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Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Vaughn Plaintiff/Petitioner(s) VS. Tesla, Inc. Defendant/Respondent(s) (Abbreviated Title)	No. RG17882082 Order Motion to Compel (Motion) Granted

The Motion to Compel (Motion) filed for Tesla, Inc. was set for hearing on 09/24/2021 at 10:00 AM in Department 21 before the Honorable Winifred Y. Smith. The Tentative Ruling was published and was contested.

The matter was argued and submitted, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

The Motion of Tesla to compel plaintiffs Chatman and Hall to arbitration is GRANTED regarding claims arising after the start dates of employment in the Tesla employment contracts. The Motion of Tesla to strike class allegations is DENIED.

The Motion of Tesla to stay the claims of plaintiffs Chatman and Hall arising after the start dates of employment in the Tesla employment contracts is GRANTED. The Motion of Tesla to stay the pre-employment claims of plaintiffs Chatman and Hall is DENIED.

MOTION OF TESLA TO COMPEL ARBITRATION (Res # 2280297)

The Motion of Tesla to compel plaintiffs Chatman and Hall to arbitration is GRANTED IN PART. The request to stay this case is DENIED.

FACTS

Chatman was employed by a staffing agency and assigned to Tesla from 11/16/16 until 8/1/17. Chatman was offered employment at Tesla and the offer included an arbitration agreement. Chatman accepted employment at Tesla and under the term of her agreement her first day as a Tesla employee was 8/2/17.

Hall was employed by a staffing agency and assigned to Tesla from 3/6/17 until 8/1/17. Hall was offered employment at Tesla and the offer included an arbitration agreement. Hall accepted employment at Tesla and under the term of her agreement her first day as a Tesla employee was 8/2/17.

EXISTENCE OF ARBITRATION AGREEMENTS

Tesla has demonstrated that both Chatman and Hall entered into employment contracts with Tesla that had arbitration agreements.

UNCONSCIONABILITY.

Chatman and Hall have not demonstrated that the arbitration agreements are procedurally unconscionable.

The contract is a contract of adhesion, so there is a minimal degree of procedural unconscionability (Gatton v. T-Mobile USA, Inc. (2007) 152 Cal.App.4th 571, 585.) Plaintiffs have not, however, demonstrated oppression or surprise. (Higgins v. Superior Court (2006) 140 Cal.App.4th 1238, 1252-1253.)

The JAMS procedure were not attached to the Agreement. This is not procedurally unconscionable. (Baltazar v. Forever 21, Inc. (2016) 62 Cal.4th 1237, 1246.)

Chatman and Hall have not demonstrated that the arbitration agreements are substantively unconscionable. The arbitration agreement states that disputes will be conducted and Administered by JAMS under the current procedures for JAMS employment disputes. An agreement may incorporate the arbitration procedures of an arbitration provider. (Baltazar v. Forever 21, Inc. (2016) 62 Cal.4th 1237, 1246.)

The JAMS procedures are adequate. The JAMS rules provide for a neutral arbitrator, for adequate discovery, for a written decision, for any relief that would be available in court, and that the employee would not have to pay more in fees than he would have had to pay in a court action. (Little v. Auto Stiegler, Inc. (2003) 29 Cal.4th 1064, 1085.)

The arbitration agreement has a carve out for Tesla's Intellectual Property Agreement. This is a factor tending to be unconscionable, but it is not enough to void the agreement.

Considering both procedural and substantive unconscionability, the court finds that the agreement is arbitration agreement is enforceable.

SCOPE OF ARBITRATION AGREEMENT

The central issue is the scope of the arbitration clause. The Tesla arbitration clause states that it covers "any and all disputes, claims, or causes of action... arising from or relating to employment or the termination of employment."

Employment. The scope of the Tesla arbitration clause states that it covers "any and all disputes, claims, or causes of action... arising from or relating to employment or the termination of employment." The disputes must arise from employment. The context of the letter is that the employment must be with Tesla.

When did employment begin. The text of the letters includes language "The first day of your employment will be ___." For both Chatman and Hall the first date of employment with Tesla was defined as 8/2/17. Salgado, 33 Cal.App.5th at 359-360 states "When language in a contract is clear and explicit, that language governs interpretation."

Applying the plain language of the contracts, the arbitration clauses require Chatman and Hall to arbitrate disputes that arise on or after 8/2/17.

Tesla relies on Salgado v. Carrows Restaurants, Inc. (2019) 33 Cal.App.5th 356, and argues that the court should read the Tesla contract as applying to claims that arise before the beginning of employment with Tesla.

Salgado involved the situation where a person was employed by Carrows in 1984, sued Carrows on 11/22/16, and signed an arbitration agreement in 12/7/16. The arbitration agreement covered disputes "related in any way to my ... employment." The Court of Appeal held that the phrase "related in any way to my ... employment" was broad enough to include claims arising from Salgado's employment with Carrows arising before Salgado signed the agreement.

Salgado is distinguishable because the plaintiff in that case was actually employed by Carrows before

she signed the agreement. The phrase "related in any way to my ... employment" reasonably covered the entire time that Salgado was employed by Carrows.

In contrast, in this case, before 8/2/17 Chatman was a temporary worker employed by West Valley Staffing and before 8/2/17 Hall was a temporary worker employed by Balance Staffing. (Tesla opening at 8:4-17.) Before 8/2/21 neither was a Tesla employee for purposes of the Tesla employment contract.

The Tesla arbitration agreement is limited to the period of employment. The arbitration agreements both set the start date of employment at 8/2/17. Therefore, any claims based on alleged wrongs before 8/2/21 are not within the temporal scope of the agreements.

Plain Text. The court addressed the plain text of the agreement in the Order of 4/9/21 at 14-15, stating:

First, the court considers the plain language of the Tesla agreement. The Tesla offer letter states, "If you accept our offer, your first date of employment will be [DATE]." The Tesla offer letter (arbitration agreement) states "you and Tesla agree that that any and all disputes, ... arising from or related to your employment .... (White 11/4/20 Dec., Exh 1.) The critical phrase is "arising from or related to your employment."

The court reads contracts to give effect to their text. "When language in a contract is clear and explicit, that language governs interpretation." (Salgado v. Carrows Restaurants, Inc. (2019) 33 Cal.App.5th 356, 359-360.) The text of the Tesla arbitration agreement states the date employment begins. The text of the Tesla arbitration agreement between a person and Tesla compels the conclusion that "your employment" means the employment relationship between the person and Tesla. The start of "employment" is the key fact, not the date of signing the agreement.

The court considers two scenarios. The court would read "your employment" as including events during a person's employment with Tesla if the person started employment with Tesla but did not complete the

employment paperwork that included the start date until several weeks after the start of employment. In contrast, the court could not reasonably read "your employment" as including events during a person's employment with a staffing agency even if the staffing agency assigned the person to Tesla. If a person were employed by a staffing agency for a time period and during that time period they were not a Tesla employee with contract rights to the benefits of contractual employment with Tesla, then they would not bound by the Tesla arbitration agreement for injuries suffered during that time period. The evidence in this case suggests that plaintiff and the persons in the potential subclass are in the second scenario. The text of the Tesla contract is that arbitration agreement does not include the time period before employment started.

[End block quotation.]

At the hearing on 9/29/21, Tesla argued that under the FAA the court should read "employment" expansively to give maximum effect to the scope of the arbitration clause. Consistent with California law and the FAA, the court gives effect to the plain language of the contract. The word "employment" refers to employment with Tesla during the contractual period of employment and not employment with any entity at any time.

At the hearing on 9/29/21, Tesla referred the court to Western Bagel Company, Inc. v. Superior Court of Los Angeles County (2021) 66 Cal.App.5th 649, and suggested that Western Bagel suggested that the FAA requires that courts not use normal principles of contract interpretation. This court disagrees both specifically and generally.

Specifically, Western Bagel concerned whether the court should interpret contractual arbitration to be binding or non-binding. Western Bagel held that the court should be guided by the statement of the United States Supreme Court that an "individualized form of arbitration [is] envisioned by the FAA," wherein " 'parties forgo the procedural rigor and appellate review of the courts in order to realize the benefits of private dispute resolution, lower costs, greater efficiency and speed, and the ability to choose expert adjudicators to resolve specialized disputes." (Lamps Plus, Inc. v. Varela (2019) 139 S.Ct. 1407, 1416.) Western Bagel implicitly presumed for purposes of contract interpretation that the parties wanted the generally recognized benefits of arbitration and interpreted the contract accordingly. In contrast, in this case the issue is the scope of the arbitration clause and whether Chatman and Hall

agreed in the employment agreement to arbitrate claims that arose before they were employed by Tesla .

Generally, Western Bagel, 66 Cal.App.5th at 338, states, " '[E]ven when the [FAA] applies, interpretation of the arbitration agreement is governed by state law principles.... Under California law, ordinary rules of contract interpretation apply to arbitration agreements.... " 'The fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties....' " ' " In this case the court reads the agreement consistent with California contract principles.

"[T]he FAA's purpose is not to provide special status for arbitration agreements, but only "to make arbitration agreements as enforceable as other contracts, but not more so." (Cronus Investments, Inc. v. Concierge Services (2005) 35 Cal.4th 376, 384.) The court appreciates that Southland Corp. v. Keating (1984) 465 U.S. 1, 10, states "Congress declared a national policy favoring arbitration." That declaration is not in the statutory language. The court has never located any legislative history suggesting that Congress expected the FAA to create a separate body of contract interpretation law that is particular to arbitration agreements.

Equitable estoppel. The court considers whether by alleging claims against Tesla that by asserting claims under the FEHA that plaintiffs Chatman and Hall are equitably estopped from arguing that they are not employees of Tesla. The Court of Appeal addressed this in Vaughn v. Tesla, Inc. (2019) 2019 WL 2181391 at *3, stating:

We decline Tesla's invitation to apply the equitable estoppel doctrine. As relevant here, that doctrine provides a "nonsignatory plaintiff may be estopped from refusing to arbitrate when he ... asserts claims that are 'dependent upon, or inextricably intertwined with,' the underlying contractual obligations of the agreement containing the arbitration clause. ... "[t]he plaintiff's actual dependence on the underlying contract in making out the claim against the nonsignatory ... is ... always the sine qua non of an appropriate situation for applying equitable estoppel." ' ... 'The fundamental point' is that a party is 'not entitled to make use of [a contract containing an arbitration clause] as long as it worked to [his or] her advantage, then attempt to avoid its application in defining the forum in which [his or] her dispute ... should be resolved.' "

Vaughn's claims do not rely or depend on the offer letter. The complaint alleges FEHA claims, specifically that Tesla violated FEHA by creating a hostile work environment for African American employees and by failing to prevent race-based discrimination and harassment. These claims depend on the existence of an employment relationship with Tesla, but they are not founded on-or bound up with-the terms of the offer letter Vaughn received after he commenced working at Tesla, an offer letter Vaughn did not accept, an offer letter that Tesla withdrew.

[End block quotation.]

This court addressed the estoppel argument in the Order of 4/9/21 at 14-15, stating:

Second, the court considers equitable estoppel. The claims of a putative class member in this case against Tesla for the time period before the person signed the Tesla arbitration agreement would arguably require the person (or the subclass) to prove that Tesla was an employer under the FEHA. (Oppo at 6-7.) Thus, the merit of the FEHA claims arguably depends on a finding that Tesla was an "employer" (or joint employer)

under the FEHA when the alleged harassment occurred. The trial court order of 6/1/18 and the Court of Appeal decision in Vaughn v. Tesla, Inc. (2019) 2019 WL 2181391, held that plaintiff Vaughn's claims arose from the FEHA and not from a contract with Tesla and that equitable estoppel did not apply. Equitable estoppel does not require plaintiff and the members of a class to arbitrate claims arising in the time period before employment started.

[End block quotation.]

George v. California Unemployment Ins. Appeals Bd. (2009) 179 Cal.App.4th 1475, 1483-1484, also supports the conclusion that equitable estoppel does not apply. George states: "Despite the Agency's contention that the civil service proceeding and the FEHA action seek to redress the same primary right, both challenging the impropriety of suspensions, case law recognizes two distinct rights or interests at stake when a civil service employee challenges discipline or termination on discriminatory or retaliatory

grounds. The primary right protected by the state civil service system is the right to continued employment, while the primary right protected by FEHA is the right to be free from invidious discrimination and from retaliation for opposing discrimination." Similarly, in this case the employment contract and the arbitration agreement concern claims arising from employment with Tesla but the arbitration provision does not extend to disputes that arose before employment and are based on the FEHA.

Consistency. The Order of 4/9/21 at 15-16 considered consistency in the start date of employment. The court noted that a person's Tesla wage and Tesla benefits (401K Program, Paid Time Off Program, etc.) began on the date of employment in the offer letter and noted that Tesla would probably vigorously contest any assertion that a person employed by a staffing agency was a Tesla employee entitled to the Tesla compensation package for the time period the person was employed by the staffing agency.

Regarding both equitable estoppel and consistency, Tesla argues that plaintiffs cannot "have it both ways" by not being Tesla employees before 8/2/17 for purposes of arbitration while claiming to be employees for purposes of the FEHA. Tesla also wants it both ways. Tesla decided to engage workers through temporary staffing agencies rather than hiring persons as Tesla employees. That has consequences. Tesla presumably gives effect to the employment start date in the Tesla contract for purposes of a person's Tesla wage and Tesla benefits (401K Program, Paid Time Off Program, etc.) The court also gives effect to the employment start date in the contract.

Claim splitting. The Order of 4/9/21 at 15-16 considered whether plaintiffs would be "claim splitting" if they pursued pre-8/2/17 claims in court and post 8/2/17 claims in arbitration. The Order at pp16-19 stated:

Fourth, the court considers whether the absent class members could temporally separate claims of (1) harassment at the Tesla factory before

employment with Tesla and (2) harassment at the Tesla factory after employment with Tesla. As a general proposition, a party can separate a series of recurring events into a series of separate recurring claims. For example, where wages are concerned, each day of non-payment is a separate violation that accrues independently. Another example is that a court may grant summary adjudication on some claims involving forged checks without resolving all the claims involving forged checks. (Edward Fineman Co. v. Superior Court (1998) 66 Cal.App.4th 1110, 1116-1117.)

In this case, plaintiff is asserting race-based harassment. (Complaint, para 51-59.) Plaintiff or a class must prove that the alleged harassment was "sufficiently severe or pervasive to alter the conditions of the [classmembers'] employment and create an abusive working environment." (Nazir v. United Airlines, Inc. 178 Cal.App.4th 243, 263-264.) "Whether the ... conduct complained of was sufficiently pervasive to create a hostile or offensive work environment must be determined from the totality of the circumstances." (Fisher v. San Pedro Peninsula Hospital (1998) 214 Cal.App.3d 590, 609.)

Plaintiff is alleging a pattern or practice of race harassment at the Tesla factory. (Complaint par 11-27.) The class claim is that the harassment is "pervasive." The class claim is not based on a single "severe" incident or a few "severe" incidents. Given the nature of the claims alleged, it is superficially implausible that Vaughn or a member of the putative class could separate the claim for pervasive harassment into a series of temporally distinct incidents. Regarding liability, there is substantial evidence that plaintiff could plausibly prove ongoing pervasive harassment. (Plaintiff appendix of exhibits with witness declarations.) Regarding damages, "'As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages.' (Duran. U.S. Bank, N.A. (2014) 59 Cal.4th 1, 33).

The court has considered Tesla's concern that a claim of pervasive harassment is a single claim and that it would be claim splitting for a person to assert claims for some months in the class action and claims for other months in arbitration. The court identifies three problems with that argument.

Initially, claim splitting is when the plaintiff splits the claim. "The rule against splitting a single cause of action prohibits a plaintiff from turning a single cause of action into the basis of several suits." (Hodge v. Kirkpatrick Development, Inc. (2005) 130 Cal.App.4th 540, 551.) "[T]he prohibition against splitting a cause of action exists for the benefit of the defendant." (Allstate Ins. Co. v. Mel Rapton, Inc. (2000) 77 Cal.App.4th 901, 910.)

It is not claim splitting when a defendant requires a plaintiff to split a claim. Or, stated otherwise, if a defendant requires a plaintiff to split a claim then the defendant is estopped from arguing that the plaintiff engaged in improper claim splitting. On the facts of this case, Tesla is asserting that any putative absent class member who worked at the Fremont factory for some time frame subject to an arbitration agreement must arbitrate all claims that arose in that time frame. Tesla has every right to seek to enforce its arbitration agreement, but Tesla cannot then claim prejudice because Tesla's enforcement of its arbitration agreement split harassment (or other) claims into temporally distinct claims based on the temporal scope of Tesla's arbitration agreement.

Secondarily, if Tesla's argument regarding claim splitting of an indivisible claim for ongoing pervasive harassment were carried to its logical conclusion then a person could not assert the claim in either court or in arbitration because the claim could not be wholly resolved in either forum. At the hearing on 4/7/21, Tesla stated that any person could elect to bring an indivisible claim for ongoing pervasive harassment in arbitration and implied that Tesla would not object to arbitrating claims that arise outside the temporal scope of the arbitration agreement.

Tesla's suggestion is a practical solution if any person wanted to pursue their claims through arbitration. Tesla's suggestion does not, however, address the fact that the arbitration agreements have temporal scopes. The court cannot compel Tesla employees, or persons who worked at Tesla, to arbitrate claims that arose outside the temporal scope of the relevant arbitration agreements. (Douglass v. Serenivision, Inc. (2018) 20 Cal.App.5th 376, 386 [Arbitration "is ... a matter of contract between the parties"].) (See also EEOC v. Waffle House, Inc. (2002) 534 U.S. 279, 289, 122 S.Ct. 754, 151 L.Ed.2d 755 (2002) ("[N]othing in the [FAA] authorizes a court to compel arbitration of any issues, or by any parties, that are not already covered in the agreement"].)

[End block quotation.]

Tesla argues that plaintiffs asserted that the alleged harassment was a continuing violation and that therefore it must be treated as a single claim. Tesla draws attention to the distinction between the continuing violation theory and the continuous accrual theory for recurring obligations. (Willis v. City of Carlsbad (2020) 48 Cal.App.5th 1104 fn 7.)

The continuing violation theory is several steps removed from the foundational question of whether Chatman or Hall can prosecute claims that arose pre-8/2/17 in court. The continuing violation theory is an exception to the statute of limitations affirmative defense. (Aryeh v. Canon Business Solutions, Inc. (2013) 55 Cal.4th 1185, 1197-1199.)

It seems attenuated to permit a party to compel arbitration based on the argument that the claims sought to be prosecuted in court are barred by the statute of limitation, that the plaintiff will then assert the continuing violation theory, and that claims within the statute of limitation must be prosecuted in arbitration.

At the hearing on 9/29/21, Tesla argued that a claim for repeated incidents of harassment is a single claim because it can be characterized as a continuing violation to avoid the statute of limitations. Tesla then pointed the court to Herbert v. Superior Court (1985) 169 Cal.App.3d 718, where the court held that because a claim for wrongful death was a single case of action that the claims of Mrs. Herbert and the five minor children would all need to proceed in arbitration. Herbert is distinguishable because a wrongful death is a single incident in this case the claims based on alleged incidents of harassment in the pre-Tesla employment time frame and the Tesla employment time frame can be separated into separate claims.

At the hearing on 9/29/21, plaintiffs referred to Carroll v. City and County of San Francisco (2019) 41 Cal.App.5th 805, 813 fn 5, which states, "When an obligation or liability arises on a recurring basis, a cause of action accrues each time a wrongful act occurs, triggering a new limitations period.' [Citation.] Because each new breach of such an obligation provides all the elements of a claim-wrongdoing, harm, and causation [citation]-each may be treated as an independently actionable wrong" Carroll is consistent with the separation of the claims of Chapman and Hall into discrete time periods.

The parties have not addressed how the statute of limitations might apply to the claims of the members of the putative class, which would include Chatman and Hall. Issues regarding whether a pending

uncertified class action tolls the limitations period for absent members of the uncertified class have been explored in Crown, Cork & Seal v. Parker (1983) 462 U.S. 345, American Pipe & Constr. Co. v. Utah (1974) 414 U.S. 538, Jolly v. Eli Lilly & Co. (1988) 44 Cal. 3d 1103, 118-1126, San Francisco Unified School Dist. v. W.R. Grace & Co. (1995) 37 Cal. App. 4th 1318, 1340-1341, and Becker v. McMillin Construction Co. (1991) 226 Cal. App. 3d 1493. This case was filed on 11/13/17, so claims arising between 11/13/16 and 8/2/17 are arguably within the statute of limitations without the need to consider the continuing violations theory. Chatman and Hall were both employees of staffing agencies working at Tesla during that time frame.

Chatman clearly asserts a pre-8/2/17 claim that is arguably an independent claim and would be timely without the continuing violation doctrine. Chatman asserts that while an employee of West Valley staffing she frequently heard the words N****r and N***a. (2AC, para 22.)

Hall less clearly asserts a pre-8/2/17 claim that is an independent claim and would be timely without the continuing violation doctrine. Hall asserts she heard the N-word many times at the Fremont Factory and has been called the N-word many times directly at the Fremont factory. (2AC, para 34) The court has not located a Hall declaration that more clearly states whether she was called the N-word before 8/2/17. The burden is on the

moving party to show that the claim is within the scope of the arbitration clause. Tesla has not provided evidence that Hall's claims are all based on conduct after 8/2/17.

The court is not persuaded by Tesla's argument that the race harassment claims of Chatman and Hall based on events pre-8/2/17 are so minimal that Chatman and Hall will need to link them to events post-8/2/17 under the continuing violations theory to avoid the statute of limitations and that the linkage to events post-8/2/17 requires that all race harassment claims must therefore be resolved in arbitration.

CONCLUSION ON ARBITRATION

The Motion of Tesla to compel plaintiffs Chatman and Hall to arbitration is GRANTED regarding claims arising after the start dates of employment in the employment contracts. Chatman must arbitrate claims against Tesla arising on and after 8/2/17. Hall must arbitrate claims against Tesla arising on and after 8/2/17.

ARBITRABILITY OF CLAIMS SEEKING PUBLIC INJUNCTION

At the hearing on 9/29/21, plaintiffs asked the court to deny the motion to compel arbitration on the alternate ground that plaintiffs are seeking a public injunction and that a waiver in an arbitration clause of a party's right to seek public injunctive relief in any forum is unenforceable under California law. (Maldonado v. Fast Auto Loans, Inc. ((2021) 60 Cal.App.5th 710; Mejia v. DACM Inc. (2020) 54 Cal.App.5th 691.)

The 2AC filed 7/7/21 does assert claims under the FEHA, which serves a public purpose, and the 2AC does state that plaintiffs are seeking a public injunction (2AC, para 72, 82, and 92, and prayer for relief D.)

The Motion of Tesla to compel plaintiffs Chatman and Hall to arbitration is DENIED to the extent that Chatman and Hall are seeking a public injunction. (Maldonado v. Fast Auto Loans, Inc. (2021) 60 Cal.App.5th 710; Mejia v. DACM Inc. (2020) 54 Cal.App.5th 691.) The ability to seek a public injunction in court applies to the claims of Chatman and Hall both before and after 8/2/17.

MOTION TO STRIKE CLASS ALLEGATIONS

The Motion of Tesla to strike class allegations is DENIED. Chatman and Hall can pursue claims in court and can make class allegations in the complaint.

REQUEST TO STAY CASE

Tesla's request to stay this case is DENIED. Tesla seeks a stay under CCP 1281.4 on that basis that the pre and post 8/2/17 claims are interrelated and because the court has ordered the post-8/2/17 claims to arbitration the court must stay the pre-8/2/17 claims.

The claims that arise before and after 8/2/17 are different claims that can be adjudicated separately.

By analogy, the court considers Edward Fineman Co. v. Superior Court (1998) 66 Cal.App.4th 1110, where the Court of Appeal held that although the plaintiff aggregated claims regarding 23 checks into three causes of action that the bank's handling of each check supported a different claim that could be resolved at summary adjudication.

Similarly here, different actions at different times give rise to different claims. If Chatman and Hall were subject to a racial slur before 8/2/17 then that claim can be resolved in court and if the same plaintiff was subject to a different racial slur after 8/2/17 then that claim must be resolved in arbitration.

In addition, Chatman and Hall are seeking a public injunction to enforce a statute that has a public purpose.

ISSUES NOT DECIDED

Tesla's assertion of its ability to compel Chatman and Hall to resolve their post 8/2/17 claims in arbitration raises the issue of whether in a class trial the court can, should, or must exclude evidence if it relates solely to an individual claim that is being resolved in arbitration or whether the court can, should, or must permit evidence if it relates to the allegedly pervasive routine harassment at the Factory. The court expressly does not address or decide these issues regarding the admission of evidence at trial. These evidence issues will be relevant to the manageability of a class trial.

Dated: 09/30/2021

Facsimile

Judge Winifred Y. Smith

SHORT TITLE:	CASE NUMBER:
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