<u>Tentative Rulings for December 17, 2024</u> <u>Department 502</u>

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) The above rule also applies to cases listed in this "must appear" section.
The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.
(Tentative Rulings begin at the next page)

Tentative Rulings for Department 502

Begin at the next page

(27)

Tentative Ruling

Re: Creditors Adjustment Bureau, Inc. v. United AG Source, Inc.

Superior Court Case No. 22CECG02966

Hearing Date: December 17, 2024 (Dept. 502)

Motion(s): (1) By Plaintiff to Compel Responses to Special Interrogatories,

Set One, and for Sanctions against Defendant

(2) By Plaintiff to Compel Production of Documents, Set One,

from and for Sanctions against Defendant

Tentative Ruling:

To grant plaintiff's motions to compel responses to the Special Interrogatories (Set One), and Request for Production of Documents (Set One). To grant the request for monetary sanctions in the amount of \$1,572.75. (Code Civ. Proc., §§ 2030.290, 2030.300.)

Plaintiff's responses, without objections, to the interrogatories and document requests are due 15 days from the date of service of this order. Sanctions are payable to moving counsel within 30 days of the date of service of this order.

Explanation:

Plaintiff's motions demonstrate that the subject discovery was served on defendant on August 7, 2024. (See Weitz, Decls. \P 2.) Responsive documents have not been received (Id. at \P 11), neither have oppositions been filed, which effectively concedes moving counsel's recitation of the relevant events. Therefore, the motions are granted.

Plaintiff's motions are substantively identical and assert the same set of facts and law. Therefore, the court awards monetary sanctions in time expended to prepare one 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: _	KCK	on	12/13/24			
_	(Judge's initials)		(Date)			

(37)

<u>Tentative Ruling</u>

Re: Arturo Rodriguez v. Ravdeep Singh

Superior Court Case No. 23CECG04769

Hearing Date: December 17, 2024 (Dept. 502)

Motion: By Plaintiff Arturo Rodriguez for Reconsideration

Tentative Ruling:

To deny.

Explanation:

Pursuant to Code of Civil Procedure section 1008, "[w]hen an application for an order has been made to a judge, or to a court, and refused in whole or in part, or granted, or granted conditionally, or on terms, any party affected by the order may" bring a motion to reconsider, and a different order may be entered, if, subject to the following conditions, the motion is:

- (1) brought before the same judge that made the order;
- (2) made within 10 days after service upon the party of notice of the entry of the order;
- (3) based on new or different facts, circumstances, or law; and
- (4) made and decided before entry of judgment.

Here, the order plaintiff seeks the court to reconsider is one that did not impact his position in this matter. In the September 26, 2024 ruling, the court overruled defendants' demurrer. This was a ruling that was in plaintiff's favor. As such, the court need not reconsider its ruling.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling						
Issued By:	KCK	on	12/13/24			
-	(Judge's initials)		(Date)			

(35)

Tentative Ruling

Re: Pedro Perez Garcia v. Fresno Plumbing & Heating, Inc.

Superior Court Case No. 24CECG03236/COMPLEX

Hearing Date: December 17, 2024 (Dept. 502)

Motion: By Defendant Fresno Plumbing & Heating, Inc. to Compel

Arbitration; Dismiss Class Claims; and Request for Stay

Tentative Ruling:

To continue to Thursday, January 9, 2025, 3:30 p.m. in Department 502. Plaintiff Pedro Perez Garcia is directed to file his timely served Supplemental Opposition on or before December 20, 2024. No further briefing is authorized.

Explanation:

Plaintiff Pedro Perez Garcia ("Plaintiff") brings an action for ten causes of action for various violations of the Labor Code, one cause of action for unfair competition, and one cause of action under the Private Attorney General Act ("PAGA") as defined by Labor Code section 2698 et seq., on behalf of himself and all aggrieved employees. Defendant Fresno Plumbing & Heating, Inc. ("Defendant") now seeks an order compelling Plaintiff to private arbitration of his individual claims, to dismiss the class action components, and to stay the representative portion of the PAGA claim.

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.)¹ 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 Cal.App.4th 1497, 1505) Thus, when a motion to compel arbitration is filed and accompanied by prima facie evidence of a written agreement to arbitrate the controversy, the court itself must determine: (1) whether the agreement exists, and (2) if any defense to its enforcement is raised, whether it is enforceable. The moving party bears the burden of proving the existence of an arbitration agreement by a preponderance of the evidence. The party claiming a defense bears the same burden as to the defense. (Rosenthal v. Great Western Fin. Securities Corp. (1996) 14 Cal.4th 394, 413-414.)

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.) Here, Defendant submits that a written agreement to arbitrate exists. (Rodriguez Decl., ¶¶ 9, and Ex. C.) In opposition, Plaintiff contests the existence of a written agreement.

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¹ Defendant submits that the arbitration, to the extent that an agreement exists, is governed by the Federal Arbitration Act.

Plaintiff submits that he does not recall the arbitration agreement that was attached to the moving papers. (Perez Garcia Decl., \P 7.) As Plaintiff argues, Defendant acknowledges that the arbitration agreement attached to the moving papers was "an updated version". (Quintero Decl., \P 7.) Defendant acknowledges that Plaintiff never signed this updated version. (Id., \P 8.)

On reply, Defendant submits two points. First, the application form in which there is no contest Plaintiff signed, has a statement regarding binding arbitration. The reliance on a single statement of binding arbitration is problematic, for the reasons argued by Plaintiff as unconscionable. Both parties acknowledge and cite to *Armendariz v. Foundation Health Psychcare Services, Inc.* In the employment context specifically, to avoid a finding of substantive unconscionability, the agreement must include the following five minimum requirements designed to provide necessary safeguards: 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 v. Foundation Health Psychcare Svcs., Inc.* (2000) 24 Cal.4th 83, 102.) None of these factors are demonstrated by the single sentence in the application form.

In what appears to be a contemplation of the above issue, Defendant next attaches an arbitration agreement it contends existed in 2020, to which Plaintiff subjected himself. New evidence on reply, used to establish the foundational issue of the motion, is generally not permitted. (Jay v. Mahaffey (2013) 218 Cal.App.4th 1522, 1537.) Doing so generally constitutes a denial of due process.

The court notes that on October 1, 2024, upon request by Plaintiff, supplemental briefing was authorized. Plaintiff was directed to file any supplemental opposition by November 19, 2024; Defendant was directed to file any supplemental reply by December 2, 2024. The court is in receipt of Defendant's supplemental reply, filed November 26, 2024. The supplemental reply references a supplemental opposition, and arguments contained therein. However, the court is not in receipt of the supplemental opposition. The court will not speculate what points and authorities Plaintiff chose to address based on Defendant's supplemental reply. Accordingly, the matter is continued. Plaintiff is directed to file his timely served supplemental opposition on or before December 20, 2024.²

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling						
Issued By:	KCK	on	12/16/24			
-	(Judge's initials)		(Date)			

² The court issues no rulings on any objections lodged at this time.