

**FILED**

San Francisco County Superior Court

JUL 29 2020

CLERK OF THE COURT

BY: Christina Echele

Deputy Clerk

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN FRANCISCO**

PATREON, INC.,

Plaintiff,

vs.

PAUL MICHAEL AYURE, *et al.*,

Defendants.

Case No. CGC-20-584586

**ORDER DENYING PRELIMINARY  
INJUNCTION**

Patreon seeks a preliminary injunction to enjoin defendants “from continuing to pursue improper claims against Patreon in JAMS arbitration,” pending this Court’s consideration and final adjudication of Patreon’s complaint for declaratory judgment. Defendants are individual claimants in 72 pending JAMS arbitration proceedings against Patreon. Patreon claims that those claims are barred by its Terms of Use because they involve nonarbitrable claims. Patreon’s request for a preliminary injunction is denied, for several reasons.

*First*, Patreon fails to show that it will suffer any irreparable injury or interim harm if an injunction does not issue. JAMS has agreed to determine the threshold jurisdictional issues Patreon raises and will afford Patreon an opportunity to object to its jurisdiction in the course of the

1 arbitration proceedings. If Patreon is correct that Defendants' claims are not arbitrable or are  
2 outside the scope of the parties' agreements, the arbitrators presumably will rule in its favor on  
3 those issues. Merely having to incur expense in order to participate in arbitration proceedings is  
4 not irreparable harm.

5         *Second*, Patreon fails to show a reasonable likelihood of prevailing on its claims. Even if  
6 Patreon were correct that Defendants' claims are not arbitrable, those issues are for the arbitrator,  
7 not the court, to decide. "An arbitration provision's reference to, or incorporation of, arbitration  
8 rules that give the arbitrator the power or responsibility to decide issues of arbitrability may  
9 constitute clear and unmistakable evidence the parties intended the arbitrator to decide those  
10 issues." (*Aanderud v. Superior Court* (2017) 13 Cal.App.5th 880, 892 [arbitration provision's  
11 reference to JAMS rules that assign issues of arbitrability to the arbitrator "evidences the parties'  
12 clear and unmistakable intent to submit issues of arbitrability to the arbitrator"].) Rule 8(b) of the  
13 JAMS Streamlined Arbitration Rules provides, "Jurisdictional and arbitrability disputes, including  
14 disputes over the formation, existence, validity, interpretation or scope of the agreement under  
15 which Arbitration is sought, and who are proper Parties to the Arbitration, shall be submitted to  
16 and ruled on by the Arbitrator. The Arbitrator has the authority to determine jurisdiction and  
17 arbitrability issues as a preliminary matter." Indeed, Patreon asserts that a JAMS arbitrator has  
18 already ruled in its favor in a similar case. (Reply at 4 n.3.)

19         *Third*, California courts rarely grant the extraordinary relief Patreon seeks here: an  
20 injunction interfering with an ongoing contractual arbitration proceeding. "Once a dispute is  
21 submitted to arbitration, the [California Arbitration Act] contemplates limited, if any, judicial  
22 involvement. 'Typically, those who enter into arbitration agreements expect that their dispute will  
23 be resolved without necessity for any contact with the courts. [Citation.] 'It is the job of the  
24 arbitrator, not the court, to resolve all questions needed to determine the controversy.'" (*Briggs v.*  
25 *Resolution Remedies* (2008) 168 Cal.App.4th 1395, 1400.) That conclusion is "especially true"  
26 where, as here, "the arbitration began without the need to seek a court order compelling  
27 arbitration." (*Id.* at 1401.) As another court has explained, "An arbitration has a life of its own

1 outside the judicial system. The trial court may not step into a case submitted to arbitration and  
2 tell the arbitrator what to do and when to do it.” (*Titan/Value Equities Group, Inc. v. Superior*  
3 *Court* (1994) 29 Cal.App.4th 482, 487-489 [trial court exceeded its jurisdiction when it attempted  
4 to remedy arbitration delay by ordering arbitration to proceed under stated conditions subject to  
5 reinstatement on trial calendar].)<sup>1</sup>

6 To be sure, Patreon is correct that this principle is not an inflexible one. However, the  
7 cases Patreon cited for the first time at the hearing do not support its position, either because no  
8 issue was actually raised or decided on appeal as to the propriety of such injunctive relief,<sup>2</sup> or  
9 because they are readily distinguishable on their facts. (See, e.g., *Brooks v. AmeriHome Mortgage*  
10 *Company, LLC* (2020) 47 Cal.App.5th 624, 629, *pet. for review filed*, No. S261879 (June 9, 2020)  
11 [court issued preliminary injunction to enjoin arbitration of PAGA claim, which employer  
12 *conceded* was “nonarbitrable” under controlling authority]; *Stasz v. Schwab* (2004) 121  
13 Cal.App.4th 420, 426-427, 442 [affirming judgment confirming arbitrator’s award; opinion notes  
14 that trial court *denied* repeated requests to stay arbitration proceedings, but suggests in *dicta*, citing  
15 federal authority, that “[i]f an arbitrator or sponsoring organization mistakenly accepts jurisdiction,  
16 a party may either seek judicial relief to enjoin the arbitration or object to jurisdiction in the  
17 arbitration proceedings and raise the lack of jurisdiction as a ground for vacating the award”];  
18

---

19 <sup>1</sup> Other courts have applied the same principle in a wide variety of factual and procedural  
20 contexts. (See, e.g., *Optimal Markets, Inc. v. Salant* (2013) 221 Cal.App.4th 912, 922-924 [trial  
21 court could not impose sanctions against corporation’s attorneys for their alleged prosecution of  
22 meritless complaint before arbitrator] [collecting authorities]; *MKJA, Inc. v. 123 Fit Franchising,*  
*LLC* (2011) 191 Cal.App.4th 643, 659-662 [trial court exceeded its jurisdiction by lifting stay of  
23 litigation merely because franchisees maintained that they could not afford the costs associated  
24 with the arbitration]; *Brock v. Kaiser Foundation Hospitals* (1992) 10 Cal.App.4th 1790, 1796  
25 [“Once a court grants the petition to compel arbitration and stays the action at law, the action at  
26 law sits in the twilight zone of abatement with the trial court retaining merely a vestigial  
27 jurisdiction over matters submitted to arbitration”]; see also *Berglund v. Arthroscopic & Laser*  
*Surgery Center of San Diego, L.P.* (2008) 44 Cal.4th 528, 535 [all discovery disputes arising out  
of arbitration must be submitted first to the arbitral, not the judicial forum].)

<sup>2</sup> “The law is well settled that cases are not authority for propositions not considered.”  
(*Blumhorst v. Jewish Family Services of Los Angeles* (2005) 126 Cal.App.4th 993, 1004).

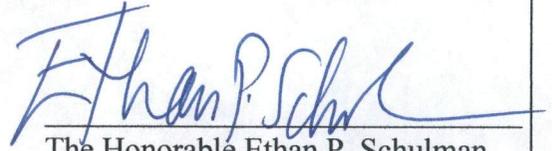
1 *Delta Dental Plan v. Banasky* (1994) 27 Cal.App.4th 1598, 1602 [affirming summary judgment  
2 for dental plan; opinion notes that the AAA advised the parties it would resume the arbitration  
3 unless there were a court order staying arbitration]; *International Film Investors v. Arbitration*  
4 *Tribunal of Directors Guild* (1984) 152 Cal.App.3d 699,704 [dismissing appeal from judgment  
5 following trial court's denial of petition for writ of prohibition seeking to prevent commencement  
6 of arbitration proceedings]; *N.A.M.E.S. v. Singer* (1979) 90 Cal.App.3d 653 [reversing order  
7 dismissing petition to confirm arbitration award]; *Windsor Mills, Inc. v. Collins & Aikman Corp.*  
8 (1972) 25 Cal.App.3d 987 [affirming judgment denying petition to compel arbitration and  
9 preliminary injunction against arbitration proceedings initiated by seller during pendency of  
10 buyer's action for damages on ground that there was no agreement to arbitrate because buyer was  
11 unaware of arbitration provision].)

12 *Briggs* is closely analogous. There, the arbitrator stayed an uninsured motorist arbitration  
13 pending a determination of the insured's entitlement to workers' compensation benefits. The  
14 insured sought a petition for writ of mandate, which the trial court denied on its merits. The Court  
15 of Appeal affirmed on other grounds, holding that "the trial court lacked the authority to review a  
16 discretionary, prehearing order of an arbitrator." (168 Cal.App.4th at 1397.) As it explained, "the  
17 trial court conducted what amounted to a de novo review of an arbitrator's interlocutory order,  
18 something it had no statutory authority to review for any reason." (*Id.* at 1401.) Here, Patreon is  
19 effectively seeking similar relief: immediate review of JAMS' interlocutory orders submitting the  
20 contested issues to the arbitrators for decision, rather than immediately granting Patreon's  
21 objections to arbitration or its alternative request to issue a blanket stay of the arbitration  
22 proceedings pending a ruling on Patreon's request for coordination of those arbitrations. Under  
23 *Briggs*, the Court lacks authority to review those administrative decisions.

24  
25  
26  
27

1 Accordingly, the Court DENIES Patreon's request for a preliminary injunction.  
2 IT IS SO ORDERED.

3 Dated: July 29, 2020.



The Honorable Ethan P. Schulman  
San Francisco Superior Court

4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

I, the undersigned, certify that I am an employee of the Superior Court of California, County Of San Francisco and not a party to the above-entitled cause and that on July 29, 2020 I served the foregoing on each counsel of record or party appearing in propria persona by causing a copy thereof to be enclosed in a postage paid sealed envelope and deposited in the United States Postal Service mail box located at 400 McAllister Street, San Francisco CA 94102-4514 pursuant to standard court practice.

Date: July 29, 2020

By: FELICIA GREEN

FRED NORTON (224725)  
THE NORTON LAW FIRM PC  
299 THIRD STREET, STE 106  
OAKLAND, CA 94607  
USA

MARC J. RANDAZZA (269535)  
RANDAZZA LEGAL GROUP, PLLC  
2764 LAKE SAHARA DRIVE  
SUITE 109  
LAS VEGAS, NV 89117  
USA