**Tentative Rulings for May 23, 2024**
**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)**

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**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.**

**21CECG03231** ***Sequoia Valery v. Turner Security Systems, Inc*****. is continued to Tuesday, June 25, 2024, at 3:30 p.m. in Department 503**

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**(Tentative Rulings begin at the next page)**

# Tentative Rulings for Department 503

Begin at the next page

(35)

**Tentative Ruling**

Re: ***Caruso v. City of Fresno et al.***
Superior Court Case No. 19CECG02382

Hearing Date: May 23, 2024 (Dept. 503)

Motion: By Defendant City of Fresno for Judgment on the Pleadings

**Tentative Ruling:**

To grant, with leave to amend.

**Explanation:**

Defendant City of Fresno ("Defendant") seeks judgment on the pleadings of the First Amended Complaint ("FAC") by plaintiff Janice Caruso ("Plaintiff") as to the second cause of action for negligence under Code of Civil Procedure section 438, subdivision (c)(1)(B)(ii). Defendant submits that the second cause of action fails to state sufficient facts on three grounds: (1) as a public entity, it is immune from direct common law claims; (2) as a public entity, it cannot be held vicariously liable for its employees when it was the actor, not the employees; and (3) the claim is not sufficiently particularly pled.

A motion for judgment on the pleadings has the same function as a general demurrer but is made after the time for demurrer has expired, and so the rules governing demurrers apply. (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999.) As in demurrers, grounds for the motion must appear on the face of the challenged pleading or on facts which the court may judicially notice. (*Saltarelli & Steponovich v. Douglas* (1995) 40 Cal.App.4th 1, 5.)

When reviewing a pleading, a demurrer or motion for judgment on the pleadings admits the truth of all material allegations and a court will "give the complaint a reasonable interpretation by reading it as a whole and all its parts in their context." (*People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 300.) The standard of pleading is very liberal and a plaintiff need only plead "ultimate facts." (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.)

Defendant submits that as a public entity, it is immune to all common law claims under Government Code section 815. This is correct. (Gov. Code § 815.) No common law claims are authorized except to the extent that a statute allows it. (*Ibid.*) Defendant suggests that the further conclusion to draw from Government Code section 815 is that a public entity is never liable for direct actions because such claims are only common law claims. (*Lloyd v. County of Los Angeles* (2009) 172 Cal.App.4th 320, 329 ["*Llyod*"] However, at issue in *Lloyd* was a challenge to a *Tameny* action, wrongful termination in violation of public policy, which is not based on a statute. The *Lloyd* court accordingly held that no statute exists that authorizes a *Tameny* claim as to a public entity. (*Ibid. citing Miklosy v. Regents of the Univ. of Cal.* (2008) 44 Cal.4th 876, 900.) However, as Defendant's citations reveal, direct liability claims that are authorized by statute may be

pursued against a public entity. (*E.g.*, *Yee v. Superior Court* (2019) 31 Cal.App.5th 26, 40 [noting a distinction that while all public entities act through individuals, such allegations do not convert a direct negligence claim to one of vicarious liability] *citing Munoz v. City of Union City* (2004) 120 Cal.App.4th 1077, 1112 *disapproved on other grounds by Hayes v. County of San Diego* (2013) 57 Cal.4th 622 [stating that "direct tort liability of public entities must be based on a specific statute declaring them to be liable, or at least creating some specific duty of care, and not on the general tort provisions of Civil Code section 1714"].) Thus, contrary to Defendant's assertion, a claim may be brought even where the public entity is directly liable to the extent that a statute affords it. Even here, as an example, the FAC alleges liability under Government Code section 815.6, which allows direct liability to attach for any duty mandatorily imposed by an enactment designed to protect against the risk of a particular kind of injury. It is otherwise a pedantic distinction to conclude that a public entity is not directly liable on a common law claim of negligence, unless the duty is statutorily defined, which would make the claim a statutory claim and not a common law claim. The court finds that Defendant fails its burden as the moving party to demonstrate that Government Code section 815 bars any claim for direct liability.

Defendant next argues that a public entity cannot be vicariously liable for its own acts. This is also correct. Vicarious liability imparts liability that would flow from the actor, to a non-actor. By definition, if the non-actor acted, the claim is not through vicarious liability. (*Yee v. Superior Court*, *supra*, 31 Cal.App.5th at p. 40.) Namely, vicarious liability depends on the employee being independently liable for the act, the entity becoming liable because the employee's act was taken within the scope of employment. (*Ibid.*) This is a general truism that does not advance Defendant's motion. Defendant argues that a City employee has no authority or responsibility to maintain and/or repair a portion of the sidewalk. This goes to the merits of the claim. Whether an employee has authority or responsibility for anything is a question of fact not present on the face of the FAC. The FAC simply alleges that Defendant's acts or failures to act, its agents, or employees, are the basis for liability. The court finds that Defendant fails its burden as the moving party to demonstrate why the notion that vicarious liability is not founded on direct action is grounds for judgment on the pleadings.

Defendant finally argues that the claim is not sufficiently pled. The FAC is not sufficiently pled. Defendant argues that the FAC fails to state sufficient facts because it does not name an employee. This is not the standard. (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 875 *citing Lopez v. S. Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780 ["*Lopez* does not stand for the proposition that a plaintiff must specifically plead, before undertaking discovery, the *identity* of a government employee whose alleged negligence is made the basis for vicarious liability under section 815.2, and we doubt such an impracticable rule would be consistent with the legislative intent in enacting that statute."]) However, as Defendant additionally argues, the pleading is subject to the standard that every fact material to the existence of its statutory liability must be pled with particularity. (*Lopez v. S. Cal. Rapid Transit Dist.*, *supra*, 40 Cal.3d at p. 795.) To the extent that the FAC relies on Government Code sections 815.2, 815.4, 820 and 840.2, no facts are alleged as to what any public employee or independent contractor did that would cause liability. The FAC merely states legal conclusions that Defendant was subject to and violated certain statutory and regulatory standards.

For the same reason, the FAC fails to state sufficient facts as to a Government Code section 815.6 basis. While Plaintiff in opposition identifies bases that impose certain mandatory duties under the Streets and Highways Code or under local ordinances, none of these allegations are specifically pled in the FAC. (*Searcy v. Hemet Unified School Dist.* (1986) 177 Cal.App.3d 792, 802 [finding that to state a cause of action against a public entity, there must be an identification of the <u>specific statute</u> imposing the duty and facts stated to show the existence of the claimed duty].)

As to the Government Code section 830 and 835 bases, Defendant submits that the second cause of action for negligence is duplicative of the premises liability claim. Redundancy is not a basis to sustain a motion for judgment on the pleadings. (*See Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858, 889-890 [on demurrer].) The elimination of a duplicative claim previously would have been a grounds for a <u>motion to strike</u>; however, the statute that authorized such a basis was repealed in 1982. (*Id.* at p. 890.) This sort of defect is ordinarily dealt with most economically at trial, or on a dispositive motion such as summary judgment. (*Ibid.*)

Based on the above, the court finds that the second cause of action for general negligence fails to state sufficient facts to support the cause of action as to Plaintiff's claim against Defendant. The motion for judgment on the pleadings is therefore granted, with leave to amend.

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: <u>jyh</u> on <u>5/20/24</u>.**
(Judge's initials) (Date)

(35)

**Tentative Ruling**

Re: ***Mechanics Bank v. Alkobadi et al.***
Superior Court Case No. 24CECG01582

Hearing Date: May 23, 2024 (Dept. 503)

Motion: By Plaintiff Mechanics Bank to Appoint Receiver

**Tentative Ruling:**

To grant and appoint Peter F. Martin as receiver.

**Explanation:**

Plaintiff Mechanics Bank ("Plaintiff") seeks to appoint a receiver under Code of Civil Procedure sections 564 regarding the handling of the potential waste to secured property as well assignment of revenues earned by the secured property. Accordingly, Plaintiff argues that a receiver is necessary for the preservation of property rights as well as to enforce an assignment of rents. (Code Civ. Proc. § 564, subd. (b)(9), (11).)

The appointment of a receiver rests in the sound discretion of the court. (*Alhambra-Shumway Mines, Inc. v. Alhambra Gold Mine Corp*. (1953) 116 Cal.App.2d 869, 873.) Because the remedy of receivership is drastic in character, if there is any other remedy, less severe in its results, which will adequately protect the rights of the party, the property may remain in the hands of the owners. (*Ibid.*) Accordingly, where an injunction will protect all rights to which the applicant for a receiver appears to be entitled, a receiver will not be appointed. (*Ibid.*) However, the existence of other remedies alone does not preclude the appointment of a receiver. (*Sibert v. Shaver* (1952) 113 Cal.App.2d 19, 21.) The moving party seeking a receiver must demonstrate: a joint interest in the property; that the property is in danger of being lost, removed, or materially injured; and that the moving party's right to possession is probable. (*Alhambra-Shumway*, *supra*, 116 Cal.App.2d at p. 873.)

Here, Plaintiff submits that it is the assignee of a recorded deed of trust against the property in question, granted by defendant Saleh Alkobadi ("Defendant") against the secured property. (First Amended Verified Complaint, ¶ 19, and Ex. C thereto.) Plaintiff submits that the secured property is at risk of material injury via waste. (*Id.*, ¶¶ 22-30, and Ex. D thereto.) Plaintiff submits that the loan secured by the deed of trust came due and payable on March 15, 2024. (*Id.*, ¶ 31.) Plaintiff submits that Defendant is therefore in default of the loan, subject to the terms of the agreement regarding defaults. (*E.g.*, *id.*, ¶¶ 34-38.) Accordingly, the court finds that Plaintiff sufficiently demonstrates an interest in the property, and that the property is in danger of material injury for the purposes of appointing a receiver.

The terms of the agreement indicate that the loan matured on March 15, 2024, which made the unpaid principal balance, accrued interest and other charges due. (First Amended Verified Complaint, Ex. A, ¶ 1.04(c).) The terms of the agreement indicate that

default occurred after 10 days past the due date of any payment required under the agreement. (*Id.*, Ex. A, ¶ 7.0.1(a).) Accordingly, Plaintiff sufficiently demonstrates its right to probable possession under the agreement, including the enforcement of assignment of rents for the purposes of appointing a receiver. (*Id.*, Ex. C, ¶¶ 2.03, 8.01(a), 8.02.)

Plaintiff submits Peter F. Martin ("Martin") to act as receiver. Defendant did not file an opposition. The court finds that Martin is well-qualified and appoints Martin to act as receiver to abate the citations indicated in the First Amended Verified Complaint, and for collection of rents. The court notes its practice to thoroughly review the scope of work of the receiver for the relatively straightforward circumstances of most of the issues raised in the Correction Notice and Order, despite the list of over 700 violations present in the notice.

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: jyh on 5/20/24.**
(Judge's initials) (Date)

(03)

**Tentative Ruling**

Re: ***Alcala v. Certified Meat Products, Inc.***
Case No. 22CECG03628

Hearing Date: May 23, 2024 (Dept. 503)

Motion: Defendant's Motion to Compel Arbitration and Stay Proceedings

**Tentative Ruling:**

To deny defendant's motion to compel arbitration and stay proceedings.

**Explanation:**

California Code of Civil Procedure section 1281.2 states that, "[o]n 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, paragraph breaks omitted.)

"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, defendant has met its burden of showing that an agreement to arbitrate the parties' dispute exists. Defendant has presented evidence showing that, at that time he was hired, plaintiff signed an agreement to arbitrate any and all disputes between himself and defendant that might arise during his employment, including claims under the Labor Code and the Business and Professions Code. (Lloyd decl., ¶¶ 7-10, and Exhibits A and B thereto.) The agreement was presented in Spanish and English, and plaintiff was given time to read the agreement and ask questions before signing. (*Id*. at ¶ 10.) The agreement provides that an employee may opt out of the agreement within thirty days of signing, but there is no evidence in defendant's personnel records that plaintiff ever opted out. (*Id*. at ¶ 10.) Therefore, defendant has provided sufficient evidence to meet its burden of showing that there was an agreement to arbitrate between the parties that covered the plaintiff's claims here.

In opposition, plaintiff does not deny that he signed the agreement or that he agreed to arbitrate any disputes that he personally had with defendant arising out of his employment. Nor does he contend that the agreement is void or unenforceable. Instead, he contends that the agreement only applies to his individual claims, which he is no longer asserting. He argues that, since he is only asserting representative claims under PAGA, which cannot be compelled to arbitration, the motion to compel arbitration should be denied. In its reply, defendant argues that the court should still compel plaintiff to arbitrate his claims, as he needs to establish that he is actually an "aggrieved employee" under PAGA in order to have standing to bring representative claims on behalf of the other employees, and this is an issue that should be resolved in arbitration rather than in court under the agreement.

However, contrary to defendant's contention, a plaintiff does not have to prove up his status as an "aggrieved employee" in arbitration in order to bring a representative claim on behalf of other aggrieved employees under PAGA in court. In fact, the plaintiff does not even have to assert individual PAGA claims in order to bring a representative claim on behalf of the other employees.

In *Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104, the California Supreme Court recently held that a plaintiff asserting a PAGA claim does not lose standing to litigate representative claims on behalf of other aggrieved employees because the plaintiff signed an arbitration agreement that requires them to arbitrate their individual claims. "[A] worker becomes an 'aggrieved employee' with standing to litigate claims on behalf of fellow employees upon sustaining a Labor Code violation committed by his or her employer. Standing under PAGA is not affected by enforcement of an agreement to adjudicate a plaintiff's individual claim in another forum. Arbitrating a PAGA plaintiff's individual claim does not nullify the fact of the violation or extinguish the plaintiff's status as an aggrieved employee, any more than the time-barring of remedies did in *Johnson* or the settlement of the individual damages claims did in *Kim*. The operative complaint alleges that Adolph experienced Labor Code violations while driving for Uber. Under *Kim*, Adolph's allegations that Labor Code violations were committed against him while he was employed by Uber suffice to confer standing to bring a PAGA action." (*Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104, 1121, citations omitted.)

In *Balderas v. Fresh Start Harvesting, Inc.* (2024) 101 Cal.App.5th 533, the Second District Court of Appeal held that the trial court erred when it dismissed the plaintiff's PAGA case because she had not alleged any individual claims of her own under PAGA, and thus she did not have standing to bring PAGA claims on behalf of the other aggrieved employees. "Here we hold that an employee who does not bring an individual claim against her employer may nevertheless bring a PAGA action for herself and other employees of the company." (*Id.* at p. 533.)

" 'An employee who brings a PAGA action to recover civil penalties acts "'as the proxy or agent'" of the state.' '"PAGA is designed primarily to benefit the general public, not the party bringing the action."' PAGA default civil penalties are intended to deter violations, rather than '"compensate employees for actual losses incurred."' The statutory goal is furthered by extending broad standing to aggrieved employees who do not depend on the viability or strength of a plaintiff's individual PAGA claim. The inability for an employee to pursue an individual PAGA claim does not prevent that employee from filing a representative PAGA action. California courts have consistently held that '"[p]aring away the plaintiff's individual claims"' for one reason or another, '"does not deprive the plaintiff of standing to pursue representative claims under PAGA."'" (*Balderas, supra,* at p. 329, quoting *Adolph, supra,* at pp. 1116-1117, 1122.)

"The *Adolph* court concluded that the *Viking River* requirement of having to file an individual PAGA cause of action to achieve standing to file a representative PAGA suit was incorrect. There are only two requirements for PAGA standing. 'The plaintiff must allege that he or she is (1) "someone 'who was employed by the alleged violator'" and (2) someone " 'against whom one or more of the alleged violations was committed.' "'" (*Balderas supra,* at p. 329, quoting *Adolph, supra*, at p. 1120.)

The *Balderas* court concluded that plaintiff had alleged enough facts to show that she had standing to bring claims under PAGA on behalf of the other employees of the defendant, and thus the trial court should not have dismissed her claims. "Balderas met the standing requirements. She alleged that she 1) was an 'aggrieved' employee of Fresh Start, and 2) was subject to one or more Fresh Start violations. She alleged, '[W]hen Employees including Ms. Balderas started work for Fresh Start at around 6:00 a.m. or 7:00 a.m., they regularly were not provided a meal period until after 5 hours of work for shifts longer than 5 hours.' This delay in providing timely meal periods for her and other

employees violated their right to have 'a meal period within the first five (5) hours of work.' [¶] Fresh Start claims more is required for standing than what Balderas alleged. But our Supreme Court rejected this claim in *Adolph*. The court declined 'to impose additional requirements not found in the statute.' 'A narrower construction of PAGA standing would "thwart the Legislature's clear intent to deputize employees to pursue sanctions on the state's behalf."'" (*Id.* at p. 330, citations omitted.)

Likewise, in *Barrera v. Apple American Group, LLC* (2023) 95 Cal.App.5th 63, the First District Court of Appeal held that, while the plaintiffs' should have been compelled to arbitrate their individual PAGA claims, the plaintiffs still had standing to bring "non-individual" PAGA claims on behalf of the other aggrieved employees, and that arbitration of the non-individual claims could not be compelled because the contractual waiver of the right to prosecute representative PAGA claims is unenforceable as against public policy. (*Id*. at pp. 82-83.)

Here, plaintiff has alleged both individual and representative claims under PAGA in his first amended complaint. However, he now states that he is willing to waive his individual claims and proceed on only the representative claims. Since he is not required to allege individual claims under PAGA in order to act as a representative of the other aggrieved employees, he should be allowed to waive his individual claims. Also, contrary to defendant's contention, plaintiff is not required to prove up his status as an aggrieved employee by providing evidence that he suffered Labor Code violations in order to have standing to bring a representative PAGA claim on behalf of the other employees. He only has to allege that he suffered at least one Labor Code violation and thus is an "aggrieved employee." (*Balderas, supra*, at p. 330.) Here, plaintiff has alleged that he and other employees suffered Labor Code violations, including failure to pay minimum wages, overtime wages, failure to provide meal and rest breaks, failure to reimburse business expenses, failure to provide accurate wage statements, etc. Therefore, he has adequately alleged standing as an aggrieved employee, and he can bring representative claims on behalf of the other aggrieved employees of defendant.

Nevertheless, defendant contends that plaintiff must still arbitrate the issue of whether he is actually an aggrieved employee before he can represent the other employees in court on the representative PAGA claim. However, defendant's interpretation would defeat the public policy that underlies arbitration, which is to provide providing a speedy, efficient and cost-effective forum to resolve disputes, since it would require plaintiff to duplicate his efforts by first litigating the issues of the case in arbitration, and then again in Superior Court. Such a result would result in considerable wasted time and money as well as duplication of efforts and possibly inconsistent results for no apparent advantage. The court will not sanction such a wasteful and pointless exercise.

Since plaintiff has adequately alleged that he has standing as an aggrieved employee, he is allowed to bring the PAGA claims in court on behalf of other aggrieved employees, notwithstanding his agreement to arbitrate any individual claims that he might have against defendant. Therefore, the court intends to deny the motion to compel arbitration and the related motion to stay the pending court action.

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: jyh on 5/21/24 .**
(Judge's initials) (Date)

(36)

**Tentative Ruling**

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|---|---|
| Re: | ***Tamiyasu, Smith, Horn & Braun v. Henseon (Vanek)***<br>Superior Court Case No. 24CECG01181 |
| Hearing Date: | May 23, 2024 (Dept. 503) |
| Motion: | Petitioner Tamiyasu, Smith, Horn & Braun's Petition to Confirm Arbitration Award |

**Tentative Ruling:**

To grant. (Code Civ. Proc., §1285.)

**Explanation:**

Applicable Law:

Any party to an arbitration in which an award has been made may petition the court to confirm the award. The petition shall name as respondents all parties to the arbitration and may name as respondents any other person bound by the arbitration award. (Code Civ. Proc., §1285.)

A petition shall: (a) set forth the substance or have attached a copy of the agreement to arbitrate unless the petitioner denies the existence of such an agreement; (b) set forth the names of the arbitrators; and (c) set forth or have attached a copy of the award and the written opinion of the arbitrators, if any. (Code Civ. Proc., §1285.4.)

If a petition is duly served and filed, the court shall confirm the award as made, whether rendered in this state or another state, unless it corrects the award and confirms it as corrected, vacates the award or dismisses the proceeding. (Code Civ. Proc., §1286.)

Here, the moving papers conform to the requirements set forth in the Code of Civil Procedure sections 1285 and 1285.4. In accordance with Code of Civil Procedure, section 1285, petitioner names Karee Hensen (Vanek) as the party bound by the arbitration award.

The petition also attaches copies of: (1) the arbitration agreement; and (2) the arbitrator's award. (Petn., Exhs. 4(b) and 8(c).) The petition and notice of hearing were properly served on April 2, 2024, by substituted service and then mailed to the respondent that same day. The petition also provides that the arbitration award was served to respondent on January 24, 2024. (Petn., Item 9(a), Exh. 8(c).) Further, the petition is unopposed and no evidence indicating any application has been made to correct or vacate the award, and the statutory period for making such application has now passed. (Code Civ. Proc., § 1288. ["A petition to vacate an award or to correct an award shall

be served and filed not later than 100 days after the date of the service of a signed copy of the award on the petitioner."].)

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: jyh on 5/21/24 .**
(Judge's initials) (Date)