TENTATIVE RULINGS

JUDGE RANDALL J. SHERMAN

DEPARTMENT CX105

APRIL 19, 2024

Appearances, whether remote or in person, must be in compliance with Code of Civil Procedure §367.75, California Rules of Court, Rule 3.672, and Superior Court of California, County of Orange, Appearance Procedure and Information, Civil Unlimited and Complex, located at https://www.occourts.org/media-relations/covid/Civil_Unlimited_and_Complex_Appearance_Procedure_and_Information.pdf. Unless the court orders otherwise, remote appearances will be conducted via Zoom through the court's online check-in process, available at https://www.occourts.org/media-relations/civil.html. Information, instructions and procedures to appear remotely are also available at https://www.occourts.org/media-relations/aci.html. Once online check-in is completed, counsel and self-represented parties will be prompted to join the courtroom's Zoom hearing session. Participants will initially be directed to a virtual waiting room while the clerk provides access to the video hearing.

Court reporters will not be provided for motions or any other hearings. If a party desires a court reporter for a motion, it will be the responsibility of that party to provide its own court reporter. Parties must comply with the court's policy on the use of pro tempore court reporters, which can be found on the court's website at www.occourts.org/media/pdf/Privately_Retained_Court_Reporter_Policy.pdf.

If you intend to submit on the tentative ruling, please advise the other parties and the court by calling (657) 622-5305 by 9:00 a.m. on the hearing date. Make sure the other parties submit as well before you forgo appearing, because the court may change the ruling based on oral argument. Do not call the clerk about a tentative ruling with questions you want relayed to the court. Such a question may be an improper ex parte communication.

#	Case Name & No.	Tentative Ruling
1	**Hernandez vs. Saint-Gobain Performance Plastics Corporation 2020-01142388**	Plaintiff has shown that the Administrator's work is complete, and that the court's file may now be closed. Plaintiff is ordered to give notice to defense counsel unless notice is waived.
2	**Cruz vs. Nason Roofing, Inc. 2021-01235276**	Plaintiff's Motion for Final Approval of Class Action and PAGA Settlement is granted, except that the court approves plaintiff's attorney costs only in the amount of $10,678.90, and awards an enhancement to plaintiff Francisco Cruz only in the amount of $3,000.00. The court disallows the $292.38 claimed for "Cumulative Print, Copy, Mileage, and Postage Fees", because the court believes that such cost items are properly part of attorney overhead. The court disallows the $200.00 claimed for "Anticipated Future Filing/Service Fees, e.g., Compliance Declaration and Supplemental Brief", because this court will not award counsel any future anticipated costs that have not yet been incurred. The court also concludes that an enhancement award of $3,000.00 is sufficient and

		proper for a class and settlement of this size. The court concludes that the $102,752.29 class action and PAGA settlement, as approved, is fair, adequate and reasonable, and approves the following specific awards: • $34,250.76 to plaintiff's counsel for plaintiff's attorneys' fees, with 2/3 awarded to Law Office of Daniel J. Hyun, and 1/3 awarded to Parker Law APC, as requested; • $10,678.90 to plaintiff's counsel for plaintiff's attorney costs, reduced from the $11,171.28 requested, with $6,816.40 awarded to Law Office of Daniel J. Hyun, reduced from the $7,308.78 requested, and $3,862.50 awarded to Parker Law APC, as requested; • $3,000.00 to plaintiff Francisco Cruz as an enhancement award, reduced from the $5,000.00 requested; • $6,000.00 to the Administrator, Phoenix Settlement Administrators, as requested; and • $3,750.00 to the LWDA for its share of PAGA penalties, as requested. The total amount that will be payable to all class members and aggrieved employees if they are paid the amount to which they are entitled pursuant to the judgment is $45,072.63. The court sets a Final Report Hearing for January 24, 2025 at 10:00 a.m., to confirm that distribution efforts are fully completed, including the distribution of the amount of the uncashed class member and aggrieved employee checks to the State Controller's Office Unclaimed Property Fund in the names of the applicable payees after 180 days, that the Administrator's work is complete, and that the court's file thus may be closed. The parties must report to the court the total amount that was actually paid to the class members and aggrieved employees. All supporting papers must be filed at least 16 days before the Final Report Hearing date. Plaintiff is ordered to give notice of the ruling to the LWDA and to defendant.
3	**Diaz vs. UCA General Insurance Services, Inc.** **2021-01185227**	Plaintiffs' Motion for Preliminary Approval of Class and Representative Action Settlement and Provisional Class Certification for Settlement Purposes Only is granted, IF AND ONLY IF plaintiffs modify the class notice before sending it out, as follows: On p. 2, in the box entitled "OPT OUT OF THE SETTLEMENT", add the following sentence after the first sentence: "A Request for Exclusion form is attached for you to use." In addition, on p. 5, in the section entitled "Option 2 – Opt Out of the Settlement", add the following sentence after the second sentence: "A Request for Exclusion form is attached for you to use." A Final Approval Hearing is set for September 20, 2024 at 10:00 a.m. All papers in support of the Final Approval Hearing, including detailed hourly breakdowns of plaintiffs'

		attorneys to support a lodestar cross-check, detailed plaintiff attorney cost breakdowns, an Administrator declaration and invoice, and plaintiffs' declarations to support the enhancement requests, must be filed at least 16 calendar days before the Final Approval Hearing date, to provide enough time for court review, and must be served in compliance with CCP notice of motion requirements. Plaintiffs are ordered to give notice to defense counsel unless notice is waived.
4	**Diaz vs. UCA General Insurance Services, Inc.** **2021-01198713**	The Status Conference set for today is continued to August 23, 2024 at 10:00 a.m., the same date and time as the Final Approval Hearing in the related case. Plaintiffs are ordered to give notice to defense counsel unless notice is waived.
5	**Villanueva vs. RedRock Technologies, Inc.** **2022-01263687**	Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement is granted. A Final Approval Hearing is set for October 4, 2024 at 10:00 a.m. All papers in support of the Final Approval Hearing, including detailed hourly breakdowns of plaintiff's attorneys to support a lodestar cross-check, detailed plaintiff attorney cost breakdowns, an Administrator declaration and invoice, and plaintiff's declaration to support the enhancement request, must be filed at least 16 calendar days before the Final Approval Hearing date, to provide enough time for court review, and must be served in compliance with CCP notice of motion requirements. Plaintiff is ordered to give notice of the ruling to the LWDA and to defendant.
6	**Bonnette vs. Waymakers** **2022-01252101**	Continued to July 26, 2024 by Stipulation and Order.
7	**Valenzuela vs. Delivery.com LLC** **2023-01336839**	Plaintiff's unopposed Motion to Seal is denied without prejudice. Plaintiff's argument is essentially that some of the documents she filed in opposition to defendant's Motion to Quash had been labeled by defendant as "Confidential" pursuant to the "Stipulation and Protective Order – Confidential Designation Only" filed on both November 21, 2023 and December 21, 2023. Plaintiff makes no showing sufficient to establish the findings required under CRC Rule 2.550(d), such as establishing an overriding interest that overcomes the right of public access to the record, and that a substantial probability exists that the overriding interest will be prejudiced if the record is not sealed. It is well-settled that the parties' mere agreement is insufficient to constitute an overriding interest to justify sealing. Rather, the agreement must be coupled with a specific showing of serious injury. McNair v. National Collegiate Athletic Assn. (2015) 234 Cal. App. 4th 25, 35-36. Plaintiff

		identifies no actual injury here, let alone a specific, serious injury. Plaintiff and/or defendant are free to renew the motion and attempt to make the required showing. The court notes for future reference that, due to the current use of electronic filing, the court's preference is that when parties intend to file unredacted documents conditionally under seal, they electronically file the unredacted documents conditionally under seal, rather than provide the court with physical copies of the unredacted documents labeled as being filed conditionally under seal. Plaintiff is ordered to give notice of the ruling unless notice is waived.
8	**Abdelghany vs. Southern California Edison 2021-01195715**	Off calendar at moving party's request.
9	**Pinkerton vs. Cultivation Technologies, Inc. 2018-01018922**	Defendant/Cross-Complainant Richard Joseph Probst's unopposed Motion to Compel Plaintiff Denise Pinkerton to Answer Questions at Deposition is denied as to Questions 2(a) and 7(a), and is otherwise granted. Plaintiff Denise Pinkerton is ordered to appear for another session of her deposition and answer Questions 1, 2(b), 3(a)-(b), 4, 5, 6(a)-(b), 7(b)-(c), 8(a)-(h), and 9(a)-(g), as specified in Probst's Separate Statement filed on December 28, 2023. Pinkerton's counsel was not justified in instructing Pinkerton not to answer the questions for which this motion is being granted based on the assertion of the attorney-client privilege. Pinkerton in large part was being asked for facts that support her contentions in this action, but her counsel instructed her not to answer unconditionally. By contrast, this motion is being denied as to Question 2(a) because counsel's instruction there was "not to answer unless she has an independent ground from what her lawyer told her", and inquiring counsel failed to follow up and ask the witness if she had any independent ground for answering. Pinkerton's counsel failed to attach this qualification to his other instructions not to answer. Question 7(a) is being denied because asking a plaintiff why she dismissed all the other defendants in the case except for one defendant necessarily implicates an attorney-client communication (unless the witness simply doesn't know). Although some of the subject questions essentially asked for a legal conclusion, that ground is not a valid ground for instructing a witness not to answer. The court awards monetary sanctions against plaintiff Denise Pinkerton's attorneys of record, Catanzarite Law Corporation, in the amount of $4,300, payable within 30 days. There was no substantial justification for 25 of the 27 instructions not to answer. The court is imposing sanctions only against counsel because it appears that counsel is fully responsible for the legally meritless instructions not to answer. Counsel also failed to respond

		to Probst's meet-and-confer attempt, further making sanctions appropriate. Probst is ordered to give notice of the ruling.
10	**Hermosillo vs. Surf City Auto Group, Inc. 2023-01338929**	Defendant Surf City Auto Group, Inc.'s Motion to Compel Arbitration, Strike Class Claims, and Dismiss or Stay Proceedings is granted. All of plaintiff's individual claims are ordered to arbitration. Plaintiff's class claims are dismissed without prejudice. This action is ordered stayed pending completion of the arbitration. The Case Management Conference set for today is ordered off calendar. A Post-Arbitration Review Hearing is set for October 24, 2024 at 9:00 a.m. The parties must file a Joint Status Report at least a week before the hearing, and may request a continuance if arbitration is not yet complete. The court concludes that there exists a valid agreement to arbitrate the individual claims asserted by plaintiff and that no grounds exist to bar enforcement of the agreement. CCP §1281.2. Defendant has shown the existence of a signed arbitration agreement dated November 29, 2021, and plaintiff does not dispute that he signed that arbitration agreement or that the agreement applies to all of his claims. Although plaintiff disputes the validity of an earlier potential agreement, defendant does not seek to enforce that potential agreement, making it irrelevant to this motion. Plaintiff has failed to meet his burden of proving the facts of any defense to enforceability. Chin v. Advanced Fresh Concepts Franchise Corp. (2011) 194 Cal. App. 4th 704, 708. Plaintiff's claims of unconscionability are unsupported by the language of the arbitration agreement and the law. The defense of unconscionability requires that the arbitration agreement be both procedurally and substantively unconscionable. De La Torre v. CashCall, Inc. (2018) 5 Cal. 5th 966, 982; Baltazar v. Forever 21, Inc. (2016) 62 Cal. 4th 1237, 1243; Baxter v. Genworth North America Corp. (2017) 16 Cal. App. 5th 713, 723. The court concludes that there is no procedural unconscionability present here based on the arbitration agreement allegedly being a contract of adhesion. In all capitals, shortly above the signature line, the agreement provides: "EMPLOYEE UNDERSTANDS THAT THIS AGREEMENT IS VOLUNTARY AND THAT EMPLOYEE CAN CHOOSE NOT TO SIGN THIS AGREEMENT AND STILL BECOME OR REMAIN EMPLOYED BY THE COMPANY." In any event, even if the arbitration agreement had been required as a condition of employment, that fact alone would not render the agreement unenforceable. Baltazar v. Forever 21, Inc. (2016) 62 Cal. 4th 1237, 1245, 1251; Sanchez v. Carmax Auto Superstores California, LLC (2014) 224 Cal. App. 4th 398, 402-03. Nor has plaintiff established substantive unconscionability. Plaintiff argues that the agreement is unenforceable

		because it allegedly waives plaintiff's right to a Berman Hearing, but plaintiff has not made any showing of such a waiver. Plaintiff also argues a lack of mutuality because only he signed the arbitration agreement. However, since the arbitration agreement provides that both plaintiff and defendant agree to submit all employment-related disputes and claims to binding arbitration, defendant has shown that it intended to be bound by the arbitration agreement, and as a result, defendant may enforce the arbitration agreement even though defendant did not physically sign it. Cruise v. Kroger Co. (2015) 233 Cal. App. 4th 390, 398. Plaintiff also argues that only defendant can modify the arbitration agreement, citing defendant's supplemental response to Special Interrogatory No. 48. That answer, however, does not create such a right – the agreement itself would have to do so, and plaintiff does not show that it does. In any event, in the case plaintiff cites, Davis v. TWC Dealer Group, Inc. (2019) 41 Cal. App. 5th 662, not only did the employer have the unilateral right to change or modify the arbitration agreement, but the relevant provision also allowed for the change to be without notice to the employee, and there were three contradictory versions of the arbitration agreement. Id. at 674. Thus, Davis is inapplicable. In short, the arbitration agreement is not substantively unconscionable because it provides basic fairness to plaintiff. Armendariz v. Foundation Health Psychcare Services, Inc. (2000) 24 Cal. 4th 83, 90-91, 120. In fact, plaintiff has not established that the agreement fails to meet the standards set forth in Armendariz, since it provides for: (1) a neutral arbitrator, (2) no limitation on statutorily imposed remedies, (3) adequate discovery, (4) a written arbitration award and judicial review, and (5) the employer's responsibility for any costs unique to arbitration. 24 Cal. 4th at 103-13. The class action waiver in the arbitration agreement is enforceable because the agreement is subject to the Federal Arbitration Act. Epic Systems Corp. v. Lewis (2018) 138 S. Ct. 1612, 1616; Iskanian v. CLS Transportation Los Angeles, LLC (2014) 59 Cal. 4th 348, 364. When an arbitration agreement does not authorize class arbitration of disputes, case law provides for dismissal without prejudice of the class claims. Epic Systems Corp. v. Lewis (2018) 138 Sup. Ct. 1612; Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp. (2010) 559 U.S. 662, 686; Kinecta Alternative Financial Solutions, Inc. v. Superior Court (2012) 205 Cal. App. 4th 506, 510-11. Finally, both the Federal Arbitration Act and California law provide for a stay of proceedings pending arbitration. 9 U.S.C. §3; CCP §1281.4. Defendant is ordered to give notice of the ruling unless notice is waived.

11	**Dever vs. American Automated Engineering, Inc. 2023-01319923**	Defendant American Automated Engineering, Inc.'s Motion to Compel Arbitration is granted. Plaintiff's individual claims in his Tenth Cause of Action for Violation of California Business & Professions Code §§17200, et seq. are ordered to arbitration. This action is ordered stayed pending completion of the arbitration. The Status Conference set for today is ordered off calendar. A Post-Arbitration Review Hearing is set for October 24, 2024 at 9:00 a.m. The parties must file a Joint Status Report at least a week before the hearing, and may request a continuance if arbitration is not yet complete. The court concludes that there exists a valid agreement to arbitrate the individual claims asserted by plaintiff in his Tenth Cause of Action for Violation of California Business & Professions Code §§17200, et seq. and that no grounds exist to bar enforcement of the agreement. CCP §1281.2. Defendant has shown the existence of a signed arbitration agreement, and plaintiff does not dispute that he signed that arbitration agreement. Defendant's moving papers repeatedly asserted that defendant was not seeking to compel arbitration of any part of plaintiff's PAGA cause of action. (Memorandum of Points and Authorities at 6:12-14, 6:19-20, 7:10-11, 7:16-17, 7:24-25, 8:10-12 and 11:15-16.) After filing the motion, however, defendant substituted in new counsel, and then in its reply brief, defendant argued for the first time that plaintiff's "individual PAGA claim" should be arbitrated. This is a new argument that unfairly and improperly expands the scope of defendant's motion on reply, and this court will not consider it. Jay v. Mahaffey (2013) 218 Cal. App. 4th 1522, 1538. Plaintiff argues Defendant American Automated Engineering, Inc. is a non-signatory to the arbitration agreement, entitled "Mandatory Arbitration to Settle All Claims", and thus may not enforce it. This argument lacks merit. A non-signatory defendant may invoke an arbitration clause to compel a signatory plaintiff to arbitrate his claim when the causes of action against the non-signatory are intimately founded in and intertwined with the underlying contract obligations. The doctrine applies where the claims are based on the same facts and are inherently inseparable from the arbitrable claims against signatory defendants. Garcia v. Pexco, LLC (2017) 11 Cal. App. 5th 782, 785-86; Boucher v. Alliance Title Co., Inc. (2005) 127 Cal. App. 4th 262, 271. Plaintiff's allegation of an agency relationship among defendants in ¶9 of the Complaint also is sufficient to allow the alleged agent to invoke the benefit of an arbitration agreement executed by its alleged principal even if the agent is not a party to the agreement. Garcia at 788. Plaintiff notes that the arbitration agreement excludes claims for equitable relief, and argues that his claim under the unfair competition law is for equitable relief and thus may not be arbitrated. However, in Torrecillas v. Fitness

		International, LLC (2020) 52 Cal. App. 5th 485, the arbitration agreement expressly excluded "claims for equitable relief", 52 Cal. App. 5th at 491, yet the court ordered arbitration anyway. "Unfair Competition Law actions for equitable monetary relief, including restitution and disgorgement, are arbitrable (Cruz v. PacifiCare Health Systems, Inc. (2003) 30 Cal. 4th 303, 320), making the first type of relief Torrecillas seeks arbitrable." 52 Cal. App. 5th at 499. The court also concluded that plaintiff's request for an injunction was private in nature and therefore arbitrable. Id. Thus, plaintiff must arbitrate his individual UCL claim in this action. Defendant is ordered to give notice of the ruling unless notice is waived.
12	**Beck vs. Catanzarite 2020-01145998**	Off calendar at moving parties' request.
13	**Dickson vs. Jack in the Box, Inc. 2022-01285959**	Defendant Feast Foods, LLC's Motion for Summary Judgment is denied. The court declines to rule on Plaintiff's Objections to Evidence. Civil Code §1781(c)(3) provides in relevant part, "A motion based upon Section 437c of the Code of Civil Procedure shall not be granted in any action commenced as a class action pursuant to subdivision (a)." Based on this statute, since plaintiff's First Cause of Action seeks damages under the CLRA on a class-wide basis, this court may not grant any motion for summary judgment as to plaintiff's CLRA claim. And since defendant brought only a motion for summary judgment, and not any alternative motion for summary adjudication of issues as to plaintiff's separate causes of action, this court may not reach the viability of any of plaintiff's other causes of action. Homestead Savings v. Superior Court (1986) 179 Cal. App. 3d 494, 498. As a result, this motion must be denied. Plaintiff is ordered to give notice of the ruling unless notice is waived.