

**Judge Mosbarger – Law & Motion – Wednesday, February 15, 2023 @ 9:00 AM
TENTATIVE RULINGS**

1. 21CV01129 ROONEY, RACHELE ET AL V. MELMS, PATRICIA ET AL

EVENT: Plaintiffs Rachele Rooney's and Scott Jordan's Motion to Compel Defendants Patricia Melms and Judith Clark to Provide Responses to Form Interrogatories, Set One (1), to Deem Objections Waived, and to Impose Monetary Sanctions

The Motion is unopposed and is granted. Plaintiffs shall provide verified responses without objection to Form Interrogatories Set One, within 10 days of service of the Order. Sanctions are awarded in the amount of \$1,000 [\$500 as to each Defendant]. Sanctions are to be paid within 30 days of service of the Order. The Court will sign the form of order submitted by counsel with modification as to the sanctions award.

2. 21CV01957 PRECIADO-SANCHEZ, MARCOS V. GARY'S AIRBAG SERVICE

EVENT: Plaintiff's Motion for Approval of Private Attorneys General Act (Cal. Labor Code § 2698, Et Seq.) Settlement

The Court finds that the proposed settlement is fair, reasonable, and adequate, and Plaintiff's Motion for Approval of Private Attorneys General Act Settlement is granted. The Court vacates the Case Management Conference on March 15, 2023 and sets the matter for a Review Hearing on April 5, 2023 at 10:30 a.m. for status of dismissal. The Court will sign the form of order submitted by counsel.

3. 21CV02330 DECKER, MICHAEL P ET AL V. SIERRA PACIFIC LAND & TIMBER COMPANY

EVENT: Motion to be Relieved as Counsel

The motion was served on January 20, 2023 by U.S. mail, which is only 16 Court days plus 3 additional calendar days before the hearing on the motion. CCP §1005(b) requires an additional 2 calendar days where service is made by mail. Notice is therefore insufficient and the motion is continued to March 1, 2023 at 9:00 a.m. to allow for additional notice and the filing of an opposition, if desired. Based on what is before the Court at this time, the Court is inclined to find good cause to grant the Motion.

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4. 22CV00718 DOBBINS, ANNIE V. CHICO TERRACE HEALTHCARE & WELLNESS CENTRA, LP ET AL

EVENT: Defendant Windsor Chico Care Center, LLC's Motion to Compel Arbitration and Stay or Dismiss the Proceedings

As to the procedural issues raised by the parties, the Court finds that there is no violation by Defendant of California Rules of Court Rule 3.1113(d) and the Court has fully read and considered the timely and proper Memorandum of Points and Authorities filed by Defendant in Support of the Motion. The Court does note that Plaintiff's Opposition violates California Rules of Court Rule 3.1113(f) in that it exceeds 10 pages and fails to include a table of contents and a table of authorities; however, the Court, in its discretion, has fully read and considered the arguments raised by Plaintiff in the Memorandum in Opposition to the Motion even in light of the procedural errors. The Court deems the matter fully briefed and will rule on the merits of the Motion.

Defendant Windsor Chico Care Center, LLC's Motion to Compel Arbitration and Stay or Dismiss the Proceedings is granted. 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 substantive unconscionability as it is clear from the Arbitration Agreement and ADR Policy who the "Company" or employer was in this matter. The two cases cited by Plaintiff in support of her position in this regard: *Carmona v. Lincoln Millennium Car Wash, Inc.* (2014) 226 Cal.App.4th 74 and *Najarro v. Superior Court* (2021) 70 Cal.App.5th 871, are factually distinguishable from the instant case, and therefore the holdings in *Carmona* and *Najarro* are inapplicable here. In regard to procedural unconscionability, the Court finds that the Arbitration Agreement is not an adhesion contract, there was no oppression at the time Plaintiff signed the Arbitration Agreement, nor is the Arbitration Agreement vague or ambiguous, and the applicable arbitration rules are sufficiently stated. Finally, Defendant has not waived its contractual right to arbitrate, the Court finding that the passage of several months prior to the filing of the instant Motion in this matter was a "mere delay" in moving to compel arbitration while engaging in very little litigation and conducting very limited discovery, that does not constitute a waiver, especially absent any evidence of prejudice to the Plaintiff as is the case here. See, *Khalatian v. Prime Time Shuttle, Inc.* (2015) 237 Cal.App.4th 651, 654, 660-663 ["We also conclude defendants did not waive their right to arbitration even though they waited 14 months after the complaint was filed to move to compel arbitration. Plaintiff cannot demonstrate prejudice from the delay, which is determinative."] Plaintiff is therefore ordered to submit all claims in this action to binding arbitration pursuant to the Arbitration Agreement and all further proceedings in this matter are stayed pending the outcome of such arbitration.

The Mandatory Settlement Conference on November 28, 2023, the Trial Readiness Conference on January 25, 2024, and the Jury Trial on January 29, 2024, are vacated and the matter is set for a Status Hearing regarding status of arbitration on August 23, 2023 at 10:30 a.m. Counsel are directed to file a Status Report on or before August 9, 2023, and counsel for the Defendant shall submit a revised form of order consistent with this ruling within two weeks.

5. **22CV01735 PEOPLE OF THE STATE OF CALIFORNIA V. VONGSAY, DAVID**

EVENT: Application for Service of Process by Publication

The Motion is granted and the Court will sign the form of order submitted by counsel. The Court also advances the Case Management Conference on calendar this date and continues it out to April 19, 2023 at 10:30 a.m.

6. **22CV01749 PEOPLE OF THE STATE OF CALIFORNIA V. MAXWELL, ANTHONY PAUL**

EVENT: Plaintiff's Motion for Order that Requests for Admission Set One be Deemed Admitted

The Motion to have Requests for Admission Set One Deemed Admitted is unopposed and is granted. Plaintiff shall submit a revised form of order with the noted attachment within two weeks. Additionally, the Court advances the Case Management Conference and continues it to August 16, 2023 at 10:30 a.m. Case Management Conference Statements are to be timely filed and served.

7. **22CV02034 IN RE: LONG, BRUCE**

EVENT: Petition for Change of Name

If proper proof of publication is submitted at or before the hearing, the Petition will be granted.

8. **22CV02624 SCHEER, SHERYL V. NORTH STATE GROCERY, INC**

EVENT: Defendant North State Grocery, Inc.'s Motion to Transfer Venue [Improper Court]

Defendant's Request for Judicial Notice is granted. The Motion is unopposed and is granted. This action shall be transferred to Glenn County for all purposes. Plaintiff and her counsel shall be responsible for the payment of costs and fees associated with the transmittal of papers and other acts required to effectuate the transfer herein ordered. The Case Management Conference on May 3, 2023 is vacated and the matter is set for a Review Hearing on March 15, 2023 at 10:30 a.m. for status of transfer. The Court will sign the form of order submitted by the Defendant.

9. 22CV02658 J G WENTWROTH ORIGINATIONS, LLC V. NB

EVENT: Verified Petition for Approval for Transfer of Payment Rights

The Court finds that the proposed transfer does not comply with *Insurance Code* Section 10139.3(e) [“Neither the annuity issuer nor the structured settlement obligor may be required to divide any structured settlement payment between the payee and any a transferee or assignee or between two or more transferees or assignees.”] Further, based upon the information submitted by the Petitioner, including the Amended Declaration, the Court has determined that the transfer does not comply with the requirements of *Insurance Code* Section 10137, including that it is not in the best interest of the Payee. The Petition is therefore denied.