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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

Ricky Henry,  
Plaintiff,  
v.  
Central Freight Lines, Inc.,  
Defendant.

No. 2:16-cv-00280-JAM-EFB

**ORDER GRANTING DEFENDANT'S  
MOTION TO STAY ACTION**

Ricky Henry ("Henry" or "Plaintiff") worked for Central Freight Lines, Inc. ("CFL" or "Defendant") as a truck driver from April 2014 to February 2015. Henry alleges CFL intentionally and illegally misclassified him, and other putative class member-truck drivers, as independent contractors to deny them statutory benefits owed under the California Labor Code. CFL contends that Henry, and the putative class members, were properly classified as independent contractors and therefore not entitled to certain protections and benefits under the California Labor Code.

Since this Court's decision on CFL's Motion for Summary Judgment and Henry's Cross-Motion for Summary Judgment, Order, ECF No. 87, the Ninth Circuit withdrew its prior ruling in Vazquez v. Jan-Pro Franchising Int'l, Inc., 923 F.3d 575 (9th

1 Cir. 2019), and certified to the California Supreme Court the  
2 question of whether the "ABC Test" announced in Dynamex Ops. W.  
3 Inc. v. Superior Court, 4 Cal.5th 903 (2018) applies  
4 retroactively. See Vazquez v. Jan-Pro Franchising Int'l, Inc.,  
5 930 F.3d 1107 (9th Cir. 2019); and Vazquez v. Jan-Pro Franchising  
6 Int'l, Inc., 939 F.3d 1045, 1049 (9th Cir. 2019). The California  
7 Supreme Court has since decided to rule on the question. See ECF  
8 No. 94-1. CFL moves to stay the action pending resolution of  
9 this issue. CFL Mot., ECF. No. 91.

10 For the reasons discussed below, the Court GRANTS  
11 Defendant's Motion to Stay the Action.<sup>1</sup>

### 12 13 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

14 The parties are intimately familiar with the events leading  
15 up to this motion, as they were described in depth in this  
16 Court's previously issued Order. See Order, ECF No. 87. As  
17 such, they will not be repeated here.

### 18 19 II. OPINION

#### 20 A. Request for Judicial Notice

21 A court may take judicial notice of a fact "that is not  
22 subject to reasonable dispute because it is generally known  
23 within the trial court's territorial jurisdiction" or "can be  
24 accurately and readily determined from sources whose accuracy  
25 cannot reasonably be questioned." Fed. R. Evid. 201(b). A

26  
27 <sup>1</sup> This motion was determined to be suitable for decision without  
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was  
scheduled for November 5, 2019.

1 court may take judicial notice of a document filed in another  
2 court "not for the truth of the matters asserted in the other  
3 litigation, but rather to establish the fact of such litigation  
4 and related findings." Kramer v. Time Warner Inc., 937 F.2d.  
5 767, 774 (2nd Cir. 1991). Likewise, a court may take judicial  
6 notice of "adjudicative facts not subject to reasonable  
7 dispute." United States v. Chapel, 41 F.3d 1338, 1342 (9th Cir.  
8 1994) (internal quotations and citation omitted).

9 Defendant requests judicial notice of the following:

- 10 1. ECF No. 1 in California Truck Association v. Becerra,  
11 No, 3:18-cv-02458-BEN-BLM (S.D. Cal. Oct. 25, 2018).
- 12 2. ECF No. 45 in California Truck Association v. Becerra,  
13 No, 3:18-cv-02458-BEN-BLM (S.D. Cal. Oct. 25, 2018).
- 14 3. Judge Staton's Order staying the action in Bruers v.  
15 Flowers Foods, Inc., No. 18-cv-01442-JLS-ADS (C.D. Cal  
16 Aug. 7, 2019).

17 Def.'s RJN at 1, ECF No. 94-1.

18 Plaintiff requests judicial notice of the following:

- 19 1. The full text of Assembly Bill No. 5, signed by  
20 Governor Newsom on September 18, 2019.

21 Plf.'s RJN at 1, ECF No. 95-1.

22 The Court agrees that the adjudicative facts Defendant and  
23 Plaintiff identify are proper subjects of judicial notice. Both  
24 Defendant's and Plaintiff's requests for judicial notice are,  
25 therefore, GRANTED.

26 B. Legal Standard

27 "[T]he power to stay proceedings is incidental to the power  
28 inherent in every court to control the disposition of the causes

1 on its docket with economy of time and effort for itself, for  
2 counsel, and for litigants." Landis v. N. Am. Co., 299 U.S.  
3 248, 254 (1936). Accordingly, "a] trial court may . . . enter a  
4 stay of an action before it, pending resolution of independent  
5 proceedings which bear upon the case." Leyva v. Certified  
6 Grocers of California, Ltd., 593 F.2d 857, 863 (9th Cir. 1979).  
7 The decision whether to stay an action is committed to the  
8 "sound discretion" of the district court and is based on  
9 weighing "the competing interests which will be affected by the  
10 granting or refusal to grant a stay . . . ." CMAX, Inc. v.  
11 Hall, 300 F.2d 265, 268 (9th Cir. 1962).

12 Among these competing interests are: (1) the possible  
13 damage which may result from the granting of a stay, (2) the  
14 hardship or inequity which a party may suffer in being required  
15 to go forward, and (3) the orderly course of justice measured in  
16 terms of the simplifying or complicating issues, proof, and  
17 questions of law which could be expected to result from a stay.  
18 Id. Finally, "the proponent of a stay bears the burden of  
19 establishing its need." Clinton v. Jones, 520 U.S. 681, 708  
20 (1997).

### 21 C. Analysis

#### 22 1. Retroactivity of the ABC Test

23 Ensuring that justice proceeds in an ordered manner is the  
24 interest that controls here. The Ninth Circuit recently  
25 certified the question of whether Dynamex applies retroactively.  
26 The California Supreme Court agreed to answer that question as a  
27 matter of state law. That ruling will significantly impact the  
28 size of any of the putative classes and impact the criteria this

1 Court must consider when deciding class certification. Waiting  
2 for the California Supreme Court's decision will allow this Court  
3 to adjudicate the issues before it with far greater certainty.  
4 For this reason, a stay is appropriate.

5 In opposition to Defendant's motion, Plaintiff argues the  
6 California Legislature has definitively mandated that the ABC  
7 Test is retroactive with the passage of Assembly Bill 5 ("AB-5").  
8 Henry Opp'n, ECF No. 95. The chronology of events cuts against  
9 this argument. The Ninth Circuit certified the question to the  
10 California Supreme Court after Governor Newsom signed AB-5 into  
11 law. See Vazquez, 939 F.3d at 1049; and ECF No. 95-1. And both  
12 the Ninth Circuit and other district courts have stayed  
13 proceedings pending resolution of this issue. See Raef Lawson v.  
14 Grubhub, Inc., No. 18-15386, D.C. No. 3:15-cv-05128-JSC (N.D.  
15 Cal. 2019); and Bruers v. Flowers Foods, Inc., D.C. No. 18-cv-  
16 01442-JLS (C.D. Cal. 2019).

17 Proceeding with class certification under the assumption the  
18 California Supreme Court will apply Dynamex retroactively could  
19 very well lead to inefficiencies and a waste of resources for  
20 both the parties and the Court. Plaintiff argues a stay would be  
21 prejudicial given the costs he has already expended preparing for  
22 class certification. Henry Opp'n, ECF No. 95 at 9. But if this  
23 Court proceeds with class certification and Dynamex is found not  
24 to be retroactive, the parties will have to relitigate the issue—  
25 an even more costly venture. Like the Ninth Circuit and district  
26 courts before us, this Court declines to take that path.

27 In sum, with multiple motions pending before this Court, see  
28 ECF No. 88; and ECF No. 96, a stay awaiting clarity on Dynamex's

1 retroactivity would allow for a more orderly disposition of these  
2 motions. Thus, Defendant's Motion to Stay the Action to await  
3 resolution from the California Supreme Court is GRANTED.

4 2. Preemption of the ABC Test by the FAAAA

5 Defendant also argues this Court should stay this case given  
6 an intra-circuit split about whether the Federal Aviation  
7 Administration Authorization Act ("FAAAA") preempts the ABC Test.  
8 See CFL Mot., ECF. No. 91 at 2-3. This Court has already ruled  
9 on this issue. See Order, ECF No. 87 at 15-17. Absent new  
10 evidence or an intervening change of controlling law, Defendant's  
11 argument is insufficient to disrupt this Court's previous  
12 finding. Thus, a stay is not warranted on these grounds.

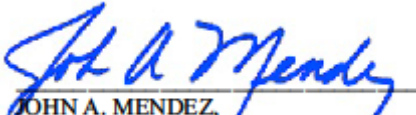
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III. ORDER

For the reasons set forth above, the Court GRANTS Defendant's Motion to Stay the Action until the California Supreme Court answers the Ninth Circuit's certified question.

IT IS SO ORDERED.

Dated: November 12, 2019



JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE