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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

**GALE CARROLL, on behalf of herself
and the Class Members,**

Plaintiff

v.

DICK’S SPORTING GOODS, INC.,

Defendant

CASE NO. 1:20-CV-928 AWI SAB

**ORDER REGARDING STIPULATION
FOR ARBITRATION AND STRIKING
CLASS CLAIMS**

(Doc. No. 6)

This is a putative class action that was filed by Plaintiff Gale Carroll on July 2, 2020, against Dick’s Sporting Goods, Inc. Carroll is pursuing five claims based on violations of the California Labor Code and one claim based on the California Business and Professions Code. Carroll brings individual claims and seeks to represent a class of similarly situated individuals.

On August 18, 2020, the parties filed a stipulation. See Doc. No. 6. The stipulation explains that Carroll signed an arbitration agreement whereby she agreed to arbitrate all claims on an individual basis and not as a class member or representative. See id. In light of the arbitration agreement, the parties agree that the Court should strike all class claims, order the parties to litigate Carroll’s individual claims through arbitration, relieve Dick’s Sporting Goods from any obligation to file a responsive pleading, stay this case, and retain jurisdiction pending the conclusion of the individual arbitration. See id.

Federal Rule of Civil Procedure 23(e) requires courts to approve a proposed voluntary dismissal of a class claim even before the class has been certified. See Choo v. Wellnx Life Scis.,

1 Inc., 2019 U.S. Dist. LEXIS 181959, *2 (E.D. Cal. Oct. 18, 2019); Madrid v. TeleNetwork
2 Partners, Ltd., 2019 U.S. Dist. LEXIS 123653, *21 (N.D. Cal. July 23, 2019). Therefore, when
3 parties seek to voluntarily dispose of class claims, the Court must be aware of possible prejudice
4 to a class and consider three factors before authorizing a dismissal: “(1) class members’ possible
5 reliance on the filing of the action if they are likely to know of it either because of publicity or
6 other circumstances, (2) lack of adequate time for class members to file other actions, because of a
7 rapidly approaching statute of limitations, (3) any settlement or concession of class interests made
8 by the class representative or counsel in order to further their own interests.” Diaz v. Trust
9 Territory of Pac. Islands, 876 F.2d 1401, 1408 (9th Cir. 1989); Choo, 2019 U.S. Dist. LEXIS
10 181959 at *2-*3; Madrid, 2019 U.S. Dist. LEXIS 123653 at *21.

11 In this case, the stipulation did not address the *Diaz* factors. Thus, on August 27, 2020, the
12 Court directed the parties to submit supplemental information that addressed the *Diaz* factors and
13 why the Court should not simply dismiss this case instead of issuing a stay. On September 10,
14 2020, the parties filed supplemental information.

15 Plaintiff’s supplement indicates that class counsel is unaware of any publicity regarding
16 this case and his firm did not conduct any outreach efforts to class members. Plaintiff also
17 indicates that it has been represented to him by defense counsel that virtually every potential class
18 member signed an arbitration agreement like the one that Plaintiff signed. This would prevent the
19 potential class members from participating either as class members or class representatives.
20 Further, the statute of limitations for the Labor Code claims is three years and the statute of
21 limitations for the unfair business practices case is four years. Because this case was filed in July
22 2, 2020, the number of potential class members who would be adversely affected by striking the
23 class claims is limited. Additionally, Plaintiff represents that the stipulation is not conditioned on
24 any type of settlement or self-interested concession, rather it is based only on the existence of a
25 valid arbitration agreement. Finally, Plaintiff states that a stay is requested for efficiency purposes
26 because if there is a challenge to an arbitration award, or an attempt to enforce an award, an
27 entirely new action would otherwise have to be filed.¹

28 _____
¹ Defendant has represented that it will defer to the Court regarding its customary practices in arbitration cases.

1 After review, the Court finds that it is appropriate to give effect to the stipulation.

2 First, based on the concession that a valid and enforceable arbitration agreement exists
3 between Plaintiff and Defendant, and the representation that the arbitration agreement prohibits
4 Plaintiff from participating in or initiating class actions, the Court will order Plaintiff to arbitrate
5 her individuals claims against Defendant.

6 Second, after considering the supplemental information by Plaintiff, the Court concludes
7 that the *Diaz* factors weigh in favor of striking the class claims. There is nothing before the Court
8 to suggest that this case is well-known or that potential class members are otherwise relying on
9 this case to validate their rights. The evidence does not indicate that a significant percentage of
10 class members are facing a statute of limitations bar. Moreover, any statute of limitations
11 concerns that are present are essentially dispelled by the representation that virtually all potential
12 class members would be subject to an arbitration agreement that is identical to the one signed by
13 Plaintiff. As a result, this class action cannot benefit virtually every potential class member
14 because Defendant is enforcing that agreement. Finally, the Court has no reason to question the
15 representation that the stipulation was purely the result of the arbitration agreement, and that there
16 are no concessions or settlements between counsel. Therefore, the Court will strike all class
17 claims.

18 Finally, the Court understands Plaintiff's concern regarding the efficient resolution of
19 either a challenge to an arbitration award or an attempt to enforce an arbitration award.
20 Nevertheless, it is speculative that either a challenge or enforcement action/motion will be
21 necessary, particularly given the penalties involved for individual claims under the Labor Code.
22 Further this Court has one of the most congested dockets in the country. That congestion is made
23 worse by the fact that there is only one full time active judge in the Fresno Division. There is
24 nothing unique about this case that would strongly counsel in favor of the Court staying this action
25 and actively monitoring its docket to ensure that the parties inform the Court of a resolution.
26 Because all non-stricken claims will be sent to arbitration, the Court will exercise its discretion
27 and dismiss this case. See Sparling v. Hoffman Constr. Co., 864 F.2d 635, 638 (9th Cir. 1988);
28 Gadomski v. Wells Fargo Bank N.A., 281 F.Supp.3d 1015, 1021 (E.D. Cal. 2017).

ORDER

Accordingly, IT IS HEREBY ORDERED that:

1. The Court will give effect to the substance of the parties' August 18, 2020, stipulation (Doc. No. 6);
2. All class claims and class allegations in the Complaint are STRICKEN;
3. The remaining individual claims of Plaintiff shall be ARBITRATED with the AAA pursuant to the arbitration agreement that exists between Plaintiff and Defendant;
4. This case is DISMISSED; and
5. The Clerk shall CLOSE this case.

IT IS SO ORDERED.

Dated: September 11, 2020



SENIOR DISTRICT JUDGE