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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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12 HEALTHY CHOICE SGH, LLC,
13 Plaintiff,

14 v.

15 ABP CORPORATION,
16 Defendant.

MEMORANDUM AND ORDER RE: MOTION
TO STAY

CIV. NO. 2:14-2370 WBS DAD

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18 HEALTHY CHOICE SM, LLC,
19 Plaintiff,

20 v.

21 ABP CORPORATION,
22 Defendant.

CIV. NO. 2:14-2371 WBS DAD

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25 In lieu of filing an Answer, defendant in each of these
26 actions has filed motion to stay proceedings. (Docket No. 8)
27 Defendant represents that both plaintiffs in this matter are
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1 owned and operated by Sajid Sohail, a non-party to this lawsuit
2 who, through various corporate entities, operates Au Bon Pain
3 franchises in New York and California. (Docket No. 8-1)
4 Defendant and Sohail are reportedly arbitrating franchise
5 disputes relating to several New York franchises before the
6 American Arbitration Association ("AAA") in Boston,
7 Massachusetts.

8 On May 2, 2014, defendant filed a lawsuit in the
9 District of Massachusetts against Sohail and ten related entities
10 to enforce the termination of Sohail's franchises for nonpayment
11 of royalties. (Docket No. 8-2)¹ Defendant states that, at that
12 time, it believed an entity called "Healthy Choice Sacramento
13 LLC" operated the California franchises at issue here, and it
14 therefore named that entity as a defendant in its Massachusetts
15 action. (See id.) Defendant states that, on September 8, 2014,
16 it voluntarily dismissed its action in Massachusetts to pursue
17 arbitration before the AAA. A month later, plaintiffs brought
18 their actions in this district.

19 On December 15, 2014, defendant filed a petition to
20 compel plaintiffs to arbitrate their claims in the District of
21 Massachusetts. (See Cloar Decl. Ex. B.) The same day, defendant
22 moved to stay proceedings in this court pursuant to § 3 of the
23 FAA or, alternatively, under principles of comity and judicial
24 efficiency while the District of Massachusetts decides whether

25 ¹ "A federal court may 'take notice of proceedings in
26 other courts, both within and without the federal judicial
27 system, if those proceedings have a direct relation to matters at
28 issue.'" Schulze v. F.B.I., Civ. No. 1:05-0180 AWI GSA, 2010 WL
2902518, at *1 (E.D. Cal. July 22, 2010) (U.S. v. Black, 482 F.3d
1035, 1041 (9 Cir. 2007)).

1 the issues here are referable to arbitration. (See Def.'s Mot.
2 to Stay Proceedings (Docket No. 8).)

3 Defendant represents that the District of Massachusetts
4 court has scheduled a hearing on its petition to compel
5 arbitration for March 5, 2015, at 2 p.m. (Def.'s Req. for
6 Judicial Notice Ex. E (Docket No. 13).) The court anticipates a
7 prompt decision regarding that petition.

8 Resolution of defendant's petition in the District of
9 Massachusetts may or may not have a dispositive impact on issues
10 raised in this district. The court is persuaded, however, that a
11 decision from that court on defendant's petition will facilitate
12 the proceedings in these actions in this district. See Kerotest
13 Mfg. Co. v. C-O-Two Fire Equip. Co., 342 U.S. 180, 184 (1952).²

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15 IT IS THEREFORE ORDERED that:

16 (1) Defendant's motion to stay be, and the same hereby
17 is, GRANTED pending the District Court for the
18 District of Massachusetts's decision regarding

19 ² Plaintiffs argue that the "First-to-File" rule requires
20 this district to decide the issue of arbitrability, and that the
21 District of Massachusetts should stay its proceedings. (Pls.'
22 Opp'n at 2.) The court disagrees. Federal district courts have
23 long exercised the power to temporarily stay proceedings in order
24 to promote comity between courts and efficiently allocate
25 judicial resources. See Kerotest, 342 U.S. at 184. Moreover,
26 several federal courts have effectively employed temporary stays
27 in similar situations to the one here. See, e.g., Ansari v.
28 Qwest Commc'ns Corp., 414 F.3d 1214 (10th Cir. 2005) (affirming a
district court's stay of proceedings pending a determination by a
district court in the District of Columbia regarding whether
arbitration of the plaintiff's claims should be compelled); Roe
v. Gray, 165 F. Supp. 2d 1164 (D. Colo. 2001) (staying
proceedings pending the Eastern District of North Carolina's
decision on arbitrability).

1 defendant's petition to compel arbitration;

- 2 (2) Defendant shall file a Status Report with this
3 court addressing arbitrability of issues raised in
4 plaintiffs' Complaints and the status of any
5 pending arbitration no later than ten days after
6 the District of Massachusetts's decision.

7 Dated: February 24, 2015

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9 **WILLIAM B. SHUBB**

10 **UNITED STATES DISTRICT JUDGE**