PROPOSED TENTATIVE

On April 14, 2026, the court denied defendant's motion to compel arbitration to plaintiff's lawsuit, which advances a single Private Attorney General Act (PAGA) cause of action for civil penalties, as least pending the California Supreme Court's decision in *Leeper v. Shipt*, S289305, as discussed in the court's order. The court asked the parties for further briefing, however, on two related but distinct points, given the undisputed fact that plaintiff had filed a complaint advancing similar employment claims against the same defendant in Martinez v. Kenai Drilling Limited, Kern County Superior Court Case No. 25CUB00342, filed on October 21, 2025 (i.e., before the December 30, 2025 complaint filed here). The Kern County Superior Court case has been assigned to Judge Pulskamp, who had granted a motion to compel arbitration and stayed the matter pending arbitration. Because the parties failed to address the import of this complaint, the court directed the parties to submit supplemental briefing to address the following:1) Should the court stay the present matter pursuant to Code of Civil Procedure[1] section 1284.4, pending outcome of the arbitration in the Kern County Superior Court case: and 2) Should the present case be abated under the priority of jurisdiction doctrine, because under that doctrine when two courts have concurrent jurisdiction over the same parties and subject matter, the tribunal which first acquires jurisdiction is entitled to exclusive jurisdiction, which would have been Kern County Superior Court? The court continued the matter to May 19, 2026, and directed further briefing to be submitted by May 5, 2026. Both parties have complied.

Initially, the court grants both parties request to take judicial notice of the complaint filed by plaintiff against defendant in *Martinez v. Kenai Drilling Limited,* Kern County Case No. 25CUB00342, assigned to Judge Pulskamp. It is a class action complaint, advancing seven (7) causes of action based on 1) failure to pay wages for all hours worked; 2) failure to pay overtime wages for daily overtime worked; 3) failure to authorize or permit meal and rest periods (2 cause of action); 4) failure to provide complete and accurate wage statements; 5) failure to time pay all earned wages and final paychecks due at time of separation; and 6) unfair business practices under Business and Professions Code section 17200, et seq. The complaint before this court, while based on the same set of operative facts and involving the same parties as the Kern County Superior Court case, advances a single cause of action under the PAGA, with the following as the bases for civil penalties: 1) failure to pay wages for all hours worked at minimum wage and all overtime hours worked; 2) failure to pay overtime wages at the proper overtime rate of pay; 3) failure to authorize or permit all legally required and/or compliant meal or pay meal premium wages; 4) failure to authorize or permit all legally required and/or compliant rest periods or pay rest period premium wages; 5) indemnification for all necessary expenditures or losses incurred by employees in direct consequence of discharging their duties; 6) statutory penalties for failure to provide accurate wage statements; 7) statutory waiting time penalties in for the form of continuation of wages for failure to timely pay employees all wages due upon separation of

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

employment. (¶ 1 of Operative Complaint). [2] Plaintiff makes it clear that he "experienced these violations personally, as well as informed and believes other aggrieved employees did as well." (*Ibid*.)

The court will first address whether this matter should be abated under the priority of jurisdiction doctrine. As indicated in this court's earlier order, the priority of jurisdiction (or exclusive concurrent jurisdiction) doctrine provides that when two or more courts have subject matter jurisdiction over a dispute, the court that first asserts jurisdiction assumes it to the exclusion of the others. (*Shaw v. Superior Court of Contra Costa County* (2022) 78 Cal.App.5th 245, 255.) If so, the latter case should be abated. The rule does not require absolute identity of parties, causes of action, or remedies sought as long as the court exercising original jurisdiction has the power to litigate all the issues and grant all the relief to which any of the parties might be entitled under the pleadings. (*Id.* at p. 256.) *Shaw* made the following important observations for our purposes: "We recognize that certain authorities state that the exclusive concurrent jurisdiction rule is mandatory (*Lawyers Title Ins. Corp. v. Superior Court* (1984) 151 Cal.App.3d 455, 460 []), whereas others state that, as a policy rule, countervailing policy concerns may render the rule inapplicable. (*Childs v. Eltinge* [(1973) 29 Cal.App.3d [843,] 854–855 [citations].) There is some tension between the two lines of authority, but we need not delve further into the issue because, if we assume the rule is mandatory, for reasons we set forth, *post*, PAGA does not clearly abrogate the rule; if we alternatively assume the trial court had discretion to weigh policy concerns in deciding whether to apply the rule, the court here committed no abuse of discretion in doing so." (*Id.* at p. 257.)

In *Shaw*, for example, petitioner brought a PAGA lawsuit in Los Angeles County Superior Court and a PAGA lawsuit in Contra Costa County Superior Court. (*Id*. at p. 251.) Both lawsuits were based on the same set of operative facts involving the same parties during the same time periods. The trial court abated the Contra Costa County Superior Court action under the exclusive concurrent jurisdiction doctrine, and the *Shaw* appellate court affirmed. The *Shaw* court rejected petitioners' claim that "PAGA abrogated the judge made doctrine of exclusive concurrent jurisdiction," concluding it did not. (*Id*. at p. 262.) Further, the *Shaw* court found that the trial court did not abuse its discretion in applying the doctrine even if it weighed policy concerns in deciding whether to apply the rule. "The trial court recognized, as have we, that application of the exclusive concurrent jurisdiction rule here did not vitiate the purposes for which PAGA was enacted. It additionally recognized that resolution of this case would duplicate court efforts, waste resources, and potentially produce divergent results. The trial court could reasonably conclude that the policies giving rise to the exclusive concurrent jurisdiction rule were not outweighed by those that drove PAGA's enactment. Indeed, petitioners themselves told the trial court below that '[a]llowing piecemeal complex litigation against BevMo over the same California Labor Code claims underlying plaintiffs' PAGA actions would waste both judicial and

[2] The court observes that these categories track almost jot-for-jot the class claims advanced in the first seven of eight causes of action advanced in Kern County Superior Court Case No. 25CUB00342.

party resources, as well as risk different outcomes based on the same facts." (*Id*. at p. 262; see *People ex rel. Bonta v. GreenPower Motor Co., Inc.* (2025) 113 Cal.App.5th 43, 49 [because it is a policy rule, application of the rule depends on the balancing of countervailing policies].)

The court agrees with plaintiff that *Shaw* is not dispositive here, because in this matter we have a pending PAGA action we well as a pending class action in Kern County Superior Court. While they are no doubt factually related, they are legally distinct. As our high court has made clear: "Although representative in nature, a PAGA claim is not simply a collection of individual claims for relief, and so is different from a class action. The latter is a procedural device for aggregating claims 'when the parties are numerous, and it is impracticable to bring them all before the court." (Code Civ. Proc., § 382.) In a class action, the 'representative plaintiff still possesses only a single claim for relief—the plaintiff's own.' (*Watkins v. Wachovia Corp.* (2009) 172 Cal.App.4th 1576, 1589.) If a representative plaintiff voluntarily settles her claim, she no longer has an interest in the class action and may lose the ability to represent the class.[5] (*Watkins*, at p. 1592; see *Wallace v. GEICO General Ins. Co.*, *supra*, 183 Cal.App.4th at pp. 1400-1401) "But a representative action under PAGA is not a class action." (*Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 757.) There is no individual component to a PAGA action because " '*every* PAGA action ... is a representative action on behalf of the state.' " [Citation.] Plaintiffs may bring a PAGA claim *only* as the state's designated proxy, suing on behalf of *all* affected employees. " (*Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 86–87.)

As noted in *Howitson v. Evans Hotels, LLC* (2022) 81 Cal.App.5th 475, PAGA and class action suits involve different primary rights, even though the claims involve the same or similar Labor Code violations. Class action (individual rights) involved a primary right possessed by the individual plaintiff. With PAGA, on the other hand, the plaintiff posing the primary right is the state, as if it had brought the action. (*Id*. at p. 192.) Further, the parties in the two lawsuits are not the same. In the class action context, the named plaintiff is the real party in interest, as she is an individual and a class representative seeking damages against defendant for purported violations of the Labor Code to the employees. In the PAGA context, the state is the real party in interest. Although plaintiff is an "aggrieved employee," standing to act a representative, he is not the real party in interest. She steps into the enforcement shoes of the state and her interest in the PAGA litigation is derivative of those of the state.

Under this authority, the court finds that while the cases generally involve the same subject matter, the specific issues raised in the present proceeding are legally distinct from the issues involved in the Kern County Superior Court case, sufficient to fall outside the priority of jurisdiction or exclusive concurrent jurisdiction doctrine. (See, e.g., *People ex rel. Bonta, supra,* 113 Cal.App.5th at p. 50.) At a minimum the court finds that the policies underlying the priority of jurisdiction or exclusive concurrent doctrine do not support abatement of the present matter.

The court is not persuaded by defendant's makeweight claim (consisting of a quarter page of argument) that the court should abate the present matter not because of the complaint in Kern County Superior Court, but because of an entirely different complaint pending in Santa Barbara County Superior Court – *Tapia v. Kenai Drilling Limited,* Sana Barbara County Superior Court Case No. 24CV054442, ***assigned to this court***. Not to belabor the point, but this situation does not implicate the priority of jurisdiction or exclusive concurrent jurisdiction doctrine, as it does not involve two California superior courts with concurrent jurisdiction over the subject matter of the litigation. It is thus manifestly outside the reasons for the supplemental briefing, and the argument will therefore not be considered.

This does not end the inquiry. As noted above, the court asked the parties to brief the second issue – whether the court should stay the present matter alternatively under section 1281.4, in light of the fact Judge Pulskamp had granted a motion to compel arbitration and stayed the matter pending arbitration. This provision provides in relevant part that 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 before a court of this State, the court in which such action or proceeding shall, upon motion of party to such action or proceeding, stay the action or proceeding until an arbitration is had according with the order to arbitrate or until such earlier time as the court specifies." This provision generally requires that a court in which the litigation is pending to impose a stay whenever that court, or another court, has ordered arbitration of a controversy that is an issue in the litigation. (*MKLA, Inc. 123 Fit Franchising, LLC* (2011) 191 Cal.App.4th 643, 647.) More specifically, "Section 1281.4 authorizes a stay only if a court has ordered arbitration of question between the parties to an agreement, and the same question and the same parties are involved in the pending action." (*Leenay v. Superior Court* (2022) 81 Cal.App.5th 553, 565-566.)

That being said, it is true, as plaintiff observes, section 1281.4 also provides that if "the controversy subject to arbitration is severable, the stay may be to that issue only." Under this provision, the trial court retains discretion to decide whether to stay the nonarbitrable, non-individual claims in a PAGA case. Whether a stay is appropriate depends on the nature and extent of any overlap between the nonarbitrable issues and the arbitrable ones. (*See, e.g., Dial 800 v. Fesbinder* (2004) 118 Cal.App.4th 32, 55; *see also Mattson v. Technologies, Inc. v. Applied Materials, Inc.* (2023) 96 Cal.App.5th 1146, 1162.) A stay of nonarbitrable claims pending arbitration is generally appropriate if the overlap is such that continuation of the litigation would disrupt the arbitration or render it ineffective. (*Cruz* v. *PacificCare Health Systems, Inc*. (2002) 30 Cal.4th 303, 320 [a stay is generally in order for inarbitrable claims that can be severed from arbitrable claims where, in the absence of a stay, the continuation of the proceeding in the trial court disrupts the arbitration proceedings and can render them ineffective]; see also *Aronow v. Superior Court* (2022) 76 Cal.App.5th 865, 882.) The court does not see the substance of the nonindividual, nonarbitrable claims as alleged in the PAGA action here, although legally distinct, as factually independent of the claims advanced in the class action

matter. Plaintiff's PAGA allegations rest almost verbatim on the individual claims the arbitrator will decide in accordance with the parties' agreement. (See, e.g., fn. 2, *ante,* and accompanying text.) A stay of the nonindividual claims in their entirety seems well in order, as litigation may pose a serious risk of disrupting the arbitration per *Cruz* and progeny. The stay may also be needed to reduce the risk of conflicting rulings on common legal or factual questions. (*Mattson, supra*, 96 Cal.App.5th at p. 1161.)

As recently observed by our high court: "When an action includes arbitrable and nonarbitrable components, the resulting bifurcated proceedings are not severed from one another; rather, the court may 'stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement.''(9 U.S.C. § 3; see Code Civ. Proc., § 1281.4.) In *McGill v. Citibank, N.A.* (2017) 2 Cal.5th 945, 966, we explained that this principle extends to "piecemeal litigation of 'arbitrable and inarbitrable remedies derived from the same statutory claim.' " (*Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104, 1125.) "Case law establishes that a stay of proceedings, as to any inarbitrable claims is appropriate until arbitration of any arbitrable claims is concluded." (*McGill, supra*, at p. 966.) And as one federal district court has recently observed in light of this authority: "District courts routinely stay the nonindividual PAGA claim pending completion of arbitration. *See Neims v. Neovia Logistics Distrib., LP*, 2023 WL 6369780, at *5 (C.D. Cal. Aug. 10, 2023) (staying non-individual PAGA claims because 'the arbitrator may determine Plaintiff's individual PAGA claim and leave the representative PAGA claim for the [c]ourt to determine'); *Filemon Colores v. Ray Moles Farms, Inc.*, 2023 WL 6215789, at *3 (E.D. Cal. Sept. 25, 2023) ('the proper course of action, as the *Adolph* decision itself indicated, will be to stay this matter until the arbitration concludes, at which time the parties can return to this [c]ourt to address any res judicata impact of the arbitrator's decision'); *Merhi v. Lowe's Home Ctr., LLC*, 2023 WL 6798500, at *8 (S.D. Cal. Oct. 13, 2023) (staying nonindividual PAGA claims pending the outcome of individual arbitration); *Rubio*, 2023 WL 8153535, at *4 (staying nonindividual PAGA claims pending individual arbitration under *Adolph*)." (*MEJIA, v. DICK'S SPORTING GOODS, INC.,* (C.D. Cal., Mar. 18, 2026, No. 2:25-CV-11645-JFW-MAAX) 2026 WL 796910, at *6.) The court will follow this authority and stay Case No. 25CV08164 pending arbitration in the Kern County Superior Court case, pursuant to its discretionary authority under section 1284.4.

Not all hope is lost for plaintiff, however. The court will schedule a CMC every 3 months, and will afford plaintiff an opportunity to address whether the continuation of the stay is appropriate given the course of arbitration. If circumstances arise that would suggest the stay should no longer apply to the nonarbitrable claims, the court will allow plaintiff to request that the stay be lifted or modified.