "Mutual Agreement to Arbitrate" is an agreement between All About Produce Company and plaintiff, signed on July 11, 2022 by plaintiff and by Les Clark as "President of The Berry Man, Inc." Defendant "Company" is defined as all "parents, subsidiaries, affiliated companies/entities. . . ." The parties agreed "that any and all disputes, claims, actions or controversies between Employee and Company arising out of the employment relationship between the Parties or that may be related in any way to my employment and/or my application for employment, including but not limited to my wages or any other compensation or benefits,

[1] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

the formation or termination of the employment relationship, that are not resolved by mutual agreement, will and shall be resolved by final and binding arbitration. This Agreement includes any claims that Company may have against Employee, or that Employee may have against Company." Section 4 of the agreement indicates that "Claims" covered by the agreement include, but are not limited to (inter alia), claims for "wrongful termination, breach of any employment-related contract or covenant, express or implied., breach of any duty owed to the Company or the Company by the Employee; wages, premiums, or other compensation due; penalties; benefits; reimbursement of expenses; including any violations of the "California Labor Code, and the California Wage Orders." The agreement is governed by the Federal Arbitration Act (9 U.S.C.,§ 1, et seq.) (FAA), and the parties agreed "that any arbitration will be conducted under the America Arbitration Association (AAA) Employment Arbitration Rules then in effect.

Plaintiff filed opposition on December 30, 2025. Defendant filed a reply on January 6, 2026. All briefing has been examined.

If a party to a civil action asks the court to compel arbitration of the pending claim, the court must determine in a summary proceeding whether an "agreement to arbitrate the controversy exists." (see §§ 1281.2, 1290.2; *Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 412–413 .) "Because the existence of the agreement is a statutory prerequisite to granting the petition, the petitioner bears the burden of proving its existence by a preponderance of the evidence. If the party opposing the petition raises a defense to enforcement ... that party bears the burden of producing evidence of, and proving by a preponderance of the evidence, any fact necessary to the defense." (*Rosenthal*, *supra*, at p. 413; see *Iyere v. Wise Auto Group* (2023) 87 Cal.App.5th 747, 754.) The arbitration proponent must first recite verbatim, or provide a copy of, the alleged agreement. (Cal. Rules of Court, rule 3.1330; *Condee v. Longwood Management Corp.* (2001) 88 Cal.App.4th 215, 219.) A movant can bear this initial burden "by attaching a copy of the arbitration agreement purportedly bearing the opposing party's signature." (*Espejo v. Southern California Permanente Medical Groups* (2016) 246 Cal.App.4th 1047, 1060.) At this step, a movant need not "follow the normal procedures of document authentication" and need only "allege the existence of an agreement and support the allegation as provided in rule [3.1330]." (*Condee*, *supra*, at pp. 218, 219.) Petitioner also has the burden of proving the arbitration agreement covers the particular controversy at issue. (*Rosenthal, supra*, at p. 402; *Engalla v. Permanente Group, Inc.* (1997) 15 Cal.4th 951, 972; *Larian v. Larian* (2004) 123 Cal.App.4th 751, 760.) The procedural requirements of section 1281.2 do not conflict with the FAA. (*Cronus Investments, Inc. v. Concierge Services* (2005) 35 Cal.App.4th 376, 390). That is, if the parties do not expressly incorporate the FAA's procedural provisions into the agreement, the procedural rules contemplated by section 1281.2 apply, even when the FAA governs. (*Valencia v. Smyt*h (2010) 185 Cal.App.4th 153, 159, 173-174.) The arbitration agreement here does not expressly incorporate the procedural provisions of the FAA into it (only its substantive provisions), meaning the procedural rules per section 1281.2 apply.

Finally, the employer -- when attempting to enforce an arbitration agreement against an employee -- must show that the arbitration agreement meets the five-part test for fairness articulated in *Armendariz v. Foundation Health Psychcare Services, Inc*. (2000) 24 Cal.4th 83, 103-113; "Such an arbitration agreement is lawful if it '(1) provides for neutral arbitrators, (2) provides for more than minimal discovery, (3) requires a written award, (4) provides for all of the types of relief that would otherwise be available in court, and (5) does not require employees to pay either unreasonable costs or any arbitrators' fees or expenses as a condition of access to the arbitration forum." (*Id.* at p. 102.) Even though California public policy favors arbitration, an arbitration agreement subject to FEHA or other unwaivable statutory rights is unenforceable if it does not meet *Armendariz's* five-factor fairness test. (*Ibid.*)

With these rules in mind, defendant has shown that plaintiff entered into an arbitration agreement. It has attached a copy of the arbitration agreement to the motion, clearly signed by plaintiff. It also seems clear that the controversies alleged in the operative pleading fall within the ambit of the arbitration clause.

Further, defendants have demonstrated that **all** defendants (even those who are not signatories to the arbitration agreement) can enforce the arbitration agreement. It appears the arbitration agreement was expressly made between defendant All About Produce Company and plaintiff.[2] Although there is a strong public policy in favor of contractual arbitration, there is no policy compelling anyone to accept arbitration of controversies which they have not agreed to arbitrate. (*Soltero v. Precise Distribution, Inc.* (2024) 102 Cal.App.5th 887, 892); see *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639, 651 ["the 'first principle' of our FAA jurisprudence" is "that '[a]rbitration is strictly "a matter of consent" ' "].) "Because arbitration is a matter of contract, the basic rule is that one must be a party to an arbitration agreement to be bound by it or invoke it—with limited exceptions." (*Soltero, supra*, at pp. 892–893.) Both California and federal courts, however, recognize nonsignatories to an agreement containing an arbitration provision may, in limited circumstances, compel arbitration of "a dispute arising within the scope of that agreement." (*Garcia v. Pexco, LLC* (2017) 11 Cal.App.5th 782, 785–786.) Nonsignatory defendants may compel arbitration under theories of agency and equitable estoppel, and as third-party beneficiaries, among others. (*Marenco v. DirecTV, LLC* (2025) 233 Cal.App.4th 1409,1417; *Garcia, supra*, 11 Cal.App.5th at pp. 786, 788.) "These exceptions to the general rule that one must be a party to an arbitration agreement to invoke it or be bound by it 'generally are based on the existence of a relationship between the nonsignatory and the signatory, such as principal and agent or employer and employee, where a sufficient "identity of interest" exists between them.' " (*DMS Service, LLC v. Superior Court* (2012) 205 Cal.App.4th 1346, 1353.) A nonsignatory defendant may "compel a signatory plaintiff to arbitrate where

---

[2] The matter is a little more complicated because in the signature line of the agreement where defendant All Purpose signed, Les Clark signed as "President of The Berry Man, Inc." While this attestation may not itself make the Berry Man, Inc., a signatory, it is a relevant mosaic that shows in the aggregate defendant The Berry Man, Inc. has a sufficient interest in the arbitration agreement to be able to enforce the arbitration as a nonsignatory, a point discussed in more detail in the body of this order.

there is a connection between the claims alleged against the nonsignatory and its agency relationship with a signatory" defendant. (*Garcia, supra,* 11 Cal.App.5th at p. 788 [nonsignatory defendant could enforce arbitration agreement when it was alleged to have been joint employer with signatory defendant, and thus agent of signatory "in [its] dealings with [plaintiff]"].) Put another way, "[n]onsignatory defendants may enforce arbitration agreements 'where there is sufficient identity of parties.' " (*Marenco, supra*, 233 Cal.App.4th at p. 1417.)

These rules apply here. The complaint makes it abundantly clear that defendants were all agents of each other, and expressly alleges they were joint employers and/or joint venturers in ***all*** claims advanced and that in the end arose under the arbitration agreement. That is, as in *Garcia, supra,* 11 Cal.App.4th 782, the operative pleading alleges violations against all defendants as joint employers,[3] referring to both employers as defendants without any distinction, and alleges identical claims and conduct regarding all wage and hour violations. This is not merely boilerpoint language, as was the case in *Garcia, supra,* 11 Cal.App.4th at page 788) This point is underscored by the language in the arbitration agreement itself, in which both parties agreed that the arbitration agreement covers all "affiliated companies/entities" of which defendant The Berry Man, Inc. is one (as reflected on the signature page of the arbitration agreement – see fn. 2, ante). Accordingly, all defendants (including The Berry Man, Inc.) are entitled to compel arbitration of plaintiff's claims against it under the arbitration clause in the arbitration agreement with All About Produce Company. In the end, equity also compels enforcement of arbitration by a nonsignatory. It would "unfair for [plaintiff] to group the [signatory and nonsignatory entities] for purposes of wage and hour liability as joint employers while at the same time denying the joint relationship in order to avoid arbitration." (*Gonzalez v. Nowhere Beverly Hills, LLC* (2024) 107 Cal.App.5th 111, 124, citing *Garcia, supra,* 11 Cal.App.5th at pp. 787-788.)

Finally, defendant has shown that the arbitration agreement comports with the five-factor fairness test articulated in *Armendariz* (even assuming without deciding that *Armendariz* applies to non-FEHA causes of action, as raised here).

This leaves the arguments advanced in plaintiff's opposition. After some thought, and despite defendant's prima facie showing as detailed above, the court agrees with plaintiff that compelled arbitration under the FAA is precluded because plaintiff is a "transportation worker" and thus exempt from arbitration rules pursuant to the FAA. Section 1 of the FAA exempts from its coverage "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce [the last is known as the residual clause, which is at issue here]." This exemption only applies to "contracts of employment of transportation workers." (*Circuit City Stores, Inc. v. Adams* (2001) 532 U.S. 105, 109; *Muro v. Cornerstone Staffing Solutions, Inc*. (2018) 20 Cal.App.5th 784, 790.) Thus, Section 1's

---

[3] To "employ" a person "means to engage, suffer, or permit [the person] to work." (Cal. Code Regs., tit. 8, § 11140(2)(C).) An "employer" is "any person ... who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person." (Cal. Code Regs., tit. 8, § 11140(2)(F).)

reference to "any other class of workers engaged in foreign or interstate commerce" is defined to mean "transportation workers" and the courts have consistently "found transportation workers' employment agreements are exempt from the FAA." (*Ibid.*)

The United States Supreme Court has articulated a two-part test in *Southwest Airlines, Inc. v. Saxon* (2022) 596 U.S. 450 (*Saxon*) to determine whether a plaintiff's employment agreement is exempt from the coverage under the FAA under the transportation worker exemption. A court should begin by defining the relevant "class of workers" to which plaintiff belongs. After that, a court should determine whether that class of workers is engaged in foreign or interstate commerce. (*Id*. at p. 455.) A member of a "class of workers" is based on what the *employee does*, not what the employer does generally. In *Saxon,* for example, plaintiff was a ramp supervisor for Southwest Airlines whose work often required "loading and unloading baggage, airmail, and commercial cargo on and off airplanes that travel across the country." (*Id.* at p. 453.) The *Saxon* court defined the class of workers to which plaintiff belonged "as workers who physically load and unload cargo on and off airplanes on a frequent basis." It then found plaintiff was engaged in foreign and interstate commerce. As a result, it concluded that plaintiff's employment contract was exempt from the FAA as a transportation worker, observing that transportation workers "must at least play a direct and 'necessary role in the free flow of goods' across borders via the channels of foreign or interest commerce." (*Id.* at p. 458.) According to the *Saxon* court, "Cargo loaders exhibit this central feature of transportation worker . . . [O]ne who loads cargo on a plane bound for interstate transmit is intimately involved with commerce (e.g. transportation) of that cargo." (*Ibid.*) *Saxon* expressly rejected the idea that "only workers who physically move goods or people across foreign or international boundaries – pilots, ship crews, locomotive engineers, and the like – are 'engaged in foreign or interstate commerce . . ."

The court, per *Saxon* and progeny, will attempt to define the relevant "class of workers" to which plaintiff belongs. The focus is on the "performance of the work" and "the actual work that the members of the class, as a whole, typically carry out." Here, we are told by plaintiff in his declaration that he worked as "Short Driver and Delivery Driver. My duties included taking orders, transporting goods between warehouses, picking up and loading the truck with deliveries from various warehouses, and making deliveries to restaurants and warehouses in one to five cities per shift."

Plaintiff's job seems to implicate the "transportation worker" exemption under the FAA. Like the plaintiff in *Saxon,* he seems to have directly facilitated the ultimate act of transporting goods for transport to their final destination. That is, plaintiff seems to have played a necessary role in the free flow of goods or "actively engaged in transportation of those goods across" interstate commerce, as contemplated by *Saxon*. (See also *Bissonnette v. LePage Bakeries Park St., LLC* (2024) 601 U.S. 246, 255.) The *Bissonnette* court emphasized that the exemption applies only to workers who are "engaged" in commerce, which focuses on the "performance of the work" rather than the industry of the employer. (*Id.* at p. 255.) As noted in *Bissonnette*: "We have never understood § 1 to define the class of exempt workers in such limitless terms. To the

contrary, as we held in *Saxon*, a transportation worker is one who is 'actively' engaged in transportation of . . . goods across borders via channels of foreign or state interstate commerce.' [Citation.] In other words, any exempt work 'must at least play a direct and 'necessary role in the free flow of goods' across borders. . . ." Under *Bissonnette,* plaintiff seems "actively" engaged in the transportation of goods.

Ortiz v. Randstad Inhouse Services, LLC (2024 9th Cir.) 95 F.4th 1152 supports plaintiff's claim. Ortiz worked for a staffing company that assigned him to work for GXO Logistics Supply Chain, Inc, which operated warehouse and distribution facilities for Adidas, and Ortiz worked in a California warehouse facility. The warehouse where Ortiz worked received Adidas goods from international locations; products remained at the warehouse from several days to a few weeks, after which they were shipped to clients in numerous states. Ortiz's duties included picking up packages and transporting them to racks to organize them, assisting pickers in obtaining packages and transporting them to warehouse racks to organize them, assisting pickers in obtaining packages so they could be shipped out, and assisting the Outflow Department to prepare packages for their subsequent shipment. (*Id*. at p. 1158.) Although Ortiz had signed an arbitration agreement, he filed a class action alleging violations of California wage and hour law. Defendant filed a motion to compel arbitration. Plaintiff claimed he was exempt from the FAA because he was a transportation worker.

The *Ortiz* court (as the first step of the analysis) acknowledged and applied *Saxon,* and determined that the federal district court had concluded that "Ortiz's job duties included exclusively warehouse work; transporting packages to and from storage racks, helping other employees in obtaining packages so they could be shipped, and assisting the Outflow Department to prepare packages for their subsequent shipment." It made no reference to the type of business and focused exclusively on the job description, as commanded by *Saxon*. Further, the district court determined that plaintiff's class of workers played a "direct and necessary role in the free flow of goods across borders and actively engaged in the transportation of such goods," and thus plaintiff was exempt from the FAA.

The appellate court affirmed. "Ortiz's job description meets all the three benchmarks laid out in *Saxon*. Both Ortiz and Saxon fulfilled an admittedly small but nevertheless 'direct and necessary' role in the interstate commerce of goods; Saxon ensured that baggage would reach its final destination by taking it on and off the planes, while Ortiz ensured that goods were still moving in interstate commerce when the employee interacted with them, and each employee played a necessary part in facilitating their continued movement." (*Id*. at p. 1162.) Further, as to the second step, "the district court correctly concluded that Ortiz's class of workers played a 'direct and necessary role in the free flow of goods across borders and actively engaged in the transportation of such goods." "Like Saxon, Ortiz handled Adidas products near the very heart of the supply chain. In each, the relevant goods were still moving in interest commerce when the employee interacted with them, and each employee played a necessary part in facilitating their continued movement." If *Saxon* is exempt, so is Ortiz. (*Id.* at pp. 1161-1162.)

Ortiz made the following observations that frame the issue here. "If *Saxon* stands for anything, it is that an employee is not categorically excluded from the transportation worker exemption simply because he performs his duties on a purely local basis . . ." What matters is not the worker's geography, but his work's connection with – and relevance to – the interstate flow of goods. To illustrate the point, the *Ortiz* court looked to the famous "Pony Express" delivery in the nineteenth century; all riders were part of larger chain, even though some never made it out of a particular state. "So too here. Ortiz is perfectly capable of participating in the interstate supply chain for Adidas products even though he fulfills his role entirely within one state's borders." Further, Ortiz was like Saxon – "one who moves Adidas products around [the warehouse]. Though Ortiz moved goods only a short distance across the warehouse floor and onto and of storage racks, ***he nevertheless moved them***. And not only did he move them, but he did so with the direct purpose of facilitating their continued travel through an interstate supply chain. Without employees like Ortiz, Adidas products that arrived at [the warehouse] would not properly be processed, organized, stored, or prepared for the next leg of their interstate journey. Indeed, as [defendant] itself readily admits, although its employees do not actively transport Adidas products themselves, its warehouses act as an intermediary 'warehouse and distribution facilities' where products are 'received,' 'stored,' and 'processed' for further distribution to business or end consumers in other states. That process – and Ortiz's undisputed role in directly facilitating it – is a necessary step in an unbroken foreign and intestate supply chain for Adidas products." *Ortiz* acknowledged that "not every connection to commerce will suffice, no matter how tenuous the connection may be." That being said, "in cases where courts have found an insufficient close relationship," "***the employee's job description was much further removed from physically handing the goods than Ortiz was here***." (*Id.* at pp. 1163-1164, emphasis added.) "Even security guards and janitors whose employment with a transportation company creates a coincidental relationships to interstate commerce nowhere near the connection to the actual transportation of goods that Ortiz had." Finally, the *Saxon* test, when applied "properly," focuses not on the flow of goods themselves but on the employee's relationship with the flow of goods and the extent to which his role enables them to flow in interstate commerce," with the crux of the analysis focusing on the "work accomplished."

The *Ortiz* court concluded with the following coda: "*Saxon*'s reasoning . . . is consistent with the fundamental reality that within any given company, different classes of employees often have markedly different roles. . . . For example, under *Saxon*, a janitor would not qualify as a transportation worker even if he was employed by Southwest Airlines because his role is not direct or necessary to, actively engaged in, or intimately involved with transportation. . . . On the other hand, a truck driver employed by a bakery or temporary worker employee employed by a warehousing company might qualify despite the overarching nature of their employer's business because their particular job descriptions meet the standards laid out in *Saxon* . . . ." (*Id.* at p. 1165).

Plaintiff's job description seems similar to the job description at issue in *Ortiz*. Plaintiff "play[ed] a direct and 'necessary role in the free flow of goods' across borders." (*Saxon, supra,* 596 U.S. at p. 458.) He was also "actively also "actively 'engaged in' " and "intimately involved with the" transportation of goods in interstate transit. (*Ibid.*) Plaintiff did not need to cross state lines to be considered "engaged in" interstate commerce." (*Rittman v. Amazon.com, Inc*. (2020) 971 F.3d 904, 910.)

This conclusion is bolstered by *Betancourt v Transportation Brokerage Specialist, Inc* . (2021) 62 Cal.App.5th 552, a case overlooked by the parties. There, plaintiff was a delivery driver for a company that did "last-mile delivery," primarily for its client, Amazon.com, Inc, travelling intrastate. (*Id*. at p. 560.) The drivers would pick up the Amazon packages from warehouses and deliver them to Amazon customers who lived locally. The packages originated from various locations within the United States and even foreign countries, *and there was nothing to indicate that the plaintiff was delivering only packages originating in California*. The court held that the plaintiff was exempt from FAA coverage under the transportation worker exemption because the deliveries "were essentially the last phase of continuous journey of the interstate commerce ' for the out-of-state packages to reach their destination to the customer. (*Id.* at p. 559.) Thus, the plaintiff was "engaged in interstate commerce through his participation in the continuation of the movement of interstate goods to their destination." (*Ibid.*)

The same seems true here. Defendant via Les Clark's declaration acknowledges that it "regularly purchases at least $500,000 of goods and supplies from business and suppliers located outside of the state on a yearly basis." Plaintiff declares (as noted above) that he worked as a short driver and delivery driver, "transporting goods between warehouses, picking up and loading the truck with deliveries from various warehouses," and "making deliveries to restaurants and warehouses in one to five cities per shift." Plaintiff was directly engaged in the continuation of the movement of interstate goods to their final destination," as contemplated in *Saxon* and (most notably) *Betancourt.*

This conclusion is also consistent with *Sheppard v. Staffmark Investment, LLC* (N.D. Cal., Feb. 23, 2021, No. 20-CV-05443-BLF) 2021 WL 690260, *Furlough v. Capstone Logistics, LLC* (N.D.Cal., May 10, 2019, No. 18-CV-02990-SVK) 2019 WL 2076723; and *Rittman, supra,* 971 F.3d 904. *Sheppard* observed that courts "have clearly established that an individual who is driver and directly engaged in the interstate delivery of goods is a transportation worker under Section 1 [citations omitted]." (*Sheppard, supra,* at p. 4.) In *Furlough,* the court noted the " 'general trend amongst the circuits" as follows: plaintiffs who are personally responsible for transporting goods in interstate commerce, no matter what industry they are in, are transportation workers under the FAA exemption.[] Plaintiffs who oversee the transportation of goods in the transportation industry are also transportation workers.'" (*Furlough, supra, at p. 7.)* And *Rittman* concluded that delivery drivers were transportation workers "engaged in the movement of goods in interstate commerce, even if they [did] not cross state lines," and were thus exempt from the FAA's coverage. (*Rittman, supra,* at pp. 910-915.)

Defendant attempts to counter these conclusions in reply by arguing that plaintiff is not a "transportation worker" under the FAA because he was a "last-mile driver," who only made local deliveries. Defendant overlooks the import and impact of *Betancourt, supra*, as detailed above, as well as the case *Betancourt* relied on, *Nieto v. Fresno Beverage Co.* (2019) 33 Cal.App.5th 274. In *Nieto*, the court concluded that a beverage driver who only made intrastate deliveries still fell within the transportation worker exemption of the FAA. (*Id.* at p. 284.) The beverages, including "some manufactured" out of state (*Betancourt, supra*, 62 Cal.App.5th at p. 550), were sent first to an in-state warehouse and held for a short period of time, and then picked up by the driver and delivered to customers. (*Ibid.*) Accordingly, *Nieto* reasoned that the driver's deliveries "were essentially the last phase of a continuous journey of the interstate commerce" for the out-of-state beverages to reach their destination to customers. (*Ibid.*) Nieto was thus exempt as a transportation worker because he was "engaged in interstate commerce through his participation in the continuation of the movement of interstate goods to their destinations." *Betancourt* and *Nieto* have clear impact here.

Defendant in one final exhalation seems to acknowledge the import of these cases when it concedes that pursuant to *Rittman, supra*, 971 F.3d 904, cited above, a "last-mile driver" can "potentially" be covered by the transportation worker exemption. According to defendant,"[u]nlike in *Rittman*, where the drivers were delivering packages that had already travelled across state lines, here, Plaintiff does not have ***any evidence*** that the fruits and vegetables he delivered locally were previously transported from out of state." (Emphasis added.) This is not accurate. No doubt plaintiff has the burden to show the transportation worker exemption applies. (*Betancourt, supra*, 62 Cal.App.5th at p. 559.) But defendant overlooks (and fails to address the impact of) statements made in the declaration of Les Clark, defendant's President, as follows: "[Defendant] is a ***wholesale*** produce distributor located in San Luis Obispo. [Defendant] delivers produce to restaurants, schools, and other businesses in San Luis Obispo County and Santa Barbara County. [¶] [Defendant] ***regularly*** purchases ***at least*** $500,000 of goods and supplies from business and supplies ***located outside of the state*** ***on a yearly basis***." (Emphasis added.) Plaintiff worked as a driver from "July 11, 2022, to March 15, 2025." Based on the reasonable import of this evidence, there is only one real conclusion that can be reached – plaintiff delivered out-of-state produce to retailer entities, including restaurants, on a regular basis, meaning he was engaged in interstate commerce through his participation in the continuation of the movement of interstate goods to their final destination.[4] There is

[4] Defendant is better situated to present evidence to show plaintiff never delivered out-of-state produce (despite the obvious import of Mr. Clark's declaration). In order words, Mr. Clark's statements – unadorned and undisputed – are sufficient by themselves to show plaintiff engaged in the flow of interstate commerce as a delivery. Indeed, as was the case in *Betancourt*, there is nothing in defendant's evidence to indicate in any way that plaintiff only delivered California grown produce. If this was not true, it was incumbent on defendant to counter the import of Mr. Clark's declaration (its *own* evidence) with supplemental declarations. Defendant has attached to its reply three additional declarations – one from Alejandro Perez, one from Sarah Minnow, and one from Francisco Curiel, all addressing the onboarding process involving plaintiff, but utterly silent about the import of Mr. Clark's declarations and whether plaintiff did or did not deliver out-of-state produce to local entities as part of his job.

certainly nothing in it to suggest that plaintiff only delivered produce from California, as was also the case in *Betancourt*. As was observed in *Betancourt*, "*any interstate journey of an ingredient used to prepare restaurant food ends when it reaches the customer: the restaurant*," thereby triggering the transportation worker exemption. (Italics added.) This is to be contrasted with "prepared meals" for local restaurants, which are not a type of food that is indisputably part of the stream of commerce. (*Id.* at p. 559.) Plaintiff's job falls within the italicized portion of *Betancourt*. Plaintiff has shown on this record that the transportation worker exemption under the FAA applies, thus precluding compelled arbitration.

In summary, the FAA mandates arbitration for transactions involving interstate commerce. But section 1 of the FAA provides an exemption for transportation workers. Plaintiff has presented substantial evidence (based on his own ***and*** defendant's evidentiary proffers) that he is a transportation worker per *Saxon* and progeny (most notably under *Betancourt*, *Nieto,* and *Rittman*), meaning compelled arbitration under the FAA is precluded. As defendant articulates no basis for compelled arbitration under the California Arbitration Act (and in fact compelled arbitration appears inappropriate under California law), the motion to compel arbitration must be denied. This conclusion obviates the need for the court to address plaintiff's unconscionability arguments.

The parties are directed to appear at the hearing either personally or by Zoom.

Plaintiff's burden was satisfied on this record, and defendant (tellingly) has failed to present evidence to counter the impact of its own evidentiary proffer.