

Judge Benson – Law & Motion – Wednesday, December 11, 2024 @ 9:00 AM
TENTATIVE RULINGS

1. 21CV02640 Espinoza, Raquel v. Delallo’s Italian Foods, Inc.

EVENT: Compliance Hearing

The compliance hearing is continued to February 19, 2025 (after the deadline for employees to cash their checks). Plaintiff shall file a supplemental declaration updating the Court on the outstanding checks by January 29, 2025.

2. 22CV01168 O’Rear, Rick v. Masula, DC, Larry E et al.

EVENT: Defendant Larry S. Masula, D.C.’s Motion For Summary Judgment (Continued from 8/14/24)

Defendant Larry S. Masula, D.C.’s Motion For Summary Judgment is GRANTED on the grounds the action is barred as to moving Defendant pursuant to CCP § 340.5. The Court notes this motion is unopposed.

Defendant’s UMF # 12 demonstrates Plaintiff was put on notice concerning Defendant’s alleged malpractice on April 27, 2021. Pursuant to CCP § 340.5, commencement of legal action against moving Defendant was required no later that April 27, 2022. Because action was not commenced against moving Defendant until February 28, 2023, the action is untimely.

The Court declines addressing the standard of care issue raised in the motion.

Defendant Larry S. Masula, D.C. shall prepare and submit a form of order consistent with this ruling within 2 weeks.

3. 24CV01467 Barclay’s Bank Delaware v. Jaime, Deidra

EVENT: Plaintiff’s Motion to Deem Requests for Admissions Admitted

Plaintiff’s Motion to Deem Requests for Admissions Admitted is GRANTED. The Court will sign the proposed order.

4. **24CV03050 Collins, Alisha**

EVENT: Change of name (minor) (Continued from 10/23/24)

The Court will hear from Petitioner.

5. **23CV00827 Binion, Steven v. Pacific Gas and Electric Company**

EVENT: Defendant's Motion for Judgment on the Pleadings

Defendant's Motion for Judgment on the Pleadings is GRANTED and is unopposed.

Defendant's Request for Judicial Notice is GRANTED. The Court takes judicial notice of Defendant's Request for Admissions Set One and the Court's August 14, 2024 order deeming admissions admitted.

In light of Plaintiff's admissions including his admission that he has not suffered an adverse employment action due to his race, Plaintiff's race discrimination and failure to prevent discrimination causes of action necessarily fail.

The Case Management Conference scheduled for February 19, 2025 is vacated. Defendant shall prepare and submit a form of order consistent with this ruling within 2 weeks.

6. **24CV03468 UniFirst Corporation v. Jeff's Truck Service & Power**

EVENT: Hearing on Petition to Confirm Contractual Arbitration Award and Motion to Vacate Arbitration Award

Motion to Vacate Arbitration Award is GRANTED.

Preliminarily, the Court finds CCP § 1288.2 does not apply in this instance because Respondent was never "served" with the award, therefore the 100 day time period was not triggered. The Court has not found any case law or other statute defining "service" for purposes of CCP § 1288.2.

Absent such guidance, the Court finds the terms of the arbitration agreement govern the definition of service. Here, it is undisputed the expedited rules of the commercial arbitration rules of the American Arbitration Association apply. As Respondent noted,

Rule R-43 requires service by mail unless there is an agreement to the contrary by the parties. There is no evidence that Respondent agreed to service by email. Thus, because the award was served by email and not mail, the 100 day rule is inapplicable.

As to the underlying issue of whether the arbitrator exceeded his authority, arbitration must proceed as the parties themselves have agreed. (*Parker v. McCaw*, (2005) 125 Cal. App. 4th 1494, 1506) Petitioner's argument that the expedited procedures conflict with the contractual requirement that the arbitration take place at "the capital city of the state where Customer has its principal place of business (or some other location mutually agreed)" is unpersuasive.

Doubtful or conflicting claims in an agreement should be construed against the party responsible for the ambiguity. (*Dollar v. International Banking Corp.*, (1909) 10 Cal. App. 83, 87) Because Petitioner drafted the agreement, Petitioner is bound to the term arbitration proceed in Sacramento unless Respondent agreed otherwise. As a result, the arbitrator lacked jurisdiction to arbitrate this matter.

Respondent shall prepare and submit a form of order consistent with this ruling within 2 weeks.

7. 24CV02604 Lucero, Sandra v. Anthem Chico Management, LLC

EVENT: Defendant's Petition to Compel Arbitration and Stay Proceedings

Defendant's Petition to Compel Arbitration and Stay Proceedings is GRANTED.

The issue before us is not whether Plaintiff's daughter had authority to send Plaintiff to the care facility. Rather, the issue is whether Plaintiff's daughter had authority under the notarized power of attorney to execute an agreement to arbitrate.

The power of attorney indicates Plaintiff has selected "all of the powers listed above". This includes "Claims and litigation" pursuant to Probate Code § 4459.

Probate Code § 4459

In a statutory form power of attorney, the language with respect to claims and litigation empowers the agent to do all of the following:

...

(d) Submit to arbitration, settle, and propose or accept a compromise with respect to a claim or litigation.

...

Pursuant to § 4459(d), Plaintiff's daughter had authority to agree to arbitration on Plaintiff's behalf.

The Case Management Conference currently scheduled for January 29, 2025 is hereby continued to April 16, 2025 at 10:30am.