Tentative Rulings for February 7, 2023
Department 502

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 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

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(27)

<u>Tentative Ruling</u>

Re: ***Paul Singer v. Brian Weldon***
Superior Court Case No. 18CECG03151

Hearing Date: February 7, 2023 (Dept. 502)

Motion: By Plaintiff to Deem the Truth of Matters Specified in Request for Admissions, set no. one, Admitted and Request for Monetary Sanctions

Tentative Ruling:

To deny.

Explanation:

Plaintiff's declaration states that "[o]n 11/08/2022 my office served Plaintiff's Request for Admissions, Set One, on Defendant Brian Weldon ("Defendant")." (Singer, Decl. ¶ 2.) Paragraph 2 refers to Exhibit A, but there is <u>*no*</u> proof of service showing service of the request for admissions on November 8, 2022 or at any other time. (Code Civ. Proc., § 2033.070.)

Furthermore, defense counsel has also provided uncontroverted evidence that the requests for admissions was not received until December 29, 2022 (Waters, Decl. ¶ 9), and notes that the only service information plaintiff eventually provided concerned a document facially unrelated to discovery (affidavit of truth, with no reference to propounded discovery). (*Id*. at ¶ 12.)

Consequently, plaintiff has not shown he is entitled to the relief requested. In addition, defense counsel also notes and provides proof that responses have since been served on January 12, 2023, and thus the merits of the motion are moot. (Waters, Decl., Ex. I; *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 409; *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 778.)

Monetary sanctions are mandatory "on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated this motion." (Code Civ. Proc., § 2033.280, subd. (c).) It does not appear that this motion was necessary because plaintiff has not shown that the subject requests for admissions were served on November 8, 2022 and defendant's uncontroverted evidence indicates that responses were provided within days of receiving the requests once they were provided on December 29, 2022. Furthermore, monetary discovery sanctions are not recoverable by self-represented litigants. (*Argaman v. Ratan* (1999) 73 Cal.App.4th 1173, 1175.) Therefore, the request for monetary sanctions is denied.

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 02/03/23.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***Villegas v. Progressive Casualty Insurance Company***
Superior Court Case No. 22CECG02055

Hearing Date: February 7, 2023 (Dept. 502)

Motion: By Plaintiffs to Compel Arbitration and for Stay of the Entire Action (Including Discovery)

Tentative Ruling:

To grant the petition to compel arbitration of the parties' dispute. (Code Civ. Proc., § 1281.2.) The arbitration shall be conducted under the JAMS rules for consumer arbitrations. To stay the pending court action until the arbitration has been resolved. (Code Civ. Proc., § 1281.4.) To order defendant to pay plaintiffs' court costs in the amount of $514.16. (Code Civ. Proc., § 1293.2.) Defendant shall pay costs to plaintiffs within 30 days of the date of this order.

Explanation:

Pursuant to 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.)

"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 [citations].'" (*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.] In determining the scope of an arbitration clause, "[t]he court should attempt to give effect to the parties' intentions, in light of the usual and ordinary meaning of the contractual language and the circumstances under which the agreement was made [citation]." [Citation.]' [¶] Following on from this, and as other courts of appeal have regularly observed, the terms of the specific arbitration clause under consideration must reasonably cover the dispute as to which arbitration is requested. This is so because '[t]here is no public policy favoring arbitration of disputes which the parties have not agreed to arbitrate.'" (*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 § 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.) Thus, in ruling on a motion to compel arbitration, the court must first determine whether the parties actually agreed to arbitrate the dispute, and 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.)

Here, plaintiffs have met their initial burden of showing that there is an agreement to arbitrate disputes between them, and that their claims fall within the agreement. The insurance policy issued by defendant to plaintiff contains an arbitration clause that covers disputes regarding uninsured motorist coverage. (See Exhibit A to Bonakdar decl., pp. 14-15.) Plaintiffs were involved in an accident with an uninsured motorist, but defendant has denied their claim. (Villegas decl., ¶¶ 4-7.) Plaintiffs demanded arbitration under the insurance policy, but defendant has refused to go to arbitration. (Bonakdar decl., ¶ 5.) Therefore, plaintiff has met its burden of showing that an agreement to arbitrate the dispute exists, that it covers the present dispute regarding uninsured motorist coverage, and that defendant has refused to participate in arbitration despite a demand to do so.

Defendant has not filed any opposition to the motion to compel arbitration, nor has it provided any evidence, authorities, or argument that would tend to show that it has a valid defense that would make the arbitration clause unenforceable. As a result, the court intends to order the parties to attend arbitration of their dispute as requested by plaintiffs. The court also orders the parties to arbitrate their dispute through JAMS under its rules for consumer arbitration. Furthermore, the court will stay the pending court

proceedings until the arbitration is resolved. (Code Civ. Proc. § 1281.4.) The court also orders defendant to pay plaintiffs' court costs in bringing the present petition to compel arbitration, in the amount of $514.16. (Code Civ. Proc. § 1293.2.)

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 02/03/23 .
(Judge's initials) (Date)