

PROPOSED TENTATIVE

Plaintiff Luciano Zepeda Martinez (plaintiff) filed a complaint against Kenai Drilling Limited (defendant), raising one cause of action under the Private Attorney General Act (the PAGA) for civil penalties. Plaintiff claims he is raising the claims personally and in a representative capacity (¶ 1), although it appears this is a representative action, as made clear in Part III, Section 1 of the operative pleading. Plaintiff claims he is acting on behalf of aggrieved employees who worked as hourly non-exempt employees in California during the relevant time period between November 2024 and March 2025, for failure to pay wages for all hours worked (minimum and overtime); failure to provide meal and rest periods; failure to reimburse for business expenses; failure to provide accurate wage statements; and failure to pay all wages due.

Defendant has filed a motion to compel arbitration pursuant to Code of Civil Procedure section 1281.4. As relevant for our purposes, defendant observes plaintiff signed an arbitration agreement that is governed by the Federal Arbitration Act (FAA). It contends that the arbitration agreement covers any *individual* PAGA claims raised by plaintiff in the lawsuit, and most notably, regardless of how the complaint is framed, every PAGA claim includes both individual and representative claims, as concluded in *Leeper v. Shipt* (2024) 107 Cal.App.5th 1001. *Leeper* concluded that “every PAGA action necessarily includes an individual PAGA claim,” requiring the parties following an arbitration agreement to arbitrate individual PAGA claims, and staying the representative PAGA claim portion of the lawsuit. (*Id.* at p. 1004.) Defendant has submitted the declaration of David Uhler, who is the Vice President of Finance for defendant, who details plaintiff’s employment, and to which is attached the “Arbitration Agreement” (agreement) signed by the parties on or near November 6, 2024. The agreement indicates that it is governed by the FAA; that it covers “any dispute arising out of or related to [plaintiff’s] employment or termination of employment with [defendant]”; and that plaintiff “agreed” to bring any Claims on an individual basis alone and waives any right to pursue Claims through a class action or in a representative action.

Defendant also submits the declaration of Kaleb Judy, defense counsel. He references two earlier cases in Santa Barbara County Superior Court – *Copeland v. Kenai Drilling Limited*, 25CV01181, and *Copeland v. Kenai Drilling Limited*, 25CV02636, both assigned to this court, and has attached to the declaration this court’s detailed final order adopted in each matter following defendant’s motions to compel arbitration. The court granted the motion to compel arbitration in Case No. 25CV01181, in light of the delegation clause and the requirement that the arbitrator was charged with determining issues of unconscionability as alleged. The court denied the motion to compel arbitration in Case No. 25CV02636, as it was not persuaded by *Leeper, supra*, but rather *Rodriguez v. Packers Sanitation Services, LTD, LLC* (2025) 109 Cal.App.5th 69, which rejected *Leeper*’s reasoning, at least where plaintiff has not advanced any individual PAGA causes of action in the operative pleading, concluding that when plaintiff does not raise individual PAGA claims, there is nothing to compel. (*Id.* at pp. 79-90.) The court stayed Case No. 25CV02636 pending resolution of arbitration as the parties were the same in both actions. Defendant contends that the

complaint here is essentially the same complaint as was filed in Case No. 25CV02636, “with an additional theory alleging unreimbursed employment-related expenses and some additional factual allegations.”

Attorney Judy also references a complaint filed by plaintiff against defendant in Kern County Superior Court styled *Luciano Zepeda Martinez v. Kenai Drilling Limited*, Kern County Superior Court Case No. 25CUB00342¹, assigned to Judge Gregory Pulskamp. Defendant does not inform us about the nature of this complaint, but has offered the signed order by Judge Pulskamp, which reads as follows: “The Court, having considering the Motion and supporting papers of defendant Kenai Drilling Limited (‘Defendant’) and Defendant’s Notice of Plaintiff Luciano Zepeda Martinez’s Non-Opposition, in the matter of Martinez v. Kenai Drilling Ltd., Kern County Superior Court Case NO. 25CUB00342, and good cause appearing, hereby finds and orders as follows: [¶] 1. The Court grants Defendant’s Motion to Compel Arbitration and stay of further proceedings during the pendency of arbitration.” The order was signed on January 27, 2026.

Plaintiff has filed opposition to the motion to compel arbitration. He does not address the impact of Santa Barbara County Superior Court Case Nos. 25CV01181 and 25CV02636, and specifically this court’s orders made therein. Nor does plaintiff address the impact of the complaint he filed against defendant in Kern County Superior Court, Case No. 25CUB00342, and the fact Judge Pulskamp granted defendant’s “Motion to Compel Arbitration” and stayed further proceedings during the pendency of arbitration. Instead, plaintiff makes the following arguments to support its claim that this court should deny the motion to compel arbitration outright: 1) the court, not the arbitrator, decides whether the agreement’s PAGA waiver is enforceable; 2) the agreement impermissibly requires a waiver of a PAGA representative action, meaning it is unenforceable; and 3) as result of both of these points, this court should deny the motion to compel arbitration and keep the matter in its entirety in this court.

Defendant filed a reply on April 7, 2026. All briefing has been examined.

As an initial matter, although not requested, the court will take judicial notice of this court’s final order in Santa Barbara County Superior Court Case Nos. 25CV01181 and 25CV02636, as well as Judge Pulskamp’s order in Kern County Superior Court Case No. 25CUB00342, as outlined above, on its own motion. These orders help frame the nature of the inquiry and provide guidance for resolution of the present matter.

Second, the court agrees with plaintiff that the court is charged with determining the scope of any PAGA waiver (i.e., whether the claim is actually arbitrable), even if there is a delegation clause. The court need look no further than Section 6(b) of the agreement, which reads in relevant part as follows: “. . . **Notwithstanding any other clause contained in this Agreement, any claim in court or arbitration** that all or part of the Class Action Waiver or the Collection Action Waiver is invalid, unenforceable, unconscionable, void or voidable may be *determined* **only by a court**

¹ This case involves the same parties as here. Although the Kern County Superior Court complaint is not attached or otherwise part of the record, it appears to involve an employment action, as here. It seems evident that in the Kern County Superior Case plaintiff did not file opposition to defendant’s motion to compel arbitration, which is not the case here.

and not by the arbitrator . . . “ (Emphasis added.) The nature of the “Collective Action Waiver,” as discussed below, is at issue here.² It is for the court to decide expressly.

Third, the court agrees with plaintiff that the agreement contains an unenforceable “Collection Action Waiver” as it relates to a PAGA representative waiver under the FAA, as contemplated under California law and implemented by *Viking Rivers Cruises, Inc. v. Moriana* (2022) 596 U.S. 639, 660-661, and *Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104, 1114.) *Viking River Cruises* concluded that while the FAA preempts California law that otherwise precludes waiver of individual PAGA causes of action, it does not preempt California law that precludes waiver of a PAGA representative action. *Adolph* concluded that an employee that was compelled to arbitrate his individual PAGA claims nonetheless maintains standing to pursue his nonindividual (or representative claims) in court. Here, the critical language of the agreement is contained in section 6(b), and reads as follows: “There will be no right or authority for any dispute to be ***brought, heard or arbitrated*** as a collective or representative action (‘Collective Action Waiver’). Employee agrees that the Collective Action Waiver shall preclude Employee from participating in a collective action as a named plaintiff or as a member of the class, proposed class, or representative action.” This language seems to require plaintiff to waive any right to sue for nonrepresentative PAGA action, and thus is impermissible and unenforceable under California law (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348), and thus under FAA. (*Viking River*; *supra*, 596 U.S. at p. 662.) Plaintiff must be allowed to enforce a PAGA representative action in court, as was the case in *Viking River*, despite the “Collective Action Waiver.”³ The PAGA representative action must stay, and defendant in the end does not contend otherwise.

This is where the court parts ways with plaintiff. What is critical in resolving the present motion to compel is the impact this determination has on the need for arbitration. And in this regard, the only way arbitration is implicated is because plaintiff advances individual PAGA claims in the lawsuit, which would have to be arbitrated as a result of any enforceable waiver in the agreement. The court finds, however, that plaintiff has not raised any individual PAGA claims in the complaint. Are individual PAGA claims ***always*** implicated in a PAGA representative action, per *Leeper*, as defendant contends, meaning they always must be ordered to arbitration while the representative action remains but is stayed? Although not addressed by the parties, the California Supreme Court granted review on April 16, 2025, in *Leeper v. Shipt*, S289305, and our high court’s order indicated that *Leeper* should remain published, but can be cited only for its persuasive value and the limited purpose of establishing the existence of a conflict in authority that would in turn allow the trial courts to exercise discretion under *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 456. Our high court indicated in the ordering granting review that it will review the

² Defendant in reply expressly argues that the “delegation clause” requires the arbitrator to determine this issue. Not so, based on the express language in the arbitration agreement.

³ The court finds severance as a doctrine is irrelevant here because, as will be discussed in other parts of this order, there are no individual PAGA claims to sever.

following issues in *Leeper*: “(1) Does every Private Attorney General Act (Lab. Code, § 2698 et seq.) (PAGA) action necessarily include both individual and non-individual PAGA claims, regardless of whether the complaint specifically alleges individual claims?; 2.) Can a plaintiff choose to bring only a non-individual PAGA action?” The issues at play here are directly implicated by the issues our high court will resolve in *Leeper*.

Pending resolution by our high court, this court does not approach the problem without appellate guidance. One published opinion has agreed with *Leeper*. (*Williams v. Alacrity Solutions Group, LLC* (2025) 110 Cal.App.5th 932, 943, review granted July 9, 2025, S291199 [agreeing with *Leeper* that “the inclusion of an individual PAGA claim [is] mandated by PAGA’s text”].) A number of published appellate opinions, however, have expressly disagreed with *Leeper*, in line with *CRST Expedited, Inc. v. Superior Court* (2025) 112 Cal.App.5th 872, 883, review granted Sept. 17, 2025, S292005 [holding, under the prior version of PAGA, that a plaintiff may bring a PAGA action asserting individual PAGA claims, nonindividual PAGA claims, or both]; *Galarsa v. Dolgen California, LLC* (2025) 115 Cal.App.5th 1, 4, 15, review granted Dec. 17, 2025, S293545 (*Galarsa*) [confirming *CRST Expedited*’s interpretation of § 2699, former subd. (a), to permit headless PAGA actions]; *Rodriguez v. Packers Sanitation Services Ltd., LLC* (2025) 109 Cal.App.5th 69, 81, fn. 5, review granted May 14, 2025 S290182 [questioning *Leeper*’s interpretation]; *Balderas v. Fresh Start Harvesting, Inc.* (2024) 101 Cal.App.5th 533, 536 [holding “that an employee who does not bring an individual claim against her employer may nevertheless bring a PAGA action for herself and other employees of the company”].)

As was the true in Case No. 25CV02363, this court remains unpersuaded by *Leeper*. The court is instead persuaded by *Rodriguez v. Packers Sanitation Services, Inc.*, *supra*, 109 Cal.App.5th 69. The *Rodriguez* court observed as follows: “Instead, we are of the view that where, as here, the defendant brings a motion to compel arbitration and the parties dispute whether the complaint includes arbitrable individual claims, the court should resolve the dispute by examining the complaint.” “If the plaintiff’s complaint asserts no individual PAGA claim, there is no existing dispute over his or her right to obtain an individual PAGA remedy, and he cannot properly be ordered to arbitrate such a claim. Therefore, if on a motion to compel arbitration the court examines the complaint and determines it does not allege an individual PAGA claim, the court should decline to compel any such claim to arbitration.” (*Id.* at p. 79, 80.)

Like the *Rodriguez* complaint, plaintiff’s complaint is not seeking individual PAGA relief, as noted above. Plaintiff seems to advance only nonindividual claims by describing the lawsuit as a “representative action” brought on behalf of aggrieved employees only. Indeed, when plaintiff does reference himself, he does so only in the larger context of a representative action. The court finds *Rodriguez* is persuasive. Because plaintiff is not raising individual

claims, but only nonindividual representative claims, there is nothing to arbitrate. As in *Rodriguez*, the court therefore denies defendant’s motion to compel arbitration.

Contrary to the parties’ briefing, however, this determination does not end the inquiry.

Two further concerns must be addressed.

First, pursuant to Code of Civil Procedure section 1284.4, if “a court of competent jurisdiction, whether in this State or not, has ordered arbitration of a controversy which is an issue involved in an action or proceeding pending before a court of this State, the court in which action or proceeding is pending shall, upon motion of party to such action or proceeding, stay the action or proceeding until an arbitration is had in accordance with the order to arbitrate or until such earlier time as the court specifies. . . .” This provision is clearly implicated in light of the pending case between plaintiff and defendant in Kern County Superior Case No. 25CUB00342, and Judge Pulskamp’s order granting arbitration and staying the matter. If the Kern County Superior Court case involves employment claims, something the parties do not expressly address, it seems appropriate to stay this action pending resolution of arbitration in that matter.

There is a second, more fundamental problem under the doctrine known as priority of jurisdiction, again not addressed by the parties. Generally, the rule in California is that “[w]here two [courts] have concurrent jurisdiction over the same parties and subject matter, the tribunal which first acquires jurisdiction of parties is entitled to retain it exclusively.” (*Williams v. Superior Court* (2007) 147 Cal.App.4th 36, 53, citing *Mungia v. Superior Court* (1964) 225 Cal.App.2d 280, 283.) Under this rule, the critical time for triggering jurisdiction is the service of the summons. (*Ibid*; *In re Marriage of Hanley* (1988) 199 Cal.App.3d 1109, 1116 [in applying this rule it is the tribunal where process is served first which has priority, regardless of which action was filed first]; *In re Marriage of Thompson* (2022) 74 Cal.App.5th 481, 488 [same]; see also *Mission Imports, Inc. v. Superior Court* (1982) 31 Cal.3d 921, 926, fn. 3 [ordinarily, the court with later jurisdiction must abate its proceedings upon demand if this doctrine is implicated].) It is uncertain from the record whether the lawsuit in Kern County Superior Court, filed by plaintiff against defendant, involves the same employment matters at issue here; if it does, it would appear the complaint in the Kern County Superior Court matter was served before the complaint here, as the present complaint (according to the proof of service) was served on n March 17, 2026, long after Judge Pulskamp’s order granting the motion to compel. It would appear that this case must be abated.

Summary of Conclusions:

The court takes judicial notice of Exhibits B and C attached to declaration of Kaleb Judy, on the court’s own motion.

The California Supreme Court is presently examining whether all PAGA claims include both individual and non-individual claims (representative claims), meaning that if they do, and when the employee in an arbitration agreement waives any individual PAGA claims in court, the

individual claims must be sent to arbitration, while the representative claims remain and are stayed. Pending resolution of the issues by our high court, this court finds *Rodriguez*, not *Leeper*, to be more persuasive, and thus determines that because plaintiff does not advance any individual PAGA causes of action in the operative pleading, there is nothing to compel to arbitration. Accordingly, the court denies defendant's motion to compel arbitration.

The court's inquiry is not concluded, however. The record indicates that plaintiff filed an earlier complaint (apparently raising the same or similar employment issues advanced here, although this is uncertain), in *Luciano Zepada Martinez v. Kenai Drilling Inc.*, Kern County Superior Court Case No. 25CUB00342, presently pending before Judge Gregory Pulskamp; Judge Pulskamp on January 27, 2026, granted defendant's unopposed motion to compel arbitration in that action and stayed the remaining litigation. The presence of that complaint, given the pending arbitration, potentially implicates Code of Civil Procedure section 1281.4, and the court as a result will at least temporarily stay the present action until a final determination about the nature and impact of the Kern County Superior Court case can be made. There is a second, more fundamental issue that must be resolved, implicating the doctrine of priority of jurisdiction. If the Kern County Superior Court complaint is similar to the complaint filed here, both implicate the rule that where two different courts have concurrent jurisdiction over the same parties and the same claims, the court that first acquires jurisdiction has exclusive jurisdiction (that would be Kern County Superior Court), meaning the present lawsuit would have to be abated. The court cannot tell whether the doctrine applies on the present record.

The court thus denies the motion to compel arbitration, but stays the matter pending further briefing. The parties are directed to brief whether the lawsuit filed in Kern County Superior Court Case No. 25CUB00342, pending before Judge Pulskamp, is same or similar to the matter here. The court also directs the parties to address whether Kern County Superior Court has exclusive jurisdiction over the matter because it has priority of jurisdiction, based on service of that lawsuit, and if it does, whether abatement of the present action is the appropriate remedy. The court continues the matter for hearing to Tuesday, May 19, 2026, at 8:30. The court directs each party to file no more than a 10-page brief addressing these topics, to be submitted to the court no later than Tuesday, May 5, 2026, by 5:00 p.m. No other briefing is authorized (there is no need for opposition or reply). The court will make a final determination about the stay and/or decision to abate at the May 19, 2026 hearing.