

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3
4 KYLE L. CAMPANELLI,

5 Plaintiff,

6 v.

7 IMAGE FIRST HEALTHCARE
8 LAUNDRY SPECIALISTS, INC., et al.,

9 Defendants.

Case No. 15-cv-04456-PJH

**ORDER GRANTING MOTION TO STAY
IN PART; DENYING MOTION FOR
RELIEF FROM NON-DISPOSITIVE
MAGISTRATE JUDGE'S ORDER**

Re: Dkt. Nos. 75, 77

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11 Defendants' motions to stay all class and collective action proceedings, and for
12 relief from a non-dispositive magistrate judge's order, came on for hearing before this
13 court on June 7, 2017. Plaintiff appeared through his counsel, Brian Malloy and David
14 Feola. Defendants appeared through their counsel, Eric Meckley. Having read the
15 papers filed by the parties and carefully considered their arguments and the relevant
16 legal authority, and good cause appearing, the court hereby GRANTS the motion to stay
17 in part and DENIES the motion for relief from the magistrate judge's order, for the
18 following reasons.

19 **BACKGROUND**

20 **A. Factual Allegations**

21 This is a putative class/collective action alleging violations of the Fair Labor
22 Standards Act ("FLSA") and California labor laws. Plaintiff Kyle Campanelli was
23 employed by ImageFIRST of California as a delivery person from March 2014 to March 3,
24 2015. Dkt. 11, First Amended Complaint ("FAC") ¶ 4, 33. The FAC named three
25 ImageFIRST companies as defendants: (1) ImageFIRST Uniform Rental Service, Inc.
26 ("IF Uniform"); (2) ImageFIRST Healthcare Laundry Specialists, Inc. ("IF Healthcare");
27 and (3) ImageFIRST of California, LLC ("IF California"). IF Uniform, as explained below,
28 was subsequently dismissed for lack of personal jurisdiction. Dkt. 51.

1 Plaintiff's primary job duty was to pick up soiled laundry from ImageFIRST
2 customers and deliver it to a warehouse/laundry center, and to pick up clean laundry from
3 the warehouse/laundry center and deliver it to ImageFIRST customers. FAC ¶ 33.
4 Campanelli alleges that he worked over forty hours a week but was denied meals and
5 rest periods, and was never paid overtime compensation. FAC ¶ 36.

6 Campanelli seeks to represent all similarly situated delivery persons of any
7 ImageFIRST entity nationwide (the "National Collective") in a collective action for failure
8 to pay overtime wages under FLSA. FAC ¶¶ 4, 37–41. Campanelli also seeks to
9 represent a Rule 23 class of similarly situated delivery persons who were wrongly
10 classified as exempt under California labor laws (the "California Class"). FAC ¶¶ 42–51.

11 Plaintiff defines similarly situated employees as "past and present employees of
12 ImageFIRST who engage/were engaged in the pick-up and delivery of ImageFIRST
13 products to and from customers intrastate however that employment was denominated
14 . . . and who were classified as exempt from Federal and state overtime laws." FAC ¶ 7.
15 Plaintiff alleges that ImageFIRST delivery persons should not be exempt as they perform
16 substantial manual labor, are not directly related to management or business operations,
17 and are not involved in the exercise of discretion and independent judgment with respect
18 to matters of significance. FAC ¶¶ 16, 19. The national collective action relies on alleged
19 violations of the FLSA; the California Class relies on alleged violations of a number of
20 provisions in the California Labor Code and Business and Professions Code.

21 **B. Procedural History**

22 IF California and IF Healthcare answered the complaint, and IF California admitted
23 to employing Campanelli. Dkt. 23, 25. IF Uniform, however, filed a motion to dismiss for
24 lack of personal jurisdiction on February 2, 2016. Dkt. 22. Following a hearing, the court
25 permitted jurisdictional discovery and ordered supplemental briefing with respect to the
26 motion to dismiss. Dkt. 40. On June 7, 2016, plaintiff filed a motion to compel regarding
27 the jurisdictional discovery. The court denied the motion to compel, Dkt. 47, and
28 subsequently granted the motion to dismiss IF Uniform. Dkt. 51.

1 Following the entry of a protective order, Dkt. 58, plaintiff sought discovery from
2 the remaining two defendants. Defendants objected to plaintiff’s first round of
3 interrogatories and requests for production of documents, and plaintiff filed a motion to
4 compel on March 7, 2017. Dkt. 60. The matter was referred to Magistrate Judge Sallie
5 Kim. Dkt. 66, 67.

6 On April 18, 2017, Judge Kim granted plaintiff’s motion to compel in part. See Dkt.
7 72, 73. Specifically, Judge Kim overruled defendants’ three objections to discovery: (1)
8 that other ImageFIRST subsidiaries were the employers of the drivers that formed the
9 putative class; (2) that the requests violated the Fourteenth Amendment rights of third
10 parties (other ImageFIRST subsidiaries or franchisees); and (3) that class discovery was
11 inappropriate because no class had yet been certified. Dkt. 72 at 1–3. However, Judge
12 Kim found that some of defendants’ objections based on “burden or vagueness” had
13 merit. Id. at 2.

14 **C. The Instant Motions**

15 On May 2, 2017, defendants filed a motion to stay all class and collective action
16 proceedings until the Supreme Court issues a decision in Epic Systems Corp. v. Lewis,
17 No. 16-285 (“Epic”), and the cases consolidated with Epic, including the Ninth Circuit’s
18 decision in Morris v. Ernst & Young, LLP, 834 F.3d 975 (9th Cir. 2016) (“Morris”). Dkt.
19 77. In Epic, which is expected to be heard in the fall of 2017, the Supreme Court will
20 address whether “an agreement that requires an employer and an employee to resolve
21 employment-related disputes through individual arbitration, and waive class and
22 collective proceedings, is enforceable under the Federal Arbitration Act, notwithstanding
23 the provisions of the National Labor Relations Act.” See Petition for a Writ of Certiorari,
24 Epic, 2016 WL 4611259 at i, cert. granted, 137 S.Ct. 809 (U.S. Jan. 13, 2017).

25 The Ninth Circuit held in Morris that general collective action waivers are not
26 enforceable as to employment-related disputes because the National Labor Relations Act
27 (“NLRA”) “precludes contracts that foreclose the possibility of concerted work-related
28 legal claims.” Morris, 834 F.3d at 990. Thus, “[a]n employer may not condition

1 employment on the requirement that an employee sign” a concerted action waiver. Id. In
2 Epic, the Supreme Court will a resolve a circuit split as to the enforceability of arbitration
3 agreements/concerted action waivers in this context.

4 Defendants filed a motion for relief from Magistrate Judge Kim’s discovery orders
5 on the same day as their motion to stay. Dkt. 77. Defendants assert a number of legal
6 errors, which all relate to permitting discovery regarding employees of ImageFIRST
7 entities who are not named defendants. On May 18, 2017, the court ordered the plaintiff
8 to file a response to the motion for relief. Dkt. 82. Both motions are fully briefed and ripe
9 for decision.

10 **DISCUSSION**

11 **A. Legal Standards**

12 **1. Motions to Stay**

13 A court’s power to stay proceedings is incidental to its inherent power to control
14 the disposition of its cases in the interests of efficiency and fairness to the court, counsel,
15 and litigants. Landis v. North Am. Co., 299 U.S. 248, 254–55 (1936). For the sake of
16 judicial economy, such a stay may be granted pending the outcome of other legal
17 proceedings related to the case. Leyva v. Certified Grocers of Calif., Ltd., 593 F.2d 857,
18 863–64 (9th Cir. 1979). The separate proceedings may be judicial, administrative, or
19 arbitral in nature, id., and the issues in the two proceedings need not be identical, Landis,
20 299 U.S. at 256.

21 The district court’s determination of whether a stay is appropriate “must weigh
22 competing interests and maintain an even balance.” Id. at 254–55. These competing
23 interests include “the possible damage which may result from the granting of a stay, the
24 hardship or inequity which a party may suffer in being required to go forward, and the
25 orderly course of justice measured in terms of the simplifying or complicating of issues,
26 proof, and questions of law which could be expected to result from a stay.” CMAX, Inc. v.
27 Hall, 300 F.2d 265, 268 (9th Cir. 1962) (citing Landis, 299 U.S. at 254–55).

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1 If there is “even a fair possibility” that the stay will harm the non-moving party, the
2 party seeking the stay must “make out a clear case of hardship or inequity in being
3 required to go forward.” Landis, 299 U.S. at 255. “[B]eing required to defend a suit,
4 without more, does not constitute a ‘clear case of hardship or inequity’ within the meaning
5 of Landis.” Lockyer v. Mirant Corp., 398 F.3d 1098, 1112 (9th Cir. 2005). In addition, a
6 stay should not be granted unless it appears likely that the other proceeding will be
7 concluded within a reasonable time in relationship to the urgency of the claims presented
8 to the court. Leyva, 593 F.2d at 864.

9 **2. Motions for Relief from a Non-dispositive Magistrate Judge’s Order**

10 A district court may modify or set aside an order of a magistrate judge on a non-
11 dispositive matter only if it is “clearly erroneous or contrary to law.” 28 U.S.C.
12 § 636(b)(1)(A); Fed. R. Civ. P. 72(a). Under this “deferential” standard, the district court
13 may not “substitute its judgment” for that of the magistrate judge. United States v.
14 Abonce-Barrera, 257 F.3d 959, 968 (9th Cir. 2001); Grimes v. City & County of San
15 Francisco, 951 F.2d 236, 241 (9th Cir. 1991).

16 A finding of fact may be set aside as clearly erroneous only if the court has “a
17 definite and firm conviction that a mistake has been committed.” Burdick v. C.I.R., 979
18 F.2d 1369, 1370 (9th Cir. 1992). However, the “magistrate’s legal conclusions are
19 reviewed de novo to determine whether they are contrary to law.” Perry v.
20 Schwarzenegger, 268 F.R.D. 344, 348 (N.D. Cal. 2010).

21 **B. Analysis**

22 **1. Whether the Court Should Stay the Case Pending a Decision in Epic**

23 Defendants’ motion to stay argues that “virtually all” of the putative class members
24 have signed arbitration agreements that include a concerted action waiver. If the
25 Supreme Court overturns the Ninth Circuit’s decision in Morris, it is possible that many
26 putative class members will be precluded from participating in a class or collective action.
27 Defendants therefore argue that the decision in Epic could have a dramatic impact on the
28 size of the putative class/collective in this case.

1 Plaintiff, for his part, argues that defendants have not shown that any class
2 members are subject to binding arbitration agreements, because defendants rely on only
3 a “hearsay” declaration that does not attach any signed, dated agreements. Even if
4 defendants’ evidence is accepted, plaintiff claims that a stay is inappropriate because any
5 further delay in this case would affect the rights of the putative class. Plaintiff also
6 accuses defendants of coercing putative class members to sign misleading agreements
7 during the pendency of this suit, and of seeking a stay primarily to avoid discovery.

8 In similar cases, courts in this district have divided over whether to grant stays
9 pending a decision in Epic. Compare, e.g., McElrath v. Uber Techs., Inc., No. 16-CV-
10 07241-JSC, 2017 WL 1175591, at *5–*7 (N.D. Cal. Mar. 30, 2017) (granting stay
11 because “whether this case can proceed as a class action turns squarely on the outcome
12 of the Supreme Court’s review of Morris”) with Daugherty v. SolarCity Corp., No. C 16-
13 05155 WHA, 2017 WL 386253, at *4 (N.D. Cal. Jan. 26, 2017) (“A decision in Morris
14 remains many months, perhaps even more than a year away. Given the extent of that
15 possible delay, a stay is not warranted.”); see also Whitworth v. SolarCity Corp., No. 16-
16 CV-01540-JSC, 2017 WL 2081155, at *4 (N.D. Cal. May 15, 2017) (analyzing the split in
17 the Northern District of California regarding stays in light of Morris/Epic).

18 Under the particular circumstances of this case, the court finds that a stay is
19 appropriate because two preliminary legal issues must be resolved before the propriety of
20 class/collective certification can be determined. Before the court can make a decision to
21 certify a class or collective, the scope of the putative class must be clear. This requires a
22 judicial determination as to (1) whether the employees of non-party ImageFIRST entities
23 are properly part of the putative class; and (2) whether the alleged arbitration agreements
24 are enforceable, and if so, how many putative class members have signed concerted
25 action waivers. Because the court concludes that it would be inefficient to proceed to the
26 certification stage until these two issues are resolved, the court GRANTS defendants’
27 motion to stay this case in part.

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1 The first issue, which has been contested throughout this suit, is which
2 ImageFIRST entities may be held liable by this court for violations of FLSA. This issue
3 hinges on whether IF Healthcare may be considered the “employer” of some or all of the
4 putative class members, as plaintiff maintains. On the one hand, only two ImageFIRST
5 entities are named as defendants in this action, and defendants’ evidence regarding
6 arbitration agreements addressed the employees of ten ImageFIRST entities in eight
7 states. See Dkt. 78 ¶ 2. However, plaintiff claims that all similarly-situated employees of
8 any ImageFIRST entity in the United States may be included in the putative class under a
9 “joint employer”/“single enterprise” theory, potentially reaching both the subsidiaries of IF
10 Healthcare and ImageFIRST franchisees with operations in as many as 40 states. Since
11 this legal issue may be determinative of the numerosity requirement of Rule 23, as well
12 as which employees must be given notice of the collective action, the scope of “joint
13 employer” liability must be resolved prior to certification.

14 The second legal issue is the existence and enforceability of the alleged arbitration
15 agreements/class action waivers signed by putative class members. Typically, this issue
16 would be resolved on a motion to compel arbitration, but since Campanelli himself has
17 not signed a waiver, such a motion is neither necessary nor appropriate in this case.
18 Regardless of the status of the named plaintiff, the arbitration agreements, if enforceable,
19 may have a significant impact of the size of the class. However, the evidence submitted
20 by defendants is inadequate to compel arbitration at this time, both because these
21 agreements are not (currently) enforceable under the rule of Morris, and because
22 defendants did not submit any signed, dated arbitration agreements. If the Supreme
23 Court ultimately overturns Morris and concludes that these types of agreements are
24 enforceable, defendants will be permitted an opportunity to move for summary judgment
25 as to whether certain putative class members are precluded by contract from participating
26 in the class/collective. If necessary, defendants may submit the signed agreements in
27 camera for inspection by the court at that time.

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1 Conservation of judicial resources supports the court’s decision to grant a partial
2 stay. The court finds that it would be waste of the court’s and the parties’ resources to
3 permit wide-ranging class discovery when it is still not clear (1) which ImageFIRST
4 employees, beyond those of the named defendants, are properly part of the putative
5 class; and (2) whether a significant group of these employees have waived their rights to
6 proceed in a class or collective action.

7 Under these circumstances, the court finds that the balance of equities and the
8 orderly course of justice favors a partial stay. Plaintiff’s primary claim of harm from the
9 stay rests on the fact that this case has been pending for nearly two years already.
10 However, most of this delay was the result of plaintiff’s decision to sue an entity over
11 which this court lacked personal jurisdiction. The stay will not be unduly long, as Epic will
12 be heard this fall and likely decided by early 2018. Moreover, as explained below, the
13 case can continue to proceed in the meantime in a limited fashion. The stay will
14 therefore not materially delay the resolution of plaintiff’s claims; instead, its primary effect
15 is simply to change the order in which the issues in this case are decided.

16 Staying the case pending Epic will simplify the issues in this litigation and avoid
17 potentially complex choice of law issues as to the nationwide collective. Several circuits
18 have held, contrary to the Ninth Circuit’s decision in Morris, that concerted action waivers
19 are enforceable against employees despite the NLRA. Thus, until the Supreme Court
20 resolves the circuit split, the arbitration agreements that defendants rely on may be
21 enforceable as to ImageFIRST entities in some states, but not others.

22 For these reasons, the court hereby STAYS all class and collective action
23 proceedings pending the decision in Epic, with the single exception of the “joint employer”
24 issue. Since Epic will have no impact on that issue, the court finds that it should be
25 litigated and resolved during the pendency of the partial stay.

26 While Epic is pending, plaintiff will be afforded an opportunity to obtain discovery
27 on his “joint employer” theory and to move for summary judgment on the issue. Both the
28 court and the parties will thus have clarity as to which ImageFIRST entities may be

1 considered to be an “employer” for purposes of plaintiff’s FLSA claims. A ruling on the
2 “employer” issue will streamline the remainder of the case, particularly the certification
3 proceedings.

4 After Epic is decided, defendants will be afforded an opportunity to move for
5 summary judgment on the arbitration issue should the Supreme Court overturn Morris. If
6 Morris is left intact, the arbitration issue becomes moot and the court will reset the
7 briefing schedule for class certification at that time.

8 **2. The Motion for Relief from Magistrate Judge Kim’s Orders**

9 The court DENIES the motion for relief from Magistrate Judge Kim’s discovery
10 orders. With one possible exception, Magistrate Judge Kim’s orders were neither “clearly
11 erroneous” nor “contrary to law.” However, because all discovery in this case—save on
12 the “joint employer” issue—is stayed pending Epic, defendants’ motion for relief is largely
13 moot in any event.

14 Defendants’ raise three overlapping objections to the discovery orders. First,
15 defendants argue that they should not be required to provide discovery regarding class
16 members who have (allegedly) signed class action waivers. However, this objection is
17 without merit since defendants do not actually establish the existence of any signed
18 agreements. Moreover, an employee’s waiver of concerted action for work-related claims
19 is not currently enforceable under Morris. If the Supreme Court overturns Morris, the
20 court will reconsider the issue at that time.

21 Second, defendants object to discovery that relates to employees of any non-
22 California, non-party entities on due process grounds. However, plaintiff is not seeking
23 third party discovery, or to hail out-of-state entities into this court without minimum
24 contacts with this forum. Rather, in its discovery requests to IF Healthcare, plaintiff can
25 only seek information that is within the possession, custody, or control of IF Healthcare.
26 Fed. R. Civ. P. 34(a). Magistrate Judge Kim correctly found that IF Healthcare, who is
27 properly before this court, cannot raise 14th Amendment objections on behalf of third
28 parties.

1 stated on the record at the hearing, the briefing schedule for class and collective action
2 certification is hereby VACATED.

3 Defendants' motion for relief from the magistrate judge's orders is DENIED.
4 However, all class and collective discovery in this case, other than that permitted by the
5 preceding paragraph concerning the "joint employer"/"single enterprise" issue, is
6 STAYED until the Supreme Court's decision in Epic is issued.

7 The parties shall inform this court within one week after the Supreme Court issues
8 its decision in Epic. If the Court affirms the Ninth Circuit's decision in Morris, the court will
9 schedule a case management conference in order to reset the schedule for class and
10 collective action certification. If the Supreme Court reverses, defendants may file a
11 motion for summary judgment on the enforceability of the alleged arbitration
12 agreements/class action waivers within 45 days following the Court's decision in Epic.

13 **IT IS SO ORDERED.**

14 Dated: July 10, 2017



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16
17 PHYLLIS J. HAMILTON
18 United States District Judge

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