Tentative Rulings for August 8, 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

22CECG03687 ***Alexander, Winton & Associates, Inc. v. Panther Interstate Carriers, Inc.***

21CECG02857 ***Makayla Fontes v. Guard Force Inc.***

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

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

Begin at the next page

(03) **Tentative Ruling**

Re: ***Faccinto v. Veterinary Service, Inc.***
Case No. 23CECG00917

Hearing Date: August 8, 2024 (Dept. 501)

Motion: by Defendant for an Order Compelling Arbitration

Tentative Ruling:

To deny defendant's motion, without prejudice to bringing a new motion based on the 12/28/21 agreement, which is the operative agreement between the parties.

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.)

In the present case, defendant Veterinary Service, Inc. (VSI) moves to compel arbitration of plaintiff's claims based on the fact that plaintiff allegedly entered into an arbitration agreement when she accepted defendant's employment offer on November 7, 2021. Defendant provides the declaration of Leilani Williams, who is a manager in defendant's Human Resources department, to establish the existence of the arbitration agreement. She states that the agreement is sent to newly hired employees electronically as part of the employment offer. (Williams decl., ¶¶ 5-9.) Plaintiff applied for a job with VSI on November 1, 2021, by creating an account with her email and a unique password through VSI's system. (*Id*. at ¶ 7.) After plaintiff created her account, she received an automatically generated email with a link to a job application and her password. (*Id*. at ¶ 8.) She was provided with a written job offer on November 5, 2021, which included a mandatory arbitration agreement. (*Id*. at ¶. 9.) Williams attaches a copy of the arbitration agreement, which was allegedly signed by plaintiff. (Exhibit A to Williams decl.) Williams states that VSI's records reflect that plaintiff logged onto VSI's system with her email and password on November 7, 2021. (*Id*. at ¶ 11.) She then signed the document acknowledging that she had received and read the offer of employment and arbitration agreement, and that she understood that the agreement required covered disputes to be submitted to arbitration. (*Ibid*.)

However, in her opposition, plaintiff claims that she does not recall signing an agreement to arbitrate, and contends that she only acknowledged receiving the employment offer on November 7, 2021. (Faccinto decl., ¶¶ 3-6.) She also claims that she does not recognize the signature on the bottom of the arbitration agreement and offer letter. (*Id*. at ¶ 6.) She claims that the signature on the offer letter does not match her signature on the Notice to Employee. (*Ibid*.) She also claims that she had not agreed to use electronic signatures to execute documents at the time that she allegedly signed the agreement. (*Id*. at ¶ 7.) Thus, there is a dispute as to whether plaintiff agreed to arbitrate any disputes that she might have with defendant when she accepted defendant's employment offer on November 7, 2021.

On the other hand, plaintiff admits that she did sign a later version of the arbitration agreement in December 2021. (Faccinto decl., ¶¶ 15-17.) The updated arbitration agreement states that "[t]his Agreement sets forth the final agreement of the parties *and supersedes all prior* negotiations, representations or *agreements,* whether written or oral, *pertaining to arbitration of claims* covered by the Agreement." (Plaintiff's Request for Judicial Notice, Exhibit D, italics added. The court intends to take judicial notice of the arbitration agreement, which was previously filed by defendant in support of its motion to compel arbitration in one of the related Riverside cases.) Therefore, by its plain terms, the updated arbitration agreement superseded and replaced any prior agreements, including the agreement that plaintiff allegedly signed when she accepted the employment offer. Consequently, plaintiff's arguments regarding whether she actually signed the November 7, 2021 agreement and whether it has been properly authenticated are moot, since she admits that she signed the later agreement in December of 2021.

However, since the December 2021 agreement superseded the earlier alleged agreement and it is the only valid agreement between the parties regarding arbitration, defendant needed to move to compel arbitration based on the December 2021 agreement rather than the November 7, 2021, agreement. Defendant does not deny that plaintiff executed an updated agreement on December 28, 2021, or that the updated agreement superseded the earlier alleged agreement. Their only argument in response to plaintiff's opposition is that the later agreement contains the same terms and effect as the earlier agreement, and therefore she should be compelled to arbitrate regardless of which agreement is currently in effect. Yet the later agreement is substantially different from the earlier alleged agreement. The December 28, 2021, agreement is four pages long, rather than one page like the November 7, 2021, agreement. The December 28th agreement also contains much more extensive terms than the November 7th agreement, and includes more detailed language regarding the parties' rights to discovery, to bring dispositive motions, and to obtain attorney's fees and other remedies. The December 28th agreement also contains a lengthy waiver of class and representative actions. Therefore, the court intends to find that the December 28th agreement is substantially different than the November 7th agreement, even if their overall effect is similar.

Since defendant has only moved to compel arbitration based on the November 7, 2021, agreement, which is no longer the operative agreement between the parties, the court intends to find that defendant has failed to meet its burden of showing that plaintiff entered into a valid, enforceable agreement to arbitrate her disputes with defendant. As a result, the court intends to deny the motion to compel arbitration. However, the denial will be without prejudice, as defendant may still be able to move to compel arbitration based on the December 28th agreement.

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 8/5/2024.
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: ***Stellar Solar, Inc. v. Amazing Energy Partners, Inc.***
Superior Court Case No. 22CECG02818

Hearing Date: August 8, 2024 (Dept. 501)

Motion: by Plaintiff for Leave to File a Second Amended Complaint

Tentative Ruling:

To grant. Plaintiff must file the Second Amended Complaint within 10 days from the clerk's service of the minute order granting this motion.

Explanation:

Amendment is Liberally Allowed

"The court may, in furtherance of justice, and on such terms as may be proper, allow a party to amend any pleading …." (Code Civ. Proc. § 473, subd. (a); see also, § 576.) There is generally a strong policy in favor of allowing a plaintiff to amend the complaint. (*Glaser v. Meyers* (1982) 137 Cal.App.3d 770, 776-777.) Judicial policy favors resolution of all disputed matters between the parties in the same lawsuit. Thus, the court's discretion will usually be exercised liberally to allow amendment of the pleadings. (*Nestle v. Santa Monica* (1972) 6 Cal.3d 920, 939; *Mabie v. Hyatt* (1998) 61 Cal.App.4th 581, 596.)

Plaintiffs contends that inclusion of a sister entity defendant necessitates this motion. No prejudice has been claimed by defendant, and it does not appear that any opposition to this motion has been filed.

Compliance with California Rules of Court, rule 3.1324

A motion to amend must: (1) include a copy of the proposed amendment, (2) state what allegations in the previous pleading are proposed to be deleted, if any, and where, by page, paragraph, and line number, the deleted allegations are located, and (3) state what allegations are proposed to be added to the previous pleading, if any, and where, by page, paragraph, and line number, the additional allegations are located. (Cal. Rule of Court, Rule 3.1324(a).) Moreover, a separate declaration must accompany the motion which specifies: (1) the effect of the amendment, (2) why the amendment is necessary and proper, (3) when the facts giving rise to the amended allegations were discovered, and (4) the reasons why the request for amendment was not made earlier. (Cal. Rule of Court, Rule 3.1324(b).)

In addition, even where otherwise in proper form, unwarranted delay in presenting an amended pleading may justify denial. (*California Concrete Co. v. Beverly Hills Savings & Loan Assn.* (1989) 215 Cal.App.3d 260, 272.) Nevertheless, even delay in bringing a motion to amend is usually not grounds for its denial unless a party has been prejudiced thereby. (*Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048.)

The proposed Second Amended Complaint is attached to the list of exhibits submitted with the motion. In addition, the information required pursuant to California Rules of Court, rule 3.1324(b), is contained in moving counsels' declaration. Accordingly, the moving party has met their burden and there does not appear to be assertions of prejudice by the opposing party. Therefore, the motion is granted.

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 8/6/2024.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Nava v. Fresno Area Express, et al.***
Superior Court Case No. 23CECG00800

Hearing Date: August 8, 2024 (Dept. 501)

Motion: by Defendant City of Fresno for Terminating Sanctions against Plaintiff Victor Nava

Tentative Ruling:

To grant defendant City of Fresno's (the "City") motion for terminating sanctions against plaintiff Victor Nava, as plaintiff has willfully refused to comply with this court's orders compelling him to respond to discovery. (Code Civ. Proc., §§ 2023.030, subd. (d)(3).) To strike the complaint and order this action dismissed. The City is directed to submit to this court, a *proposed judgment* dismissing the action within 10 days of the service of the minute order.[1] To deny the City's request for monetary sanctions.

Explanation:

Terminating Sanctions

Code of Civil Procedure section 2023.010 defines "misuses of the discovery process" as including, "failing to respond or submit to an authorized method of discovery" and "disobeying a court order to provide discovery." (Code Civ. Proc., § 2023.010, subds. (d) & (g).) Code of Civil Procedure section 2023.030 states, in relevant part:

> To the extent authorized by the chapter governing any particular discovery method or any other provision of this title, the court, after notice to any affected party, person, or attorney, and after opportunity for hearing, may impose the following sanctions against anyone engaging in conduct that is a misuse of the discovery process:
>
> [¶] . . . [¶]
>
> (d) The court may impose a terminating sanction by one of the following orders:
>
> [¶] . . . [¶]
>
> (1) An order striking out the pleadings or parts of the pleadings of any party engaging in the misuse of the discovery process.
>
> [¶] . . . [¶]

[1] The proposed "Order and Order After Hearing Granting City of Fresno's Motion for Terminating Sanctions" lodged on July 12, 2024 will not be signed.

(4) An order rendering a judgment by default against that party.

Noncompliance with compelled discovery justifies terminating sanctions, and, in addition, monetary sanctions. (See Code Civ. Proc., §§ 2030.290, subd. (c), 2031.310, subd. (i).) This court is also guided by the principle that "[t]he sanctions the court may impose are such as are suitable and necessary to enable the party seeking discovery to obtain the objects of the discovery he seeks but the court may not impose sanctions which are designed not to accomplish the objects of the discovery but to impose punishment." (*Caryl Richards, Inc. v. Superior Court* (1961) 188 Cal.App.2d 300, 304.)

This court granted the City's motions to compel plaintiff Victor Nava's responses to its document requests, form interrogatories, and special interrogatories on April 24, 2024. Despite these orders, responsive documents have not been served. (See Cisneros Decl., ¶ 8.) There is no evidence indicating plaintiff has made any attempt to communicate with the City's counsel regarding the discovery requests since the order was made.

Therefore, it appears that plaintiff is willfully refusing to comply with the court's order compelling him to respond to the discovery requests. Lesser sanctions would likely be ineffective to obtain plaintiff's compliance here, as it appears he has no interest in responding to the City's discovery. Thus, the motion for terminating sanctions is granted.

Monetary Sanctions

"A request for a sanction shall, in the notice of motion, identify every person, party, and attorney against whom the sanction is sought, and specify the type of sanction sought." (Code Civ. Proc., § 2023.040.) However, the City's notice of motion fails to provide that monetary sanctions are being sought. In fact, the request for monetary sanctions does not appear in the caption of any of the moving papers. Nor are monetary sanctions even mentioned in the introduction or prayer of the memorandum of points and authorities. Further, monetary sanctions for plaintiff's failure to comply with a court order are not sought in the proposed "Order and Order After Hearing" lodged with the court. The one paragraph buried in the fifth page of the memorandum of points and authorities requesting for monetary sanctions is insufficient to meet the statutory notice requirements of such a request. Thus, the City's request for monetary sanctions is denied for defective 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: DTT on 8/6/2024.
(Judge's initials) (Date)