

**Judge Mosbarger – Law & Motion – Wednesday, February 1, 2023 @ 9:00 AM
TENTATIVE RULINGS**

1. 18CV01433 REYNOSO, ADRIANA MARGARITA ET AL V. BURCH, DEAN ROCKEY ET AL

EVENT: Order of Examination

The Court has not received proof of service of the Order to Appear for Examination on the debtor. If the debtor appears, the Court will swear him in for examination.

2. 21CV02883 PENCA, ANTHONY V. SIERRA NEVADA BREWING CO

EVENT: Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, Conditional Certification, Approval of Class Notice, Setting of Final Approval Hearing Date

Plaintiffs' Motion for Preliminary Approval of Class Action Settlement is granted. The Case Management Conference on March 15, 2023 is vacated and the matter is set for a hearing for final settlement approval on May 31, 2023 at 9:00 a.m. The Court will sign the form of Order provided.

3. 22CV02443 ANDERSON, LASEANDRA R V. COMMUNITY LIVING OPTIONS, INC.

EVENT: Motion to Compel Arbitration of Complaint and Stay Proceedings

Defendant's and Plaintiff's respective Requests for Judicial Notice are granted. As an initial matter, *Code of Civil Procedure* §1281.2 "does not require the petitioner to introduce the agreement into evidence. A plain reading of the statute indicates that as a preliminary matter the Court is only required to make a finding of the agreement's existence, not an evidentiary determination of its validity" nor does California Rules of Court Rule 3.1330 "require the petitioner to introduce the agreement into evidence or provide the court with anything more than a copy or recitation of its terms." *Condee v. Longwood Management Corp.* (2001) 88 Cal.App.4th 215, 218-219. However, if the Court were to consider the evidentiary burden (should one exist here), the Court finds that the requirements of *Evidence Code* §1271 have been satisfied and the Applicant's Statement and Agreement falls within the business records exception to the hearsay rule.

The Motion to Compel Arbitration is granted, in part. Defendant has established the existence of an arbitration agreement and Plaintiff bears the burden of proof on the issue of unconscionability. *Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413; *Coast Plaza Doctors Hospital v. Blue Cross of California* (2000) 83 Cal.App.4th 677, 686-687. The Court finds that there has been no showing of either procedural or substantive unconscionability. Plaintiff is therefore ordered to submit all of her individual pending claims in this action to binding arbitration pursuant to the Arbitration Agreement entered into between Plaintiff and Defendant, and denies the request of Plaintiff to conduct class-wide arbitration.

The Court stays the action as to Plaintiff's representative PAGA claims and defers ruling on the issue of dismissal of those claims pending the outcome of *Adolph v. Uber Technologies* (Cal Sup Court Case No. S274671), currently before the California Supreme Court.

The Court vacates the Case Management Conference on April 12, 2023 at 10:30 a.m. and sets this matter for a Review Hearing as to the status of arbitration, an update as to the status of *Adolph v. Uber Technologies*, and further ruling on dismissal of the Plaintiff's representative PAGA claims, for August 2, 2023 at 9:00 a.m. Counsel are directed to file a Status Report on or before July 19, 2023.