UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

STEVE THOMA

Plaintiff,

v.

CBRE GROUP, INC. *et al.*

Defendants.

Case No.: CV 16-6040-CBM-AJWx

ORDER RE: DEFENDANTS CBRE GROUP, INC. AND CBRE, INC.'S MOTION TO COMPEL ARBITRATION, STRIKE COLLECTIVE ACTION CLAIMS, AND STAY CLAIM, OR IN THE ALTERNATIVE STAY PROCEEDINGS [58]

The matter before the Court is Defendants CBRE Group, Inc. and CBRE, Inc.'s (collectively, "CBRE's") Motion To Compel Arbitration, Strike Collective Action Claims, and Stay Claim, or in the Alternative Stay Proceedings (the "Motion"). (Dkt. No. 58.)

I. BACKGROUND

Plaintiff's Complaint asserts the following eight causes of action on a class, collective, and/or representative basis arising from defendants' alleged misclassification of facility managers as exempt employees: (1) Unpaid overtime pursuant to the Fair Labor Standards Act ("FLSA"); (2) Unpaid overtime pursuant to California law; (3) failure to pay wages upon termination; (4) waiting time penalties pursuant to Cal. Lab. Code § 203; (5) unpaid premium pay for missed meal and rest periods; (6) failure to provide accurate wage statements; (7) unfair

business practices; and (8) California Private Attorneys General Act ("PAGA").

CBRE's instant Motion requests the Court compel individual arbitration of Plaintiff's claims and strike Plaintiff's collective action claims, or alternatively stay proceedings pending the Supreme Court's review of *Morris v. Ernst & Young, LLP*, 834 F.3d 975 (9th Cir. 2016).[1]

II. STATEMENT OF THE LAW

Under the Federal Arbitration Act ("FAA"),[2] a written agreement to arbitrate in a contract involving interstate commerce is "valid, irrevocable and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." *See* 9 U.S.C. § 2; *see also Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 111-12 (2001); *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 67-68 (2010). A party aggrieved by the refusal of another to arbitrate under a written arbitration agreement may petition any United States district court for an order directing that arbitration proceed in the manner provided in the agreement. 9 U.S.C. § 4; *Volt Info. Servs., Inc. v. Bs. of Ts. of Leland Junior Univ.*, 489 U.S. 468, 474 (1989). The Court's role under the FAA is limited to determining: "(1) whether a valid agreement to arbitration exists and, if it does, (2) whether the agreement encompasses the dispute at issue."[3] *Volt Info. Servs., Inc.*, 489 U.S. at

---

[1] On January 26, 2017, the Court denied Defendants JPMorgan Chase National Corporate Services, Inc., JPMorgan Chase & Co., and JP Morgan Chase Bank, N.A. (collectively, "Chase's") motion to compel arbitration on the ground that the arbitration agreement between Plaintiff and Chase violated the National Labor Relations Act ("NLRA"). (Dkt. No. 50.)

[2] Plaintiff does not contend the FAA does not apply here. Moreover, the arbitration agreement between Plaintiff and CBRE provides that arbitration "shall be conducted pursuant to the provisions of the arbitration rules of the Federal Arbitration Act." (Cruz Decl. Ex. A, hereinafter "Arbitration Agreement".) (*See also* Compl. ¶¶ 1, 4 (alleging CBRE is a Delaware corporation and Plaintiff is a resident of Los Angeles County).) *See* 9 U.S.C. § 2; *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 119 (2001); *CarMax Auto Superstores Cal. LLC v. Hernandez*, 94 F. Supp. 3d 1078, 1101 (C.D. Cal. 2015); *Herrera v. CarMax Auto Superstores Cal., LLC*, 2014 WL 3398363, at *3 (C.D. Cal. July 2, 2014).

[3] Plaintiff does not dispute his claims are encompassed within the scope of the Arbitration Agreement. (*See* Arbitration Agreement ("The claims and disputes subject to arbitration include all claims arising from or related to [Plaintiff's] employment or the termination of [Plaintiff's] employment including, but not

474 (citations omitted).

III. DISCUSSION

The Arbitration Agreement between Plaintiff and CBRE provides:

> In the event of any dispute or claim between you and CBRE (including all of its employees, agents, subsidiary and affiliated entities, benefit plans, benefit plans' sponsors, fiduciaries, administrators, affiliates, and all successors and assigns of any of them), we jointly agree to submit all such disputes or claims to confidential binding arbitration and waive any right to a jury trial.

The Arbitration Agreement also includes the following class, collective, and representative action waiver:

> All claims or disputes subject to arbitration, other than claims seeking to enforce rights under Section 7 of the National Labor Act, must be brought in the party's individual capacity, and not as a plaintiff or class member in any class, collective, or representative action.

(Hereinafter, the "Waiver".)

A. NLRA

Plaintiff contends the Arbitration Agreement is unenforceable because it violates the NLRA.

Section 7 of the NLRA provides:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

29 U.S.C. § 157. Under Section 8 of the NLRA, it is "an unfair labor practice for

---

limited to, claims for wages or other compensation due; claims for breach of any contract or covenant (express or implied); tort claims; claims for discrimination (including, but not limited to, race, sex, religion, national origin, age, marital status, or medical condition or disability); claims for benefits (except where an employee benefit or pension plan specifies that its claims procedure shall culminate in an arbitration procedure different from this one); and claims for violation of any federal, state, or governmental law, statute, regulation, or ordinance").)

an employer . . . to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in [§ 7]." 29 U.S.C. § 158.

The Ninth Circuit recently found in *Morris v. Ernst & Young, LLP* that the "mutual aid or protection clause" set forth in Section 7 of the NLRA "includes the substantive right to collectively 'seek to improve working conditions through resort to administrative and judicial forums.'" 834 F.3d at 983. The Circuit therefore held the "concerted action waiver"[4] in the employer's agreements was unenforceable because it interfered with a substantive federal right protected by the NLRA's § 7 in violation of § 8 by obligating employees to pursue work-related claims individually and preventing concerted activity by employees in arbitration proceedings. *Id.* at 983-84, 990.

Here, the Waiver in the Arbitration Agreement violates the NLRA by precluding Plaintiff from engaging in concerted activity by requiring Plaintiff to pursue work-related claims individually in arbitration.[5] *Id.* at 983-84, 990.[6] Accordingly, the Court finds the Waiver is unenforceable under *Morris*.[7]

The Court further finds the Waiver is not severable from the remainder of the Arbitration Agreement. Severing the Waiver and requiring Plaintiff to

---

[4] Specifically, the "concerted activity waiver" contained in the agreements required plaintiffs to: (1) pursue legal claims against their employer exclusively through arbitration; and (2) arbitrate claims only as individuals and in "separate proceedings."

[5] The Supreme Court granted certiorari of *Morris* on January 13, 2017. This Court, however, is bound by the Ninth Circuit's decision in *Morris* until it is expressly overruled by the Ninth Circuit *en banc*, by the Supreme Court, or subsequent legislation. *United States v. Maxey*, 989 F.2d 303, 305 (9th Cir. 1993).

[6] *See also Echevarria v. Aerotek, Inc.*, 2017 WL 24877, at *3 (N.D. Cal. Jan. 3, 2017); *Bui v. Northrop Grumman Sys. Corp.*, 2016 WL 7178921, at *4 (S.D. Cal. Dec. 9, 2016); *Whitworth v. Solarcity Corp.*, 2016 WL 6778662, at *1 (N.D. Cal. Nov. 16, 2016); *Cashon v. Kindred Healthcare Operating, Inc.*, 2016 WL 6611031, at *2 (N.D. Cal. Nov. 9, 2016); *Mackall v. Healthsource Glob. Staffing, Inc.*, 2016 WL 6462089, at *1 (N.D. Cal. Nov. 1, 2016); *Gonzalez v. Ceva Logistics U.S., Inc.*, 2016 WL 6427866, at *8 (N.D. Cal. Oct. 31, 2016).

[7] The Court also finds the Arbitration Agreement's Waiver of representative PAGA claims is unenforceable. *Sakkab v. Luxottica Retail N. Am., Inc.*, 803 F.3d 425 (9th Cir. 2015); *Iskanian v. CLS Transp. L.A., LLC*, 59 Cal. 4th 348 (Cal. 2014).

arbitrate his individual claims would effectively preclude Plaintiff from pursuing class and collective claims, and thereby violate the NLRA. *See Echevarria*, 2017 WL 24877, at *3; *Whitworth*, 2016 WL 6778662, at *4; *Gonzalez*, 2016 WL 6427866, at *7.

Since Plaintiff and CBRE did not agree to arbitrate class-wide, collective, or representative claims, the Court denies CBRE's motion to compel arbitration and strike Plaintiff's collective action claims. *Stolt-Nielsen S.A. v. Animal Feeds Int'l. Corp*, 559 U.S. 662, 684 (2010); *Mackall*, 2016 WL 6462089, at *1.[8]

B. Stay

Alternatively, CBRE requests the Court stay proceedings pending the Supreme Court's review of *Morris*.[9]

A district court has discretionary power to stay proceedings. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). The court "may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case." *Leyva v. Certified Grocers of Cal. Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979). "A stay is an intrusion into the ordinary processes of administration and judicial review, and accordingly is not a matter of right, even if irreparable injury might otherwise result" to the party seeking a stay. *Nken v. Holder*, 556 U.S. 418, 427 (2009) (internal quotations and citations omitted). "'[I]f there is even a fair possibility that the stay . . . will work damage to someone else,' the stay may be inappropriate absent a showing by the moving party of 'hardship or inequity.'" *Dependable Highway Express v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007) (quoting *Landis*, 299 U.S. at 255). "[B]eing required to defend a suit, without more, does not constitute a 'clear case of hardship or

[8] Having found the Arbitration Agreement is unenforceable, the Court denies CBRE's request to stay Plaintiff's PAGA claims pending arbitration.

[9] This Court previously denied two requests by Defendant Chase to stay proceedings pending the Supreme Court's decision in *Morris*. (Dkt. Nos. 48, 66.)

inequity.'" *Lockyer*, 398 F.3d at 1112. In all cases, "[t]he proponent of a stay bears the burden of establishing its need." *Clinton v. Jones*, 520 U.S. 681, 706 (1997).

Here, CBRE fails to meet its burden of establishing a need for a stay. Plaintiff demonstrates there is "a fair possibility" a stay would "work to damage" putative class members who may be required to continue working extensive hours for CBRE without compensation based on their alleged misclassification as exempt employees. *Dependable Highway Express*, 498 F.3d at 1066. Moreover, requiring CBRE to defend this lawsuit in court as a putative class action does not constitute a "clear case of hardship or inequity." *Lockyer*, 398 F.3d. at 1112.

Therefore, the Court declines to exercise its discretion to stay proceedings pending the Supreme Court's review of *Morris*.

IV. CONCLUSION

Accordingly, the Court:

(1) **DENIES** CBRE's Motion To Compel Arbitration, Strike Collective Action Claims, and Stay Claim pending arbitration; and

(2) **DENIES** CBRE's Motion To Stay Proceedings pending the Supreme Court's review of *Morris*.

IT IS SO ORDERED.

DATED: March 9, 2017.

CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE