Tentative Rulings for June 4, 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.***

23CECG04683 ***Roybal v. Audeamus***

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

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(34)

Tentative Ruling

Re: ***Soto v. Espinoza Brothers Food Distribution, Inc., et al.***
Superior Court Case No. 22CECG03830

Hearing Date: June 4, 2025 (Dept. 503)

Motion: by Plaintiffs for Preliminary Approval of Class Action Settlement

Tentative Ruling:

To deny without prejudice. In a subsequent submission, plaintiffs are only requested to supplement their evidence in support of the attorney fees and costs of the settlement administrator.

Explanation:

1. CLASS CERTIFICATION

a. Standards

"Class certification requires proof (1) of a sufficiently numerous, ascertainable class, (2) of a well-defined community of interest, and (3) that certification will provide substantial benefits to litigants and the courts, i.e., that proceeding as a class is superior to other methods. In turn, the community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*In re Tobacco II Cases* (2009) 46 Cal. 4th 298, 313.)

b. Numerosity and Ascertainability

Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be res judicata. (*Bell v. Superior Court* (2007) 158 Cal.App.4th 147, 166.) "Whether a class is ascertainable is determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class members." (*Reyes v. Board of Supervisors* (1987) 196 Cal.App.3d 1263, 1271.)

To determine the identity of potential class members, the court will look to whether there are any objective criteria to describe them and whether they can be found without unreasonable expense or effort through business or official records. (*Lewis v. Robinson Ford Sales, Inc*. (2007) 156 Cal.App.4th 359, 369-370, citing *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 706 [proposed class action of taxi cab users from 1960 to 1964 who paid by coupons identifiable where they could be identified by serial numbers which were kept manually, not in computerized form]; *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932 [plaintiff safety members denied uniform allowances, ammunition allowance, holiday pay and lump sum unused sick leave pay as factors used calculating their "final

compensation," used in PERS' service retirement formula easily identifiable from PERS records].)

Here, the class members are current and former hourly, non-exempt employees who worked for defendants Espinoza Brothers Food Distribution, Inc. and/or Espinoza Brothers Enterprises, LLC between June 5, 2018 and March 9, 2024. Class members can be ascertained from defendants' payroll and business records. (Wieland Decl., ¶ 5.) The putative class consists of 106 members who worked a collective 5,136 workweeks. (Id. at ¶ 4.) This is sizeable enough for class treatment and the ability to identify potential members appears feasible without unreasonable expense. This number satisfies the numerosity requirement. (*Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2009) 670 F.Supp.2d 1114, 1121 ["Courts have routinely found the numerosity requirement satisfied when the class comprises 40 or more members"].)

c. Community of Interest

The community of interest factor requires consideration of three separate factors: (1) predominant common questions of law or fact; (2) class representatives whose claims are typical of the class; and (3) class representatives and counsel who can adequately represent the class. (*Brinker Restaurant Corp., supra,* 53 Cal.4th at 1021.) The community of interest requirement for certification does not mandate uniform or identical claims, but focuses on internal policies, pattern and practice in order to assess whether that common behavior toward similarly situated plaintiffs renders class certification appropriate. (*Capitol People First v. Dept. Developmental Servs.* (2007) 155 Cal.App.4th 676, 692.)

This action involves claims that defendants failed to provide meal and rest breaks, failed to pay wages for all time worked including minimum wage and overtime, failed to provide accurate wage statements, failed to reimburse employees for necessary business expenses, and derivative claims for waiting time penalties, violation of the California Business & Professions Code, and PAGA. (Yslas Decl., ¶¶ 3-5.)

Here, there appear to be sufficient common issues between the putative class members for purposes of the commonality requirement, as plaintiffs allege defendants' policies resulted in its failure to pay for off-the-clock work and failure to provide meal and rest breaks, which led to the inaccurate wage statements and failure to timely pay final wages. Plaintiffs also alleged defendants failed to provide expense reimbursement for usage of employees' personal cell phone or purchase of required steel-toe boots.

The declarations of plaintiffs Cruz Soto, a delivery driver, and Monica Garcia, a human resources assistant, include descriptions of the employments practices causing them to experience similar labor code violations despite their different positions within the company. (Soto Decl., ¶¶ 4-6; Garcia Decl., ¶¶ 4-7.) Security measures delayed timely entry to the facilities resulting in time on premises but off the clock. (Soto Decl., ¶4; Garcia Decl., ¶ 4.) Plaintiffs were expected to be available by phone during breaks and meals and were interrupted when attempting to take breaks. (Soto Decl., ¶ 5; Garcia Decl., ¶ 5.) The use of a personal cell phone for work-related communications was a regular practice and there was no reimbursement from defendant. (Soto Decl., ¶ 6; Garcia Decl., ¶5.) Additionally, Ms. Garcia's position in human resources gave her unique ability to see

the effect of defendant's policies and procedures and resulting in Labor Code violations among all putative class members. (Garcia Decl., ¶¶ 6-7.)

There is also a typicality requirement, i.e. that plaintiffs' claims are significantly similar to those of other class members. (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 470.) This requires them to arise from the same event, practice, course of conduct, or legal theories (even if they are not identical to the class). (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 874; *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347.)

Usually, in wage and hour class actions, the distinctive feature that permits class certification is that the employees have the same job title or perform similar jobs, and the employer treats all in that discrete group in the same allegedly unlawful fashion. In *Brinker Restaurant v. Superior Court* (2012) 53 Cal.4th 1004, 1017, "no evidence of common policies or means of proof was supplied, and the trial court therefore erred in certifying a subclass."

The declarations of plaintiffs Soto and Garcia adequately demonstrate commonality and typicality to support class certification for purposes of the settlement.

"[T]he adequacy inquiry should focus on the abilities of the class representative's counsel and the existence of conflicts between the representative and other class members." (*Caro v. Procter & Gamble Co.* (1993) 18 Cal. App. 4th 644, 669.) Counsel have shown that they are experienced and that they have successfully litigated other class actions. (Yslas Decl. ¶¶ 23-30.) Therefore, it does appear that class counsel have shown that they are adequate to represent the interests of the class. The question is whether other circumstances evince that the proposed class counsel and representatives may have looked more to their own interests than to those of the class. One consideration is the incentive award.

i. Class Representative Incentive Award

> "Where, as here, the class representatives face significantly different financial incentives than the rest of the class because of the conditional incentive awards that are built into the structure of the settlement, we cannot say that the representatives are adequate. *See Amchem Prods., Inc. v. Windsor,* 521 U.S. 591, 627, 117 S. Ct. 2231, 138 L Ed 2d 689 (1997) ('The settling parties, in sum, achieved a global compromise with no structural assurance of fair and adequate representation....')"

(*Radcliffe v Experian Information Solutions, Inc.* (2013) 715 F. 3d 1157, 1165.)

"We once again reiterate that district courts must be vigilant in scrutinizing all incentive awards to determine whether they destroy the adequacy of the class representatives. The conditional incentive awards in this settlement run afoul of our precedents by making the settling class representatives inadequate representatives of the class." (*Id*. at p. 1164.)

"There is a serious question whether class representatives could be expected to fairly evaluate whether awards ranging from $26 to $750 is a fair settlement value when

they would receive $5,000 incentive awards. Under the agreement, if the class representatives had concerns about the settlement's fairness, they could either remain silent and accept the $5,000 awards or object to the settlement and risk getting as little as $26 if the district court approved the settlement over their objections." (*Id*. at p. 1165.)

> "The propriety of incentive payments is arguably at its height when the award represents a fraction of a class representative's likely damages; for in that case the class representative is left to recover the remainder of his damages by means of the same mechanisms that unnamed class members must recover theirs. The members' incentives are thus aligned. But we should be most dubious of incentive payments when they make the class representatives whole, or (as here) even more than whole; for in that case the class representatives have no reason to care whether the mechanisms available to unnamed class members can provide adequate relief."

(In re Dry Max Pampers Litigation (6th Cir. 2013) 724 F.3d 713, 722.)

The settlement agreement in the instant case provides that each of the two named plaintiffs gets an enhancement payment of up to $7,500 as class representative. It is unclear if this payment is in addition to their respective individual settlement payment as a class member and or PAGA group member. After deduction of administration expenses, attorney costs and fees, PAGA payment to the LWDA, and the $15,000 in incentive awards, approximately $71,000 is left to be distributed to the class members. Counsel for plaintiffs calculates the average net benefit to a class member to be $678.86, without factoring in payroll taxes. (Yslas Decl., ¶ 23.) The actual amounts will vary based on the class member's amount of workweeks.

Plaintiffs' declarations submitted in support of the preliminary approval of the settlement describe similar concerns of future employability after participation in a lawsuit against their employer and working an estimated 50 hours to assist in the prosecution of the case. (Garcia Decl., ¶¶ 12-13, 17; Soto Decl., ¶¶ 12, 15-16.)

The class representative incentive award is 10 times the mathematical average payment to class members and a single incentive award is 4% of the gross settlement fund. The usual amount approved is 1.5% or less. Although this doesn't prevent granting preliminary approval, plaintiffs' declarations submitted with a motion for final approval should include evidence of more than speculative risk in future employability to support an incentive award greatly disproportionate to the payments to class members. The court may award less than the agreed upon amount on final approval.

d. Superiority of Class Certification

The court intends to find that certifying the class would be superior to any other available means of resolving the disputes between the parties. Wage and hour Labor Code cases are particularly well-suited to class resolution because of the small amounts of each employee's claim, which makes it impractical to bring wage and hour cases on an individual basis. The large number of proposed class members would also make it impractical to bring the claims separately. It would be far more efficient to bring all of the claims in one action, rather than forcing the employees to bring their own separate

cases. Therefore, the court intends to find that class certification is the superior method of resolving the case, and it intends to grant the request to certify the class for the purpose of approving the settlement.

2. SETTLEMENT

a. Legal Standards

"When, as here, a class settlement is negotiated prior to formal class certification, there is an increased risk that the named plaintiffs and class counsel will breach the fiduciary obligations they owe to the absent class members. As a result, such agreements must withstand an even higher level of scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required under Rule 23(e) before securing the court's approval as fair." (*Koby v. ARS Nat'l. Serv. Inc.* (9th Cir. 2017) 846 F.3d 1071, 1079.)

"[I]n the final analysis it is the Court that bears the responsibility to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing litigation. The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement . . . The courts are supposed to be the guardians of the class." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129.)

"[T]o protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished … [therefore] the factual record before the ... court must be sufficiently developed." (*Id*. at p. 130, internal citation omitted.) "The court 'must stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case,' but nonetheless it 'must eschew any rubber stamp approval in favor of an independent evaluation.'" (*Id*. at p. 130, internal citation omitted.) The court must be leery of a situation where "there was nothing before the court to establish the sufficiency of class counsel's investigation other than their assurance that they had seen what they needed to see." (*Id.* at p. 129.)

b. The Adequacy of the Settlement

Plaintiffs' counsel presents his assessment of the value of the alleged Labor Code violations based on the documents and data produced in informal discovery, including the estimated number of class members and workweeks for the class period and PAGA period, plaintiffs' personnel files, employment handbook and policies, job descriptions, and a sampling of time and payroll records. (Yslas Decl., ¶¶ 9-18.) The potential value was discounted by counsel based on perceived risks to class certification and likely recovery at trial. (*Ibid*.)

Bennett Berger of Berger Consulting Group provided expert data and statistical analysis to assist plaintiffs in reviewing the timekeeping and payroll data provided by defendant. (Yslas Decl., ¶ 13; Berger Decl., ¶¶ 2, 5-6.) Mr. Berger's declaration describes his methodology and analysis to provide sufficient foundation for the damage estimates

forming the basis of plaintiff counsel's evaluation for the realistic potential recovery. (Berger Decl., ¶¶ 6-9.)

"In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as 'the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.' The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244–245, internal citations omitted, disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

Plaintiffs point out that the settlement was reached after arm's length mediation, and that counsel conducted informal discovery and document exchange to investigate the claims and learn the strengths and weaknesses of the case. Expert statistical analysis of timekeeping and payroll records serves as the foundation for plaintiff counsel's attestation that the settlement is fair, adequate, and reasonable. Counsel are experienced in wage and hour litigation. These factors generally weigh in favor of finding that the settlement is fair, adequate, and reasonable. The court intends to find the gross settlement amount is fair and reasonable for purposes of preliminary settlement approval.

c. Proposed Class Notice

The proposed notice appears to be adequate. The notification procedure is designed to provide the greatest likelihood that each class member will receive the settlement notification. The notices will provide the class members with information regarding their time to opt out, object, or challenge the number of workweeks, the nature and amount of the settlement, the amount to be received by the class member, the impact on class members if they do not opt out, the amount of attorney's fees and costs, and the service award to the named class representative. (See Yslas Decl., Exh. 1, Settlement Agreement, Exh. A.) The notice also advises PAGA group members they may opt-out of the class settlement but cannot exclude themselves from the PAGA claims and will receive a PAGA penalty payment. The court intends to find that the proposed class notice is adequate.

3. ATTORNEYS' FEES AND COSTS

Plaintiffs' counsel seeks a fee award based on one-third of the gross settlement. There has been considerable debate in the Courts of Appeal as to whether a percentage fee should be permitted in class action settlements, or whether the courts should employ the lodestar fee calculation method. However, the California Supreme Court determined that a percentage fee method is allowable where there is a common fund settlement.

"Whatever doubts may have been created by *Serrano III* [citation], or the Court of Appeal cases that followed, we clarify today that use of the percentage method to

calculate a fee in a common fund case, where the award serves to spread the attorney fee among all the beneficiaries of the fund, does not in itself constitute an abuse of discretion. We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created." (*Laffitte v. Robert Half Intern. Inc*. (2016) 1 Cal.5th 480, 503.)

However, the Supreme Court also observed that the trial court has discretion to double-check a proposed fee percentage award by using the lodestar method. "Nor do we perceive an abuse of discretion in the court's decision to double check the reasonableness of the percentage fee through a lodestar calculation. As noted earlier, '[t]he lodestar method better accounts for the amount of work done, while the percentage of the fund method more accurately reflects the results achieved.' [Citation.] A lodestar cross-check thus provides a mechanism for bringing an objective measure of the work performed into the calculation of a reasonable attorney fee. If a comparison between the percentage and lodestar calculations produces an imputed multiplier far outside the normal range, indicating that the percentage fee will reward counsel for their services at an extraordinary rate even accounting for the factors customarily used to enhance a lodestar fee, the trial court will have reason to reexamine its choice of a percentage. [Citation.]" (*Id*. at p. 504.)

Here, plaintiffs are seeking preliminary approval of $66,500 in attorney fees, representing 35% of the gross settlement, and litigation costs of $18,790.76. Plaintiffs' counsel has provided a summary of the qualifications of the attorneys within the Wilshire Law Firm but has failed to provide any evidence of the hours worked or billing rates of the attorneys. Counsel represents that the merits of the attorney fee request will be fully briefed at final approval.

Although the court may ultimately approve the requested fees and litigation costs, counsel is expected to provide some evidentiary basis for the requested fees when requesting preliminary approval of the settlement. The same was requested following the first motion for preliminary approval on January 14, 2025 and no evidence was produced with this subsequent submission. The court does not intend to preliminarily approve the attorney fees requested without reviewing evidence of the hours worked and billing rates of the attorneys.

4. PAYMENT TO CLASS ADMINISTRATOR

The settlement provides that the settlement administrator ILYM Goup, Inc. will be paid $7,750. The moving papers provide no evidence, such as an estimate for the services from the proposed settlement administrator, demonstrating that the amount to be approved is representative of the cost of services to be performed.

5. PAGA CLAIM AND NOTICE TO LWDA

"An employee plaintiff suing, as here, under [PAGA], does so as the proxy or agent of the state's labor law enforcement agencies." *Raines v. Coastal Pacific Food*

Distributors, Inc. (2018) 23 Cal. App. 5th 667, 674. For that reason, Labor Code section 2699(l)(2) requires that any proposed settlement of a PAGA claim be submitted to the Labor Workforce Development Agency at the same time it was submitted to the Court. Plaintiffs' counsel has shown that notice of the settlement has been sent to the LWDA. (Lab. Code, § 2699, subd. (*l*)(2); Yslas Decl., ¶ 8, Exh. 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: JS on 6/2/2025.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Yang v. Farmer et al.***
Superior Court Case No. 24CECG01894

Hearing Date: June 4, 2025 (Dept. 503)

Motion: By Plaintiff Bao Yang for Relief Pursuant to Code of Civil Procedure Section 1281.97

Tentative Ruling:

To grant and vacate the September 4, 2024, Order compelling the parties to arbitration and staying the action pending arbitration. To order the March 4, 2026, Status Conference off calendar. To set the matter for Case Management Conference on July 15, 2025, 3:30 p.m. in Department 503. To impose a monetary sanction against defendant Cross River Bank, in favor of plaintiff Bao Yang, in the amount of $8,125.98, payable no later than thirty (30) days from the date of service of this order.

Explanation:

Plaintiff Bao Yang ("Plaintiff") seeks attorney's fees incurred on the aborted arbitration, pursuant to Code of Civil Procedure section 1281.97. Defendant Cross River Bank ("Defendant") opposes on two grounds: the Federal Arbitration Act ("FAA") preempts the application of the state statute; and should the court find no preemption, defendant was not in material breach as defined by the statute.

Preemption

Defendant raises in opposition the threshold issue of preemption. As both parties impliedly acknowledge, there is a split of authority as to whether Code of Civil Procedure section 1281.97 is preempted by federal law, namely the Federal Arbitration Act ("FAA"). The parties acknowledge that the split of authority has been recognized by the California Supreme Court, who has granted review of the split of authority. It is uncontested that the question certified to the California Supreme Court is whether the FAA preempts the California law now at issue. Under these circumstances, the trial court may exercise discretion to choose between the conflict of authority. (*E.g.*, *Hernandez v. Sohnen Enterprises* (2024) 102 Cal.App.5th 222, review granted August 21, 2024, S285696; Cal. Rules of Ct., rule 8.1115(e)(3).) For the following reasons, the court finds that there is no preemption.

It is uncontested that the language of the arbitration provision has a choice of law, in favor of the FAA, and only the FAA. (Sarabian Decl., ¶ 15 and Ex. 11 thereto.) This is sufficient to find that the FAA applies to the arbitration agreement. (*See*, *e.g.*, *Cronus Investments, Inc. v. Concierge Services* (2005) 35 Cal.4th 376, 387-394 [discussing the treatment of choice-of-law conflicts, and concluding that parties are not precluded from expressly designating that arbitration proceedings be governed by FAA procedural provisions].) When the FAA applies, it will preempt state substantive laws that conflict with

the policies of the FAA. (*AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 341.) The FAA will also preempt state law that singles out arbitration agreements in order to impose requirements on them that subtly discourage their formation or enforcement. (*Id.* at pp. 343-344.)

However, there is no federal policy favoring arbitration under a certain set of procedural rules. (*Volt Information Sciences, Inc. v. Board of Trustees* (1989) 489 U.S. 468, 476.) Thus, the FAA leaves room for states to enact some rules affecting arbitration. (*Mt. Diablo Medical Center v. Health Net of California, Inc.* (2002) 101 Cal.App.4th 711, 718.) State laws that single out procedural arbitration considerations are not preempted because those state laws are manifestly designed to encourage, rather than discourage, the arbitral process. (*Volt Information Sciences, Inc. v. Board of Trustees*, *supra*, 489 U.S. at p. 476.) Here, the state procedural statute singles out arbitration but is not in conflict with the FAA because it encourages the parties to properly engage in the arbitral process.

The FAA was motivated, first and foremost, by Congress's desire to enforce agreements to which parties had entered. (*Dean Witter Reynolds, Inc. v. Byrd* (1985) 470 U.S. 213, 219.) The second goal was to encourage efficient and speedy dispute resolution. (*Id.* at pp. 220-221.) Based on these two objectives, there is no preemption of Code of Civil Procedure section 1281.97. Code of Civil Procedure section 1281.97 specifically sought to address "individuals who have been forced to submit to mandatory arbitration to resolve an employment or consumer dispute" who, by this statute, "would be provided with procedural options and remedies… when a company stalls or obstructs the arbitration proceeding by refusing to pay the required fees." (Sen. Rules Com., Off. Of Sen. Floor Analyses, 3d reading analysis of Sen Bill No. 707 (2019-2020 Reg. Sess.) as amended May 20, 2019, p. 6.) This intent can neither be said to obstruct enforcement of arbitration proceedings, nor to discourage efficient and speedy resolution. (*See also Sink v. Aden Enterprises, Inc.* (9th Cir. 2003) 352 F.3d 1197, 1200-1201 [finding that the FAA would be frustrated if a party were allowed to refuse to cooperate in arbitration to indefinitely postpone litigation].)

For the above reasons, the court finds no federal preemption of Code of Civil Procedure section 1281.97, and proceeds. (*Gallo v. Wood Ranch USA, Inc.* (2022) 81 Cal.App.5th 621.)

Applicability

Code of Civil Procedure section 1281.97 provides, in pertinent part:

> In an employment or consumer arbitration that requires, either expressly or through application of state or federal law or the rules of the arbitration provider, the drafting party to pay certain fees and costs before the arbitration can proceed, if the fees or costs requirements necessary to initiate an arbitration proceeding are not paid within 30 days after the due date the drafting party is in material breach of the arbitration agreement, is in default of the arbitration, and waives its right to compel arbitration under [Code of Civil Procedure] Section 1281.2. (Code Civ. Proc. § 1281.97, subd. (a)(1).)

Plaintiff submits that Defendant materially breached the arbitration provision because Defendant failed to pay the costs necessary to initiate the arbitration proceeding within 30 days after the due date. Upon review of the invoice, the invoice indicates that the balance is due upon receipt. (Sarabian Decl., Ex. 3.) Moreover, the invoice provides notice that due to state law, AAA is unable to extend the payment deadline. (*Ibid.*) A cover letter to the invoice was served concurrently. (*Id.*, Ex. 4.) The cover letter appears to advise of the same, that payment is due 30 days from the date of receipt, and no later than December 17, 2024. (*Ibid.*) On January 3, 2025, more than two weeks after the deadline to pay, AAA closed the matter for failure to pay the filing fee. (*Id.*, Ex. 7.) The court finds that Defendant is in material breach within the meaning of Code of Civil Procedure section 1281.97.

Defendant opposes. Defendant submits an explanation. Defendant states that the invoice was not received by current counsel, Rich McPherson then recently moved to Bowman and Brooke, but rather Alexandra Hider at McGuireWoods. This does not excuse performance to pay filing fees as they come due, nor is it Plaintiff's duty to bear those consequences. AAA provided notice to Cross River Bank. Whether it was by counsel of convenience or trial counsel, notice was provided. Counsel here does not argue that McGuireWoods never represented Cross River Bank, nor that Cross River Bank itself was not apprised of the situation. Counsel merely argues that he personally did not receive an invoice. (McPherson Decl., ¶ 5.) Counsel here does not suggest that the notice served on November 17, 2024 postdated his client's election to move to a new firm. (*See id.*, ¶ 6.) Through no fault of Plaintiff, Defendant defaulted on arbitration to which it was aware would be occurring. (Sarabian Decl., Ex. 2.)

Where the drafting party materially breaches the arbitration provision and is in default, the consumer may unilaterally elect to, among other things, withdraw the claim from arbitration and proceed in a court of appropriate jurisdiction. (Code Civ. Proc. § 1281.987 subd. (b)(1).) If the consumer withdraws the claim from arbitration and proceeds in a court of appropriate jurisdiction, the consumer may bring a motion to recover all attorney's fees and all costs associated with the abandoned arbitration proceeding, without regard to any findings on the merits in the underlying action. (*Id.*, § 1281.97, subd. (d).) Where such a motion is made, the court shall impose a monetary sanction by ordering the drafting party to pay the reasonable expenses, including attorney's fees and costs, incurred by the consumer as a result of the material breach. (*Id.* § 1281.97, subd. (d). 1281.99, subd. (a).)

Plaintiff seeks to recover approximately 23 attorney hours, at a rate of $350 per hour, for a total fee request, inclusive of costs, of $8,125.98. The court finds the rate reasonable, and imposes a monetary sanction in the amount of $8,125.98 against defendant Cross River Bank.[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

[1] In the event argument is requested, the court will consider a request for additional time in preparation for and attendance at hearing.

will constitute notice of the order.

Tentative Ruling
Issued By: JS on 6/2/2025.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***David Castaneda v. Jonah Bielcher***
Superior Court Case No. 23CECG00430

Hearing Date: June 4, 2025 (Dept. 503)

Motion: Default Prove-Up

Tentative Ruling:

To take off calendar, as no moving papers have been filed.

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 6/2/2025.
(Judge's initials) (Date)