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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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10 KUREEN COOK, individually, and on  
11 behalf of other members of the general  
public similarly situated,

12 Plaintiff,

13 v.

14 RENT-A-CENTER, INC., a Delaware  
15 corporation; RENT-A-CENTER WEST,  
INC., a Delaware corporation; RENT-A-  
16 CENTER FRANCHISING  
INTERNATIONAL INC., a Texas  
17 corporation; and DOES 1 through 10,  
inclusive,

18 Defendants.

No. 2:17-cv-00048-MCE-EFB

**MEMORANDUM AND ORDER**

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Plaintiff Kureen Cook (“Plaintiff”) alleges a nationwide collective action claim against his former employer, Rent-A-Center (“RAC”),<sup>1</sup> for overtime under the Fair Labor Standards Act (“FLSA”), as well as numerous Rule 23 class action claims under California law for alleged unpaid wages, unpaid overtime, unpaid meal and rest breaks, unreimbursed business expenses, failure to compensate for split shifts, and penalties arising from allegedly non-compliant wage statements under the California Labor Code and California Business and Professions Code.

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<sup>1</sup> Plaintiff’s Complaint names three Rent-A-Center entities as Defendants: Rent-A-Center, Inc., Rent-A Center West, Inc. and Rent-A-Center Franchising International, Inc. All three entities will be collectively referred to as RAC in this Memorandum and Order unless otherwise noted.

1 RAC now moves to dismiss Plaintiff's individual claims on grounds that under the  
2 terms of an arbitration agreement reached with Plaintiff, Plaintiff agreed to arbitrate all  
3 "past, present and future" disputes with RAC, including all claims for "wages and other  
4 compensation due" and any statutory claims (the "Arbitration Agreement" or  
5 "Agreement"). RAC further moves to strike Plaintiff's collective and class action claims  
6 on grounds that the Arbitration Agreement precludes such claims. Finally, and in the  
7 alternative, since resolution of a case currently pending before the United States  
8 Supreme Court may be dispositive of much of Plaintiff's action in any event, RAC asks  
9 the Court to stay the entire action if it is disinclined to simply enforce the terms of the  
10 Arbitration Agreement.

11 As set forth below, the Court finds it appropriate to stay this action pending further  
12 guidance from the Supreme Court. To the extent RAC's motion requests a stay of these  
13 proceedings, then, the motion is GRANTED. Given the stay that is hereby imposed, the  
14 Court declines to address RAC's motion to the extent it requests the striking of certain  
15 matters and/or dismissal of the case. That portion of RAC's motion is therefore DENIED  
16 without prejudice to the refile of the motion at such time as the Court's stay of the case  
17 is lifted.<sup>2</sup>

## 18 **BACKGROUND**

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21 On or about July 30, 2013, at the inception of his employment with RAC, Plaintiff  
22 executed the Arbitration Agreement that is the subject of this motion. Declaration of  
23 Marc Tuckey ("Tuckey Decl."), Ex. 1. That Agreement contains the following provision  
24 requiring that all claims asserted by Plaintiff against RAC be arbitrated:

25 The Company and I mutually consent to the resolution by  
26 arbitration of all claims or controversies ("claims"), past,  
27 present or future, including without limitation, claims arising  
out of my application for employment,

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28 <sup>2</sup> Having determined that oral argument would not be of material assistance, the Court ordered this matter submitted on the briefs in accordance with E.D. Cal. Local Rule 230(g).

1 assignment/employment, and/or the termination of my  
2 assignment/employment that the Company may have against  
3 any of the following: (1) the Company, . . .<sup>3</sup> (3) the Company's  
parent, subsidiary, and affiliated entities.

4 \* \* \* \* \*

5 . . . The claims covered by this Agreement include, but are  
6 not limited to : . . . claims for wages or other compensation  
due . . . and claims for violation of any federal, state or other  
governmental law, statute, regulation, or ordinance . . .

7 Id. at Ex. 1, p. 1

8 Plaintiff worked as an hourly-paid, non-exempt, Customer Accounts  
9 Representative and Accounts Manager for RAC at various locations between July of  
10 2013 and April of 2016. Pl.'s Compl., ¶ 6. After his employment with RAC ended,  
11 Plaintiff instituted the present lawsuit in this Court despite the above-enumerated  
12 arbitration provisions.

13 As indicated above, in addition to individual claims, Plaintiff also asserts collective  
14 and class action claims on behalf of other similarly situated individuals. The Arbitration  
15 Agreement, however, purports to expressly preclude such claims, stating as follows:

16 **Class Action Waiver**

17 There will be no right or authority for any dispute to be  
18 brought, heard, or arbitrated as a class action and/or as a  
19 collective action ("Class Action Waiver"). Nor shall the  
Arbitrator have any authority to hear or arbitrate any such  
dispute.

20 Id. at Ex. 1, p. 2.

21 Given this provision of the Arbitration Agreement, RAC 1) moves to dismiss  
22 Plaintiff's individual claims as being brought by this lawsuit in contravention of the  
23 Arbitration Agreement; 2) moves to strike Plaintiff's collective and class action  
24 allegations on grounds they are precluded by the Class Action Waiver; and 3) moves to  
25 compel arbitration as to Plaintiff's individual claims, only.

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27 <sup>3</sup> Rent-A-Center, Inc. is the parent company of Rent-A-Center West, Inc. Both companies do  
28 business as "Rent-A-Center". Rent-A-Center Franchising International, Inc. is an affiliate of Rent-A-  
Center, Inc. See Tuckey Decl., ¶ 4. The Arbitration Agreement defines "Company" to include both Rent-  
A-Center-Inc. and "all parent, subsidiary, partners, divisions, and affiliated entities . . ." Id. at Ex. 1, p. 1.

1 With respect to the Class Action Waiver, however, RAC recognizes that in  
2 Morris v. Ernst & Young, 834 F.3d 975, 984 (9th Cir. 2016), the Ninth Circuit held that  
3 class action waivers are unlawful if made a mandatory condition of employment. There  
4 appears to be no dispute that Plaintiff's execution of the Arbitration Agreement, and the  
5 Class Action Waiver it contained, were indeed a mandatory condition of his employment.

6 Despite recognizing that Morris is controlling law in this Circuit, RAC nonetheless  
7 alleges that Morris was wrongly decided. In support of its position, RAC points to the  
8 fact that on January 13, 2017, the United States Supreme Court granted petitions for  
9 certiorari in both Morris and in two related decisions from the Seventh and Fifth Circuits,  
10 all of which address the enforceability of class action waivers. Ernst & Young LLP v.  
11 Morris, 137 S. Ct. 809 (Jan. 13, 2017). While the Seventh Circuit case, Lewis v. Epic  
12 Systems Corp., 823 F.3d 1147 (7th Cir. 2016), agreed with Morris, the Fifth Circuit's  
13 decision in Murphy Oil USA, Inc. v. N.L.R.B., 808 F.3d 1013 (5th Cir. 2015) did not, and  
14 other cases decided by the Fifth, Eighth, and Second Circuits are in accord with Murphy.  
15 See, e.g., D.R. Horton, Inc. v. N.L.R.B., 737 F.3d 344 (5th Cir. 2013); Cellular Sales of  
16 Missouri, LLC v. N.L.R.B., 824 F.3d 772 (8th Cir. 2016); and Sutherland v. Ernst &  
17 Young LLP, 726 F.3d 290 (2d Cir. 2013). Consequently, it would appear that by taking  
18 the issue, the Supreme Court's intention is to resolve the circuit split that has developed.

19 Given the uncertainty with respect to whether class action waivers are  
20 enforceable, as an alternative to addressing this case on its merits RAC urges the Court  
21 to stay this entire action pending direction from the Supreme Court. Because the Court  
22 concludes that a stay is indicated under the circumstances, the analysis below focuses  
23 on the propriety of a stay.

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1 may not require waiver of an employee's right to bring class or collective action by way  
2 of an arbitration agreement presented as a condition of employment, on grounds that  
3 such waivers interfere with an employee's right under the National Labor Relation Act to  
4 engage in concerted activity. Therefore, the Ninth Circuit found class/collective action  
5 waivers to be unenforceable. As indicated above, on January 13, 2017, the Supreme  
6 Court granted certiorari as to Morris and the Fifth Circuit's decision, Murphy Oil USA, Inc.  
7 v. N.L.R.B., 808 F.3d 1013 (5th Cir. 2015) which came to just the opposite conclusion.  
8 According to the parties, a decision from the Supreme Court is expected in early 2018.  
9 As already indicated, it is within this Court's inherent power to stay an action where an  
10 imminent decision by the Supreme Court will be dispositive of issues pending in a case  
11 before it. See Roman v. Northrop Grumman Corp., 2016 U.S. Dist. LEXIS 173022, at  
12 \*7-8.

13 The Court agrees that a stay is compelling under the circumstances of this case.  
14 Despite Plaintiff's individual claims, the gravamen of his lawsuit would appear to rest with  
15 the viability of his collective and class action allegations. If the Supreme Court agrees  
16 with the Fifth, Eighth, and Second Circuit decisions holding that class action waivers are  
17 enforceable, and disagrees with the contrary position taken by the Ninth Circuit in Morris,  
18 the collective and class action claims here will fail. As a practical matter, that  
19 determination could well be dispositive of Plaintiff's entire lawsuit.

20 Requiring the parties to go forward with litigation given the uncertainty in this  
21 regard would waste the time and resources of both the parties and the Court. Engaging  
22 in collective and class action discovery, not to mention handling disputes over  
23 conditional certification, potential class members, and the merits of the collective/class  
24 action allegations themselves, will require substantial effort on the part of all concerned,  
25 efforts that may well be unnecessary depending on the Supreme Court's ultimate  
26 decision in Morris. Additionally, by forcing RAC to litigate this matter while the class  
27 waiver issue is pending before the Supreme Court, would effectively deprive RAC of its  
28 right under the Federal Arbitration Act to enforce its Arbitration Agreement as written.

