Tentative Rulings for April 22, 2025
Department 503

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.***

24CECG03894 ***Howell v. Select Portfolio Servicing, Inc.*** **will be heard in Department 403.**

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 503

Begin at the next page

(03)

Tentative Ruling

Re: ***Acosta v. General Motors, LLC***
Case no. 24CECG01704

Hearing Date: April 22, 2025 (Dept. 503)

Motion: Plaintiff's Motion to Compel PMQ Deposition and Production of Documents

If oral argument is timely requested, it will be entertained on Thursday, April 24, 2025, at 3:30 p.m. in Department 503.

Tentative Ruling:

To deny plaintiff's motion to compel the deposition of defendant General Motors' person most qualified and production of documents.

Explanation:

Under Code of Civil Procedure section 2025.450, subdivision (a) "If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under Section 2025.230, *without having served a valid objection under Section 2025.410*, fails to appear for examination, or to proceed with it, or to produce for inspection any document, electronically stored information, or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document, electronically stored information, or tangible thing described in the deposition notice." (Italics added.)

"A motion under subdivision (a) shall comply with both of the following: (1) The motion shall set forth specific facts showing good cause justifying the production for inspection of any document, electronically stored information, or tangible thing described in the deposition notice. (2) The motion shall be accompanied by a meet and confer declaration under Section 2016.040…" (Code Civ. Proc., § 2025.450, subd. (b), paragraph breaks omitted.)

Also, under Fresno Superior Court's Local Rule 2.1.17, "No motion under sections 2017.010 through 2036.050, inclusive, of the California Code of Civil Procedure shall be heard in a civil unlimited case unless the moving party has first requested an informal Pretrial Discovery Conference with the Court and such request has either been denied and permission to file the motion is granted via court order or the discovery dispute has not been resolved as a result of the Conference and permission to file the motion is expressly granted. This rule shall not apply the following: 1. Motions to compel the deposition of a duly noticed party or subpoenaed person(s) **who have not timely served an objection pursuant to Code of Civil Procedure section 2025.410**…" (Emphasis added.)

Under section 2025.410, "Any party served with a deposition notice that does not comply with Article 2 (commencing with Section 2025.210) waives any error or irregularity unless that party promptly serves a written objection specifying that error or irregularity at least three calendar days prior to the date for which the deposition is scheduled, on the party seeking to take the deposition and any other attorney or party on whom the deposition notice was served." (Code Civ. Proc., § 2025.410, subd. (a).)

Here, after unsuccessfully seeking a date from defendant for its PMQ deposition, plaintiff's counsel served a deposition notice for defendant's PMQ and request for production of documents on July 10, 2024. Plaintiff unilaterally set the deposition for July 25, 2024, but also offered to agree to an alternative date if the selected date was inconvenient.

Defendant served a written objection to the notice on July 18, 2024[1], which objected to the plaintiff's unilateral selection of a date and raised multiple specific objections to the categories listed on the notice and the requests for production. However, defendant did offer to produce its PMQ and respond to several of the listed requests for documents.

In response to defendant's objection, plaintiff's counsel sent emails in March of 2025, requesting that defendant provide a new date for the deposition. However, plaintiff did not address any of the specific objections raised by defendant. Defense counsel did not respond to the emails or offer any alternative deposition dates. Plaintiff's counsel then filed his motion to compel the deposition on March 19, 2025.

However, plaintiff's counsel never filed a request for a pretrial discovery conference regarding the dispute. As discussed above, a pretrial discovery conference is mandatory where there is a dispute over a deposition where the opposing party served a timely objection to the deposition notice. (Fresno Sup. Ct. Local Rules, rule 2.1.17 A 1.) Here, defendant served timely objections to the deposition notice, so plaintiff's counsel needed to file a pretrial discovery conference request and obtain leave of court before filing his motion to compel. Since he did not do so, the motion is not properly before the court.

Also, plaintiff's counsel never adequately met and conferred with defendant about the specific objections raised by defense counsel to the deposition notice. Plaintiff's meet and confer letters simply offered to discuss alternative dates for the deposition. Counsel's letters did not even mention the multiple objections that defense counsel made to the specific categories listed in the deposition notices or the requests for production of documents. Since plaintiff's counsel never responded to the substance of defendant's objections or made any attempt to show why the objections were unwarranted, the court finds that plaintiff did not meet and confer in good faith before bringing the motion to compel.

Therefore, since plaintiff's counsel never adequately met and conferred regarding the defendant's objections and never filed a request for pretrial discovery conference,

[1] Plaintiff's counsel and defense counsel both state that the objections were served on July 25, 2025, the same date on which the deposition was set. However, the proof of service for the objections shows that they were actually served on July 18, 2024. Therefore, the objections were timely, as they were served more than three days before the date of the deposition.

the court intends to deny the motion to compel without reaching the merits of the motion.

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: ______JS______ on ______4/21/2025______.
(Judge's initials) (Date

(34)

Tentative Ruling

Re: ***Lee v. Milestone Management (CA) – Kingstone, LLC***
Superior Court Case No. 21CECG02744

Hearing Date: April 22, 2025 (Dept. 503)

Motion: by Defendant to Compel Arbitration of Plaintiff's Individual PAGA Claims

If oral argument is timely requested, it will be entertained on Thursday, April 24, 2025, at 3:30 p.m. in Department 503.

Tentative Ruling:

To grant defendant's motion to compel plaintiff to arbitrate his individual PAGA claims against defendants and stay the court action with regard to the representative PAGA claims until the arbitration is resolved.

Explanation:

"[W]hen a petition to compel arbitration is filed and accompanied by prima facie evidence of a written agreement to arbitrate the controversy, the court itself must determine whether the agreement exists and, if any defense to its enforcement is raised, whether it is enforceable. Because the existence of the agreement is a statutory prerequisite to granting the petition, the petitioner bears the burden of proving its existence by a preponderance of the evidence. If the party opposing the petition raises a defense to enforcement - either fraud in the execution voiding the agreement, or a statutory defense of waiver or revocation (see Code Civ. Proc. § 1281.2, subds. (a), (b)) - that party bears the burden of producing evidence of, and proving by a preponderance of the evidence, any fact necessary to the defense." (*Rosenthal v. Great Western Fin. Securities Corp*. (1996)14 Cal. 4th 394, 413.) Thus, in ruling on a motion to compel arbitration, the court must first determine whether the parties actually agreed to arbitrate the dispute, and general principles of California contract law guide the court in making this determination. (*Mendez v. Mid-Wilshire Health Care Center* (2013) 220 Cal.App.4th 534.)

In the case at bench, defendant Milestone Management (CA) – Kingstone, LLC has presented evidence of plaintiff having signed an arbitration agreement on June 5, 2020. (Bowers Decl., ¶ 21 Exh. A.) Plaintiff does not challenge the existence of the agreement but does challenge its enforceability. Plaintiff asserts defendant has waived its right to enforce the agreement and that the agreement is unconscionable.

Waiver

Waiver is the "intentional relinquishment or abandonment of a known right." (*Morgan v. Sundance, Inc*. (2022) 596 U.S. 411, 417, quoting *United States v. Olano* (1993) 507 U.S. 725, 733.) When considering whether waiver has occurred, the United States Supreme Court has noted the focus is on the actions of the party who held a right. (*Ibid*.)

In its ruling in *Morgan*, the Supreme Court has clarified that prejudice is not a requirement when considering the federal rule of waiver in the arbitration context. (*Id*. at p. 1714.) State and federal law both have a policy of favoring arbitration agreements and doubts regarding whether a waiver has occurred are to be resolved in favor of arbitration. (*St. Agnes Medical Center v. PacifiCare of California* (2003) 31 Cal.4th 1187, 1195.)

When determining whether a party holding the right to arbitrate has waived said right, the courts consider, 1) whether the party's actions are inconsistent with that right, 2) how far along the parties are in litigation before notice of an intent to arbitrate, 3) any delays in seeking arbitration, 4) whether the party seeking arbitration has filed a counterclaim, and 5) whether important intervening steps have occurred.[2] (*St. Agnes Medical Center v. PacifiCare of California, supra*, 31 Cal.4th at p. 1196.)

Plaintiff argues that defendant has acted inconsistently with the right to arbitrate because, while it first stated an intent to arbitrate at the outset of litigation, it did not file the motion to compel arbitration until over three years later. Plaintiff further argues defendant has deposited jury fees, filed case management statements with the court and participated in case management conferences, failed to indicate it was willing to participate in "binding private arbitration" in its case management statements, and engaged in discovery including formal and informal written discovery and producing a person most knowledgeable for deposition. Defendant argues that its actions in this case have been limited to attempting to resolve the action through mediation, filings and appearances related to case management conferences, and responding to discovery. It has not propounded discovery. It consistently represented its intention to move to compel arbitration in case management statements. (Reply RJN[3], Exh. B, C, F, L, N.) Additionally, the delay caused by the parties' attempt to pursue mediation is not an unreasonable delay or inconsistent with the right to arbitrate plaintiff's individual claims. (*Piplack v. In-N-Out Burgers* (2023) 88 Cal.App.5th 1281, 1290.)

Here, it would appear that defendant consistently pointed to an intent to arbitrate at the outset of its participation in this case and the long delay in moving for arbitration is primarily attributable to the parties attempting to schedule mediation. Thus, defendant has not acted inconsistent with its right to arbitrate. The court is not inclined to find that defendant has waived its right to arbitrate.

Procedural Unconscionability

The doctrine of unconscionability has " 'both a "procedural" and a "substantive" element,' the former focusing on ' "oppression" ' or ' "surprise" ' due to unequal bargaining power, the latter on ' "overly harsh" ' or ' "one-sided" ' results." (*Armendariz v. Foundation Health Psychcare Services* (2000) 24 Cal.4th 83, 114.) To invalidate an arbitration agreement, the court must find both procedural and substantive unconscionability. (*Id*. at p. 122; *Stirlen v. Supercuts, Inc*. (1997) 51 Cal.App.4th 1519, 1533; *Mercuro v. Superior Court* (2002) 96 Cal.App.4th 167, 174.)

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[2] California case law also has included whether the other party was prejudiced, but as noted in *Morgan*, there should be no prejudice requirement when considering waiver in an arbitration context.

[3] Defendant's Request for Judicial Notice of the documents filed in this action are granted.

Plaintiff contends that the arbitration provision is procedurally unconscionable as a contract of adhesion, presented on a take-it-or-leave-it basis as part of plaintiff's onboarding.

Here, the contract was drafted by the employer and presented for plaintiff's electronic signature. As such it is a contract of adhesion and supports finding some amount of procedural unconscionablity. However, courts frequently enforce employment arbitration agreements that are contracts of adhesion, as long as they are not also substantively unconscionable. "Arbitration clauses in employment contracts have been upheld despite claims that the clauses were unconscionable because they were presented as part of an adhesion contract on a take-it-or-leave-it basis. In finding the arbitration clause in *Lagatree* was not unconscionable, the court noted that, 'as *Gilmer* and its progeny make clear, the compulsory nature of a predispute arbitration agreement does not render the agreement unenforceable on grounds of coercion or for lack of voluntariness.'" (*Giuliano v. Inland Empire Personnel, Inc.* (2007) 149 Cal.App.4th 1276, 1292, citations omitted.)

The evidence presented by plaintiff supports finding minimal procedural unconscionability.

Substantive Unconscionablity

Mandatory arbitration clauses in employment contracts are enforceable if they provide essential fairness to the employee. (*Armendariz v. Foundation Health Psychcare Services, Inc., supra,* 24 Cal.4th at pp. 90-91; see also *24 Hour Fitness v. Superior Court* (1998) 66 Cal.App.4th 1199, 1212 [arbitration clause in employee handbook was not unconscionable where it provided all parties with substantially same rights and remedies].) In the employment context, an agreement must include the following five minimum requirements designed to provide necessary safeguards to protect unwaivable statutory rights where important public policies are implicated: 1) a neutral arbitrator; 2) adequate discovery; 3) a written, reasoned, opinion from the arbitrator; 4) identical types of relief as available in a judicial forum; and 5) that undue costs of arbitration will not be placed on the employee. (*Armendariz, supra,* 24 Cal.4th at p. 102.) Plaintiff makes no arguments that the agreement does not conform to these minimum requirements.

Plaintiff argues the agreement is substantively unconscionable in its scope, the requirement plaintiff first provide notice to defendant before demanding arbitration, and the agreement allowing provisions to be "deemed modified" rendering the contract indefinite and uncertain. Plaintiff's argument that only he must provide notice to defendant before demanding arbitration is not consistent with the language of the agreement. The court does not find the language indicating the parties' intent to allow the agreement to be modified to allow enforceability of the agreement to the fullest extent of the law is unconscionable or inconsistent with the court's ability to sever provisions that would otherwise affect the enforceability of the agreement.

The language of the agreement requires plaintiff to arbitrate all claims against defendant "whether or not" they relate to his employment and such language has been held substantively unconscionably. (*Cook v. University of Southern California* (2024) 102 Cal.App.5th 312, 325.) Defendant counters that the agreement specifically excepts from

arbitration any claims that by law are not subject to mandatory arbitration. Defendant's argument does not address the scope of the agreement created by the phrase "whether or not arising out of or in any way related to" the employment relationship. However, striking the phrase "or not" removes the possibility that the agreement can be interpreted to force plaintiff to arbitrate disputes outside of those arising from his employment or termination thereof. The court is inclined to sever the phrase "or not," as the language raising the possibility of including disputes arising outside of the employment relationship can be fairly regarded as collateral to the purpose of the contract requiring arbitration of disputes between the employee and employer, and the provision can be stricken without affecting any of the other provisions. With that adjustment, there is no substantive unconscionability, and the agreement must be enforced.

Defendant has met its burden of demonstrating the existence of a valid arbitration agreement covering the claims of plaintiff's complaint. Plaintiff has not met his burden of showing that the agreement is unconscionable. (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413.) As a result, the court will order the parties to attend arbitration of plaintiff's individual PAGA claims and stay the pending court action with regard to the representative PAGA claims until the arbitration is resolved.

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: JS on 4/21/2025.
(Judge's initials) (Date)