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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**EDCV 16-2287 JGB (KKx)**	Date	April 13, 2017
Title	***Sergio Gonzalez v. Coverall North America, Inc.***		

Present: The Honorable	JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ	Not Reported
Deputy Clerk	Court Reporter
Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: **Order (1) GRANTING Defendant Coverall North America, Inc.'s Motion to Compel Arbitration; (2) STAYING All Proceedings Pending Decision on Arbitrability by the Arbitrator; and (3) VACATING the hearing on April 17, 2017 (IN CHAMBERS)**

Before the Court is Defendant Coverall North America, Inc.'s Motion to Compel Arbitration and Stay PAGA Claim. (Dkt. No. 11.) The Court finds this matter suitable for resolution without a hearing. See Fed. R. Civ. P. 78; L.R. 7-15. After consideration of the papers filed in support of and in opposition to the motion, the Court GRANTS the Motion to Compel Arbitration, STAYS all proceedings pending a decision on arbitrability by the arbitrator, and VACATES the hearing on April 17, 2017.

I. BACKGROUND

A. Procedural Background

Plaintiff Sergio Gonzalez ("Plaintiff") filed a class action complaint against Defendant Coverall North America, Inc. ("Defendant") on November 2, 2016. ("Complaint," Dkt. No. 1.) The Complaint asserts five claims individually and on behalf of similarly situated individuals: violations of California Labor Code §§ 221, 224, 226(a), 2802 and California Business and Professions Code § 17200, et seq., as well as penalties pursuant to the California Labor Code Private Attorney General Act of 2004 ("PAGA"). (Compl. at 8-11.)

Defendant filed a Motion to Compel Arbitration on February 3, 2017. ("Motion," Dkt. No. 11.) Defendant moves to compel arbitration of Plaintiff's claims pursuant to a "Janitorial

Franchise Agreement" (the "Agreement") between the parties executed in 2006, in which he agreed to submit any disputes to binding arbitration. (See "Motion," Dkt. No. 11-1 at 1.) Defendant also seeks to stay Plaintiff's PAGA claim. (Id.) Plaintiff opposed the Motion on March 8, 2017. ("Opposition," Dkt. No. 16.) Plaintiff contends the Agreement is unenforceable under the National Labor Relations Act ("NLRA") because it contains a class action waiver, and also under California law because it is unconscionable. ("Opposition," Dkt. No. 16 at 6-18.) Defendant filed its reply concurrently with a stipulation to exceed the page limit, on March 27, 2017. ("Reply," Dkt. No. 20; "Page Limit Stipulation," Dkt. No. 21.) The Court granted the Page Limit Stipulation on March 28, 2017. (Dkt. No. 22.)

On April 3, 2017, Plaintiff filed an Ex Parte Application for Leave to File a Sur-reply. ("Application," Dkt. No. 23.) Defendant opposed the Application on April 5, 2017. (Dkt. No. 24.) The Court denied Plaintiff's Application on April 10, 2017. (Dkt. No. 26.)

B. Factual Allegations

1. The Parties

Defendant is a franchisor of commercial cleaning janitorial franchised businesses. ("Taulman Decl.," Dkt. No. 11-2 ¶ 3.) Presently, Defendant has more than 4,000 franchisees in the United States. (Id.)

Plaintiff is a franchisee of Defendant. Plaintiff entered into the Agreement on September 22, 2006. (Taulman Decl. Ex. A.) Through the Agreement, Plaintiff gained the right to operate a commercial janitorial business using Defendant's trademarks and operating system. (Id.) Plaintiff sold his franchise to Anna Gonzalez on October 11, 2006, and reacquired a fifty percent interest in the franchise two years later. (Id. Exs. B, C.)

2. The Complaint

Plaintiff alleges he, and other similarly situated individuals, are misclassified as independent contractors by Defendant, in violation of California law. (Compl. ¶ 1.) Plaintiff claims Defendant exercises significant behavioral and financial control over the franchisees, including instructing, training, and providing oversight of their work, determining the amount charged to a customer and the amount paid to the franchisee, reprimanding the franchisee upon complaint from a customer, as well as terminating accounts serviced by the franchisee at Defendant's discretion. (Id. ¶ 12.) Plaintiff also claims he and the other franchisees do not work in an independently established trade or profession, and they do not hold themselves out as an independent business. (Id. ¶¶ 14-15.) Instead, he and the other franchisees provide services that are within Defendant's usual course of business—cleaning services. (Id. ¶ 13.) Because of the misclassification by Defendant, Plaintiff alleges he and other franchisees have not received the benefits that inure in an employment relationship under law, including receiving itemized wage statements, biweekly pay, and reimbursement of expenses incurred in the course of their work, among others. (Id. ¶¶ 16-18.) Plaintiff also alleges the Agreement is a form contract of adhesion,

pursuant to which he and similarly situated individuals have had to pay substantial amounts of money in order to obtain cleaning work. (Id. ¶¶ 10-11.)

3. The Agreement

The print version of the Agreement is twenty-four pages in length and contains headings that separate sections and subsections of text. (Taulman Decl. Ex. A.) The arbitration clause begins on page 22 and provides as follows:

> 21. ADDITIONAL REMEDIES FOR BREACH
> A. Arbitration. Except as otherwise provided in Paragraphs 21A(14) and 21B, all controversies, disputes or claims between Coverall, its officers, directors, agents and/or employees (in their respective capacities) and Franchisee (and Franchisee's owners, officers, directors and/or any guarantors of this Agreement) arising out of or related to the relationship of the parties, this Agreement or the validity of this Agreement, any related agreement between the parties, and/or any specification, standard or operating procedures of Coverall, including those set forth in the Coverall Policy and Procedure Manual, which controversies, disputes or claims are not resolved in accordance with Paragraph 20, shall be submitted promptly for arbitration.

(Id. Ex. A. at 20.) Paragraph 21A is followed by fourteen additional subparagraphs that set forth specific parameters of the arbitration clause. (Id. at 20-22.) Paragraph 21A(11) concerns the class action waiver, which Plaintiff contends is unenforceable:

> Franchisee and Coverall agree that arbitration shall be conducted on an individual, not a class wide basis, which restriction shall be enforceable to the fullest extent permitted by law. Any arbitration between Coverall and Franchisee shall not be consolidated with any other proceedings between Coverall and any other Franchisee. Only Coverall (and its officers, directors, agents and/or employees) and Franchisee (and Franchisee's owners, officers, directors and/or guarantors) may be parties to any arbitration proceeding described in Paragraph 21.A.

(Id. at 21.) Plaintiff also argues Paragraphs 21A(3)[1], 21A(13)[2], 21(B)[3]-(C)[4], and 22[5] are unenforceable because they are unconscionable. The Agreement also includes a governing law provision, as well as a severability provision:

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[1] Paragraphs 21A(3) states:

The costs of the arbitration shall, subject to the provisions of Paragraph 21C of this Agreement, be shared equally by Franchisee and Coverall; further provided, if there is more than one arbitrator, each party shall, subject to the provisions of Paragraph 21C, be responsible for the fees of the arbitrator appointed by that party, and shall share equally the fees of the arbitrator appointed by the other arbitrators pursuant to Paragraph 21A(5). Coverall, however, reserves the right in its sole and exclusive discretion to assume responsibility for all of the costs of the arbitration.

[2] Paragraph 21A(13) provides:
A decision by the arbitrator or arbitrators (including any finding of fact and/or conclusion of law) against either Coverall or Franchisee shall be confidential unless otherwise required to be disclosed by law or by any administrative body and may not be collaterally used against either of them in existing or subsequent litigation or arbitration involving any other franchisee or third party.

[3] Paragraph 21B states:
Injunction and Specific Performance. Notwithstanding anything in Paragraphs 20 and 21 to the contrary, Coverall shall be entitled to apply directly to a court of competent jurisdiction for the entry of preliminary and permanent injunctions and orders of specific performance enforcing the provisions of this Agreement or any other related agreement pertaining to Franchisee's use of the Marks; the obligations of Franchisee regarding confidentiality or non-competition; any assignments or attempted assignments of this Agreement by Franchisee; any matter relating to the ownership of the Franchise, and/or any other matter for which Coverall would have no adequate remedy at law. If Coverall secures any injunction or order of specific performance, Franchisee agrees to pay Coverall an amount equal to the costs incurred by Coverall in obtaining relief, including without limitation, attorney's fees, litigation costs and expenses, as well as any damages incurred by Coverall as a result of Franchisee's actions.

[4] Paragraph 21C provides:
Attorney's Fees. Should either Party incur attorney's fees in order to enforce the terms and conditions of this Agreement, including post-term covenants, whether or not an arbitration proceeding is instituted, the prevailing party shall be entitled to reimbursement by the other party of all litigation costs, including attorneys' fees.

[5] Paragraph 22 states:
TIME TO ASSERT CLAIMS. Any and all claims and actions arising out of or relating to this Agreement, the relationship of Franchisee and Coverall, or Franchisee's operation of its business, brought by any Party hereto against the other, shall be commenced within two years from the occurrence of the facts giving rise to such claim or action, or such claim or action shall be barred.

> 23. GOVERNING LAW. This Agreement shall be interpreted and governed by the laws of the state in which the Franchise granted herein is located.
> …
> 28. SEVERABILITY. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

(Id. at 22, 23.)

4. Prior Proceeding

On August 8, 2008, Franchisee Sabrina Laguna filed a putative class action against Defendant containing substantially similar allegations. See Sabrina Laguna v. Coverall North America, Inc., Case No. 3:09-cv-02131-JM (GBS). The case was settled. (Mot. at 3.)

Plaintiff was a franchisee at that time and thus, received notice of and an opportunity to opt out of the settlement. (Id.) Plaintiff participated in the settlement and did not opt out. (Id.) As a result, Plaintiff is bound by the terms of the settlement. (Id.)

II. LEGAL STANDARD

The Federal Arbitration Act (the "FAA") provides that contractual arbitration agreements "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. The FAA establishes a general policy favoring arbitration agreements. AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 339 (2011); Cox v. Ocean View Hotel Corp., 533 F.3d 1114, 1119 (9th Cir. 2008) ("Section 2 of the FAA creates a policy favoring enforcement of agreements to arbitrate.") Its principal purpose is to "ensure that private arbitration agreements are enforced according to their terms." Concepcion, 563 U.S. at 334 (citing Volt Info. Sciences, Inc. v. Bd. of Tr. of Leland Stanford Jr. Univ., 489 U.S. 468 (1989) (internal quotation marks omitted)). "Arbitration is a matter of contract, and the [FAA] requires courts to honor parties' expectations." Id. at 351.

Pursuant to the FAA, "[a] party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court . . . for an order directing that such an arbitration proceed in the manner provided for in [the arbitration] agreement." 9 U.S.C. § 4. Upon a showing that a party has failed to comply with a valid arbitration agreement, the district court must issue an order compelling arbitration. Id. If such a showing is made, the district court shall also stay the proceedings pending resolution of the arbitration at the request of one of the parties bound to arbitrate. Id. § 3.

In determining whether to issue an order compelling arbitration, a district court's involvement is limited to "determining (1) whether a valid agreement to arbitrate exists and, if it

does, (2) whether the agreement encompasses the dispute at issue." Cox, 533 F.3d at 1119 (quoting Chiron Corp. v. Ortho Diagnostyic Sys., Inc., 207 F.3d 1126, 1130 (9th Cir. 2000)). A party seeking to compel arbitration under the FAA has the burden in this regard. Id.

III. DISCUSSION

Defendant contends the arbitration provision of the Agreement is valid and encompasses Plaintiff's claims. (Mot. at 5-8.) Plaintiff argues Defendant's Motion should be denied for two reasons: first, because Plaintiff is misclassified as an employee and the arbitration clause is therefore unenforceable because its class-waiver provision violates the NLRA; and second, because the arbitration clause is unenforceable as unconscionable. (Opp'n at 6-18.) In response, Defendant argues the parties delegated decisions of arbitrability to the arbitrator. (Reply at 3.) Defendant also contends the Agreement is not unconscionable. (Id. at 3-14.)

A. Arbitrability

Defendant asserts the arbitration clause includes a delegation provision whereby the parties agreed to delegate to the arbitrator any challenges to the enforceability of the arbitration clause. (Reply at 3.) Plaintiff contends the Court, not an arbitrator, must decide whether the arbitration clause is enforceable because the delegation provision is unconscionable and thus unenforceable. (Opp'n at 22.) Defendant maintains the delegation provision is neither procedurally nor substantively unconscionable. (Reply at 3-13.) The Court first examines whether the parties delegated arbitrability to the arbitrator, and then determines whether the delegation provision is unconscionable.

1. Delegation of issues of arbitrability

While "there is a presumption that courts will decide which issues are arbitrable," (Oracle Am., Inc. v. Myriad Group A.G., 724 F.3d 1069, 1072 (9th Cir. 2013)), parties may delegate arbitrability decisions to the arbitrator. Howsam v. Dean Witter Reynolds, Inc., 537 U.S. 79, 83 (2002)(quoting AT&T v. Commc'ns Workers, 475 U.S. 643, 649 (1986)) ("Unless the parties clearly and unmistakably provide otherwise, the question of whether the parties agreed to arbitrate is to be decided by the court, not the arbitrator"); see also First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 939, 944 (1995) ("Courts should not assume that the parties agreed to arbitrate arbitrability unless there is 'clea[r] and unmistakabl[e]' evidence that they did so.") Where the parties "clearly and unmistakably intend to delegate the power to decide arbitrability to an arbitrator, the court should . . . determine whether the assertion of arbitrability is 'wholly groundless.'" Qualcomm Inc. v. Nokia Corp., 466 F.3d 1366, 1371 (2006); see, e.g., Simmons v. Hankey, No. 2:16-cv-06125-ODW(JEMx), 2017 WL 424850, at *5 (C.D. Cal. Jan. 30, 2017) (applying "wholly groundless" standard); Elmore v. CVS Pharmacy, Inc., No. 2:16-cv-05603-ODW(ASx), 2016 WL 6635625, at *4 (C.D. Cal. Nov. 9, 2016)(same); Alvarez v. Progress Financial Company, No. CV 14-00027 MMM (Ex), 2014 WL 12605643 (C.D. Cal. May 15, 2014) (same).

Here, the arbitration clause specifically states that "all controversies, disputes or claims . . . arising out of or related to the relationship of the parties, this Agreement or the validity of this Agreement . . . shall be submitted promptly for arbitration." (Taulman Decl. Ex. A ¶ 21A.) By this language, any claim, controversy, or dispute regarding the validity of the Agreement is subject to arbitration.

In addition, the arbitration clause also provides that "Arbitration shall be subject to . . . the then current Rules of the American Arbitration Association for Commercial Arbitration." (Taulman Decl. Ex. A ¶ 21A(1).) Rule 7(a) of the applicable Rules of the American Arbitration Association for Commercial Arbitration ("AAA Rules") provide that "[t]he arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim." ("Sims Decl.," Dkt. No. 11-3 Ex. A.) The Ninth Circuit and "[v]irtually every circuit to have considered the issue has determined that incorporation of the [AAA Rules] constitutes clear and unmistakable evidence that the parties agreed to arbitrate arbitrability." Oracle, 724 F.3d at 1074. [6]

Based on the language of the arbitration clause and the delegation provision, as well as the incorporation of the AAA Rules, the Court concludes the parties' demonstrate a clear and unmistakable intent to arbitrate the question of arbitrability.[7]

The Court next determines whether the assertion of arbitrability is "wholly groundless." See Qualcomm Inc., 466 F.3d at 1371. In conducting this inquiry, the Court "should look to the scope of the arbitration clause and the precise issues that the moving party asserts are subject to arbitration." Id. at 1374. "Because any inquiry beyond a 'wholly groundless' test would invade the province of the arbitrator, whose arbitrability judgment the parties agreed to abide by . . . the district court need not, and should not, determine whether [the claims or defenses] are in fact arbitrable." Id. If the assertion of arbitrability is not "wholly groundless," the Court must stay

[6] Plaintiff argues the delegation provision of the arbitration clause is unconscionable in part because the Agreement provides that "[t]he arbitrator or appointed arbitrators shall not alter or otherwise reform the terms of this Agreement, or award any relief or grant any remedy not provided for in this Agreement or specifically excluded by this Agreement." (Taulman Decl. Ex. A ¶ 21A(6).) Plaintiff contends this provision alters the AAA Rules in a way that "renders the arbitrator unable to rule on questions of arbitrability to the extent they would require the arbitrator to hold any of the provisions of the agreement were unenforceable." (Opp'n at 24-25 n. 24.) In response, Defendant argues that the arbitration clause "does not expressly restrict an arbitrator from striking any provision he deems unconscionable." (Reply at 12.) Rather, the no-modification clause merely provides that the arbitrator cannot change any term of the Agreement unless the arbitrator is expressly authorized to do so. (Id.) The Court disagrees with Plaintiff because it is not apparent that the no-modification provision prevents the arbitrator from adhering to AAA Rule 7(a). See Part III.A.2 for further discussion of unconscionability.

[7] Plaintiff does not appear to argue otherwise. Rather, Plaintiff argues that the delegation provision is unconscionable, which the Court addresses in Part III.A.2.

the trial pending a ruling on arbitrability by an arbitrator, whereas if the assertion of arbitrability is "wholly groundless," the Court may deny the stay under FAA § 3. Id. at 1371.

As both parties acknowledge, the arbitration provision here is broad. (Mot. at 10, Opp'n at 22.) It covers "all controversies, disputes, or claims . . . arising out of or related to the relationship of the parties, this Agreement, or the validity of this Agreement," as well as related agreements, or "any specification, standard or operating procedure" by Defendant. (Taulman Decl. Ex. A ¶ 21A.) Pursuant to the Court's reading of the Complaint in conjunction with the arbitration clause, the assertion of arbitrability by Defendant is not "wholly groundless." For instance, Plaintiff claims he and other franchisees are misclassified as independent contractors. (Compl. ¶ 11). However, the Agreement itself expressly disclaims the existence of an employment relationship: "Franchisee is and shall remain at all times a completely independent contractor in business for itself . . . ." (Taulman Decl. Ex. A ¶ 13.) The issue of classification is one "arising out of or related to" both the relationship of the parties and the Agreement itself. Moreover, the terms of Agreement will provide evidence of the type of relationship between the parties, including provisions regarding training, cleaning contracts, pay, and termination. Accordingly, Defendant's assertion of arbitrability is not "wholly groundless."

Upon a determination that the parties demonstrate a clear and unmistakable intent to arbitrate the question of arbitrability and the moving party's assertion of arbitrability is not "wholly groundless," the Court must stay the trial pending a ruling on arbitrability by an arbitrator. However, because Plaintiff contends the delegation clause is unconscionable, the Court must first consider his arguments in this regard.

2. Unconscionability of the delegation provision

Plaintiff contends the delegation provision is unconscionable and unenforceable. "Under California law, an arbitration agreement, like any other contractual clause, is unenforceable if it is both procedurally and substantively unconscionable." Pokorny v. Quixtar, Inc., 601 F.3d 987, 996 (9th Cir. 2010). Both procedural and substantive unconscionability must be present, but not necessarily to the same degree. Ferguson v. Countrywide Credit Indus., Inc., 298 F.3d 778, 783 (9th Cir. 2002). "The more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa." Armendariz v. Found. Health Psychare Servs., Inc., 24 Cal. 4th 83, 114 (2000). "When considering an unconscionability challenge to a delegation provision, the court must consider only arguments 'specific to the delegation provision.'" Rent-A-Center, West, Inc. v. Jackson, 561 U.S. 63, 73-74 (2010).

Procedural unconscionability concerns "the circumstances of contract negotiation and formation, focusing on oppression or surprise due to unequal bargaining power." Pinnacle Museum Tower Assn. v. Pinnacle Market Dev. (US) LLC, 55 Cal. 4th 223, 246 (2012). "There are degrees of procedural unconscionability. At one end of the spectrum are contracts that have been freely negotiated by roughly equal parties, in which there is no procedural unconscionability." Baltazar v. Forever 21, Inc., 62 Cal. 4th 1237, 1244 (2016). On the other end

of the spectrum are "[c]ontracts of adhesion that involve surprise or other sharp practices." Id. "Ordinary contracts of adhesion, although they are indispensable facts of modern life that are generally enforced, contain a degree of procedural unconscionability even without any notable surprises, and bear within them the danger of oppression and overreaching." Id.

Here, Plaintiff contends that the delegation provision "is part of a contract of adhesion and is procedurally unconscionable for the reasons discussed [in Part A], which apply in equal force to the delegation clause itself." (Opp'n at 23.) The four reasons, which Plaintiff incorporates by reference, are as follows. First, the terms were set by Defendant and Plaintiff had no choice but to agree to the terms, or not be able to work for Defendant. (Id. at 9.) Second, Plaintiff was not provided with a Spanish-language version of the Agreement or an explanation of the arbitration clause. (Id. at 10.) Third, the arbitration provision is not set apart from the rest of the Agreement. (Id.) Fourth, Defendant did not provide Plaintiff with a copy of the AAA Rules incorporated by reference into the arbitration clause. (Id. at 11.)

However, as Defendant points out, the Ninth Circuit has instructed: "When considering an unconscionability challenge to a delegation provision, the court must consider only arguments 'specific to the delegation provision.'" Mohamed, 848 F.3d at 1210 (quoting Rent-A-Ctr., 561 U.S. at 73). The cases Plaintiff relies on to assert otherwise are distinguishable because they are non-binding and pre-date Mohamed. (See Opp'n at 23.) The Court declines to consider Plaintiff's arguments because they are not specific to the delegation provision and thus finds no basis to conclude the delegation provision is procedurally unconscionable. Because the delegation provision is not procedurally unconscionable, and because both procedural and substantive unconscionability must be present in order for an agreement to be unenforceable, the Court need not consider Plaintiff's contentions regarding the substantive unconscionability of the delegation provision. See Armendariz, 24 Cal. 4th at 114.

In sum, the Court concludes the language of the arbitration clause and delegation provision demonstrate the parties' clear and unmistakable intent to arbitrate the question of arbitrability and Defendant's assertion of arbitrability here is not "wholly groundless." In the absence of unconscionability, the Court is required to enforce the Agreement and yield decisions regarding arbitrability to the arbitrator. Accordingly, the Court GRANTS the Motion and STAYS further proceedings pending a ruling on arbitrability by an arbitrator.

B. PAGA Claim

Defendant additionally moved for a stay of litigation of Plaintiff's PAGA claim pending the resolution of Plaintiff's individual claims in arbitration. (Mot. at 11.) Defendant argues Plaintiff's PAGA claim is non-arbitrable and based on the same facts as his other claims, such that requiring litigation of the PAGA claim while the other claims are being arbitrated "could affect the independence and utility of the arbitration proceeding and lead to inconsistent results on the very same issues." (Mot. at 12.)

Conversely, Plaintiff asserts staying his PAGA claim pending arbitration of his individual claims is incorrect under recent Ninth Circuit Authority. (Opp'n at 4.) Plaintiff states:

> If the Court rules that the arbitration clause is unenforceable, then Plaintiff can pursue both his class claims and the PAGA claims in this Court. If, however, the Court rules that the arbitration clause is unenforceable, then Plaintiff's PAGA claim must also be sent to arbitration (and not stayed), where Plaintiff can pursue it on a representative basis.

(Id.) In response, Defendant notes it has only moved to compel arbitration of Plaintiff's non-PAGA claims, and thus if Plaintiff believes his PAGA claims are arbitrable, he may submit them to arbitration, where the arbitrator would determine arbitrability of those claims. (Reply at 15 n. 11.)

Defendant's request to stay Plaintiff's PAGA claims depends on the conclusion that such claims are non-arbitrable. (See Mot. at 11.) Similarly, Plaintiff's contentions regarding the stay depend on the Court determining whether the arbitration clause is enforceable. However, as previously discussed, whether Plaintiff's claims are arbitrable and whether the arbitration clause is enforceable are questions that reside with the arbitrator. As a result, the Court DENIES Defendant's request to stay only Plaintiff's PAGA claim.

IV. CONCLUSION

For the foregoing reasons, the Court GRANTS the Motion to Compel Arbitration and STAYS all proceedings pending a decision on arbitrability by the arbitrator. The Court ORDERS the parties to file a joint status report within one week of the arbitrator's decisions or by July 17, 2017, whichever is sooner. The hearing on April 17, 2017 is VACATED.

IT IS SO ORDERED.