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7 **UNITED STATES DISTRICT COURT**  
8 **SOUTHERN DISTRICT OF CALIFORNIA**  
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10 DAVID RADCLIFF, individually and on  
11 behalf of others similarly situated and  
12 aggrieved,

Plaintiff,

13 v.

14 SAN DIEGO GAS & ELECTRIC  
15 COMPANY, a California corporation;  
16 SEMPRA ENERGY, a California  
17 corporation; and DOES 1 through 50,  
inclusive,

Defendants.  
18

Case No.: 20-cv-1555-H-MSB

**ORDER GRANTING DEFENDANTS’  
MOTION TO COMPEL  
ARBITRATION AND  
MOTION TO STRIKE**

[Doc. No. 49.]

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20 On February 27, 2020, Plaintiff David Radcliff filed a proposed class action  
21 complaint against Defendants San Diego Gas & Electric Company and Sempra Energy  
22 alleging various wage-and-hour violations. (Doc. No. 1-2, Compl.) On September 25,  
23 2020, Defendants moved to compel arbitration of Plaintiff’s wage-and-hour claims. (Doc.  
24 No. 7.) The Court granted this motion. (Doc. No. 20, the “2020 Order.”) As a result, the  
25 only claims still before the Court are Plaintiff’s claims for penalties under the California  
26 Private Attorneys General Act (“PAGA”). (Id.)

27 On January 13, 2022, the parties jointly moved to stay the Court’s consideration of  
28 the PAGA claims pending a forthcoming decision by the United States Supreme Court in

1 Viking River Cruises, Inc. v. Moriana, 142 S.Ct. 1906 (2022) (“Moriana”). (Doc. No. 46.)  
2 The Court granted the parties’ motion for a stay. (Doc. No. 47.) The Supreme Court issued  
3 its decision in Moriana on June 15, 2022.

4 On August 16, 2022, Defendants moved to compel arbitration of Plaintiff’s  
5 individual PAGA claim and to strike Plaintiff’s representative PAGA claim.<sup>1</sup> (Doc. No.  
6 49.) The Court held a case status hearing on August 22, 2022. (Doc. No. 50.) Plaintiff  
7 subsequently filed his opposition to the motion on August 30, 2022. (Doc. No. 51.)  
8 Defendants filed their reply in support of their motion on September 7, 2022. (Doc. No.  
9 53.) The Court held a hearing on the motion on September 12, 2022. Sara B. Tosdal  
10 appeared for the Plaintiff, and Richard Azada appeared for the Defendants. For the  
11 foregoing reasons, the Court grants Defendants’ motion.

12 **MOTION TO COMPEL ARBITRATION**

13 In the 2020 Order, this Court compelled Plaintiff to submit his wage-and-hour claims  
14 to arbitration. (2020 Order at 7, 12.) Plaintiff acknowledges that his PAGA claims are  
15 predicated on these same wage-and-hour claims. (See Doc. No. 51 at 3.) However,  
16 Plaintiff insists that his PAGA claims are not subject to arbitration because these predicate  
17 claims were not subject to arbitration in the first instance. (Id. at 3, 6-8.) In essence,  
18 Plaintiff seeks reconsideration of the 2020 Order. For support, Plaintiff rehashes many of  
19 the arguments from his opposition to Defendants’ initial motion to compel. (See Doc. No.  
20 53 at 1-3.) The Court is unpersuaded by Plaintiff’s argument. The Court continues to view  
21 the wage-and-hour claims as properly subject to the parties’ arbitration agreement for the  
22 reasons set forth in the 2020 Order. (See 2020 Order at 3-12.) Since these predicate claims  
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25 <sup>1</sup> In Moriana, the Supreme Court noted that the terms “individual” and “representative”  
26 have multiple meanings in the context of a PAGA claim. 142 S.Ct. at 1916. For the  
27 purposes of this order, the Court uses the term “individual” PAGA claims to mean claims  
28 that are premised on California Labor Code violations “actually sustained by the plaintiff”  
and “representative” PAGA claims to mean those claims “arising out of events involving  
other employees.” Id.

1 are subject to arbitration, Plaintiff’s individual PAGA claim will also be subject to  
2 arbitration.

3 During the Court’s consideration of the prior motion to compel arbitration,  
4 Defendants conceded that Plaintiff’s PAGA claims were not subject to arbitration. (2020  
5 Order at 3.) At the time, the California Supreme Court’s opinion in Iskanian v. CLS  
6 Transp. Los Angeles, LLC, 327 P.3d 129 (Cal. 2014), set forth the controlling law on that  
7 issue. Recently, the Supreme Court has held that the Federal Arbitration Act (“FAA”)  
8 preempts the rule of California law established by Iskanian. See Moriana, 142 S.Ct. at  
9 1913.

10 The background of this case is nearly identical to Moriana. In both cases, an  
11 employee filed a complaint alleging PAGA claims and various predicate wage-and-hour  
12 violations. Id. at 1916. The defendant in Moriana, Viking River Cruises (“Viking”),  
13 moved to compel arbitration of the plaintiff’s individual PAGA claim and to dismiss her  
14 representative PAGA claim. Id. The trial court denied the motion to compel, and the  
15 California Court of Appeal affirmed the denial on the basis of the California Supreme  
16 Court’s opinion in Iskanian. Id. The Supreme Court overruled these decisions and  
17 concluded that the FAA preempted the rule in Iskanian that precluded the division of  
18 PAGA actions into individual and non-individual claims through an arbitration agreement.  
19 Id. at 1924. Thus, Viking “was entitled to enforce the agreement insofar as it mandated  
20 arbitration of Moriana’s individual PAGA claim.” Id. at 1925. Likewise, Defendants in  
21 this case are entitled to arbitrate Plaintiff’s individual PAGA claim because it is subject to  
22 the parties’ valid, enforceable arbitration agreement as set forth in the Court’s 2020 Order.  
23 Accordingly, the Court grants Defendants’ motion to compel arbitration of Plaintiff’s  
24 individual PAGA claim.

### 25 **MOTION TO STRIKE**

26 Plaintiff alleges both individual and representative PAGA claims in Count XI of his  
27 Complaint. (Doc. No. 1-2, Compl. ¶¶ 68-71.) The Court now turns to the representative  
28 PAGA claim. Defendants move to strike the representative PAGA claim from Count XI

1 for lack of statutory standing.<sup>2</sup> (Doc. No. 49 at 9-10.) Plaintiff contends that he has  
2 statutory standing to pursue a representative PAGA claim before this Court even if he is  
3 compelled to arbitrate his individual PAGA claim. (Doc. No. 51 at 10-15.)

4 Defendants' motion to strike is effectively a motion to dismiss for failure to state a  
5 claim pursuant to Fed. R. Civ. P. 12(b)(6) for lack of statutory standing. Vaughn v. Bay  
6 Envtl. Mgmt., Inc., 567 F.3d 1021, 1022-24 (9th Cir. 2009). But, given that Defendants  
7 filed an answer in this case (Doc. No. 2), the Court considers the proper legal standards to  
8 be those that govern a motion for judgment on the pleadings pursuant to Fed. R. Civ. P.  
9 12(c). Dworkin v. Hustler Magazine Inc., 867 F.2d 1188, 1192 (9th Cir. 1989). A Rule  
10 12(c) motion will only be granted "when, viewing the facts as presented in the pleadings  
11 in the light most favorable to the plaintiff, and accepting those facts as true, the moving  
12 party is entitled to judgment as a matter of law." Gutierrez v. Chung, 2013 WL 655141,  
13 \*3 (E.D. Cal. Feb. 21, 2013). The standard governing a motion under Rule 12(c) is  
14 essentially the same as that governing a Rule 12(b)(6) motion. Dworkin, 867 F.2d at 1192.  
15 When a Rule 12(c) motion is used to raise the defense of failure to state a claim, the motion  
16 is subject to the same test as a motion under Rule 12(b)(6).

17 In reviewing a motion to dismiss for failure to state a claim upon which relief can be  
18 granted, "[a] claim has facial plausibility when the plaintiff pleads factual content that  
19 allows the court to draw the reasonable inference that the defendant is liable for the  
20 misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). The plaintiff must  
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22 <sup>2</sup> Plaintiff does not assert that his representative PAGA claim should be arbitrated. Rather,  
23 he only seeks to maintain his representative PAGA claim before this Court. Notably, the  
24 Supreme Court remarked in Moriana that the PAGA claim joinder rule may not require  
25 parties to arbitrate matters outside of those agreed upon. Moriana, 142 S. Ct. at 1923-24.  
26 Thus, the Defendants are not required to arbitrate the representative PAGA claim unless  
27 they agreed to do so. See id. Defendants argue that they did not agree to arbitrate the  
28 representative claim. Plaintiff does not contest this assertion. Moreover, the Court  
concluded in its 2020 Order that the arbitration agreement only provides for arbitration of  
Plaintiff's individual claims. (See 2020 Order at 12-13.)

1 allege “more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” Id.  
 2 “Dismissal under Rule 12(b)(6) is appropriate only where the complaint lacks a cognizable  
 3 legal theory or sufficient facts to support a cognizable legal theory.” Mendiondo v.  
 4 Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104 (9th Cir. 2008).

5 There are no relevant factual disputes between the parties on this issue. The parties  
 6 simply disagree as to whether Plaintiff can maintain statutory standing to bring a  
 7 representative PAGA claim once his individual PAGA claim is compelled to arbitration.  
 8 The Court begins with a brief review of Moriana’s holding on this issue. PAGA contains  
 9 “what is effectively a rule of claim joinder [and] [a]n employee with statutory standing  
 10 may seek any civil penalties the state can, including penalties for violations involving  
 11 employees other than the PAGA litigant herself.” Moriana, 142 S.Ct. at 1915 (internal  
 12 quotation omitted). However, “[u]nder PAGA’s standing requirement, a plaintiff can  
 13 maintain non-individual PAGA claims in an action only by virtue of also maintaining an  
 14 individual claim in that action.” Id. at 1925 (citing Cal. Labor Code §§ 2699(a), (c)).  
 15 “When an employee’s own dispute is pared away from a PAGA action, the employee is no  
 16 different from a member of the general public, and PAGA does not allow such persons to  
 17 maintain suit.” Id. (citing Kim v. Reins Int’l Cal., Inc., 459 P.3d 1123, 1133 (Cal. 2020)).  
 18 In sum, the Supreme Court concluded that once a plaintiff’s individual PAGA claims were  
 19 compelled to arbitration, that plaintiff “lack[ed] statutory standing to continue to maintain  
 20 her non-individual claims in court, and the correct course is to dismiss her remaining  
 21 claims.” Id.

22 Defendants contend that Moriana’s holding resolves the statutory standing issue.<sup>3</sup>  
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25 <sup>3</sup> Defendants also argue that Plaintiff’s statutory standing is a question s of federal law.  
 26 (Doc. No. 53 at 3-4.) But Defendants are conflating statutory standing—in this case, set  
 27 forth by California state law—and Article III standing. See Cetacean Cmty. v. Bush, 386  
 28 F.3d 1169, 1174-75 (9th Cir. 2004) (discussing Article III standing and statutory standing).  
 Statutory standing, not Article III standing, is at issue in this case, and because PAGA is a  
 state law claim, state law is controlling of statutory standing to bring the claim.

1 In contrast, Plaintiff argues that the Supreme Court erred in its interpretation of PAGA’s  
2 statutory standing. (Doc. No. 51 at 11-12.) Plaintiff primarily takes issue with the Supreme  
3 Court’s interpretation of the California Supreme Court’s opinion in Kim. (Id.) Plaintiff  
4 asserts that Justice Sotomayor invited California courts to correct this error in her  
5 concurrence. Moriana, 142 S.Ct. at 1925-26 (Sotomayor, J., concurring) (“Of course, if  
6 this Court’s understanding of state law is wrong, California courts, in an appropriate case,  
7 will have the last word. Alternatively, if this Court’s understanding is right, the California  
8 Legislature is free to modify the scope of statutory standing under PAGA within state and  
9 federal constitutional limits.”). Notwithstanding Justice Sotomayor’s concurrence, a  
10 majority of Justices—including Justice Sotomayor—held that a plaintiff lacks statutory  
11 standing to bring a representative PAGA claim without a related individual PAGA claim  
12 in that same proceeding. See Moriana, 142 S.Ct. at 1925-26. Moreover, the Supreme  
13 Court explicitly considered Kim when reaching this holding. See Moriana, 142 S.Ct. at  
14 1925-26.

15 The Court is disinclined to substitute its own interpretation of California state law in  
16 place of an interpretation set forth so recently by the Supreme Court. See Kona Enterprises,  
17 Inc. v. Est. of Bishop, 229 F.3d 877, 884 n.7 (9th Cir. 2000) (explaining that courts within  
18 the Ninth Circuit are bound by interpretations of state law by the Ninth Circuit in the  
19 absence of any subsequent indication from the state courts that the interpretation is  
20 incorrect); Owen ex. rel. Owen v. United States, 713 F.2d 1461, 1464 (9th Cir. 1983)  
21 (same); see also F.D.I.C. v. McSweeney, 976 F.2d 532, 535 (9th Cir. 1992) (“As a three-  
22 judge panel, we are bound by our prior decisions interpreting state as well as federal law  
23 in the absence of intervening controlling authority.”). Moreover, like the Supreme Court,  
24 this Court sees no “mechanism [provided by PAGA] to enable a court to adjudicate non-  
25 individual PAGA claims once an individual claim has been committed to a separate  
26 proceeding.” Moriana, 142 S.Ct. at 1925. Accordingly, the Court strikes Plaintiff’s  
27 representative PAGA claim from Count XI because Plaintiff now lacks statutory standing  
28 to bring the claim before this Court.



**REQUEST TO STAY**

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2 Plaintiff argues that if this Court finds in favor the Defendants on the statutory  
3 standing issue, then the Court should stay this case until the California Supreme Court  
4 issues its opinion in the appeal of Adolph v. Uber Techs., Inc., No. G059860, 2022 WL  
5 1073583 (Cal. Ct. App. Apr. 11, 2022).<sup>4</sup> “The district court has broad discretion to stay  
6 proceedings as an incident to its power to control its own docket.” Clinton v. Jones, 520  
7 U.S. 681, 706 (1997). Plaintiff, as the proponent, bears the burden of establishing the need  
8 of the stay. Id. at 708. “The Court considers the following factors when ruling on a request  
9 to stay proceedings: (1) the possible damage which may result from the granting of a stay;  
10 (2) the hardship or inequity which a party may suffer in being required to go forward; and  
11 (3) the orderly course of justice, measured in terms of the simplifying or complicating of  
12 issues, proof, and questions of law which could be expected to result from a stay.” Richards  
13 v. Pac. Gas & Elec. Co., 2017 WL 1370684, at \*1 (C.D. Cal. Apr. 10, 2017) (citation  
14 omitted). The Court should “balance the length of any stay against the strength of the  
15 justification given for it.” Id. (citation omitted).

16 Plaintiff requests that the Court stays this case until after the California Supreme  
17 Court issues its order in Adolph. (Doc. No. 51 at 15-17.) Plaintiff contends that the  
18 California Supreme Court will correct the Supreme Court’s error on the question of  
19 statutory standing. (Id.) Two factors weigh heavily against a stay. First, the Supreme  
20 Court directly addressed the statutory standing issue in Moriana. Although the California  
21 Supreme Court may also address this question, this Court is already presented with  
22 persuasive authority on the statutory standing issue. Second, this Court has no assurances  
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24 <sup>4</sup> Plaintiff requests that this Court take judicial notice of related trial court opinions. (Doc.  
25 No. 51-4.) A court may take judicial notice of a fact that is “not subject to reasonable  
26 dispute because it (1) is generally known within the trial court’s territorial jurisdiction; or  
27 (2) can be accurately and readily determined from sources whose accuracy cannot  
28 reasonably be questioned.” Fed. R. Evid. 201(b). This includes court records. See U.S.  
v. Raygoza-Garcia, 902 F.3d 994, 1001 (9th Cir. 2018). Accordingly, the Court takes  
judicial notice of the opinions submitted by the Plaintiff. (Doc. Nos. 51-5 – 51-9.)

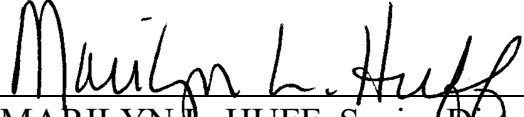
1 of when the California Supreme Court will decide Adolph. The opening merits brief in the  
2 appeal is due on September 19, 2022 (Doc. No. 51 at 16), but neither the parties nor the  
3 Court know when this case will be resolved. The Court declines to issue an indefinite stay  
4 of months, or possibly years, on the possibility that the California Supreme Court’s  
5 interpretation of statutory standing will differ from the interpretation articulated in  
6 Moriana. See Dependable Highway Exp., Inc. v. Navigators Ins. Co., 498 F.3d 1059, 1066  
7 (9th Cir. 2007) (“Generally, stays should not be indefinite in nature.”).

8 **CONCLUSION**

9 For the foregoing reasons, the Court grants Defendants’ motion. The Court strikes  
10 Plaintiff’s representative PAGA claim from Count XI of his complaint and compels the  
11 remaining individual PAGA claim in Count XI to be arbitrated. As the PAGA claims were  
12 the only remaining claims before the Court, the Court dismisses the case.

13 **IT IS SO ORDERED.**

14 DATED: September 12, 2022

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16 MARILYN L. HUFF, Senior District Judge  
17 UNITED STATES DISTRICT COURT  
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