

**1. GETZ v. SERRANO EL DORADO OWNERS' ASSN., ET AL., PC20170113****Defendant Serrano Associates' Motion to Strike Plaintiff's Jury Trial Request**

Pursuant to Code of Civil Procedure §§ 435 and 436, defendant Serrano Associates ("Serrano") moves to strike plaintiff's jury trial request on the grounds that (1) plaintiff is judicially estopped from seeking a jury trial, (2) the remaining cause of action pending against Serrano is in equity, and (3) plaintiff cannot transform his remaining cause of action against Serrano at this late stage.

**1. STANDARD OF REVIEW**

"The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: [¶] (a) Strike out any irrelevant, false, or improper matter inserted in any pleading. [¶] (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (Code Civ. Proc., § 436.) A motion to strike is generally used to address defects appearing on the face of a pleading that are not subject to demurrer. (*Pierson v. Sharp Mem. Hosp.* (1989) 216 Cal.App.3d 340, 342.) The grounds for a motion to strike must appear on the face of the pleading or from any matter which the court is required to take judicial notice. (Code Civ. Proc., § 437(a).)

**2. LEGAL PRINCIPLES**

The right to a jury trial is recognized as "inviolable." (*People v. \$17,522.08 United States Currency* (2006) 142 Cal.App.4th 1076, 1082.) In a civil action the right to a jury trial may be afforded either by statute or by the California Constitution. (*Shaw v. Superior Court* (2017) 2 Cal.5th 983, 993.)

Whether a jury trial is required depends upon the nature of issues as being equitable or legal. (*Escamilla v. Cal. Ins. Guarantee Assn.* (1983) 150 Cal.App.3d 53, 57; *Hodge v. Superior Court* (2006) 145 Cal.App.4th 278, 283.) A jury trial is available as a matter of right in actions at law, but not in equitable actions. (*C & K Engineering Contractors v. Amber Steel Co.* (1978) 23 Cal.3d 1, 8.) Ordinarily, the type of relief to be afforded

determines whether the action is legal or equitable. (*Baugh v. Garl* (2006) 137 Cal.App.4th 737, 740.)

Actions at law include claims for money damages arising out of contract or tort, as well as for recovery of specific real or personal property. (Code Civ. Proc., § 592; see *Ceriale v. Superior Court* (1996) 48 Cal.App.4th 1629, 1634 [action for damages is normally action at law]; *Brown v. Mortensen* (2019) 30 Cal.App.5th 931, 942 [nominal statutory damages are legal in nature supporting right to jury trial].)

A jury trial must be granted when the “gist” of the action is legal rather than equitable. (*C & K Engineering, supra*, 23 Cal.3d at p. 8 [prayer is not conclusive]; *Nationwide Biweekly Admin., Inc. v. Superior Court* (2020) 9 Cal.5th 279, 315 [form or title of a statutory cause of action is not controlling].)

### 3. DISCUSSION

Serrano first argues that plaintiff is judicially estopped from having a jury trial. This argument is not persuasive.

The right to a jury trial may only be waived by the express consent of the parties as prescribed by statute. (Cal. Const. Art. I, § 16; *Chen v. Lin* (2019) 42 Cal.App.5th Supp. 12, 17 [statute is the exclusive authority governing civil jury waivers].) Nonstatutory waiver of a jury trial is unenforceable. (*Valley Crest Landscape Development, Inc. v. Mission Pools of Escondido, Inc.* (2015) 238 Cal.App.4th 468, 492–493, fn. 4.)

Code of Civil Procedure § 631 addresses waiver of a jury trial. “A party waives trial by jury in any of the following ways: [¶] (1) By failing to appear at the trial. [¶] (2) By written consent filed with the clerk or judge. [¶] (3) By oral consent, in open court, entered in the minutes. [¶] (4) By failing to announce that a jury is required, at the time the cause is first set for trial, if it is set upon notice or stipulation, or within five days after notice of setting if it is set without notice or stipulation. [¶] (5) By failing to timely pay the fee described in subdivision (b), unless another party on the same side of the case has paid

that fee. [ ¶ ] (6) By failing to deposit with the clerk or judge, at the beginning of the second and each succeeding day's session, the sum provided in subdivision (e)." (*Ibid.*)

Judicial estoppel is not one of the means of waiving a jury trial. The motion on this basis is denied.

Serrano next argues that plaintiff is not entitled to a jury trial because his 3rd C/A sounds in equity and seeks only equitable relief.

Turning to plaintiff's Third Amended Complaint, the 3rd C/A is for breach of the CC&Rs asserted against all defendants. (Mot., RJN, Ex. 5, pp. 14–15.) The 3rd C/A requests consequential damages, the exact amount of which will be proven at trial. (*Id.*, Ex. 5, ¶ 55.) Thus, the claim is essentially for money damages arising out of a breach of contract. It is true that the Prayer for Relief also includes a request for equitable relief, but the "gist" of the action is legal, not equitable. Moreover, the prayer is not conclusive. (*C & K Engineering, supra*, 23 Cal.3d at p. 8.) The motion on the grounds that the 3rd C/A sounds in equity is denied.

Lastly, Serrano argues that plaintiff cannot reimagine his claim as one for damages in order to obtain a jury trial. This contention amounts to Serrano's interpretation and argument concerning the nature of plaintiff's claim, which is not a basis to deny plaintiff's right to a jury trial. Further, the contention is simply another way of arguing that plaintiff's 3rd C/A sounds in equity, not at law. The court already rejected this argument.

**TENTATIVE RULING # 1: SERRANO'S MOTION TO STRIKE PLAINTIFF'S REQUEST FOR A JURY TRIAL IS DENIED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE**

BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. PARTIES MAY APPEAR IN PERSON AT THE HEARING. IF ANY PARTY WISHES TO APPEAR REMOTELY THEY MUST APPEAR BY ZOOM. EACH PARTY IS LIMITED TO 15 MINUTES OR LESS OF ARGUMENT ON THE LAW AND MOTION CALENDAR.

**2. REYES, ET AL. v. CAL. DEPT. OF TRANSPORTATION, ET AL., SC20200027****(1) CalTrans' Motions to Compel Plaintiffs' Verifications to Discovery Responses****(2) Defendant Hudspeth's Motions to Compel Plaintiffs' Responses to Discovery**

Pending are four discovery-related motions filed by defendants. First, CalTrans moves to compel plaintiffs Maria Reyes's and Fernando Gonzalez's verifications to CalTrans' Demand for Supplemental Discovery, set two. Second, Nicholas Hudspeth moves to compel plaintiffs' verified responses to set one of Form Interrogatories, Special Interrogatories, Request for Production of Documents and Request for Admissions ("Discovery Set One").

**CalTrans' Motions to Compel Plaintiffs' Verifications to Discovery Responses**

CalTrans propounded its Demand for Supplemental Discovery, set two, on both plaintiffs on June 3, 2022. (Mots., Declarations of David Trent, ¶¶ 3–4 & Exs. A–B.) Plaintiffs produced unverified responses, with page that stated, "Verification Forthcoming." (*Id.*, ¶ 5, Ex. C.) When verifications were not received, defense counsel attempted to resolve the matter by calling plaintiffs' counsel, sending meet and confer letters, and granting continuances to plaintiffs' counsel. (*Id.*, ¶¶ 6–9 & Exs. D–F.) As of the date the moving papers were signed, no verifications were received. (*Id.*, ¶ 10.)

Good cause appearing, CalTrans' two motions are granted. The court has reviewed and considered defense counsel's declarations concerning attorney fees and costs incurred in preparing both motions. The court finds that a total of \$1,948 (8 hrs. x \$220/hr. + \$188 for filing fees) is a reasonable sanction under the Discovery Act.

**Nicholas Hudspeth's Motions to Compel Plaintiffs' Verified Discovery Responses**

Hudspeth propounded his Discovery Set One on both plaintiffs on June 3, 2022. (Mots., Declarations of David Trent, ¶¶ 3–4 & Exs. A–B.) When no responses were received by the deadline, defense counsel attempted to resolve the matter by calling plaintiffs' counsel, sending meet and confer letters, and granting continuances to plaintiffs'

counsel. (*Id.*, ¶¶ 6–9 & Exs. C–E.) As of the date the moving papers were signed, no verified responses were received. (*Id.*, ¶ 10.)

Good cause appearing, Hudspeth's two motions are granted. The court has reviewed and considered defense counsel's declarations concerning attorney fees and costs incurred in preparing both motions. The court finds that a total of \$1,508 (6 hrs. x \$220/hr. + \$188 for filing fees) is a reasonable sanction under the Discovery Act.

**TENTATIVE RULING # 2: DEFENDANTS' FOUR MOTIONS ARE GRANTED. PLAINTIFFS MUST SERVE DEFENDANTS WITH VERIFICATIONS TO DEMAND FOR SUPPLEMENTAL DISCOVERY, SET TWO, AND VERIFIED RESPONSES, WITHOUT OBJECTIONS, TO DISCOVERY SET ONE, AND PAY DEFENDANTS A TOTAL OF \$3,456 NO LATER THAN 30 DAYS FROM THE DATE OF SERVICE OF THE NOTICE OF ENTRY OF ORDER. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. PARTIES MAY APPEAR IN PERSON AT THE HEARING. IF ANY PARTY WISHES TO APPEAR REMOTELY THEY MUST APPEAR BY ZOOM. EACH PARTY IS LIMITED TO 15 MINUTES OR LESS OF ARGUMENT ON THE LAW AND MOTION CALENDAR.**

**3. RDR BUILDERS, LP v. SECHRIST, ET AL., SC20180022**

**Status Conference Re: Settlement**

**TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY,  
SEPTEMBER 30, 2022, IN DEPARTMENT FOUR.**

**4. RURAL COMMUNITIES UNITED v. COUNTY OF EL DORADO, PC20210189**

**Case Management Conference**

**TENTATIVE RULING # 4: AT THE REQUEST OF THE PARTIES, MATTER IS  
CONTINUED TO 1:30 P.M., FRIDAY, DECEMBER 9, 2022, IN DEPARTMENT FOUR.**



**5. MURPHY v. SECURITAS SECURITY SERVICES USA, INC., 22CV0770****Motion to Compel Arbitration of Plaintiff's PAGA Claims**

On June 6, 2022, plaintiff Sheri Murphy filed a PAGA representative action complaint alleging violations of the Labor Code by defendant Securitas Security Services USA, Inc. ("Securitas"). (See Lab. Code, § 2698, et seq.) Now pending is Securitas's motion to compel arbitration of plaintiff's individual PAGA claims and to dismiss her non-individual, representative PAGA claims. The motion is made on the basis that because of the United States Supreme Court's recent decision in *Viking River Cruises, Inc. v. Moriana* (2022) \_\_ U.S. \_\_ [142 S.Ct. 1906] (*Viking*), plaintiff's individual PAGA claims are divisible from the non-individual PAGA claims for purposes of the parties' arbitration agreement. As such, Securitas contends that plaintiff must arbitrate her individual claims pursuant to the parties' arbitration agreement and the non-individual PAGA claims must be dismissed.

"PAGA authorizes any 'aggrieved employee' to initiate an action against a former employer 'on behalf of himself or herself and other current or former employees' to obtain civil penalties that previously could have been recovered only by the State" in an enforcement action by the California Labor and Workforce Development Agency. (*Viking*, *supra*, 142 S.Ct. at p. 1914 (quoting Lab. Code, § 2699(a)).

In *Viking*, the high court considered whether the Federal Arbitration Act ("FAA") preempts a state law prohibiting the waiver of PAGA representative actions in arbitration agreements. At issue was the California Supreme Court's decision in *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348.

The *Viking* decision explains that PAGA claims are "representative" in two senses: (1) PAGA claims brought by the plaintiff acting as a "representative" of the state for Labor Code violations actually *sustained by the plaintiff*, and (2) PAGA claims brought by the plaintiff acting as a "representative" for other employees for Labor Code violations *sustained by the other employees*. (*Viking*, *supra*, 142 S.Ct. at p. 1916.)

In *Iskanian*, *supra*, 59 Cal.4th 348, the California Supreme Court held that waivers in employment arbitration agreements of the right to bring “representative” PAGA claims—in the first sense—are invalid as a matter of public policy. (*Id.* at pp. 383–384.) The high in *Viking* terms this holding as “*Iskanian*’s principal rule”. *Iskanian* also invalidated “agreements to separately arbitrate or litigate ‘individual PAGA claims’” (i.e., the first sense) from non-individual PAGA claims (i.e., the second sense). (*Id.* at p. 383.) In other words, *Iskanian*’s secondary rule is that “PAGA claims cannot be split into arbitrable individual claims and nonarbitrable ‘representative’ claims.” (*Viking*, *supra*, 142 S.Ct. at p. 1917 [termed *Iskanian*’s “secondary rule”].)

In *Viking*, the high court overturned *Iskanian*’s secondary rule regarding employment agreements to separately arbitrate or litigate individual claims from non-individual claims, but upheld California’s bar on waivers in employment agreements of the right to bring individual claims.

Turning to this case, the first issue is whether the parties’ Dispute Resolution Agreement (“Agreement”) encompasses plaintiff’s individual PAGA claims. Plaintiff argues that the parties only consented to arbitrate claims that were arbitrable under state law at the time the Agreement was entered into, which did not include PAGA claims.

This argument is not persuasive. “As a general rule, judicial decisions are given retroactive effect. [Citation.] A narrow exception to this general rule exists ‘when considerations of fairness and public policy are so compelling in a particular case that, on balance, they outweigh the considerations that underlie the basic rule.’ [Citation.]” (*Norager v. Nakamura* (1996) 42 Cal.App.4th 1817, 1820.) The court finds no such compelling considerations here. The Second Appellate District’s decision in *Moriana v. Viking River Cruises, Inc.*, was issued in 2020. The United States Supreme Court granted certiorari in 2021. Thus, the present issue was already before the high court before this action was filed, and both parties’ counsel would have been aware of this development.

The court also does not find any public policy reasons for why it should not give full effect to the high court's *Viking* decision.

Plaintiff further contends that, regardless of the holding in *Viking*, the parties' Agreement waives the requirement to arbitrate all PAGA claims.

The court disagrees. Section 7 of the Agreement states that PAGA "representative actions ... are not arbitrable, not within the scope of this Agreement and may be maintained in a court of law." (Mot., Ex. B, § 7.) In reviewing section 7, it is clear that it pertains to non-individual PAGA claims. Indeed, Section 7 is entitled "Class and Collective Action Waiver." Further, there are multiple references to class and collective actions. The Agreement states: "There will be no right or authority for any dispute to be brought, heard or arbitrated as a class action"; and "[t]here will be no right or authority for any dispute to be brought, heard or arbitrated as a collective action." (*Ibid.*) Given the language of the Agreement, the court finds that section 7 does not pertain to plaintiff's individual PAGA claims.

Further, the arbitration provision broadly covers "any dispute arising out of or related to your employment with Securitas .... Except as it otherwise provides, this Agreement applies, without limitation, to disputes with any entity or individual arising out of or related to ... compensation, classification, minimum wage, ... expense reimbursement, overtime, breaks and rest periods ...." (Mot., Ex. B, § 2.) Plaintiff's allegations assert that Securitas failed to pay minimum and overtime wages, failed to pay all wages earned and owed upon separation, failed to provide accurate itemized waged statements, failed to provide a day's rest in seven, failed to provide meal and rest breaks, and failed to reimburse business expenses. These type of claims are all within the scope of the Agreement and are therefore subject to arbitration.

The last question is whether the court must dismiss the non-individual PAGA claims on the basis that plaintiff lacks standing, as Securitas argues. This issue was addressed in *Viking*, with the high court stating: "The remaining question is what the lower courts

should have done with Moriana’s non-individual claims. Under our holding in this case, those claims may not be dismissed simply because they are ‘representative.’ *Iskanian*’s rule remains valid to that extent. But as we see it, PAGA provides no mechanism to enable a court to adjudicate non-individual PAGA claims once an individual claim has been committed to a separate proceeding. Under PAGA’s standing requirement, a plaintiff can maintain non-individual PAGA claims in an action only by virtue of also maintaining an individual claim in that action.” (*Viking, supra*, 142 S.Ct. at p. 1925, citing Lab. Code, § 2699(a), (c).) The high court concluded that “Moriana lacks statutory standing to continue to maintain her non-individual claims in court.” (*Ibid.*)

Despite that discussion in *Viking*, plaintiff cites *Kim v. Reigns International California, Inc.* (2019) 9 Cal.5th 73, in support of her contention that she has standing to bring representative PAGA claims even if her individual claims are sent to arbitration.

The court is not persuaded. *Kim* is distinguishable since it held that the plaintiff did not lose standing to pursue a PAGA claim after settling and dismissing his individual claims for Labor Code damages. (*Id.* at p. 80 [“A PAGA claim is legally and conceptually different from an employee’s own suit for damages and statutory penalties.”].)

Lastly, if the court is inclined to dismiss the representative PAGA claims—which the court is so inclined to do—plaintiff requests that the court stay the representative action pending the California Supreme Court’s decision in *Adolph v. Uber Technologies, Inc.*, review granted July 20, 2022, S274671. *Adolph* will answer the question of whether a plaintiff who has arbitrated his individual PAGA claims maintains standing to bring representative PAGA claims.

“ [A] court ordinarily has inherent power, in its discretion, to stay proceedings when such a stay will accommodate the ends of justice.’ [Citation.] ... ‘[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.’ ” (*OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 141.) “Grounds for staying an action

may be prescribed relative to particular statutory provisions governing certain claims or cases; for example, a court may stay a proceeding brought by a vexatious litigant, [fn] stay an action that has been transferred to a different court pending payment of the costs of transfer, [fn] stay an action after trial by jury, whether or not a motion for judgment notwithstanding the verdict is pending, [fn] or a court may stay proceedings under specified circumstances until a nonresident plaintiff furnishes security for costs and attorney's fees. [Fn.] Another action pending involving the same parties and issues may constitute a ground for a stay of an action. [Fn.]” (1A Cal. Jur. 3d Actions § 214.)

Plaintiff's request for a stay is denied. First, it could be multiple years before a decision is issued in *Adolph*. Second, the U.S. Supreme Court directly addressed the standing issue in *Viking*. Accordingly, plaintiff's non-individual PAGA claims are dismissed.

**TENTATIVE RULING # 5: DEFENDANT'S MOTION TO COMPEL ARBITRATION OF PLAINTIFF'S INDIVIDUAL PAGA CLAIMS AND TO DISMISS HER REPRESENTATIVE PAGA IS GRANTED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. PARTIES MAY APPEAR IN PERSON AT THE HEARING. IF ANY PARTY WISHES TO APPEAR REMOTELY THEY MUST APPEAR BY ZOOM. EACH PARTY IS LIMITED TO 15 MINUTES OR LESS OF ARGUMENT ON THE LAW AND MOTION CALENDAR.**