Tentative Rulings for March 25, 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

Begin at the next page

(20)

Tentative Ruling

Re: ***Andrea Jacobo v. Dan Jacobo***
Superior Court Case No. 24CECG04060

Hearing Date: March 25, 2025 (Dept. 502)

Motion: by Plaintiffs for Interlocutory Judgment

Tentative Ruling:

To grant and sign the proposed interlocutory judgment. To set a hearing for the Final Judgment on June 25, 2025 at 3:30 p.m. in Department 502. Supporting papers for the accounting and final judgment by default must be filed and served at least 16 court days before the hearing. The court will entertain a request for continuance to a later date if plaintiffs need more time.

Explanation:

In this case, plaintiffs seek partition, either in-kind or by sale as determined appropriate by the referee. The partition statutes (Code Civ. Proc., §§ 872.010 - 874.240) have no special provisions for obtaining default judgment, so plaintiffs must follow the procedures to obtain default in a civil action (Code Civ. Proc., §§ 585-587.5). In particular, with any partition action (whether by default or by contest), the judgment proceeds in two stages, interlocutory and final.

The content of the interlocutory judgment in a partition action varies according to the issues being adjudicated. In general, the judgment must set forth the ownership interests in the property or estate affected by the partition to be made, and order the partition. (See Code Civ. Proc., § 872.720, subd. (a).) This requirement is satisfied in the proposed judgment.

In an action for partition all parties' interest in the property may be put at issue regardless of the record title. (Code Civ. Proc., § 872.610.) Plaintiffs show that they and defendant are each owners of a 1/3 undivided interest in the property.

"The court shall appoint a referee to divide or sell the property as ordered by the court." (Code. Civ. Proc., § 873.010, subd. (a).) Plaintiffs propose appointment of Matthew L. Taylor, Esq., as partition referee to review different partition alternatives and determine the appropriate method. Mr. Taylor is approved.

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 03/17/25.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Jeffrey Seaberg v. Specific Properties, LLC***
Superior Court Case No. 20CECG00012

Hearing Date: March 25, 2025 (Dept. 502)

Motion: (1) Petition to Vacate Arbitration Award
(2) Petition to Confirm Arbitration Award
(3) Motion to Tax Costs

Tentative Ruling:

To grant John S. Foggy's petition to confirm the arbitrator's award. (Code Civ. Proc., §§ 1285, 1286.) To deny Jeffrey Seaberg's petition to vacate the arbitrator's award. (Code Civ. Proc., § 1285.2.)

To grant in part Jeffrey Seaberg's motion to tax John S. Foggy's memorandum of costs and tax costs in the amount of $4,563.89.

Explanation:

Under Code of Civil Procedure section 1285, "Any party to an arbitration in which an award has been made may petition the court to confirm, correct or vacate the award." (Code Civ. Proc., § 1285.) "A response to a petition under this chapter may request the court to dismiss the petition or to confirm, correct or vacate the award." (Code Civ. Proc., § 1285.2.) "If a petition or response under this chapter is duly served and filed, the court shall confirm the award as made, whether rendered in this state or another state, unless in accordance with this chapter it corrects the award and confirms it as corrected, vacates the award or dismisses the proceeding." (Code Civ. Proc., § 1286.)

Also, under section 1286.2, "the court shall vacate the award if the court determines any of the following: (1) The award was procured by corruption, fraud or other undue means. (2) There was corruption in any of the arbitrators. (3) The rights of the party were substantially prejudiced by misconduct of a neutral arbitrator. (4) The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted. (5) The rights of the party were substantially prejudiced by the refusal of the arbitrators to postpone the hearing upon sufficient cause being shown therefor or by the refusal of the arbitrators to hear evidence material to the controversy or by other conduct of the arbitrators contrary to the provisions of this title. (6) An arbitrator making the award either: (A) failed to disclose within the time required for disclosure a ground for disqualification of which the arbitrator was then aware; or (B) was subject to disqualification upon grounds specified in Section 1281.91 but failed upon receipt of timely demand to disqualify himself or herself as required by that provision." (Code Civ. Proc., § 1286.2, subd. (a), paragraph breaks omitted.)

The Code of Civil Procedure sections dealing with vacation and correction of arbitrational warrants provide exclusive grounds upon which court may review a private arbitration award. (*J. Alexander Securities, Inc. v. Mendez* (1993) 17 Cal.App.4th 1083.) "[A]n award reached by an arbitrator pursuant to a contractual agreement to arbitrate is not subject to judicial review except on the grounds set forth in sections 1286.2 (to vacate) and 1286.6 (for correction)." (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 33.) Absent proof of one of the grounds listed in those sections, a court may not intervene. Even "the existence of an error of law apparent on the face of the award that causes substantial injustice does not provide grounds for judicial review." (*Ibid*.)

In the present case, cross-complainant John S. Foggy moves to confirm the final arbitration award entered by the arbitrator on September 23, 2024, and cross-defendant Jeffrey Seaberg has filed a petition to vacate the arbitration award. Seaberg contends that the arbitration award should be vacated because the arbitrator exceeded her authority by making determinations as to the legal validity of two fixed-rate contracts and that Foggy falsely represented to the arbitrator that the two contracts were not valid.

The preliminary decision issued by the arbitrator identified the specific fixed bid contract invoices with corresponding Contractor Log Work entries that appeared to be duplicative. Seaberg objected to the preliminary decision and provided over five hundred pages of evidence including invoices for the Contractor Log Work entries. No vendor invoices or other "backup" was provided in connection with the fixed bid contract invoices. The arbitrator's final decision indicates she reviewed the additional evidence and did not change her conclusion that there were duplicate charges from Seaberg.

Seaberg asserts he was not required to present invoices for the work performed in connection with the fixed bid contracts as a matter of law because the nature of the contract did not require such evidence for payment of the agreed amount. As such, Seaberg argues, the invoices were to have been paid in full without "backup" and it was error by the arbitrator to apply requests for payment for Contractor Log Work against the amounts paid for the fixed bid contracts. Seaberg argues the error was made due to false statements by Foggy that the fixed bid contracts were fraudulent and the error is evidence of the arbitrator making a determination as to the validity of the contracts in excess of her authority.

The final arbitration decision makes no mention of the validity of the fixed bid contracts or the arguments put forward by Foggy regarding the validity of the fixed bid contracts. The evidence demonstrates the parties were given adequate and equal opportunity to present their arguments and evidence to the arbitrator.

Although Seaberg characterizes his grounds for vacation as fraud and the arbitrator acting in excess of her authority, the argument in essence is that he believes the arbitrator made an error of law with regard to the fixed bid contracts and speculates as to the reason for the arbitrator's decision. The alleged fact that an arbitrator's decision is legally incorrect is not a valid basis for overturning the award. (*Moncharsh v. Heily & Blase, supra,* 3 Cal.4th at pp. 6, 33.) Therefore, Seaberg's contentions regarding the purported legal incorrectness of the arbitrator's decision are irrelevant and do not provide a basis for vacating the award.

As a result, Seaberg has failed to show that the arbitrator's award should be vacated, and the court intends to deny his petition to vacate the award. The court will instead grant Foggy's petition to confirm the award.

Motion to Tax Costs

Under Code of Civil Procedure section 1032, subdivision (b), "Except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding." (Code Civ. Proc., § 1032, (subd. (b).) "'Prevailing party' includes the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant." (Code Civ. Proc., § 1032, subd. (a)(4).)

Code of Civil Procedure section 1033.5 sets forth a list of allowable costs, as well as a number of costs that are not allowed. The court also has discretion to award other costs not specifically listed under section 1033.5 if it determines that they are reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation. (Code Civ. Proc., § 1033.5, subd. (c)(2).)

"If the items appearing in a cost bill appear to be proper charges, the burden is on the party seeking to tax costs to show that they were not reasonable or necessary. On the other hand, if the items are properly objected to, they are put in issue and the burden of proof is on the party claiming them as costs. Whether a cost item was reasonably necessary to the litigation presents a question of fact for the trial court and its decision is reviewed for abuse of discretion. However, because the right to costs is governed strictly by statute a court has no discretion to award costs not statutorily authorized." (*Ladas v. California State Auto. Assn*. (1993) 19 Cal.App.4th 761, 774, citations omitted.) Expenses that are "merely convenient or beneficial" to preparation for litigation are not recoverable. (*Id.* at p. 775.)

"We agree the mere filing of a motion to tax costs may be a 'proper objection' to an item, the necessity of which appears doubtful, or which does not appear to be proper on its face. However, '[i]f the items appear to be proper charges the verified memorandum is prima facie evidence that the costs, expenses and services therein listed were necessarily incurred by the defendant [citations], and the burden of showing that an item is not properly chargeable or is unreasonable is upon the [objecting party].'" (*Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 131, citations omitted.)

Here, Seaberg has challenged three categories of costs sought by Foggy, items (11) court reporter fees, (12) models, enlargements, and photocopies, and (16) "other" costs.

Court Reporter Fees: Seaberg challenges the necessity of the cost because the use of a court reporter was not ordered by the court but also states the use of a court reporter for trial was agreed upon by the parties. Foggy argues the use of a reporter was reasonably necessary based on the bench trial format and requirement to provide

briefing to aid the court in issuing its statement of decision. The court agrees the court reporter fees were reasonably necessary and the motion is denied as to Item 11.

Models, Enlargements, and Photocopies: Seaberg moves to tax the entire $5,521.74 sought in this category because it is unclear whether the photocopies, exhibits, exhibit binders, and accounting binders are duplicative. The declaration of Rebecca Stasio attests to the documents and exhibit binders created for which costs are sought. (Stasio Decl., ¶¶ 3-5.) The court is satisfied with the showing that the costs were reasonably necessary to the litigation and the motion is denied as to Item 12.

Other Costs**:** Seaberg finally moves to strike or tax the "other costs" in the amount of $4,563.89 listed in Foggy's memo of costs in their entirety. The amount of "other" costs is not itemized in an attachment to the memo.

"An item not specifically allowable as costs under Code of Civil Procedure section 1033.5, subdivision (a), and not specifically prohibited under subdivision (b), may be allowed as costs at the discretion of the trial court if reasonably necessary to the conduct of the litigation." (*Landwatch San Luis Obispo County v. Cambria Community Services District* (2018) 25 Cal.App.5th 638, 645, citation omitted.)

First, he moves to tax the CourtCall fees sought by Foggy, contending that these costs were not reasonable or necessary but rather for the convenience of counsel. (Cal. Rules of Court, rule 3.670(k)(1).) The opposition states $467.65 in costs are attributed to the use of CourtCall and argues they were reasonable and necessary without evidence of what appearances the service was used for. Although the court acknowledges there is a policy in favor of allowing telephonic appearances, Foggy has failed to provide any evidence that the particular CourtCall appearances for which he is seeking reimbursement were reasonable and necessary to the litigation. The court intends to tax costs in the amount of $476.65.

Seaberg also seeks to tax costs attributed to First Legal Services within the "other" category as duplicative of category 14 electronic service fees. There is no argument or evidence presented to oppose the motion with respect to this expense. There is also no specific sum identified as specific to First Legal Services. Using the sums provided in the opposition for each of the other "other" costs sought, the court calculates the amount to be $1,045.28 of the total $4,563.89 and intends to tax the same.

The opposition identifies $359.56 attributed to Mileage and $474.06 in travel expenses for which reimbursement is sought. While generally arguing that these expenses are allowable as costs in connection with depositions, Foggy makes no showing as to what these specific expenses were incurred in connection with in order for the court to determine whether they were reasonably necessary to the litigation. The court intends to tax mileage and travel costs in the amount of $833.62.

Seaberg has produced evidence that the parties agreed to share mediation costs in equal 2/6th proportions. (Watts Decl., ¶ 3, Exh. A.) Since the parties have already agreed that they will share the cost of mediation between them, defendant is not entitled to an award of its mediation costs now. "[W]here, as in this case, the parties agree to share costs during litigation, the courts will enforce those agreements as written

under the principles that '[w]hen the language of a document is unambiguous, we are not free to restructure the agreement,' and 'if the parties wanted to allow recovery of the apportioned fee [by] the prevailing party as an item of cost, they were free to spell this out in their agreement,' but such a provision will not be read into the agreement." (*Anthony v. Xiaobin Li* (2020) 47 Cal.App.5th 816, 824, citations omitted.) Foggy has not provided evidence to refute the existence of the agreement. The court intends to tax $2,208.34 sought in connection with the mediation.

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 03/21/25.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***City of Fresno v. Art Terzian***
Superior Court Case No. 24CECG02985

Hearing Date: March 25, 2025 (Dept. 502)

Motion: by Plaintiff for Pre-Judgment Possession

Tentative Ruling:

To grant the plaintiff's motion for an order for possession. (Code Civ. Proc., § 1255.410.)

Explanation:

Under Code of Civil Procedure section 1255.410, subdivision (a), "At the time of filing the complaint or at any time after filing the complaint and prior to entry of judgment, the plaintiff may move the court for an order for possession under this article, demonstrating that the plaintiff is entitled to take the property by eminent domain and has deposited pursuant to Article 1 (commencing with Section 1255.010) an amount that satisfies the requirements of that article." (Code Civ. Proc. § 1255.410, subd. (a).)

"Not later than 30 days after service of the plaintiff's motion seeking to take possession of the property, any defendant or occupant of the property may oppose the motion in writing by serving the plaintiff and filing with the court the opposition. If the written opposition asserts a hardship, it shall be supported by a declaration signed under penalty of perjury stating facts supporting the hardship. The plaintiff shall serve and file any reply to the opposition not less than 15 days before the hearing." (Code Civ. Proc. § 1255.410, subd. (c).)

"If the motion is opposed by a defendant or occupant within 30 days of service, the court may make an order for possession of the property upon consideration of the relevant facts and any opposition, and upon completion of a hearing on the motion, if the court finds each of the following:

(A) The plaintiff is entitled to take the property by eminent domain.

(B) The plaintiff has deposited pursuant to Article 1 (commencing with Section 1255.010) an amount that satisfies the requirements of that article.

(C) There is an overriding need for the plaintiff to possess the property prior to the issuance of final judgment in the case, and the plaintiff will suffer a substantial hardship if the application for possession is denied or limited. [¶] (D) The hardship that the plaintiff will suffer if possession is denied or limited outweighs any hardship on the defendant or occupant that would be caused by the granting of the order of possession." (Code Civ. Proc., § 1255.410, subd. (d)(2).)

Also, a public entity seeking to take property by eminent domain must first obtain a resolution of necessity from its governing body. (Code Civ. Proc. § 1245.220.) "Except as otherwise provided by statute, a resolution of necessity adopted by the governing body of the public entity pursuant to this article conclusively establishes the matters referred to in Section 1240.030." (Code Civ. Proc., § 1245.250, subd. (a).) In other words, the resolution of necessity conclusively establishes that the public interest and necessity require the project, the project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury, and the property sought to be acquired is necessary for the project. (Code Civ. Proc. § 1240.030.)

Here, the plaintiff has established all of the required elements to allow it to obtain and order for prejudgment possession of the subject property. Plaintiff is a public entity with the right to take property by eminent domain. It obtained a resolution of necessity from the Council of the City of Fresno, California on April 18, 2024, thus establishing that the project is necessary, that it is planned and located in a manner that is most compatible with the public good and least private injury, and that the property to be acquired is necessary for the project. (Bain Decl., ¶¶ 9-11.) The plaintiff has also deposited the probable amount of compensation, $2,259,500, with the State Treasurer. (Donahue Decl., ¶¶ 2-3; Bain Decl., ¶¶ 6-7; Linden Decl., ¶ 3.)

In addition, plaintiff has shown that there is an overriding need for it to possess the property in order to complete the Blackstone McKinley BNSF (Burlington Northern-Santa Fe) Grade Separation Project. (Bain Decl., ¶¶ 2, 4, 5.) The plaintiff will also suffer substantial harm if the project is delayed, since there may be a risk of the loss of funding for the project. (Bain Decl., ¶ 12.) To meet funding obligation deadlines, the project is scheduled to begin construction in the Spring of 2026. (*Ibid*.) Plaintiff cannot wait until trial in this case, which is not scheduled to commence until March 9, 2026, because plaintiff anticipates approximately six months is necessary in order to fully vacate the property and demolish the improvements. (*Ibid*.) Therefore, plaintiff has met its burden of showing the basic elements of its claim for an order of prejudgment possession.

Defendant was served with notice of the motion by electronic mail on December 16, 2024, which is more than 90 days before the hearing on the motion. Defendant opposes the motion, contending that he will suffer substantial harm if the order of possession is granted and plaintiff takes possession of the property. Defendant indicates that his business will be destroyed, because there are no other comparable properties priced under $3.4 million to relocate his business to. (A. Terzian Decl., ¶ 5, T. Terzian Decl., ¶ 5.) Defendant has also received an estimate from a professional mover, who indicates it would cost approximately $1,344.821 and three months to relocate defendant's business. (Avila Decl, ¶¶ 5, 6; Exhibit ISO Opposition, Ex. D.) Defendant asks the court either deny the motion outright, or impose conditions that might allow him the opportunity to relocate his business. Notably, defendant does not indicate what these conditions might be.

However, defendant provides little evidence to dispute the appraisal supplied by plaintiff. A competing appraisal is not attached, and defendant's valuation of comparable properties is supported only by his and his son's declarations. Nor has defendant engaged in negotiations with plaintiff or presented a counteroffer, despite being contacted on approximately sixteen occasions by plaintiff's agents and

representatives to discuss the offer to purchase the subject property. (Bain Decl., ¶ 8.) Moreover, defendant's hardships may be adequately remedied by monetary relief. Even if the motion for prejudgment possession is granted, defendant may litigate the issue of greater compensation. Defendant is also entitled to relocation assistance under Government Code section 7260, *et seq*. Although defendant indicates that the relocation assistant consultant has not been helpful, the electronic communications presented by defendant indicate that defendant would be reimbursed for a professional mover based on the lowest bid. (Exhibit ISO Opposition, Ex. B.) These communications indicate that monetary assistance has not been disbursed and professional movers have not been contacted, since a replacement property has not yet been selected. (*Ibid*.) Also, while defendant indicates that the consultant has not assisted defendant in locating a replacement property by performing internet searches for such properties, the consultant has suggested that defendant hire a realtor for this process. (*Ibid*.)

Defendant also indicates that it is his understanding that plaintiff only requires the subject property to build a temporary road in order to shorten the total time expenditure of the project by six months. However, no evidence is provided to support this assertion.

Therefore, defendant has not shown that the harm it will suffer if the order is granted will outweigh the harm that plaintiff will suffer if the order is not granted. In light of the funding obligation and construction schedule, the court finds that plaintiff's need for the property is overriding. As a result, the motion for prejudgment possession of the property is granted.

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 03/24/25.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Jennifer Torres v. Zhiyuh Chang, M.D.***
Superior Court Case No. 23CECG04545

Hearing Date: March 25, 2025 (Dept. 502)

Motion: By Defendants Kaiser Foundation Health Plan, Inc., The Permanente Medical Group, Inc., and Kaiser Foundation Hospitals to Compel Arbitration

Tentative Ruling:

To grant. This action is stayed pending completion of arbitration. (Code Civ. Proc. § 1281.4.)

To set an Arbitration Status Conference for Tuesday, September 9, 2025, at 3:30 p.m. in Department 502.

Explanation:

Defendants Kaiser Foundation Health Plan, Inc., The Permanente Medical Group, Inc., and Kaiser Foundation Hospitals (collectively "Defendants") seek to compel arbitration of the claims of Plaintiffs Josiah Gutierrez, by and through his guardian ad litem Jennifer Torres, Jennifer Torres, and Louis Gutierrez (collectively "Plaintiffs").[1]

Defendants note that the arbitration provision falls under the Federal Arbitration Act (9 U.S.C. § 1 *et seq*.) because the contract under review evidences a transaction involving interstate commerce. Plaintiffs do not directly address this issue. However, even where an arbitration provision falls under the purview of the Federal Arbitration Act, "[b]ecause the California procedure for deciding motions to compel serves to further, rather than defeat, full and uniform effectuation of the federal law's objectives, the California law, rather than section 4 of the [Federal Arbitration Act], is to be followed in California courts." (*Rosenthal v. Great Western Fin. Securities Corp*. (1996) 14 Cal.4th 394, 409-410.) The federal law has two parts: an enforcement mandate, and a savings clause on grounds applicable to any contract. (*Epic Systems Corp. v. Lewis* (2018) 584 U.S. 497, 505-507.) Accordingly, while state laws that discriminate against the face of arbitration are preempted, state laws generally applicable to contract defenses are not. (*Perry v. Thomas* (1987) 482 U.S. 483, 492, fn. 9 [finding that "state law, whether of legislative or judicial origin, is applicable if that law arose to govern issues concerning the validity, revocability, and enforceability of contracts generally."])

In moving to compel arbitration, a defendant 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,

[1] Defendants' Request for Judicial Notice is granted.

etc.) (*Hotels Nevada v. L.A. Pacific Center, Inc.* (2006) 144 Cal.App.4th 754, 758.) Presumptions are to be made in favor of arbitrability. (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 971-972.)

Here, Defendants submit a renewal of an existing agreement that includes an arbitration provision. While not directly signed by Plaintiffs, as Defendants submit, an agent or other fiduciary, such as an employer negotiating for its collective employees, who contracts for medical treatment retains the authority to enter into an agreement for arbitration of claims for medical malpractice. (*Madden v. Kaiser Foundation Hospitals* (1976) 17 Cal.3d 699, 705-709 [finding that where an employer has the authorization to negotiate contracts for group medical plans, the employer may agree to arbitration as an agent or representative of its employees and thereby bind the employees].) Thus, even where, as Plaintiffs argued they did not sign an arbitration agreement, an arbitration agreement signed by the employer can be enforceable against Plaintiffs. As Plaintiffs do not contest the existence of a written agreement by the employer, Cromer, Inc. ("Cromer") on behalf of the enrolled plaintiff Louis Gutierrez, an employee of Cromer, the court finds that there is a written agreement to arbitrate the claims of the Complaint.

The matter turns to enforcement. Plaintiffs submit that the arbitration agreement may not be enforced for several reasons: Plaintiffs had no knowledge of the arbitration agreement and therefore, the arbitration agreement violates California Health and Safety Code section 1363.1, and Defendants failed to make a mandatory disclosure of the arbitration agreement under the federal Employee Retirement Income Security Act ("ERISA"). All of these challenges fall under the same two-pronged inquiry of whether Defendants were required to notify Plaintiffs of the arbitration agreement, and whether Plaintiffs were notified of the arbitration agreement.

The parties dispute as to what standard against which notice is to be held. Defendants submit that ERISA controls, and does not expressly state that arbitration provisions need be provided to beneficiaries such as Plaintiffs. (*See* 29 U.S.C. § 1022, subd. (b).) Plaintiffs submit that Health and Safety Code section 1363.1 controls, which mandates that arbitration provisions be disclosed for any health care service plan.

Three provisions of ERISA speak expressly to the question of preemption. (*FMC Corp. v. Holliday* (1990) 498 U.S. 52, 57-58 ["*FMC*"].) The provisions are the preemption clause, the saving clause, and the deemer clause. The preemption clause is broad, preempting state laws which regulate any employee benefit plan. (29 U.S.C. § 1144, subd. (a).) The saving clause excludes state laws that regulate insurance. (*Id.*, § 1144 subd. (b)(2)(A).) The deemer clause prevents an employee plan governed by ERISA from being deemed an insurance company for the purposes of state law regulating insurance companies and contracts. (*Id.*, § 1144, subd. (b)(2)(B).) Here, there is no general dispute that Health and Safety Code section 1363.1 relates to an employee benefit plan. Therefore, ERISA preempts state law unless the saving clause applies.

There is a dispute as to whether the state law in question is saved from preemption because the law does not regulate insurance. Defendants submit that Health and Safety Code section 1363.1 does not speak to any matters of insurance, and seeks to regulate only arbitration disclosures. To "regulate insurance", the law must be specifically directed towards entities engaged in insurance, and substantially affect the risk of pooling

arrangements. (*Kentucky Ass'n of Health Plans, Inc. v. Miller* (2003) 538 U.S. 329, 341-342 ["*Miller*"].) Plaintiffs in opposition do not directly address this issue, relying only on *Inter Valley Health Plan v. Blue Cross/Blue Shield*, (1993) 16 Cal.App.4th 60. There, the issue of whether the state law regulated insurance was not discussed, but accepted as true because the issue in that matter was which insurance between mother and father was primarily responsible for benefits. (*Inter Valley Health Plan v. Blue Cross/Blue Shield*, (1993) 16 Cal.App.4th 60, 62-63.) That has no bearing here, where there are no such facts.

On the other hand, both parties cite to *Smith v. PacifiCare Behavioral Health of California, Inc.*, (2001) 93 Cal.App.4th 139 ("*Smith*"). While *Smith* predates the United States Supreme Court *Miller* case, the analysis is directed at Health and Safety Code section 1363.1, and is instructive. On the first issue, a law that addresses health care service plans directly affects the business of insurance. (*Smith*, *supra*, 93 Cal.App.4th at pp. 157-158.) In other words, Health and Safety Code section 1363.1 is specifically directed towards entities engaged in insurance. (*See id.* at pp. 159-160.) However, it cannot be said that Health and Safety Code section 1363.1 substantially affects the risk of pooling arrangements. (*Id.* at p. 161 ["It is true that (Health and Safety Code section) 1363.1 does not transfer risk."]) Accordingly, the second prong of the *Miller* test fails, and the court finds that the state law is not saved from preemption, and ERISA preempts Health and Safety Code section 1363.1.

ERISA's notice requirements are described at Section 1022 of Title 29 of the United States Code. Defendants submit that sufficient notice was given as required by ERISA. (Van Duzer Decl., ¶¶ 2-6, and Ex. 1-10.)

Plaintiffs in opposition, rely on a federal regulation, which states that plan documents shall be written in a manner calculated to be understood by the average plan participant, and shall be sufficiently comprehensive to apprise the plan's participants and beneficiaries of their rights and obligations under the plan. (29 C.F.R. § 2520.102-2(a).) Plaintiffs submit that Cromer failed its obligations because the disclosures made do not adhere to the standards set by the Code of Federal Regulations. It is implied by Plaintiffs that the arbitration provision falls within the federal regulation.

Plaintiffs' argument is inconclusive. First, as Defendants suggest, arbitration provisions are not expressly stated as a required disclosure. (*See* 29 U.S.C. § 1022, subd. (b).) Next, the regulation upon which Plaintiffs rely issues guidance that the summary plan description is to be written in a manner with intent of understanding by the reader. (29 C.F.R. § 2520.102-2(a).) It does not speak to publication of the information, and does not guide the inquiry of notice. Plaintiffs do not contend that the arbitration provision was unintelligible or incomprehensible. (*Compare id.*)

Neither does the formatting requirements listed in subpart (b) of the regulation, upon which Plaintiffs next rely, guide the inquiry of notice. (29 C.F.R. § 2520.102-2(b).) The regulation merely states that the format of the summary plan description must not have the effect to misleading, misinforming, or failing to inform participants of beneficiaries. (*Ibid.*) The regulation continues that any description of exceptions, limitations, reductions, and other restrictions of plan benefits shall not be minimized, rendered obscure or otherwise made to appear unimportant. (*Ibid.*) These descriptions hall be described or summarized in a manner not less prominent than the styles, captions, printing type, and

prominence used to describe or summarize plan benefits. (*Ibid.*) The advantages and disadvantages of the plan shall be presented without either exaggerating the benefits or minimizing the limitations. (*Ibid.*) None of these formatting issues have bearing on the issue of notice. Though Plaintiffs suggest that Cromer's Benefit Summary is the summary plan at issue (Van Duzer Decl., ¶ 4, Ex. 1), the exhibit shows several options for medical coverage, including options aside from Defendants' plan. This is not a summary plan. (*Compare* 29 C.F.R. § 2520.102-3.) In any event, Defendants submit that more than the Benefit Summary was provided to Plaintiffs. (Van Duzer Decl., ¶ 6.)

Aside from the above, Plaintiffs make no other specific argument as to whether Defendants were required to provide notice of the arbitration provision. The court concludes that, based on the above, Defendants were not required to provide notice of the arbitration provision. In light of this finding, the court further concludes that because notice of the arbitration provision was not substantiated as required, whether Plaintiffs received notice is a moot inquiry. Plaintiffs do not argue any further basis upon which they seek to defend against enforcement. Accordingly, the motion to compel arbitration is granted, as is the request for stay pending final resolution at arbitration.[2]

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 03/24/25.
(Judge's initials) (Date)

[2] Defendants' Objections to the Declaration of Louis Gutierrez are overruled as immaterial to the outcome.