Tentative Rulings for June 25, 2025
Department 502

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.

25CECG00040 ***In re: Steven Antonio Kuripeth*** **is continued to Thursday, June 26, 2025 at 3:30 p.m. in Department 502**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 502

Begin at the next page

(03)

Tentative Ruling

Re: ***Jaime Barbosa v. Sierra Pacific Orthopaedic Center Medical Group***
Superior Court Case No. 24CECG03385

Hearing Date: June 25, 2025 (Dept. 502)

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

If oral argument is timely requested, it will be entertained on Thursday, June 26, 2025, at 3:30 p.m. in Department 502.

Tentative Ruling:

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

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.)

In the present case, defendant has met its burden of showing that there was an agreement to arbitrate the type of claims that plaintiff has now raised. Plaintiff signed the agreement to arbitrate when he was hired by defendant in July of 2019. (Johnston decl., ¶ 8.) The agreement covers all disputes between the parties arising out of plaintiff's employment with defendant, including the types of Labor Code wage and hour claims that plaintiff has now alleged. (Exhibit A to Johnston decl.)

Also, defendant issued an updated version of its Alternative Dispute Resolution Policy in May of 2022, which also included an arbitration agreement and also included a waiver of the right to bring representative or class action claims. (Johnston decl., ¶ 10 and Exhibit C thereto.)[1] The updated policy states that it will apply if the employee accepts or continues to work for defendant. (*Ibid*.) Defendant's HR Manager, Chris Johnston, met with plaintiff about the updated policy and provided him with a copy of the policy. (*Id*. at ¶ 11.) Plaintiff did not sign the policy, but Johnston explained to him that he would be bound by its terms if he continued to work for defendant. (*Ibid*.) Plaintiff worked for defendant for another year and a half after being provided with the updated policy. (See Complaint, ¶ 13, alleging plaintiff worked for defendant until January of 2024.) Therefore, plaintiff is deemed to have accepted the terms of the updated policy, including the arbitration agreement. As a result, defendant has met its burden of showing that there is an agreement between the parties to arbitrate the types of claims that plaintiff has now raised.

[1] Plaintiff has objected to the declaration of Johnston on various grounds. The court intends to overrule the objections.

In opposition, plaintiff does not dispute that he entered into an agreement to arbitrate his claims. However, he has raised several defenses to the agreement, including waiver and unconscionability. He also argues that the defendant is collaterally estopped from attempting to enforce the arbitration agreement, as defendant has already brought a motion to compel arbitration in the underlying class action, which was denied by the trial court in that case. The trial court's ruling is now on appeal. Plaintiff argues that, if the Court of Appeal affirms the trial court's ruling, that ruling will be binding and final, and will prevent defendant from enforcing the arbitration clause in the present case as well.

However, the doctrine of collateral estoppel does not apply unless there is a final ruling on the merits on the same issue between the same parties in the other action. (*Hernandez v. City of Pomona* (2009) 46 Cal.4th 501, 511.) Here, there has not yet been a final ruling on the motion to compel arbitration in the related class action, as the trial court's order is currently on appeal and the Court of Appeal has not yet issued its decision. Therefore, collateral estoppel does not apply to bar defendant's motion in the present case.

On the other hand, defendant's excessive delay in bringing its motion to compel arbitration is sufficient to constitute a waiver of its right to bring compel arbitration. In *Quach v. California Commerce Club, Inc.* (2024) 16 Cal.5th 562, 569, the California Supreme Court recently held that a party seeking to establish that the other party waived its right to compel arbitration does not need to establish that it was prejudiced by the moving party's conduct. It only needs to "prove by clear and convincing evidence that the waiving party knew of the contractual right and intentionally relinquished or abandoned it. Under the clear and convincing evidence standard, the proponent of a fact must show that it is 'highly probable' the fact is true. The waiving party's knowledge of the right may be 'actual or constructive.' Its intentional relinquishment or abandonment of the right may be proved by evidence of words expressing an intent to relinquish the right or of conduct that is so inconsistent with an intent to enforce the contractual right as to lead a reasonable factfinder to conclude that the party had abandoned it." (*Id.* at p. 584, citations omitted.) "To establish waiver, there is no requirement that the party opposing enforcement of the contractual right demonstrate prejudice or otherwise show harm resulting from the waiving party's conduct." (*Id.* at p. 585, citations and footnote omitted.)

"It is well established that a four-to six-month delay in enforcing the right to arbitrate may result in a finding of waiver if the party acted inconsistently with the intent to arbitrate during that window." (*Semprini v. Wedbush Securities Inc.* (2024) 101 Cal.App.5th 518, 527, 320 Cal.Rptr.3d 338; see also *Campbell v. Sunshine Behavioral Health, LLC* (2024) 105 Cal.App.5th 419, 432.) Also, "the absence of a reasonable explanation for delay is a significant factor weighing in favor of finding waiver." (*Davis v. Shiekh Shoes, LLC* (2022) 84 Cal.App.5th 956, 969, citations omitted.)

In the present case, defendant clearly knew of the fact that there was an agreement to arbitrate the plaintiff's claims, as it raised the defense in its answer in the present case as well as its answer in the related class action. It also brought two motions to compel arbitration of plaintiff's claims in the class action in April and July of 2024, before the complaint in the present case was filed. Thus, defendant clearly knew of the existence of the arbitration agreement for many months before it brought the present

motion to compel arbitration. Nevertheless, defendant did not move to compel arbitration in this case until June 2, 2025, about ten months after plaintiff filed his complaint in this case and nine months after defendant filed its answer and asserted the arbitration defense. Defendant did bring a motion to stay the action on the ground that the appeal in the class action would affect the outcome of this case. However, defendant never made any attempt to enforce the arbitration agreement in the present case, despite its clear knowledge that the agreement existed, until June of 2025. Defendant has not made any effort to explain its lengthy delay in seeking to compel arbitration in the present case, despite its awareness of the arbitration agreement before the plaintiff brought the PAGA action. Thus, defendant's conduct in this case is inconsistent with asserting the right to enforce the arbitration agreement, and the court finds that defendant waived its right to compel arbitration here.

Also, even if defendant did not waive its right to compel arbitration, the court finds that the agreement is unenforceable due to unconscionability. "Unconscionability has generally been recognized to include an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party." (*Williams v. Walker-Thomas Furniture Company* (D.C. Cir. 1965) 350 F.2d 445, 449, fn. omitted.)

"Phrased another way, unconscionability has both a 'procedural' and a 'substantive' element. (*A & M Produce Co. v. FMC Corp.* (1982) 135 Cal.App.3d 473, 486, citations omitted.) "The procedural element focuses on two factors: 'oppression' and 'surprise.' 'Oppression' arises from an inequality of bargaining power which results in no real negotiation and 'an absence of meaningful choice.' 'Surprise' involves the extent to which the supposedly agreed-upon terms of the bargain are hidden in a prolix printed form drafted by the party seeking to enforce the disputed terms. Characteristically, the form contract is drafted by the party with the superior bargaining position." (*Ibid*, citations omitted.)

"No precise definition of substantive unconscionability can be proffered. Cases have talked in terms of 'overly harsh' or 'one-sided' results. One commentator has pointed out, however, that '... unconscionability turns not only on a "one-sided" result, but also on an absence of "justification" for it.'" (*Id.* at p. 487, citations omitted.) Courts now follow "the traditional standard of unconscionability - contract terms so one-sided as to 'shock the conscience.'" (*Stirlen v. Supercuts, Inc.* (1997) 51 Cal.App.4th 1519, 1532, citations omitted.) "The prevailing view is that these two elements must *both* be present in order for a court to exercise its discretion to refuse to enforce a contract or clause under the doctrine of unconscionability." (*Id.* at p. 1533, citations omitted, italics in original.)

Here, the arbitration agreement has some degree of procedural unconscionability, since it was presented to the plaintiff on a take-it-or-leave-it basis as a mandatory condition of employment. The agreement was a form drafted by the employer, which had greater bargaining power. Also, when plaintiff questioned whether he had to sign the updated version of the agreement in May of 2022, defendant's HR manager told plaintiff that he would be bound by the terms of the agreement's if he continued to work for defendant, even if he did not sign the agreement. (Johnston decl., ¶ 11.) Thus, the agreement was procedurally unconscionable, as plaintiff was given no opportunity to negotiate its terms or do anything other than accept the agreement's terms or decline the job.

The agreement is also substantively unconscionable. First, the agreement purports to require arbitration of wage claims, which is inconsistent with California law. Under Labor Code section 229, "[a]ctions to enforce the provisions of this article for the collection of due and unpaid wages by an individual may be maintained without regard to the existence of any private agreement to arbitrate."

Labor Code section 432.6, subdivision (a), also provides that "[a] person shall not, as a condition of employment, continued employment, or the receipt of any employment-related benefit, require any applicant for employment or any employee to waive any right, forum, or procedure for a violation of any provision of the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code) or this code, including the right to file and pursue a civil action or a complaint with, or otherwise notify, any state agency, other public prosecutor, law enforcement agency, or any court or other governmental entity of any alleged violation."

Here, the arbitration agreement requires arbitration of wage claims in violation of Labor Code section 229, as well as requiring employees to waive their right to bring their right to bring civil actions under FEHA and the Labor Code. Thus, the agreement is unconscionable to the extent that it purports to waive rights that are unwaiveable under California law.

Defendant contends that the agreement is valid under the Federal Arbitration Act (FAA), and thus the fact that it might be inconsistent with California law does not make it unenforceable. Defendant notes that the agreement expressly states that the FAA applies to its terms. Defendant claims that its business affects interstate commerce, and that plaintiff himself rendered services to out-of-state patients. Therefore, defendant concludes that the FAA applies here, and California law should not be used to bar enforcement of the agreement.

Under section 2 of the FAA, A written provision in … a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract or as otherwise provided in chapter 4." (9 U.S.C.A. § 2.)

Thus, the agreement must "involve interstate commerce" in order for the FAA to apply to it. There must be evidence in the record that the relationship between the employer and employee "had a specific effect or bear[ing] on interstate commerce in a substantial way.'" (*Hoover v. American Income Life Ins. Co.* (2012) 206 Cal.App.4th 1193, 1207-1208.) In *Hoover*, the Court of Appeal found that the plaintiff, who was a California resident who sold life insurance policies for a Texas-based company, did not have a relationship with defendant that affected interstate commerce in a substantial way. (*Ibid*.) Likewise, here the evidence indicates that plaintiff is a California resident who worked as an X-ray technician for defendant in California. His use of equipment that originated outside of California and occasional provision of X-ray services to out-of-state patients does not establish that his employment had a substantial effect on interstate commerce. Therefore, the court finds that plaintiff's employment did not substantially affect interstate commerce, and it finds that the FAA does not preempt

California law. As a result, the court intends to find that the agreement violates Labor Code sections 229 and 432.6(a), and is invalid and unconscionable.

The agreement also includes a class action waiver that is substantively unconscionable. (*Muro v. Cornerstone Staffing Solutions, Inc*. (2018) 20 Cal.App.5th 784, 793 [finding class action waiver of wage and hour claims in arbitration agreement was invalid and denying petition to compel arbitration as a result].)

Finally, since the entire agreement is permeated with unconscionability, it does not appear that it would be possible to cure the defect in the agreement by severing the offending provisions. Therefore, the court intends to deny the motion to compel arbitration, as well as the request 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: KCK on 06/23/25.
(Judge's initials) (Date)

(47)

Tentative Ruling

Re: ***Silas Simental v. Levi Sanders***
Superior Court Case No. 23CECG04659

Hearing Date: June 25, 2025 (Dept. 502)

Motion: Petition to Approve Compromise of Disputed Claim of Minor

If oral argument is timely requested, it will be entertained on Thursday, June 26, 2025, at 3:30 p.m. in Department 502.

Tentative Ruling:

To grant petition. Order signed. No appearance necessary. The court sets a Case Status Minors Comp hearing for Thursday, September 18, 2025, at 3:30 p.m., in Department 502, for confirmation of deposit of the minors' funds into the blocked accounts. If Petitioner files the Acknowledgment of Receipt of Order and Funds for Deposit in Blocked Account (MC-356) at least five court days before the hearing, the status conference will come off calendar.

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 06/23/25.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Guadalupe Villagomez v. Leonel Villagomez / LEAD CASE***
Superior Court Case No. 22CECG00485

Hearing Date: June 25, 2025 (Dept. 502)

Motion: by Plaintiff to Compel Compliance with Subpoena

If oral argument is timely requested, it will be entertained on Thursday, June 26, 2025, at 3:30 p.m. in Department 502.

Tentative Ruling:

To deny. (Code Civ. Proc. § 2025.480, subd. (b).)

Explanation:

On September 9, 2024, plaintiff issued a deposition subpoena for the production of business records to the Pacific Farm Management, Inc. seeking business records related to the relationship with the parties to this case. (Cuttone Decl., ¶ 2, Exh. A.) The date for production specified on the subpoena was September 30, 2024. No records were produced by nonparty deponent in response to the subpoena by the production deadline. (*Id*. at ¶ 6.) On October 3, 2024 and October 10, 2024 the records service for plaintiff and plaintiff contacted deponent to inquire as to the status of records responsive to the subpoena. (*Id*. at ¶¶ 7-9, Exh. 5-7.) On October 17, 2024, deponent provided a Certificate of No Records in response to the subpoena. (*Id*. at ¶¶ 10-11, Exh. 9-10.) Plaintiff attempted further meet and confer efforts to obtain responsive records believed to be in deponent's possession, culminating in a Demand for Preservation of Evidence sent to nonparty deponent on December 11, 2024. (*Id*. at ¶¶ 12-16, Exh. 10-11.) No further records were provided by deponent. Plaintiff now seeks an order to compel responses to the September 9, 2024 deposition subpoena of business records.

"[D]iscovery from a *nonparty* may be obtained only by 'deposition subpoena.'" (*Unzipped Apparel, LLC v. Bader* (2007) 156 Cal.App.4th 123, 130; Code Civ. Proc. § 2025.010, subd. (b).) Failure to produce the specified documents is the subject of a motion to compel. (Code Civ. Proc. § 2025.480, subd. (a); see also *Kramer v. Superior Court* (1965) 237 Cal.App.2d 753, 755, fn. 2.)

Any motion to compel compliance with a deposition subpoena must be made within 60 days of the completion of the deposition record. (Code Civ. Proc. § 2025.480, subd. (b).) This deadline applies to nonparty deposition subpoenas of business records. (*Bd. of Registered Nursing v. Superior Court* (2021) 59 Cal.App.5th 1011, 1030-1031.) The deposition record is deemed complete on the date set for production by the lack of response to the subpoena. As discussed in *Board of Registered Nursing v. Superior Court*:

> The nonparty discovery statutes establish a one-step process for a nonparty responding to a business records subpoena.

> Upon receipt of the subpoena, a nonparty must make the production on the date and in the manner specified, unless grounds exist to object or disregard the subpoena. The nonparty's compliance with the subpoena is clear on the date specified for production. It has either produced documents as requested in the subpoena, or not. On that date, the subpoenaing party has all the information it needs to meet and confer regarding the nonparty's compliance and, if unsatisfied, prepare a motion to compel.
>
> This one-step process minimizes the burden on the nonparty. It may comply (or not) with the subpoena, and it can be confident that its obligations under the subpoena will be swiftly addressed and adjudicated. The one-step process also reflects the reality that the discovery demanded from a nonparty will generally be more limited, and consequently less subject to lengthy dispute, than discovery demanded from a party. (*Id.* at p. 1033.)

Here, the deposition notice set September 30, 2024 as the date to comply. The Certificate of No Records was executed by the records service on October 21, 2024. A response to the subpoena was served, albeit untimely. To the extent plaintiff is seeking an order for a further response, that motion to compel was to be filed within 60 days of the October 21, 2024 response on December 20, 2024. The present motion to compel was filed June 2, 2025. Accordingly, the motion is untimely, and therefore denied. (*Board of Registered Nursing v. Superior Court*, *supra*, 59 Cal.App.5th at pp. 1034-1035, and fn. 5.)

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 06/23/25.
(Judge's initials) (Date)

(20)

Tentative Ruling

Re: ***In Re: Imidacloprid Cases***
Superior Court Case No. 22JCCP05241

Hearing Date: June 25, 2025 (Dept. 502)

Motion: Applications to Appear *pro hac vice* by Matthew Bober and Jeffrey Masson

If oral argument is timely requested, it will be entertained on Thursday, June 26, 2025, at 3:30 p.m. in Department 502.

Tentative Ruling:

To grant. (Cal. Rules of Court, Rule 9.40(a).) No appearances are necessary.

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 06/23/25 .
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Diligent Investment, Inc. v. Nahal Investment LLC***
Superior Court Case No. 20CECG03025

Hearing Date: June 25, 2025 (Dept. 502)

Motion: By Plaintiff to Enforce Settlement

If oral argument is timely requested, it will be entertained on Thursday, June 26, 2025, at 3:30 p.m. in Department 502.

Tentative Ruling:

To grant. To approve costs in the amount of $75.45 as sought. To sign the revised proposed judgment filed June 5, 2025.

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 Diligent Investment, Inc. ("Plaintiff") submits a writing, signed by the parties, made outside the presence of the court. The parties filed a stipulation for an order that the court retain jurisdiction prior to dismissal. Further, the writing reflects that this court would retain jurisdiction under section 664.6 to enforce the writing. (Kaufmann Decl., ¶ 3, and Ex. A thereto.) The agreement contemplated the payment of $18,000.00 to settle the claims of this action. Plaintiff submits that defendant Nahal Investment LLC has made payments totaling $4,000.00, but has not complied with the terms of the settlement since. (*Id.*, ¶¶ 4, 5.) No opposition was filed.

Based on the above, the court finds a valid written signed settlement agreement outside of the presence of the court, and judgment will be entered in accordance with the terms of the written settlement agreement. (Code Civ. Proc. § 664.6, subd. (a).)

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 06/24/25.
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: ***The Golden 1 Credit Union v. West Williams***
Superior Court Case No. 24CECG05226

Hearing Date: June 25, 2025 (Dept. 502)

Motion: By Plaintiff for Summary Judgment or Summary Adjudication

If oral argument is timely requested, it will be entertained on Thursday, June 26, 2025, at 3:30 p.m. in Department 502.

Tentative Ruling:

To grant plaintiff's motion for summary judgment; and to order defendant to turn over the subject vehicle to plaintiff within 15 days of entry of judgment. Plaintiff is directed to submit to this court, within 10 days of service of the minute order, a proposed judgment consistent with the court's summary judgment order.

Explanation:

Plaintiff, The Golden 1 Credit Union (Plaintiff), seeks to enforce a Retail Installment Sale Contract (Contract) executed on December 31, 2022, by the seller, Delano Chevrolet Buick GMC (Seller), and the buyer, defendant West A. Williams (Defendant), for the purchase of a vehicle described as a 2023 Chevrolet Camaro, VIN 1G1FJ1R6XP0116796 (Vehicle). (Fact No. 1.) Later in the day, Seller transferred all of its rights, title, and interest in the Contract to Plaintiff. (Fact No. 3.) On January 10, 2024, and continuing thereafter, Defendant defaulted in payments, and Plaintiff elected to declare the balance of the Contract immediately due and payable. (Fact Nos. 4, 5.)

After Defendant failed to perform his contractual obligations, Plaintiff filed the operative complaint for breach of contract, claim and delivery, conversion, possession of personal property, and declaratory relief on November 26, 2024 (Complaint). Plaintiff now moves for summary judgment or summary adjudication.

Plaintiff Satisfies Its Initial Burden

Code of Civil Procedure section 437c provides that summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) A plaintiff may move for summary judgment when the plaintiff contends there is no defense to the cause of action. (Code Civ. Proc., § 437c, subd. (a).) A plaintiff meets the burden of showing there is no defense by proving each element of the cause of action. (Code Civ. Proc., § 437c, subd. (p)(1).) A plaintiff moving for summary judgment is not required to disprove any defense asserted by the defendant in addition to proving each element of the plaintiff's own cause of action. (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 853.) If the plaintiff meets the plaintiff's burden, the burden shifts to the defendant to show the existence of a triable issue of

material fact. (*Ibid.*) The trial court must "carefully scrutinize the moving party's papers and resolve all doubts regarding the existence of material, triable issues of fact in favor of the party opposing the motion." (*Connelly v. County of Fresno* (2006) 146 Cal.App.4th 29, 36.)

Breach of Contract

"[T]he elements of a cause of action for breach of contract are (1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the plaintiff." (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 821.) Plaintiff provides evidence of 12 undisputed facts to show it is entitled to judgment on its first cause of action for breach of contract. After his default, Defendant has failed and refuses to pay the balance owing under the Contract. (Fact No. 6.) The Contract gives Plaintiff the right to take possession of the Vehicle and to sell it after satisfying legal notice requirements. (Fact No. 7.) The Contract also provides for the recovery of collection costs, including attorney fees. (Fact No. 11.) Plaintiff seeks to recover a total of $68,940.69, comprised of the balance due on the Contract of $67,348.32, plus court and service costs of $1,592.37 incurred by Plaintiff. (Fact Nos. 10, 11, 12.) Plaintiff's 12 undisputed facts demonstrate it has satisfied its burden to establish each element of its first cause of action for breach of contract and it is entitled to judgment in favor of Plaintiff and against Defendant, in the total sum of $68,940.69 comprised of the balance due on the Contract of $67,348.32, plus court and service costs of $1,592.37 incurred by Plaintiff.

Possession of Collateral

Although Plaintiff's second cause of action is labeled "Claim and Delivery," Plaintiff seeks to enforce its contractual right to take possession of the Vehicle as one of its remedies for breach of the Contract. (See *Eleanor Licensing LLC v. Classic Recreations LLC* (2018) 21 Cal.App.5th 599, 612 [cause of action for recovery of specific personal property often incorrectly referred to as "claim and delivery action]".) Plaintiff restates the first 11 facts to prove breach of contract (Fact Nos. 13-23), and provides 4 additional facts to show it is entitled to the requested orders allowing it to take possession of the Vehicle. (Fact Nos. 24-27.)

Plaintiffs' undisputed material facts demonstrate Plaintiff is entitled to its requested orders. (See Facts No. 13-28.) Specifically, Plaintiff meets its burden to show it is entitled to the following orders:

1. The court orders Defendant to turn over the Vehicle to Plaintiff within 15 days of entry of judgment;
2. The court declares Plaintiff is the sole owner of the Vehicle and Plaintiff is the only person or legal entity which has the right to register the Vehicle with the California Department of Motor Vehicles;
3. The court orders Defendant to permanently cease any and all attempts to register the Vehicle or to represent to anyone that he is still the owner of the Vehicle;
4. Plaintiff shall sell the Vehicle at a commercially reasonable private or public sale after notice provided by law; and after deducting the expense of sale

and the costs of retaking and repairing, apply the net proceeds to the balance due.

The burden then shifts to Defendant to raise a triable issue of material fact.

Defendant Fails to Raise a Triable Issue of Material Fact

A party opposing summary judgment must present admissible evidence, including "declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice" must or may "be taken." (*Aguilar, supra,* 25 Cal.4th at p. 843, quoting Code Civ. Proc., § 437c, subd. (b).) By submitting no opposition, Defendant fails to do so.

Conclusion

In conclusion, the court finds Plaintiff meets its burden to prove Defendant breached the Contract and Plaintiff is entitled to the remedies requested in its notice of motion for summary judgment. Defendant fails to prove a valid defense. Therefore, the court grants Plaintiff's motion for summary judgment and directs Plaintiff to prepare a proposed judgment consistent with the court's summary judgment order.

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 06/24/25.
(Judge's initials) (Date)