SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 39
JUDICIAL OFFICER: EDWARD G WEIL
HEARING DATE: 05/29/2025

The tentative ruling will become the Court's ruling unless by 4:00 p.m. of the court day preceding the hearing, counsel or self-represented parties email or call the department rendering the decision to request argument and to specify the issues to be argued. Calling counsel or self-represented parties requesting argument must advise all other affected counsel and self-represented parties by no later than 4:00 p.m. of their decision to appear and of the issues to be argued**.** Failure to timely advise the Court and counsel or self-represented parties will preclude any party from arguing the matter. (*Local Rule* 3.43(2).)

Note: In order to minimize the risk of miscommunication, parties are to provide an **EMAIL NOTIFICATION TO THE DEPARTMENT OF THE REQUEST TO ARGUE AND SPECIFICATION OF ISSUES TO BE ARGUED**. Dept. 39's email address is: dept39@contracosta.courts.ca.gov. Warning: this email address is not to be used for any communication with the department except as expressly and specifically authorized by the court. Any emails received in contravention of this order will be disregarded by the court and may subject the offending party to sanctions.

Submission of Orders After Hearing in Department 39 Cases

The prevailing party must prepare an order after hearing in accordance with CRC 3.1312. If the tentative ruling becomes the Court's ruling, a copy of the Court's tentative ruling **must be attached to the proposed order** when submitted to the Court for issuance of the order.

Courtroom Clerk's Calendar

1. 10:00 AM CASE NUMBER: C22-01725
CASE NAME: LONELL SWEARINGTON VS. DONOR NETWORK WEST
HEARING IN RE: INFORMAL DISCOVERY CONFERENCE SET BY THE COURT AS REQUESTED BY PARTIES 04.22.25
FILED BY:
TENTATIVE RULING:
Withdrawn by the parties to be reset at a later date.

Law & Motion

2. 9:00 AM CASE NUMBER: C22-02572
CASE NAME: ROCIO DE LEON VS. TREELINE LOGISTICS, INC.
***HEARING ON MOTION IN RE: COMPEL ARBITRATION**
FILED BY: AMAZON LOGISTICS, INC.
****TENTATIVE RULING:****

Defendants Amazon Logistics, Inc. and Amazon.com Services LLC's motion to compel arbitration is **denied**.

The Amazon Defendants were added using DOE amendments in September 2024. They filed an answer in January 2025 and filed this motion in March 2025.

Amazon presents evidence of an enforceable arbitration agreement. According to Treeline's records, Plaintiff electronically agreed to the arbitration agreement. (Cantwell-Badyna dec. ¶¶5-7 and ex. A and B.) Plaintiff does not dispute that she electronically agreed to the arbitration agreement (although she declares that she does not remember).

The Agreement requires arbitration of all claims arising out of or relating to "(a) Employee's application, hiring, hours worked, services provided, and/or employment with the Company or the termination thereof, and/or (b) a Company policy or practice, or the Company's relationship with or to a customer, vendor, or third party, including without limitation claims Employee may have against the Company and/or any Covered Parties (defined below), or that the Company may have against Employee." (Agreement p. 1.) The agreement was between Treeline and Plaintiff, but specifically included "covered parties" which is defined to include "clients of the company". (Agreement p.2) The agreement includes a waiver of class actions. (Agreement p. 2.) However, if the waiver is unenforceable then the representative action will be heard in court. (Agreement p. 2.) Finally, the Agreement states that the FAA governs the interpretation and enforcement of the agreement. (Agreement p.3)

Plaintiff does not contest Amazon's right to enforce the arbitration agreement as a third-party beneficiary. Thus, the Court finds that although Amazon was not a signatory to the Arbitration Agreement it can enforce the Agreement.

FAA

Generally, the FAA would apply to the Agreement here. "Section 1 of the FAA, however, provides a limited exemption from FAA coverage to 'contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.' (9 U.S.C. § 1.)" (*Betancourt v. Transportation Brokerage Specialists, Inc.* (2021) 62 Cal.App.5th 552, 558.) The catchall provision for "any other class of workers" applies to "transportation workers." (*Ibid*.) Whether a particular individual can be defined as a "transportation worker" "require[s] a case-by-case factual determination, with the party opposing the motion to compel arbitration bearing the burden to

demonstrate that the exemption applies. [Citations.]" (*Id*. at 559.)

In *Rittmann v. Amazon.com, Inc.* (9th Cir. 2020) 971 F.3d 904, the Ninth Circuit explained that Amazon packages do not "'come to rest' at Amazon warehouses, and thus the interstate transactions do not conclude at those warehouses. The packages are not held at warehouses for later sales to local retailers; they are simply part of a process by which a delivery provider transfers the packages to a different vehicle for the last mile of the packages' interstate journeys." (*Rittmann, supra*, 971 F.3d at p. 916.) Thus, *Rittmann* concluded that Amazon last-mile delivery drivers are "engaged in interstate commerce" because their "transportation of goods wholly within a state are still a part of a continuous interstate transportation."

In *Betancourt* the court upheld the trial court's denial of a motion to compel arbitration finding that the employee's "last-mile delivery" of goods coming into the state from interstate commerce exempted the employee from the FAA. (*Betancourt, supra,* (2021) 62 Cal.App.5th 552, 558.) Similarly, in *Nieto v. Fresno Beverage Co., Inc.* (2019) 33 Cal.App.5th 274 the court concluded that a beverage delivery driver who only made *intra*state deliveries still fell within the exemption. (*Id.* at p. 284.) *Betancourt* relied on both *Rittman* and *Nieto*.

In *Southwest Airlines Co. v. Saxon* (2022) 596 U.S. 450 the United States Supreme Court clarified that the focus of the exception "emphasizes the actual work that the members of the class, as a whole, typically carry out." (*Id*. at 456.) *Saxon* explained that the court first defines the relevant "class of workers" to which the employee belongs and then determines whether that class of workers is "engaged in foreign or interstate commerce." (*Id.* at 455.) *Saxon* noted that the issue can be a close call and declined to decide whether *Rittmann* was correct. However, *Carmona v. Domino's Pizza, LLC* (9th Cir. 2023) 73 F.4th 1135 found that *Rittmann* is not in clear conflict with *Saxon* and thus, it continues to be good law. The Court agrees with *Carmona*'s analysis that *Rittman* remains good law.

Amazon argues that *Betancourt, Rittman* and *Nieto* have been superseded by *Bissonnette v. LePage Bakeries Park St., LLC* (2024) 601 U.S. 246. In *Bissonnette* the United States Supreme Court held that there is no requirement that "a transportation worker must work for a company in the transportation industry to be exempt under §1 of the FAA.". (*Id.* at 252.) The court explained that the focus is "on '"the *performance* of work"' rather than the industry of the employer. [Citation.]" (*Bissonnette, supra,* 601 U.S. 246, 253.) *Bissonnette* does not change the Court's analysis here. *Carmona* focused on the performance of work as required by *Saxon* and came to the same conclusion as *Betancourt* and *Rittman*.

Amazon argues that this Court should follow *Lopez v. Cintas Corp.* (5th Cir. 2022) 47 F.4th 428 which found that a local delivery driver was not exempt under the transportation workers' exemption. If there were only federal court opinions on this issue then this Court could decide to follow *Lopez* instead of *Rittman, Nieto*, and *Carmona*. Here, however, *Betancourt* is a published California Court of Appeal decision on point. Betancourt has not been overruled and the cases it relies on, including Rittman, remain good law. Therefore, this Court must follow *Betancourt*.

Plaintiff's declaration states that her job as a delivery associate "consisted exclusively of loading and delivering Amazon packages around Northern California." (DeLeon dec. ¶3.) She delivered

hundreds of Amazon packages each shift and that many of the packages indicated that they came from out of state or another country. (DeLeon dec. ¶¶4-5.) While working for Treeline, Plaintiff's "class of workers" was delivery drivers. Further, Plaintiff's evidence shows that in her work as a delivery driver she regularly delivered out of state packages. This evidence shows that Plaintiff is delivering packages from interstate commerce and thus, she has met her burden of showing that she was a "last-mile" delivery driver of goods coming from interstate commerce. Following, *Betancourt, Rittman* and *Carmona* the Court finds that Plaintiff is exempt from the FAA as a transportation worker.

Class Waiver

When "the FAA is not applicable, the appropriate test under California law to determine whether to enforce the 'class waiver' provisions of an arbitration agreement remains the four-part analysis under *Gentry [v. Superior Court* (2007) 42 Cal.4th 443]. [Citation.] In *Gentry*, the court concluded that a party opposing enforcement of an express class waiver clause must make a factual showing under a four-factor test [citation], which requires the trial court to consider: (1) "the modest size of the potential individual recovery'; (2) 'the potential for retaliation against members of the class'; (3) 'the fact that absent members of the class may be ill informed about their rights'; and (4) 'other real world obstacles to the vindication of class members' rights … through individual arbitration.'[Citation.] *Gentry* held that a trial court may decline to enforce a class action waiver if it concludes, based on these factors, that class arbitration is 'likely to be a significantly more effective practical means of vindicating the rights of the affected employees than individual litigation or arbitration,' and that there would be a 'less comprehensive enforcement' of the applicable laws if the class action device is disallowed. [Citation.]" (*Muro v. Cornerstone Staffing Solutions, Inc.* (2018) 20 Cal.App.5th 784, 792.) "It is the plaintiff's burden to show the class action waiver is invalid by making a factual showing of the four *Gentry* factors." (*Id*. at 792.)

In *Muro*, the plaintiff filed a wage and hour class action complaint and the court considered the *Gentry* factors. As to the first factor, plaintiff's attorney estimated a "maximum individual recovery would be less than $26,000". (*Id* at. 793.) The court agreed that the $26,000 recovery was "modest" and also noted that a potential award of as large as $37,000, was considered modest in *Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 745. (*Ibid*.) Finally, the court quoted *Gentry,* which "observed that 'wage and hour cases will generally satisfy the "modest" recovery factor because they "usually involve[] workers at the lower end of the pay scale." ' [Citations.]" (*Ibid*.)

Here, Plaintiff's attorney estimates that Plaintiff's likely individual recovery would be $22,819.39. (Wilkinson dec. ¶6.) This evidence is sufficient to convince the Court that Plaintiff's likely individual recovery would be modest. Amazon argues that the possible recovery of statutory attorney fees changes the analysis. But attorney fees are not part of ones' individual recovery and thus, not part of this factor. *Muro* implicitly recognized this point in a footnote. (*Muro, supra,* 20 Cal.App.5th at 793, fn. 5.)

As to the second factor, *Muro* found that plaintiff's declaration that he feared he would be fired or retaliated against for bringing a lawsuit was sufficient to meet the second *Gentry* factor. (*Id*. at 794.) In addition, the court found that one worker's expression of his own concerns about retaliation

"provided a sufficient basis for the court, as the finder of fact, to draw the reasonable inference that other similarly situated drivers shared those same concerns." (*Ibid*.)

Here, Plaintiff declares that she "was afraid [she] would be retaliated against for initiating this lawsuit while still employed by Treeline. [She] was even afraid that complaining about the strict quotas or missed breaks could result in discipline or termination." (DeLeon dec. ¶14.) This language is similar to the language in *Muro* and is sufficient to create an inference that other putative class members are concerned about potential retaliation. Thus, Plaintiff has met the second *Gentry* factor.

Amazon's argues that the retaliation factor requires more evidence. *Franco v. Athens Disposal Co., Inc.* (2009) 171 Cal.App.4th 1277, 1296 provided more evidence of retaliation, but *Franco* is not in conflict with *Muro*, which found a declaration from the plaintiff sufficient to show a potential for retaliation. In *Saul v. Lineage Logistics Servs. LLC* (E.D.Cal. Feb. 27, 2025, No. 2:24-cv-01331-DJC-CSK) 2025 U.S.Dist.LEXIS 35671 and *Lewis v. UBS Fin. Servs.* (N.D.Cal. 2011) 818 F.Supp.2d 1161 the federal district courts wanted more detail information on the potential for retaliation. To the extent those cases are in conflict with *Muro*, this Court must follow the California Court of Appeal cases.

As to the third factor, *Muro* found that the plaintiff's declaration that he did not know his rights and did not understand that he was not getting paid for all hours worked or receiving his meal and rest breaks was sufficient to show that absent members of the class may be ill informed about their rights. (*Muro, supra,* 20 Cal.App.5th at 794.) *Muro* also disagreed with the argument "that there must be affirmative evidence that rights were not communicated to absent class members in order to satisfy the third *Gentry* factor." (*Ibid*.)

Here, as in *Muro*, Plaintiff declares that she was not aware of her rights as an employee. She explains that she was told to take breaks, but also had to keep delivering packages, which made taking breaks "almost never possible." She also says that her supervisors instructed her to take her meal break while driving so the records would show she had taken a break and that she almost never took rest breaks. Plaintiff declares that she was not aware that this was a "violation of the law or that it entitled [her] to more pay." (De Leon dec. ¶9.) She explains that Treeline did not explain the timing of breaks to her and that she did not know that she was entitled to extra pay for missed breaks. (De Leon dec. ¶10.) Amazon argues that Plaintiff acknowledged that she signed a bunch of forms when her employment started. (De Leon dec. ¶8.)

Amazon argues that the putative class members "were made aware of their rights under the Labor Code via the onboarding process, legally required posters informing employees of their rights throughout the worksites, and the very onboarding documents" Plaintiff signed. But Amazon does not provide any evidence of the information provided to Plaintiff.

Plaintiff's evidence shows that she was unaware of her rights and her evidence is sufficient to create an inference that putative class members may not have been informed of their rights. Thus, Plaintiff has met the third *Gentry* factor.

As to the fourth factor addressing other real world obstacles to the vindication of employee rights, Plaintiff relies on case law instead of evidence. Amazon argues that the failure to provide

evidence is insufficient to establish this factor. However, when the first three *Gentry* factors are found to support plaintiff, the court need not give weight to the fourth factor. (*Sanchez v. Western Pizza Enterprises, Inc.* (2009) 172 Cal.App.4th 154, 171 fn.7; see also, *Mitchell v. Lineage Logistics Servs. LLC* (E.D.Cal. Feb. 27, 2025, No. 2:24-cv-02099-DJC-CSK) 2025 U.S.Dist.LEXIS 35792, at *27.)

The Court finds that Plaintiff has met the first three factors in the *Gentry* test and this is sufficient to show that the class action waiver should not be enforced. Thus, Plaintiff is entitled to bring this case as a class action. The parties' arbitration agreement requires that class actions be brought in court. Therefore, the Court denies the motion to compel arbitration.

Objections to Evidence

The Court rules on Amazon's objections to evidence as follows:
1 to 22. Sustained. The Court finds the Han declaration is inadmissible.
23 to 29. Overruled.
30. Overruled.
31 to 37. Overruled.
38. Sustained as to the statement that supervisors wanted other delivery drivers to respond, but otherwise overruled.
39 to 41. Overruled.

3. 9:00 AM CASE NUMBER: C23-01728
CASE NAME: KELLI FREYTES VS. GENERAL MOTORS LLC
***HEARING ON MOTION IN RE: RECONDSIDERATION RE 01/28/25 MOTION PARTIALLY GRANTING FEES AND COSTS**
FILED BY: GENERAL MOTORS LLC
TENTATIVE RULING:

Defendant General Motors moves under Code of Civil Procedure section 473(b) to set aside an order awarding attorney's fees to plaintiff, specifically the portion of the order that awarded plaintiff a multiplier of 1.5 to their lodestar fee. The ground for the motion is that counsel was not permitted to present oral argument, because defense counsel did not comply with Local Rule 3.43(2), i.e., notify the court and opposing counsel that they intended to contest the tentative ruling. Counsel states that he was not aware of the requirement, and that this was due to his mistake, inadvertence, or excusable neglect.

Code of Civil Procedure section 473.5 provides that "the court may, upon such terms as may be just, relieve a party or his legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect."

It has long been established that "[the policy of the law is to have every litigated case tried upon its merits, and it looks with disfavor upon a party, who, regardless of the merits of the case, attempts to take advantage of the mistake, surprise, inadvertence, or neglect of his adversary." (*Weitz v. Yankosky* (1966) 63 Cal.2d 849, 854-855.) Thus, '"the provisions of section 473 … are to be liberally

construed and sound policy favors the determination of actions on their merits." [Citation.]' [Citation.] '[B]ecause the law strongly favors trial and disposition on the merits, any doubts in applying section 473 must be resolved in favor of the party seeking relief from default.'" (*Shapell SoCal Rental Properties, LLC v. Chico's FAS, Inc.* (2022) 85 Cal.App.5th 198, 212.) "'Section 473 is often applied liberally where the party in default moves promptly to seek relief, and the party opposing the motion will not suffer prejudice if relief is granted. [Citations.] In such situations "very slight evidence will be required to justify a court in setting aside the default." [Citations.]'" (*Fasuyi v. Permatex, Inc*. (2008) 167 Cal.App.4th 681, 695.)

There are two problems with defendant's argument. First, the failure to know and follow the rule is not due to excusable neglect. The procedure is authorized by the California Rules of Court. The specific procedure is set forth in the published Local Rules, at Rule 3.43(2). The procedure also is reprinted as the first item on the posted tentative rulings. Moreover, defendant's law firm has other cases pending in this county.

Second, the argument presupposes that the failure to present oral argument was the cause of the court's order. The matter was fully briefed by both sides, and the particular issue—whether a multiplier was appropriate—was addressed in the Court's ruling. Thus, the failure to present oral argument was not the reason for the Court's ruling.

Since the order was not caused by counsel's failure to present oral argument, the requirements of the statute are not met, and the motion is denied.

4. 9:00 AM CASE NUMBER: C23-02179
CASE NAME: DMITRIY SHORNIKOV VS. LAKE ALHAMBRA PROPERTY OWNERS ASSOCIATION
***HEARING ON MOTION IN RE: FOR AN OSC RE PERJURY**
FILED BY: SHORNIKOV, DMITRIY
****TENTATIVE RULING:****

Plaintiff Dimitriy Shornikov alleges that defendant Lake Alhambra Property Owners Association has failed to carry out legally proper elections for the HOA Board of Directors. In this motion, he contends that defendant's Fourth Amended Answer to the complaint contains false information. He therefore moves that this Court issue an order to show cause re contempt against the person who verified that answer, Steve Armanini. Plaintiff relies on Code of Civil Procedure section 1209(a)(9) which provides that "any unlawful interference with the process or proceedings of a court" constitutes contempt, and Penal Code section 118, which provides that perjury is unlawful.

In *Moore v/ Superior Court* (2020) 57 Cal.App.5th at 441, 458, the court stated "'A judge has a duty to exercise the power [to punish for contempt] to protect the integrity of the court and the judicial process [citation], but he must do so "with great caution, lest [he] stifle the freedom of thought and speech so necessary to a fair trial under our adversary system." (Internal quotations omitted.)

The Fourth Amended Answer made various statements concerning past elections for the HOA Board of Directors and stated that in the past there had been fewer candidates for members of the Board than vacancies. These statements go to the merits of the underlying litigation, and are more appropriately tested in the normal manner, i.e., trial. The contempt procedure should not be turned

into an alternative and abbreviated way of determining disputed factual matters on their merits.

The motion for an order to show cause is denied.

5. 9:00 AM CASE NUMBER: C23-02438
CASE NAME: RYAN JONES VS. JAMES JEWELL
***HEARING ON MOTION IN RE: TO COMPEL ARBITRATION**
FILED BY: MAHMOOD POURZAND AS THE TRUSTEE OF THE POURZAND-MOUBEDI FAMILY TRUST AND
****TENTATIVE RULING:****

Introduction

Before the Court is Cross-Defendant Mahmood Pourzand, dba Gehl Design Build's motion to compel arbitration. The Motion relates to Plaintiff's First Amended Complaint for failure to disclose and fraud related causes of action.

Defendant moves for an order for the dispute between BEE LLC and Pourzand to be separately and expeditiously resolved by the contractually required arbitration.

For the reasons explained below, Cross-Defendant Mahmood Pourzand, dba Gehl Design Build's motion to compel arbitration is **denied**.

Procedural Background

In March 2023, the Current Homeowners filed a Complaint in Arbitration against Bee LLC for causes of action including those based on alleged construction defects, including issues with the work performed by Gehl. (Heitz Decl., ¶ 5.) Bee Renovated LLC timely responded to the Complaint in arbitration, and on August 4, 2023, filed a Cross-Complaint in the arbitration against the previous owner, Mahmood Pourzand. Despite being named in the arbitration between Jones and Bee, concerning the Subject Property previously owned by Pourzand and constructed by his dba Gehl Design Build, Mr. Pourzand chose not to participate, and at that time did not retain counsel. (Heitz Decl., ¶ 6.)

On September 27, 2023, the Current Homeowners filed a Complaint in the Contra County Court against Bee Renovated, Inc.; James Alan Jewell; Sean Gaston Steer; and Does 1-10, alleging causes of action including those based on alleged construction defects. (Heitz Decl., ¶ 7.) The Complaint was later amended to include Bee LLC. Bee LLC and Bee Renovated Inc., timely filed a Cross-Complaint against the implicated parties, including Pourzand/Gehl. (Heitz Decl., ¶ 8.) Pourzand/Gehl answered the cross complaint on June 4, 2024. (Heitz Decl., ¶ 9.) After filing an Answer to the Cross-Complaint, Pourzand/Gehl propounded discovery on Bee LLC and Bee Renovated Inc., and responses were timely served to Pourzand/Gehl by both parties on February 18, 2025. (Heitz Decl., ¶ 10.)

Considering the pending state action, Bee LLC and Plaintiffs agreed to stay the arbitration given that the claims against the various parties all arise from the same underlying facts, and an order to that effect was entered on December 10, 2024. (Heitz Decl., ¶ 11.) Litigation is now proceeding with all parties in the state court. As part of that litigation, Pourzand served extensive written discovery on Bee LLC, and has responded to discovery requests. (Heitz Decl., ¶ 12.) Additionally, and without objection, Pourzand has participated in depositions of the PMK for Bee LLC and Bee Renovated, Inc.

(Heitz Decl., ¶ 13.) Finally, Pourzand agreed and signed a Case Management Order to guide discovery and settlement efforts, and participated in pre-mediation calls under that Order with mediator Bruce Edwards. (Heitz Decl., ¶ 14.)

Despite participating in the state case for almost a year, Pourzand (but notably, not his dba, Gehl, who is not part of the contract containing the arbitration provision) now seeks arbitration between just two of the numerous overlapping parties.

Factual Background

This case is a dispute over a house at 20 Kerr Avenue in Kensington, California ("Property"). Pourzand sold the Property to Bee Renovated Properties, LLC ("Bee Renovated") on August 2, 2020. Bee Renovated then had its related construction company, Bee Renovated Inc., do the construction work to finish the house on the Property. Bee Renovated marketed the Property, represented by Defendants Compass Real Estate and Ruth Frassetto. In October 2021, Plaintiffs purchased the house from Bee Renovated. Subsequently, there were issues with water intrusion, mold and other issues that led Plaintiffs to file a Notice of Claim on Bee Renovated and eventually file a Complaint in Arbitration against Bee Renovated on March 2, 2023. (Marchant Decl., ¶ 2.)

Legal Standard for Motions to Compel Arbitration

A motion to compel arbitration "is in essence a suit in equity to compel specific performance of a contract." (*Cal. Teachers Ass'n v. Governing Bd.* (1984) 161 Cal.App.3d 393, 399, citation omitted.) "A party who files a motion to compel arbitration 'bears the burden of proving the existence of a valid arbitration agreement by a preponderance of the evidence, and a party opposing the petition bears the burden of proving by a preponderance of the evidence any fact necessary to its defense." (*Alvarez v. Altamed Health Services Corp.* (2021) 60 Cal.App.5th 572, 580 quoting *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 972.) Whether or not the arbitration clause is governed by federal law, the threshold issue of whether a valid and enforceable agreement to arbitrate exists is determined under California law and procedures. (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413).)

Analysis

Plaintiffs' Filing of a Complaint in Arbitration

The Court views Plaintiffs' filing of the Complaint in Arbitration attempt to preserve their claims in all possible jurisdictions, and as an acknowledgement of the existence of a valid arbitration clause between the parties. However, this does not have any bearing on the Court's analysis because of the actions taken in the civil case filed in this Court. Namely, the filing and consolidation of the numerous Cross-Complaints by at least three additional parties with Plaintiff's lawsuit, which affects the applicability of CCP § 1281.2 which is analyzed below.

Cross-Defendant's Initial Burden

Defendant/Cross-Complainant Bee Renovated signed a Purchase Agreement with Cross-Defendant Pourzand for the Subject Property located at 20 Kerr Street, Kensington, CA 94707 on July 31, 2020, which included an Arbitration Clause. Cross-Defendant Pourzand provides a true and correct copy of the executed Purchase Agreement. (Pourzand Motion to Compel, Ex. A.) The Court notes no party is challenging the existence or validity of the July 31, 2020, Purchase Agreement and its Arbitration

Clause.

Accordingly, Cross-Defendant Pourzand has met its initial burden to establish the existence of the Arbitration Agreement. The burden now shifts to Plaintiffs and Defendant/Cross-Complainant Bee Renovated to present facts showing why it should not be enforced.

Waiver

Waiver "is the intentional relinquishment or abandonment of a known right." (*Morgan v. Sundance, Inc*. (2022) 596 U.S. 411, 417.) "Accordingly, regardless of whether the procedural requirements of the FAA or the CAA apply in these proceedings, our determination of whether [a party moving to compel arbitration] has lost its right to compel arbitration as a result of its litigation-related conduct is governed by generally applicable state law contract principles." (*Quach v. California Commerce Club, Inc*. (2024) 16 Cal.5th 562, 572.) "To decide whether a waiver has occurred, the court focuses on the actions of the person who held the right; the court seldom considers the effects of those actions on the opposing party." (*Morgan, supra*, 596 U.S. at 417.)

To establish waiver under generally applicable contract law, the party opposing enforcement of a contractual agreement must prove by clear and convincing evidence that the waiving party knew of the contractual right and intentionally relinquished or abandoned it. ((*Lynch v. California Coastal Com.* (2017) 3 Cal.5th 470, 475; see *Waller v. Truck Ins. Exchange, Inc*. (1995) 11 Cal.4th 1, 31 (Waller) [burden is on party claiming waiver "'to prove it by clear and convincing evidence'"]; 30 Cal.Jur.3d, supra, Estoppel and Waiver, § 38.) Under the clear and convincing evidence standard, the proponent of a fact must show that it is "highly probable" the fact is true. (*Conservatorship of O.B.* (2020) 9 Cal.5th 989, 995 (O.B.).) The waiving party's knowledge of the right may be "actual or constructive." (*Outboard Marine Corp. v. Superior Court* (1975) 52 Cal.App.3d 30.) Its intentional relinquishment or abandonment of the right may be proved by evidence of words expressing an intent to relinquish the right or of conduct that is so inconsistent with an intent to enforce the contractual right as to lead a reasonable fact finder to conclude that the party had abandoned it. ((*Quach v. California Commerce Club, Inc.* (2024) 16 Cal.5th 562, 584-85; citing *Lynch*, supra, 3 Cal.5th at p. 475.)

The waiver inquiry is exclusively focused on the waiving party's words or conduct; neither the effect of that conduct on the party seeking to avoid enforcement of the contractual right nor that party's subjective evaluation of the waiving party's intent is relevant. (See *McCormick v. Orient Insurance Co.* (1890) 86 Cal. 260, 262 ["the term 'waiver' is used to designate the act, or the consequences of the act, of one side only"]; *Altman v. McCollum* (1951) 107 Cal.App.2d Supp. 847, 862 [waiver "depends upon the intention of one party only," i.e., the party alleged to have waived the right].) This distinguishes waiver from the related defense of estoppel, "which generally requires a showing that a party's words or acts have induced detrimental reliance by the opposing party." (*Lynch, supra*, 3 Cal.5th at pp. 475–476; see *DRG/Beverly Hills, Ltd. v. Chopstix Dim Sum Cafe & Takeout III, Ltd.* (1994) 30 Cal.App.4th 54, 59 [by contrast to estoppel, waiver "does not require any act or conduct by the other party"].) To establish waiver, there is no requirement that the party opposing enforcement of the contractual right demonstrate prejudice or otherwise show harm resulting from the waiving party's conduct. (*Lynch*, at p. 475; see *City of Hollister v. Monterey Ins. Co.* (2008) 165 Cal.App.4th 455, 487 [Waiver does not require "any demonstration that the other party was caused by the waiver to expose himself to any harm"].)

"[A] party's unreasonable **delay** in demanding or seeking **arbitration**, in and of itself, may constitute a waiver of a right to **arbitrate**." (*Burton, supra*, 190 Cal.App.4th at p. 945.) Arbitration loses much, if not all, of its value if undue time and money is lost in the litigation process preceding a last-minute petition to compel. (*Burton v. Cruise* (2010) 190 Cal.App.4th 939, 948.)

Plaintiffs and Defendant/Cross-Complainant Bee Renovated argue that Cross-Defendant Pourzand waived his right to arbitrate because Pourzand's motion was unreasonably delayed, and Pourzand participation in Discovery was inconsistent with any intent to arbitrate the matter. The Court is not swayed by these arguments.

The Court recognizes that Cross-Defendant Pourzand did participate in discovery but from discovery described in the opposition, it seems that the discovery is the same kind of discovery that would have been made available in arbitration. (See Bee Renovated Oppo at pp. 7-8; Reply p.4:4-7.)

Cross-Defendant Pourzand answered the Cross-Complaint by the Bee entities on May 31. 2024. Five months later Cross-Defendant Pourzand sent a letter demanding arbitration October 1, 2024, and has been consistently demonstrating its desire to pursue contractual arbitration in its letters, emails, meet and confers, and CMC statements. (Reply at p. 4:8-17; Smuckler Decl. 02 at ¶ 3, Exh, C; Pourzand Motion Exh. B.)

For this reason, Cross-Defendant Pourzand did not waive their right to arbitrate.

Possibility of Conflicting. Rulings on a Common Issue of Law or Fact

California has given "courts authority to consolidate or stay arbitration proceedings … in order to minimize the potential for contradictory judgments." (*Rodriguez v. American Technologies, Inc*. (2006) 136 Cal App.4th 1110.) The rule plainly is designed to prevent inconsistent rulings and to bring all interested parties into a single proceeding when that is appropriate.

California Code of Civil Procedure section 1281.2(c) provides that the court may deny a petition to compel arbitration, even when there is a valid, enforceable arbitration agreement, when the following occurs: A party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact (Cal. Civ. Proc. Code § 1281.2(c); see *Henry v. Alcove Investment, Inc*. (1991) 233 Cal.App.3d 94 [the stay of arbitration was properly based on the possibility of conflicting rulings on common issues of law or fact].) Under section 1281.2(c), if a party to an arbitration agreement is also a party to related litigation with a third party that creates the risk of conflicting rulings on a common issue of law or fact, "the court (1) may refuse to enforce the arbitration agreement and may order intervention or joinder of all parties in a single action or special proceeding; (2) may order intervention or joinder as to all or only certain issues; (3) may order arbitration among the parties who have agreed to arbitration and stay the pending court action or special proceeding pending the outcome of the arbitration proceeding; or (4) may stay arbitration pending the outcome of the court action or special proceeding." (Ibid.) California has taken the lead in fashioning a] legislative response to this problem, by giving courts authority to consolidate or stay arbitration proceedings … in order to minimize the potential for contradictory judgments." (*Rodriguez v. American Technologies, Inc* (2006) 136 Cal. App. 4th 1110, 1117-18.)

"The application of section 1281.2, subdivision (c), therefore turns on whether "there is a possibility of conflicting rulings on a common issue of law or fact" if respondents arbitrate their claims . . . and

proceed with litigation as to non-arbitrable claims." (*Metis Development LLC v. Bohacek* (2011) 200 Cal.App.4th 679, 691.) "This exception '[to the enforcement of arbitration agreements] "addresses the peculiar situation that arises when a controversy also affects claims by or against other parties not bound by the arbitration agreement."'" (*Laswell v. AG Seal Beach, LLC* (2010) 189 Cal. App. 4th 1399, 1405, quoting *Cronus Investments, Inc. v. Concierge Services* (2005) 35 Cal.4th 376, 393.)

Section 1281.2(c)'s purpose is to avoid piecemeal litigation and conflicting judgments with respect to the same set of facts. All the above conditions are met here. The first element is met because Bee Renovated and Pourzand are named and actively participating in a current state court action, which consolidated all of Complaints and Cross-Complaints into one action. The second element is met since the causes of action arise from the same nucleus of operative fact, which in this case is the construction and sale of the Subject Property of which Pourzand was an original owner, and his dba GEHL did extensive construction work on prior to sale to Defendant/Cross-Complainant Bee Renovated. The third element is met here because there is a distinct possibility that the arbitration could result in a conflict ruling from the state court. Particularly the Court can ponder that an arbitration officer can find liability as to the July 31, 2020, Purchase Agreement while the trial court could find no liability on behalf of the Defendants and Cross-Complainants which would result in conflicting judgments.

Conclusion

Based on the analysis above, Cross-Defendant Mahmood Pourzand, dba Gehl Design Build's motion to compel arbitration is **denied**.

6. 9:00 AM CASE NUMBER: C24-00180
CASE NAME: STACY SMITH VS. SHIFTMED, LLC
***HEARING ON MOTION IN RE: PRELIMINARY APPROVAL**
FILED BY: SMITH, STACY
****TENTATIVE RULING:****

Plaintiffs Stacy Smith and Keyona Turner move for preliminary approval of their class action and PAGA settlement with defendant ShiftMed, LLC

A. Background and Settlement Terms

The original complaint was filed on January 23, 2024, raising class action claims and PAGA claims on behalf of non-exempt employees, alleging that defendant violated the Labor Code in various ways, including failure to pay minimum and overtime wages, failure to provide meal breaks, failure to provide proper wage statements, failure to reimburse necessary business expenses, and failure to pay all wages due on separation. The operative complaint is a First Amended Complaint filed on February 7, 2025, after a tentative settlement had been reached.

The settlement would create a gross settlement fund of $676,300. The class representative payment to each plaintiff would be $10,000. Attorney's fees would be $225,433.33 (one-third of the settlement). Litigation costs would not exceed $25,000. The settlement administrator's costs would not exceed $11,950. PAGA penalties would be $50,000, resulting in a payment of $37,500 to the LWDA and $12,500 to plaintiffs. The net amount paid directly to the class members would be about $343.913. The fund is non-reversionary. Based on the estimated class size of 1,117, the average net payment for each class member is approximately $308.

The proposed settlement would certify a class of all current and former non-exempt employees employed by Defendants in California during the class period.

The class members will not be required to file a claim. Class members may object or opt out of the settlement. (Aggrieved employees cannot opt out of the PAGA portion of the settlement.) Funds would be apportioned to class members based on the number of pay periods worked during the class period.

Various prescribed follow-up steps will be taken with respect to mail that is returned as undeliverable. Checks undelivered or uncashed 180 days after mailing will be voided, and will be transmitted to the State Controller's Office Unclaimed Property fund.

The settlement contains release language covering all claims and damages "that were alleged in the Action and that reasonably could have been alleged in the Action based on the allegations asserted in the Action… or that could have been alleged in the Action based on the facts alleged in the Action." Under recent appellate authority, the limitation to those claims with the "same factual predicate" as those alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 ["A court cannot release claims that are outside the scope of the allegations of the complaint." "Put another way, a release of claims that goes beyond the scope of the allegations in the operative complaint' is impermissible." (*Id*., quoting *Marshall v. Northrop Grumman Corp*. (C.D. Cal.2020) 469 F.Supp.3d 942, 949.)

Informal written discovery was undertaken. An analyst was retained to analyze the information. The matter settled after arms-length negotiations, which included a session with an experienced mediator.

Counsel attest that they have analyzed the value of the case, and that the result achieved in this litigation is fair, adequate, and reasonable. The moving papers include an estimate of the potential value of the case, broken down by the type of claim.

The potential liability needs to be adjusted for various evidence and risk-based contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a number of reasons: they derive from other violations, they include "stacking" of violations, the law may only allow application of the "initial violation" penalty amount, and the total amount may be reduced in the discretion of the court. (See Labor Code, § 2699(e)(2) [PAGA penalties may be reduced where "based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory."])

Counsel attest that notice of the proposed settlement was transmitted to the LWDA concurrently with the filing of the motion.

B. Legal Standards

The primary determination to be made is whether the proposed settlement is "fair, reasonable, and adequate," under *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801, including "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction … to the proposed settlement." (See also *Amaro v. Anaheim Arena Mgmt., LLC, supra,* 69 Cal.App.5th 521.)

Because this matter also proposes to settle PAGA claims, the Court also must consider the

criteria that apply under that statute. Recently, the Court of Appeal's decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the "fair, reasonable, and adequate" standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.) The Court also held that the trial court must assess "the fairness of the settlement's allocation of civil penalties between the affected aggrieved employees[.]" (*Id*., at 64-65.)

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, "[t]he court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter." (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because "[w]here the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutatory purpose." (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

C. Attorney fees

Plaintiff seeks one-third of the total settlement amount as fees, relying on the "common fund" theory. Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: "If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." (*Id*., at 505.) Following typical practice, however, the fee award will not be considered at this time, but only as part of final approval.

Similarly, litigation costs and the requested representative payment of $10,000 for each plaintiff will be reviewed at time of final approval. Criteria for evaluation of representative payment requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.

D. Conclusion

The Court finds that there is sufficient evidence that the settlement is fair, reasonable, and adequate to warrant preliminary approval. The motion is granted.

Counsel are directed to prepare an order reflecting this tentative ruling, the other findings in the previously submitted proposed order, and to obtain a hearing date for the motion for final approval from the Department clerk. Other dates in the scheduled notice process should track as appropriate to the hearing date. The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented. Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing date. 5% of the attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court.

7. 9:00 AM CASE NUMBER: C24-01338
CASE NAME: PRAVEEN GUPTA VS. HUSSAIN SAFFOURI
HEARING IN RE: APPLICATION FOR RECONSIDERATION
FILED BY:
TENTATIVE RULING:

Plaintiff, Praveen Gupta, filed suit against his former attorneys, whom he alleges committed malpractice. Defendants responded by filing a motion to compel arbitration, which was granted by Judge Treat on October 17, 2024. On October 21, 2024, plaintiff filed a motion for reconsideration, which was scheduled for hearing on February 27, 2025. On February 26th, a tentative ruling denying the motion was posted. No one properly contested the tentative. Accordingly, it became the Court's final ruling. (See Local Rule 3.43.)

On February 27, 2025, at 11:45 pm, plaintiff e-filed the present "Application for Reconsideration of Tentative Ruling." Plaintiff's Request for Leave to Amend Caption in Application for Reconsideration, filed later, on May 19, 2025, clarifies he does not intend to challenge the *tentative* ruling, but rather the *adopted* ruling.

Under Code of Civil Procedure section 1008, a motion to reconsider must be "based upon new or different facts, circumstances, or law[.]" Plaintiff reargues the merits of the prior decision, but offers no new facts or law.

Defendants oppose the motion, requesting judicial notice of the two minute orders from October 17, 2024 and February 27, 2025. Judicial notice is **granted** as to the minute orders.

The motion is **denied**. While defendants request sanctions in their opposition, and plaintiff replies they are not warranted, defendants have also filed a Motion for Sanctions Pursuant to CCP § 128.7. That motion is not yet before the Court. No sanctions are awarded at this time.

8. 9:00 AM CASE NUMBER: C24-02966
CASE NAME: YUE REN VS. GAUTAM PATIL
***HEARING ON MOTION IN RE: FOR LEAVE TO FILE FIRST AMENDED COMPLAINT**
FILED BY: REN, YUE
TENTATIVE RULING:
Introduction

Before the Court is Plaintiff Yue Ren's (Plaintiff) Motion for Leave to File First Amended Complaint (FAC).

For the following reasons, **the Court grants Plaintiff's motion and Plaintiff is ordered to file and serve the FAC within 30 days. (See CCP § 438(g)(2).)**

Factual Background

Plaintiff alleges that on November 28, 2020, Plaintiff' Yue Ren and Defendant Gautam Patil entered into promissory note, whereby Plaintiff' loaned $50,000 to Defendant, with an agreed-upon interest rate of 4.5% per annum, compounded monthly. (Complaint at ¶ 3; Exh. 1.) Defendant was to repay the loan in monthly installments of $1,554.28, with the initial payment due on January 10, 2021. (Id.) However, Plaintiff alleges that Defendant has failed to make any payments under this agreement.

Plaintiff now seeks to amend the Complaint to focus on the breach of contract, unjust enrichment, and declaratory relief claims and abandon the breach of implied covenant of good faith and fair dealing. Plaintiff has also styled the FAC in a more organized fashion.

Procedural Background

The operative Complaint was filed on November 5, 2024, and Defendant filed their answer on December 5, 2024. The instant motion was filed on March 6, 2025. Defendant filed its opposition on May 15, 2025. Plaintiff filed it reply on May 19, 2025.

Legal Standards for Granting Leave to Amend for a Complaint

Under California Code of Civil Procedure 473(a), courts liberally allow amendments to ensure that cases are decided on their merits. Code of Civil Procedure § 473(a)(1), courts may allow amendments to pleadings. However, the court may deny leave to amend where the proposed amendment adds no new material facts, is offered in bad faith, is legally insufficient, or causes unfair prejudice. (*See Lawrence v. Bank of America* (1985) 163 Cal.App.3d 431, 436; *Emerald Bay Community Assn. v. Golden Eagle Ins. Corp*. (2005) 130 Cal.App.4th 1078, 1097.) Under CCP 473(a) and relevant case law (*Nestle v. City of Santa Monica* (1972) Cal.3d920, 939), courts are instructed to allow amendments liberally unless prejudice can be clearly demonstrated.

Analysis

Defendant opposes this motion on the grounds that the proposed FAC has claims that are legally defective and would prejudice Defendant because allowing the FAC at this time would encourage gamesmanship and frustrate the filing of Defendant's cross-complaint and motions. Defendant makes these conclusory statements about how the FAC would prejudice Defendant without any facts or evidence to support such accusations. Arguments regarding the merits of the claims alleged in the proposed FAC are more properly addressed in a challenge to the FAC after it is filed, whether by demurrer, motion for judgment on the pleadings, or motion for summary judgment. (*Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 760-761; *Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048 ["[T]he preferable practice would be to permit the amendment and allow the parties to test its legal sufficiency by demurrer, motion for judgment on the pleadings or other appropriate proceedings."].)

The case has been pending for less than a year. There is no trial date set, and discovery is ongoing. There is no prejudice to Defendant by allowing the amendment, as they will have ample opportunity to contest its merits "by appropriate proceedings." (*Kittredge Sports Co., supra,* 213 Cal.App.3d at 1048.)

Conclusion

Based on the explanation provided above, **the Court grants Plaintiff's motion and Plaintiff is ordered to file and serve the FAC within 30 days. (See CCP § 438(g)(2).)**

9. 9:00 AM CASE NUMBER: C24-03541
CASE NAME: DANICA AULAUMEA VS. AIRBNB, INC.
***HEARING ON MOTION IN RE: TO COMPEL ARBITRATION**

FILED BY: AIRBNB, INC.
TENTATIVE RULING:
Granted. The moving papers show consent to a valid arbitration agreement and there is no opposition.

10. 9:00 AM CASE NUMBER: MSC21-01888
CASE NAME: LONTOC VS. BANIQUED
HEARING IN RE: MOTION TO STAY OR DENY DEPOSITION & PROTECTIVE ORDER
FILED BY:
TENTATIVE RULING:

Defendants Araceli Baniqued and Ernesto Baniqued move to stay the taking of Araceli Baniqued's deposition, which was noticed by Plaintiff. The Baniqueds contend that, based on their answers to previous requests for admission, the deposition of Araceli Baniqued is duplicative and unnecessary. The matters admitted are not so wide-ranging as to cover everything that might be addressed in a deposition. The Baniqueds also contend that the notice of deposition failed to adequately identify the topics on which examination is sought. They cite, however, to authority concerning federal court procedures for noticing a deposition under Federal Rules of Civil Procedure Rule 30(b)(6), which does not apply in state court. Moreover, the state law counterpart of the federal rule, the "person most qualified" deposition, does not apply to a deposition of a party to the case.

Motion denied.

11. 9:00 AM CASE NUMBER: MSC22-00286
CASE NAME: EQUITY FIRST PROPERTY VS FIVE HILLS
HEARING ON DEMURRER TO: CROSS COMPLAINT
FILED BY: FIVE HILLS, LP
TENTATIVE RULING:

Vacated. 1st Amended Complaint filed May 15, 2025.

12. 9:00 AM CASE NUMBER: MSP19-01717
CASE NAME: RE: THE 1994 JOHNS FAMILY TRUST
HEARING ON PETITION IN RE: INSTRUCTIONS TO SELL REAL PROPERTY OF THE TRUST ESTATE. TO BE HEARD BY JUDGE WEIL AS D39.
FILED BY: UNGER, MARK
TENTATIVE RULING:

Appearances required. Absent objection, the court intends to transfer this matter to Department 38 for hearing on July 30, 2025, 9:00 a.m.

13. 9:00 AM CASE NUMBER: MSP19-01717
CASE NAME: RE: THE 1994 JOHNS FAMILY TRUST
HEARING ON PETITION IN RE: FOR INSTRUCTIONS FILED 3/14/22 BY MARK UNGER GRANTED ON 10/18/22 (TRAILING TRIAL IN MSP19-01649 REASSIGNED TO D18 ON 4/30/24) TO BE HEARD BY JUDGE WEIL AS D39
FILED BY:

TENTATIVE RULING:
Appearances required. Absent objection, the court intends to transfer this matter to Department 38 for hearing on July 30, 2025, 9:00 a.m.

14. 9:00 AM CASE NUMBER: N24-2155
CASE NAME: CG PHARMACEUTICALS, INC VS. SANG CHO
HEARING ON ORDER TO SHOW CAUSE IN RE: PRELIMINARY INJUNCTION (PER ORDER FILED 4/3/25)
FILED BY:
TENTATIVE RULING:

Continued to July 10, 2025, 9:00 a.m., by order granted May 6, 2025.

15. 9:00 AM CASE NUMBER: N25-0232
CASE NAME: PETITION OF:PRAVEEN GUPTA
***HEARING ON MOTION IN RE: PETITION**
FILED BY:
TENTATIVE RULING:
Before the Court is Petitioner's Praveen Gupta Motion for Relief from the Government Claims Presentation requirement.

The Court **rules that the motion is moot for two reasons. First, Petitioner's claims regarding the Revenue and Taxation Code meet a statutory exception to the government claims rule. Second, Petitioner's July 16, 2024, government claim that affects Petitioner's cause of actions not related to the Revenue and Taxation Code was filed timely.**

Factual Background

On March 18, 2014, Contra Costa County ("County") recorded a Tax Deed to Purchaser of Tax-Defaulted Property from the Tax Collector as seller and petitioner Praveen Gupta and Madhu Gupta as purchasers of the Lot 48 of the Orinda Oaks map. (Petition Exh. A-1, p. 3.) On March 11, 2016, the County recorded another Tax Deed indicating petitioner purchased Lots 46 and 47 of the same map.2 (Petition Exh. A-1, p. 4.) At the time of the purchase of Lot 48, petitioner had reviewed the county records describing the property and referencing a 1924 map of the area with designated lots and road easements.3 (Petition Exh. A-1, p. 4, lns 13 – 16.) Based on their understanding that this road or easement existed, plaintiffs purchased Lot 48. (Petition Exh. A-1, p. 4:18 – 19.) Petitioner inspected the property in March 2014 at which time he noted that the paved road ended at the property of his neighbor, William C. Scott, and there was no road up the hillside to Lot 48 (and later Lots 46 and 47, collectively, the "Lots"). (Petition Exh. A-1, p. 4:19 – 23.)

Petitioner and his contractors used an easement indicated on the 1924 map to gain access to his properties between 2014 and 2024. (Petition Exh. A-1, p. 4, ln. 25 – Petition Exh. A-1, p. 5, ln. 2.) He intended to extend the paved road up to his Lots along a 40-foot-wide easement indicated in the Map.4 (Id.) From the outset of 2014, Mr. Scott insisted that there was no easement and stated that no one was entitled to use his property. (Petition Exh. A-1, p. 5:3 – 5.) Petitioner took the dispute up to the City of Orinda, but they claimed that it was a private road and, therefore, a private dispute. (Petition Exh. A-1, p. 5:10 – 11.) It got to the point in 2017 where Petitioner threatened Mr. Scott with

legal action over the easement. (Petition Exh. A-1, p. 5:23 – 24.)

In 2019, Petitioner built a wooden retaining wall along the purported easement, part of which was placed on the property of Oliver and Ann Sweningsen, who owned the property adjacent to Mr. Scott. (Petition Exh. A-1, p. 6:7 – 8.) The first contact between Oliver and petitioner was a 2019 phone call when Oliver discovered the construction of the retaining wall. (Petition Exh. A-1, p. 7:13 – 14.) Eventually Mr. Sweningsen sued petitioner for nuisance, encroachment and trespass. (Petition Exh. A-1, p. 6:7 – 13.) In response, petitioner cross-complained against Mr. Scott (Id) and filed two Notices of Intent to Preserve Property on May 28, 2019 (Petition Exh. A-1, p. 14:19 – 27.) The nuisance action was dismissed in 2023.

Mr. Sweningsen has lived on his property since 1975, and owned up to seven neighboring lots, including the lot that Mr. Scott's house is on. (Petition Exh. A-1, p. 6:14 – 18.) Over the years, the lots were transferred, forested, and generally maintained by the Sweningsens and neighbors. (Id.) Mr. Scott's house was built in 2006, although he did not purchase the Lot and home until 2013. (Petition Exh. A-1, p.7:8 -9; ln. 19.)

Mr. Scott made some improvements to his property since buying it in 2013, notably, an enclosed garden structure cemented into the ground with a wood retaining wall on the downslope side, which was added in 2013. (Petition Exh. A-1, p. 7:23 - 25.) In 2017-2018, Mr. Scott constructed a flagstone patio, a turf area for his dog, and made repairs to the existing wood retaining wall. (Id.) Part of the wood retaining wall alongside the enclosed garden is partly in the area on the 1924 map designated as an easement and partly on one of plaintiff Mr. Gupta's lots. (Petition Exh. A-1, p. 8:15 – 20.) Other improvements to Mr. Scott's property, such as a concrete embankment and rock retaining wall, existed as early as 2007, and were obviously hostile to Mr. Gupta's easement. (Petition Exh. A-1, p. 8:20 – 24.)

Mr. Gupta filed a lawsuit in 2022 seeking declaratory relief over the existence of the easement between the Scott and Sweningsen properties. (See Contra Costa Superior Court Case C22-00619.) On February 20, 2024, the Hon. Terri Mockler found that the two defendants in the underlying action had adversely possessed the easement, thereby terminating petitioner's rights to its use. (Petition Exh. A-1, pp. 19 -20.)

Procedural Background

On July 16, 2024, petitioner presented his first claim to Contra Costa County's Clerk of the Board. (Petition, Exhibit B, pgs. 99.) County Counsel and the Board of Supervisors ("BoS") determined that the claim was partially untimely. (Id. at pgs. 97 – 99.) On August 15, 2024, petitioner submitted additional materials in support of his claim, which the County Counsel treated as an amended claim, and the Board of Supervisors rejected the amended claim as partially untimely on September 24, 2024. (Id. at 100 – 104.) Petitioner thereafter submitted further materials in support of his claim to the County's Counsel's office on September 9, 2024. (Id. at 105 – 110.) The Board of Supervisors reviewed the further amended claim on October 22, 2024, and determined, once again, that the matter was partially untimely. (Id. at 111.) After being informed that his September 9, 2024, claim was partially untimely, petitioner presented an application to present a late claim by mail on September 27, 2024. (Id. at 112 – 113.) The Board of Supervisors denied the application on November 5, 2024 and notified petitioner of the denial that same day. Once again, petitioner submitted a further

application to file a late claim on November 24, 2024.5 (Id. at 114 – 116.) This further application to file a late claim was denied on January 14, 2025. (Id. at 116.)

On January 29, 2025, petitioner filed a lawsuit in Contra Costa County Superior Court (Case No. C25-00271), alleging causes of action for 1) Property Sale with Incorrect Title Deed and Disclosures; 2) Sale of Landlocked Property; 3) Incorrect Processing of Refund Claim Filed with Contra Costa County Board of Supervisors; 4) Loss of Money Due to Negligence."

Analysis

Petitioner's Claim Was Timely Filed from the Outset

Accrual of a claim is determined by when a reasonable person would suspect an injury and its cause. (See *Jolly v. Eli Lilly & Co*. (1988) 44 Cal.3d 1103, 1110; *Fox v. Ethicon Endo-Surgery, Inc*. (2005) 35 Cal.4th 797, 807.) Here, Petitioner did not suspect a title defect until the Court ruled on April 22, 2024. Filing the government claim in July 2024 was within the one-year statute of limitations window required by Government Code Section 911.2. The County's argument that Petitioner "should have known" in 2019 is both speculative and unsupported by evidence. Petitioner acted diligently in asserting property rights based on government records and communications up until the court's definitive ruling. The Court Declines to adopt Respondent's view of having to pre-emptively file a government claim and suit at any time a neighbor claims an easement or other property right is invalid because this would lead to clogged up court dockets with unripe land disputes.

Exempt from Claims Presentation for Revenue and Taxation Code Claims

Government Code subsection a provides that any claim under the Revenue and Taxation Code does not require a government claims presentation. To the extent that Petitioner's claims are based on the Revenue and Taxation Code, those claims do not necessitate a government claim because a statutory exception applies. (See Gov. Code § 905(a).) To the extent that Petitioner's claims are based on damage to real property not relating to the Revenue and Taxation Code, the Court finds that Petitioner's July 16, 2024, government claim was timely as Petitioner's cause of action did not accrue until the May 2024 Judgment which decided the easement Petitioner was using from 2014 to 2024 was adversely possessed, abandoned, and no longer an easement. (See Petition, Exh. 1 generally.)

Petitioner's Current Lawsuit

Considering Petitioner's current case against Contra Costa County Board of Supervisors Case Number C25-00271, the statutory exception applies to the first three causes of action and the fourth cause of action for negligence to the extent that it includes a negligence per se claim using the Revenue and Taxation Code as a predicate duty. All other duties alleged under the fourth cause of action for negligence were brought timely as explained above.

Conclusion

For the reasons analyzed above, Court **rules that the motion is moot for two reasons. First, Petitioner's claims regarding the Revenue and Taxation Code meet a statutory exception to the government claims rule. Second, Petitioner's July 16, 2024, government claim that affects Petitioner's cause of actions not related to the Revenue and Taxation Code was filed timely.**

16. 9:00 AM CASE NUMBER: N25-0505
CASE NAME: CLAIM OF:LANDON SCHWEIGER
***HEARING ON MINOR'S COMPROMISE**
FILED BY:
****TENTATIVE RULING:****

Granted. For good cause, the Court waives the appearance of the claimant and the petitioner.

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 39
JUDICIAL OFFICER: EDWARD G WEIL
HEARING DATE: 05/29/2025