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

Case No.	**EDCV 19-2124 JGB (SPx)**	Date	May 15, 2020
Title	***Reginald Moore, et al. v. Universal Protection Service, LP, et al.***		

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 Plaintiffs' Motion to Certify FLSA Collective Action (Dkt. No. 47); (2) DENYING Defendant's Motion to Stay (Dkt. No. 57); (3) GRANTING Defendant's Motions and Petitions to Compel Arbitration (Dkt. Nos. 58-65, 67-76); and (4) VACATING the May 18, 2020 Hearing (IN CHAMBERS)**

Before the Court are the following motions:

- Plaintiffs' Motion to certify FLSA collective action and issue notice ("Motion to Certify," Dkt. No. 47);
- Defendant's motion to stay case pending final approval of class settlement in related action, ("Motion to Stay," Dkt. No. 57);
- Defendant's numerous motions and petitions to compel arbitration, ("Motions to Compel Arbitration," Dkt. Nos. 58-65, 67-76);

The Court finds these matters appropriate for resolution without a hearing. See Fed. R. Civ. P. 78; L.R. 7-15. After considering the papers filed in support of and in opposition to the matters, the Court GRANTS the Motion to Certify, DENIES the Motion to Stay, and GRANTS the Motions to Compel Arbitration. The Court VACATES the May 18, 2020 hearing.

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I. BACKGROUND

A. Procedural Background

On November 5, 2019, Reginald Moore, Alisa Jones, and Eduardo Guerra ("Plaintiffs") commenced this action against Universal Protection Service, LP ("Defendant") for violations of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201-219, and violations of California and Colorado state law. (Dkt. No. 1.) Plaintiffs amended the complaint on November 19, 2019. ("FAC," Dkt. No. 23.) The FAC asserts ten causes of action: (1) violation of FLSA; (2) violation of California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code, §§ 17200-17210; (3) California minimum wage violations under Cal. Wage Order No. MW-2019 and Cal. Labor Code §§ 1182.11, 1182.12, & 1194; (4) California overtime violations under Cal. Wage Order No. 5-2001/7-2001 and Cal. Labor Code §§ 510, 1194; (5) California meal and rest break violations under Cal. Wage Order No. 4-1001 and Cal. Labor Code §§ 218.5, 226.7, & 512; (6) California record keeping violations under Cal. Wage Order No. 5-2001/7-2001 and Cal. Labor Code §§ 226, 1174, & 1174.5; (7) California wage payment violations under Cal. Labor Code §§ 201, 202, & 203; (8) California Private Attorney General Act ("PAGA") violations under Wage Order No. 5-2001/7-2001 and Cal. Labor Code §§ 2698-2699.5; (9) Colorado minimum wage violations under the Colorado Wage Claim Act, Colo. Rev. Stat. § 8-4-101 – 8-4-123 ("CWCA"), the Colorado Minimum Wage Act, Colo. Rev. Stat. § 8-6-101 – 8-6-119, and Colorado Minimum Wage Order Number 35, 7 Colo. Code Regs. § 1103-1 ("CMWA"); and (10) Colorado overtime violations under the CWCA and CMWA. (FAC.)

On November 6 and 7, 2019, Plaintiffs filed consent to join forms for Milagros Almonte, Denise Aquino, Crystal Brandly, Damaura Christian, Austin Salle, Nancy Sindar, Esther Shipley, Robert Snyder, and Erica McGee. (Dkt. No. 11.) Consent to join forms followed for Tonya Brown, Christina Capstraw, David Capstraw, II, Jalee Outlaw, Bernard Tyree, James Boggs, Ronald Burkhammer, Alice Dawson, Anicia Grant, Tanesha Johnson, Andrew Moses, Darrius Patterson, Donald Sandoval, Michael Smith, Khristian Thornton, Taminka White, Brian Wilburn, King Bandoh, Angel Grant, Dennis Clay, Levi DeMasi, Justin LeBlanc, Kimberly Adam, Beatrice Augusta, Shakamree Cauthren, Johnthan Fuller, Salvador Munoz, Brian Rodney, John Titus, and John Vandewater. (Dkt. Nos. 17, 18, 40, 41, 43, 44, 46, 66) The Court refers to these individuals as "Opt-In Plaintiffs."

Plaintiffs filed the Motion to Certify on February 13, 2020. (Mot. Cert.) Plaintiffs included an appendix in support of this Motion. ("Plaintiffs' Appendix," Dkt. No. 48 (attaching Exhibits A to J).) Defendant opposed the Motion to Certify on March 23, 2020, ("Defendant's Opposition," Dkt. No. 79), and included objections to Plaintiffs' evidence, ("Defendant's Objections," Dkt. No. 80), a request for judicial notice, ("Defendant's RJN," Dkt. No. 81 (attaching Exhibits A to J)), and an appendix for the Opposition, ("Defendant's Appendix," Dkt. No. 82 (attaching Exhibits 1 to 35), Dkt. No. 83 (attaching Exhibits 36-60)., Dkt. No. 84 (attaching Exhibits 61 to 90), Dkt. No. 85 (attaching Exhibits 91 to 115), Dkt. No. 86 (attaching Exhibits 116-140), and Dkt. No. 87 (attaching Exhibits 141 to 174).) Plaintiffs replied on April 29, 2020, ("Plaintiffs' Reply," Dkt. No. 102), and objected to an untimely filed declaration, (Dkt. No. 103.)

Defendant filed the Motion to Stay on March 16, 2020. (Mot. Stay.) In support of the Motion to Stay, Defendant included the Declaration of Michelle Williams, ("Williams Declaration," Dkt. No. 58-1 (attaching Ex. A)), and the Declaration of Janine M. Braxton, ("Braxton Declaration," Dkt. No. 58-3 (attaching Exs. A to F)). Defendant also filed the Motions to Compel Arbitration on March 16, and each includes numerous declarations and attachments. (Motions to Compel Arbitration.)

Plaintiffs opposed the Motion to Stay, ("Plaintiffs' Opposition RE Stay," Dkt. No. 91), and opposed the Motions to Compel Arbitration, ("Plaintiffs' Opposition RE Arbitration," Dkt. No. 92). Plaintiffs also filed evidentiary objections regarding the Motions to Compel Arbitration. ("Plaintiffs' Objections," Dkt. No. 93). Defendant replied in support of the Motion to Stay, ("Defendant's Reply RE Stay," Dkt. No. 98), and in support of the Motions to Compel Arbitration, ("Defendant's Reply RE Arbitration," Dkt. No 101).

B. Factual Background

1. Allegations

Plaintiffs allege as follows. Defendant is a leading security and facility services company that provides security personnel to its customers to safeguard locations across the country. (FAC ¶ 4.) According to its website, Defendant employs more than 200,000 individuals and has revenues exceeding $7 billion. (Id.) Plaintiffs are or were hourly-paid, non-exempt security guard employees of Defendant who worked at Defendant's customers' sites providing security services including patrolling, monitoring, and reporting suspicious activity. (Id. ¶ 5.) Plaintiffs assert Defendant maintains several unlawful policies or practices with regard to minimum wage, off-the-clock work, meal and rest breaks, and other labor code violations under California and Colorado law. Plaintiffs also claim Defendant's nationwide practices violate FLSA. (Id. ¶ 6.)

Plaintiffs seek to conditionally certify a collective action pursuant to FLSA, 29 U.S.C. § 216(b), composed of putative "Collective Action Members," and defined as follows:

> All current and former non-exempt, hourly-paid security guard employees who worked at any location nationwide at any time within the three years prior to the date of filing of this Complaint through the date of the final disposition of this action who were denied minimum and/or overtime wages in connection with Defendant's policy and/or practice of requiring mandatory pre- and post-shift work to be completed off-the-clock without any compensation.

(Id. ¶ 29 (emphasis added).) Plaintiffs also seek class certification under Fed. R. Civ. P. 23 for "California Class Action Members" and "Colorado Class Action Members." (Id. ¶¶ 23, 26 (defining the classes and time periods).) Plaintiffs seek declaratory and injunctive relief, as well as damages and statutory penalties. (Id. at 50-51.)

2. Maged Hakeem Action

The Motion to Stay seeks to stay this action pending the outcome of settlement proceedings in the consolidated lawsuit Maged Hakeem, et al. v. Universal Protection Service, LP dba Allied Universal Security Services, Case No. 34-2019-00270901, in California Superior Court for the County of Sacramento ("Maged Hakeem"). (Mot. Stay at 1; Pls.' Opp'n RE Stay at 2-3.) In Maged Hakeem, Plaintiffs assert claims under the California Labor Code and PAGA. (Id.) Superior Court Judge David I. Brown granted preliminary approval of the settlement and set a hearing on final approval for June 8, 2020. (Mot. Stay at 2.) The period covered by the Maged Hakeem settlement ends on February 1, 2020. (Pls.' Opp'n RE Stay at 7; id., Ex. A.)

II. LEGAL STANDARD

A. Motion to Stay

A court may stay proceedings as part of its inherent power "to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." Landis v. N. Am. Co., 299 U.S. 248, 254 (1936); see also Clinton v. Jones, 520 U.S. 681, 706 (1997) ("The District Court has broad discretion to stay proceedings as an incident to its power to control its own docket.") (citing Landis). The inherent power to stay includes ordering a stay "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). Where a stay is considered pending the resolution of another action, the court need not find that two cases possess identical issues; a finding that the issues are substantially similar is sufficient to support a stay. See Landis, 299 U.S. at 254. In deciding whether to grant a stay, a district court must weigh the competing interests that will be affected. CMAX, Inc. v. Hall, 300 F.2d 265, 268 (9th Cir. 1962); see also Lockyer v. Mirant Corp., 398 F.3d 1098, 1110 (9th Cir. 2005) (affirming and applying the framework set forth in CMAX). The competing interests include (1) the damage that may result from granting a stay; (2) the hardship or inequity a party may suffer if required to proceed in the litigation; and (3) "the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected to result from a stay." CMAX, Inc., 300 F.2d at 268.

B. Federal Arbitration Act

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.

Under 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. To determine whether to compel 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 Diagnostic Sys., Inc., 207 F.3d 1126, 1130 (9th Cir. 2000)). A party seeking to compel arbitration under the FAA bears the burden of making this showing. Id.

C. FLSA Collective Action

FLSA allows employees to bring a collective action on behalf of other "similarly situated" employees based on alleged statutory violations. 29 U.S.C. § 216(b). A "collective action" differs from a class action in that each plaintiff must opt into the suit by giving her consent in writing. McElmurry v. U.S. Bank Nat'l Ass'n, 495 F.3d 1136, 1139 (9th Cir. 2007). As a result, "unlike a class action, only those plaintiffs who expressly join the collective action are bound by its results." Id. (citing 29 U.S.C. § 256). Every plaintiff who opts in to a collective action has party status. Campbell v. City of Los Angeles, 903 F.3d 1090, 1104–05 (9th Cir. 2018). Employees that do not opt in are not bound by the outcome of the collection action. Edwards v. City of Long Beach, 467 F. Supp. 2d 986, 989 (C.D. Cal. 2006) (relying on Leuthold v. Destination Am., Inc., 224 F.R.D. 462, 466 (N.D. Cal. 2004)).

To proceed with a collective action, the plaintiff bears the burden of showing that she and the proposed class members are "similarly situated." Adams v. Inter–Con Security Sys., Inc., 242 F.R.D. 530, 535 (N.D. Cal. Apr. 11, 2007) (citing 29 U.S.C. § 216(b)). The FLSA does not define the term "similarly situated" and the Ninth Circuit has not yet articulated the appropriate test for certifying an FLSA collective action; however, district courts in this Circuit generally apply a two-step approach. Harp v. Starline Tours of Hollywood, Inc., No. 214CV07704CASEX, 2015 WL 4589736, at *3–4 (C.D. Cal. July 27, 2015); see also Reed v. County of Orange, 266 F.R.D. 446, 449 (C.D. Cal. 2010); Edwards v. City of Long Beach, 467 F.Supp.2d 986, 990 (C.D. Cal. 2006); Leuthold v. Destination Am., Inc., 224 F.R.D. 462, 466 (N.D. Cal. 2004). Under the first step, the court makes an initial "notice-stage" determination as to whether potential opt-in plaintiffs are similarly situated to the representative plaintiffs, deciding if a collective action should be certified for the sole purpose of sending notice of the action to potential class members. Leuthold, 224 F.R.D. at 467. This determination is "based primarily on the pleadings and any affidavits submitted by the parties." Id. However, courts "generally do not evaluate the merits of the claims or make credibility determinations at the conditional

certification stage." Chastain v. Cam, No. 3:13-CV-01802-SI, 2016 WL 1572542, at *2 (D. Or. Apr. 19, 2016).

The standard applied at this stage is "fairly lenient" and requires little more than substantial allegations, supported by declarations or discovery, that "the putative class members were together the victims of a single decision, policy, or plan." Villa v. United Site Servs. of California, Inc., 2012 WL 5503550, at *15 (N.D. Cal. Nov. 13, 2012) (citation omitted). Moreover, "[p]laintiffs need not conclusively establish that collective resolution is proper, because a defendant will be free to revisit this issue at the close of discovery." Benedict, 2014 WL 587135, at *5 (citing Kress v. PricewaterhouseCoopers, LLP, 263 F.R.D. 623, 640 (E.D. Cal.2009)). In this second stage, which is reached once discovery is complete and the case is ready to be tried, the party opposing class certification may move to decertify the class. Harp, 2015 WL 4589736, at *4. At that point, the court must make a factual determination regarding the propriety and scope of the class. Id. Should the court determine, on the basis of the complete factual record, that the plaintiffs are not similarly situated, then the court may decertify the class and dismiss the opt-in plaintiffs without prejudice. Leuthold, 224 F.R.D. at 467.

III. DISCUSSION

The Court concludes that Defendant's motion to stay the entire action is unwarranted, but finds that several Plaintiffs and Opt-In Plaintiffs must be sent to arbitration. Their claims are stayed pending the outcome of arbitration proceedings. This result does not prevent the provisional certification of a collective action, however. A lead Plaintiff and several Opt-In Plaintiffs are not forced to arbitrate, and are similarly situated to the group of security guards, so the lenient standard for the notice stage of a FLSA collective action is satisfied.

A. Defendant's Motion to Stay

Defendant asks the Court to stay this action until at least June 8, 2020, when there will be a final approval hearing in Maged Hakeem. (Mot. Stay.) The Court declines to exercise its discretion to stay this action for several reasons. First, because the statute of limitations will continue to run for any potential Collective Action Member who does not opt in, Dunn v. Teachers Ins. & Annuity Assoc. of Am., 2016 WL 153266, at *6 (N.D. Cal. Jan. 13, 2016), any delay would prejudice Plaintiffs. Second, a stay would not prevent duplicative litigation, because the actions are not substantially similar. In Maged Hakeem the Plaintiffs do not allege nationwide violations of FLSA and do not include Colorado state law claims. Opt-In Plaintiff Esther Shipley will opt-out of the Maged Hakeem settlement, and Defendant has not filed a motion to compel her to arbitrate. (Pls.' Opp'n RE Stay at 11.) Her claim, and claims of potential opt-ins would remain. Finally, the time periods of the actions are different. The Maged Hakeem settlement for California claims ends on February 1, 2020, and this action is ongoing, extending to any security guard hired after that date and before the date of final disposition of this case. (Id.)

Defendant's argument for a stay under Colorado River doctrine is misplaced. (Mot. Stay at 5.) Colorado River Conservation Dist. v. United States, 424 U.S. 800, 817 (1976). Only in rare cases will a federal court stay or dismiss a suit to avoid duplicative litigation already advancing on the same subject in state court. The Supreme Court has expressed reluctance to stay or abstain on the basis of duplicative efforts alone. Indeed, Colorado River cautioned federal courts that they have a "heavy obligation to exercise jurisdiction," 42 U.S. at 820, and noted a stay is improper where the state proceeding is inadequate to resolve the federal claims, id. Here, Maged Hakeem certainly cannot be characterized as "more comprehensive state litigation," as Defendant suggests. (Mot. Stay at 5 (citing Sompo Am. Ins. Servs., LLC v. Plaza Indem. Ins. Co., 2019 WL 6841988, at *4 (C.D. Cal. Oct. 1, 2019)). The California state law claims in this action are far more wide-ranging, and this action also includes nationwide and Colorado claims that are not a part of Maged Hakeem. Thus, the Court DENIES the Motion to Stay.

B. Motions and Petitions to Compel to Arbitration

Defendant seeks to compel to arbitration the claims of twenty-two Plaintiffs and Opt-In Plaintiffs.[1] (See Dkt. Nos. 58-65, 67-76.) Defendant did not move to compel to arbitration the claims of nineteen Opt-In Plaintiffs.[2] Plaintiffs do not contest that the arbitration terms extend to the twenty-two individuals and to this action, and the Court agrees with Defendant that the claims must be arbitrated.

Instead, Plaintiffs contest the admissibility of the arbitration agreements submitted as attachments to the Motions to Compel Arbitration for eighteen of the twenty-two individuals.[3]

[1] Dkt. Nos. 75 (regarding Andrew Moses) and 76 (Angel Grant) are styled as petitions to compel arbitration pursuant to collective bargaining agreements, rather than motions to compel pursuant to individual employment agreements with arbitration clauses. Defendant seeks to compel Moses and Grant to participate in the grievance process outlined in their arbitration agreements, which includes arbitration.

[2] Those individuals are: Denise Aquino, Esther Shipley, and Robert Snyder, (Dkt. No. 11); Tonya Brown, (Dkt. No. 17); Bernard Tyree, (Dkt. No. 26); Alice Dawson, Tanesha Johnson, Darrius Patterson, Michael Smith, and Khristian Thornton, (Dkt. No. 40); Bandoh King, (Dkt. No. 41); Dennis Clay, (Dkt. No. 43); and Kimberly Adam, Beatrice Augusta, Shakamree Cauthren, Johnathan Fuller, Salvador Munoz, Brian Rodney, John Titus, and John Vandewater, (Dkt. No. 66).

[3] The relevant Motions to Compel Arbitration are for: (1) Alisa Jones, (Dkt. No. 59); (2) Eduardo Guerra, (Dkt. No. 61); (3) Almonte Milagros, (Dkt. No. 63); (4) Crystal Brandly, (Dkt. No. 65); (5) Damaura Christian, (Dkt. No. 68); (6) Austin Salle, (Dkt. No. 69); (7) Nancy Sindar, (Dkt. No. 72); (8) Erica McGee (Dkt. No. 71); (9) Christina Capstraw, (Dkt. No. 68); (10) David Capstraw, (id.); (11) Jalee Outlaw, (Dkt. No. 62); (12) James Boggs, (Dkt. No. 60); (13) Ronald Burkhammer, (Dkt. No. 73); (14) Donald Sandoval, (Dkt. No. 68); (15) Taminka White, (Dkt. No.

Nevertheless, the Court concludes that Defendant satisfies its burden to demonstrate the existence of valid agreements to arbitrate and that the agreements "encompass the dispute at issue." Cox, 533 F.3d at 1119. Again, Plaintiffs do not directly dispute that the claims in this action fall within the provisions of the agreements, and do not attack the validity of the agreements.[4] Instead, they quarrel with the admissibility of the agreements. That argument fails. As Defendant indicates, the agreements are admissible as business records. Clark v. City of Los Angeles, 650 F.2d 1033, 1036-37 (9th Cir. 1981) (citing Fed. R. Evid. 803(6)); Trevino, 2018 WL 3537885, at *4 (N.D. Cal. 2018) (noting that electronically signed arbitration agreements are admissible where human resources personnel familiar with the record-keeping practice authenticate the record). (Hearn Declaration, Dkt. No. 101-1, ¶¶ 8-10 (noting each agreement is entered into at the time it is recorded, and a date and time stamp appears next to the electronic signature once signed).) Thus, Plaintiffs' objections to the admissibility of the agreements are OVERULED. Any other objections are OVERULED.

Four individuals have yet to be discussed. Reginald Moore, (Dkt. No. 58), and Anicia Grant, (Dkt. No. 70), signed arbitration agreements that do not contain class action waivers, but signed arbitration agreements nonetheless. (Dkt. Nos. 58-2, 76-2). Plaintiffs argue that they may, as a result, act as collective action representatives. (Pls.' Opp'n at 12.) The Court agrees, as discussed below, but their individual claims must be sent to arbitration.[5] Andre Moses, (Dkt. No. 75), and Angel Grant, (Dkt. No. 76), signed collective bargaining agreements which contained arbitration clauses, and their claims too must be arbitrated.[6]

After finding that claims are arbitrable, the Court must, in response to the request of a party, stay the action pending the completion of arbitration. 9 U.S.C. § 3. Accordingly, the

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74); (16) Brian Wilburn, (Dkt. No. 64); (17) Levi DeMasi, (Dkt. No. 72); and (18) Justin LeBlanc (Dkt. No. 67). (Pls.' Opp'n RE Arbitration at 2.)

[4] The Court does not consider Plaintiffs' arguments as challenges to the validity of the agreements, because they focus on evidentiary questions and not traditional defenses to contract enforcement. Under the FAA, a party may challenge the validity or applicability of the arbitration provision by raising the same defenses available to a party seeking to avoid the enforcement of any contract. 9 U.S.C.A. § 2. Courts properly exercise jurisdiction over claims raising defenses existing at law or in equity for the revocation of the arbitration clause itself. 9 U.S.C.A. § 1 et seq.

[5] Plaintiffs do not argue that Reginald Moore or Anicia Grant's arbitration agreements are not valid and enforceable. (Pls.' Opp'n at 12.) They only contend that the two may act as representatives, regardless of any individually applicable arbitration agreement. (Id.)

[6] Plaintiffs' Opposition does not provide any reason that arbitration should not be compelled. (Pls.' Opp'n at 7.) Plaintiffs only argue that courts have certified collective actions of individuals with collective bargaining agreements, because the arbitration agreements pertain to defenses at the second step of a FLSA collective action. (Id.)

Court GRANTS Defendant's motions and petitions to compel arbitration and STAYS the claims of the twenty-two above referenced individuals, with the caveat that the PAGA claims are not compelled to arbitration and are not stayed.[7] To the extent Defendant requests individual claims or the entire action be dismissed with prejudice, Defendant's motions are DENIED.

C. Collective Action Certification

1. Similarly Situated

Courts apply a fairly lenient standard and typically grant conditional class certification where the proposed class is similarly situated. Misra v. Decision One Mortg. Co., LLC, 673 F. Supp. 2d 987, 992 (C.D. Cal. 2008). The standard applied is less rigorous than the commonality requirement of Rule 23. Here, the Court concludes Plaintiffs meet that standard. Plaintiffs present adequate evidence at this stage for the Court to conclude there exists a similarly situated group of workers subjected to Defendant's policy and/or practice of requiring mandatory pre- and post-shift work to be completed off-the-clock without any compensation. (See Pls.' Appendix, Ex. A ¶¶ 7-10, Ex. B ¶¶ 7-10, Ex. C ¶¶ 6-8, Ex. D ¶¶ 6-8, Ex. E ¶¶ 6-8, Ex. F ¶¶ 7-10, Ex. G ¶¶ 7-10, Ex. H ¶¶ 6-8).

Defendant argues that the Court must determine whether all potential opt-in Plaintiffs are subject to an arbitration agreement before ruling on collective action certification. (Ds.' Opp'n at 18.) In Ortega, a prior decision on this subject, the Court noted:

> At least one court has issued § 216(b) notice despite a previous finding that FLSA plaintiffs' arbitration agreement was enforceable. In D'Antuono, a District of Connecticut court issued § 216(b) notice despite a prior finding that the lead plaintiffs had signed enforceable arbitration agreements and that there was evidence that potential opt-in plaintiffs had also signed similar agreements. 2011 WL 5878045, at *4. The court found that these facts were "immaterial" to the question of class certification, since its determination that the arbitration agreement was enforceable as to the lead plaintiffs could not "automatically be applied to the arbitration agreements of all other [potential opt-ins] who have not had a chance to contest, on their individual facts, the applicability of their agreements." Id.

WL 2871156, at *6 (C.D. Cal. May 15, 2019). The Court found D'Antuono more persuasive than cases reaching the opposite outcome, since it "more closely aligns with the general principle that the existence of an arbitration agreement is more appropriately raised as a defense to individual claims in stage two of the FLSA certification process." (Id.) The Court went on to determine that the opt-in plaintiffs may move for conditional certification and issuance of

[7] (Def.'s Reply at 3 n.1 ("Defendant does not seek to compel arbitration of Plaintiff's [sic] PAGA claims.").)

notice, despite the arbitration of the lead plaintiff's claims. Id. ("All individuals who opt into a FLSA action prior to conditional certification become party plaintiffs with the same status in relation to the claims as do the named plaintiffs and remain so until the district court determines they are not similarly situated and dismisses them.") (citation omitted).

The Court finds no reason to depart from the logic in D'Antuono and Ortega here. At least one lead Plaintiff, Reginald Moore, signed an arbitration agreement that did not contain a class action waiver, and Defendant has not moved to compel arbitration for nineteen of the Opt-In Plaintiffs. (Pls.' Reply at 13.)

Defendant attempts to call into question whether the potential collective action members and representative plaintiffs are similarly situated. Defendant submits a large number of affidavits regarding their policies and practices nationwide, and raises evidentiary objections to Plaintiffs' affidavits. Yet, this action is only at the notice stage. At the second step and at the close of discovery, Defendant can move to decertify the class, and only then will the Court "make a factual determination regarding the propriety and scope of the class." Romero v. Producers Dairy Foods, Inc., 235 F.R.D. 474, 482 (C.D. Cal. 2006) (citation omitted). The Court agrees with Plaintiffs that Defendant's arguments come too early, because they go to the merits of the case. (Pls.' Reply at 4, 15-16.) The Court makes no findings of fact or ultimate conclusions on Plaintiffs' claims at this stage, and OVERRULES Defendant's evidentiary objections to Plaintiffs' affidavits. Keilholtz v. Lennox Hearth Prods., Inc., 268 F.R.D. 330, 337 n.3 (N.D. Cal. 2010). The provisional certification of the proposed collective action is appropriate, and the Court turns next to the question of notice.

2. Notice

Defendant argues Plaintiffs' notice procedure or notice content is defective. (Def.'s Opp'n at 23; "Proposed Consent," Pls.' Appendix, Ex. I; "Proposed Notice," Pls.' Appendix, Ex. J.) Defendant seeks to narrow the scope of the notice or to modify the content. The Court adopts some of Defendant's suggestions and rejects others.

First, Defendant argues that "gap time" claims are not cognizable under FLSA. (Def.'s Opp'n at 20 (citing Adair v. City of Kirkland, 185 F.3d 1055, 1062 n. 6 (9th Cir. 1999) ("[There is] no claim under FLSA for hours worked below the 40–hour overtime threshold, unless the average hourly wage falls below the federal minimum wage [emphasis added]")).) Defendant thus argues it paid the workers slightly above minimum wage, and so many security guards were not paid less than minimum wage if one divides their total pay by hours worked (including alleged off the clock hours). (Id.) These individuals should not receive notice, Defendant insists. This argument goes to the merits, however. It would be impracticable to identify those individuals at this preliminary stage, and the Court rejects this proposed narrowing.

The Court also disagrees with Defendant that the supervisors should not receive notice. (Def.'s Opp'n at 21.) Plaintiffs assert the existence of a companywide policy that appears to

apply to supervisor and supervised guards alike (Reply at 19 (citing Langston v. U.S. Sec. Assocs. Inc., 2019 WL 4145234, at *2-3 (W.D. Okla. Aug. 30, 2019)); FAC ¶¶ 6, 29, 72).

Notice may also be sent to Maged Hakeem class members who meet the definition for participation in this collective action. (Def.'s Opp'n at 22.) As Plaintiffs remark, only voluntary opt-ins may be bound by a release of FLSA claims. (Pls.' Reply at 21 (citing Kakani v. Oracle Corp., 2007 WL 1793774, at *7 (N.D. Cal. June 19, 2007).) Neither the Court nor the parties can definitively know which Maged Hakeem class members release their FLSA claims until and unless there is final approval of that action. (Def.'s Opp'n at 22.)

Next, Defendant asks that notice only be sent to individuals whose claim period begins three years before the date of this Order, to avoid notice being sent to individuals with expired FLSA claims. (Id. at 23.) That modification is reasonable, based on the three-year FLSA limitations period, which is not tolled by the filing of a Complaint, and is adopted by the Court.

Defendant asks that the Court reduce the forms of notice (e.g. only by first class mail), shorten the opt-in period, order Plaintiffs to use a third-party administrator to send notice, and not permit a postcard reminder. The Court rejects these modifications, because Plaintiffs provide sound reasons for each, (Reply at 23-25), except the Court agrees with Defendant that text messages and social media notifications are not warranted. Plaintiffs shall send the Proposed Notice and Consent forms by email and mail, and Defendant shall post the notices in the locations it controls.

The Court also finds the consent to join does not need to be modified, because it may be worded more broadly than the FAC itself, to encompass potential claims or modifications Plaintiffs could make if they sought leave to amend. (See Def.'s Opp'n at 25.) Having resolved these issues, the Court does not believe a further meet and confer over the content and form of the notice is necessary.

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IV. CONCLUSION

The Court DENIES Defendant's motion to stay the entire action, and GRANTS Defendant's motions and petitions to compel arbitration, except the PAGA claims, as set forth above. The claims sent to arbitration are STAYED.

The Court GRANTS Plaintiffs' motion to certify a FLSA collective action. The Court conditionally certifies the following putative FLSA class:

> All current and former non-exempt, hourly-paid security guard employees who worked at any location nationwide at any time within the three years prior to the date of filing of [this Order] through the date of the final disposition of this action who were denied minimum and/or overtime wages in connection with Defendant's policy and/or practice of requiring mandatory pre- and post-shift work to be completed off-the-clock without any compensation.

The Court APPROVES Plaintiffs' consent and notice forms and notice schedule, with the modifications noted above, and ORDERS Defendant to produce the names and contact information of the collective action members to Plaintiffs' Counsel. The Court VACATES the hearing set for May 18, 2020.

IT IS SO ORDERED.