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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

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WILLIAM H. GRADIE, individually and on  
behalf of all others similarly situated

Plaintiff,

v.

C.R. ENGLAND, INC., and DOES 1 through  
100, inclusive,

Defendant.

**MEMORANDUM DECISION AND  
ORDER GRANTING [38] MOTION TO  
STAY; FINDING MOOT [39] MOTION  
TO POSTPONE BRIEFING SCHEDULE;  
and GRANTING IN PART AND  
DENYING IN PART [49] MOTION TO  
CONSOLIDATE CASES**

Lead Case No. 2:16-cv-00768-DN  
Member Case No. 2:16-cv-001015-DN  
District Judge David Nuffer

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Defendant C.R. England, Inc. moved to stay all proceedings in this case.<sup>1</sup> Plaintiff William H. Gradie (Gradie) responded in opposition.<sup>2</sup> C.R. England replied in support of its motion.<sup>3</sup>

In the alternative, C.R. England filed a motion to postpone the briefing schedule on the motion for class certification.<sup>4</sup> Plaintiff did not respond. C.R. England replied.<sup>5</sup>

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<sup>1</sup> Motion of Defendant C.R. England, Inc. to Stay All Proceedings in This Case (Motion to Stay), [docket no. 38](#), filed October 11, 2016.

<sup>2</sup> Plaintiff William H. Gradie's Opposition to Defendant C.R. England's Motion to Stay (Opposition to Motion to Stay), [docket no. 42](#), filed October 17, 2016.

<sup>3</sup> Reply of Defendant C.R. England, Inc. in Support of Its Motion to (1) Postpone the Briefing Schedule on Plaintiff's Motion for Class Certification and (2) Motion to Stay All Proceedings in This Case, [docket no. 43](#), filed October 19, 2016.

<sup>4</sup> Motion of Defendant C.R. England, Inc. to Postpone the Briefing Schedule on Plaintiff's Motion for Class Certification (Motion to Postpone), [docket no. 39](#), filed October 11, 2016.

<sup>5</sup> Reply of Defendant C.R. England, Inc. in Support of Its Motion to (1) Postpone the Briefing Schedule on Plaintiff's Motion for Class Certification and (2) Motion to Stay All Proceedings in This Case, [docket no. 43](#), filed October 19, 2016.

Gradie moved to consolidate cases related to this action.<sup>6</sup> C.R. England responded in partial opposition.<sup>7</sup> Plaintiffs in one of the related cases responded in opposition.<sup>8</sup> Gradie replied.<sup>9</sup>

For the reasons stated below C.R. England's Motion to Stay is GRANTED and its Motion to Postpone is found MOOT. Gradie's motion to consolidate related cases is GRANTED IN PART and DENIED IN PART.

### **BACKGROUND**

Three separate cases are affected by these motions. This action (Gradie I) was filed April 20, 2016, in the Superior Court of the State of California for the County of Los Angeles.<sup>10</sup> It was removed to the United States District Court for the Central District of California, Western Division, on May 20, 2016.<sup>11</sup> It was transferred to the Utah Federal District Court on July 8, 2016.<sup>12</sup>

*Milton Harper v. C.R. England, Inc.* (Harper)<sup>13</sup> was filed February 1, 2016, in the Superior Court of the State of California in and for the County of San Bernardino.<sup>14</sup> It was removed to the United States District Court for the Central District of California on August 24,

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<sup>6</sup> Plaintiff William H. Gradie's Motion to Consolidate Related Cases, [docket no. 49](#), filed November 2, 2016.

<sup>7</sup> Defendant C.R. England, Inc.'s Memorandum in Opposition to Plaintiff's Motion to Consolidate Related Cases (C.R. England's Opposition to Consolidation), [docket no. 51](#), filed November 16, 2016.

<sup>8</sup> Memorandum in Opposition to Plaintiff's Motion to Consolidate Related Cases by Plaintiffs Milton Harper, Ronnie Stevenson and Jonathan Mitchell from *Harper v. C.R. England* Action, [docket no. 52](#), filed November 18, 2016.

<sup>9</sup> Plaintiff William H. Gradie's Reply in Support of Motion to Consolidate, [docket no. 55](#), filed December 7, 2016.

<sup>10</sup> Complaint for Unpaid Wages, [docket no. 1-1](#), filed May 20, 2016.

<sup>11</sup> Notice of Removal from Los Angeles Superior Court, [docket no. 1](#), filed May 20, 2016.

<sup>12</sup> Case transferred in from USDC of California Central, [docket no. 16](#), entered July 8, 2016.

<sup>13</sup> 2:16-cv-00906-DB ("Harper").

<sup>14</sup> Class Action Complaint, 2:16-cv-00906-DB docket no. 1-2, filed August 24, 2016.

2016.<sup>15</sup> On August 26, 2016, it was transferred to the Utah Federal District Court.<sup>16</sup> It was assigned to Judge Benson.

*William H. Gradie v. C.R. England* (Gradie II)<sup>17</sup> was filed in this court on September 29, 2016.<sup>18</sup> It was assigned to Judge Jenkins.<sup>19</sup>

“There is no dispute that [Gradie I and Harper] involve the same subject matter and legal issues.”<sup>20</sup> In both cases, plaintiffs assert various California wage and hour and misrepresentation claims. On January 9, 2017, Judge Benson issued an order in Harper “(1) confirming certification of class action for settlement purposes; (2) granting final approval of class action settlement; and (3) entering final judgment.”<sup>21</sup>

Gradie II seeks “declaratory judgment that the purported ‘Class Action/Collective Action and Other Group Proceedings Waivers’ set forth at Paragraph 5 of the parties’ arbitration agreement . . . is illegal and unenforceable as a matter of law.”<sup>22</sup>

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<sup>15</sup> Notice of Removal from California Superior Court-San Bernardino, 2:16-cv-00906-DB docket no. 1, filed August 24, 2016.

<sup>16</sup> Order Granting Stipulation to Transfer Action to the United States District Court for the District of Utah, 2:16-cv-00906-DB docket no. 11, filed August 26, 2016.

<sup>17</sup> 2:16-cv-01015-BCW (“Gradie II”).

<sup>18</sup> Complaint, 2:16-cv-01015-BCW docket no. 2, filed September 29, 2016.

<sup>19</sup> 2:16-cv-01015-BCW docket no. 20, entered December 6, 2016.

<sup>20</sup> Opposition to Motion to Stay at 5.

<sup>21</sup> Order (1) Confirming Certification of Class Action for Settlement Purposes; (2) Granting Final Approval of Class Action Settlement; and (3) Entering Final Judgment, 2:16-cv-00906-DB docket no. 70, entered January 9, 2017.

<sup>22</sup> Gradie II Complaint at 2, 2:16-cv-01015-BCW docket no. 2, filed September 29, 2016.

## DISCUSSION

### **The Motion to Stay is granted, rendering the motion to postpone briefing moot.**

“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.”<sup>23</sup>

In his Opposition to Motion to Stay Gradie argues:

1. C.R. England is rushing to obtain approval of a collusive, “reverse auction” settlement in Harper;<sup>24</sup>
2. The competing class actions must be consolidated before a single judge;<sup>25</sup>
3. The Harper Settlement does not extinguish the class claims in Gradie I;<sup>26</sup> and
4. The Harper Settlement is grossly inadequate.<sup>27</sup>

Gradie’s first and fourth arguments amount to a collateral attack on the Harper settlement. Gradie had an opportunity and venue to make those arguments.<sup>28</sup> He cannot make them again in this action. The second argument is addressed below. The third argument is better addressed in future discussion of his motion to certify the class.

Therefore, C.R. England’s motion to stay is granted.

### **The Motion to Consolidate is granted in part and denied in part.**

Rule 42(a) of the Federal Rules of Civil Procedure states that “[i]f actions before the court involve a common question of law or fact, the court may . . . consolidate the actions.”

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<sup>23</sup> *Landis v. North American Co.*, 299 U.S. 248, 254 (1936).

<sup>24</sup> Opposition to Motion to Stay at 2–4.

<sup>25</sup> *Id.* at 4–6.

<sup>26</sup> *Id.* at 6–7.

<sup>27</sup> *Id.* at 7–10.

<sup>28</sup> See Order Granting Preliminary Approval of Class Settlement [in Harper] ¶¶ 10 and 11, 2:16-cv-00906-DB docket no. 29, entered October 6, 2016, providing details regarding filing objections the fairness hearing.

Actions should only be consolidated if it will avoid unnecessary costs, save judicial resources and efficiency, and will not prejudice the parties.<sup>29</sup>

C.R. England does not oppose consolidating Gradie II with this case, Gradie I.<sup>30</sup> Therefore, because the parties stipulate to consolidation and because Gradie I and Gradie II involve common questions of law and fact, Gradie II will be consolidated with this case.

C.R. England does, however, oppose consolidating Gradie I with Harper. In Harper, Judge Benson already entered final judgment and approval of the class and class action settlement.<sup>31</sup> By contrast, the motion to certify the class in this case, Gradie I,<sup>32</sup> is not yet fully briefed. Therefore, because consolidation would substantially prejudice the parties in Harper, would not reduce unnecessary costs, and would not save judicial resources, this case and Harper will not be consolidated.

## ORDER

IT IS HEREBY ORDERED that the Motion of Defendant C.R. England, Inc. to Stay All Proceedings in this Case<sup>33</sup> is GRANTED. The stay shall be in place until Harper becomes completely final, i.e. all appellate rights have been exhausted. Within seven days after Harper becomes completely final, Gradie shall re-file his Plaintiff's Motion for Class Certification<sup>34</sup>

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<sup>29</sup> *Margolis v. Hydroxatone, LLC*, No. 11-cv-4355 (SRC) (CLW), 2013 WL 875987, at \*3–4 (D. N.J. March 6, 2013).

<sup>30</sup> C.R. England's Opposition to Consolidation at 7.

<sup>31</sup> Order (1) Confirming Certification of Class Action for Settlement Purposes; (2) Granting Final Approval of Class Action Settlement; and (3) Entering Final Judgment, 2:16-cv-00906-DB docket no. 70, entered January 9, 2017.

<sup>32</sup> Plaintiff's Motion for Class Certification, [docket no. 36](#), filed October 7, 2016.

<sup>33</sup> [Docket no. 38](#), filed October 11, 2016.

<sup>34</sup> [Docket no. 36](#), filed October 7, 2016.

accounting for the developments in Harper. Following Gradie's re-filing, briefing shall proceed according to DUCivR 7-1.

IT IS FURTHER ORDERED that the Plaintiff William H. Gradie's Motion to Consolidate Related Cases<sup>35</sup> is GRANTED IN PART and DENIED IN PART. William H. Gradie v. C.R. England<sup>36</sup> is consolidated with this case, William H. Gradie v. C.R. England, Inc.<sup>37</sup> Milton Harper et al. v. C.R. England, Inc. et al.<sup>38</sup> will not be consolidated with this case.

IT IS FURTHER ORDERED that the consolidated cases shall be administratively closed pending the re-filing of Gradie's motion for class certification.

Signed January 23, 2017.

BY THE COURT

A handwritten signature in blue ink, appearing to read "David Nuffer", is written over a horizontal line.

District Judge David Nuffer

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<sup>35</sup> [Docket no. 49](#), filed November 2, 2016.

<sup>36</sup> 2:16-cv-01015.

<sup>37</sup> 2:16-cv-00768.

<sup>38</sup> 2:16-cv-00906.