

Tentative Rulings for October 27, 2021
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 Ruling

Re: **Snyder v. City of Fresno, et al.**
Superior Court Case No. 20CECG02826

Hearing Date: October 27, 2021 (Dept. 403)
If oral argument is timely requested, the matter will be heard on Thursday, October 28, 2021 at 3:00 p.m. in Dept. 403

Motion: Defendant's Motion for Leave to File Cross-Complaint

Tentative Ruling:

To grant defendant City of Fresno's motion for leave to file cross-complaint. The Cross-complaint shall be filed within 10 days of the clerk's service of this minute order. It shall be served within 10 days of its filing.

Explanation:

A defendant whose negligence is alleged to have caused an accident may file a cross-complaint for equitable indemnity against concurrent tortfeasors. (*Santa Barbara Channelkeeper v. City of San Buenaventura* (2018) 19 Cal.App.5th 1176, 1186.) However, where a party is entitled to pursue a claim for indemnity by way of either a cross-complaint or a separate action, "purposes of judicial economy and efficiency militate in favor of a cross-complaint so the rights and liabilities of the parties can be resolved in one proceeding rather than through successive lawsuits." (*Black Diamond Asphalt, Inc. v. Superior Court* (2003) 114 Cal.App.4th 109, 115.)

Here, defendants' negligence is alleged to have caused the accident wherein plaintiff was injured. Defendants may therefore file a cross-complaint for equitable indemnity against alleged concurrent tortfeasors, Ryan Snyder and Joyah Snyder.

Trial is not set until August of 2022 and plaintiff has not shown that the filing of the cross-complaint will interfere with the trial date or that prejudice will result.

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** 10/20/21.
(Judge's initials) (Date)

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Tentative Ruling

Re: ***Bolin v. Pitman Farms***
Superior Court Case No. 20CECG03740

Hearing Date: October 27, 2021 (Dept. 403)
If oral argument is timely requested, the matter will be heard on Thursday, October 28, 2021 at 3:00 p.m. in Dept. 403

Motion: by Defendant to Compel Arbitration and Stay Action

Tentative Ruling:

To grant the motion to compel arbitration, and stay the proceedings pending the outcome of arbitration.

Explanation:

State and federal law favor enforcement of valid arbitration agreements. (*Wagner Construction Co. v. Pacific Mechanical Corp.* (2007) 41 Cal.4th 19, 25; *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 97; see Code Civ. Proc. §1281.2.)

“[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 - 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, internal citations omitted; see also *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 972 [party resisting arbitration bears burden of proving unconscionability]; *Espejo v. Southern California Permanente Medical Group* (2016) 246 Cal.App.4th 1047, 1060 [moving party meets its burden by attaching signed copy of arbitration agreement to petition, and need only establish its validity if challenged by opposing party].)

Mandatory arbitration clauses in employment contracts are enforceable if they provide essential fairness to the employee. (*Armendariz*, supra, 24 Cal.4th at pp. 90-91; see also *24 Hour Fitness v. Superior Court* (1998) 66 Cal.App.4th 1199, 1212 [arbitration clause in employee handbook was not unconscionable where it provided all parties with substantially same rights and remedies].) In the employment context, an agreement must include the following five minimum requirements designed to provide necessary safeguards to protect unwaivable statutory rights where important public policies are implicated: 1) a neutral arbitrator; 2) adequate discovery; 3) a written, reasoned, opinion from the arbitrator; 4) identical types of relief as available in a judicial forum; and 5) that

In the case at bench, the evidence shows there is a valid and enforceable arbitration agreement between Plaintiff and Defendant, and that it covers all of Plaintiff's claims here, as each arise from Plaintiff's employment with Defendant, which the arbitration agreement explicitly covers. (Ryan Decl., Exh. A; see First Amended Complaint.) The agreement meets the *Armendariz* factors. As Defendant meets its burden, the burden shifts to Plaintiff to show by a preponderance of the evidence a ground for denying the petition. As Plaintiff has not filed an opposition, she does not meet this burden. Defendant's motion to compel arbitration is therefore granted, and the instant action stayed pending the outcome of arbitration.

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Tentative Ruling

Hearing Date: October 27, 2021 (Dept. 403)
If oral argument is timely requested, the matter will be heard on Thursday, October 28, 2021 at 3:00 p.m. in Dept. 403

Tentative Ruling:

Explanation:

The court may, when the convenience of witnesses, the ends of justice, or the economy and efficiency of handling the litigation would be promoted thereby, on motion of a party, after notice and hearing, make an order...that the trial of any issue or any part thereof shall precede the trial of any other issue or any part thereof in the case....

The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any cause of action ... or of any separate issue or of any number of causes of action or issues.

Based on the information and evidence presented, bifurcating the trial of the duty to defend before other issues would promote economy and efficiency. Defendant has not opposed this motion.

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