Tentative Rulings for January 29, 2025
Department 502

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) ***The above rule also applies to cases listed in this "must appear" section.***

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 502

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(20)

Tentative Ruling

Re: ***In Re: Imidacloprid Cases***
Superior Court Case No. 22JCCP05241

Hearing Date: January 29, 2025 (Dept. 502)

Motion: By Plaintiffs/Cross-Defendants, Horizon Nut, LLC, Horizon Growers Cooperative, Inc., and Joel Perkins to Strike and Seal

Tentative Ruling:

To grant and sign the proposed order. Moving parties are directed to re-file their Index of Exhibits originally filed and lodged on 10/29/2024 within 10 days of service of the order by the clerk. The Index of Exhibits for the public file shall (1) remove those portions stricken – Exhibit 13 pages 1-14, 17-29, 33-50, and 52-99 and Exhibit 56 pages 1-163 and 182-289; and (2) redacting the customer name from Exhibit 19 pages 24 and 100-103 and Exhibit 5 page 5.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 01/23/25 .
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: ***Jane Roe 1 v. Riverdale Assembly of God, Inc.***
Superior Court Case No. 22CECG01945

Hearing Date: January 29, 2025 (Dept. 502)

Motion: By Defendant for Summary Judgment or Summary Adjudication

Tentative Ruling:

To grant summary judgment in favor of defendant The Southern California District Counsel of the Assemblies of God dba SoCal Network Assemblies of God (SCDAOG). SCDAOG is directed to submit to this court, within five days of service of the minute order, a proposed judgment consistent with the court's summary judgment order.

Explanation:

In August 2022 the plaintiff, Jane Roe 1 (Plaintiff), filed the operative pleading in this matter, her Amended Complaint for Damages. Plaintiff alleges she was groomed and sexually assaulted by co-defendant Charles Spencer, Jr. (Spencer), a leader, school supervisor and pastor, when she was a minor child and a member, congregant and student of the other named defendants. In addition to Spencer, Plaintiff names as defendants Riverdale Assembly of God, Inc. d.b.a. Riverdale Christian Academy (Riverdale), The General Council of the Assemblies of God, and the moving defendant, SCDAOG (sued as The Southern California District Council of the Assemblies of God). Plaintiff alleges all six of her causes of action against all defendants. SCDAOG now moves for summary judgment or summary adjudication, based on the undisputed facts that SCDAOG had no duty and no capability to control Spencer and Riverdale.

Defendant Satisfies Its Initial Burden

Code of Civil Procedure section 437c, subdivision (c) provides that summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." A defendant moving for summary judgment has the initial burden of presenting evidence that a cause of action lacks merit because the plaintiff cannot establish an element of the cause of action or there is a complete defense. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853 (*Aguilar*).)

A "moving defendant may show by competent proofs . . . that the *plaintiff lacks the evidence* to prove a necessary fact." (*Browne v. Turner Const. Co*. (2005) 127 Cal.App.4th 1334, 1339–1340, italics original.) "[T]he defendant need not affirmatively prove anything about what actually occurred; it is enough to show that there is insufficient evidence of what occurred, or insufficient evidence favorable to the plaintiff, to establish a necessary element of the cause of action." (*Id.* at p. 1340.) If the defendant

satisfies this initial burden, the burden shifts to the plaintiff to present evidence demonstrating there is a triable issue of material fact. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar, supra,* 25 Cal.4th at p. 850.)

Plaintiff alleges causes of action against all defendants for: (1) negligence; (2) childhood sexual assault under Code of Civil Procedure section 340.1; (3) negligent supervision; (4) negligent hiring or retention; (5) intentional infliction of emotional distress; and (6) breach of statutory duty under Civil Code section 51.7. To prove each of these claims, Plaintiff must prove SCDAOG had both a duty and the capability to control Riverdale and Spencer. SCDAOG submits undisputed facts to show Plaintiff lacks the necessary evidence. Specifically, SCDAOG provides evidence of undisputed facts to show it has a limited role to assist churches with specific problems if contacted, but it had no day-today- oversight role and no ability or right to dictate policy for its associated churches (which includes co-defendant Riverdale), nor does it have the ability to control a church's hiring or firing practices. (Fact Nos. 2-5.)

Negligence

A negligence claim has four elements: (1) duty; (2) breach of duty; (3) proximate cause; and (4) injury. (*Brown v. USA Taekwondo* (2021) 11 Cal.5th 204, 213 (*Brown*).) To determine if SCDAOG owed a duty to Plaintiff, the court must follow a two-step inquiry. "First, the court must determine whether there exists a special relationship between the parties or some other set of circumstances giving rise to an affirmative duty to protect." (*Id.* at p. 209.) In the absence of a special relationship, the court has no need to "consult the factors described in *Rowland v. Christian* (1968) 69 Cal.2d 108, to determine whether relevant policy considerations counsel limiting that duty." (*Ibid.*)

"Duty is not universal; not every defendant owes every plaintiff a duty of care. A duty exists only if the plaintiff's interests are entitled to legal protection against the defendant's conduct." (*Brown, supra*, 11 Cal.5th at p. 213, internal quotation marks and citations omitted.) A person has no duty to control another's conduct or warn others endangered by such conduct:

> The law does not impose the same duty on a defendant who did not contribute to the risk that the plaintiff would suffer the harm alleged. Generally, the "person who has not created a peril is not liable in tort merely for failure to take affirmative action to assist or protect another" from that peril.

(*Id.* at p. 214, quoting *Williams v. State of California* (1983) 34 Cal.3d 18, 23.)

In the affirmed portion of the underlying appellate case for *Brown,* the court explained the key for the existence of a special relationship as follows:

> The key in each special relationship is that the defendant's relationship with the tortfeasor places the defendant in the best position to protect against the risk of harm. Thus, the defendant's ability to control the person who caused the harm must be such that if exercised, it would meaningfully reduce the risk of the harm that actually occurred. [Citation.]

(*Brown v. USA Taekwondo* (2019) 40 Cal.App.5th 1077, 1092, internal quotation marks omitted.)

SCDAOG presents facts supported by evidence to show it had no relationship with Spencer. SCDAOG was not in the best position to protect against the harm Plaintiff suffered, because it had no ability to control Spencer and no ability to meaningfully reduce the risk of harm. (Fact Nos. 1-17.) The court finds Plaintiff cannot establish the element of duty, therefore, her negligence claim lack merit.

Childhood Sexual Assault under Code of Civil Procedure Section 340.1

Code of Civil Procedure section 340.1allows an adult plaintiff to recover damages from someone other than the perpetrator for childhood sexual assault that resulted in injury if the defendant owed the plaintiff a duty of care and a wrongful or negligent act by that defendant was a legal cause of the plaintiff's childhood sexual assault or if the defendant's intentional act was a legal cause of the plaintiff's childhood sexual assault. (Code Civ. Proc., § 340.1, subd. (a)(2)(3).) The court finds SCDAOG presents facts to show no duty, as discussed above. SCDAOG also presents evidence to show Plaintiff has insufficient evidence to establish that SCDAOG acted intentionally to cause Plaintiff's childhood sexual assault. (See Fact No. 23 [SCDAOG has no information about or authority over church members]; Fact No. 24 [Plaintiff admits she has [no] information that SCDAOG can hire or fire for Church (Riverdale)].) Therefore, SCDAOG presents evidence to show Plaintiff cannot establish her second claim. (Fact Nos. 18-34.)

Negligent Supervision, Negligent Hiring or Retention

The first element of negligent supervision, hiring, or retention of an employee requires Plaintiff to prove SCDAOG hired Spencer. (CACI No. 426.) SCDAOG provides evidence to show it did not hire Spencer and Plaintiff has no facts to suggest otherwise. (Fact Nos. 41-46.) Plaintiff's third and fourth causes of action against SCDAOG fail because she cannot prove the first element. (Fact Nos. 35-51.)

Intentional Infliction of Emotional Distress

The first element of a cause of action for intentional infliction of emotional distress requires Plaintiff to prove extreme and outrageous conduct by SCDAOG to intentionally or recklessly disregard the probability of causing Plaintiff's emotional distress. (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050.) SCDAOG provides facts to show SCDAOG had no contact whatsoever with Plaintiff or Spencer. (Fact Nos. 52-68.)

Violations of Civil Code Section 51.7

Plaintiff alleges SCDAOG violated Civil Code section 51.7 when it committed, threatened, ratified, or approved of an act of violence against her because of her gender. To plead a violation of Civil Code section 51.7, the first element Plaintiff must establish is SCDAOG threated or committed violent acts against her. (*Ibid*., CACI Nos. 3063, 3064.) Plaintiff cannot establish the first element because she has no evidence

that SCDAOG or any of its employees or staff had any direct interaction with her. (Fact Nos. 69-85.)

In summary, SCDAOG has satisfied its initial burden to show it has a complete defense to each cause of action in Plaintiff's Amended Complaint for Damages. The burden then shifts to Plaintiff to raise a triable issue of material fact.

Plaintiff Fails to Raise a Triable Issue of Material Fact

A party opposing summary judgment must present admissible evidence, including "declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice" must or may "be taken." (*Aguilar, supra,* 25 Cal.4th at p. 843, quoting Code Civ. Proc., § 437c, subd. (b).) By submitting no opposition, Plaintiff fails to do so. Therefore, the court grants SCDAOG's motion for summary judgment.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 01/27/25.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Dominic Brooks v. Uber Technologies, Inc.***
Superior Court Case No. 24CECG03226

Hearing Date: January 29, 2025 (Dept. 502)

Motion: to Compel Arbitration and Dismiss or Stay Proceedings

Tentative Ruling:

To grant and order plaintiff Dominic Israel Brooks to arbitrate his claims against defendants Uber Technologies, Inc.; Rasier, LLC; and Rasier-CA, LLC. This action is stayed pending completion of arbitration. (Code Civ. Proc. § 1281.4.)

Explanation:

Legal Standard

In moving to compel arbitration, the moving party must prove by a preponderance of evidence the existence of the arbitration agreement and that the disputes are covered by the agreement. The party opposing the motion must then prove by a preponderance of evidence that a ground for denial of the motion exists (e.g., fraud, unconscionability, etc.) (*Hotels Nevada v. L.A. Pacific Center, Inc.* (2006) 144 Cal.App.4th 754, 758; *Rosenthal v. Great Western Fin'l Securities Corp.* (1996) 14 Cal.4th 394, 413-414.)

Written Arbitration Agreement

Unless there is a dispute over authenticity, the mere recitation of the terms is sufficient for a party to move to compel arbitration. (*Sprunk v. Prisma LLC* (2017) 14 Cal.App.5th 785, 793.) The moving party has the burden of proving the existence of a valid arbitration agreement. (*Pinnacle Museum Tower Assn v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 236.) A party opposing arbitration has the burden of showing that the arbitration provision cannot be interpreted to cover the claims in the complaint. (*Aanderud v. Superior Court* (2017) 13 Cal.App.5th 880, 890.)

Here, the moving parties: Uber Technologies, Inc.; Rasier-CA, LLC; and Rasier, LLC ("defendants"), attached a copy of the written terms of agreement, including those in effect at the time of Dominic Israel Brook's ("plaintiff") account creation and subsequent updated terms. (Yu Decl., ¶¶ 8, 13, Exhs. B, D.) Defendants also provide a "Checkbox Consent History" for Account Holder Dominic Brooks, evidencing plaintiff's consent to the updated Uber terms, including the most recent 2023 revision. (*Id.*, ¶ 12, Exh. A.) This is sufficient evidence to support the present motion. (*Cox v. Bonni* (2018) 30 Cal.App.5th 287, 301.) Plaintiff does not materially contest the existence of the written arbitration agreement, nor his consent to the terms. The court intends to find that there is a valid written agreement to arbitrate.

Choice of Law Provision

The currently effective terms of the arbitration agreement provide that "the parties agree and acknowledge that this Arbitration Agreement evidences a transaction involving interstate commerce and that the Federal Arbitration Act, 9 U.S.C. § 1 et seq. ("FAA"), will govern its interpretation and enforcement and proceedings pursuant thereto." (Yu Decl., Exh. D [PDF at p. 66/95].) Plaintiff does not dispute the validity of the written arbitration agreement, and does not dispute the choice of law provision. California Code of Civil Procedure section 1280 *et seq*. therefore does not apply and plaintiff's arguments to the same will not be addressed.

Delegation to Arbitrator

The 2023 terms of the arbitration agreement provide that "an arbitrator shall also have exclusive authority to resolve all threshold arbitrability issues, including issues relating to whether these Terms are applicable, unconscionable, or illusory and **any defense to arbitration, including without limitation waiver**, delay, laches, orestoppel." (Yu Decl., Exh. D [PDF at p. 65/95], emphasis added.) It has been held that "[i]n accordance with Supreme Court precedent, we [the courts] are required to enforce these agreements 'according to their terms' and, in the absence of some other generally applicable contract defense, such as fraud, duress, or unconscionability, let an arbitrator determine arbitrability as to all but the claims specifically exempted." (*Mohamed v. Uber Technologies, Inc.* (9th Cir. 2016) 848 F.3d 1201, 1209.) Besides not disputing the validity of the arbitration agreement, plaintiff does not address or dispute the enforceability of the delegation clause. As the arbitration agreement has been found to be valid, and the agreement provides that the issue of waiver falls to the arbitrator, the court intends to decline to decide this issue.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 01/28/25.
(Judge's initials) (Date)