Tentative Rulings for December 11, 2024
Department 501

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 501

Begin at the next page

(24)

Tentative Ruling

Re: ***Moua v. Thao***
Superior Court Case No. 23CECG03437

Hearing Date: December 11, 2024 (Dept. 501)

Motion: by Defendant Nom Fue Thao for an Order Compelling Responses to Form Interrogatories, Set One, and for Terminating Sanctions and Monetary Sanctions

Tentative Ruling:

To grant the motion to compel responses to Form Interrogatories, Set One. Within 20 days of service of the order by the clerk, plaintiff Steve Moua shall serve objection-free responses to Form Interrogatories, Set One. To award monetary sanctions against plaintiff Steve Moua in the amount of $585.00, to be paid within 20 calendar days of the date of this order, with the time to run from the service of this minute order by the clerk. To deny the request for terminating sanctions without prejudice, as such request is premature.

Explanation:

Plaintiff had ample time to respond to the discovery propounded by defendant, and he has not done so. Failing to timely respond to discovery waives objections to the discovery, including claims of privilege and "work product" protection. (Code Civ. Proc. §§ 2030.290, subd. (a), 2031.300, subd. (a); see *Leach v. Superior Court* (1980) 111 Cal.App.3d 902, 905–906.)

Monetary sanctions are mandatory unless the court finds that the party acted "with substantial justification" or other circumstances that would render sanctions "unjust." (Code Civ. Proc., §§ 2030.290, subd. (c).) No opposition was filed, so no facts were presented to warrant finding sanctions unjust. Sanctions can be awarded even if no opposition is filed. (Cal. Rules of Court, rule 3.1348.) However, the court will not include the time spent in propounding the discovery since this time would have been spent even if plaintiff had timely responded. Nor will the court include time spent in sending a follow-up letter to plaintiff, since meet and confer efforts are not required where there has been a total failure to respond to the propounded discovery. (*Leach v. Superior Court, supra,* 111 Cal.App.3d at p. 905.) Also, no time will be needed in traveling to or appearing at the hearing on this unopposed motion. Therefore, the court will allow 1.5 hours at $350 per hour for preparation of this uncomplicated motion, plus the $60 motion fee, for a total sanction of $585.00.

Terminating sanctions are not warranted at this time. Sanctions are supposed to further a legitimate purpose under the Discovery Act, i.e., to compel disclosure so that the party seeking the discovery can prepare their case, and secondarily to compensate the requesting party for the expenses incurred in enforcing discovery. (*Ghanooni v. Super Shuttle* (1993) 20 Cal.App.4th 256, 262; *Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 796.) Sanctions should not constitute a "windfall" to the requesting party, giving the moving

party more than would have been obtained had the discovery been answered. (*Caryl Richards, Inc. v. Superior Court* (1961) 188 Cal.App.2d 300, 305.) Any sanctions imposed must be "suitable and necessary" to allow the propounding party to obtain the information sought, but they are not designed to "impose punishment." (*Id.* at p. 304.) Terminating sanctions in the first instance may be an appropriate sanction if the abuse of the discovery process is particularly egregious. (*R.S. Creative, Inc. v. Creative Cotton, Ltd*. (1999) 75 Cal.App.4th 486, 496—warranted due to forgery and spoliation of evidence.) Here, no facts have been shown to establish that this is an egregious abuse of the discovery process. The imposition of terminating sanctions is a drastic consequence, one that should not lightly be imposed, or requested. (*Ruvalcaba v. Government Employees Ins. Co*. (1990) 222 Cal.App.3d 1579, 1581.)

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: DTT on 12/5/2024.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Porraz v. Quality Group Homes, Inc.***
Superior Court Case No. 24CECG02628

Hearing Date: December 11, 2024 (Dept. 501)

Motion: by Defendant to Compel Arbitration

Tentative Ruling:

To deny.

Explanation:

In moving to compel arbitration, defendant must prove by a preponderance of evidence the existence of the arbitration agreement and that the dispute is covered by the agreement. The party opposing the motion must then prove by a preponderance of evidence that a ground for denial of the motion exists (e.g., fraud, unconscionability, etc.) (*Rosenthal v. Great Western Fin'l Securities Corp.* (1996) 14 Cal.4th 394, 413-414; *Hotels Nevada v. L.A. Pacific Ctr., Inc.* (2006) 144 Cal.App.4th 754, 758; *Villacreses v. Molinari* (2005) 132 Cal.App.4th 1223, 1230.)

A trial court is required to grant a motion to compel arbitration "if it determines that an agreement to arbitrate the controversy exists." (Code Civ. Proc. § 1281.2) However, there is "no public policy in favor of forcing arbitration of issues the parties have not agreed to arbitrate." (*Garlach v. Sports Club Co.* (2012) 209 Ca1.App.4th 1497, 1505) Thus, in ruling on a motion to compel arbitration, the court must first determine whether the parties actually agreed to arbitrate the dispute. (*Mendez v. Mid-Wilshire Health Care Center* (2013) 220 Cal.App.4th 534, 541.)

Here, defendant contends that there was an agreement to arbitrate all disputes arising out of the parties' employment relationship, with limited exception, and thus plaintiff's individual claims under the Private Attorney General's Act ("PAGA") should be sent to binding arbitration. In support, defendant submits a copy of the agreement containing the arbitration provision it purports, was signed by plaintiff on October 26, 2021. (Romero Decl., ¶ 2, Ex. 1.)

Here, the agreement explicitly states in the "Scope of Controversy of Claims" and "Waiver" sections, that "any wage and hour matter within the jurisdiction of the California Labor Commissioner" are exempted from arbitration. (Romero Decl., Ex. 1 at Sections 1 and V of the Arbitration Agreement.) The relevant portion of the "Scope of Controversy or Claims" section of the agreement provides as follows:

> Any controversy or claim arising out of or pertaining to an employee's recruitment, employment with QGH., Inc., or the termination of that employment… (with the exception of … any wage and hour matter within

> the jurisdiction of the California Labor Commissioner), shall be submitted to binding arbitration…

(Romero Decl., Ex. 1 at Section 1, emphasis omitted.)

"Before enactment of the PAGA in 2004, several statutes provided civil penalties for violations of the Labor Code. The Labor Commissioner could bring an action to obtain such penalties, with the money going into the general fund or into a fund created by the Labor and Workforce Development Agency (Agency) for educating employers." (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 378 overruled by Quach v. California Commerce Club, Inc. (2024) 16 Cal.5th 562, abrogated by Viking River Cruises, Inc. v. Moriana (2022) 596 U.S. 639.) Arguably, therefore, PAGA claims, which originally could have been brought by the Labor Commissioner prior to the enactment of PAGA, would fall into the category of "matter[s] within the jurisdiction of the California Labor Commissioner". Accordingly, these claims are exempted from the arbitration agreement presented.

Defendant has not established that an agreement to arbitrate the issues raised by the Complaint in this case, i.e., the PAGA claims, exist. The motion is denied.

The court further notes that it appears that there is an ongoing case involving the same parties and same general allegations, but a Notice of Related Case has not been filed. "Whenever a party in a civil action knows or learns that the action or proceeding is related to another action or proceeding pending, dismissed, or disposed of by judgment in any state or federal court in California, the party must serve and file a Notice of Related Case." (Cal. Rules of Court, rule 3.300(b).)

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: DTT on 12/10/2024.
(Judge's initials) (Date)