

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

Department 6

Honorable Evette D. Pennypacker, Presiding

David Criswell, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2160

DATE: March 7, 2024 TIME: 9:00 A.M.

RECORDING COURT PROCEEDINGS IS PROHIBITED

FOR ORAL ARGUMENT: Before 4:00 PM today you must notify the:

- (1) Court by calling (408) 808-6856 and
 - (2) Other side by phone or email that you plan to appear at the hearing to contest the ruling
- (California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

FOR APPEARANCES: The Court strongly prefers in person appearances. If you must appear virtually, please use video. To access the courtroom, click or copy and paste this link into your internet browser and scroll down to Department 6:

https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml

FOR COURT REPORTERS: The Court does **not** provide official court reporters. If you want a court reporter to report your hearing, you must submit the appropriate form, which can be found here:

https://www.scsccourt.org/general_info/court_reporters.shtml

FOR YOUR NEXT HEARING DATE: Please reserve your next hearing date using Court Schedule—an online scheduling tool that can be found on the Santa Clara County court website.

LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
1	22CV396343	Brent Pitchford vs Yvonne Khananis	Parties are ordered to appear for examination.
2	23CV420038	LESLEY MATHIS vs HEALTH GORILLA, INC.	Defendant Health Gorilla, Inc.’s Motion to Compel Arbitration is GRANTED. An amended notice of motion with this hearing date and time was served on Plaintiff by electronic mail on January 26, 2024. No opposition was filed. “[T]he failure to file an opposition creates an inference that the motion [] is meritorious.” (<i>Sexton v. Super Ct.</i> (1997) 58 Cal.App.4th 1403, 1410.) There is also good cause to grant this motion. Plaintiff’s suit is for failure to pay sales commissions and wrongful termination. (Complaint.) Defendant submits an offer letter that includes an agreement to arbitrate these claims. (Declaration of Nicole Bickett (“Bickett Decl.”), Ex. A.) Defendant also describes the process by which Plaintiff signed that agreement. (Bickett Decl., ¶¶8-10, 15.) This is prima facie evidence of the existence of an arbitration agreement, which evidence Plaintiff fails to refute. (<i>Condee v. Longwood Management Corp.</i> (2001) 88 Cal. App. 4th 215, 218; <i>Gamboa v. Northeast Community Clinic</i> (2021) 72 Cal. App. 5th 158, 165 (once moving party produces prima facie evidence of a written arbitration agreement by attaching the agreement or summarizing the terms in a motion to compel, the opposing party bears the burden of producing evidence to challenge the authenticity of the agreement.); California Rules of Court, Rule 371.) On this record, the Court is required to send this matter to arbitration. (Code Civ. Pro. § 1281.2 (“the court shall order a matter to arbitration if it determines that there is an agreement to arbitrate and (1) the agreement has not been waived or (2) the agreement has not been revoked.”); <i>Cinel v. Barna</i> (2012) 206 Cal.App.4th 1383, 1389.) Accordingly, this case is ordered to arbitration. The April 30, 2024 case management conference is VACATED, and a status conference regarding arbitration is set for September 26, 2024 at 10:00 a.m. in Department 6. Court to prepare formal order.
3	20CV364255	Asset Capital Recovery Group, LLC vs Quincelisa Reyes	Quincelisa Reyes’ claim of exemption is GRANTED, in part. The Court will prepare an order withholding \$50 per pay period, for a total of \$100 per month.
4	20CV370520	AMELIA GLISSMAN et al vs DILBER IRAHETA et al	Plaintiffs Amelia Glissman’s and Michael Contolini’s Motion to Resolve Dispute of Alleged Dismissal is GRANTED. Regardless of how this motion is viewed, the relief sought, namely, to confirm that Defendants Dilber Isabel Iraheta, David Gabay, Pure Remodeling, Inc., Delsur Construction Inc., and Wesco Insurance Company (“Contractor Defendants”) remain Defendants in this case is warranted. First, the Court did not merge the pleadings or direct Plaintiff to file a consolidated amended complaint, thus filing the Third Amended Complaint in the second filed case did not dismiss the Contractor Defendants as a matter of law. Only Plaintiffs and the Defendants in the second filed case signed the stipulation for Plaintiffs to file the TAC, and the Contractor Defendants continued to participate in discovery even after Plaintiff filed the TAC. Thus, even the Contractor Defendants understood the nature of the consolidation here. Next, even if somehow, the Contractor Defendants were dismissed by Plaintiffs filing the Third Amended Complaint, it was certainly a result of mistake, inadvertence, and excusable neglect and should be set aside under Code of Civil Procedure section 473(b). Contractor Defendants’ request for attorneys’ fees is denied; given the authority underlying Code of Civil Procedure section 473(b) and the clear favor in the law towards deciding cases on the merits, this matter could and should have been resolved without motion practice. Court to prepare formal order.

5	21CV375520	Synchrony Bank vs Margaret Orozco	Plaintiff Synchrony Bank's Motion to Set Aside and Vacate Pursuant to Code of Civil Procedure section 664.6 is GRANTED. A notice of motion with this hearing date and time was served on Defendant by U.S. Mail on January 22, 2024. No opposition was filed. "[T]he failure to file an opposition creates an inference that the motion [] is meritorious." (<i>Sexton v. Super Ct.</i> (1997) 58 Cal.App.4th 1403, 1410.) The parties also entered a stipulation pursuant to Code of Civil Procedure section 664.6 under which (a) Defendant agreed to make certain payments, (b) Plaintiff agreed to dismiss the case without prejudice and not seek entry of judgment so long as Defendant complied with the agreed payments, and (c) the parties agreed that the Court would retain jurisdiction to enforce their settlement agreement. Defendant made some payments but ceased making payments on October 5, 2022 in violation of the parties' stipulation. Accordingly, the Court vacates the dismissal without prejudice and will enter judgment against Defendant and in favor of Plaintiff in the amount of \$1,570 pursuant to the parties' stipulation. Court to prepare formal order with this ruling and will use form of judgment on file.
6	23CV411810	WENQIAN ZUO vs Select CAL Physical Therapy, P.C.	Plaintiff's Motion to Vacate Judgment is DENIED. Even if the Court were to consider Plaintiff's exhibits, those materials confirm the Court's analysis that Plaintiff's claims are barred by the statute of limitations. However, this motion is the incorrect procedure for Plaintiff to challenge the Court's judgment after sustaining defendant's demurrer without leave to amend. As the Court explained during the hearing on Defendant's demurrer to the second amended complaint, the appropriate vehicle for Plaintiff to challenge the Court's ruling and judgment is to file an appeal, which, according to the docket, it appears Plaintiff may have now done. Court to prepare formal order. The parties are ordered to appear at the hearing.
7	23CV419392	Rohini Solos et al vs Shiva Arulanandan et al	David L. Olson's Motion to Withdraw as Counsel for Plaintiff Rohini Solos is GRANTED. Court to use form of order on file.
8	23CV420188	MEDTRONIC, INC vs GEORGE TRIADAFILOPOULOS MD INC.,	Anthony F. Ventura's Motion to Withdraw as Counsel for Defendant George Triadafilopoulos M.D., Inc. is GRANTED. Court to use form of order on file.
9	23CV426760	DANIEL KRAMER vs GUSTAVO CALDERON	Employer's Assurance Company's Motion for Leave to File a Complaint in Intervention is GRANTED. A notice of motion with this hearing date and time was served by electronic mail on January 30, 2024. No opposition was filed. "[T]he failure to file an opposition creates an inference that the motion [] is meritorious." (<i>Sexton v. Super Ct.</i> (1997) 58 Cal.App.4th 1403, 1410.) The Court has also reviewed the motion and finds it to be well taken. Employer's Assurance Company may file the complaint in intervention attached to its motion. Court to prepare formal order.
10	24CV429367	Peter Wang dba Foothill Mobilodge vs Francisco Silva	The parties are ordered to appear <u>in person</u> in Department 8 at 9 a.m. on March 7, 2024 to conduct this hearing.