Tentative Rulings

Civil Tentative Rulings and Probate Examiner Recommendations are available below. All attempts possible are made to have the information on these pages updated by 3:00pm the day prior to hearing in order to allow for any needed continuances or travel if an appearance should be required.

Civil Tentative Rulings: The court does not issue tentative rulings on Writs of Attachment, Writs of Possession, Claims of Exemption, Claims of Right to Possession, Motions to Tax Costs After Trial, Motions for New Trial, or Motions to Continue Trial. Under California Rules of Court, rule 3.1308 and Local Rule 701, any party opposed to the tentative ruling must notify the court and other parties by 4:00 p.m. today of their intention to appear for oral argument. The court's notice must be made by facsimile (fax) to 559-733-6774.

Probate Examiner Recommendations: For further information regarding a probate matter listed below you may contact the Probate Document Examiner at **559-730-5000 ext #2342**. The Probate Calendar Clerk may be reached at **559-730-5000** Option 4, then Option 6.

Civil Tentative Rulings & Probate Examiner Recommendations

Current Tentative Rulings

The Tentative Rulings for *Tuesday, December 31, 2024*, are:

Re: Estes, Jeremy Lee vs. Cheema Transport, Inc.

Case No.: VCU289306

Date: December 31, 2024

Time: 8:30 A.M.

Dept. 2-The Honorable Bret D. Hillman

Motion: Continued Motion for Preliminary Approval of Class Action and PAGA Settlement

Tentative Ruling: To grant the motion; to set the motion for final approval hearing on **June 24, 2025** 8:30 am, Department 2.

Facts

The Court previously continued this hearing to permit supplemental declarations as to information to calculate the lodestar attorney fee figure and the presently incurred costs.

On December 17, 2024, Plaintiff filed supplemental declaration addressing these issues.

Attorneys' Fees and Costs

Attorneys' fees of 33.3% of the gross settlement fund of $100,000 or $33,333.33 and costs not to exceed $15,000 are sought by Plaintiff's counsel.

Counsel has utilized the percentage of common fund methodology as well as provided adequate lodestar information to evaluate the reasonableness of the fee request.

Here, Counsel indicates 90.7 hours incurred at rates ranging from $950 to 400, creating a base lodestar of $60,695. Based on the lodestar figure, the requested fees of $33,333.33 are approved.

Counsel has also provided the current costs expended in amounts of $11,827.95. The Court preliminarily approves costs not to exceed $15,000.00.

Plaintiff's deductions from the gross settlement of $100,000 are approved as follows:

Preliminarily Approved Attorney Fees (33.3%):	$33,333.33
Preliminarily Approved Costs (up to):	$15,000
Preliminarily Approved Enhancement Payment to Plaintiff:	$5,000
Preliminarily Approved Settlement Administrator Costs	$7,990
Preliminarily Approved Total PAGA Payment	$10,000
Preliminarily Approved Net Settlement Amount	**$28,676.67**

Accordingly, the motion to preliminarily approve the Class Action and PAGA settlement is granted. Motion for final approval is set for **June 24, 2025** 8:30 am, Department 2.

If no one requests oral argument, under Code of Civil Procedure section 1019.5(a) and California Rules of Court, rule 3.1312(a), no further written order is necessary. The minute order adopting this tentative ruling will become the order of the court and service by the clerk will constitute notice of the order.

Re: Ray, Scottie vs. Clark, Marvin Lee

Case No.: VCU306834

Date: December 31, 2024

Time: 8:30 A.M.

Dept. 2-The Honorable Bret D. Hillman

Motion: Defendant's Motion to Set Aside Entry of Default

Tentative Ruling: To grant the motion upon presentation of the proposed responsive pleading.

Facts

In this motor vehicle negligence action, Plaintiff filed a proof of service indicating personal service on Defendant occurred March 15, 2024.

On July 16, 2024, request for default was entered.

On November 8, 2024, Defendant move to set aside entry of default pursuant to Code of Civil Procedure section 473.

In support, Defendant's declaration admits he was served with the complaint (though he states it occurred May 15, 2024 instead of March 15, 2024, as reflected on the proof) (Declaration of Clark ¶4.) Defendant indicates he was insured by State Farm and after service of the complaint, believed the case was being handled by State Farm.

Defendant also filed a declaration from the Claims Specialist at State Farm, who confirms Defendant was insured by State Farm at all relevant times and that he received an email from Plaintiff's counsel, that the Claims Specialist request a checklist of documents from counsel, that the Claims Specialist reached out to Plaintiff to inform him State Farm was investigating the claim. (Declaration of Martin ¶¶1, 3-6.)

Further, that on May 22, 2024, the Claims Specialist received an email from Plaintiff's counsel's assistant that informing him that a complaint against Defendant was filed on March 12, 2024 and containing a courtesy copy of the complaint "so that [State Farm] may notify [its] insured that service will be forthcoming." (Declaration of Martin ¶7.) The Claims Specialist interpreted the email as indicating that Defendant had not yet been served. (Declaration of Martin ¶8.)

The next communication between the Claims Specialist and Plaintiff's counsel was an August 1, 2024 letter confirming a telephone conversation that default had been entered. (Declaration of Martin ¶9.)

State Farm thereafter referred this case to Defendant's counsel but would have done so sooner had State Farm received notice that Defendant had been served or that Plaintiff would be requesting default. (Declaration of Martin ¶¶10, 11.)

Defendant's counsel indicates that on August 22, 2024, State Farm contacted the law office regarding the instant lawsuit against Defendant. (Declaration of Denno ¶10)

In opposition, Plaintiff argues that service was effective and an insufficient explanation as to the failure to respond to the lawsuit has been set forth by both Defendant and State Farm.

Authority and Analysis

The Court may relieve a party or counsel from a judgment, dismissal, order or other proceeding taken against the party resulting from mistake, inadvertence, surprise, or excusable neglect. (Code Civ. Proc., § 473, subd. (b).) The application for relief must be made within a reasonable time, not to exceed six months, after the judgment, dismissal, order or proceeding was taken. (*Id.*)

There is no issue as to the timing of this motion.

Here, there is no dispute that Defendant was served with the summons, complaint and related documents. However, Defendant's insurance carrier was aware of the lawsuit, but reasonably believed from communications with Plaintiff's counsel that no service had yet been effectuated on Defendant.

"Surprise" is defined as "some condition or situation in which a party to a cause is unexpectedly placed to his injury, without any default or negligence of his own, which ordinary prudence could not have guarded against." (*Miller v. Lee* (1942) 52 Cal.App.2d 10, 16.)

The Court finds a sufficient showing that the failure to answer the lawsuit, based on State Farm's knowledge thereof and failure to engage counsel prior to the entry of default, is sufficient surprise as to Defendant to warrant relief.

Where a party seeking relief form default or default judgment claims that they were caring for a relative but does not provide evidence of the time devoted to such care and whether such care operated to the exclusion of the party's affairs, a court will find that the party's conduct does not constitute excusable neglect. (*Davis v. Thayer* (1980) 113 Cal.App.3d 892, 909.) "[T]he mere fact that [a party] is busy and occupied with other affairs is never held to constitute an excuse for [her] neglect." (*Id.*)

Next, subsection (b) additionally requires the filing of "a copy of the answer, motion, or other pleading proposed to be filed in the action." Although no copy of a responsive pleading was attached to the motion, this is not fatal to granting relief. This requirement is not jurisdictional and substantial compliance may suffice. (*Carmel, Ltd. v. Tavoussi* (2009) 175 Cal.App.4th 393, 403: finding substantial compliance where counsel offered proposed answer at motion hearing rather than serving it with moving papers.)

Therefore, the Court is inclined to grant the motion upon presentation of the proposed pleading.

If no one requests oral argument, under Code of Civil Procedure section 1019.5(a) and California Rules of Court, rule 3.1312(a), no further written order is necessary. The minute order adopting this tentative ruling will become the order of the court and service by the clerk will constitute notice of the order.

Re: Longmire Swaging, Inc vs. L & P Farms, LLC

Case No.: VCU305881

Date: December 31, 2024

Time: 8:30 A.M.

Dept. 2-The Honorable Bret D. Hillman

Motion: Defendant Reddy's Motion to Set Aside Default

Tentative Ruling: To grant the motion; to order the proposed answer filed no later than ten (10) days from the date of this hearing.

Facts

On February 9, 2024, Plaintiff filed this breach of contract and common counts action against Defendant Ashoka Malladi Reddy, amongst others.

On March 7, 2024, Plaintiff filed a proof of personal service of the summons and complaint on Defendant Reddy indicating personal service occurred on March 5, 2024, in Highland Ranch, CO, after Defendant Reddy confirmed his identity to the process server.

On May 15, 2024, default against Defendant Reddy was entered.

On June 1, 2024, default judgment was entered against Defendant Reddy.

On November 8, 2024, Defendant Reddy filed this motion to set aside default and default judgment.

In support, Defendant Reddy does not contest that he was served with the summons and complaint. However, Defendant Reddy indicates that he is a permanent resident of Colorado, is not an officer, member, owner, manager, owner, employee, or agent of the co-Defendant LLCs and did not enter into a contract with Plaintiff or otherwise request Plaintiff to provide goods, services and labor for the repair of certain agricultural wells as alleged. (Declaration of Reddy ¶¶3-6.) Defendant Reddy indicates no contact or knowledge whatsoever of Plaintiff. (Declaration of Reddy ¶¶6, 15.)

Additionally, Defendant Reddy indicates that the failure to respond to the lawsuit was due to a number of medical issues involving Defendant Reddy's close family during the time when a responsive pleading would have been due pursuant to the personal service. (Declaration of Reddy ¶¶9-13.)

Defendant Reddy's counsel's declaration attaches a proposed answer in connection with this motion. (Declaration of Gill ¶4 – Ex. A.)

In opposition, Plaintiff argues a lack of diligence regarding the delay of five months.

Authority and Analysis

The Court may relieve a party or counsel from a judgment, dismissal, order or other proceeding taken against the party resulting from mistake, inadvertence, surprise, or excusable neglect. (Code Civ. Proc., § 473, subd. (b).) The application for relief must be made within a reasonable time, not to exceed six months, after the judgment, dismissal, order or proceeding was taken. (*Id.*)

There is no issue as to the timing of this motion.

Here, there is no dispute that Defendant was served with the summons, complaint and related documents

“A ‘mistake’ exists when a person, under some erroneous conviction of law or fact, does, or omits to do, some act which, but for the erroneous conviction, he would not have done, or omitted. It may arise either from unconsciousness, ignorance, forgetfulness, imposition, or misplaced confidence.” (*Salazar v. Steelman* (1937) 22 Cal.App.2d 402, 405, 410.)

“Surprise” is defined as “some condition or situation in which a party to a cause is unexpectedly placed to his injury, without any default or negligence of his own, which ordinary prudence could not have guarded against.” (*Miller v. Lee* (1942) 52 Cal.App.2d 10, 16.)

Further, “excusable neglect” has been defined as “neglect that might have been the act or omission of a reasonably prudent person under the same or similar circumstances.” (*Ebersol v. Cowan* (1983) 35 Cal.App.3d 427, 435.)

“Finally, as for inadvertence or neglect, ‘[t]o warrant relief under section 473 a litigant's neglect must have been such as might have been the act of a reasonably prudent person under the same circumstances. The inadvertence contemplated by the statute does not mean mere inadvertence in the abstract. If it is wholly inexcusable it does not justify relief.’ ” (*Hearn v. Howard* (2009) 177 Cal.App.4th 1193, 1206.)” (*Henderson v. Pacific Gas & Electric Co.* (2010) 187 Cal.App.4th 215, 230.)

Here, Defendant indicates he has no connection to Plaintiff, the Co-Defendant LLCs or the well work at issue on the underlying contract. Additionally, Defendant indicates that four of his close family members had various, serious medical issues around the time of service and when the responsive pleading was due. The Court finds a sufficient showing of mistake and excusable neglect. “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.’ [Citation.]” (*Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233.) Further, the Court finds a sufficient basis under *Davis v. Thayer* (1980) 113 Cal.App.3d 892, 909 as to the care of family members during the time a responsive pleading is required to be filed applicable to the facts presented in this case.

This explanation is sufficient as to the delay between entry of default and the filing of this motion seeking relief therefrom.

Next, subsection (b) additionally requires the filing of "a copy of the answer, motion, or other pleading proposed to be filed in the action." As noted above, Counsel for Defendant has provided a proposed answer in satisfaction of this requirement.

Therefore, the Court grants the motion. Defendant is ordered to file the proposed answer attached to Counsel's declaration no later than ten (10) days from the date of this hearing.

If no one requests oral argument, under Code of Civil Procedure section 1019.5(a) and California Rules of Court, rule 3.1312(a), no further written order is necessary. The minute order adopting this tentative ruling will become the order of the court and service by the clerk will constitute notice of the order.

Re: L. J. vs. County of Tulare

Case No.: VCU293108

Date: December 31, 2024

Time: 8:30 A.M.

Dept. 2-The Honorable Bret D. Hillman

Motion: Defendants' Joint (1) Motion to Bifurcate Trial and (2) Motion to Permit Questioning of Plaintiff re: Sexual History

Tentative Ruling: (1) To deny the motion; (2) To grant the motion and hold the hearing pursuant to Evidence Code section 783(c) as to potential evidence for which the offer of proof in this motion was sufficient.

(1) Defendants' Joint Motion to Bifurcate

Facts

In this action plaintiff alleges negligence, on the part of the County of Tulare (County) in one cause of action, and on the part of Koinonia Foster Homes, Inc. (Koinonia) in another, proximately caused her to suffer sexual abuse during her placement at a foster home when she was a minor.

Defendants, jointly, move to bifurcate the trial on issues of liability and damages.

Defendants argue that they are adamant they have no liability based on contradictions between the operative complaint and Plaintiff's deposition testimony and Child Welfare Services records, that Plaintiff has no witnesses to support the allegations of the operative complaint, and that Plaintiff was not placed into a foster home until 1999, instead of 1995 as alleged in the operative complaint.

Defendants generally state that justice would be promoted by separating liability and damages because a jury may be emotional and sympathetic to Plaintiff as it hears testimony as to damages. Defendants further generally state that the estimated length of trial of 7 days is now for liability only, based on 16 to 19 witnesses, including unretained experts.

Defendants now estimate the damages portion of the trial would then take an additional four to six days, requiring an additional 12 to 15 witnesses. The Defendants generally argue that the convenience of witnesses would be promoted upon bifurcation. Defendants argue settlement would be promoted by a bifurcated trial.

In opposition, Plaintiff argues that the facts as to liability and damages are intertwined to the extent that bifurcating trial would result in two nearly duplicate trials and that Defendants have demonstrated a lack of prejudice.

Authority and Analysis

Whether to order bifurcation of issues for trial is typically discretionary (Code Civ. Proc. §§ 598, 1048(b); *Grappo v. Coventry Financial Corp.* (1991) 235 Cal.App.3d 496, 504).

The objective of bifurcation is to avoid wasting time and money on the trial of damages if the liability issue is resolved against plaintiff. (*Horton v. Jones* (1972) 26 Cal.App.3d 952, 954.) Granting or denying of a motion for bifurcation lies within the trial court's sound discretion and is subject to reversal on appeal only for clear abuse. (*Grappo v. Coventry Financial Corp.* (1991) 235 Cal.App.3d 496, 503-504.)

Under Code of Civil Procedure section 1048(b):

"The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any cause of action, including a cause of action asserted in a cross-complaint, or of any separate issue or of any number of causes of action or issues, preserving the right of trial by jury required by the Constitution or a statute of this state or of the United States."

Similarly, Code of Civil Procedure section 598 provides:

"The court may, when the convenience of witnesses, the ends of justice, or the economy and efficiency of handling the litigation would be promoted thereby, on motion of a party, after notice and hearing, make an order, no later than the close of pretrial conference in cases in which such pretrial conference is to be held, or, in other cases, no later than 30 days before the trial date, that the trial of any issue or any part thereof shall precede the trial of any other issue or any part thereof in the case, except for special defenses which may be tried first pursuant to Sections 597 and 597.5. The court, on its own motion, may make such an order at any time."

Section 598 was expressly adopted as the result of Judicial Council recommendations and "Its objective is avoidance of waste of time and money caused by unnecessary trial of damage questions in cases where the liability issue is resolved against the plaintiff." (*Trickey v. Superior Court* (1967) 252 Cal.App.2d 650, 653)

Finally, Evidence Code section 320 states that: "[e]xcept as otherwise provided by law, the court in its discretion shall regulate the order of proof." "Under these provisions, trial courts have broad discretion to determine the order of proof in the interests of judicial economy." (*Grappo v. Coventry Financial Corp.* (1991) 235 Cal.App.3d 496, 504.)

California courts have recognized that bifurcation is proper where liability is a simple matter while damages require testimony from multiple witnesses, or where only a small fraction of the evidence would be repeated, and the trial court had determined the ends of justice would be served by bifurcation. (See *Trickey*, supra, at 652-653 – one witness in addition to the parties; *Kaiser Steel Corp. v. Westinghouse Elec. Corp.* (1976) 55 Cal.App.3d 737, 745-746 (superseded by statute on other grounds in *Barnett v. American-Cal Medical Services* (1984) 156 Cal.App.3d 260 – "the trial court could properly conclude that while some evidence relating to damages would also be necessary on the issue of liability, only a small fraction of the evidence would be repeated so that the ends of justice were served by bifurcation.")

Here, Defendants indicate that up to 19 witnesses are necessary for the liability phase and up to an additional 15 witnesses will testify for the damages proportion, including two days of testimony from retained an unretained experts. However, the Court notes a lack of a declaration supporting these facts. Defendants have failed to provide evidence through declaration or documentation and what is presented to the Court is simply argument of counsel. (See *Fuller v. Tucker* (2000) 84 Cal.App.4th 1163, 1173 ["Argument of counsel is not evidence"]; See also *Ponte v. County of Calaveras* (2017) 14 Cal.App.5th 551, 556 ["the arguments of counsel in a motion are not a substitute for *evidence*..."].)_

Additionally, the generalized arguments set forth by Defendant as to undue prejudice are concerns in every case that involves liability and damages. Jurors can be instructed as to their own emotions, compassions and sympathies, thereby reducing any concern of bias or undue prejudice.

Therefore, the Court denies the motion.

(2) Defendants' Joint Motion Permit Questioning of Plaintiff re: Sexual History

Facts

Defendants seek to introduce a history of sexual abuse and sexual assault that Plaintiff has experienced which includes the following: 1) being kissed by her sisters biological father, 2) being sexually abused at the age of three (3), 3) being sexually abused by her uncle, 4) and being the victim of sexual assault on more than one occasion throughout her life (Declaration of Haller ¶¶ 3-5.)

Specifically, Defendants seek to argue that the abuse and assault suffered by Plaintiff prior to and after the foster care has contributed to the injuries suffered by Plaintiff and the damages alleged.

Defendants seek a hearing pursuant to Evidence Code section 783 and as explained by the California Supreme Court in *Doe v. Superior Court* (2023) 15 Cal.5th 40.

In opposition, Plaintiff does not address *Doe*, supra, 15 Cal.5th 40 and argues the evidence is more prejudicial than probative under Evidence Code section 352.

Authority and Analysis

Doe, supra 15 Cal.5th at 46 considered the extent to which evidence of subsequent sexual molestation was admissible under Evidence Code sections 352, 780, 783 and 1106 in support of the argument that the subsequent events caused at least some of the plaintiff's emotional distress injuries and related damages.

The California Supreme Court summarized the interaction between 352, 780, 783 and 1106 as follows:

"Evidence Code section 1106, subdivision (a), generally protects—or shields—civil litigants who allege "sexual harassment, sexual assault, or sexual battery" by barring evidence of a "plaintiff's sexual conduct … to prove consent by the plaintiff or the absence of injury to the plaintiff." (Italics added.) Yet subdivision (e) of section 1106 also specifies: "This section shall not be construed to make inadmissible any evidence offered to attack the credibility of the plaintiff as provided in Section 783." In turn, section 783, subdivision (d), provides that a trial court **may allow introduction of evidence "regarding the sexual conduct of the plaintiff," so long as that evidence "is relevant pursuant to Section 780" (governing witness credibility, generally) and "not inadmissible pursuant to Section 352" (governing a court's discretion to exclude relevant evidence under certain circumstances)."** (*Id*.)

"The sections apply whenever a plaintiff's credibility *as a witness* is at issue - such as when memory or accuracy may be disputed. When evidence regarding a plaintiff's credibility concerns that person's sexual conduct, the requirements of sections 783, 780, and 352 work together to prevent admission of evidence that is unnecessarily harassing, irrelevant, or unduly prejudicial." (*Id*. at 62.) To admit such evidence, however, the trial court must follow the express statutory procedures set forth in section 783 with "especially careful review and scrutiny. (*Id*. at 48.)

Evidence Code section 783 states:

"In any civil action alleging conduct which constitutes sexual harassment, sexual assault, or sexual battery, if evidence of sexual conduct of the plaintiff is offered to attack credibility of the plaintiff under Section 780, the following procedures shall be followed:

(a) A written motion shall be made by the defendant to the court and the plaintiff's attorney stating that the defense has an offer of proof of the relevancy of evidence of the sexual conduct of the plaintiff proposed to be presented.

(b) The written motion shall be accompanied by an affidavit in which the offer of proof shall be stated.

(c) If the court finds that the offer of proof is sufficient, the court shall order a hearing out of the presence of the jury, if any, and at the hearing allow the questioning of the plaintiff regarding the offer of proof made by the defendant.

(d) At the conclusion of the hearing, if the court finds that evidence proposed to be offered by the defendant regarding the sexual conduct of the plaintiff is relevant pursuant to Section 780, and is not inadmissible pursuant to Section 352, the court may make an order stating what evidence may be introduced by the defendant, and the nature of the questions to be permitted. The defendant may then offer evidence pursuant to the order of the court."

Before the Court currently is a motion pursuant to section 783(a) as to an offer of proof as to sexual abuse before and after she was in foster care. Defendants state such instances are "…highly relevant in determining the extent to which Defendants caused or contributed to the injuries and damages claimed by Plaintiff. In addition, County should be allowed to use any documents evidencing Plaintiff's past sexual abuse and sexual assault, and to examine, or cross examine, her at trial for the purpose of determining damages."

In support, Defendants offer the following list of known instances:

"a. Although no date was identified, Plaintiff told her biological mother then, her youngest sister's father had kissed her in private.

b. Plaintiff informed a doctor on January 26, 2006, that two men sexually abused her when she was three (3) years old and that her uncle had sexually abused her.

c. Plaintiff had also been a victim of sexual assault on more than one occasion throughout her life."

The Court here notes the first two offers of proof appear to involve incidents prior to the incidents in the complaint. (Complaint ¶¶24-25.) The facts of the *Doe* case expressly involves subsequent sexual molestation, not such acts occurring prior to a specific incident for which recovery is sought; however the findings in *Doe* do not limit themselves to only subsequent conduct. Nevertheless, admissibility of these incidents appears be better suited for the hearing set forth in subsection (c).

Therefore, the Court intends to conduct the hearing pursuant to subsections (c) and (d) as to the following:

"a. Although no date was identified, Plaintiff told her biological mother then, her youngest sister's father had kissed her in private.

b. Plaintiff informed a doctor on January 26, 2006, that two men sexually abused her when she was three (3) years old and that her uncle had sexually abused her.

c. Plaintiff had also been a victim of sexual assault on more than one occasion throughout her life."

If no one requests oral argument, under Code of Civil Procedure section 1019.5(a) and California Rules of Court, rule 3.1312(a), no further written order is necessary. The minute order adopting this tentative ruling will become the order of the court and service by the clerk will constitute notice of the order.

Re: In the Matter of Gravitas Golden LLC

Case No.: VCU308748

Date: December 31, 2024

Time: 8:30 A.M.

Dept. 2-The Honorable Bret D. Hillman

Motion: (1) Respondent's Motion to Vacate Arbitration Award; (2) Petitioner's Ex Parte Application for OSC re: Contempt

Tentative Ruling: (1) To deny the motion; (2) To deny the application.

(1) Respondent's Motion to Vacate Arbitration Award

Facts

Petitioner's petition seeks to compel arbitration between Petitioner and Respondent based upon a written agreement permitting Respondent to be the guardian for a specific golden retriever for the purpose of breeding the dog and permitting Respondent to retain the dog upon the completion of breeding.

The written agreement, attached the declaration of counsel, contains a term as to "binding arbitration" as follows:

"10. Binding Arbitration: All claims and disputes arising under or relating to this Agreement are to be settled by binding arbitration in the County of Tulare, state of California or another location mutually agreeable to the parties. The arbitration shall be conducted on a confidential basis pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses, and reasonable attorneys' fees. Any such arbitration shall be conducted by an arbitrator experienced in business and contract law and shall include a written record of the arbitration hearing. The parties reserve the right to object to any individual who shall be employed by or affiliated with a competing organization or entity. An award of arbitration may be confirmed in a court of competent jurisdiction."

The document appears to be fully executed by Petitioner and Respondent via e-signature.

Prior to the filing of a petition to compel arbitration, Petitioner demanded the parties participate in binding arbitration due to Respondent's alleged breach of the agreement as to failure to release the dog for breeding purposes.

The Court continued the initial hearing on this petition because no proof of service of the petition or the accompanying documents has been filed.

Thereafter, Petitioner obtained a court order to publish notice of the petition pursuant to Code of Civil Procedure section 415.50 after an ex parte application. The Court notes here the application was supported by multiple declarations evidencing efforts to locate a physical address for Respondent.

The Court notes further that "30777 RANCHO CALIFORNIA RD UNIT 980, TEMECULA, CA 92589-6002" and "P.O. Box 890132, Temecula, CA 92589" were identified as a possible address, but that this address corresponded only to a PO Box.

The Court notes that its order as to publication also ordered service on Respondent via the email address.

On October 4, 2024, Petitioner filed a proof of service by publication in the Coast News for September 13, 20, 27, 2024 and October 4, 2024.

The Court notes that other proofs of service for other documents were also served electronically on Respondent.

On October 15, 2024, the Court granted the unopposed petition to compel arbitration.

On December 3, 2024, Respondent made a first appearance in this matter, filing a motion to move this case from arbitration back to court, to vacate the arbitration award and to dismiss the case. Respondent argues that she was never served with the petition and that the arbitration process was flawed requiring vacating the award under Code of Civil Procedure section 473(d). Respondent further sets forth various factual statements regarding the underlying dog breeding process for which the agreement was entered into.

In opposition, Petitioner argues service was proper, the order is not void, the arbitrator's conduct was permissible and that Respondent has not sufficiently sought to vacate the award pursuant to Code of Civil Procedure section 1286.2.(a).

Authority and Analysis

Code of Civil Procedure Section 473(d)

Respondent cites to Code of Civil Procedure § 473(d), which states:

"The court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed, and may, on motion of either party after notice to the other party, set aside any void judgment or order."

The Court has ordered service by publication and granted the petition to compel arbitration.

Much of the caselaw is centered on defaults under 473(d) and *Calvert v. Al Binali* (2018) 29 Cal.App.5th 954, 960-961 summarizes the law as follows:

" 'A judgment or order is said to be void on its face when the invalidity is apparent upon an inspection of the judgment-roll.' " (*Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1441; *Trackman v. Kenney* (2010) 187 Cal.App.4th 175, 181 ["This does not hinge on evidence: A void judgment's invalidity appears on the face of the record."].) In cases where there is no answer filed by the defendant, the judgment roll includes: "the summons, with the affidavit or proof of service; the complaint; the request for entry of default with a memorandum indorsed thereon that the default of the defendant in not answering was entered, and a copy of the judgment; … and **in case the service so made is by publication, the affidavit for publication of summons, and the order directing the publication of summons."** ([Code Civ. Proc.,] § 670; Dill, supra, at p. 1441, 29 Cal.Rptr.2d 746 ["In a case in which the defendant does not answer the complaint, the judgment roll includes the proof of service."].) (emphasis added.)

Respondent failed to answer or otherwise respond to the petition.

Therefore, the Court may properly inspect the affidavit for publication of summons and the order directing publication as part of the judgment roll.

Service by Publication and Petition to Compel Arbitration

As summarized by the court in *Rios v. Singh* (2021) 65 Cal. App. 5th 871, 880:

"Section 415.10 et seq. governs the manner of service of a summons. A summons may be served by various methods. If service of a summons by other means proves impossible, service may be effected by publication, upon the trial court's approval. (*Watts v. Crawford* (1995) 10 Cal.4th 743, 748–749 & fn. 5.) Section 415.50 governs this method of service. Subdivision (a) of section 415.50 provides, in pertinent part, 'A summons may be served by publication if upon affidavit it appears to the satisfaction of the court in which the action is pending that the party to be served cannot with reasonable diligence be served in another manner specified in [section 415.10 et seq.] and that … [¶] … [a] cause of action exists against the party upon whom service is to be made or he or she is a necessary or proper party to the action.'"

Further, “A number of honest attempts to learn the defendant's whereabouts through inquiry and investigation generally are sufficient. (*Watts*, *supra*, 10 Cal.4th at p. 749, fn. 5.) A plaintiff must show such efforts because it is generally recognized that service by publication rarely results in actual notice. (*Ibid* ; accord, *Donel*, *Inc. v. Badalian* (1978) 87 Cal.App.3d 327, 332; *Sanford v. Smith* (1970) 11 Cal.App.3d 991, 1001).) Whether the plaintiff exercised the diligence necessary to justify resort to service by publication depends on the facts of the case. (*Donel*, at p. 333.) The question is whether the plaintiff took the steps a reasonable person who truly desired to give notice of the action would have taken under the circumstances. (*Ibid.*)” (*Id*. at 411-412)

Here, the Court notes extensive declarations detailing the attempts to locate Respondent, serve Respondent personally, by consent or via the electronic mail address Respondent had been using to communicate with Petitioner. Petitioner’s principal indicates contact with Respondent via email and confirmation of last known addresses in San Diego. (Declaration of Corso ¶¶4-10.)

The Court also notes declarations process servers as to attempts at service in the San Deigo area at various addresses. (Declaration of Larsen; Declaration of Torres)

The Court further notes Petitioner’s counsel’s declaration noting the efforts undertaken to locate updated addresses for Respondent, including PO Box 890132 in Temecula that Respondent has listed as her address on this motion. (Declaration of Ruiz ¶¶3-7.)

It was based on these declarations that the Court ordered service by publication, having found the requisite number of honest attempts to discover an address where Respondent could be served and sufficient diligence to justify resorting to service by publication. The Court further notes it ordered service of these documents on the email address which Respondent and Petitioner had been communicating via throughout the relevant time period.

The Court, having permitted service by publication under the circumstances set forth above, found that at the October 14, 2024 hearing on the petition to compel arbitration, that service on Respondent was complete, that no opposition had been filed and that Petitioner had carried its burden as to the existence of an enforceable arbitration agreement encompassing the dispute and that no valid defenses applied to enforcement thereof. The Court also notes service of the petition and other documents via electronic mail in addition to the publication.

Therefore, the Court does not find the order to serve by publication nor the order granting the petition to compel arbitration to be void under section 473(d).

Challenge to Arbitration

California recognizes a strong public policy in favor of arbitration as a speedy, relatively inexpensive means of resolving disputes. (Malek Media Group LLC v. AXQG Corp. (2020) 58 Cal. App. 5th 817, 827.) The California Supreme Court held in *Morris v. Zuckerman* that '"[n]either the merits of the controversy…nor the sufficiency of the evidence to support the arbitrator's award are matters for judicial review.' Although the court may vacate an award if it determines that '[the] arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted,' it may not substitute its judgment for that of the arbitrators." (*Morris v. Zuckerman* (1968) 69 Cal.2d 686, 691.)

The arbitrator's decision cannot be reviewed by the Court for errors of fact or law, even if the error is apparent and causes substantial injustice. *(State Farm Mut. Auto. Ins. Co. v. Robinson* (2022) 76 Cal. App. 5th 276, 283.) However, judicial review is available where serious problems with the award itself, or the fairness of the process arise, as set by statute under Code of Civil Procedure section 1286.2(a). (*Malek Media*, supra, 58 Cal. App. 5th at 827.) Section 1286.2(a) permits a court to vacate an arbitration award if the Court determines any of the following:

"(1) The award was procured by corruption, fraud or other undue means.

(2) There was corruption in any of the arbitrators.

(3) The rights of the party were substantially prejudiced by misconduct of a neutral arbitrator.

(4) The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.

(5) The rights of the party were substantially prejudiced by the refusal of the arbitrators to postpone the hearing upon sufficient cause being shown therefor or by the refusal of the arbitrators to hear evidence material to the controversy or by other conduct of the arbitrators contrary to the provisions of this title.

(6) An arbitrator making the award either: (A) failed to disclose within the time required for disclosure a ground for disqualification of which the arbitrator was then aware; or (B) was subject to disqualification upon grounds specified in Section 1281.91 but failed upon receipt of timely demand to disqualify himself or herself as required by that provision. However, this subdivision does not apply to arbitration proceedings conducted under a collective bargaining agreement between employers and employees or between their respective representatives."

To start, there appears to be no award to challenge or vacate at this time.

Nevertheless, Respondent challenges the "proper service" of "judicial or arbitration-related" documents under Code of Civil Procedure sections 412.10-417.40 by the arbitrator. These sections, however, related to service of a summons and complaint, as opposed to documents from the arbitrator.

Next, Respondent argues a "failure to provide governing rules" at the arbitration. However, the arbitration agreement itself provides the details of the arbitration, including that it is binding, that the Commercial Arbitration Rules of the American Arbitration Association apply and various other details of the arbitration proceeding. Respondent generally cites Code of Civil Procedure sections 1290 through 1294.2 as to transparency and adherence to procedural requirements. None of these sections, however, relate to the conduct of the arbitrator and do not address the statutorily permitting challenges to vacating the award.

Next, Respondent argues a "breach of confidentiality and neutrality" where Respondent alleges that direct communications with the arbitrator were shared with opposing counsel. Here, Respondent cites to California Standards of Judicial Administration Standard 10.21, but the Court notes that this involves recruitment of appointment of arbitrators as to establishing and maintaining a list thereof.

The Court notes, as demonstrated by the arbitrator's response in Attachment 6, that ex parte communications are generally not permitted and the Court, therefore, cannot say that the conduct described fits the categories listed in section 1286.2(a). The Court does not either *Schlessinger v. Rosenfeld, Meyer & Susman* (1995) 40 Cal. App. 4th 1096 nor *Moncharsh v. Heily & Blasé* (1992) 3 Cal. 4th 1, 6 apply to the fact of this case.

Finally, Respondent raises issues of Petitioner's counsel's conduct as to service and efforts to locate Respondent to server her personally. The Court has reviewed the publication order and affidavits in support thereof above at length, finding sufficient diligence was demonstrated to support the order to serve by publication.

The remainder of Respondent's motion appears to be directed at the underlying disputes to be decided in arbitration.

Therefore, the Court denies the motion.

(2) Petitioner's Ex Parte Application for OSC re: Contempt

Petitioner seeks a contempt finding based on Respondent's apparent notice of withdrawal from the arbitration on December 1, 2024, in response to the Court's order to arbitrate this matter.

It appears that the arbitration proceeding has not yet occurred and the arbitrator has taken briefing regarding Respondent's attempts to unilaterally withdraw. This issue appears pending and properly before the arbitrator, not this Court.

The application is denied without prejudice.

If no one requests oral argument, under Code of Civil Procedure section 1019.5(a) and California Rules of Court, rule 3.1312(a), no further written order is necessary. The minute order adopting this tentative ruling will become the order of the court and service by the clerk will constitute notice of the order

Probate Examiner Recommendations

Examiner Notes for Probate Matters Calendared

- Visalia Division
- South County Justice Center Division