Tentative Rulings for June 18, 2024
Department 403

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.***

23CECG03430 ***Regions Bank v. M & D Brothers Logistics, Inc.***

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

23CECG02740 ***1 Community Compact v. City of Fresno*** **is continued to Thursday, August 1, 2024, at 3:30 p.m. in Department 403**

23CECG04214 ***Emery v. Cheng*** **is continued to Tuesday, July 23, 2024, at 3:30 p.m. in Department 403**

21CECG00944 ***Cox v. Centene Corporation*** **is continued to Tuesday, July 23, 2024 at 3:30 p.m. in Department 403**

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Tentative Ruling

Re: ***Mosqueda v. Fresno Community Hospital and Medical Center***
Superior Court Case No. 21CECG00839

Hearing Date: June 18, 2024 (Dept. 403)

Motion: Plaintiff's Motion to Set Aside Summary Judgment Order

Tentative Ruling:

To deny.

Explanation:

On 3/23/2023, the court granted defendant's motion for order that matters in Request for Admissions ("RFA") be deemed admitted. This order was made on defendant's showing that plaintiff did not respond to the RFAs. The motion was unopposed.

On 8/3/2023, the court granted defendant's unopposed motion for summary judgment, which was based on the admissions made through the deemed admissions order, which admissions are fatal to plaintiff's case.

Plaintiff now moves to set aside the summary judgment order, contending that she did serve responses to the RFAs, and that she was not served with the summary judgment motion.

A motion to set aside pursuant to Code of Civil Procedure section 473, subdivision (b), "shall be accompanied by a copy of the … pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken."

The motion must be denied for a number of reasons. First, the motion is untimely, as it was filed more than six months after the order at issue was issued. Second, the court cannot grant the motion because plaintiff did not submit with the motion for relief her proposed opposition. Third, it is unclear how plaintiff could possibly submit an effective opposition to the motion for summary judgment, even if the summary judgment order were set aside. The summary judgment motion was brought on the basis of the deemed admissions, which remain in effect. Plaintiff never moved to withdraw those admissions. (See Code Civ. Proc., §§ 2033.300, 2033.410.) Finally, the court noted in the order denying plaintiff's last attempt to set aside the summary judgment order that plaintiff would need to provide legal authorities relating to proper service of the motion for summary judgment, as plaintiff's filings in this action reference numerous different addresses for plaintiff. Plaintiff's motion does not address this issue at all.

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 6/13/2024.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Torosian v. Patten et al.***
Superior Court Case No. 23CECG02034

Hearing Date: June 18, 2024 (Dept. 403)

Motion: By Defendant Susan Patten for an Award of Fees

Tentative Ruling:

To grant and award $18,477.50 in fees in favor of Defendant Susan Patten.

Explanation:

On June 2, 2023, plaintiff David Torosian ("Plaintiff") filed suit against defendant Susan Patten ("Defendant") regarding a settlement of certain real property and trust assets. On May 26, 2022, Defendant filed a special motion to strike ("anti-SLAPP") motion pursuant to Code of Civil Procedure section 425.16. On August 10, 2023, prior to the anti-SLAPP motion being heard, Plaintiff filed a First Amended Complaint. On September 19, 2023, the anti-SLAPP motion was heard and granted in favor of Defendant. Defendant now seeks attorney's fees. Where a defendant files a motion pursuant to Code of Civil Procedure section 425.16 and prevails, the defendant shall be entitled to recover attorney's fees and costs. (Code Civ. Proc. § 425.16, subd. (c)(1).)

The amount of attorney's fees awarded is a matter within the court's discretion. (*Clayton Development Co. v. Falvey* (1988) 206 Cal.App.3d 438, 447.) In determining the reasonable amount to award, "the court should consider ... 'the nature of the litigation, its difficulty, the amount involved, the skill required and the skill employed in handling the litigation, the attention given, the success of the attorney's efforts, his learning, his age, and his experience in the particular type of work demanded [citation]; the intricacies and importance of the litigation, the labor and necessity for skilled legal training and ability in trying the cause, and the time consumed.'" (*Ibid*.) The moving party bears the burden to prove the reasonableness of the number of hours devoted to this action. (*Concepcion v. Amscan Holdings, Inc.* (2014) 223 Cal.App.4th 1309, 1325.)

A court assessing attorney fees begins with a touchstone or lodestar figure, based on the careful compilation of the time spent and the reasonable hourly compensation of each attorney involved. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131-1132.) The lodestar is calculated using the reasonable rate for comparable legal services in the local community for noncontingent litigation of the same type, multiplied by the reasonable number of hours spent on the case. (*Id.* at p. 1133.) Here, Defendant seeks to assert a rate of $475 per hour. The court approves the rate as sought in light of counsel's 32 years' experience.

Defendant submits 96.2 hours spent on the anti-SLAPP motion. Following a careful review, the court finds that several entries are not compensable: purely clerical entries (*e.g.*, Rowell Decl., ¶ 7, Ex. A, p. 1 ["Access court's online docket, ascertain status of

Motion to Strike"; 2 ["Review and update calendar regarding service of anti-SLAPP motion; draft and send instructions to staff re service/filing of same"]; 4 ["Telephone conference with clerk's staff re Docket"]); time billed disproportionately to task and experience level (*id.*, ¶ 7, Ex. A, p. 1 [4.5 hours to prepare a general denial answer; 26.6 hours to prepare anti-SLAPP motion]; 4-5 [24.05 hours to prepare fee motion])[1]; or are otherwise unrelated to the anti-SLAPP motion as general litigation efforts (*id.*, ¶ 7, Ex. A, p. 2 [entries regarding discovery, communications with counsel for other parties]). Of the 96.2 hours sought, the court discounts 57.3 hours, for a total of 38.9 hours. Accordingly, the court sets the lodestar at $18,477.50, and awards $18,477.50 in fees.

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 6/13/2024.
(Judge's initials) (Date)

[1] The court is unable to replicate how Defendant concluded that 16.25 hours were spent in preparation of the present motion from the billing records.

(35)

Tentative Ruling

Re: ***Carranza v. Family Tree Farms, Inc.***
Superior Court Case No. 23CECG04234

Hearing Date: June 18, 2024 (Dept. 403)

Motion: By Defendant Family Tree Farms, Inc. to Compel Arbitration; Dismiss Class Claims; and Request for Stay

Tentative Ruling:

To grant the motion to compel arbitration and order plaintiff Laura Carranza to arbitrate her individual claims against defendant Family Tree Farms, Inc. This action is stayed pending completion of arbitration.

To grant the motion to dismiss the class claims. Defendant Family Tree Farms, Inc. is directed to submit a proposed order within five days of service of the order by the clerk.

Explanation:

Plaintiff Laura Carranza ("Plaintiff") filed a class action for certain wage and hour claims, as well as under the Private Attorneys General Act ("PAGA"). Defendant Family Tree Farms, Inc. ("Defendant") now seeks to compel Plaintiff to arbitrate her individual claims, to dismiss Plaintiff's class claims, and to stay the non-individual PAGA claims.

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

Plaintiff filed an opposition, but does not dispute the writing. Accordingly, the court finds that there is a valid agreement to arbitrate that applies to the issues raised in the First Amended Complaint. The motion to compel arbitration is therefore granted, and the parties are ordered to arbitration of Plaintiff's individual claims.

Defendant further seeks dismissal of class claims. Defendant submits that the arbitration agreement housed a class and collective action waiver. Plaintiff in her opposition does not contest Defendant's request to dismiss Plaintiff's class claims or the basis of the request. The class claims of the First Amended Complaint are therefore dismissed.

Defendant requests a stay in their moving papers. Where the court has ordered arbitration of a controversy which is an issue involved in an action or proceeding pending before the court, the court shall, upon motion of a party, stay the action until an arbitration is had in accordance with the order to arbitrate. (Code Civ. Proc. § 1281.4.)

Plaintiff opposes on the grounds that there is no preclusive effect between the arbitration of Plaintiff's individual claims and the PAGA claim. However, the statute above is clear on its face. As the stay is requested, and the court above orders Plaintiff to arbitrate her individual claims, including her individual PAGA claim, the matter as to the non-individual PAGA claims is stayed pending outcome of the arbitration. (Code Civ. Proc. § 1281.4.; *Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104, 1124-1125.)[1]

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 6/13/2024.
(Judge's initials) (Date)

[1] Plaintiff relies on a case from Fourth District Court of Appeals, Division 1 that predates the California Supreme Court opinion issued in *Adolph v. Uber Technologies, Inc.* by approximately three months. (*Nickson v. Shemran, Inc.* (2023) 90 Cal.App.5th 121.) Plaintiff cites to the case of the premise that a plaintiff does not lose standing as an aggrieved employee whether her individual claims are time-barred or not. (*See id.* at p. 126.) The case does not directly stand for the premise suggested by Plaintiff. However, the court does not make any findings as to this issue. Regardless, the stay is mandatory where the court orders arbitration and a stay is requested.

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Tentative Ruling

Re: ***Pings v. Cardiovascular Associates Holdings LP***
Superior Court Case No. 24CECG00849

Hearing Date: June 18, 2024 (Dept. 403)

Motion: Defendant's Petition to Compel Arbitration

Tentative Ruling:

To grant the petition to compel arbitration and to stay the civil action pending the outcome of the arbitration. (Code Civ. Proc., § 1281.2.)

Explanation:

Procedural Requirements

"A petition to compel arbitration is to be heard in the manner of a motion." (*Strauch v. Eyring* (1994) 30 Cal.App.4th 181, 185; see also Cal. Rules of Court, rule 3.1103(a)(2) [including a petition to compel arbitration in the definition of law and motion].) "A petition under this title shall be heard in a summary way in the manner and upon the notice provided by law for the making and hearing of motions, except that not less than 10 days' notice of the date set for hearing on the petition shall be given." (Code Civ. Proc., § 1290.2.) Thus, "a petition to compel arbitration must be prepared in accordance with the rules applicable to motions generally." (Knight, Chernick, Quinn, and Gupta, Cal. Prac. Guide: Alternative Dispute Resolution (TRG 2023) § 5:304; 9 U.S.C., § 6.)

The essential elements of a motion consist of the motion (or petition) itself, a notice of hearing, and a memorandum of points and authorities. (Cal. Rules of Court, rule 3.1112(a).) A motion filed without the supporting papers which it is based is treated as an "incomplete motion" and may be continued, placed off calendar or denied without prejudice. (*Weinstein v. Blumberg* (2018) 25 Cal.App.5th 316, 320-321.) It should then follow that these same rules apply for an "incomplete petition".

Here, defendant has filed the petition itself, a declaration in support of the petition, a request for judicial notice, and a proposed order for signature. Notably however, a notice of the hearing and a memorandum of points of authorities have not been submitted.

Ordinarily, the court would deny the petition without prejudice. In light of plaintiff's filing of a non-opposition to the petition, the court will overlook these procedural defects and consider the merits of the petition, as it appears plaintiff has waived the issue. (*Alliance Bank v. Murray* (1984) 161 Cal.App.3d 1, 7 [allowing the court to treat an opposition on the merits as a waiver of defective notice].)

Arbitration

Defendant moves for an order compelling arbitration under California Code of Civil Procedure section 1281.2, and requests to stay the action pending arbitration.

Under California Code of Civil Procedure section 1281.2,

> On 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.

(Cal. Civ. Proc. Code § 1281.2.)

"In recognition of Congress' principal purpose of ensuring that private arbitration agreements are enforced according to their terms, we have held that the FAA pre-empts state laws which 'require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration.'" (*Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University* (1989) 489 U.S. 468, 478, internal citations 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.'" (*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.]" (*Id*. 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 [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 ("*Rosenthal*").)

Thus, in ruling on a motion to compel arbitration, the court must first determine whether the parties actually agreed to arbitrate the dispute, and the 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, 541.)

Here, defendant has met its burden of presenting evidence that shows there was an agreement between it and plaintiff to arbitrate all disputes and claims relating to the architectural contract entered into by the parties. (Request for Judicial Notice ("RJN"), Exh. A, Exh A at Section 8.)[2] According to plaintiff's complaint, the parties entered into the agreement containing the arbitration provision on December 1, 2020. (RJN, Exh. A, ¶ 6.) Therefore, defendant has met its burden of showing that an agreement to arbitrate plaintiff's legal disputes exists, and that it covers the claims raised by plaintiff in the present action. As a result, the burden shifts to plaintiff to show that he did not actually agree to arbitrate his disputes, the agreement is not valid or enforceable, or that some other defense exists to the agreement.

Since plaintiff has filed a non-opposition to the petition to compel arbitration, the petition to compel arbitration 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: JS on 6/13/2024.
(Judge's initials) (Date)

[2] Defendant's request for judicial notice of the Complaint (Exhibit A) is granted. (Evid. Code, § 452, subd. (d).)

(27)

Tentative Ruling

Re: ***Amalia Aispuro v. Margarita Dinsdale***
Superior Court Case No. 23CECG00434

Hearing Date: June 18, 2024 (Dept. 403)

Motion: By Plaintiffs' for Summary Adjudication

Tentative Ruling:

To overrule defendants' objections and to grant the motion. Plaintiff is directed to submit to the court a proposed judgment consistent with the summary adjudication ruling within ten (10) days from the date of this order.

Explanation:

Summary adjudication of a cause of action in favor of a plaintiff is proper where the plaintiff establishes it is entitled to judgment on the cause of action. (Code Civ. Proc., § 437c, subds. (f), (p); *Taswell v. Regents of University of California* (2018) 23 Cal.App.5th 343, 350.) If the plaintiff meets its burden to prove each element of the cause of action, the burden shifts to the defendant to demonstrate a triable issue of fact exists. (Code Civ. Proc., § 437c, subd. (p)(1).) In evaluating such motion, the moving party's papers are construed strictly and the opposing party's liberally, and "any doubts as to the propriety of granting the motion [are resolved] in favor of [the opposing party]." (*Kendall-Jackson Winery, Ltd. v. Superior Court* (1999) 76 Cal.App.4th 970, 977-978.)

" 'A co-owner of real or personal property may bring an action for partition.'" (*Cummings v. Dessel* (2017) 13 Cal.App.5th 589, 596 (*Cummings*); Code Civ. Proc., § 872.210.) Partition is a favored remedy, in part, because it furthers " ' "the policy of facilitating transmission of title, thereby avoiding unreasonable restraints on the use and enjoyment of property."'" (*Cummings, supra,* 13 Cal.App.5th at p. 596; see also *Summers v. Superior Court* (2018) 24 Cal.App.5th 138, 142.) The court determines the plaintiff's right and manner of partition. (*Id*. at p. 140 [holding "that the partition statutes do not allow a court to order the manner of a property's partition … before it determines the ownership interests in the property]; Code Civ. Proc., §§ 872.710, subd. (a), 872.720, subd. (a).)

Partition in kind (i.e. physical division) is favored, however, this option may prove impractical, inequitable, or impossible due to modern zoning or a variety of other circumstances. (*Butte Creek Island Ranch v. Crim* (1982) 136 Cal.App.3d 360, 365.) Alternatively, "[i]n lieu of dividing the property among the parties, the court shall order the property be sold and the proceeds divided among the parties in accordance with their interests in the property if the parties agree to such relief or the court determines sale and division of the proceeds would be more equitable than a division of the property." (*LEG Investments v. Boxler* (2010) 183 Cal.App.4th 484, 493.)

Plaintiff asserts recorded instruments indicating her status as a grantee of the recorded property. (See Request for Judicial Notice, Ex. A.) The "existence and facial contents" of recorded instruments are judicially noticeable (*Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 924, fn. 1), and in this case they show plaintiff's interest in the subject property and attendant right to partition. (*Cummings v. Dessel* (2017) 13 Cal.App.5th 589, 596.)

Although they filed a unified opposition to plaintiff's motion, defendants appear to concede that plaintiff is an owner of the subject property and thus is entitled to partition and recovery of her share. (Opp. at p. 4-5 ["Plaintiff and all defendants are joint tenants. Plaintiff is entitled to partition as a matter of right."] Defendants appear to only oppose partition by sale, and instead request "partition by appraisal" (Opp. at p. 5:7), but such an option requires written agreement and particular memorialization of the agreement with the court. (*Cummings, supra,* 13 Cal.App.5th at p. 598; Code Civ. Proc., § 873.920.) Neither of those conditions are present here (e.g. the rejected settlement agreement). Finally, to the extent defendants dispute the eventual allocation of attorneys' fees, "costs or attorneys' fees may not be allowed until the final judgment is entered, and should not be included in the interlocutory decree." (*Williams v. Wells Fargo Bank & Union Trust Co*. (1941) 56 Cal.App.2d 645, 652.)

Therefore, plaintiff has established a right to partition and defendants have not shown the existence of a triable issue of fact upsetting that right sufficient to require trial.

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 6/14/2024.
(Judge's initials) (Date)