Tentative Rulings for April 24, 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.***

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: ***Hedrington v. Holt Lumber, Inc.***
Case No. 24CECG04484

Hearing Date: April 24, 2025 (Dept. 503)

Motion: Defendants' Demurrer and Motion to Dismiss Case

Tentative Ruling:

To sustain the demurrer to the entire complaint for failure to state facts sufficient to constitute a cause of action and uncertainty, with leave to amend. Plaintiff shall serve and file his first amended complaint within 10 days of the date of service of this order. All new allegations shall be in **boldface**.

Explanation:

The Demurrer was Timely Filed: First, plaintiff argues that the demurrer is untimely because defendants did not file the demurrer within 30 days of being served as required under Code of Civil Procedure section 430.40(a), and therefore the demurrer should be overruled. However, defense counsel filed a declaration for an automatic 30-day extension of time to bring the demurrer more than 30 days after being served, as provided under section 430.41(a)(2). (See Declaration of Demurring or Moving Party in Support of Automatic Extension filed December 4, 2024.) Defense counsel stated that she had attempted to meet and confer with plaintiff on November 27, 2024, but that plaintiff, who is unrepresented by counsel, was unfamiliar with the meet and confer process and the issues raised by counsel, and that he needed more time. (*Ibid*.) Counsel also felt it was necessary to send plaintiff a letter to ensure that he was aware of the issues and concerns with his pleading. (*Ibid*.) However, due to the upcoming holiday, counsel was not able to provide correspondence to plaintiff and needed more time to thoroughly meet and confer with plaintiff before filing the demurrer. (*Ibid*.)

Therefore, defendants complied with the requirements of section 430.41(a)(2), and they were granted an automatic 30-day extension of time to bring their demurrer. They filed their demurrer on January 3, 2025, less than 30 days later. As a result, the demurrer was not untimely, and the court will hear the merits of the demurrer.

Plaintiff argues that defense counsel lied about her inability to meet and confer with him sooner, and that the automatic extension of time should have not have been granted. However, he has not provided any evidence that would tend to rebut defense counsel's evidence that she was not able to fully meet and confer with him on November 27, 2024. Therefore, plaintiff has not shown that the automatic extension should not have been granted. Since the defendants obtained a 30-day extension of time to file their demurrer, the court intends to find that the demurrer was timely filed.

Next, with regard to the merits of the demurrer, the court intends to find that plaintiff has failed to state any valid causes of action and that his complaint is uncertain.

Plaintiff attempts to allege claims for breach of contract, grand theft, embezzlement, and "conspiracy concealment." However, he has not alleged sufficient facts to support these claims.

First Cause of Action: In order to state a claim for breach of contract, a plaintiff must allege (1) the existence of a contract between the parties, (2) performance under the contract by plaintiff or excuse for nonperformance, (3) breach by the defendant, and (4) resulting damages to plaintiff. (*Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1186.) Also, in order to properly state a claim, the plaintiff must allege whether the contract was written, oral, or implied. (*Otworth v. Southern Pac. Transportation Co.* (1985) 166 Cal.App.3d 452, 458-459.) In addition, when alleging breach of a written contract, plaintiff must also allege the terms of the contract, either by attaching a copy of the contract to the complaint, or alleging its essential terms verbatim. (*Id*. at p. 459.) For example, in *Otworth*, the Court of Appeal held that, where the plaintiff failed to allege whether the contract was written or oral and did not set forth the contract's terms, as well as failing to allege whether he performed under the contract, the plaintiff failed to state a valid claim for breach of contract and the court properly sustained a demurrer to the complaint. (*Ibid*.)

In the present case, plaintiff has attempted to state a claim for breach of contract. He alleges that defendants owed him a duty to properly manage his business account, and that they breached their duties by mismanaging his financial accounts, which resulted in damage to him. (Complaint, ¶¶ 14-16.) However, he alleges no facts regarding the nature of the contract between himself and defendants, including whether it is written or oral, and what its essential terms are. Nor does he attach a copy of the agreement, assuming that he is alleging a written contract. He seems to be alleging that there was an account between himself and Holt Lumber, and that he agreed to make payments on the account. (Complaint, ¶¶ 1-6.) He also alleges that defendants demanded payments of $16,253.23 and $27,000 from him. (*Id*. at ¶ 1.) However, he does not state what the other terms of the agreement were, when it was formed, what goods or services he obtained from defendants, how much he owed on the account, whether he paid off the amount he owed, or what exactly defendants did to breach the contract and when their breach occurred.

Plaintiff also does not clearly allege whether he performed under the contract. He does allege that he paid $66,000 on the account (*id*. at ¶ 4), but it is not clear whether this amount was enough to pay off his account or not. Also, while he alleges that he was damaged in the amount of $2.5 million (*id.* at ¶ 5), he does not provide any facts showing how such substantial damages were caused by defendant's breach, assuming that the breach was overbilling him by $27,000. The claimed amount of damages appears to have no relationship to the defendants' alleged overbilling or mismanagement of his account. Thus, the cause of action for breach of contract is vague, ambiguous, confusing, and uncertain, as well as failing to state facts sufficient to state a cause of action against defendants.

In addition, it is unclear whether plaintiff is attempting to state a claim for breach of contract against defendants William Woolman and Megan Dutra. If he is attempting to state a contract claim against them, the complaint fails to state any facts showing why Woolman and Dutra would be liable for breach of contract, given that they are the

attorneys for defendant Holt Lumber and appear to have no other involvement in the matter. Plaintiff does not allege that Woolman and Dutra were parties to the contract with him, or that they owed any contractual duties to him. Even if Woolman or Dutra were the ones who sent a demand letter to plaintiff, their involvement was only in their role as attorneys for Holt, which would not support a breach of contract claim against them. Thus, plaintiff has not alleged a valid breach of contract claim against Woolman and Dutra.

Second Cause of Action: Plaintiff's second cause of action is for grand theft. However, he again states no facts that would tend to support such a claim, and his allegations are extremely vague and confusing. "Grand theft" is not a recognized civil cause of action, but rather a criminal offense. "The statutory elements of grand theft of property exceeding $400 … are 'the taking of personal property [valued at more than $400] from the owner ... into the possession of the criminal without the consent of the owner or under a claim of right, [and] the asportation of the subject matter [with] the specific intent to deprive the owner of his property wholly and permanently.'" (*People v. Whitmer* (2014) 230 Cal.App.4th 906, 922, citation omitted.)

It seems that plaintiff may be attempting to state a claim for conversion rather than grand theft. "'Conversion is generally described as the wrongful exercise of dominion over the personal property of another. The basic elements of the tort are (1) the plaintiff's ownership or right to possession of personal property; (2) the defendant's disposition of the property in a manner that is inconsistent with the plaintiff's property rights; and (3) resulting damages.' 'Conversion is a strict liability tort. The foundation of the action rests neither in the knowledge nor the intent of the defendant. Instead, the tort consists in the breach of an absolute duty; the act of conversion itself is tortious. Therefore, questions of the defendant's good faith, lack of knowledge, and motive are ordinarily immaterial.'" (*Regent Alliance Ltd. v. Rabizadeh* (2014) 231 Cal.App.4th 1177, 1181, citations omitted.)

Here, plaintiff has not alleged any facts that would tend to show that defendants took personal property from him without his consent, or that he was damaged as a result. He alleges that defendants were unjustly enriched because they told him that he had not made any payments on his account, and that defendant Barbara Anisel "stole over $950.00 for this Plaintiff." (Complaint, ¶ 18.) He also alleges that he and his corporation were damaged as a result of defendant's breach. (*Id*. at ¶ 19.) However, to the extent that he alleges that defendants demanded money from him and misstated the amount that he owes on the account, he has not alleged that defendants actually took money from him as a result of their misrepresentations. In fact, he seems to be alleging that he disputed the amount that he owed and refused to pay. If so, defendants did not obtain any money from him and as a result he has not stated a claim against them for conversion.

Also, while he alleges that Barbara Anisel "stole over $950.00" from him, he alleges no facts to support his claim that Ms. Anisel took money from him. None of the other allegations in the complaint show that he paid Ms. Anisel any money. At most, they show that he made payments of $66,000 on the account and that defendants are still demanding that he pay between $16,253.23 and $27,000 to them. (Complaint, ¶¶ 1, 4.) It is not clear whether his claim against Ms. Anisel is related to the other payments he

made, or if it is based on a separate event. Thus, his claim against Ms. Anisel is vague and uncertain, as well as failing to state facts sufficient to constitute a cause of action against her.

Likewise, the second cause of action is vague, uncertain and fails to state a claim against defendants Woolman and Dutra. Again, there are no facts alleged in the complaint that might tend to show that Woolman or Dutra stole any money or property from plaintiff. At most, they demanded that plaintiff pay money to Holt. However, plaintiff admits that Woolman and Dutra are Holt's attorneys and that they were attempting to collect on a debt that he allegedly owed to their client. Under these circumstances, plaintiff has not shown how they are liable for theft or conversion, especially since he does not allege that he paid Holt any money as a result of Woolman and Dutra's demands. Even if he had made payments to Holt as a result of their demands, it is not clear why they would be personally liable for demanding money on behalf of their client. As a result, the court intends to sustain the demurrer to the second cause of action for uncertainty and failure to state a claim.

Third Cause of Action: For the same reasons, plaintiff has also failed to state a claim in his third cause of action for embezzlement. Plaintiff simply alleges that "Defendants committed embezzlement when they stated Plaintiff did not make any payments towards his account and committed embezzlement when they stole his money." (Complaint, ¶ 20.) He also alleges that he was damaged as a result. (*Id*. at ¶ 21.) Again, embezzlement is a crime, not a civil cause of action. "'Embezzlement is the fraudulent appropriation of property by a person to whom it has been [e]ntrusted.' ([Penal Code] § 503.) The elements of embezzlement are: '1. An owner entrusted his/her property to the defendant; 2. The owner did so because he/she trusted the defendant; 3. The defendant fraudulently converted that property for his/her own benefit; [and] 4. When the defendant converted the property, he/she intended to deprive the owner of its use.' (CALCRIM No. 1806.)" (*People v. Selivanov* (2016) 5 Cal.App.5th 726, 764, quoting *People v. Fenderson* (2010) 188 Cal.App.4th 625, 636-637.)

Here, even assuming that plaintiff can state a civil claim for embezzlement, he has not alleged any facts showing that he entrusted his property to defendants, or that they fraudulently converted his property to their own benefit with the intent to deprive him of its use. He seems to be alleging that defendants committed embezzlement by demanding that he pay money even though he does not owe any more money on his account. However, he does not allege that he actually paid them any money after they demanded payment, so he has not shown that defendants converted his money through fraud after he entrusted it to them. He alleges that they "stole his money", but he does not allege any facts showing how defendants "stole his money", or how he was actually damaged. Again, he never alleges that he paid defendants any money after they demanded payments, and in fact he seems to allege that he never paid them after the demands because he had already paid them $66,000. (Complaint, ¶ 4.) He claims that he was damaged in the amount of $2.5 million, but this claim of damages is completely unsupported by the other allegations of the complaint and seems to be unrelated to any amounts that he actually paid to defendants.

Furthermore, there are no allegations that Woolman or Dutra ever embezzled or converted any money from plaintiff. Once again, plaintiff admits that Woolman and

Dutra were acting as the attorneys for Holt Lumber and were attempting to collect on money that he allegedly owed to Holt. He also never alleges that he paid them any money after they demanded payments. Therefore, the complaint fails to state a claim and is uncertain as to Woolman, Dutra, as well as the other defendants.

Fourth Cause of Action: Next, plaintiff has not stated a valid cause of action against defendants for "conspiracy concealment." First, there is no separate civil cause of action for conspiracy. "Conspiracy is not a cause of action, but a legal doctrine that imposes liability on persons who, although not actually committing a tort themselves, share with the immediate tortfeasors a common plan or design in its perpetration. By participation in a civil conspiracy, a coconspirator effectively adopts as his or her own the torts of other coconspirators within the ambit of the conspiracy. In this way, a coconspirator incurs tort liability co-equal with the immediate tortfeasors. Standing alone, a conspiracy does no harm and engenders no tort liability. It must be activated by the commission of an actual tort. '" 'A civil conspiracy, however atrocious, does not give rise to a cause of action unless a civil wrong has been committed resulting in damage.' "'" (*Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 510–511, citations and paragraph break omitted.)

Thus, to the extent that plaintiff attempts to allege a claim for conspiracy as a separate tort, the complaint does not state a claim, as no such cause of action exists. At most, plaintiff can allege that defendants conspired together to commit another tort as a way to impute liability for that tort to each separate defendant.

Here, plaintiff alleges "[t]hat defendant[s] committed conspiracy when they tried to conceal the fact that they stole his money and used their attorney of record to try and cover it up by stating Plaintiff never made a payment towards his account when he did in fact make the payments." (Complaint, ¶ 22.) Therefore, it appears that plaintiff is alleging that each defendant is liable for the tort of conversion, as they all attempted to conceal the theft of his money by lying about the fact that he had made payments on his account. Yet, as discussed above, plaintiff has not alleged facts to support his conversion claims, as he never alleges that defendants wrongfully obtained money from him. At most, he appears to be alleging that defendants falsely claimed that he owed them money when he did not. Yet he never alleges that he paid them money as a result of their false demands. Consequently, he has not alleged facts to support his contention that defendants engaged in a conspiracy to conceal their conversion of his money, as he has not alleged that they actually stole money from him. Therefore, the court intends to sustain the demurrer to the fourth cause of action for failure to state facts sufficient to constitute a cause of action and uncertainty.

Defendants Have Not Shown that the Complaint is Barred by *Res Judicata*, Collateral Estoppel, or Statute of Limitations: Defendants have argued that plaintiff's complaint is also barred by the doctrines of *res judicata* and collateral estoppel as well as being barred by the statutes of limitation, since plaintiff's complaint here is attempting to relitigate the same facts and issues that have already been decided against him in two prior cases. Defendants allege that Holt Lumber had previously sued plaintiff in 2009 to collect amounts that he owed to Holt after Holt supplied him with lumber and materials for his construction business. (See *Holt Lumber, Inc. v. Hedrington*, case no. 09CECL04424.) They also allege that plaintiff agreed on June 16, 2010 to pay Holt $27,000

in order to settle Holt's case against him, and judgment was subsequently entered against plaintiff on September 9, 2014, in the amount of $27,000. (Defendants' Request for Judicial Notice, Exhibits A and B. The court intends to take judicial notice under Evidence Code section 452(d) of the materials attached to defendants' request for judicial notice, as they are all court records.)

Defendants also allege that plaintiff subsequently failed to pay the judgment, and instead filed another lawsuit against Holt in 2022, which is based on the same facts that he now alleges in the present case. (See *Hedrington v. Holt Lumber, Inc*., case no. 22CECL00440.) Defendants moved for summary judgment in that case, which the trial court granted. (Exhibit E to Request for Judicial Notice, Court's Minute Order dated October 16, 2024 in case no. 22CECL00440.) Plaintiff attempted to file a second amended complaint in that action, which is identical to the complaint in the present case. (Exhibit D to Request for Judicial Notice, Second Amended Complaint in case no. 22CECL00440.) When it granted the summary judgment motion, the trial court also denied leave to file the second amended complaint on the ground of untimeliness. (Exhibit E to Request for Judicial Notice.)

Defendants argue that the fact that plaintiff attempted to file an amended complaint in the 2022 action that is identical to the complaint that he subsequently filed in the present case shows that the two cases are based on the same facts and involve the same parties and causes of action. As a result, defendants conclude that the present case is barred by the doctrines of *res judicata* and collateral estoppel, as well as being barred by the statute of limitations.

However, defendants have not shown that the present action is based on the same operative facts and issues as the prior cases. "On demurrer a court considers the allegations on the face of the complaint and any matter of which it must or may take judicial notice. If judicially noticed records of prior litigation show the complaint is barred by collateral estoppel, the demurrer may be sustained." (*Groves v. Peterson* (2002) 100 Cal.App.4th 659, 667, citations omitted.) "Collateral estoppel is an aspect of the doctrine of res judicata. Under collateral estoppel, a prior judgment between the same parties operates as an estoppel or conclusive adjudication as to those issues that were *actually litigated and necessarily determined* in the prior action." (*Ibid*, citation omitted, italics in original.)

"In order for collateral estoppel to apply (1) the issue one seeks to preclude from relitigation must be identical to that decided in the former proceeding, (2) the issue must have been actually litigated in the former proceeding, (3) the issue must have been necessarily decided in the former proceeding, (4) the decision must have been final and on the merits, and (5) the party against whom preclusion is sought must be the same as, or in privity with, the party in the former proceeding." (*Union Pacific Railroad Co. v. Santa Fe Pacific Pipelines, Inc*. (2014) 231 Cal.App.4th 134, 179, citations omitted.)

"'"Res judicata" describes the preclusive effect of a final judgment on the merits. Res judicata, or claim preclusion, prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them.' 'A predictable doctrine of res judicata benefits both the parties and the courts because it "seeks to curtail multiple litigation causing vexation and expense to the parties and wasted effort

and expense in judicial administration."'" (*Consumer Advocacy Group, Inc. v. ExxonMobil Corp.* (2008) 168 Cal.App.4th 675, 683, citations omitted.)

"Three elements must exist for res judicata (or claim preclusion) to apply: '"(1) the decision in the prior proceeding is final and on the merits; (2) the present proceeding is on the same cause of action as the prior proceeding; and (3) the parties in the present proceeding or parties in privity with them were parties to the prior proceeding."' To put it another way, res judicata or claim preclusion 'arises if a second suit involves (1) the same cause of action (2) between the same parties [or their privies] (3) after a final judgment on the merits in the first suit.' 'Only a final judgment on the merits between the same parties or their privies and upon the same cause of action is entitled to the res judicata effect of bar or merger.'" (*Association of Irritated Residents v. Department of Conservation* (2017) 11 Cal.App.5th 1202, 1218–1219, citations omitted.)

In the present case, defendants have not shown that the current case involves the same cause of action, claims, facts or issues as the prior proceedings. Defendants contend that the 2009 case and the 2022 case both involved the same dispute over whether plaintiff owes Holt Lumber money on his account, and that plaintiff already agreed to settle the first case by agreeing to pay Holt $27,000. He also lost a motion for summary judgment in the 2022 action, which resulted in the second case being dismissed. However, defendants have not submitted copies of the complaints in the 2009 or 2022 cases, nor have they requested that the court take judicial notice of them. None of the other documents that defendants have submitted show that the claims, facts, or issues of the two prior cases are identical to the facts, claims, or issues in the present case.

The court's review on a general demurrer is limited to matters alleged on the face of the complaint, as well as matters of which it may take judicial notice. (Code Civ. Proc. § 430.30, subd. (a).) Here, it is not apparent from the allegations of the complaint in the present case that plaintiff is alleging claims based on the same facts and issues that were raised and resolved in prior actions. Nor have defendants requested judicial notice of the operative complaints in the prior actions, so they have not shown that the two prior cases raised the same claims and are based on the same facts. Also, to the extent that defendants rely on the statements of their attorney in her declaration regarding the facts, issues, and claims raised in the prior cases, the court cannot consider such extrinsic evidence when ruling on a demurrer.

Also, while defendants have submitted a copy of the proposed second amended complaint that plaintiff attempted to file in the 2022 case as evidence that he is raising the same claims in this case, the trial court in the 2022 case did not allow plaintiff to file the second amended complaint. As a result, the proposed SAC was never filed and the claims that plaintiff attempted to raise in that pleading were not resolved adversely to him. Consequently, the fact that the proposed SAC in the prior case is identical to the complaint in the present case does not necessarily mean that plaintiff's new complaint is barred by collateral estoppel or *res judicata*.

In addition, given the confusing and vague allegations of the present complaint, it is impossible for the court to determine with certainty whether the new complaint is based on the same facts and claims as the prior actions. For example, plaintiff's new complaint never specifies exactly what the basis is for defendants' demand that he pay

them $27,000. It is possible that their demand is based on the judgment in the 2009 action, but there is no way to be sure given the vague and incomplete allegations of the complaint. Therefore, the court will not sustain the demurrer based on the doctrines of collateral estoppel or *res judicata*.

Likewise, while defendants argue that the complaint is barred by the statute of limitations, the complaint is so vaguely alleged that it is not possible to determine with certainty that the statute has run on plaintiff's claims. "'A demurrer on the ground of the bar of the statute of limitations will not lie where the action may be, but is not necessarily barred.' It must appear clearly and affirmatively that, upon the face of the complaint, the right of action is necessarily barred. This will not be the case unless the complaint alleges every fact which the defendant would be required to prove if he were to plead the bar of the applicable statute of limitation as an affirmative defense." (*Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 881; see also *Leasequip, Inc. v. Dapeer* (2002) 103 Cal.App.4th 394, 400.)

Here, plaintiff's complaint does not clearly allege the necessary facts to conclude that his claims are barred by the statute of limitations. He does not allege any dates on which his claims accrued, or any other facts from which the court can conclude that the claims are time-barred. Also, to the extent that defendants rely on the facts in the prior actions to show that his claims are time-barred, as discussed above, they have not shown that the cases share the same facts and claims. Therefore, the court will not sustain the demurrer to the complaint based on the running of the statute of limitations.

On the other hand, as discussed above, the complaint still fails to state sufficient facts to state valid causes of action, as well as being uncertain. Thus, the court intends to sustain the demurrer to the entire complaint. However, the court will grant leave to amend, as it is possible that plaintiff may be able to allege facts to state valid claims if he is given a chance to do so.

Defendants' Request to Declare Plaintiff to be a Vexatious Litigant: Finally, to the extent that defendants request an order declaring plaintiff to be a vexatious litigant and barring him from filing another action without first complying with the vexatious litigant statute, defendants have not filed a motion to declare plaintiff vexatious. Nor have they submitted evidence or briefing to support their request for a vexatious litigant order. Their brief request to declare plaintiff vexatious is buried on the last page of their points and authorities brief, which is insufficient to give plaintiff notice of the request or an opportunity to oppose it. Therefore, the court intends to deny the request to declare plaintiff vexatious, without prejudice.

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)

(29)

Tentative Ruling

Re: ***Chavez v. Lozano***
Superior Court Case No. 23CECG02323

Hearing Date: April 24, 2025

Motion: Petition to Compromise Claim of a Minor (Dept. 503)

Tentative Ruling:

To grant. Orders signed. No appearances necessary.

The court sets a status conference for Wednesday, June 16, 2025, at 3:30 p.m., in Department 503, for confirmation of deposit of claimant's funds into the blocked account. If petitioner files the Acknowledgment of Receipt of Order and Funds for Deposit in Blocked Account (MC-356) at least five court days before the hearing, the status conference will come off calendar.

Pursuant to California Rules of Court, rule 3.1312, and Code of Civil Procedure section 1019.5(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)

(37)

Tentative Ruling

Re: ***Michael Tran v. Kia America, Inc.***
Superior Court Case No. 24CECG00364

Hearing Date: April 24, 2025 (Dept. 503)

Motion: By Plaintiff Michael Tran to Enforce Settlement

Tentative Ruling:

To continue the matter to Wednesday, May 21, 2025 at 3:30 p.m. in Department 503. Counsel are to file supplemental declarations, with supporting exhibits, regarding the interest amount no later than May 7, 2025. Counsel may file supplemental briefs regarding the attorney's fees and additional expenses incurred by Plaintiff no later than May 7, 2025. The supplemental briefs shall not exceed five pages.

Explanation:

The Court has insufficient information to determine whether Defendant has fully complied with the terms of the Settlement Agreement signed on August 7, 2024 by Plaintiff. The Agreement does address that "Kia America Inc. will reimburse Plaintiff for interest accrued on the loan for the Subject Vehicle between August 2, 2024 and the date of the loan payoff." (Valiskaya Decl., Exh. A.) Plaintiff asserts that interest accrued in the amount of $3,955.85. (Valiskaya Decl., filed April 17, 2025, ¶ 11 and Exh. 3.) It is unclear what the source is of the document attached as Exhibit 3, which purports to demonstrate the interest amounts. The Court is inclined to order enforcement of this term of the Agreement once the interest amount is properly evidenced.

The Court is not inclined to award attorney's fees. The Agreement provides that $10,000 of the overall payment of $77,608.61 is attorney's fees. (Valiskaya Decl., Exh. A, Section 2.) The Agreement further states, "Other than the amount set forth in Section 2 of the Settlement Agreement, each party is to bear its own costs and attorney's fees." (Id. at Section 4.) Plaintiff has presented insufficient authority for awarding additional attorney's fees under these circumstances.

The Court has insufficient authority regarding the additional expenses incurred by Plaintiff for the rental of another vehicle and the registration fees. Counsel may provide supplemental briefing addressing whether Defendant is obligated to reimburse Plaintiff for the rental of another vehicle and/or the registration payment made in March of 2025.

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 4/23/2025.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Paula Yang v. Yolo Sushi Bar & Karaoke***
Superior Court Case No. 24CECG03223

Hearing Date: April 24, 2025 (Dept. 503)

Motion: Defendant Blue Hospitality LLC's Demurrer to the Complaint

Tentative Ruling:

To sustain the demurer to the entire complaint. Plaintiffs are granted 45 days' leave to file the First Amended Complaint, which will run from service by the clerk of the minute order.

Explanation:

Paula Yang has filed a complaint in propria persona on behalf of herself and her four minor grandchildren. While the Court did sign orders appointing her as the Guardian Ad Litem for each of the four minors on January 2, 2025 and February 3, 2025, a non-attorney cannot act in propria persona to represent minors, even where that person has been appointed as their Guardian Ad Litem. (Bus. & Prof. Code, § 6125; *J.W. v. Superior Court* (1993) 17 Cal.App.4th 958, 965-968.) As such, while Paula Yang may represent herself, counsel must be obtained for the minor children. The Court sustains the demurrer to the complaint as to the minor children, with leave to amend. Plaintiffs are granted 45 days to obtain counsel and amend the complaint accordingly.

Code of Civil Procedure section 430.10, subdivision (f), provides for demurrer where a complaint is uncertain. For the claims of Paula Yang, the Court is sustaining the demurrer on the basis of uncertainty. The complaint alleges several events occurring in the time prior to the death of Decedent. However, the complaint fails to connect these events to the three causes of action asserted in the form complaint. As such, Defendant cannot reasonably respond to the complaint. The Court also sustains the demurrer to the complaint as to Paula Yang, with leave to amend.

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 4/23/2025.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Carlos Barajas, Jr. v. Kept Companies, Inc.***
Superior Court Case No. 24CECG04903

Hearing Date: April 24, 2025 (Dept. 503)

Motion: by Defendant to Compel Arbitration and Stay Proceedings

Tentative Ruling:

To grant defendant Kept Companies, Inc. dba Valley Fleet Clean's motion to compel arbitration of plaintiff's individual claims, dismiss the class claims, and stay plaintiff's court action pending the arbitration of plaintiff's claims.

Explanation:

California Code of Civil Procedure section 1281.2 states that, "[o]n petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party thereto refuses to arbitrate such controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists, unless it determines that: (a) The right to compel arbitration has been waived by the petitioner; or (b) Grounds exist for the revocation of the agreement. (c) A party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact." (Civ. Proc. Code § 1281.2, paragraph breaks omitted.)

"California courts traditionally have maintained a strong preference for arbitration as a speedy and inexpensive method of dispute resolution. To this end, 'arbitration agreements should be liberally construed', with 'doubts concerning the scope of arbitrable issues [being] resolved in favor of arbitration [citations].'" (*Market Ins. Corp. v. Integrity Ins. Co*. (1987) 188 Cal. App. 3d 1095, 1098, internal citations omitted.) "This strong policy has resulted in the general rule that arbitration should be upheld 'unless it can be said with assurance that an arbitration clause is not susceptible to an interpretation covering the asserted dispute. [Citation.]' [Citations.] [¶] It seems clear that the burden must fall upon the party opposing arbitration to demonstrate that an arbitration clause cannot be interpreted to require arbitration of the dispute.'" (*Bono v. David* (2007) 147 Cal.App.4th 1055, 1062.)

However, "[a]s our Supreme Court stressed several decades ago, the contractual terms themselves must be carefully examined before the parties to the contract can be ordered to arbitration: 'Although "[t]he law favors contracts for arbitration of disputes between parties" [citation], " 'there is no policy compelling persons to accept arbitration of controversies which they have not agreed to arbitrate....'" [Citations.] In determining the scope of an arbitration clause, "[t]he court should attempt to give effect to the

parties' intentions, in light of the usual and ordinary meaning of the contractual language and the circumstances under which the agreement was made [citation]." [Citation.]' [¶] Following on from this, and as other courts of appeal have regularly observed, the terms of the specific arbitration clause under consideration must reasonably cover the dispute as to which arbitration is requested. This is so because '[t]here is no public policy favoring arbitration of disputes which the parties have not agreed to arbitrate.'" (*Bono v. David*, *supra*, 147 Cal.App.4th. at p. 1063.)

"[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* § 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.)

Here, defendant has met its burden of showing that an agreement to arbitrate the parties' dispute exists. Defendant has presented evidence showing that, at that time he was hired, plaintiff signed an agreement to arbitrate any disputes between himself and defendant that might arise during his employment. (Gamez Decl., ¶¶ 4-5, Exhibit 1.) The language of the agreement is extremely broad. It includes "all claims or controversies arising out of Employee's employment or its termination…that either party may have against the other." (*Id*. at Exhibit 1, ¶ 2.) The agreement excepts from arbitration any PAGA claim, any claim for workers' compensation or state unemployment benefits, disputes arbitrable under a collective bargaining agreement or expressly not subject to arbitration pursuant to the National Labor Relations Act, and any claim for benefits under an Employer plan that has its own procedure – none of which are present here. (*Id*. at Exhibit 1, ¶¶ 2a, 3.)

Defendant has provided sufficient evidence to meet its burden of showing that there was an agreement to arbitrate between the parties that covered the plaintiff's Labor Code and unfair competition claims here.

As a result, the burden shifts to plaintiff to show that a defense to the arbitration agreement exists. However, plaintiff has failed to meet his burden. Plaintiff argues that he is exempt from the Federal Arbitration Act ("the FAA") because he was a worker involved in interstate commerce. Under the FAA, 9 U.S.C., section 1, "nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." He contends his duties as a power washer and driver include: driving to customer sites where interstate trucks are serviced, handling and transporting cleaning materials and industrial equipment necessary for truck maintenance, and power-washing commercial trucks

and trailers that are actively engaged in transporting goods in interstate commerce; which he argues entitle him to exception from the FAA as a transportation worker.

Plaintiff has read the exemption under section 1 of the FAA too broadly. The exemption applies to certain types of transportation workers engaged in interstate commerce, such as railroad and maritime workers and other employees directly involved in the interstate transport of goods. (*Harper v. Amazon.com Services, Inc.* (3d Cir. 2021) 12 F.4th 287.) "It is a 'very particular qualification' attributed to pre-existing 'alternative employment dispute resolution regimes for many transportation workers.' Adding to § 1's language, we have applied the exception to cover employees in any transportation industry who 'engage[ ] in the movement of interstate or foreign commerce or in work so closely related thereto as to be in practical effect part of it.' Since then, the Supreme Court has cautioned courts to 'construe the "engaged in commerce" language in the FAA with reference to the statutory context in which it is found and in a manner consistent with the FAA's purpose.' Applying this framework, the Court has held 'that the § 1 exclusion provision [should] be afforded a narrow construction.'" (*Id.* at pp. 292–293, citations omitted.)

Here, plaintiff and the class of workers he seeks to represent are not delivering goods in interstate commerce. Plaintiff is not a distributor transporting goods from the producer to the end user. Plaintiff is not the "last mile" driver for goods that have travelled interstate ordered by the consumer. Plaintiff's duties to transport cleaning materials and industrial equipment "necessary for truck maintenance" does not equate him or this class of workers with those who are involved in transporting goods in interstate commerce.

Plaintiff's contention that he is subject to the exemption under section 1 because his job duties bring him into contact with trucks and trailers potentially engaged in interstate commerce and *maybe* carry goods transported outside of California is too broad of an interpretation of authority upon which he relies. The exemption was intended to apply only to a limited class of workers who are directly engaged in the transport of goods in interstate commerce, such as railroad workers, seamen, interstate truckers, and airline cargo loaders. Since plaintiff has not presented any evidence that he worked in transportation of goods in interstate commerce, he has failed to show that the exemption under section 1 applies to him.

Even if the exemption under section 1 of the FAA did apply to plaintiff, the fact that he is exempt from the FAA does not mean that defendant cannot still enforce the agreement to arbitrate under the California Arbitration Act. "If the § 1 exclusion applies, then the FAA does not. But the parties still have an agreement to arbitrate, and if federal law does not govern the arbitrability of their contract, *some* law must." (*Harper v. Amazon.com Services, Inc.*, *supra*, 12 F.4th at p. 294, italics in original.) Likewise, here the parties agreed to arbitrate their disputes arising out of the employment relationship. Even if the agreement cannot be enforced under the FAA due to the section 1 exemption, it can still be enforced under the California Arbitration Act. As a result, the court will not deny the motion to compel arbitration because of the alleged applicability of the section 1 exemption.

As this is plaintiff's only argument for why the arbitration agreement should not be enforced, the court intends to grant the motion to compel arbitration of plaintiff's claims.

In addition, because plaintiff agreed to waive his right to bring any class or representative claims (Gamez Decl., Exhibit 1, ¶ 5), the court will dismiss his class claims. The court will stay the action pending resolution of the arbitration. The court will also sustain defendant's evidentiary objections nos. 1-3.

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 4/23/2025.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Jusdip Rai v. Parmvir Batth***
Superior Court Case No. 20CECG02290

Hearing Date: April 24, 2025 (Dept. 503)

Motion: by Plaintiffs for Trial Preference

Tentative Ruling:

To grant. (Code Civ. Proc. § 36, subd. (e).) A trial date shall be set for a date within the next 120 days.

Explanation:

Jusdip "Jerry" Rai and Gurnek Rai ("plaintiffs") request preference to advance the trial date in this matter in order to not be subjected to the mandatory dismissal requirement set forth in Code of Civil Procedure section 583.310, which states that "[a]n action shall be brought to trial within five years after the action is commenced against the defendant." Plaintiffs filed their complaint on August 3, 2020 and trial is currently set for April 20, 2026.

"Notwithstanding any other provision of law, the court may in its discretion grant a motion for preference that is supported by a showing that satisfies the court that the interests of justice will be served by granting this preference." (Code Civ. Proc. § 36 subd. (e).) The decision to grant or deny a preferential trial setting rests at all times in the sound discretion of the trial court in light of the totality of the circumstances." (*Salas v. Sears, Roebuck & Co.* (1986) 42 Cal.3d 342, 344.)

Four factors central to a court's determination on this matter are: "(1) the plaintiff's diligence or lack thereof; (2) prejudice to the defendant of an accelerated trial date; (3) the condition of the court's calendar; and (4) the likelihood of eventual mandatory dismissal if the early trial date is denied. (*Dick v. Superior Court* (1986) 185 Cal.App.3d 1159, 1164–1165.)

Plaintiffs' position is that they have done their due diligence in prosecuting their case, and as much of the discovery has been conducted, defendant would not be prejudiced in preparing for trial set for an advanced date. Without advancing the trial to a date prior to August 3, 2025, there is high potential for the case to be dismissed on procedural rather than meritorious grounds. Plaintiffs rely heavily on *Dick v. Superior Court*, in which the court found that the trial court abused its discretion when it denied the petitioner's motion to specially set trial before expiration of the five-year period. "It is the policy of the law to dispose of litigation on its merits rather than on procedural grounds." (*Dick v. Superior Court, supra,* 185 Cal.App.3d. at p. 1168.)

However, in *Dick v. Superior Court*, the sole basis of the denial was court congestion. Defendants Parmvir S. Batth, aka Prince Batth; and Paul Singh, aka Darshanpal Singh, aka Paul Singh Batth; argue that plaintiffs were not diligent in prosecuting this case, and that plaintiffs "cannot wait and then ask the Court to relieve them of their mistakes by granting trial preference." (Opp. 7:20.) Defendants additionally reference *Salas v. Sears, Roebuck & Co.* (1986) 42 Cal.3d 342, 343, which held that "a trial court does not have a mandatory duty to set a preferential trial date, even when the five-year deadline approaches." (*Id*. at p. 349.) The Supreme Court found in *Salas* that plaintiffs' "utter lack of diligence" caused them to forfeit their right to preferential trial setting.

Plaintiffs' own record of activity between August 2020 and the present notes that the named defendants were served in early 2021, a DOE amendment was filed Spring 2022, and the DOE defendant was unable to be served until 2023. Plaintiffs indicate they propounded discovery, conducted depositions, subpoenaed records, participated in a forensic phone examination, and participated in an IME, but these activities did not begin until approximately November 2023. (See Motion 4:14-26.) Defendants add to this timeline, indicating that plaintiffs served written discovery on defendants in January 2021, to which they responded in April 2021. Between 2021 and 2023, the parties' stipulated to continuances of the initial trial date, ultimately resulting in the trial date being vacated in October 2023.

"[A]lthough the interests of justice weigh heavily against disposing of litigation on procedural grounds—a policy we reaffirm—that policy will necessarily prevail only if a plaintiff makes some showing of excusable delay." (*Salas v. Sears, Roebuck & Co., supra,* 42 Cal.3d at p. 347. The question is whether plaintiffs have demonstrated sufficient diligence. In *Salas*, the court gave plaintiffs additional opportunity to support their position for trial preference *after* filing their motion and the plaintiffs ultimately let the five-year limitation period lapse without taking advantage of the court's generous continuance. "They make no attempt to justify or even explain their lack of diligence in prosecuting this action." (*Id*., at p. 345.)

In this case, plaintiffs have demonstrated that they have been active in the case, whether by engaging in discovery, signing stipulations, attempting service, or attending case management conferences. Despite what may perceivably be errors in time management, plaintiffs have at least offered some valid explanation for their delay (i.e. attempts to serve the DOE defendant). Following service, plaintiff's activity continued rather than stalled.

When considering the totality of the circumstances as they appear in this instance, the court is inclined to allow disposition of this case on its merits and grant the motion for trial preference.

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)