

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

Law and Motion Calendar
HONORABLE SUSAN GREENBERG
Department 3

400 County Center, Redwood City
Courtroom 2B

Monday, July 16, 2018

NOTICE TO ALL COUNSEL

Until further order of the Court, no endorsed-filed "courtesy copy" of pleadings is required to be provided to the Law and Motion Department.

IF YOU **INTEND TO APPEAR** ON ANY CASE ON THIS CALENDAR, YOU MUST DO THE FOLLOWING:

1. YOU MUST CALL (650) 261-5019 BEFORE 4:00 P.M. TO INFORM THE COURT OF YOUR INTENT TO APPEAR.
2. You must give notice before 4:00 P.M. to all parties of your intent to appear pursuant to California Rules of Court 3.1308(a)(1).

Failure to do both items 1 and 2 will result in no oral presentation.

Notifying CourtCall with your intent to appear is not an alternative to notifying the court.

All Counsel are reminded to comply with California Rule of Court 3.1110. The Court will expect all exhibits to be tabbed accordingly.

Case

Title / Nature of Case

9:00

LINE: 1

16-CIV-01931 THRIFTY PAYLESS, INC. VS. PEARLMARK HINES SAN MATEO,
LP,

THRIFTY PAYLESS, INC.
PEARLMARK HINES SAN MATEO, LP

MICHAEL A. CORFIELD
HEATHER N. INGLE

MOTION TO CONSOLIDATE

TENTATIVE RULING:

The motion to consolidate is DENIED for lack of proof of service.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

9:00

LINE: 2

16-CIV-01931 THRIFTY PAYLESS, INC. VS. PEARLMARK HINES SAN MATEO,
LP

THRIFTY PAYLESS, INC.
PEARLMARK HINES SAN MATEO, LP

MICHAEL A. CORFIELD
HEATHER N. INGLE

JOINDER

TENTATIVE RULING:

The motion is DENIED as per the ruling on the Motion to Consolidate.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

9:00

LINE: 3

16-CIV-02987 MIKE ROSEN, ET AL. VS. XIAO YAN CHEN, ET AL.

MIKE ROSEN
XIAO YAN CHEN

LAWRENCE D. MILLER
BRADLEY KASS

MOTION TO COMPEL

TENTATIVE RULING:

The Motion of Plaintiffs Mike Rosen, Assignee of Spondulix Company, Inc., and Barry Milgrom, Trustee of Bankruptcy Estate of James Jin Qing Li, (“Plaintiffs”) Directing Compliance with Subpoena Duces Tecum, is ruled on as follows:

(1) The motion as to the subpoena to J.P. Morgan Chase Bank is GRANTED. Plaintiffs’ need for this discovery outweighs James Jin Qing Li’s (“Li”) privacy objection. J.P. Morgan Chase Bank is ordered to provide the records requested in Plaintiffs’ subpoena that was issued on February 14, 2018. (See Plaintiffs’ Revised Exh. 1.)

(2) The motion as to the subpoena to Wells Fargo is DENIED. Plaintiffs have not established that the subpoena was served on all of the individuals and/or entities identified in the subpoena. Plaintiffs served a “Notice to Consumer or Employee and Objection” on 10 individuals and/or entities. (See Plaintiffs’ Revised Exhibit List, Exh. 2.) Thus, Plaintiffs have not established that these remaining 9 entities were served: (1) King Wah, Inc., (2) King Wah Restaurant, Inc., (3) Qiong Hua Restaurant, Inc., (4) J. Li & Associates, Inc. (separately named from J. Li & Associates), (5) La Mian Group, Inc., (6) Mayfair International Co., Inc., (7) Texas Development, Inc., (8) Taxas Development, Inc., and (9) Willow Creek Group, Inc.

Further, as to the remaining 10 individuals and/or entities that were provided with notice of the subpoena, Plaintiffs only served this motion on Defendant Chen, Li, Zhao (agent for service of process for Portola Valley Development LLC) and Kwan (agent for service of process for 277 San Francisco LLC and 2933 San Juan LLC). Plaintiffs did not serve the other 5 entities. Moreover, Plaintiffs offer no explanation as to how the bank records of these entities are relevant to this action.

Additionally, Plaintiffs fail to demonstrate that their need for this discovery outweighs the privacy objections raised by Zhao and Kwan.

Finally, the subpoena is overbroad, including with respect to Chen and Li, because it seeks any and all records of all Wells Fargo accounts for them. Plaintiffs have not identified any specific bank account(s) directly relevant to this action.

(3) The motion as to the subpoena to Bank of America is DENIED. Plaintiffs seek bank records for 19 individuals and/or entities and for 12 specific account numbers. Plaintiffs served a “Notice to Consumer or Employee and Objection” on 10 individuals and/or entities. (See Plaintiffs’ Revised Exhibit List, Exh. 3.) Once again, Plaintiffs have not established that these remaining 9 entities were served: (1) King Wah, Inc., (2) King Wah Restaurant, Inc., (3) Qiong Hua Restaurant, Inc., (4) J. Li & Associates, Inc. (separately named from J. Li & Associates), (5) La Mian Group, Inc., (6) Mayfair International Co., Inc., (7) Texas Development, Inc., (8) Texas Development, Inc., and (9) Willow Creek Group, Inc.

Further, as to the remaining 10 individuals and/or entities that were provided with notice of the subpoena, Plaintiffs only served this motion on Defendant Chen, Li, Zhao (agent for service of process for Portola Valley Development LLC) and Kwan (agent for service of process for 277 San Francisco LLC and 2933 San Juan LLC). Plaintiffs did not serve the other 5 entities. Moreover, Plaintiffs offer no explanation as to how the bank records of these entities are relevant to this action.

Additionally, Plaintiffs fail to demonstrate that their need for this discovery outweighs the privacy objections raised by Zhao and Kwan.

Finally, the subpoena is overbroad, including with respect to Chen and Li, because it seeks all accounts in their names without demonstrating how all accounts are directly relevant to this action. Notably, Plaintiffs have identified 12 specific bank accounts without explaining who these bank accounts belong to and how they are related to this action.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

9:00

LINE: 4

16-CIV-03063 SOKENYA SINGLETARY VS. K1 SPEED, INC., ET AL.

SOKENYA SINGLETARY
K1 SPEED, INC.

ROBERT E. CARTWRIGHT
JAMES A. D'AMBROSIO

MOTION FOR SUMMARY OF JUDGMENT/ADJUDICATION OF ISSUES

TENTATIVE RULING:

This motion is dropped from calendar. A Notice of Settlement was filed 4-6-18.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

9:00

LINE: 5

17-CIV-05594 ALLAN & HENRY, INC. VS. CEPHAS ENTERPRISES, INC., ET
AL.

ALLAN & HENRY, INC., A CALIFORNIA CORPORATION CLIFFORD R. HORNER
CEPHAS ENTERPRISES, INC.

MOTION TO COMPEL

TENTATIVE RULING:

The motion is denied without prejudice for failure to establish that it was served on defendant Disaster Restoration and Recovery. The proof of service states only that plt caused the motion to be personally delivered to defense counsel. There is no declaration from the individual who actually accomplished the service.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

9:00

LINE: 6

17-CIV-05621 MECHANICS BANK, INC. VS. RAFAEL E. PORTER

MECHANICS BANK, INC.
RAFAEL E. PORTER

PAUL M. PARVANIAN
FRED W. SCHWINN

MOTION FOR ATTORNEY FEES

TENTATIVE RULING:

Defendant Rafael E. Porter's Motion for Attorney's Fees is GRANTED but the requested fee amount is modified as indicated below. Although Plaintiff's initial complaint contained a single cause of action on the caption page (Complaint for Breach of Contract), Paragraph 8 in the complaint specifically provides that "The above described Contract was, and is, subject to the provision of the Rees – Levering Motor Vehicle Sales and Finance Act (ASFA), Civil Code Section 2981—2984.4. (See Paragraph 8 at Pg. 2 of Complaint). Defendant, in answering the complaint, raises five (5) affirmative defenses directly related to ASFA. At no point in time during the course of the litigation did Plaintiff ever amend its complaint to remove or strike the contention that the contract in dispute was subject to ASFA. Instead, Plaintiff waited until they filed their opposition to this motion to address the inclusion of an ASFA claim in their complaint by stating "a provision was inserted into the Complaint for reasonable attorneys' fees under Civil Code § 2983.4. That was a mistake and not necessary..." Civil Code §2983.4 provides "Reasonable attorney's fees and costs shall be awarded to the prevailing party in any action on a contract or purchase order subject to the provisions of this chapter regardless of whether the action is instituted by the seller, holder or buyer..." ASFA does not define the term "prevailing party". As a result, the court takes a pragmatic approach, and determines that Defendant is the prevailing party in this case as Defendant succeeded on a practical level by achieving its ultimate litigation objective. Defendant's fee request is granted, however the requested fees are reduced by \$360.00 to offset the amount of fees attributed to an attorney who did not file a supporting declaration. Therefore, the total fee award for Defendant shall be \$8,640.00. Said amount shall be paid by Plaintiff to Defendant on or before July 30, 2018.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

9:00

LINE: 7

18-CLJ-02420 MARK CASSIDY VS. MENZIES AVIATION

MARK CASSIDY
MENZIES AVIATION

PRO/PER

MOTION TO COMPEL ARBITRATION AND TO STAY

TENTATIVE RULING:

Defendant Menzies Aviation's Motion to Compel Arbitration is GRANTED. California law favors the enforceability of arbitration agreements. Calif. Arbitration Act ("CAA"), codified by Code Civ. Proc. Sect. 1281, *et seq.*; *Armendariz v. Foundation Health Psychcare Services, Inc.*, 24 Cal.4th 83, 97 (2000). As set forth in Ex. A to the 6-11-18 Manwani Decl., on 3-14-16, Plaintiff Cassidy signed an agreement requiring the arbitration of employment-related disputes. Plaintiff's asserted claims here fall within the parties' agreement, which is enforceable. *Armendariz, supra*, 24 Cal.4th 83. Accordingly, the motion is granted, and the case is STAYED pending resolution of the arbitration. Code Civ. Proc. Sect. 1281.4.

Plaintiff's Opposition disputes defense counsel's contention that Plaintiff "abandoned" his employment. True or not, that issue is not relevant to the enforceability of the parties' arbitration agreement. Plaintiff also notes that the caption of Menzies Aviation's "Notice of Motion" incorrectly referred to "Plaintiff Carrillo." This was clearly a typographical error does not render the motion defective. All other references to Plaintiff in the moving papers correctly refer to Plaintiff Mark Cassidy, including the body of the Notice of Motion, which states that Defendant seeks to compel the arbitration "of all claims brought by Plaintiff Mark Cassidy." Further, this error has caused no confusion, as Plaintiff has opposed the motion on the merits.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

9:00

LINE: 8

CIV531938 IMPACT PAPER & INK, LTD VS. ALAN SAJADI, ET AL.

IMPACT PAPER & INK, LTD
PACIFIC BUSINESS SUPPLIES

MARC L. JACUZZI
PRO/PER

MOTION FOR ATTORNEY FEES

TENTATIVE RULING:

The Court finds that service on all defendants is sufficient. Plaintiff still has not filed a copy of the Settlement Agreement for this motion, which the Court noted was omitted from the moving papers. The Court takes judicial notice of the Settlement Agreement that is contained as Exhibit A to the Declaration of Mark Jacuzzi in Support of Motion to Enforce Settlement Agreement, filed March 15, 2018.)

Plaintiff's motion for attorney's fees is granted in the amount of \$64,142.50. Defendant shall pay said amount to Plaintiff on or before 8-13-18.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Plaintiff shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court.

POSTED: 3:00 PM