

2022 WL 3453068

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United States District Court, N.D. California.

Leyla SHAMS, Plaintiff,
v.
REVATURE LLC, Defendant.

Case No. 22-cv-01745-NC
|
Signed August 17, 2022

Synopsis

Background: Former employee brought state-court action under California law, including California's Private Attorneys General Act (PAGA), alleging that employer unlawfully required employees to participate in unpaid training, told employees that they would have to repay training costs if they left their employment before a certain time, and required employees to use personal equipment for business purposes without reimbursement. After removal under the Class Action Fairness Act (CAFA), employer moved to compel arbitration.

Holdings: The District Court, [Nathanael M. Cousins](#), United States Magistrate Judge, held that:

class-action waiver in arbitration agreement applied only to non-individual representative actions, not to employee's claims on behalf of the state under PAGA, and waiver was thus permissible under the Federal Arbitration Act (FAA);

employee was required to arbitrate her individual claims; but

employee had statutory standing under PAGA to pursue claims in court on state's behalf alleging violations of California labor law.

Motion granted in part and denied in part.

Procedural Posture(s): Motion to Compel Arbitration.

Attorneys and Law Firms

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ORDER GRANTING DEFENDANT'S MOTION TO COMPEL ARBITRATION; ORDERING SUPPLEMENTAL BRIEFING ON REMAINING CLAIMS

Re: ECF 14

[NATHANAEL M. COUSINS](#), United States Magistrate Judge

*1 On July 19, 2022, Defendant Revature LLC filed a Motion to Compel Arbitration pursuant to the parties' arbitration agreement. Plaintiff Leyla Shams responded that the parties' arbitration agreement is null and void because the Supreme Court's recent decision in [Viking River Cruises, Inc. v. Moriana](#) upheld California's prohibition on waivers of claims brought under California's Private Attorneys General Act (PAGA). After reviewing the parties' arguments and [Viking River Cruises](#), the Court finds that, although the Supreme Court upheld part of California's prohibition on PAGA waivers, the parties' waiver falls within the portion of California's prohibition that is preempted by the Federal Arbitration Act (FAA), so the parties' agreement is not void. Because the agreement is valid, the Court GRANTS Revature's Motion to Compel Arbitration of Shams' individual claims, and ORDERS the parties to provide supplemental briefing suggesting how the Court should handle the remaining non-individual PAGA claims.

I. BACKGROUND

According to the complaint, Shams is a former hourly employee of Defendant Revature LLC. ECF 1-4 ¶ 7. Revature is a company that provides talent development and technology outsourcing services throughout California. *Id.* ¶ 16. Shams alleges that Revature required her and other class members to participate in mandatory training as a condition of employment; they were not paid for this training time. *Id.* ¶ 18. Revature also required Shams and other class members to use their personal computers, home internet connections, and/or cellular phones to perform necessary and essential functions of their positions; they were not reimbursed for these business expenses. *Id.* Finally, Revature represented to Shams and other class members that they would be required

to pay back their training costs if they left Revature before a specified period of time. *Id.* ¶ 20.

On February 11, 2022, Shams brought this suit for California Labor Code and California Business and Professions Code violations in Santa Clara County Superior Court. *Id.* 3–15. On March 18, 2022, Revature removed the case to this Court under Class Action Fairness Act diversity jurisdiction. ECF 1. On July 19, 2022, Revature filed the instant Motion to Compel Arbitration. ECF 14. All parties have consented to the jurisdiction of a magistrate judge under 28 U.S.C. § 636(c). ECF 5; ECF 8.

II. LEGAL STANDARD

The FAA makes arbitration agreements “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. Under the FAA, a court must compel arbitration if: (1) a valid agreement to arbitrate exists, and (2) the dispute falls within the scope of the agreement. *Geier v. M-Qube Inc.*, 824 F.3d 797, 799 (9th Cir. 2016) (internal citation omitted).

III. DISCUSSION

A. Does a Valid Agreement to Arbitrate Exist?

First, the Court considers whether a valid agreement to arbitrate exists. Together with its Motion, Revature filed a copy of the four-page Mutual Agreement to Arbitrate Disputes signed by Shams and an authorized Revature representative on July 21, 2021. ECF 14-2. Shams does not dispute that she signed the Agreement as a condition of her employment. ECF 16 at 6. But Shams argues that because the Supreme Court upheld California's prohibition on PAGA waivers, the Agreement's “Form of Arbitration” Clause is invalid, and because the “Form of Arbitration” Clause is invalid, under the Agreement's “Severability” Clause, the entire Agreement is null and void. *See* ECF 16 at 7–11.

1. Viking River Cruises and PAGA Waivers

*2 The parties agree that *Viking River Cruises* squarely applies to this case. ECF 14 at 3, 11; ECF 16 at 7–9.

In *Viking River Cruises*, the Supreme Court considered whether the FAA preempts California caselaw prohibiting PAGA waivers. — U.S. —, 142 S. Ct. 1906, 1913, --


L.Ed.2d — (2022). The California Supreme Court case at issue, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348, 173 Cal.Rptr.3d 289, 327 P.3d 129 (2014), held that waivers of the right to bring “representative” PAGA claims are invalid as a matter of public policy. *Id.* at 1916. The Court clarified that PAGA claims are “representative” in two ways: (1) all PAGA claims are brought by an employee “representing” the State; and (2) some PAGA claims are brought by an employee “representing” other employees. *Id.* (This Court refers to the latter claims as “non-individual claims.”) *Iskanian* presented a rule for each interpretation of “representative”. *Iskanian*'s first rule prohibited waivers of PAGA claims by an employee as a representative of the State. *Id.* at 1916. *Iskanian*'s second rule prohibited separation of individual and non-individual PAGA claims. *Id.* at 1916–17. The Supreme Court ultimately upheld *Iskanian*'s first rule. *Id.* at 1925–26. But it found that *Iskanian*'s second rule was preempted by the FAA “insofar as it precludes division of PAGA actions into individual and non-individual claims through an agreement to arbitrate.” *Id.* at 1925.

2. Application of Viking River Cruises to the Agreement

Here, the Agreement's “Form of Arbitration” Clause states that: “Employee and Employer expressly understand and acknowledge that by signing this Agreement they are waiving their rights to pursue class action, collective action, multiple-party, and private attorney general remedies in any court and in any arbitration forum except as expressly provided herein.” ECF 14-2 at 3. Shams argues this clause includes the type of wholesale PAGA waiver barred by *Viking River Cruises*. ECF 16 at 9. The Court disagrees.

Viking River Cruises does not quote the exact language of the waiver at issue, but it explains that the parties’ “Class Action Waiver” prohibited them from bringing “any dispute as a class, collective, or representative action under PAGA.” 142 S. Ct. at 1911.

Here, the waiver is not similarly labeled “Class Action Waiver,” but the context of where “private attorney general” appears makes clear that the waiver applies to non-individual

representative actions, not Shams' individual PAGA claims on behalf of the State. The Agreement only mentions the term "private attorney general" three times; all in the "Form of Arbitration" Clause. *See* ECF 14-3. All three times, the term is grouped with waivers of rights to pursue "class action," "collective action," and "multiple-party" remedies. *Id.* The last sentence of the Clause states that: "each Party shall only submit their own individual claims in arbitration and shall not bring claims against the other in any representative capacity on behalf of any other individual." *Id.* From this context, it is clear that the Agreement's PAGA waiver is a waiver of Shams' right to bring non-individual claims; it is not a wholesale waiver. Because the waiver only waives Shams' right to bring non-individual PAGA claims, it is permissible under  *Viking River Cruises*. Thus, the Agreement is valid, and the first element of the arbitration test is satisfied.¹

B. Does this Dispute Fall Within the Scope of that Agreement?

Next, the Court considers whether the claims Shams raises in this case fall within the scope of the parties' Agreement. Shams' complaint alleges violations of the California Labor Code and California Business and Professions Code based on Revature's failure to reimburse employees for training and business-related expenses and its assertion that employees repay their training costs if they do not meet certain requirements. ECF 1-4 ¶¶ 37, 43, 49, 54-55. The "Claims" Clause of the Agreement states:


Claims: The Parties mutually agree that the dispute resolution procedure set forth in this Agreement applies to any and all past, current, and future disputes, claims, grievances, and/or causes of action arising out of or related to Employee's employment relationship, terms and conditions of employment, or termination of employment with Employer, including but not limited to claims relating to hiring, recruitment, wages or other compensation, benefits, promotion, transfer, demotion, working conditions, termination of employment, breach of contract (express or implied), discrimination, harassment, retaliation, whistleblower


claims, workers' compensation retaliation, wrongful termination (constructive or actual), tort claims, and any common law or statutory claims arising under any applicable federal, state, local, or other governmental law, statute, regulation, or ordinance (hereinafter referred to as "**Claims**"). This Agreement applies to Claims Employee may have against Employer or its officers, directors, supervisors, managers, employees, or agents in their capacity as such or otherwise, as well as Claims that Employer may have against Employee.

*3 ECF 14-2 at 2. The claims Shams asserts here relate to the terms and conditions of her employment, compensation, and torts. These types of claims are within the scope of the Agreement. Accordingly, the second element of the arbitration test is satisfied.

Because there is a valid agreement to arbitrate between Shams and Revature, and the claims raised in Shams' complaint fall within the scope of the parties' Agreement, the Court must compel arbitration of Shams' individual claims.

C. Should the Remaining Non-Individual PAGA Claims be Dismissed?

After granting Revature's Motion to Compel Arbitration of Shams' individual claims, the non-individual PAGA claims raised in the complaint remain.  *Viking River Cruises* addressed this issue, stating:

The remaining question is what the lower courts should have done with Moriana's non-individual claims. Under our holding in this case, those claims may not be dismissed simply because they are "representative."  *Iskanian's* rule remains valid to that extent. But as we see it, PAGA provides no mechanism to enable a court to adjudicate non-individual

PAGA claims once an individual claim has been committed to a separate proceeding. Under PAGA's standing requirement, a plaintiff can maintain non-individual PAGA claims in an action only by virtue of also maintaining an individual claim in that action. See Cal. Lab. Code Ann. §§ 2699(a), (c).

142 S. Ct. at 1925. The Court ultimately concluded that “Moriana lacks statutory standing to continue to maintain her non-individual claims in court.” *Id.*

In response to Revature's request to dismiss the remaining claims under *Viking River Cruises*, Shams asserts that the Supreme Court “relied on an erroneous reading of *Kim v. Reins*, 9 Cal. 5th 73, 259 Cal.Rptr.3d 769, 459 P.3d 1123 (2020), to dismiss Moriana's non-individual PAGA claim” resulting in an “exactly backwards” standing analysis. ECF 16 at 15.

In *Kim*, the California Supreme Court held that employees do not lose standing to pursue a PAGA claim if they settle and dismiss their individual claims. 9 Cal. 5th at 80, 259 Cal.Rptr.3d 769, 459 P.3d 1123 (2020). The Court explained that PAGA's plain language presented only two requirements for standing: (1) “the plaintiff must be an aggrieved employee” (2) “against whom one or more of the alleged violations was committed.” *Id.* at 83–84, 259 Cal.Rptr.3d 769, 459 P.3d 1123 (citing Cal. Lab. Code § 2699(c)). Because “Kim was employed by Reins and alleged that he personally suffered at least one Labor Code violation on which the PAGA claim is based,” “Kim is thus an ‘aggrieved employee’ with standing to pursue penalties on

the state's behalf.” *Id.* at 84, 259 Cal.Rptr.3d 769, 459 P.3d 1123.

Although the Supreme Court suggests that under PAGA, Moriana lost standing to pursue her non-individual PAGA claims, because the California Supreme Court is the final arbiter of California law, this Court applies *Kim*'s interpretation of PAGA standing to this case. See *Beal v. Missouri P.R. Corp.*, 312 U.S. 45, 50, 61 S.Ct. 418, 85 L.Ed. 577 (1941) (explaining that state courts are the “final arbiters” of the meaning and application of state statutes). Shams was employed by Revature and alleges that she suffered at least one of the asserted PAGA Labor Code violations, thus she is an aggrieved employee with standing to pursue penalties on the State's behalf. See *Kim*, 9 Cal. 5th at 84, 259 Cal.Rptr.3d 769, 459 P.3d 1123, 259 Cal.Rptr.3d, 459 P.3d. Accordingly, the Court DECLINES to dismiss the non-individual PAGA claims remaining in this case.²

IV. CONCLUSION

*4 For the foregoing reasons, the Court GRANTS Revature's Motion and ORDERS the parties to submit to binding arbitration of Shams' individual claims in accordance with their Mutual Agreement to Arbitrate Disputes. As for the remaining non-individual PAGA claims, the Court DECLINES to dismiss the claims, finding that Shams has standing to pursue them. To aid the Court in determining how to handle the separate claims while maintain judicial economy, the Court ORDERS the parties to file a joint supplemental brief, not to exceed ten pages, suggesting how it should handle the non-individual PAGA claims by **September 14, 2022**.


IT IS SO ORDERED.

All Citations

--- F.Supp.3d ----, 2022 WL 3453068

Footnotes

¹ Because the Agreement is valid, the Court need not consider Shams' severability arguments. See ECF 16 at 10–11.

- 2 Because the Court declines Shams' invitation to stay this case pending the California Supreme Court's decision in *Adolph v. Uber Technologies*, Case No. S274671, the Court also DENIES Shams' Request for Judicial Notice, at ECF 16-1.  *Flick v. Liberty Mut. Fire Ins. Co.*, 205 F.3d 386, 399 n.7 (9th Cir. 2000) (denying a request for judicial notice when the documents are not relevant to any issue before the court).

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