Tentative Rulings for April 10, 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

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The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

22CECG02227 ***Gabriel Parra v. Willitts Equipment & Engineering Co., Inc.*** **is continued to Thursday, June 6, 2024, at 3:30 p.m. in Department 501**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

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(20)

Tentative Ruling

Re: ***Montiel v. Alqadhi***
Superior Court Case No. 20CECG02029

Hearing Date: April 10, 2024 (Dept. 501)

Motion: to Extinguish Judgment Lien

Tentative Ruling:

To grant. The judgment lien recorded on 4/26/2022 is extinguished *nunc pro tunc* as of the date of recording.

Explanation:

The Complaint in this matter was filed on 7/14/20. On 8/6/20 plaintiff filed a proof of service ("POS") of defendant stating that defendant was served on 7/29/20. Defendant's default was the entered on 9/3/20, and a monetary judgment was entered on 3/3/22. On 4/26/22, plaintiff recorded a lien based on the default judgment in Fresno County. On 5/11/23 the court granted defendant's motion to set aside the judgment on the showing that defendant was not actually served as claimed in the POS.

Because plaintiff had passed away prior to the order setting aside the judgment, defendant has not been able to get plaintiff's counsel to withdraw or remove the judgment lien. Defendant now seeks relief from this court to extinguish the judgment lien. As shown in the moving papers, the time in which to appeal the order vacating the judgment has expired.

In light of the fact that the judgment lien is based on a vacated judgment, and there appears to be no successor-in-interest in a position to voluntarily withdraw or remove it, an order extinguishing the judgment lien is warranted. Code of Civil Procedure section 187 provides the court authority to accomplish this result, though no specific statutory procedure is identified: "When jurisdiction is, by the Constitution or this Code, or by any other statute, conferred on a Court or judicial officer, all the means necessary to carry it into effect are also given; and in the exercise of this jurisdiction, if the course of proceeding be not specifically pointed out by this Code or the statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this Code." Accordingly, the court intends to grant the motion to set aside the

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 4/3/2024 .
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***Hacienda Homeowners for Justice v. La Hacienda Mobile Estates, LLC***
Case No. 23CECG03987

Hearing Date: April 10, 2024 (Dept. 501)

Motion: by City of Fresno for Leave to File Complaint in Intervention

Tentative Ruling:

To grant the City of Fresno's motion for leave to file its Complaint in Intervention. The City of Fresno ("City") shall file and serve its Complaint in Intervention within 10 days of the date of service of this order.

Explanation:

"The court may, upon timely application, permit a nonparty to intervene in the action or proceeding if the person has an interest in the matter in litigation, or in the success of either of the parties, or an interest against both." (Code Civ. Proc., § 387, subd. (d)(2).) "'If proper procedures are followed [citation], the court has *discretion* to permit a nonparty to intervene in litigation pending between others, provided: [¶] The nonparty has a *direct and immediate interest* in the litigation; and [¶] The intervention will *not enlarge* the issues in the case; and [¶] The reasons for intervention outweigh any opposition by the existing parties. [Citations.]'" (*Truck Ins. Exchange v. Superior Court (Transco Syndicate No. 1)* (1997) 60 Cal.App.4th 342, 346, citation omitted, italics in original.)

"The purpose of allowing intervention is to promote fairness by involving all parties potentially affected by a judgment. The right to intervene granted by section 387, subdivision (a), is not absolute, however; intervention is properly permitted only if the requirements of the statute have been satisfied. The trial court is vested with discretion to determine whether the standards for intervention have been met." (*Simpson Redwood Co. v. State of California* (1987) 196 Cal.App.3d 1192, 1199, citations omitted.)

"It is well settled that the intervener's interest in the matter in litigation must be direct, not consequential, and that it must be an interest which is proper to be determined in the action in which intervention is sought. The 'interest' referred to in section 387, subdivision (a), 'must be of such direct or immediate character, that the intervener will either gain or lose by the direct legal operation and effect of the judgment.' [¶] But the nature of the necessary direct interest in the litigation is undescribed by the statute. Nor is the decisional law helpful. As has been said: '[T]he point at which one's interest in the success of one of the parties to the action becomes direct, and not consequential, is not easily fixed. It has been the subject of much judicial discussion.' Whether the intervener's interest is sufficiently direct must be decided on the facts of each case. But it is established that the intervener need neither claim a

pecuniary interest nor a specific legal or equitable interest in the subject matter of the litigation. And section 387 should be liberally construed in favor of intervention. (*Id.* at pp. 1199–1200, citations omitted.)

In the present case, the City has shown that it has a direct and immediate interest in the issues presented by the case, since the City is the authority with jurisdiction over mobilehome parks within its boundaries. Under Government Code section 65863.7, the City is responsible for determining whether to approve the park owners' plan to close the park and relocate its residents. Plaintiffs' Complaint seeks to prevent defendant park owners from closing the park and evicting the residents until defendants have obtained City's approval of their closure and relocation plan. City has already rejected defendants' original closure plan, but defendants have indicated that they intend to go forward with the closure anyway. Obviously, City has a strong interest in ensuring that its authority over park closures is respected and that park owners do not close mobilehome parks without first obtaining approval of a closure plan. Therefore, City has a direct interest in the issues raised by the case.

Defendants argue that City's interest in the case is being adequately represented by plaintiffs, and that the court has already granted a preliminary injunction preventing defendants from closing the park and evicting the residents until a closure plan is approved by City. Therefore, defendants contend that the motion to intervene should be denied. Yet, while it is true that the court has already granted a preliminary injunction to prevent defendants from closing the park without first obtaining City's approval of their closure plan, it does not appear that the issuance of the injunction has mooted City's request to intervene in the action. City still has a direct interest in ensuring that its authority over mobilehome parks is protected. Plaintiffs may settle with defendants, which would potentially lift the preliminary injunction and leave City's interests unprotected in the action. Therefore, the court intends to find that City continues to have a direct interest in the action.

Also, while defendants argue that intervention should not be granted when the proposed intervener's interests are being adequately represented by an existing party to the action, defendants rely on section 387, subdivision (d)(1)(B), which is the mandatory intervention portion of the statute. Here, City is moving to intervene under section 387, subdivision (d)(2), which gives the court discretion to grant leave to intervene if the moving party shows that it has an interest in the litigation, or the success of either of the parties, or an interest against both. There is no requirement under section 387(d)(2) that the proposed intervener show that its interests are not already being adequately represented by one of the existing parties. As a result, defendants have failed to show that City does not have an interest in the action sufficient to support its request to intervene.

City has also shown that allowing it to intervene would not enlarge the issues of the case, as its proposed Complaint in Intervention would simply seek declaratory and injunctive relief requiring defendants to comply with Government Code section 65863.7. This is the same type of relief that plaintiffs have already sought in the case, so City's Complaint in Intervention would not add any new claims or issues to the case.

Finally, City's motion is timely, as City brought its motion in February 2024, shortly after plaintiffs filed their action and defendants filed their responsive pleading. City claims that it filed its motion as soon as it learned that it might need to intervene to protect its interest in regulating the mobilehome park and preventing defendants from closing the park prematurely. While defendants contend that City unduly delayed in bringing its motion to intervene because City has known for months or years about the potential problems with the park and the fact that defendants wanted to close the park, defendants have failed to show that City excessively delayed in seeking to intervene and caused material harm to defendants' interests as a result.

"[I]ntervention is possible, if otherwise appropriate, at any time, even after judgment." (*Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 437, citation omitted.) "[T]he timeliness of a motion to intervene under section 387 should be determined based on the date the proposed interveners knew or should have known their interests in the litigation were not being adequately represented." (*Ziani Homeowners Assn. v. Brookfield Ziani LLC* (2015) 243 Cal.App.4th 274, 282, citation omitted.) However, even where there has been some delay in seeking leave to intervene, if intervention would not cause any material impairment of the other parties' rights, the court should grant leave to intervene. "[T]imeliness is hardly a reason to bar intervention when a direct interest is demonstrated and the real parties in interest have not shown any prejudice other than being required to prove their case." (*Truck Ins. Exchange v. Superior Court*, *supra*, 60 Cal.App.4th at pp. 350–351.)

Here, City sought to intervene in February 2024, about five months after plaintiffs filed their Complaint and only about three months after defendants filed their Answers. City also denied defendants' park closure plan on November 16, 2023, about three months before City filed its motion to intervene. Arguably, City had no direct interest in the litigation until defendants' plan was rejected and they announced that they intended to go forward with the park closure anyway. At that point, City had a direct interest in ensuring that defendants did not close the park without first obtaining City's approval of the park closure plan.

Also, defendants have not shown that they would suffer any real prejudice if the court grants the motion to intervene. They argue that they would incur additional costs to defend the action if City intervenes. However, the fact that defendants might have to incur additional legal costs alone is not enough to show actual prejudice, as any time a party is allowed to intervene, it is likely to increase the cost to the other parties to litigate the action. If defendants' argument were correct, then no party would ever be allowed to intervene. Clearly, this cannot be correct. In any event, City is not raising any new issues or claims that are substantially different from the issues and claims already asserted by plaintiffs, so any increased costs of litigation if City intervenes are likely to be minimal.

As a result, the court intends to grant City's motion for leave to file its Complaint in Intervention.

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 4/4/2024.
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: ***Harjit Singh v. Sukhdev GIll***
Superior Court Case No. 24CECG00218

Hearing Date: April 10, 2024 (Dept. 501)

Motion: by Plaintiff for Appointment of Receiver and Preliminary Injunction

Tentative Ruling:

To deny, without prejudice.

Explanation:

"The appointment of a receiver rests largely in the discretion of the trial court ...." (*Goes v. Perry* (1941) 18 Cal.2d 373, 381.) However, it "is a drastic remedy, may involve unnecessary expense and hardship and courts carefully weigh the propriety of such appointment in exercising their discretion to appoint a receiver particularly if there is an alternative remedy." (*Hoover v. Galbraith* (1972) 7 Cal.3d 519, 528.) Accordingly, "[o]rdinarily, if there is any other remedy, less severe in its results, which will adequately protect the rights of the parties, a court should not take property out of the hands of its owners." (*Golden State Glass Corp. v. Superior Court of Los Angeles County* (1939) 13 Cal.2d 384, 393, internal citations omitted.)

In addition, "[t]he general purpose of such an injunction is the preservation of the status quo until a final determination of the merits of the action." (*Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 528.) " '[T]he trial court is the judge of the credibility of the affidavits filed in support of the application for preliminary injunction and it is that court's province to resolve conflicts.' " (*Hilb, Rogal & Hamilton Ins. Services v. Robb* (1995) 33 Cal.App.4th 1812, 1820.)

Plaintiff's proposed order is comprehensive - to say the least. It spans twelve pages and includes numerous specific instructions to the proposed receiver (indicating expense and vigorous oversight) and requires the enjoined parties to immediately engage in burdensome efforts to turnover records and "monies." Yet, the basis for such drastic measures is furnished in only two minimal paragraphs of plaintiff's declaration stating, generally, and in conclusory fashion, that he has been denied access to the subject property. (See Singh, Decl. ¶¶ 9-10.) Plaintiff does not describe his attempts to access the property, attendant written correspondence, or specific representations by defendants. In other words, plaintiff's evidence is insufficient to justify the drastic remedy of imposing a receiver and injunctive relief. Finally, plaintiff's motion does not address the issue of an undertaking. (See Code Civ. Proc., § 529.)

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 ___4/8/2024___.
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: ***Shayla Scott v. Calvin Freeman***
Superior Court Case No. 23CECG04848

Hearing Date: April 10, 2024 (Dept. 501)

Motion: by Defendant for an Order Compelling Arbitration

Tentative Ruling:

To grant and order plaintiff to arbitrate her claims. The action is stayed pending completion of arbitration. (9 U.S.C. § 3.)

Explanation:

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.) Similarly, cases applying Federal Arbitration Association rules note that, " 'doubts concerning the scope of arbitrable issues [being] resolved in favor of arbitration [citations].'" (*Market Ins. Corp. v. Integrity Ins. Co*., supra, 188 Cal. App. 3d at p. 1098; *Western Bagel Company, Inc. v. Superior Court of Los Angeles County* (2021) 66 Cal.App.5th 649, 654-655.)

In essence, "[t]he petitioner bears the burden of proving the existence of a valid arbitration agreement by a preponderance of the evidence, while a party opposing the petition bears the burden of proving by a preponderance of the evidence any fact necessary to its defense. The trial court sits as the trier of fact, weighing all the affidavits, declarations, and other documentary evidence, and any oral testimony the court may receive at its discretion, to reach a final determination." (*Ruiz v. Moss Bros. Auto Group, Inc.* (2014) 232 Cal.App.4th 836, 842, (*Ruiz*) internal citations omitted.)

"'In California, "[g]eneral principles of contract law determine whether the parties have entered a binding agreement to arbitrate,"' and the party seeking arbitration bears the burden of proving the existence of an arbitration agreement." (*Ruiz, supra,* 232 Cal.App.4th at p. 842, internal citations omitted.) Where the moving party relies on a written agreement purportedly signed by the plaintiff, the moving party must authenticate the agreement before it may be received into evidence. (*Id*. at p. 843.) " 'Authentication of a writing means (a) the introduction of evidence *sufficient to sustain a finding that it is the writing that the proponent of the evidence claims it is* or (b) the establishment of such facts by any other means provided by law.'" (*Ibid*, internal citations omitted.)

A declaration which details security precautions, the use of an employee's unique username and passwords, and the "the steps an applicant would have to take to place his or her name on the signature line" have been found sufficient to authenticate an

electronic signature and agreement to arbitrate. (*Espejo v. Southern California Permanente Medical Group* (2016) 246 Cal.App.4th 1047, 1062 (*Espejo*) [noting that "critical factual connection" in *Ruiz, supra,* 232 Cal.App.4th at p. 844 was provided in a supplemental declaration].)

Here, defendants support their motion with a declaration from Michelle Chrysler ("Chrysler"), who is a Director of Finance & Human Resources with Popeye's parent company – co-defendant California QSR Management, Inc. Chrysler attests to her assigned responsibility for overseeing the company's hiring and onboarding process and new hire orientation. She also is one of the custodian of records for employee personnel records.

Chrysler's declaration includes a detailed summary of the individualized automated process "onboarding" through an independent software system (iProcess Online). This process begins when a new employee is hired, and is created through unique employee supplied identity information including contact information (personal email address and cell phone number) and numeric (PIN) number. This detailed information (especially the unique employee created identifier) supplied by a director of human resources with personal knowledge of the subject onboarding procedures and plaintiff's records is consistent with that found sufficient in *Espejo, supra,* 246 Cal.App.4th at 1062, and thus is similarly satisfactory here. Accordingly, plaintiff's objections to Chrysler's declaration are overruled and the declaration sufficient to authenticate plaintiff's signature.

Part of the onboarding process includes policy review and agreements, and a new employee must enter their PIN to sign each agreement, including the arbitration agreement. (Chrysler, Decl. ¶¶ 6-7.) Chrysler has personal knowledge of plaintiff's personnel records and notes that plaintiff's arbitration agreement was electronically signed on November 19, 2020 at 11:53 p.m.

Plaintiff argues that she has no knowledge of the iProcess system nor the existence of the arbitration agreement. In particular, plaintiff's opposition argues that plaintiff "never received, obtained, or was shown a copy of any arbitration agreement at any point during her employment with [d]efendants." (Opp. at p. 4:2-3[1].) Nevertheless, plaintiff does not present, nor does she even assert, that her onboarding documents were presented or maintained in another (i.e., paper hardcopy) form. Furthermore, as discussed above, plaintiff's unsupported claim is insufficient to rebut the detailed evidence supplied in Chrysler's declaration. (*Espejo, supra,* 246 Cal.App.4th at 1062; *Market Ins. Corp. v. Integrity Ins. Co., supra*, 188 Cal. App. 3d at p. 1098.)

Plaintiff also contends that the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (9 U.S.C. §§ 401, 402 (the "Act")) enacted in March, 2022 bars compelling arbitration in this case. (Opp. at p. 6:26.) Without page citation, plaintiff relies on *Kader v. Southern California Medical Center* (2024) 99 Cal.App.4th 214 (*Kader*) for the

[1] Plaintiff attempts to support her claim that she was not presented with the subject arbitration agreement with a reference to her own declaration. That declaration does not appear to have been filed with the court. Nevertheless, assuming the omission was inadvertent and assuming the accuracy of the citation, as discussed infra, plaintiff's argument is inapposite.

proposition that her claim did not "arise" for purposes of the Act until she filed her charge with the California Civil Rights Department in October, 2023. In *Kader*, however, the Second District emphasized the "fact-specific inquiry" of application of the Act, and held the absence of evidence demonstrating the existence of a dispute prior to the filing of administrative charges in _May_, 2022 (i.e. just after the Act's enactment) rendered the plaintiff's claim timely. (*Id*. at p. 224.) Here, in contrast, plaintiff alleges she began complaining of mistreatment as early as November of 2020 – specifically alleging she complained directly to defendants Calvin Freeman and Kristin Morris "at least ten times". (Complaint, ¶ 16.) Accordingly, unlike the absence of pre-charge dispute evidence in Kader, here plaintiff's own allegations indicate the existence of a dispute well before the Act's enactment and her administrative charge.

In addition, plaintiff contends the arbitration agreement is unconscionable because she does not recall its existence and that it gives discovery discretion to the arbitrator. However, as discussed above, defendants' evidence of a standardized automated onboarding process remains uncontroverted and plaintiff presents no evidence that the arbitrator will deny plaintiff's discovery rights. Finally, although plaintiff criticizes the notification and enforceability provisions, those provisions do not compromise arbitrator neutrality. (See *Armendariz v. Foundation Health Psychcare Services, Inc*. (2000) 24 Cal.4th 83, at pp. 110-111.)

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 4/8/2024 .
(Judge's initials) (Date)