

Tentative Rulings for April 17, 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*

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

18CECG04240 *Gina Esteras v. JD Home Rentals* is continued to Thursday, May 23, 2024, at 3:30 p.m. in Department 501

23CECG05289 *Diane Hensley v. Paula Bremel* is continued to Wednesday, May 1, 2024, at 3:30 p.m. in Department 501

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Tentative Rulings for Department 501

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Tentative Ruling

Re: **Aspire Federal Credit Union v. Lev Protas**
Superior Court Case No. 22CECG00128

Hearing Date: Date April 17, 2024 (Dept. 501)

Motion: by Plaintiff for Order Amending Judgment Nunc Pro Tunc

Tentative Ruling:

To grant and sign the proposed order. No appearances are necessary.

Explanation:

Plaintiff requests the court to amend the judgment entered on November 27, 2023, to enter plaintiff's name correctly as Pentagon Federal Credit Union. The court finds the amendment merely clarifies the court's original intent. Therefore, it is appropriate to amend the judgment nunc pro tunc to November 27, 2023, to change the plaintiff's name from Aspire Federal Credit Union to Pentagon Federal Credit Union. (*Young v. Gardner-Denver Co.* (1966) 244 Cal.App.2d 915, 919.)

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 4/15/2024.
(Judge's initials) (Date)

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Tentative Ruling

Re: ***Kristy Childress v. Kindred Hospice, Inc., et al.***
Superior Court Case No. 22CECG01637

Hearing Date: April 17, 2024 (Dept. 501)

Motion: Default Prove-Up

Tentative Ruling:

To deny without prejudice.

Explanation:

At the prior default hearing on September 20, 2023, the court adopted the tentative ruling in which the court *clearly* laid out why default judgment could not be granted in favor of plaintiff. The court refers plaintiff to that ruling for further particulars. Plaintiff did not remedy the errors mentioned there and did not provide a complete default judgment packet for review at this default hearing.

More importantly, chief among the problems with entry of judgment is that the Complaint does not state an amount of damages, so no judgment can issue on the complaint as now stated. (*Marriage of Lippel* (1990) 51 Cal.3d 1160, 1166 (due process requires plaintiff to give notice of specific relief sought); *Greenup v. Rodman* (1986) 42 Cal.3d 822, 824 (demand of complaint sets ceiling on recovery).) Plaintiff would have to amend the complaint to state an amount of damages, which would open the default of defendant Kindred Hospice, Inc. (*Ostling v. Loring* (1994) 27 Cal.App.4th 1731, 1744 (material amendment to complaint opens defendant's default).) No judgment can issue as to the Doe defendants because they have not yet appeared in the action, and may not even have been served yet. Plaintiff must show better progress in moving this case along.

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 4/15/2024.
(Judge's initials) (Date)

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Tentative Ruling

Re: **J&V Fresno, LLC v. Blunt**
Superior Court Case No. 22CECG02270

Hearing Date: April 17, 2024 (Dept. 501)

Motion: by Plaintiff J&V Fresno, LLC to Enforce Settlement

Tentative Ruling:

To deny without prejudice.

Explanation:

Code of Civil Procedure section 664.6 provides as follows: "If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court . . . for settlement of the case . . . the court, upon motion, may enter judgment pursuant to the terms of the settlement." It also provides that the parties may request that the court "retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement." (Code Civ. Proc. § 664.6.) Due to the summary nature of the statute authorizing judgment to enforce a settlement agreement, strict compliance with its requirements is prerequisite to invoking the power of the court to impose a settlement agreement. (*J.B.B. Investment Partners, Ltd. v. Fair* (2014) 232 Cal.App.4th 974, 984.)

Here, plaintiff J&V Fresno, LLC submits a writing, signed by the parties, made outside the presence of the court, and the court has agreed to retain jurisdiction pursuant to the parties' stipulation. (Sarabian Decl., ¶ 3, Exhs. 1 and 3.) The agreement contemplated the repayment of certain unpaid balances. (*Ibid.*) The pertinent terms of the settlement were as such:

1. The parties were to enter into a New Lease of the premises, naming J&V Fresno, LLC as the landlord and Blunt Man, Inc. as tenant. A copy of the lease was attached and "all of the terms of which are expressly incorporated herein by reference."
2. Defendant Michael Blunt was to execute a personal guaranty guaranteeing the performance of the corporation on the New Lease. A copy of the guaranty was attached and the terms expressly incorporated into the settlement agreement by reference.
3. The Past Due Rent on the original lease in the amount of \$200,000 in rent and CAM charges was to be paid at 8% interest and amortized over a ten-year term with the first payment due on October 15, 2023.

(Sarabian Decl., Exh. 1, ¶¶ 1-3.)

Plaintiff moves to enforce the settlement agreement and the incorporated New Lease and personal guaranty thereof by defendant Michael Blunt after defendant terminated his tenancy under the New Lease in March 2024 and failed to make

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Tentative Ruling

Re: **Joseph Chacon v. Vroom Automotive, LLC**
Superior Court Case No. 23CECG01397

Hearing Date: April 17, 2024 (Dept. 501)

Motion: by Defendant Vroom Automotive LLC for an Order
Compelling Arbitration and Staying Proceedings

Tentative Ruling:

To grant and order plaintiff to arbitrate the subject claims against all defendants. The action is stayed pending completion of arbitration. (Code Civ. Proc., § 1281.4.)

Explanation:

“California law, like federal law, favors enforcement of valid arbitration agreements.” (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 97.) “When presented with a petition to compel arbitration, the initial issue before the court is whether an agreement has been formed.” (*Diaz v. Sohnen Enterprises* (2019) 34 Cal.App.5th 126, 129.) Then, “[o]nce the moving party has satisfied its burden, the litigant opposing arbitration must demonstrate grounds which require that the agreement to arbitrate not be enforced.” (*Harris v. TAP Worldwide* (2016) 248 Cal.App.4th 373, 380-381.)

Defendant Vroom Automotive LLC's motion presents the subject arbitration agreement containing plaintiff's unchallenged signature and vehicle information (matching the vehicle description alleged in the complaint). Plaintiff contends, primarily, that the movant's name differs from the contracting name, but he offers no evidence that the difference is material (if any) nor that the arbitration agreement asserted is different than the transaction agreement referred to in the complaint. Similarly, plaintiff's request for rescission is insufficient to preclude arbitration. (*St. Agnes Medical Center v. PacificCare of California* (2003) 31 Cal.4th 1187, 1198-1199 (*St. Agnes*) [“By entering into the arbitration agreement, the parties established their intent that disputes coming within the agreement's scope be determined by an arbitrator rather than a court; this contractual intent must be respected even with regard to claims of fraud in the inducement of the contract generally.”].)

In addition, plaintiff has not satisfied the “heavy burden” required to establish waiver. (*St. Agnes, supra*, 31 Cal.4th at p. 1195.) In particular, to the extent defendant participated in litigation and let matters “play out” (as plaintiff describes it), the record indicates little activity - with the exception of efforts expended to place the issue of compelling arbitration before the court. (*Id.* at p. 1203 [“mere expense of responding to motions or other preliminary pleadings filed in court is not the type of prejudice that bars a later petition to compel arbitration”].)

