

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

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3 ERIN HANKS, et al., )  
4 )  
5 Plaintiffs, )  
6 vs. )  
7 )  
8 BRIAD RESTAURANT GROUP, L.L.C., )  
9 )  
10 Defendant. )  
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Case No.: 2:14-cv-00786-GMN-PAL

**ORDER**

10 Pending before the Court are the Motion for Rule 54(b) Certification (ECF No. 101) and  
11 the Motion to Amend Order (ECF No. 94) filed by named Plaintiffs Erin Hanks, Deatra Enari,  
12 Jeffrey Anderson, Toby Earl, Shyheem Smith, Robert Baker, James Skadowski, and Michelle  
13 Pickthall’s (collectively, “Plaintiffs”). Defendant Briad Restaurant Group, L.L.C. filed  
14 Responses opposing both the Motion for Rule 54(b) Certification as well as the Motion to  
15 Amend Order. (ECF Nos. 108, 103). Plaintiffs filed respective Replies. (ECF Nos. 113, 111).

16 Also pending before the Court are Defendant’s Motion to Compel (ECF No. 104) and  
17 Motion to Dismiss Plaintiff Shyheem Smith (ECF No. 110). Plaintiff Shyheem Smith filed a  
18 Response (ECF No. 116), and Defendant filed a Reply (ECF No. 120).

19 For the reasons discussed below, Plaintiffs’ Motion for Rule 54(b) Certification and  
20 Motion to Amend Order are **DENIED**, and Defendant’s Motion to Compel and Motion to  
21 Dismiss are **GRANTED**.

**I. BACKGROUND**

22 This case arises out of alleged violations of an amendment to the Nevada Constitution  
23 setting certain minimum wage requirements for employers (the “Minimum Wage  
24 Amendment”). Plaintiffs are employees of the restaurant chain TGI Friday’s and work at  
25

1 several of the chain’s various locations throughout Nevada. (Am. Compl. ¶ 1, ECF No. 6).  
2 Plaintiffs allege that this action “is a result of [Defendant’s] failure to pay Plaintiffs and other  
3 similarly-situated employees who are members of the Class the lawful minimum wage, because  
4 [Defendant] improperly claimed eligibility to compensate employees at a reduced minimum  
5 wage rate under Nev. Const. art. XV, § 16.” (Id. ¶ 2).<sup>1</sup>

6 Plaintiffs filed the instant action in this Court on May 19, 2014 on behalf of themselves  
7 and a purported class of Defendant’s current and former employees. (See Compl., ECF No. 1).  
8 Defendant subsequently filed their First Motion to Compel, seeking to compel four of the eight  
9 named plaintiffs (collectively, the “Arbitration Plaintiffs”)<sup>2</sup> to arbitrate their claims pursuant to  
10 a four-page Employment At-Will and Arbitration Agreement (“Arbitration Agreement”) signed  
11 by each of the Arbitration Plaintiffs. (First Mot. to Compel 1:21–2:5, ECF No. 42). Defendant  
12 then filed a Motion for Partial Judgment on the Pleadings, which sought to limit Plaintiffs’  
13 claims to a two-year statute of limitations period. (Mot. for J. 2:1–3:3, ECF No. 74). The  
14 Court’s Order of July 27, 2015 granted both of Defendant’s motions and dismissed the  
15 Arbitration Plaintiffs “to arbitrate their claims against Defendant.” (Order 9:8–10, ECF No. 93).

16 The Arbitration Plaintiffs have not, however, pursued arbitration. Instead, the  
17 Arbitration Plaintiffs have filed a Motion for Rule 54(b) Certification (ECF No. 101) asking the  
18 Court to certify its ruling compelling arbitration for interlocutory appeal. In addition, Plaintiffs

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19  
20 <sup>1</sup> The Nevada Constitution provides in pertinent part:

21 Each employer shall pay a wage to each employee of not less than the hourly rates set forth in  
22 this section. The rate shall be five dollars and fifteen cents (\$5.15) per hour worked, if the  
23 employer provides health benefits as described herein, or six dollars and fifteen cents (\$6.15) per  
24 hour if the employer does not provide such benefits. Offering health benefits within the  
25 meaning of this section shall consist of making health insurance available to the employee for  
the employee and the employee’s dependents at a total cost to the employee for premiums of not  
more than 10 percent of the employee’s gross taxable income from the employer. These rates of  
wages shall be adjusted by the amount of increases in the federal minimum wage over \$5.15 per  
hour, or, if greater, by the cumulative increase in the cost of living.

Nev. Const. art. XV, § 16.

<sup>2</sup> The Arbitration Plaintiffs are Deatra Enari, Toby Earl, James Skadowski, and Michelle Pickthall.

1 have filed a Motion to Amend Order (ECF No. 94) asking the Court to certify its ruling  
2 applying a two-year statute of limitations for interlocutory appeal pursuant to 28 U.S.C.  
3 § 1292(b). Defendant subsequently filed its Second Motion to Compel (ECF No. 104) and  
4 Motion to Dismiss (ECF No. 110), seeking to compel Plaintiff Shyheem Smith (“Smith”) to  
5 arbitrate his claims pursuant to “the same” Arbitration Agreement signed by the Arbitration  
6 Plaintiffs. (Resp. to Second Mot. to Compel 2:6–7, ECF No. 116).

7 On September 15, 2015, the Court granted a temporary stay of the case pending  
8 resolution of a certified question to the Nevada Supreme Court. (Order, ECF No. 118).  
9 Specifically excluded from the stay were the presently pending Motion for Certification (ECF  
10 No. 101), Motion to Compel (ECF No. 104), and Motion to Amend Order (ECF No. 94). (Id.).

## 11 **II. LEGAL STANDARDS**

### 12 **A. Motion for Rule 54(b) Certification**

13 In cases with multiple claims and multiple parties, the district court may enter final  
14 judgment against some, but not all, of the claims or parties when the court determines that there  
15 is no just reason for delay. Fed. R. Civ. P. 54(b). In deciding whether to certify an order under  
16 Rule 54(b), the district court must determine (1) that the Order is a “final judgment,” and (2)  
17 whether there is a just reason to delay appeal. *Curtiss-Wright Corp. v. General Elec. Co.*, 446  
18 U.S. 1, 7–8 (1980). “Judgments under Rule 54(b) must be reserved for the unusual case in  
19 which the costs and risks of multiplying the number of proceedings and of overcrowding the  
20 appellate docket are outbalanced by pressing needs of the litigants for an early and separate  
21 judgment as to some claims or parties.” *Morrison–Knudsen Co. v. J.D. Archer*, 655 F.2d 962,  
22 965 (9th Cir. 1981).

1           **B.     Motion to Amend Order to Include Certification for Interlocutory Appeal on**  
2                           **Issue of the Limitation on Plaintiffs' Claims**

3           Federal district courts certify orders for interlocutory appeal only when exceptional  
4 circumstances exist. *In re Cement Antitrust Litig.*, 673 F.2d 1020, 1026 (9th Cir. 1982) (citing  
5 *U.S. Rubber Co., v. Wright*, 359 F.2d 784, 785 (9th Cir. 1966) (“[28 U.S.C. § 1292(b)] was not  
6 intended merely to provide review of difficult rulings in hard cases.”)). Even when exceptional  
7 circumstances exist, the petitioner must also satisfy three criteria before a district court will  
8 certify an order for interlocutory appeal. See 28 U.S.C. § 1292(b). The requirements are: “(1  
9 that there be a controlling question of law, (2) that there be substantial grounds for difference of  
10 opinion, and (3) that an immediate appeal may materially advance the ultimate termination of  
11 the litigation.” *In re Cement*, 673 F.2d at 1026. A controlling question of law is one that, if  
12 resolved on appeal, would materially affect the outcome of the litigation in district court. *Id.*

13           **C.     Motion to Compel Arbitration and Motion to Dismiss Plaintiff Shyheem**  
14                           **Smith**

15           Section 2 of the Federal Arbitration Act (“FAA”) provides that:

16                           A written provision in . . . a contract evidencing a transaction  
17                           involving commerce to settle by arbitration a controversy thereafter  
18                           arising out of such contract or transaction . . . shall be valid,  
19                           irrevocable, and enforceable, save upon such grounds as exist at law  
                              or in equity for the revocation of any contract.

20           9 U.S.C. § 2. “In enacting § 2 of the federal Act, Congress declared a national policy favoring  
21 arbitration and withdrew the power of the states to require a judicial forum for the resolution of  
22 claims which the contracting parties agreed to resolve by arbitration.” *Southland Corp. v.*  
23 *Keating*, 465 U.S. 1, 10 (1984). Courts shall place arbitration agreements “upon the same  
24 footing as other contracts.” *Volt Info. Sciences, Inc. v. Bd. of Trs. of Leland Stanford Junior*  
25 *Univ.*, 489 U.S. 468, 478 (1989).

1 Under the FAA, parties to an arbitration agreement may seek an order from the Court to  
2 compel arbitration. 9 U.S.C. § 4. The FAA “leaves no place for the exercise of discretion by a  
3 district court, but instead mandates that district courts shall direct the parties to proceed to  
4 arbitration on issues as to which an arbitration agreement has been signed.” Dean Witter  
5 Reynolds Inc. v. Byrd, 470 U.S. 213, 218 (1985). Thus, the Court’s “role under the Act is . . .  
6 limited to determining (1) whether a valid agreement to arbitrate exists and, if it does, (2)  
7 whether the agreement encompasses the dispute at issue.” Lee v. Intelius, Inc., 737 F.3d 1254,  
8 1261 (9th Cir. 2013) (quoting Chiron Corp. v. Ortho Diagnostic Sys., Inc., 207 F.3d 1126, 1130  
9 (9th Cir. 2000)). If a district court decides that an arbitration agreement is valid and  
10 enforceable, then it should either stay or dismiss the claims subject to arbitration. Nagrampa v.  
11 MailCoups, Inc., 469 F.3d 1257, 1276–77 (9th Cir. 2006).

12 Similarly, Nevada law also recognizes that “strong public policy favors arbitration  
13 because arbitration generally avoids the higher costs and longer time periods associated with  
14 traditional litigation.” D.R. Horton v. Green, 96 P.3d 1159, 1162 (Nev. 2002). Nevada has  
15 adopted the Uniform Arbitration Act (the “UAA”). See generally Nev. Rev. Stat. §38.206–.248.  
16 Under the UAA, “the court shall proceed summarily to decide the issue and order the parties to  
17 arbitrate unless it finds there is no enforceable agreement to arbitrate.” Nev. Rev. Stat.  
18 § 38.221(1)(b). Arbitration agreements are “valid, enforceable and irrevocable except as  
19 otherwise provided in NRS 597.995 or upon a ground that exists at law or in equity for the  
20 revocation of a contract.” Nev. Rev. Stat. § 38.219. Accordingly, like the FAA, the Court’s  
21 role under the UAA is limited to determining (1) whether a valid agreement to arbitrate exists  
22 and, if it does, (2) whether the agreement encompasses the dispute at issue. See Nev. Rev. Stat.  
23 § 38.221(1)(b) (“[T]he court shall proceed summarily to decide the issue and order the parties  
24 to arbitrate unless it finds there is no enforceable agreement to arbitrate.”) (emphasis added).

1 **III. DISCUSSION**

2 **A. Motion for Rule 54(b) Certification**

3 Plaintiffs assert that the Court’s dismissal of the Arbitration Plaintiffs was a final  
4 judgment, and Defendant does not dispute this point. Indeed, the Court’s determination that the  
5 Arbitration Plaintiffs must arbitrate their claims against Defendant, together with the Court’s  
6 dismissal of the Arbitration Plaintiffs, is an ultimate decision on a cognizable claim for relief.  
7 See *Curtiss-Wright*, 446 U.S. at 7; *Interactive Flight Techs., Inc. v. Swissair Swiss Air Transp.*  
8 *Co.*, 249 F.3d 1177, 1179 (9th Cir. 2001). Consequently, the only dispute relates to whether  
9 there is a just reason for delay.

10 With respect to just reason for delay, “a similarity of legal or factual issues will weigh  
11 heavily against entry of judgment” and an order of judgment “will be proper only where  
12 necessary to avoid a harsh and unjust result.” *Morrison–Knudsen Co.*, 655 F.2d at 965. To  
13 determine whether a just reason for delay exists, courts consider the following factors: (1)  
14 whether certification will result in unnecessary appellate review; (2) whether the claims finally  
15 adjudicated were separate, distinct, and independent of any of the other claims or counterclaims  
16 involved; (3) whether review of the adjudicated claims would not be mooted by any future  
17 developments in the case; and (4) whether the nature of the claims was such that no appellate  
18 court would have to decide the same issues more than once even if there were subsequent  
19 appeals. *Id.* (citing *Curtiss–Wright Corp.*, 446 U.S. at 5–6).

20 In this case, certification would result in unnecessary appellate review, thus making Rule  
21 54(b) certification unwarranted. In support of certification, Plaintiffs merely repeat their  
22 arguments already rejected by the Court based on binding Ninth Circuit precedent that “the  
23 [Minimum Wage] Amendment’s plain language disallows any waiver of the Amendment’s  
24 provisions.” (Reply to Mot. to Cert. 2:24–25, ECF No. 113). However, “[t]here is nothing  
25 unique or distinguishing about [Plaintiffs’] theories.” *Wood v. GCC Bend, LLC*, 422 F.3d 873,

1 879, 879 (9th Cir. 2005). Indeed, Plaintiffs have not cited any new authority demonstrating a  
2 disagreement in this circuit regarding “[w]hether the [Minimum Wage] Amendment proscribes  
3 arbitration . . . and whether that proscription is preempted by the FAA” that would suggest  
4 immediate appellate review is necessary. (Reply to Mot. to Cert. 2:19–21). Plaintiffs have  
5 therefore failed to present a “seriously important reason” to overcome “the interests of judicial  
6 administration [that] counsel against certifying claims.” Wood, 422 F.3d at 883.

7 Further, the similarity of factual issues and likelihood of piecemeal appeals renders  
8 certification inappropriate. While the arbitration issue is separate from Plaintiff’s claims under  
9 the Minimum Wage Amendment, the underlying factual allegations apply equally to both  
10 issues. Consequently, any subsequent appeal of “this case would inevitably come back to [the  
11 Ninth Circuit] on the same set of facts.” Id. at 879 (“We particularly scrutinize a district judge’s  
12 rule 54(b) certification to prevent piecemeal appeals in cases which should be reviewed only as  
13 single units.”) (citations omitted). Moreover, if the Arbitration Plaintiffs were allowed to  
14 proceed with an appeal as to the arbitration issue, and a separate appeal followed as to future  
15 unnamed class members who also have arbitration agreements, the Ninth Circuit could be  
16 required to decide the same or similar issues more than once. Conversely, the Court finds no  
17 harsh or unjust result should the Arbitration Plaintiffs be required to wait until the disposition  
18 of this action to appeal the Court’s Order compelling arbitration. Therefore, the Court denies  
19 Plaintiff’s request for certification under Rule 54(b).

20 **B. Motion to Amend Order to Include Certification for Interlocutory Appeal on**  
21 **Issue of the Limitation on Plaintiffs’ Claims**

22 Plaintiffs’ Motion to Amend asks the Court to certify for interlocutory appeal the  
23 following issue pursuant to § 1292(b): “Whether claims for violation of Nev. Const. art. XV,  
24 § 16, are subject to a two-year limitation?” (Mot. to Am. Order 3:4–5, ECF No. 94). Plaintiffs  
25 advance two reasons the Court should grant the motion: (1) whether claims for violations of the

1 Minimum Wage Amendment are subject to a two-year statute of limitations is a debatable and  
2 controlling question of law; and (2) an interlocutory appeal would materially advance the  
3 ultimate termination of this litigation in federal court “by resolving now a question that shapes  
4 Plaintiffs’ and the putative Class’s potential claims and recovery.” (Id. 3:7–4:22).

5         However, because the Nevada Supreme Court is set to decide the exact issue Plaintiffs  
6 seek to certify, an immediate appeal would not materially advance the litigation. On October 6,  
7 2015, the Nevada Supreme Court sitting en banc heard oral arguments in *Williams v. Eighth*  
8 *Judicial District Court*, Nevada Supreme Court, Case No. 66629. The issues in that case are  
9 identical to the issue Plaintiffs seek to certify to the Ninth Circuit, namely: (1) whether the  
10 statute of limitations issue warrants review before a final judgment; and (2) whether a two-year  
11 statute of limitation applies. (Resp. to Mot. to Am. 4:10–13, ECF No. 103). Accordingly, the  
12 Court concludes that immediate certification would not materially advance termination of this  
13 litigation, but would simply shuffle the procedural deck.

14         **C. Motion to Compel Arbitration and Motion to Dismiss Plaintiff Shyheem**  
15         **Smith**

16         In its Motion to Compel, Defendant asserts that like the Arbitration Plaintiffs, Smith  
17 signed a valid Arbitration Agreement requiring his dismissal from this case to arbitrate his  
18 claims. (Second Mot. to Compel 1:19–2:4, ECF No. 104). The Court previously granted an  
19 identical Motion to Compel in its July 27, 2015 Order. (Order, ECF No. 93). Smith admits that  
20 “[t]he substance of the arbitration agreement purportedly signed by Smith is the same as those  
21 signed by the Arbitration Plaintiffs.” (Resp. to Second Mot. to Compel 2:6–7, ECF No. 116).  
22 As a result, “Smith’s arguments in opposition[ to the present Motion to Compel] are . . . the  
23 same as the arguments in the previous round of briefing.” (Id. 2:8–9). Because Smith fails to  
24 raise any new argument suggesting that the Court’s Order granting Defendant’s First Motion to  
25 Compel was in error, the Court grants the instant Motion to Compel for the same reasons



1 discussed in its July 27, 2015 Order. See, e.g., Thomas v. Bible, 983 F.2d 152, 155 (9th Cir.  
2 1993) (noting that the “law of the case” doctrine precludes courts from reconsidering an issue  
3 that has already been decided unless “substantially different” evidence exists).

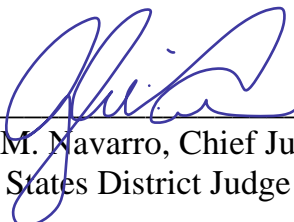
4 **IV. CONCLUSION**

5 **IT IS HEREBY ORDERED** that Plaintiffs’ Motion to Amend Order (ECF No. 94) and  
6 Motion for Rule 54(b) Certification (ECF No. 101) are **DENIED**.

7 **IT IS FURTHER ORDERED** that Defendant’s Motion to Compel (ECF No. 104) and  
8 Motion to Dismiss (ECF No. 110) are **GRANTED**. Plaintiff Shyheem Smith is dismissed from  
9 this action and ordered to arbitrate his claims in accordance with his version of the Arbitration  
10 Agreement.

11 **IT IS FURTHER ORDERED** that, in light of the Court’s Order (ECF No. 118)  
12 granting a temporary stay of the case pending resolution of the Court’s Certified Question by  
13 the Nevada Supreme Court, the presently pending Motion to Disqualify (ECF No. 106), Motion  
14 for Summary Judgment (ECF No. 107), and Motion for Partial Summary Judgment (ECF No.  
15 114) are **DENIED without prejudice**.

16  
17 **DATED** this 7 day of March, 2016.

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21 Gloria M. Navarro, Chief Judge  
22 United States District Judge  
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