

Tentative Rulings for December 17, 2024
Department 502

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.

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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.

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

