Tentative Rulings for January 26, 2022
Department 403

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

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(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

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(03)

Tentative Ruling

Re: ***Williams v. John Paul Mitchell Systems***
Superior Court Case No. 20CECG00645

Hearing Date: January 26, 2022 (Dept. 403)

Motion: Plaintiff's Motion to Transfer Venue to Los Angeles County

Tentative Ruling:

To deny plaintiff's motion to transfer venue to Los Angeles County. (Code Civ. Proc. § 397, subd. (a); Govt. Code § 12965, subd. (b)(3).) To deny defendant's request for sanctions against plaintiff.

Explanation:

Plaintiff moves to transfer venue from Fresno to Los Angeles under Code of Civil Procedure section 397, subdivision (a) and Government Code section 12965, subdivision (b)(3). Under Code of Civil Procedure section 397, "The court may, on motion, change the place of trial in the following cases: [¶] (a) When the court designated in the complaint is not the proper court." (Code Civ. Proc., § 397, subd. (a).)

There is no express time limit for moving for a change of venue under section 397, and courts should not import the time limits set forth in section 396b to find that a motion under section 397 is untimely. (*Walt Disney Parks & Resorts U.S., Inc. v. Superior Court* (2018) 21 Cal.App.5th 872, 879-880.) Thus, absent evidence that the moving party waived its right to move for a change of venue by failing to bring the motion within a reasonable time, the court should not find that a motion to change venue under section 397 is untimely. (*Ibid*.)

Also, unlike section 396b, the language of section 397 does not require that the motion to change venue be brought by the defendant. Thus, it appears that either a plaintiff or a defendant may move for a change of venue under section 397. Consequently, while it is unusual for a plaintiff to move to change venue to a different county after they have chosen to file in another county, there does not seem to be any reason that a plaintiff cannot move to change the venue of their own case, assuming that there is a sufficient basis for the change of venue.

However, plaintiff's initial choice of venue is deemed to be presumptively correct. (*Tokuzo Shida v. Japan Food Corp*. (1960) 185 Cal.App.2d 443, 447.) "Generally, when venue is proper in more than one county, a plaintiff has the choice of where to file the action from among the available options. There is a presumption that the county in which the plaintiff chose to file the action is the proper county. The burden rests on the party seeking a change of venue to defeat the plaintiff's presumptively correct choice of court." (*Battaglia Enterprises, Inc. v. Superior Court* (2013) 215 Cal.App.4th 309, 313–314, internal citations omitted.)

Here, plaintiff contends that her original decision to file the action in Fresno County was incorrect under Government Code section 12965, the venue provision of FEHA, and thus the court should transfer venue to Los Angeles. Section 12965, subdivision (b)(3) states that, "[a]n action [under FEHA] may be brought in any county in the state in which the unlawful practice is alleged to have been committed, in the county in which the records relevant to the practice are maintained and administered, ***or in the county in which the aggrieved person would have worked*** or would have had access to the public accommodation ***but for the alleged unlawful practice***, but if the defendant is not found within any of these counties, an action may be brought within the county of the defendant's residence or principal office." (Gov. Code, § 12965, subd. (b)(3), emphasis added.)

"[T]he special provisions of the FEHA venue statute control in cases involving FEHA claims joined with non-FEHA claims arising from the same facts." (*Brown v. Superior Court* (1984) 37 Cal.3d 477, 487.)

In the present case, plaintiff points out that she was representing herself in *pro per* when she filed the original complaint, that she is not a licensed attorney, and that she was unfamiliar with the venue rules for FEHA actions. She claims that she only filed her action in Fresno County because she lives here, but that section 12965 requires the action to be filed in Los Angeles County. She contends that venue is proper in Los Angeles because the defendant committed the allegedly illegal acts in Santa Clarita, its principal office is in Santa Clarita, it maintains its records in Santa Clarita, and plaintiff worked in Santa Clarita and would have continued to work there if the defendant had allowed her to go back to work. She also contends that she would have effectively been working through defendant's Santa Clarita office even if she had been allowed to work remotely from her home. Thus, she concludes that venue is improper in Fresno and should be transferred to Los Angeles County.

However, while plaintiff undoubtedly could have properly filed her action in Los Angeles County based on the facts that the allegedly unlawful acts took place in Santa Clarita, defendant keeps its employment records in Santa Clarita, and defendant's principal offices are in Santa Clarita, that does not necessarily mean that plaintiff's decision to file her complaint in Fresno County was improper. In fact, plaintiff has alleged in both her complaint and first amended complaint that she had requested to work part time from her home in Fresno County as an accommodation of her disability, and thus venue in Fresno is proper as it is the place where plaintiff would have worked if defendant had granted her requested accommodation. (Govt. Code § 12965, subd. (b)(3).)

Plaintiff has alleged that, "[O]n or about January 16, 2017 and April 13, 2017, Plaintiff's health care provider again submitted releases to Defendant that stated Plaintiff was able to return to work with the reasonable accommodations of a part-time or modified work schedule and ***being permitted to work from home***…" (Complaint, ¶ 10, emphasis added, see also FAC, ¶ 14.) "Throughout this time Plaintiff was forced by Defendant to remain on leave, Plaintiff was eager to return to work the same as Plaintiff had done when Plaintiff worked a similar modified work schedule ***from home*** as a reasonable accommodation when Plaintiff was previously disabled in 2013." (Complaint, ¶ 11, emphasis added, see also FAC ¶ 16.) "Plaintiff continued to contact Defendant to

request return to work on a part-time or modified schedule ***working from home***." (Complaint at ¶ 12, emphasis added, see also FAC ¶ 17.)

The documents attached to plaintiff's motion also indicate that she was seeking an accommodation that would allow her to work from her home in Fresno County several days per week. Plaintiff moved from Santa Clarita to Fresno County in May of 2016. (Exhibit E to Plaintiff's Motion.) Plaintiff went out on medical leave in July of 2016. Her doctor released her to return to work with restrictions in October of 2016. The main accommodation requested by plaintiff was that she be allowed to work part-time from home.

In an email from defendant's HR representative, Andrea Coo, dated October 6, 2016, Ms. Coo stated that "Your physician has released you to return to work under modified duty, effective 10/11/2016, with the following proposed accommodation: ***Working from home*** on a reduced schedule - four, four-hour shifts weekly - a total of 16 hours per week." (Exhibit G to Motion, email dated October 6, 2016, emphasis added.) Defendant denied this request for accommodation. "Unfortunately, we are not able to accommodate the proposed request for you to ***work from home*** on a reduced schedule." (*Ibid*, emphasis added.)

Plaintiff then submitted a modified release from her doctor in April of 2017, which again requested that plaintiff be allowed to work from home part-time, although she also proposed working in the Santa Clarita office one or two days per month. Defendant again refused the request. "I have your physician's modified duty request in hand, requesting '***four 4-hour shifts from home per week*** – may drive to office 1-2x 1 month.' … We are unable to accommodate the proposed request; however, we will place you on extended leave status." (Exhibit G to Plaintiff's Motion, email of April 17, 2017, emphasis added.) In a follow-up email, Ms. Coo stated that "we are simply unable to allow you to work from home – certainly not with that frequency – for an entire year." (Exhibit G to Plaintiff's Motion, email dated April 19, 2017.)

In addition, on August 8, 2017, plaintiff again asked Ms. Coo if defendant could accommodate her by providing work that she could do on a part-time basis, "preferably by telecommuting." (Exhibit G to Plaintiff's Motion, email of August 8, 2017.) Defendant again refused to accommodate plaintiff by providing her with a part-time position, stating that they were not aware of any such part-time positions that were available. (Exhibit G to Plaintiff's Motion, email of August 10, 2017.)

Thus, the allegations of plaintiff's complaints, as well as the documents attached and incorporated into her motion, indicate that she was seeking to work from her home in Fresno County at least four days per week and only work one or two days per month in the office in Santa Clarita. As a result, if defendant had granted the requested accommodation, plaintiff would have worked primarily in Fresno County. Consequently, plaintiff's original choice of venue in Fresno County was not improper, and the court intends to deny the motion to transfer the case to Los Angeles County.

Plaintiff argues that, even if she worked from home, she would have been effectively working as part of the Santa Clarita office. However, she cites no legal authorities or evidence that would tend to support her position. The fact remains that

plaintiff had requested to work from her home in Fresno County on several occasions, and if defendant had granted the accommodation, she would have been physically located in Fresno County when she worked for defendant. Regardless of whether her work would have been done on behalf of defendant's Santa Clarita office, she would not have been working there most of the time. Consequently, plaintiff's decision to file her complaint in Fresno County was not improper under Government Code section 12965, and she has failed to meet her burden of showing that she is entitled to a change of venue under Code of Civil Procedure section 397(a). Therefore, the court intends to deny the motion for change of venue.[1]

Finally, defendant has requested that the court order sanctions against plaintiff for bringing an unsuccessful motion to change venue. Defendant relies on Code of Civil Procedure sections 396b, subdivision (b), and 399, subdivision (a), to support its request for sanctions. However, section 396b only applies to motions for change of venue that have been brought by the defendant, not the plaintiff.

"[I]f an action or proceeding is commenced in a court having jurisdiction of the subject matter thereof, other than the court designated as the proper court for the trial thereof, under this title, the action may, notwithstanding, be tried in the court where commenced, ***unless the defendant***, at the time he or she answers, demurs, or moves to strike, or, at his or her option, without answering, demurring, or moving to strike and within the time otherwise allowed to respond to the complaint, files with the clerk, a notice of motion for an order transferring the action or proceeding to the proper court, together with proof of service, upon the adverse party, of a copy of those papers." (Code Civ. Proc., § 396b, subd. (a), emphasis added.)

Here, plaintiff is the party moving for a change of venue, not defendant. Also, plaintiff brought her motion under section 397(a), not 396b, and section 397 does not provide for sanctions to either party. Defendant has argued that plaintiff's motion is effectively a motion under section 396b, but as discussed above, it is not possible for a plaintiff to move for a change of venue under section 396b. Plaintiff's motion is clearly made under section 397(a), which does not provide for an award of sanctions. Therefore, defendant's request for sanctions under section 396b is misplaced.

Defendant also cites to section 399, subdivision (a) in support of its request for sanctions. However, section 399 only states that the plaintiff shall pay the costs and fees associated with transferring the case if the case was brought in the wrong county, and for an award of sanctions against plaintiff to the extent permitted under section 396b. "If the transfer is sought solely, or is ordered, because the action or proceeding was commenced in a court other than that designated as proper by this title, those costs and fees, ***including any expenses and attorney's fees awarded to the defendant pursuant to Section 396b***, shall be paid by the plaintiff before the transfer is made." (Code Civ. Proc.,

[1] Plaintiff's motion also briefly mentions that she believes a change of venue to Los Angeles would be more convenient to the party witnesses in the case. However, plaintiff has denied that she is relying on "the convenience of witnesses or the ends of justice" provisions of section 397 in moving to change venue, so the court does not need to address the question of whether a change of venue is necessary for the convenience of the witnesses or whether it would serve the ends of justice.

§ 399, subd. (a), emphasis added.) Here, there will be no transfer fees or costs, since the motion for transfer will be denied. Also, the motion was not made under section 396b, so there is no basis for awarding sanctions against plaintiff. Consequently, the court intends to deny the defendant's request for sanctions against plaintiff.

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 01/21/22.
(Judge's initials) (Date)

(20) **Tentative Ruling**

Re: ***Davis v. Community Medical Centers, Inc. et al.***
Superior Court Case No. 18CECG03536

Hearing Date: January 26, 2022 (Dept. 403)

Motion: Defendant Fresno Community Hospital and Medical Center's Unopposed Motion to Confirm Arbitration Award

Tentative Ruling:

To grant.

Explanation:

Code of Civil Procedure section 1285.4 requires that a petition to confirm an arbitration award set forth: (a) the substance or have attached a copy of the agreement to arbitrate unless the petitioner denies the existence of such an agreement; (b) 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.

Petitioner has complied with these requirements. Thus, unless plaintiff/respondent properly moves to vacate, correct or dismiss the petition, the court must confirm the arbitration award and enter judgment thereon. (Code Civ. Proc., §§ 1286; 1287.4; *Eternity Investments, Inc. v. Brown* (2007) 151 Cal.App.4th 739, 744-45.) Respondent makes no such challenge to the arbitration award, and in fact has not opposed the petition to confirm the award. Accordingly, the petition will be granted.

Pursuant to Cal. Rules of Court, Rule 3.1312(a) and Code Civ. Proc., § 1019.5, subd. (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 01/21/22 .
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Thao v. Parano, et al.***
Superior Court Case No. 18CECG03735

Hearing Date: January 26, 2022 (Dept. 403)

Motion: Defendants and Cross-Complainants Strong Holdings, Inc. and Paul Parano's Motion to Determine Good Faith Settlement

Tentative Ruling:

To grant.

Explanation:

Under Code of Civil Procedure, section 877.6, a settlement entered by one or more of several joint tortfeasors may be determined by the court to be in "good faith." The court determines whether a settlement is within the "good faith ballpark" by considering the following factors (evaluated as of the time of the settlement): 1) a rough approximation of plaintiffs' total recovery and the settlor's proportionate liability; 2) the amount paid in settlement; 3) a recognition that a settlor should pay less in settlement than if found liable after a trial; 4) the allocation of the settlement proceeds among plaintiffs; 5) the settlor's financial condition and insurance policy limits, if any; and 6) evidence of any collusion, fraud, or tortious conduct between the settlor and the plaintiffs aimed at making the nonsettling parties pay more than their fair share. (*Tech-Bilt, Inc. v. Woodward–Clyde & Associates* (1985) 38 Cal.3d 488, 499; *Oldham v. California Capital Fund, Inc.* (2003) 109 Cal.App.4th 421, 432 ["In other words, the superior court must understand the size of the settlement pie, how the pie is sliced, and who is getting which slice."].)

A determination that the settlement was made in good faith bars any other joint tortfeasor or co-obligor from further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault. (Code Civ. Proc. § 877.6, subd. (c).)

All parties required to be noticed have been given notice of this motion and no one has filed opposition or objected to the settlement. The settlement between defendants Strong Holdings, Inc. and Paul Parano on one hand, and plaintiff on the other, is found and determined to be in good faith as set forth in Code of Civil Procedure § 877.6. (*Tech-Bilt, Inc. v. Woodward–Clyde & Associates* (1985) 38 Cal.3d 488, 499.)

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 01/24/22.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Unifund CCR, LLC v. Esquivel***
Superior Court Case No. 20CECG02076

Hearing Date: January 26, 2022 (Dept. 403)

Motion: Plaintiff's Motion for Transfer of Venue

Tentative Ruling:

To grant the motion to transfer venue to Riverside County. (Code Civ. Proc., § 395, subd. (b).) Plaintiff is ordered to pay the costs and fees of transferring the action within 30 days after service of notice of the transfer order.

Explanation:

In actions to enforce obligations for goods or services intended primarily for personal, family or household use, venue is proper either in the county where defendant (consumer) signed the contract, or resided at that time, or resided at the commencement of the action. (Code Civ. Proc., § 395, subd. (b).) No evidence has been presented as to where the defendant signed the contract or resided at that time; however, Plaintiff has discovered that defendant currently resides and resided at the commencement of this action, in Riverside County. Consequently, Fresno County is not the proper venue.

Where transfer is ordered on the grounds that plaintiff filed in the "wrong court," plaintiff is responsible for paying the costs and fees, if any, of transferring the action within 30 days after service of notice of the transfer order. If plaintiff fails to do so within 5 days after service of the notice, any other interested party may pay such costs and fees in order to expedite the transfer. If fees and costs are not paid within 30 days, the action is subject to dismissal. (Code Civ. Proc. § 399, subd. (a); *Stasz v. Eisenberg* (2010) 190 Cal.App.4th 1032, 1037.)

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 01/25/22.
(Judge's initials) (Date)

(30)

Tentative Ruling

Re: ***Keaton Gleason v. Soraida Ascencio***
Superior Court Case No. 21CECG01126

Hearing Date: January 26, 2022 (Dept. 403)

Motion: Motion for Default Judgment, by Plaintiff Keaton Gleason

Tentative Ruling:

To grant. Judgment signed. Hearing 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 01/25/22 .
(Judge's initials) (Date)