Dept. 1
Civil Law and Motion Tentative Rulings for Friday, June 21, 2024 at 8:30 a.m.

If you wish to appear for oral argument, you must so notify the Court at (209) 533-6633 and (209) 588-2316, and all other parties by 4:00 p.m. on the court day preceding the hearing, consistent with CRC 3.1308. The tentative ruling will become the ruling of the Court if notice for oral argument has not been provided.

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1. CV66120 Verdugo v. Capstone Logistics, LLC
Hearing on: Confirm Arbitration Award
Moving Party: Both (Joint)
Tentative Ruling: Continued to 07/19/2024 @ 8:30 a.m.

This case involves a wage/hour dispute with putative individual, class and representative (PAGA) claims. Before the Court this day is a "joint" motion to confirm the arbitration "award" entered on 04/08/2024. For a variety of reasons, some of which are identified herein, the petition is not ready for approval.

First, a superior court is only authorized to affirm *final* arbitration awards, as contrasted with interim awards of the nature described herein. See CCP §1283.4; *Taska v. RealReal, Inc.* (2022) 85 Cal.App.5th 1, 9. Although class action suits require a two-step process for affirming settlements in general, neither party has explained how that process re-establishes interim jurisdiction for a superior court.

Second, a superior court may only affirm an "award" issued by an arbitrator, which is defined as a ruling which (1) determines all issues that are necessary to the resolution of the controversy being subjected to arbitration, and (2) leaves unresolved only those issues that are potential, conditional or that otherwise could not have been determined at the time of that ruling. *Lonky v. Patel* (2020) 51 Cal.App.5th 831, 845. The arbitration award describes itself as "proposed" and is, in reality, nothing more than approval of a settlement. Does this constitute an arbitral award?

Third, "any petition made after the commencement or completion of arbitration shall be filed in a court having jurisdiction in the county where the arbitration is being or has been held." CCP §1292.2. The lawsuit was filed in Los Angeles County based upon an employment agreement between a warehouse worker residing in Riverside County and a company based out of Georgia. It was removed to the Central District, settlement with the help of a mediator based out Los Angeles County, and referred to an arbitrator based out of Georgia to "approve" the settlement. Although the written award states that the parties appeared at an approval hearing in Tuolumne County, and the petition provides the address of that meeting as 350 S. Washington Street, Sonora, something does not add up. That address belongs to the Heritage Inn in Sonora. Did lawyers from Chicago, Los Angeles, and San Francisco, actually convene with an arbitrator from Georgia here in tiny Tuolumne County (2 hours from the nearest international airport) to resolve a cause having nothing at all to do with Tuolumne County? As noted, there is nothing about this case touching Tuolumne County (see CCP §1282.2), and as such this Court will require actual evidence that an arbitral hearing occurred here.

Fourth, a petition to confirm an arbitration award should include a copy of the agreement to arbitrate (CCP §1285.4), and the copy provided to this Court appears to be incomplete. There is a curious gap between paragraphs 11 and 12, and another following paragraph 14. There are also "standard" clauses this Court typically sees in employment arbitration agreements that would fit nicely into those gaps, and which are not otherwise present (ie, choice of law, forum selection, etc). Moreover, the arbitration agreement presented includes a class action waiver, and yet the proposed award here covers the class – suggesting there may be an amended agreement somewhere. Lastly, there is no signature on the agreement and no proof to show that the e-signature attributed to plaintiff is authentic. See Civil Code §1633.9; *Garcia v. Stoneledge Furniture LLC* (2024) 102 Cal.App.5 41 at *7-8, *Ruiz v. Moss Bros. Auto Group, Inc.* (2014) 232 Cal.App.4th 836, 843; in accord, *Gamboa v. Northeast Comm Clinic* (2021) 72 Cal.App.5th 158, 167-168.

Hearing continued to 07/19/2024. All supplemental papers are to be filed on or before 07/10/2024.

2. **CV65621** **Aguayo v. Healthcare Staffing Professionals**
   Hearing on: Review Hearing
   Moving Party: N/A
   Tentative Ruling: N/A

This is a representative (PAGA) suit involving wage/hour disputes in the health care services industries. On 05/01/2024, the parties filed a Notice of Conditional Settlement of the Entire Case, and provided an expected date of completion no later than 07/31/2024. While no Request for Dismissal is yet on file, it would appear that this review hearing may have been scheduled too soon. If counsel elects not to appear, Court simply intends to continue this review hearing to early August.

3. **CV65514** **Gardner v. Lake Tulloch RV Campground Marina, LLC**
   Hearing on: Leave to Amend Cross-Complaint
   Moving Party: Defendant Lake Tulloch
   Tentative Ruling: Grant

This is a personal injury action involving an alleged trip-and-fall inside a retail store operated near the banks of Lake Tulloch. Before the Court this day is an unopposed motion for leave to amend the cross-complaint to add (1) a cause of action for breach of contract and (2) the individual shop owner.

Motions for leave to amend a pleading are directed to the sound discretion of the court. CCP §§ 473(a)(1) and 576. This discretion, however, is to be exercised liberally in favor of allowing amendments. *Howard v. County of San Diego* (2010) 184 Cal.App.4th 1422, 1428. Courts may permit amendments at any stage in the proceedings, up to an including trial, so long there is no prejudice to the adverse party. *Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 761. Prejudice exists where amendment would require delaying the trial, resulting in loss of critical evidence, or significant added litigation burden/costs. *Magpali v. Farmers Group* (1996) 48 Cal.App.4th 471, 486-488. Unexcused delay in bringing the motion may also be considered. *Melican v. Regents of University of California* (2007) 151 Cal.App.4th 168, 175.

To amend a pleading already at issue, the sponsoring party is required first to seek leave of court by way of noticed motion. CCP §473(a)(1). Pursuant to California Rules of Court, Rule 3.1324, the moving party must (a) specify in the moving papers by page, paragraph, and line number the allegations proposed to be added and/or deleted; and (b) include with the moving papers a declaration specifying the effect of the amendment, why the amendment is necessary/proper, when the facts giving rise to the amended allegations were discovered, and the reasons why the request was not made earlier. The supporting declaration fails to provide any of the required information. However, as noted, no opposition is filed. Nevertheless, this Court would be remiss if it failed to point out that cross-complainant knew or should have known about the contract claim, and the parties associated therewith, long before it filed its "Roe" cross-complaint on 10/02/2023.

Motion granted. Cross-complainant shall have 5 days to file/serve a First Amended Cross-Complaint.

4. CVL66041 **In re 20310 Canyon View Road**
Hearing on: Deposit of Surplus Funds (Continued)
Moving Party: Petitioner-Trustee
Tentative Ruling: Grant with conditions

This is a special proceeding to permit deposit of surplus funds. Following a foreclosure sale, the effectuating trustee has a statutory duty to collect proof of record ownership, identify potential claimants to surplus funds, and give notice of surplus funds. Civil Code §2924j. Once all of the competing claims have been received, the trustee's next obligation is to analyze and evaluate those claims, establish the order of priority, and – if a genuine conflict exists – provide the court with any information relevant to the dispute. Civil Code §2924j. If no genuine dispute regarding priority exists, the trustee shall distribute the funds in accordance with Civil Code §2924k. If the trustee has failed, after

due diligence, to determine the priority of any claims within the time allotted by statute, the trustee may then file a petition for permission to deposit the surplus funds with the Court (and put the onus on the Court to determine priority interests in the surplus funds). Civil Code §2924j(b)-(d). Once the funds are deposited with the Court, the clerk gives notice to the claimants and must "serve written notice of the hearing by first-class mail on all claimants identified in the trustee's declaration at the addresses specified." The hearing date must take place within 90 days – at which time all viable claimants will be prioritized, and the funds distributed accordingly. Civil Code §2924j(d).

The trustee's sale herein resulted in a net surplus (after administrative costs) of $22,408.11. Petitioner received eleven (11) claims. Based on the supplemental papers filed, it would appear that the only claimant with a *recorded* interest is the Ponderosa Hills Recreation Club for $644.50. That claim is entitled to immediate payment from the surplus funds, and the trustee is directed to make that distribution. The balance belongs to the rightful heirs of the trustor, which the Court shall determine after an evidentiary hearing. Thus, after the trustee pays the $644.50 to Ponderosa, the trustee is authorized to deposit the balance here and to be discharged from further involvement. (Although Ponderosa now claims a higher lien amount, the failure to timely record that interest leaves Ponderosa with an unsecured claim against the estate.)

5. **CV65378** **Sataua v. Kendal**
   Hearing on: Review Hearing
   Moving Party: N/A
   Tentative Ruling: N/A

This is a personal injury action arising out of a motor vehicle accident. On 05/24/2024, the parties filed a Notice of Conditional Settlement of the Entire Case, and provided an expected date of completion no later than 06/20/2024. There being no Request for Dismissal is yet on file, counsel shall advise if additional efforts are needed or if a dismissal can be entered forthwith.

6. **CV63883** **Pine Mountain Lake Ass'n v/ Chisolm**
   Hearing on: Motion to Enforce Settlement
   Moving Party: Plaintiff
   Tentative Ruling: Grant

This is a dispute between the HOA and a homeowners reportedly out of compliance. Before the Court this day is a motion to enforce a recent settlement brokered between the parties at the MSC on 02/16/2024.

The Minute Record from the MSC reflects that a settlement was reached in open Court, to which defendant gave her personal assent. The terms were that defendant would pay the HOA $10,000 within 60 days; would sign a nondisclosure agreement; would establish her ownership rights, and would abide by the CC&Rs going forward. Counsel for the HOA present undisputed evidence that defendant has failed to honor any of her existing obligations under the terms of the settlement agreement. Defendant does not dispute making the settlement, and only implies an inability to comply.

Pursuant to CCP §664.6, if parties to pending litigation stipulate in a writing signed by the parties themselves, or in open court before a judge, the court, upon motion, may enter judgment pursuant to the terms of the settlement. The statute "was enacted to provide a summary procedure for specifically enforcing a settlement contract without the need for a new lawsuit." *Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 809. Not every settlement agreement is amenable to enforcement by way of this summary proceeding; sometimes, the parties will need to amend the operative pleading or file a new lawsuit. See *Khavarian Enterprises, Inc. v. Commline, Inc.* (2013) 216 Cal.App.4th 310, 328-329; *Robertson v. Chen* (1996) 44 Cal.App.4th 1290, 1293. For example, if an oral settlement as reflected on the record leaves material terms wanting, the settlement cannot be enforced through the §664.6 summary proceeding. See, *e.g.*, *Terry v. Conlan* (2005) 131 Cal.App.4th 1445, 1459; *Lindsay v. Lewandowski* (2006) 139 Cal.App.4th 1618. However, minor terms reasonably necessary to facilitate the settlement can be incorporated, but nothing which objectively impacts the "value" of the settlement. See *Steller v. Sears, Roebuck and Co.* (2010) 189 Cal.App.4th 175, 181. The only term left open here was "Board approval," which has apparently been secured.

This is sufficient to warrant judicial intervention. Motion to enter judgment according to terms of settlement is GRANTED. Plaintiff to prepare proposed judgment.