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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DOUGLAS O'CONNOR, et al.,

Plaintiffs,

v.

UBER TECHNOLOGIES, INC., et al.,

Defendants.

Case No. 13-cv-03826-EMC

Case No. 14-cv-5200-EMC

Case No. 15-cv-3667-EMC

IN RE UBER FCRA LITIGATION

**ORDER RE FIRST-FILED RULE AND
UBER'S REQUEST FOR
STAY/DISMISSAL PURSUANT TO
COLORADO RIVER ABSTENTION
DOCTRINE**

RICARDO DEL RIO, et al.,

Plaintiffs,

v.

UBER TECHNOLOGIES, INC., et al.,

Defendants.

On December 17, 2015, the Court ordered Uber to file an opposition to the *O'Connor* Plaintiffs' motion to amend in claims under the Private Attorney General Act (PAGA). *O'Connor*, Docket No. 426. Uber filed a brief in *O'Connor*, *In re Uber FCRA Litigation*, and *Del Rio*, arguing that the Court should not only deny the *O'Connor* Plaintiffs' request to add PAGA claims to the *O'Connor* action, but that the Court should also "stay or dismiss any PAGA claims asserted by the *In re FCRA* and *Del Rio* Plaintiffs, to the extend those PAGA claims are

1 duplicative of PAGA claims already asserted by the *Price* [*v. Uber Technologies, Inc.*, State Court
2 Case No. BC554512] plaintiff in the first-filed action.” *O’Connor*, Docket No. 427; *In re Uber*
3 *FCRA Litigation*, Docket No. 135; *Del Rio*, Docket No. 46 at 2. In the alternative, Uber urged the
4 Court to “apply the *Colorado River* doctrine of abstention and deny amendment to add, stay, or
5 dismiss the proposed PAGA claims without prejudice, pending the outcome of *Price*.” *Id.*

6 First, the Court finds that the PAGA statute does not require the stay or dismissal of
7 duplicative PAGA claims. Instead, PAGA only states that:

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9 No action may be brought under this section by an aggrieved
10 employee if the agency or any of its departments, divisions,
11 commissions, boards, agencies, or employees, on the same facts and
12 theories, cites a person within the timeframes set forth in Section
13 2699.3 for a violation of the same section or sections of the Labor
14 Code under which the aggrieved employee is attempting to recover a
15 civil penalty on behalf of himself or herself or others or initiates a
16 proceeding pursuant to Section 98.3.

17 Cal. Lab. Code § 2699(h). Thus, under the plain language of the statute, an employee may not
18 bring an action only when the Labor and Workplace Development Agency (LWDA) cites an
19 employer based on the same Labor Code violation. Uber has cited dicta in cases suggesting the
20 contrary. *See Stafford v. Dollar Tree Stores, Inc.*, Case No. 13-cv-1187 KJM CKD, 2014 U.S.
21 Dist. LEXIS 163458, at *8 (E.D. Cal. Nov. 21, 2014) (citing section 2699(h) for the proposition
22 that “[t]he aggrieved employee cannot pursue a PAGA action if the agency or another party is
23 pursuing enforcement against the employer on the same claims under the same provisions of the
24 Labor Code”); *Brown v. Ralph’s Grocery Co.*, 197 Cal. App. 4th 489, 501 (2011) (citing section
25 2699(h) for the proposition that PAGA “prohibits an employee action when the agency or
26 someone else is directly pursuing enforcement against the employer ‘on the same facts and
27 theories’ under the same ‘section(s) of the Labor Code’). But the issue at bar was not presented in
28 those cases, and the statements therein are merely descriptive of section 2699(h); they were not
holdings. Importantly, other than a one sentence description, none of those cases explain why
section 2699(h) should be read to include deferring to a suit brought by *private* plaintiffs (as
opposed to the LWDA) when the statutory language makes no such provision. The Court

1 therefore declines to stay or dismiss the duplicative PAGA claims.¹

2 Second, the Court declines to apply the *Colorado River* doctrine of abstention. Abstention
3 in favor of a parallel state action may be proper due to considerations of “[w]ise judicial
4 administration giving regard to conservation of judicial resources and comprehensive disposition
5 of litigation.” *Nakash v. Marciano*, 882 F.2d 1411, 1415 (9th Cir. 1989) (quoting *Colorado River*
6 *Water Conserv. Dist. v. United States*, 424 U.S. 800, 817 (1976)). However, such cases are “rare,”
7 “limited,” and “exceptional,” with only “only ‘the clearest of justifications,’” supporting
8 abstention. *R.R. St. & Co. v. Transp. Ins. Co.*, 656 F.3d 966, 977-78 (9th Cir. 2011) (quoting
9 *Colorado River*, 424 U.S. at 818-19).

10 In determining whether to stay a case pursuant to *Colorado River*, courts in the Ninth
11 Circuit consider eight factors:

12 (1) which court first assumed jurisdiction over [the case]; (2) the
13 inconvenience of the federal forum; (3) the desire to avoid
14 piecemeal litigation; (4) the order in which the forums obtained
15 jurisdiction; (5) whether federal law or state law provides the rule of
16 decision on the merits; (6) whether the state court proceedings can
adequately protect the rights of the federal litigants; (7) the desire to
avoid forum shopping; and (8) whether the state court proceedings
will resolve all issues before the federal court.

17 *R.R. St.*, 656 F.3d at 978-79. In this analysis, “[n]o one factor is necessarily determinative; a
18 carefully considered judgment taking into account both the obligation to exercise jurisdiction and
19 the combination of factors counseling against that exercise is required.” *Colorado River*, 424 U.S.
20 at 818-19. Nevertheless, certain of the eight factors are “dispositive;” in particular, “substantial
21 doubt as to whether the state proceedings will resolve the federal action precludes the granting of a
22 stay.” *Intel Corp. v. Advanced Micro Devices, Inc.*, 12 F.3d 908, 913 (9th Cir. 1993).

23 Here, Uber argues that the Court should abstain from adjudicating PAGA claims that have
24 been raised in *Price. O’Connor*, Docket No. 427 at 8. However, even if the Court should abstain

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¹ A different analysis would be required if the *Price* PAGA claims had been decided, as a
“judgment in such an action is binding not only on the named employee plaintiff but also on
government agencies and any aggrieved employee not a party to the proceeding.” *Arias v.*
Superior Court, 46 Cal. 4th 969, 985 (2009). However, the *Price* PAGA claims have yet to be
decided.

1 from adjudicating the PAGA claims that have been raised in *Price*, there is no dispute that PAGA
2 claims will remain in both *In re Uber FCRA* and *Del Rio* because both cases raise PAGA claims
3 that have not been brought in any other proceeding. Thus, the state case will not resolve the
4 federal actions, and there is little judicial economy to be gained from abstention. *See Sciortino v.*
5 *Pepsico, Inc.*, 108 F. Supp. 3d 780, 815 (N.D. Cal. 2015) (“Given the fact of the broader remedies
6 sought herein and the fact that certain of Plaintiffs’ claims that are not based directly on
7 Proposition 65, the Court concludes that there is substantial doubt that the state proceedings will
8 resolve the federal action; this precludes a *Colorado River* stay.”). The Court therefore denies
9 Uber’s request that it abstain from adjudicating PAGA claims that have been raised in *Price*.

10 Having found that neither the first-filed rule nor abstention apply in the instant cases, the
11 Court must still resolve the *O’Connor* Plaintiffs’ request to amend in PAGA claims. The Court
12 will defer a decision on the motion to amend until after it has received a trial plan in this case. The
13 Court therefore **ORDERS** the *O’Connor* parties to meet-and-confer **in-person** on a viable trial
14 plan. The trial plan must, at a minimum, explain what claims and defenses (and elements thereof)
15 will be presented, the types of evidence that will be produced for each claim and defense, how the
16 presentation of evidence on behalf of or against the class will proceed, whether the trial should
17 proceed in phases (and what each phase would entail), and how damages and penalties will be
18 calculated. The trial plan should include the proposed PAGA claims to facilitate the Court’s
19 assessment of Plaintiffs’ motion to amend. If the parties are unable to agree on a trial plan, the
20 parties shall detail their separate trial plans along with a joint statement explaining the disputes
21 and each party’s position. The trial plan(s) must be filed by **March 10, 2016**, and the Court will
22 set a Status Conference for **March 24, 2016, at 1:30 p.m.** to discuss any outstanding issues with
23 the trial plan.

24 **IT IS SO ORDERED.**

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26 Dated: February 4, 2016

27 
28 EDWARD M. CHEN
United States District Judge