

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Pembrick v. Loyal Source Government Services, LLC

No. 3:24-cv-01524-RBM-DEB (S.D. Cal. July 28, 2025) · No. 3:24-cv-01524-RBM-DEB · Decided July 28, 2025

SUMMARY

The United States District Court for the Southern District of California denied Loyal Source Government Services, LLC’s motion to compel arbitration in a representative PAGA action brought by Monique Pembrick. The court held that the operative July Voluntary Employee Arbitration Agreement clearly and unambiguously excluded PAGA claims from arbitration, and that the general arbitration provision did not override that exclusion. The court also declined to rely on other arbitration agreements or the subsequent unsigned agreement as evidence of a contrary intent.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Ruth Bermudez Montenegro
JURISDICTION	United States District Court for the Southern District of California
DECIDED	July 28, 2025
DOCKET	3:24-cv-01524-RBM-DEB
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved under the Federal Arbitration Act to compel arbitration of plaintiff's representative claims under California's Private Attorneys General Act.
STANDARD OF REVIEW	On a motion to compel arbitration under the FAA, the court determines whether a valid written agreement to arbitrate exists and whether that agreement encompasses the dispute at issue.
PRECEDENTIAL VALUE	Unpublished district court order; persuasive authority only

TOPICS

- arbitration
- employment law
- contract interpretation
- statutory interpretation
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the July 2022 Voluntary Employee Arbitration Agreement was the valid and operative agreement between the parties.
2. Whether the July 2022 agreement encompassed Plaintiff's PAGA claims despite its express exclusion of claims under PAGA.
3. Whether Defendant was entitled to compel arbitration of Plaintiff's individual PAGA claims and stay her non-individual PAGA claims.

HOLDINGS

1. The July 2022 Voluntary Employee Arbitration Agreement was the valid and operative agreement to arbitrate because Defendant identified it as the agreement on which it relied and Plaintiff did not dispute its validity.
2. The July 2022 Voluntary Employee Arbitration Agreement unambiguously excluded PAGA claims from arbitration, so it did not encompass Plaintiff's PAGA claims.
3. Defendant was not entitled to compel arbitration of Plaintiff's PAGA claims, and its request to stay the non-individual PAGA claims was moot.

KEY QUOTATIONS

"Here, the valid and operative July Voluntary Arbitration Agreement specifically and unambiguously excludes PAGA claims from its arbitration provision." (Section III.B)

"As written, the provision is clear and unambiguous, includes no qualifying language, and cannot reasonably be interpreted to mean the Parties agreed to arbitrate any category of PAGA claims." (Section III.B)

"Based on the foregoing, Defendant's Motion is DENIED." (Section IV)

FACTUAL BACKGROUND

Plaintiff signed several arbitration agreements in connection with her employment with Loyal Source Government Services, LLC. The July 2022 Voluntary Employee Arbitration Agreement contained broad arbitration language but expressly excluded claims under California's PAGA from arbitration. After *Viking River Cruises, Inc. v. Moriana* was decided, Defendant later transmitted an unsigned arbitration agreement purporting to require arbitration of PAGA claims, but the operative July agreement stated that it could not be modified or revoked except in a writing signed by both parties.

PROCEDURAL HISTORY

Plaintiff filed a representative PAGA complaint in state court, and Defendant removed the action to the United States District Court for the Southern District of California. Defendant moved to compel arbitration based primarily on a July 2022 Voluntary Employee Arbitration Agreement. The court denied the motion without oral argument, rendering Defendant's request to stay non-individual PAGA claims moot.

DISPOSITION

other

CASES CITED

- Allied-Bruce Terminix Companies, Inc. v. Dobson, 513 U.S. 265, 273 (1995)
- Circuit City Stores, Inc. v. Adams, 532 U.S. 105, 111 (2001)
- Vaden v. Discover Bank, 556 U.S. 49, 58 (2009)
- Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1, 24-25 (1983)
- Lytton v. Southern California Regional Rail Authority, 683 F. Supp. 3d 1101, 1105 (C.D. Cal. 2023)
- Ashbey v. Archstone Property Management, Inc., 785 F.3d 1320, 1323 (9th Cir. 2015)
- Revitch v. DIRECTV, LLC, 977 F.3d 713, 716 (9th Cir. 2020)
- AT&T Technologies v. Communications Workers of America, 475 U.S. 643, 648 (1986)
- United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582 (1960)
- Berman v. Freedom Financial Network, LLC, 30 F.4th 849, 855 (9th Cir. 2022)
- First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 944 (1995)
- Duran v. EmployBridge Holding Co., 92 Cal. App. 5th 59, 65-68 (2023)
- Sandquist v. Lebo Automotive, Inc., 1 Cal. 5th 233, 252 (2016)
- EFund Capital Partners v. Pless, 150 Cal. App. 4th 1311, 1320 (2007)
- Balandran v. Labor Ready, Inc., 124 Cal. App. 4th 1522, 1528 (2004)
- Viking River Cruises, Inc. v. Moriana, 596 U.S. 639 (2022)

OPINION

Pembrick v. Loyal Source Government Services, LLC.

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 MONIQUE PEMBRICK, on behalf of Case No.: 3:24-cv-01524-RBM-DEB herself and all
others similarly situated, 12

ORDER DENYING DEFENDANT’S

13 Plaintiff, MOTION TO COMPEL

ARBITRATION

14 v.

15 LOYAL SOURCE GOVERNMENT [Doc. 9]

SERVICES, LLC, a Florida Limited 16 Liability Company, et al., 17 Defendants. 18 19 20 On
July 22, 2024, Plaintiff Monique Pembrick (“Plaintiff”), on behalf of herself and 21 all others
similarly situated, filed a Representative Action Complaint for Civil Penalties 22 Under the Private

Attorneys General Act (“PAGA”), California Labor Code § 2698 et seq. 23 (“Complaint”). (Doc. 1-2 [“Compl.”] at 6–17.1) 24 Pending before the Court is Defendant Loyal Source Government Services, LLC’s 25 (“Defendant”) Motion to Compel Arbitration (“Motion”), which was filed on January 24, 26 27 28 1 1 2025. (Doc. 9.) On February 10, 2025, Plaintiff filed an Opposition to Defendant’s Motion 2 (“Opposition”). (Doc. 12.) On February 14, 2025, Defendant filed a Reply in Support of 3 its Motion (“Reply”). (Doc. 13.) 4 The Court finds this matter suitable for determination without oral argument 5 pursuant to Civil Local Rule 7.1(d)(1). For the reasons discussed below, Defendant’s 6 Motion is DENIED.

7 I. BACKGROUND

8 A. Factual Background 9 Defendant identifies several different arbitration agreements executed or transmitted 10 between the Parties. The Court briefly summarizes each agreement here. 11 1. Mutual Arbitration Agreement 12 On April 6, 2022, Plaintiff signed a Mutual Arbitration Agreement, a copy of which 13 was attached to her offer of employment. (Doc. 9-3 at 8–10 [Declaration of Javier 14 Rodriguez (“Rodriguez Decl.”), ¶ 3, Ex. A].) The Mutual Arbitration Agreement provides: 15 The Parties hereby acknowledge and agree that, except for Disputes Not Covered, which is defined below, (i) any and all claims or disputes arising out 16 of, related to, or in connection with my offer of employment letter, as well as 17 (ii) any and all other claims or disputes between the Parties arising out of, related to, or in connection with my employment with or termination from 18 LSGS (collectively, ‘Disputes’) shall be resolved exclusively through final 19 and binding arbitration, and not by way of a court or jury trial, as set forth in this Agreement. 20 21 ... 22 Disputes Not Covered by this Agreement shall mean claims for workers’ compensation, unemployment compensation benefits, administrative charges 23 for unfair labor practices brought before the National Labor Relations Board, 24 claims which cannot be waived under applicable law, or any other claims that, as a matter of law, the Parties cannot agree to arbitrate. 25 26 27 (Id. at 8.) The Mutual Arbitration Agreement did not identify PAGA claims as a “Dispute 28 Not Covered.” 1 2. Voluntary Employee Arbitration Agreement 2 On May 18, 2022, Plaintiff signed a Voluntary Employee Arbitration Agreement. 3 (Doc. 9-3 at 12–14 [Rodriguez Decl., ¶ 4, Ex. B].) The Voluntary Employee Arbitration 4 Agreement provides: 5 The Parties agree that, to the fullest extent permitted by law, any and all claims or controversies between them ... relating in any manner to the employment 6 or the termination of employment of Employee, including claims or 7 controversies that arose, existed, or accrued prior to the signing of this Agreement ... , that are currently pending as of the signing of this Agreement, 8 and that may arise or accrue after the signing of this Agreement, including 9 claims that may arise or accrue during employment with the Company, and including but not limited to the interpretation, applicability, or enforceability 10 of this Agreement, shall be resolved by final and binding arbitration. 11 12 (Id. at 12.) However, the Voluntary Employee Arbitration Agreement provides that 13 “claims under California’s Private Attorney General’s Act (‘PAGA’) ... shall not be 14 subject to arbitration (the ‘Excluded Claims’).” (Id.) 15 3. Employee Arbitration Agreement 16 On July 27, 2022, Plaintiff

signed an Employee Arbitration Agreement. (Doc. 9-3 17 at 16–18 [Rodriguez Decl., ¶ 5, Ex. C].) The Employee Arbitration Agreement provides: 18 The Parties agree that, to the fullest extent permitted by law, any and all claims or controversies between them ... relating in any manner to the employment 19 or the termination of employment of Employee, including claims or 20 controversies that arose, existed, or accrued prior to the signing of this Agreement ... , that are currently pending as of the signing of this Agreement, 21 and that may arise or accrue after the signing of this Agreement, including 22 claims that may arise or accrue during employment with the Company, and including but not limited to the interpretation, applicability, or enforceability 23 of this Agreement, shall be resolved by final and binding arbitration. 24 25 (Id. at 16.) Unlike the Voluntary Employee Arbitration Agreement, the Employee 26 Arbitration Agreement did not identify PAGA claims as “Excluded Claims.” (Id.) 27 4. July Voluntary Employee Arbitration Agreement 28 On July 28, 2022, Plaintiff signed a second Voluntary Employee Arbitration 1 Agreement (the “July Voluntary Employee Arbitration Agreement”). (Doc. 9-3 at 20–22 2 [Rodriguez Decl., ¶ 6, Ex. D].) The July Voluntary Employee Arbitration Agreement 3 provides: 4 The Parties agree that, to the fullest extent permitted by law, any and all claims or controversies between them ... relating in any manner to the employment 5 or the termination of employment of Employee, including claims or 6 controversies that arose, existed, or accrued prior to the signing of this Agreement ... , that are currently pending as of the signing of this Agreement, 7 and that may arise or accrue after the signing of this Agreement, including 8 claims that may arise or accrue during employment with the Company, and including but not limited to the interpretation, applicability, or enforceability 9 of this Agreement, shall be resolved by final and binding arbitration. 10 11 (Id. at 20.) However, the July Voluntary Employee Arbitration Agreement also provides 12 that “claims under California’s Private Attorney General’s Act (‘PAGA’) shall not be 13 subject to arbitration (the ‘Excluded Claims’).” (Id.) 14 The July Voluntary Employee Arbitration Agreement also contains a Class Action 15 Waiver. (Id. at 20–21.) The Class Action Waiver provides:

16 EXCEPT TO THE EXTENT THAT REPRESENTATIVE CLAIMS UNDER
PAGA ARE EXCLUDED FROM THIS ARBITRATION AGREEMENT,
17
AND EXCEPT AS PROVIDED OTHERWISE BY LAW AND HEREIN,
18 EMPLOYEE AGREES THAT ALL CLAIMS MUST BE BROUGHT IN HIS
OR HER INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR
19
PARTICIPATING CLASS MEMBER IN ANY PURPORTED CLASS,
20 COLLECTIVE, OR CONSOLIDATED PROCEEDING, AND EMPLOYEE
EXPRESSLY WAIVES ANY RIGHT EMPLOYEE HAD OR MAY HAVE
21
HAD TO HAVE ANY DISPUTE BROUGHT, HEARD, OR ARBITRATED

22 AS A CLASS ACTION AND/OR AS A COLLECTIVE ACTION. 23

24 (Id. at 20 (emphasis in original).) 25 Finally, the July Voluntary Employee Arbitration Agreement provides: 26 The Company and Employee understand and agree that this Arbitration Agreement contains a full and complete statement of any agreements and 27 understandings regarding resolution of disputes between the parties, and the 28 parties agree that this Agreement supersedes all previous agreements, whether 1 written or oral, express or implied, relating to the subjects covered in this Agreement. The parties also agree that the terms of this Agreement cannot be 2 revoked or modified except in a written document signed by both Employee 3 and an authorized executive of the Company. 4 5 (Id. at 22 (emphasis added).) 6 5. Dispute Resolution Notice and Unsigned Mutual Arbitration Agreement 7 On October 15, 2024, Defendant electronically transmitted to Plaintiff an “Important 8 Notice Regarding Dispute Resolution with Loyal Source Government Services, LLC” (the 9 “Dispute Resolution Notice”). (Doc. 9-3 at 24–28 [Rodriguez Decl., ¶ 7, Ex. E].) The 10 Notice states, “[y]our agreement to the terms and conditions of the attached mutual 11 arbitration agreement is a mandatory condition of employment with Loyal Source 12 Government Services. Continued employment evidences your acceptance to those terms 13 and conditions.” (Id. at 24.) The attached Mutual Arbitration Agreement, which is 14 unsigned, (the “Unsigned Mutual Arbitration Agreement”) provides: 15 Loyal Source Government Services, LLC ... , and the undersigned ... hereby agree that, to the fullest extent permitted by law, any and all past, current, or 16 future claims or controversies between them ... , or between Employee and 17 any client of Company to which Employee is assigned or otherwise performs any work ... , arising out of or relating in any manner to the recruitment, 18 hiring, employment, or the termination of employment of Employee, 19 including but not limited to the interpretation, applicability, enforceability ... of this Agreement or other arbitrability disputes, shall be resolved by final and 20 binding arbitration. 21 22 (Id. at 25.) The Unsigned Mutual Arbitration Agreement does not identify PAGA claims 23 as “Excluded Claims.” 24 The Unsigned Mutual Arbitration Agreement also contains a Class, Collective, and 25 Representative Action Waive, which provides: 26 Employee further understands and agrees that, to the maximum extent permitted by law, any claim under [PAGA] shall be filed in arbitration and 27 solely as an individual claim. The parties acknowledge, however, that as of 28 the date of this Agreement, California law provides that, if an employee 1 establishes that he or she is an aggrieved employee within the meaning of PAGA in arbitration, the employee shall have standing to pursue applicable 2 non-individual PAGA claims in a court of law. The Parties agree that so long 3 as this remains the state of the law, this representative action waiver shall not apply to non-individual PAGA claims asserted by an employee who first 4 establishes that he or she is an aggrieved employee under PAGA in an 5 individual arbitration. However, in the event that the state of the law changes (for example, due to a change in California law, or because federal law is held 6 to preempt California law on this point), then Employee: (i) expressly waives 7 any right Employee had or may have had to have any dispute brought, heard, or arbitrated as a

representative action; ... (ii) agrees that Employee may not 8 assert non-individual PAGA claims whether in arbitration or otherwise; and 9 (iii) agrees that any PAGA claim shall proceed solely as to the individual PAGA claim of Employee and not any other allegedly aggrieved employees 10 or the general public. The arbitrator has no authority to adjudicate 11 representative proceedings, other than to enforce this provision. 12 13 (Id. at 26.) 14 B. Defendant's Motion 15 In its Motion, Defendant first argues that a valid arbitration agreement exists. (Doc. 16 9-1 at 10–11.) Specifically, Defendant argues that the July Voluntary Employee 17 Arbitration Agreement is valid because (1) Plaintiff signed and initialed the agreement, and 18 (2) its title and terms are written clearly and in plain language, including a provision stating

19 "THE PARTIES ACKNOWLEDGE AND AGREE THAT THEY ARE EACH
20 EXECUTING THIS ARBITRATION AGREEMENT WITHOUT DURESS OR UNDUE
21 INFLUENCE BY THE COMPANY OR ANYONE ELSE." (Id. at 11 (quoting Doc. 9-3 22 at 22, Rodriguez Decl., ¶ 6, Ex. D).) 23 Defendant then argues that Plaintiff's claim is covered by the July Voluntary 24 Employee Arbitration Agreement. (Id. at 11–12.) Specifically, Defendant argues that, 25 although the July Voluntary Employee Arbitration Agreement excludes claims brought 26 under PAGA, the Supreme Court's decision in *Viking River Cruises, Inc. v. Moriana*, 596 27 U.S. 639 (2022) ("Viking") now permits the arbitration of PAGA claims. (Id. at 10, 12.) 28 Defendants asserts that, after Viking, the inclusion of PAGA as an "Excluded Claim" 1 directly contradicts the provision stating: "[t]he Parties agree that, to the fullest extent 2 permitted by law, any and all claims or controversies between them ... relating in any 3 manner to the employment or the termination of employment of Employee ... shall be 4 resolved by final and binding arbitration." (Id. at 12 (quoting Doc. 9-3 at 20–22 5 [Rodriguez Decl., ¶ 6, Ex. D]) (emphasis added).) Defendant seems to assert that, in the 6 face of this inconsistency, the Court must defer to the intent of the parties, which is to 7 arbitrate any and all claims arising from Plaintiff's employment. (Id. at 12–13.) 8 Defendant also argues that no grounds exist to revoke the July Voluntary Employee 9 Arbitration Agreement. (Id. at 13–15.) Specifically, Defendant argues that the July 10 Voluntary Employee Arbitration Agreement is neither procedurally unconscionable nor 11 substantively unconscionable. (Id.) Lastly, Defendant argues that, while Plaintiff's 12 individual PAGA claims must be compelled to arbitration, Plaintiff's non-individual 13 PAGA claims must be stayed pending arbitration. (Id. at 15–16.) 14 C. Plaintiff's Opposition 15 In her Opposition, Plaintiff asserts that the July Voluntary Employee Arbitration 16 Agreement specifically excludes PAGA claims. (Doc. 12 at 5–6.) Plaintiff also asserts 17 that she did not sign or agree to the Dispute Resolution Notice or the Unsigned Mutual 18 Arbitration Agreement.² (Id. at 6–9.)

19 II. LEGAL STANDARD

20 "The Federal Arbitration Act ['FAA'], § 2, provides that a 'written provision in ... 21 a contract evidencing a transaction involving commerce to settle by arbitration a 22 23 24 2 In its Reply, Defendant re-asserts that, after the Supreme Court's decision in *Viking River*, 25 the exclusion of PAGA claims contradicts the provision providing for arbitration to the fullest extent permitted by

law. (Doc. 13 at 2.) Defendant also re-argues that 26 Plaintiff's PAGA claims must be arbitrated "to comport with the intent of the whole 27 contract." (Id.) Finally, Defendant asserts that Plaintiff accepted the terms of the Dispute Resolution Notice and the Unsigned Mutual Arbitration Agreement through her continued 28 1 controversy thereafter arising out of such contract or transaction ... shall be valid, 2 irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the 3 revocation of any contract.'" *Allied-Bruce Terminix Companies, Inc. v. Dobson*, 513 U.S. 4 265, 273 (1995) (quoting 9 U.S.C. § 2); see also *Cir. City Stores, Inc. v. Adams*, 532 U.S. 5 105, 111 (2001). "Congress enacted the FAA to overcome judicial resistance to arbitration, 6 and to declare a national policy favoring arbitration of claims that parties contract to settle 7 in that manner." *Vaden v. Discover Bank*, 556 U.S. 49, 58 (2009) (internal citations and 8 quotations omitted). Thus, "[t]he [FAA] establishes that, as a matter of federal law, any 9 doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration 10" *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24–25 (1983).

11 III. DISCUSSION

12 "Section 4 of the FAA states that 'a party aggrieved by the alleged failure, neglect, 13 or refusal of another to arbitration under a written agreement for arbitration may petition 14 any United States district court ... for an order directing that such arbitration proceed in the 15 manner provided for in such agreement.'" *Lytton v. S. Cal. Reg'l Rail Auth.*, 683 F. Supp. 16 3d 1101, 1105 (C.D. Cal. 2023) (quoting 9 U.S.C. § 4). "A court reviewing a motion to 17 compel arbitration under this section of the FAA, must determine: '(1) the existence of a 18 valid, written agreement to arbitrate; and, if it exists, (2) that the agreement to arbitrate 19 encompasses the dispute at issue.'" *Id.* (quoting *Ashbey v. Archstone Prop. Mgmt., Inc.*, 20 785 F.3d 1320, 1323 (9th Cir. 2015)); see also *Revitch v. DIRECTV, LLC*, 977 F.3d 713, 21 716 (9th Cir. 2020) ("Because the [FAA] leaves no place for the exercise of discretion by 22 a district court, a federal court's role is limited to determining (1) whether a valid agreement 23 to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at 24 issue.") (citations and quotation omitted). The Court addresses each issue in turn. 25 A. Valid, Written Agreement to Arbitrate 26 As set forth above, the Court must determine whether a valid agreement to arbitrate 27 exists. *Revitch*, 977 F.3d at 716. In its Motion, Defendant appears to concede that the July 28 Voluntary Arbitration Agreement is the valid, operative agreement despite summarizing 1 several other agreements executed or transmitted between the Parties. Defendant states 2 that it "expects Plaintiff to focus on the [July Voluntary Employee Arbitration Agreement]" 3 (Doc. 9-1 at 10) and then argues that the July Voluntary Employee Arbitration Agreement 4 is valid because (1) Plaintiff signed and initialed the agreement and (2) its title and terms 5 are written clearly and in plain language (*id.* at 11 (quoting Doc. 9-3 at 20–22 [*Rodriguez 6 Decl.*, ¶ 6, Ex. D])). Defendant does not argue for the validity of any other agreement. 7 Plaintiff also does not dispute the validity of the July Voluntary Arbitration 8 Agreement. Plaintiff asserts that the July Voluntary Arbitration Agreement is the 9 "applicable arbitration agreement." (Doc. 12 at 6.) Thus, the Court finds that

the July 10 Voluntary Arbitration Agreement is the valid, operative agreement to arbitrate, and the 11 Court need not address the remaining agreements summarized by Defendant in the 12 introduction to its Motion.³ The Court now turns to whether the July Voluntary Arbitration 13 Agreement encompasses the dispute at issue. 14 B. Agreement to Arbitrate Encompasses the Dispute at Issue 15 As set forth above, the Court must also determine whether the operative arbitration 16 agreement encompasses the dispute at issue. See *Revitch*, 977 F.3d at 716. While there is 17 a policy in favor of arbitration, “a party cannot be required to submit to arbitration any 18 dispute which he has not agreed so to submit.” *AT&T Techs. v. Communications Workers* 19 of Am., 475 U.S. 643, 648 (1986) (citing *United Steelworkers of Am. v. Warrior & Gulf* 20 21 3 The Court also need not reach Defendant’s unconscionability arguments. (See Doc. 9-1 22 at 13–15.) As Defendant notes, Plaintiff “bears the burden of proving that the arbitration 23 agreement is unenforceable[,]” and Plaintiff has not made any such argument here. (*Id.* at 13 (citing *Sonic-Calabazas A, Inc. v. Moreno*, 57 Cal. 4th 1109, 1149 (2013)); see also 24 Doc. 12 at 4–9.) Additionally, the Court need not reach Plaintiff’s arguments regarding 25 the Dispute Resolution Notice and the Unsigned Mutual Arbitration Agreement. Even so, the Court notes that the July Voluntary Employee Arbitration Agreement precludes 26 modification or revocation “except in a written document signed by both” parties. (Doc. 27 9-3 at 20–22 [*Rodriguez Decl.*, ¶ 6, Ex. D].) The Court also notes that the Unsigned Mutual Arbitration Agreement was transmitted to Plaintiff approximately three months after the 28 1 *Nav. Co.*, 363 U.S. 574, 582 (1960)). “In determining whether the parties have agreed to 2 arbitrate a particular dispute, federal courts apply state-law principles of contract 3 formation.” *Berman v. Freedom Fin. Network, LLC*, 30 F.4th 849, 855 (9th Cir. 2022) 4 (citing *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995)). 5 Under California law, “[a]rbitration is strictly a matter of consent.” *Duran v. 6 EmployBridge Holding Co.*, 92 Cal. App. 5th 59, 65 (2023). “A party cannot be required 7 to arbitrate a dispute that he or she has not agreed to submit to arbitration.” *Id.* (citing 8 *Sandquist v. Lebo Automotive, Inc.*, 1 Cal.5th 233, 252 (2016)). “Whether the parties 9 agreed to arbitrate all or a portion of ‘the present controversy turns on the language of the 10 arbitration clause.’” *Id.* (quoting *EFund Cap. Partners v. Pless*, 150 Cal. App. 4th 1311, 11 1320 (2007)). 12 “The language of a contract is to govern its interpretation, if the language is clear 13 and explicit, and does not involve an absurdity.” Cal. Civ. Code § 1638. Further, “[w]hen 14 a contract is reduced to writing, the intention of the parties is to be ascertained from the 15 writing alone, if possible” *Id.* § 1639. “The policy in favor of arbitration does not 16 apply when the contract cannot be interpreted in favor of arbitration.” *Balandran v. Lab. 17 Ready, Inc.*, 124 Cal. App. 4th 1522, 1528 (2004); see also *Duran*, 92 Cal. App. 5th at 66 18 (“The policy favoring arbitration ... does not apply when unambiguous language shows 19 the parties did not agree to arbitrate all or a part of the dispute.”). 20 Here, the valid and operative July Voluntary Arbitration Agreement specifically and 21 unambiguously excludes PAGA claims from its arbitration provision. (See Doc. 9-3 at 20– 22 22 [*Rodriguez Decl.*, ¶ 6, Ex. D] (“[C]laims under [PAGA] shall not be subject to 23 arbitration”).) As written, the provision

is clear and unambiguous, includes no 24 qualifying language, and cannot reasonably be interpreted to mean the Parties agreed to 25 arbitrate any category of PAGA claims. See *Duran*, 92 Cal. App. 5th at 66 (“We conclude 26 the language stating claims under PAGA are not arbitrable under the agreement is 27 unambiguous. It cannot be reasonably interpreted to mean the parties agreed to arbitrate 28 the category of PAGA ... claims seeking to recover penalties for Labor Code violations 1 suffered by plaintiff.”). 2 Nevertheless, Defendants argue that, after the Supreme Court’s decision in *Viking 3 River*, which now permits the arbitration of certain PAGA claims, the inclusion of PAGA 4 as an “Excluded Claim” directly contradicts the July Voluntary Employee Arbitration 5 Agreement’s general arbitration provision. (Id. at 12.) Defendant seems to assert that, in 6 the face of this purported inconsistency, the Court must defer to the intent of the Parties, 7 which is to arbitrate all claims arising from Plaintiff’s employment. (Id. at 12–13; see also 8 Doc. 13 at 2.) Although not explicit, Defendant seems to offer the various arbitration 9 agreements summarized above (see Section I.A) as evidence of the Parties’ intent. The 10 Court, however, is not persuaded. The California appellate court’s ruling in *Duran* is 11 instructive. 12 In *Duran*, the defendant argued that the clear intent of a PAGA exclusion provision 13 at issue, which is similar in form to the PAGA exclusion provision at issue here, was to 14 identify claims that applicable law prohibits from being arbitrated. *Duran*, 92 Cal. App. 15 5th at 66. The *Duran* court rejected this argument, stating “we will not rewrite the parties’ 16 agreement.” Id. at 67. The *Duran* court elaborated, “[i]f [the defendant] intended the 17 clause to be a truism—that is, only nonarbitrable PAGA claims would not be arbitrable 18 under the agreement—it should have drafted the clause to say so. Alternatively, [the 19 defendant] should have presented extrinsic evidence showing this alleged intention was 20 communicated between the parties.” Id. at 67–68 (internal citations omitted). 21 Here too, if Defendant intended to agree that “only nonarbitrable PAGA claims 22 would not be arbitrable” under the July Voluntary Arbitration Agreement, they “should 23 have drafted the clause to say so.” Id. at 67 (citations omitted). Indeed, *Viking River* was 24 decided on June 12, 2022, more than one month before the execution of the July Voluntary 25 Employee Arbitration Agreement. Additionally, one day prior, the Parties executed an 26 Employee Arbitration Agreement that did not exclude PAGA claims. This series of events 27 underscores that, had Defendant wanted to update its arbitration agreement to reflect the 28 change in law, they could have done so. Instead, Defendant did not update its agreement 1 until October 15, 2024 (Doc. 9-3 at 2 [Rodriguez Decl., □ 7]), more than two years later, 2 ||and approximately three months after the filing of Plaintiff’s Complaint. 3 Finally, the various arbitration agreements submitted by Defendant are not “extrinsic 4 || evidence” of Defendant’s intent to only exclude claims non-arbitrable by law. *Duran*, 92 5 App. 5th at 68. Indeed, Defendant has not explained why the Parties executed multiple 6 arbitration agreements, each with distinct arbitration provisions, and each succeeding 7 || arbitration agreement does not appear to reflect a change in the law.

8 IV. CONCLUSION

9 Based on the foregoing, Defendant's Motion is DENIED. 10 IT IS SO ORDERED. 11 |}/DATE:
July 28, 2025 12 eet emily, Moittagps ☐☐
13 HON. RUTH BERMUDEZ'MONTENEGRO
UNITED STATES DISTRICT JUDGE
14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 Defendant's request to stay Plaintiff's non-
individual PAGA claims pending arbitration is moot given the Court's ruling. 12