

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, July 17, 2024 3:00 p.m.
Courtroom 17 – Hon. Bradford DeMeo
3035 Cleveland Avenue, Santa Rosa**

PLEASE NOTE: In accordance with the Order of the Presiding Judge, a party or representative of a party may appear in Department 17 in person or remotely by Zoom, a web conferencing platform. Whether a party or their representative will be appearing in person or by Zoom must be part of the notification given to the Court and other parties as stated below.

CourtCall is not permitted for this calendar.

If the tentative ruling is accepted, no appearance is necessary via Zoom unless otherwise indicated.

TO JOIN ZOOM ONLINE:

D17 – Law & Motion

Meeting ID: 161 126 4123

Passcode: 062178

<https://sonomacourt-org.zoomgov.com/j/1611264123>

TO JOIN ZOOM BY PHONE:

By Phone (same meeting ID and password as listed for each calendar):

+1 669 254 5252

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, **YOU MUST NOTIFY** Judge DeMeo's Judicial Assistant by telephone at **(707) 521-6725**, and all other opposing parties of your intent to appear, and **whether that appearance is in person or via Zoom, by 4:00 p.m. the court day immediately preceding the day of the hearing.**

1. 23CV01935, Capital One N.A. v. Lee

Plaintiff Capital One, N.A. moves for an order to deem as admitted the truth of all specified facts in Plaintiff's Request for Admissions, Set One, to responding party Defendant Lee. Plaintiff propounded request for admissions to Defendant on March 19, 2024, but has not received any response at all. Plaintiff filed this motion and timely served Defendant by mail on May 13, 2024. Defendant has not opposed the motion.

If a party to whom requests for admission are directed “fails to serve a timely response,” the party to whom the requests are directed waives any objection. (C.C.P. § 2033.280(a).) This section provides that “[t]he requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted”. (C.C.P. § 2033.280(b).) Additionally, it provides that the court “shall make this order” unless it finds that the party to whom the requests have been directed has served a proposed response in substantial compliance with section 2033.220 before the hearing on the motion. (C.C.P. § 2033.280(c).) Based on the foregoing, Plaintiff’s unopposed motion is **GRANTED**, per Code of Civil Procedure sections 2033.010 and 2033.280. Unless oral argument is requested, the Court shall sign the Plaintiff’s proposed order lodged with the motion on May 14, 2024.

2. 24CV02873, Taylor v. National Railroad Passenger Corporation

Petitioner Taylor’s petition to compel arbitration pursuant to Code of Civil Procedure (“C.C.P.”) section 1281.2 is **GRANTED**.

Procedural History

Petitioner purchased a ticket from Respondent National Railroad Passenger Corporation (“Respondent” or “Amtrak”) on September 4, 2020, to travel from Rohnert Park to Martinez, California. Upon purchasing the ticket, Petitioner entered into a Mutual Arbitration Agreement which stated in relevant part the following:

“Amtrak and Customer... AGREE that this Arbitration Agreement applies, without limitation, to claims Amtrak may have against You and claims You may have against Amtrak...based upon or related to: these Terms and Conditions, breach of contract, tort claims, common law claims, Your relationship with Amtrak, tickets, services and accommodations provided by Amtrak, carriage on Amtrak trains and equipment, any personal injuries (including, but not limited to, claims for negligence...”

(Petition, Exhibit 6.) Petitioner has a dispute against Amtrak for personal injury alleged in the Petition during her trip on September 4, 2020. Petitioner served a written demand for arbitration to Amtrak on July 15, 2022, which was within the two-year statute of limitation period for bringing a claim for personal injury. Amtrak acknowledged receipt of the demand, but did not respond to it until July 19, 2023, when Amtrak refused to participate in arbitration. (Petition, Exhibit 11.) Petitioner continued to pursue arbitration with Amtrak for two years before bringing this Petition, but Amtrak argued that the statute of limitations for Plaintiff’s claim had passed.

Petitioner now moves to compel the arbitration per the agreement. Amtrak opposes.

ANALYSIS

C.C.P. section 1280 et seq. governs arbitration in California. Sections 1281.2 and 1281.4 allow a party to move to compel arbitration per an arbitration agreement, and to stay legal proceedings pending the arbitration's conclusion. California law favors arbitration. (*Morris v. Zuckerman* (1958) 257 Cal.App.2d 91, 95.) A petition to compel arbitration must be brought within four years after the party to be compelled has refused to arbitrate. (*Wagner Constr. Co. v. Pac. Mech. Corp.* (2007) 41 Cal. 4th 19, 29.) Delay in demanding or seeking to compel arbitration can justify denying a motion to compel. (*Ibid.*)

Petitioner seeks to compel arbitration pursuant to the mutual arbitration agreement, pursuant to C.C.P. section 1281.2. Petitioner argues that she has never waived her right to arbitration and that Amtrak has refused to participate in arbitration.

Amtrak argues that the statute of limitations for Petitioner's personal injury claim expired on September 4, 2022, approximately because the event giving rise to the alleged personal injury took place four years ago. Amtrak argues that Petitioner waived the right to arbitrate by delaying bringing this petition to compel, and because Petitioner failed to notify the American Arbitration Association of the demand for arbitration.

Per *Wagner*, Petitioner has four years after Amtrak *refused to arbitrate* to bring a motion to compel arbitration. Amtrak refused in July of 2023 per the evidence provided by Petitioner, so the Court finds that Petitioner has not waived her right to demand arbitration under the express mutual arbitration agreement entered into by both parties. Furthermore, the demand to arbitrate on Petitioner's personal injury claims had been timely made within two years of the time of injury. It was due to Amtrak's lengthy processing to respond to the demand that the limitation had passed, and Petitioner was delayed in petitioning to compel arbitration.

CONCLUSION

Based on the foregoing, the Petition is **GRANTED**. Petitioner shall prepare and serve a proposed order consistent with this tentative ruling and in accordance with California Rules of Court, Rule 3.1312.

3. MCV-257587, American Express National Bank v. Aleman

Plaintiff American Express National Bank's unopposed motion to vacate the dismissal and entered judgment pursuant to Code of Civil Procedure ("C.C.P.") section 664.6 is **GRANTED**. Judgment shall be entered in the amount of **\$8,688.99 plus costs of \$76.57** against Defendant Aleman for the outstanding debt plus costs.

PROCEDURAL HISTORY

Plaintiff brought this action against Defendant to collect payment on credit card debt Defendant owed. The parties entered into a Stipulation for Conditional Entry of Judgment (the "Stipulation"), according to which Defendant agreed to pay Plaintiff \$8,888.99 to satisfy the debt. (Declaration of Keith, Exhibit A.) Defendant agreed to make monthly payments of \$200.00 and a final payment of \$233.44 until she satisfied the debt. (*Ibid.*) Per the Stipulation, if she

defaulted on paying, she would owe the entire remaining balance minus the amount he already paid along with Plaintiff's court costs. (*Ibid.*) Defendant defaulted after paying off \$200 for the debt owed. (Declaration of Keith, at ¶ 9.)

ANALYSIS

If parties to a pending litigation agree to sign a written stipulation for settlement of the case, then the court may upon noticed motion enter judgment pursuant to the terms of the settlement. (C.C.P. § 664.6(a).) The court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement if the parties request it. (*Ibid.*) "Section 664.6 was enacted to provide a summary procedure for specifically enforcing a settlement contract without the need for a new lawsuit." (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 809.)

Plaintiff requests to vacate the dismissal and moves for entry of judgment per the Stipulation and section 664.6. Plaintiff properly served notice of this motion on Defendant, who has not opposed. Plaintiff now moves the Court to enter judgment in the amount of \$8,688.99 against Defendant, which includes the balance remaining on the debt, plus court costs of \$76.57 which is supported by Plaintiff's memorandum of costs submitted May 20, 2024.

Plaintiff has sufficiently demonstrated that the parties entered into a valid written and signed settlement agreement that was subject to C.C.P. section 664.6, under which Defendant continues to owe on her payment obligations. Per the motion, the parties' Stipulation, and section 664.6, the Court finds it reasonable to enter judgment in the amount of \$8,688.99 against Defendant, plus Plaintiff's court costs of \$76.57.

CONCLUSION

Accordingly, the unopposed motion is **GRANTED**. Judgment shall be entered in the amount of **\$8,688.99 plus court costs of \$76.57** against Defendant. Unless the parties request and appear for oral argument, the Court will sign the proposed order setting aside the dismissal and the proposed judgment filed with this motion.