

**Tentative Rulings and Resolution Review Hearings
March 20, 2023
Department 8**

This Court does not follow the procedures described in Rules of Court, Rule 3.1308(a). Tentative rulings appear on the calendar outside the court department on the date of the hearing, pursuant to California Rule of Court, Rule 3.1308(b) (1). As a courtesy to counsel, the court also posts tentative rulings no less than 12 hours in advance of the time set for hearing. The rulings are posted on the court’s website (www.shasta.courts.ca.gov) and are available by clicking on the “Tentative Rulings” link. A party is not required to give notice to the Court or other parties of intent to appear to present argument.

In furtherance of compliance with the California Department of Public Health and CDC guidelines and recommendations, the Superior Court of California, County of Shasta is continuing to undertake precautionary measures to ensure the health and safety of the courthouse users. Persons are encouraged to make appearances telephonically, through CourtCall (888-882-6878; courtcall.com).

8:30 a.m. – Law & Motion

**DELEVATI VS. VIP NAILS, ET AL
Case Number: CVPO22-0198992**

Tentative Ruling on Order to Show Cause Re: Sanctions: An Order to Show Cause Re: Sanctions (hereinafter “OSC”) issued on February 16, 2023 to Plaintiff Kathleen Delevati for failure to timely serve. The Complaint in this matter was filed on January 26, 2022. “The complaint must be served on all named defendants and proofs of service on those defendants must be filed with the court within 60 days after the filing of the complaint.” CRC 3.110(b). The Court notes that Defendant Vung Nguyen doing business as VIP Nails and Na Thi Ti Huynh doing business as VIP Nails were recently served. However, there is no proof of service on file for Defendant VIP Nails.

No written response to the OSC was filed with the Court, however, the Court notes that a letter was received by the Court on March 2, 2023. This was returned to Plaintiff as an ex parte communication. However, the Court notes that at the time of receipt of the letter, no defendants had appeared in the case as one defendant had been defaulted and no other defendants had been served. Based on this, the Court is exercising its discretion to consider the contents of this letter. Plaintiff is reminded that filings with the Court need to be on pleading paper and comply with the California Rules of Court. Additionally, they must be served on all parties who have appeared in the case.

Hearing on the OSC is continued to **Monday, May 15, 2023 at 8:30 a.m. in Department 8**. The matter will also be on calendar on **Monday, May 15, 2023 at 9:00 a.m. in Department 8** for review regarding status of service on Defendant VIP Nails and status of responsive pleadings. The Court expects that by the next hearing, Defendant VIP Nails will be served and that all Defendants will either have responsive pleadings on file or have been defaulted.

**HALE VS. BRIUS MANAGEMENT COMPANY, LLC, ET AL
Case Number: 22CV-0200149**

Tentative Ruling on Motion to Compel Arbitration: This is an employment action alleging violations of the Labor Code including claims for, wage and hour violations, retaliation and wrongful termination. It arises out of Plaintiff’s former employment as Nurse for Infection Prevention at the skilled nursing facility Windsor Redding Care Center (“Windsor”) from 2018 until he was terminated in October 2020.

On May 28, 2021, Plaintiff filed suit in this Court against Windsor and his supervisor Tina Brey, in *Hale v. Windsor Redding Care Center, et al.* (Case No. 197430) (the “Windsor Action”). In the Windsor Action, Plaintiff and Defendants stipulated to binding arbitration based upon the Agreement to be Bound By Alternative Dispute Resolution Policy (“Arbitration Agreement”) between Plaintiff and River Valley Health Care and Wellness Center (“River Valley”). Plaintiff thereafter added River Valley to the arbitration.

On July 13, 2022, Plaintiff filed this suit, making the same and similar claims, arising out of his employment at Windsor, against Defendants Brius Management Company, LLC (“Brius Mgmt.”), Brius, LLC (“Brius”), and Rockport Healthcare Services, LLC (“Rockport”). Defendants move now to compel arbitration and stay or dismiss the proceedings. Plaintiff does not dispute that he signed the Arbitration Agreement. (Opp. p.2 ln.23.) Neither party raises any issues regarding enforceability of the terms of the Arbitration Agreement such as substantive or procedural unconscionability. Instead, the dispute here concerns only whether the non-signatory Defendants, Brius Mgmt., Brius, and Rockport, can be compelled to arbitrate under a theory of equitable estoppel, third-party beneficiaries, or agency.

Request for Judicial Notice. Defendants request the Court take Judicial Notice of the Stipulation and Order to Submit the Matter to Arbitration in Case No. 197430 dated December 1, 2021. The request is granted, pursuant to Evid. Code §§ 452, 453, and CRC Rule 3.1306(c).

Meet and Confer. The Declaration of Bertikian states facts demonstrating a demand for arbitration was made prior to the filing of the instant motion as required by CCP § 1281.2.

Merits

Nonsignatories. California has a strong public policy in favor of arbitration as an expeditious and cost-effective way of resolving disputes. *Avila v. S. California Specialty Care, Inc.* (2018) 20 Cal.App.5th 835, 843. Even so, parties can only be compelled to arbitrate when they have agreed to do so. *Ibid.* “Even the strong public policy in favor of arbitration does not extend to those who are not parties to an arbitration agreement or who have not authorized anyone to act for them in executing such an agreement. Nevertheless, there are circumstances under which persons who have not signed an agreement to arbitrate are bound to do so. One treatise has stated that there are six theories by which a nonsignatory may be bound to arbitrate: (a) incorporation by reference; (b) assumption; (c) agency; (d) veil-piercing or alter ego; (e) estoppel; and (f) third-party beneficiary.” *Jensen v. U-Haul Co. of California* (2017) 18 Cal.App.5th 295 (internal citations omitted). A party to an arbitration agreement may petition the court to compel other parties to arbitrate a dispute that is covered by their agreement. CCP § 1281.2. The petitioner bears the burden of proving the existence of a valid arbitration agreement by a preponderance of the evidence. *Jones v. Jacobson* (2011) 195 Cal.App.4th 1, 15. However, when a nonsignatory seeks to enforce an arbitration agreement/provision against a signatory, the nonsignatory bears the burden to establish he or she is a *party* to the arbitration agreement/provision covering the dispute. (See § 1281.2 [“On petition of a party to an arbitration agreement”] italics added.) *Ibid.*

Equitable Estoppel. Defendants argue that equitable estoppel applies here to compel arbitration of Plaintiff’s claims. Under the doctrine of equitable estoppel “a nonsignatory defendant may invoke an arbitration clause to compel a signatory plaintiff to arbitrate its claims when the causes of action against the nonsignatory are ‘intimately founded in and intertwined’ with the underlying contract obligations.” (*Boucher v. Alliance Title Co., Inc.* (2005) 127 Cal.App.4th 262, 271–272; see also *JSM Tuscany, LLC v. Superior Court* (2011) 193 Cal.App.4th 1222, 1237.) *Jones v. Jacobson* (2011) 195 Cal. App. 4th 1, 20. The intent of this doctrine is “to prevent a party from using the terms or obligations of an agreement as the basis for his claims against a nonsignatory, while at the same time refusing to arbitrate with the nonsignatory under another clause of that same agreement.” *Ibid.* The doctrine focuses on the nature of the claims asserted by the plaintiff against the nonsignatory defendant; claims that rely upon, make reference to, or are intertwined with claims under the subject contract are arbitrable. *Ibid.*

Plaintiff's claims in this matter arise out of alleged violations of the Labor Code, Health and Safety Code, and Business and Professions Code. There is no "subject contract" apart from the Arbitration Agreement. Plaintiff is not using the terms and obligations of the Arbitration Agreement as the basis for his claims against the non-signatories. Instead, his claims arise out of alleged violation of statutes. Therefore, his claims do not rely upon, or make reference to, and are not intertwined with the "subject contract" (the Arbitration Agreement). The doctrine of equitable estoppel does not apply here.

Third-Party Beneficiaries. Defendants contend they are entitled to compel Plaintiff to arbitrate because they are third-party beneficiaries of Plaintiff's Agreement. In support of this contention, Defendants point only to Plaintiff's Complaint, noting that Plaintiff has alleged Defendants and Windsor Redding are "agents" of each other, and "a single employer, joint employer, dual employer and/or integrated enterprise. (Motion 8:19-22, citing Complaint; Reply 5:18-19.) Civ. Code § 1559 provides "A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it." "Under California's third party beneficiary doctrine, a third party — that is, an individual or entity that is not a party to a contract — may bring a breach of contract action against a party to a contract only if the third party establishes not only (1) that it is likely to benefit from the contract, but also (2) that a motivating purpose of the contracting parties is to provide a benefit to the third party, and further (3) that permitting the third party to bring its own breach of contract action against a contracting party is consistent with the objectives of the contract and the reasonable expectations of the contracting parties." *Goonewardene v. ADP, LLC* (2019) 6 Cal. 5th 817, 821.

Defendants' Declaration of Meir Orloff provides evidence in support of the relationship among the various entities. Regarding Rockport Healthcare Services, LLC, Defendants' evidence provides that this is a fictitious business name for Rockport Administrative Services, LLC, an entity which "provides administrative consulting services to River Valley Healthcare and Wellness Center, LP, which includes such services as legal support, regulatory compliance support, payroll processing ..." (Decl. Orloff ¶ 2.) Again, the only contract at issue here is the Arbitration Agreement between Plaintiff and River Valley Healthcare and Wellness Center, LP. Defendants have failed to provide any evidence supporting application of the third party beneficiary doctrine to this company, which provides consulting services to Plaintiff's employer. The objective of the Arbitration Agreement is to compel binding arbitration "in the event employment disputes arise between my employer or any of its employees or officers (herein collectively referred to as the "Company"), on the one hand, and me, on the other hand." (Arbitration Agreement p.1.) There is no evidence of any motivating purpose, or reasonable expectations, that this third party entity would benefit from the Arbitration Agreement.

Regarding Brius Management Company, LLC, Defendants' evidence provides that it is "a holding company under which River Valley Healthcare and Wellness Center, LP exists. [It] has no employees and never had any employees." (Decl. Orloff ¶ 4.) The same analysis applies – Defendants have not provided any evidence to establish Brius Mgmt. and Plaintiff, would have had a reasonable expectation that Brius Mgmt. (a holding company with no employees) should benefit from an Arbitration Agreement governing employment disputes arising between Plaintiff and his employer River Valley.

Finally, Regarding Brius, LLC Defendants' evidence provides that it is "a holding company and completely unrelated to River Valley Healthcare and Wellness Center, LLP. [It] has no employees nor has it ever had any employees." (Orloff Decl. ¶ 5.) Defendants provide no further evidence regarding Brius' status as a beneficiary here, they state only that the entity is "completely unrelated" to Plaintiff's employer. Nothing on this record supports a finding that a motivating purpose of River Valley and Plaintiff was to provide a benefit to Defendants, nor that permitting them to compel arbitration would be consistent with the reasonable expectations of River Valley and Plaintiff. Therefore, the third party beneficiaries exception does not apply.

Agency. Defendants contend Plaintiff may be compelled to arbitration based upon Plaintiff's allegations that Defendants are his employer's agents. Defendants argue that it is enough for Plaintiff to *allege* agency to support their right to compel arbitration. Defendants do not provide any evidence in support of an agency relationship

between signatory River Valley and any of the three Defendants here. Defendants rely on *Thomas v. Westlake* (2012) 204 Cal.App.4th 605 (“*Thomas*”), for the proposition that where a plaintiff makes allegations in a complaint that defendants acted as agents of one another it is sufficient to allow alleged agent/nonsignatory to compel arbitration. *Id.* at 614. In *Thomas*, Plaintiff argued that the allegations of agency in his complaint could not be used to require him to arbitrate his claims against defendants which were not parties to any of the agreements. *Ibid.* The Court disagreed, reasoning that, “[h]aving alleged all defendants acted as agents of one another, [Plaintiff] is bound by the legal consequences of his allegations. (See *Westra, supra*, 129 Cal.App.4th at p. 766, [plaintiffs' allegations that nonsignatory to arbitration agreement acted as agent of signatory parties constituted binding judicial admissions].) *Ibid.* The Court further reasoned that “it would be unfair to defendants to allow [Plaintiff] to invoke agency principles when it is to his advantage to do so, but to disavow those same principles when it is not.” *Id.* at 615.

Plaintiff does not distinguish this authority, and instead relies on *Jensen v. U-Haul Co. of Cal.* (2017) 18 Cal.App.5th 295 (“*Jensen*”). In *Jensen*, the Court examined whether it was appropriate to enforce an arbitration agreement between a corporation and a third party against a nonsignatory employee of the corporation under the agency exception. The Court held that the nonsignatory could not be bound, finding there was no implied authority for the corporation to bind the employee by its agreement with his employer.

This case is analogous to *Thomas*, not *Jensen*. In *Thomas*, Plaintiff brought suit against multiple Defendants, only one of which was a party to the agreements containing arbitration clauses. The Court noted that, under the general rule, only that party could enforce the arbitration provisions against Plaintiff. *Thomas* at 613-614. However, based on Plaintiff’s pleading alone, the Court applied the agency exception, finding that the other Defendants “as alleged agents of parties to the agreements containing the arbitration clauses ... are also entitled to compel arbitration of [Plaintiff’s] claims against them.” *Id.* at 614.

In his Complaint, Plaintiff alleges that River Valley, Windsor Redding Care Center, and Defendants Rockport, Brius Mgmt., and Brius were agents, employees, partners and/or successors of the remaining defendants, and were acting within the scope of such agency. (Complaint ¶ 10.) Plaintiff also alleges that there is a unity of interest and ownership between, by and among River Valley (signatory to the Arbitration Agreement) and Defendants, such that any individuality and separateness between these individuals and entities has ceased to exist; and that they have used and continue to use corporate or other entity funds and assets belonging to each other as if they were the same entities. (Complaint ¶ 7.) As the Court in *Thomas* reasoned, it would be unfair to allow Plaintiff here to invoke agency principles when it is to his advantage to do so, but to disavow those same principles when it is not. Therefore the agency exception applies here.

The Motion to Compel Arbitration and Stay Proceedings is **GRANTED**. A proposed order has been lodged with the Court and will be executed. This matter is **STAYED** pending arbitration. All future dates are **VACATED**. This matter is set for **Monday, July 24, 2023 at 9:00 a.m. in Department 8** for status of arbitration. The parties are ordered to provide a status to the Court no later than five court days prior to the hearing.

MIDLAND CREDIT MANAGEMENT, INC. VS. DELELLA

Case Number: CVG21-0000142

Tentative Ruling on Order to Show Cause Re: Sanctions: An Order to Show Cause Re: Sanctions issued on January 9, 2023 to Plaintiff Midland Credit Management, Inc. and counsel for failure to timely submit a judgment. The Court trial in this matter was conducted on April 4, 2022 and the Court ordered Plaintiff to submit a proposed judgment. It is nearly a year later and there has been no proposed judgment submitted. No written response to the Order to Show Cause has been filed.

With no sufficient excuse for the delay, sanctions are imposed in the amount of \$250.00 against Plaintiff and Counsel. The clerk is instructed to prepare a separate Order of sanctions. The Court will issue an Order to Show Cause Re: Dismissal pursuant to Gov’t Code Section 68608(b) to Plaintiff and Counsel for failure to timely submit a proposed judgment and failure to timely prosecute. The hearing on the Order to Show Cause Re: Dismissal is set for **Monday, May 22, 2023, at 8:30 a.m. in Department 8.** The clerk is instructed to prepare a separate Order to Show Cause Re: Dismissal.

REGISTRATION EXPRESS GROUP, INC. VS. AMOUR

Case Number: CVCL21-0000138

Tentative Ruling on Production of Statement of Assets and Examination: Plaintiff Registration Express Group, Inc. obtained a judgment against Defendant Glenda Kay Amour on December 2, 2021. On February 14, 2023, Plaintiff submitted an Application indicating that the judgment had not been paid and Plaintiff had not received a completed Judgment Debtor’s Statement of Assets from Defendant. Defendant was ordered to pay the judgment and file a written declaration stating such to appear on today’s date with a completed Judgment Debtor’s Statement of Assets (Judicial Council form SC-133). The Court notes that a Statement of Assets was given to Plaintiff by Defendant in open court on November 14, 2022, however, no examination took place. CCP § 708.110(d) requires personal service of the Order for Appearance and Examination to be made on the debtor at least 10 days before the examination date. No proof of service has been filed. If a valid proof of service is filed, the examination will proceed. If there is no valid proof of service filed by the time of hearing, the matter will be dropped from calendar.

UMPQUA BANK VS. ALBERTSON, ET AL

Case Number: CVCV15-0182824

Tentative Ruling on Application for Judgment Debtor Examination: Code of Civil Procedure section 708.110 requires personal service to be made on the judgment debtor at least 10 days before the examination date. If proof of service showing proper service on the judgment debtor is submitted at the time of hearing, the debtor examination shall proceed. Otherwise this matter will be dropped from calendar.

THOMAS VS. USA BATH CALIFORNIA REMODELING, INC.

Case Number: 22APSC-0016

Tentative Ruling on Order to Show Cause Re: Dismissal: An Order to Show Cause Re: Dismissal issued on January 9, 2023 to Plaintiff/Respondent USA Bath California Remodeling Inc. for failure to comply with the Court’s January 9, 2023 Order regarding management of the case. Plaintiff/Respondent filed a declaration on February 17, 2023 indicating that the matter settled out of court and requested that the matter be dismissed. The Court accepts this a Plaintiff/Respondent’s Motion to Dismiss. The Order to Show Cause is **DISCHARGED**. Plaintiff/Respondent’s Motion to Dismiss is **GRANTED** and the matter is **DISMISSED**. The Clerk is directed to close the court file and vacate any future dates.

9:00 a.m. – Review Hearings

BROWN VS. ZINCO HOLDING, LLC.ET. AL.

Case Number: CVCV21-0198122

This matter is on calendar for trial setting. This matter is at issue. The Court designates this matter as a Plan III case and intends on setting the matter for trial no later than August 29, 2023. Neither party has posted jury fees. The parties are granted 10 days leave to post jury fees. A failure to post jury fees in that time will be deemed a waiver of the right to a jury. The parties are ordered to meet and confer regarding proposed dates for trial. **An appearance is necessary on today’s calendar.**

CAPITAL ONE BANK VS. MCKELLAR

Case Number: CVG21-0001056

This matter is on calendar for review regarding status of bankruptcy. The Case Management Conference Statement filed by Plaintiff on March 6, 2023 does not address the bankruptcy stay. **An appearance is necessary on today’s calendar.**

DELEVATI VS. VIP NAILS, ET AL.

Case Number: CVPO22-0198992

This matter was called on today's 8:30 a.m. Law & Motion calendar and continued to **Monday, May 15, 2023 at 9:00 a.m. in Department 8** for review regarding status of service and responsive pleadings. **No appearance is necessary on today's calendar.**

DISCOVER BANK VS. SAPPELSA

Case Number: CVG21-0000990

This matter is on calendar for review regarding status of conditional settlement. A Conditional Notice of Settlement of Entire Case was filed on September 22, 2022. The notice sets forth that the settlement is conditional on the satisfactory completion of specified terms that are not to be performed with 45 days of the date of settlement, and that a request for dismissal will be filed no later than October 20, 2024. Due to limited court budgets and reduced court staffing, the Court does not have staffing to monitor a case to assure dismissal and closure of the court file. The Court's previous order dated September 28, 2022 encouraged the parties to resolve such cases in a way which results in a conditional dismissal; i.e., a stipulation that the dismissal may be set aside and judgment entered if there is a default in completing the terms of the settlement. Since issuing this order, it appears the parties have done nothing. **An appearance is necessary on today's calendar.**

LITTAU VS. LOYA

Case Number: 23CV-0201392

This matter is on calendar for status of writ. On January 24, 2023, the Court set today's hearing and ordered the parties to meet and confer. Petitioner was ordered to serve a copy of the order and file a proof of service reflecting this had been accomplished. No proof of service is on file. Petitioner has submitted a declaration which states she served the paperwork as ordered. **The parties are ordered to appear to provide the Court with a status of the writ and any responsive pleadings. The Court will also inquire as to a briefing schedule and hearing date.**

PACIFIC WALL SYSTEMS, INC. VS. PROPERO III REDDING, LLC, ET AL.

Case Number: 22CV-0199602

This matter is on calendar for trial setting. All dates were vacated following the Complaint being dismissed, however, there are two Cross-Complaints in this matter. The Courts notes that the Cross-Complaint filed by Proframe, Inc. on July 15, 2022 and the Cross-Complaint filed by Dominion Construction, LLC on August 4, 2022 are both at issue. The Court designates this matter as a Plan II case and intends on setting the matter for trial no later than October 17, 2023. Neither party has posted jury fees. The parties are granted 10 days leave to post jury fees. A failure to post jury fees in that time will be deemed a waiver of the right to a jury. The parties are ordered to meet and confer regarding proposed dates for trial. **An appearance is necessary on today's calendar.**

PEOPLE VS. \$53, 409.00 U.S. CURRENCY

Case Number: CVPT20-0196286

This asset forfeiture matter is on calendar for trial setting. At the last appearance, the Court was informed that a plea was entered in the underlying criminal case and the District Attorney requested a continuance of this matter. **An appearance is necessary on today's calendar to inform the Court of how the parties intend to proceed.**

PROGRESSIVE WEST INS VS. JONES

Case Number: CVG22-0000166

This matter is on calendar for review regarding status of entry of default. This matter was most recently on calendar on January 23, 2023 for an Order to Show Cause Re: Sanctions and sanctions were imposed for failure to timely request entry of default. Since that date, nothing has been filed. **An appearance is necessary on today's calendar. Absent an appearance and a showing of good cause why entry of default has not occurred, the Court intends to issue an Order to Show Cause Re: Dismissal.**

SALTSMAN, SR., ET AL. VS. HEADRICK LOGGING INC., ET AL.

Case Number: CVPO21-0198364

This matter is on calendar for trial setting. The Court notes that the Cross-Defendants Tony Curtis Gamio and Mow Em Timber Falling were dismissed from the Cross-Complaint filed by Headrick Logging on October 14, 2022. This matter is now at issue. The Court designates this matter as a Plan III case and intends on setting the matter for trial no later than October 17, 2023. Campbell Global, LLC, TC+1 Shasta, LLC, and Headrick Locking, Inc. have posted jury fees. The remaining parties have not. The parties are granted 10 days leave to post jury fees. A failure to post jury fees in that time will be deemed a waiver of the right to a jury. The parties are ordered to meet and confer regarding proposed dates for trial. **An appearance is necessary on today's calendar.**

THE BEST SERVICE CO., INC. VS. BELL, ET AL.

Case Number: CVG21-0000610

This matter is on calendar for review regarding status of stay and/or dismissal of Defendant Jacob Bell. The matter was stayed as to Defendant Jacob Bell on June 6, 2022 due a bankruptcy filing. Judgment was entered against Defendant Kristin Marie Bell on July 11, 2022. **An appearance is necessary on today's calendar to inform the Court of the status of the bankruptcy and whether Plaintiff intends to dismiss the matter as to Defendant Jacob Bell.**