1. MARKER v. CARRINGTON MORTGAGE SERVS., ET AL., SC20190147

Defendants' Motion to Compel Plaintiff's Further Responses to Discovery

TENTATIVE RULING # 1: PLAINTIFF HAVING DISMISSED HIS COMPLAINT ON OCTOBER 12, 2022, THE PENDING MOTION IS MOOT. MATTER IS DROPPED FROM THE CALENDAR.

2. MORENO v. TAHOE KEYS PROPERTY OWNERS' ASSN., SCL20200087

Motion to Reclassify Action from Limited to Unlimited

Plaintiff Fabian Moreno moves to reclassify this action from limited to unlimited jurisdiction pursuant to Code of Civil Procedure section 403.040(b). The motion is opposed.

Code of Civil Procedure section 403.040(b) states: "If a party files a motion for reclassification after the time for that party to amend that party's initial pleading …, the court shall grant the motion and enter an order for reclassification only if both of the following conditions are satisfied: [¶] (1) The case is incorrectly classified. [¶] (2) The moving party shows good cause for not seeking reclassification earlier." (*Ibid.*)

"[A] civil case is classified as unlimited by default; extra requirements must be satisfied to render a case limited. The Code of Civil Procedure and the California Rules of Court require parties to explicitly indicate that a case is limited. Section 422.30, subdivision (b) provides, 'In a limited civil case, the caption shall state that the case is a limited civil case, and the clerk shall classify the case accordingly.' California Rules of Court, rule 2.111(10) similarly requires that, 'In the caption of every pleading and every other paper filed in a limited civil case, the words "Limited Civil Case" ' appear. Compliance with these provisions is important; the Law Revision Commission has stated that 'the clerk is to rely on the caption in determining how to classify a civil case that is brought in a unified superior court.' [Citation.]" (*Stratton v. Beck* (2017) 9 Cal.App.5th 483, 493.)

As to the first factor, the court finds that the case was not incorrectly classified. When plaintiff commenced this action, he indicated on the Civil Case Cover Sheet that this action is a "Limited" civil case. On the face of the original Complaint, plaintiff indicated that the "Action is a Limited Civil Case" and the amount demanded "exceeds $10,000, but does not exceed $25,000." (Compl., p. 1, caption.) In the body of the Complaint, he confirmed that the relief sought is within the jurisdiction of this court. (Compl., p. 3, item no. 13.) As such, the case was correctly classified when it was initiated.

In plaintiff's First Amended Complaint, filed November 23, 2020, he checked the box on the complaint form stating that the "Action is a Limited Civil Case," but the complaint itself alleges damages in the amount of $28,637. (FAC, pp. 1, caption & 3, item no. 14(a).) It should also be noted that plaintiff stated that the relief sought is within the jurisdiction of the court, including "[m]onetary, compensatory and punitive damages, loss of earning potential, [and] emotional distress." (FAC, p. 3, item no. 13.)

Because the FAC demanded damages in excess of $25,000, plaintiff should have reclassified his case upon filing the amended pleading. "If a plaintiff … files an amended complaint … that changes the jurisdictional classification from limited to unlimited, the party at the time of filing the pleading shall pay the reclassification fee provided in Section 403.060, and the clerk shall promptly reclassify the case." (Code Civ. Proc., § 403.020(a).) However, plaintiff, who was then in pro per, did not pay the required reclassification fee at the time of filing the FAC. The court clerk was not obligated to check the amount demanded because "the clerk is to rely on the caption in determining" classification. (*Stratton*, *supra*, 9 Cal.App.5th at p. 493.)

On January 19, 2021, counsel substituted in on behalf of plaintiff. On February 16, 2021, plaintiff's counsel filed a Second Amended Complaint on pleading paper. The face of the SAC does not state the action is a "Limited Civil Case." The SAC also alleges damages in excess of $25,000 and seeks declaratory relief and injunctive relief. Again, neither plaintiff nor plaintiff's counsel paid the required reclassification fee at the time of filing the SAC. "If a reclassification fee is required and is not paid at the time an amended complaint ... is filed ..., ... the clerk shall not reclassify the case and the case shall remain and proceed as a limited civil case." (Code Civ. Proc., § 403.060(b).)

Plaintiff's counsel substituted in almost a month before the SAC was filed. It should have been obvious to plaintiff's counsel during a review of the case file that the case was classified as a limited civil case and that the action would need to be reclassified in order to seek the damages and relief requested by the SAC.

In addition to the failure to pay the required reclassification fee upon filing his amended complaints, in his present motion plaintiff has not met his burden of demonstrating "a *possibility*" that his damages will exceed $25,000. (*Ytuarte v. Superior Court* (2005) 129 Cal.App.4th 266, 279 [italics in original].) Plaintiff did not provide any documentary evidence to support the claim by plaintiff's counsel that plaintiff's damages are "close to $120,000 in damages." (Mot., Declaration of Han W. Sir, ¶ 10.)

Plaintiff "must present evidence to demonstrate a *possibility* the damages will exceed $25,000. The trial court, without adjudicating the merits of the underlying case, should review the record to determine whether a judgment in excess of $25,000 is obtainable. If a jurisdictionally appropriate verdict may result, (i.e., if such a verdict is not virtually unobtainable) the court should grant the motion to reclassify the case as 'unlimited.' Concomitantly, the court may deny the motion only where it appears to a legal certainty that the plaintiff's damages will *necessarily* be $25,000 or less. [Fn.]" (*Ytuarte*, *supra*, 129 Cal.App.4th at p. 279 [italics in original].)

Unlike plaintiff, defendant did submit documentary evidence to support its contention that plaintiff's compensable damages are $25,000 or less; specifically, that plaintiff's own document production does not establish damages in excess of $21,507.22. (Opp'n, Declaration of Alisa E. Sandoval, ¶¶ 1–11 & Exs. 1–5.)

Having reviewed and considered the parties' briefs, declarations, and documentary evidence, the court finds that it appears to a legal certainty that the plaintiff's damages will necessarily be $25,000 or less. As such, plaintiff has not met his burden under the first factor of demonstrating that this action is incorrectly classified.

As to the second factor, the court finds that plaintiff has not shown good cause for the delay in moving for reclassification. Notably, the declaration from plaintiff's counsel in support of the motion does not state when counsel first discovered that the case should be reclassified. But, we know that counsel recognized the action should be reclassified no later than October 19, 2021, because plaintiff's counsel raised the issue at a Case

Management Conference on that date. (Mot., Sir Decl., ¶ 7.) Counsel declares that the judge pro tem at the CMC told him that to reclassify the action he would need "to file the necessary form." (*Ibid.*) Apparently it was not until June 7, 2022, over seven months later, before counsel discovered there is no form motion to reclassify. (*Id.*, ¶ 11.) Counsel then waited over two months before filing the instant motion.

Plaintiff has not come close to showing good cause for not seeking reclassification earlier. (See Code Civ. Proc., § 403.040(b)(2).) Plaintiff's counsel was aware of a potential reclassification issue almost a year ago. Even assuming the judge pro tem told counsel to file "the necessary form," it does not take over seven months to review the list of civil forms on the Judicial Council's website and the El Dorado County Superior Court's website to discover there is no such form. This is especially true since counsel could conduct his search using key words such as "classify" or "reclassify." Further, it was unreasonable that counsel then waited another two months before filing this motion on August 23, 2022. Plaintiff's motion was set for hearing on October 14, 2022, which is less than two months before the jury trial is set to commence on December 12, 2022. In addition to no showing of good cause for the delay, it also would be unfairly prejudicial to defendant to change the nature of this action so close to the trial date and after two years of litigation.

For the foregoing reasons, plaintiff's motion is denied.

TENTATIVE RULING # 2: PLAINTIFF'S MOTION TO RECLASSIFY ACTION 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.

3. WING, ET AL. v. DECKSIDE VILLAS HOMEOWNERS' ASSN., 22CV0966

Motion to Transfer Venue

Plaintiffs' complaint asserts causes of action for (1) defamation at common law and pursuant to Code of Civil Procedure ("CCP") section 46, (2) intentional interference with economic advantage, (3) violation of Business and Professions Code section 17200, et seq., and (4) injunctive relief.

Pending is defendant Deckside Villas Homeowners' Association's motion to transfer venue to Ventura County pursuant to CCP section 397. Plaintiffs allege in their complaint that the proper venue is El Dorado County for the following reasons: plaintiffs reside here and they resided here when the purported defamatory letter was mailed to over 100 residents of the HOA; plaintiffs suffer extreme anxiety and health issues when they return to the site of their home in Deckside Villas in Ventura County, and therefore venue should be in El Dorado County for the sake of their health and well-being; and plaintiffs' physicians are located in El Dorado County.

CCP section 397 states in relevant part: "The court may, on motion, change the place of trial in the following cases: [¶] (a) When the court designated in the complaint is not the proper court. [¶] … [¶] (c) When the convenience of witnesses and the ends of justice would be promoted by the change." (*Id.*, subds. (a), (c).)

Defendant's motion is well taken. First, pursuant to CCP section 395(a), "the superior court in the county where the defendants or some of them reside at the commencement of the action is the proper court for the trial of the action." (*Ibid.*) Defendant states it is a nonprofit California Corporation which maintains a principal place of business in Ventura County. (Mot., Declaration of Jeffery C. Long, ¶ 5 & Ex. B.)

Second, in a defamation action venue is also "where the defendants or some of them reside at the commencement of the action." (CCP § 395(a).) Again, defendant maintains a principal place of business in Ventura County.

And third, the convenience of witnesses and the ends of justice would be promoted by transfer to Ventura County. Defendant's place of business is in Ventura County. In reviewing plaintiffs' complaint, multiple incidents involving plaintiffs and other individuals occurred in or around Ventura County, and therefore it appears that many, if not most of, the potential witnesses likely reside in or around Ventura County. While plaintiffs and their physicians are located in El Dorado County, it appears that the majority of the witnesses are located in or around Ventura County.

Further, plaintiffs did not file an opposition to the motion. The proof of service to the motion declares that the moving papers were served on plaintiffs by electronic transmission on August 24, 2022. Plaintiffs' opposition was due no later than nine (9) court days prior to the hearing. (CCP § 1005(b).) The court deems plaintiffs' non-opposition as an admission that the motion is meritorious.

The motion is granted. Plaintiffs are responsible for paying any transfer fees. (CCP § 399.)

TENTATIVE RULING # 3: DEFENDANT'S MOTION TO TRANSFER VENUE TO THE COUNTY OF VENTURA IS GRANTED. PLAINTIFFS ARE RESPONSIBLE FOR THE PAYMENT OF ANY TRANSFER FEES. 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.

4. MEDINA, ET AL. v. EL DORADO SENIOR CARE, ET AL., PC20190064

(1) Plaintiffs' Motion to Compel Deposition and Production of Records

(2) Plaintiffs' Motion to Compel Production of Documents

Pending are plaintiffs' motions (1) to compel the deposition of defendant Benjamin Foulk and for the production of records responsive to nine (9) requests for production, and (2) to compel the production of documents. Defendants are opposed.

Motion to Compel Deposition and Production of Records

Plaintiffs originally propounded their amended deposition notice and requests for production by electronic mail to defendants' counsel on September 1, 2022. (Mot., Decl. of John F. McIntyre, Jr., ¶ 3 & Ex. A.) The amended deposition notice states that Mr. Foulk's deposition was scheduled for September 14, 2022. (*Id.*, Ex. A.) Defendants did not object to the deposition notice. (*Id.*, ¶ 3.)

Plaintiffs assert that at Mr. Foulk's deposition, Mr. Foulk and counsel for defendants refused to hand over documents for review and refused to identify and hand over documents responsive to the document requests. (*Id.*, ¶ 6 & Ex. C.) Due to the purported lack of cooperation from Mr. Foulk and defendants' counsel, plaintiffs' counsel suspended the deposition. (*Id.*, Ex. C.)

On September 16, 2022, plaintiffs' counsel sent an email to defendants' counsel requesting that they set up a call to meet and confer about the dispute, but defendants' counsel never responded to the request. (*Id.*, ¶ 7 & Ex. D.)

On September 20, 2022, plaintiffs filed an ex parte application for order shortening time to set a hearing on the motion to compel. The court granted the application on October 5, 2022, set a briefing schedule, and set the matter for hearing on October 14, 2022. Plaintiffs' notice of hearing was filed on October 5, 2022, and the motion was filed on October 6, 2022.

In opposition to the motion, defendants argue that the motion is not timely pursuant to Code of Civil Procedure § 2024.020. That section states that "any party shall be entitled

as a matter of right to complete discovery proceedings on or before the 30th day, and to have motions concerning discovery heard on or before the 15th day, before the date initially set for the trial of the action." (*Id.*, subd. (a).) In addition, "Except as provided in Section 2024.050, a continuance or postponement of the trial date does not operate to reopen discovery proceedings." (*Id.*, subd. (b).) Section 2024.050 provides that "[o]n motion of any party, the court may grant leave to complete discovery proceedings, or to have a motion concerning discovery heard, closer to the initial trial date, or to reopen discovery after a new trial date has been set. This motion shall be accompanied by a meet and confer declaration under Section 2016.040." (*Ibid.*)

The original trial date in this matter was October 17, 2022. At a Case Management Conference on September 13, 2022, the original trial date was vacated and trial was re-set for September 25, 2023. The minute order from the CMC states, "Discovery runs from original trial dates." Thus, discovery closed on Saturday, September 17, 2022, which was three days after Mr. Foulk's deposition. The ex parte application for order shortening time was filed on Tuesday, September 20, 2022. Due to this court's judge shortage, the court could not accommodate an ex parte hearing until October 5, 2022, seven court days after the ex parte was filed. Had the court been able to hear the matter on September 21, 2022, which is when it normally would have been heard, the instant motion likely would have been resolved prior to the discovery motion deadline of October 2, 2022.

Due to the court's judge shortage and the inability to schedule this motion earlier, the court finds there are exceptional circumstances justifying plaintiffs' late filing of the pending motion.

Having reviewed the parties' briefs, declarations, and documentary evidence, plaintiffs' motion to compel deposition is granted. Mr. Foulk's deposition began on September 14, 2022, which is before the discovery cutoff. A deposition is considered completed for this purpose (i.e., the cutoff deadline) on the day it begins, *however long it actually takes*. (Code Civ. Proc., § 2024.010 [italics added].) Plaintiffs' counsel

"suspended" the deposition in order to seek court intervention to resolve a dispute. Accordingly, the court finds that while Mr. Foulk's deposition is considered complete for purposes of the discovery cutoff, it may be continued without running afoul of the close of discovery since the deposition was only suspended in order for the court to resolve the records dispute.

Because of the unusual circumstances of the timing of plaintiffs' motion, the court finds that defendants acted with substantial justification in opposing the motion. As such, the imposition of sanctions would be unjust.

Motion to Compel Production of Documents

On July 6, 2022, plaintiffs propounded their request for production of documents on defendant El Dorado Senior Care ("El Dorado"). (Mot. Declaration of Kevin R. Elliott, ¶ 2 and Ex. 1.) El Dorado served its responses on August 9, 2022, but did not produce any documents at that time. (*Id.*, ¶ 2 & Ex. 2.) El Dorado's responses indicated that the documents requested would be produced. (*Ibid.*) When no documents were produced, plaintiffs' counsel contacted defendants' counsel to inquire about the documents. (*Id.*, ¶ 3.) Counsel spoke with each other by phone on August 24, 2022. (*Id.*, ¶ 4.) At that time, defendants' counsel objected to producing the documents at the office of Michael Harrington, one of plaintiffs' counsel. (*Ibid.*) Plaintiffs' counsel stated he would consult with the other attorneys for plaintiffs and would get back to defendants' counsel. (*Ibid.*) On August 30, 2022, plaintiffs' counsel left a voicemail for defendants' counsel, and also sent a follow-up email, requesting that the documents be delivered to a certain court reporter's office. Defendants' counsel never responded to the request. (*Ibid.*)

In opposition to the motion, El Dorado argues that the motion is not timely pursuant to Code of Civil Procedure § 2024.020. That section states that "any party shall be entitled as a matter of right to complete discovery proceedings on or before the 30th day, and to have motions concerning discovery heard on or before the 15th day, before the date initially set for the trial of the action." (*Id.*, subd. (a).) In addition, "Except as provided in

Section 2024.050, a continuance or postponement of the trial date does not operate to reopen discovery proceedings." (*Id.*, subd. (b).) Section 2024.050 provides that "[o]n motion of any party, the court may grant leave to complete discovery proceedings, or to have a motion concerning discovery heard, closer to the initial trial date, or to reopen discovery after a new trial date has been set. This motion shall be accompanied by a meet and confer declaration under Section 2016.040." (*Ibid.*)

On September 14, 2022, plaintiffs filed an ex parte application for order shortening time to hear the motion to compel. On September 15, 2022, the court granted the application, set a briefing schedule, and set this matter for hearing on October 14, 2022. As noted with regard to the earlier motion, due to the shortage of judges in South Lake Tahoe, hearing dates have been limited recently. Accordingly, the court finds there are exceptional circumstances for hearing the motion after the discovery motion deadline date.

Having reviewed the parties' papers, declarations, and documentary evidence, plaintiffs' motion to compel production of documents is granted as requested.

Because of the unusual circumstances of the timing of plaintiffs' motion, the court finds that defendant El Dorado acted with substantial justification in opposing the motion. As such, the imposition of sanctions would be unjust.

TENTATIVE RULING # 4: PLAINTIFFS' MOTION TO COMPEL DEPOSITION TESTIMONY OF BENJAMIN FOULK AND PRODUCTION OF RECORDS IS GRANTED AS REQUESTED. PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF RECORDS IS GRANTED AS REQUESTED. 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.

5. KORTGE, ET AL. v. U-HAUL, ET AL., SC20210180

U-Haul Co. of California's Motion to Quash Service of Amended Complaint

TENTATIVE RULING # 5: U-HAUL CO. OF CALIFORNIA HAVING BEEN DISMISSED ON OCTOBER 7, 2022, THE MOTION TO QUASH IS MOOT. MATTER IS DROPPED FROM THE CALENDAR.

6. RDR BUILDERS, LP v. SECHRIST, ET AL., SC20180022

(1) Trevizo Tile & Stone, Inc.'s Motion for Good Faith Settlement Determination

(2) Delta Fire Systems, Inc.'s Motion for Good Faith Settlement Determination

The pending motions for good faith settlement determination were filed on September 14, 2022, by cross-defendant Trevizo Tile & Stone (served electronically on September 9, 2022), and on September 15, 2022, by cross-defendant Delta Fire Systems (served electronically on September 15, 2022). The deadline for any other party to contest the good faith settlements has expired. (Code Civ. Proc., § 877.6(a)(2).) No objections were filed.

The motions are granted.

TENTATIVE RULING # 6: THE MOTIONS FOR GOOD FAITH SETTLEMENT DETERMINATION ARE GRANTED. COUNSEL FOR DELTA FIRE SYSTEMS NEEDS TO SUBMIT A PROPOSED ORDER TO THE COURT AS TO ITS MOTION ONLY. THE HEARING ON OCTOBER 14, 2022, IS VACATED. NO ARGUMENT WILL BE ALLOWED.

7. FLETCHER, ET AL. v. FOX, 22CV0580

Motion to Compel Arbitration

On April 28, 2022, plaintiffs Tal Fletcher and Tahoe Sierra Transportation, LLC ("TST") filed a Complaint to Enforce Agreement to Settle Claims and for Declaratory Relief against defendant Brian Fox. Pending is plaintiffs' motion to compel arbitration of the claims in this action and of the claims asserted by defendant in his complaint filed with the California Department of Industrial Relations, Labor Commissioner's Office ("DLSE"), Case No. WC-CM-8178367, and to stay all proceedings until the completion of arbitration. The motion is opposed.

1. BACKGROUND

Plaintiff Tal Fletcher declares that in 2016 defendant telephoned him about driving for TST. (Reply, Reply Declaration of Tal S. Fletcher, Jr., ¶ 3.) On or about January 1, 2017, defendant acquired a membership interest in TST. (Compl., ¶ 4.) TST and defendant entered into a written agreement by which defendant provided transportation services to the public as a Member of TST. (Mot., Declaration of Tal S. Fletcher, Jr., Ex. A.) The service was primarily between Truckee and the north Lake Tahoe area and the Reno airport, but it also included service between other points within California. (Compl., ¶ 4) According to plaintiffs, in December 2017 defendant drove a TST vehicle to run personal errands and caused an accident which resulted in a total loss of the TST vehicle and the other driver's car. (Reply, Fletcher Reply Decl., ¶ 11.) Additionally, the other driver sustained serious injuries, TST's insurance carrier paid $500,000 to the injured driver, and there was a five-fold increase in TST's insurance costs. (*Ibid.*) Defendant ceased providing transportation services as a Member of TST in October 2018. (Compl., ¶ 4.)

On or about January 5, 2021, defendant filed a claim with the DLSE, asserting unpaid wages for services rendered between July 2016 and September 2018. (*Id.*, ¶ 6; Mot., Declaration of Jacqueline Loveless, Ex. A, p. 5.) Defendant subsequently added other claims to his wage claims. (Compl., ¶ 6.)

On January 10, 2022, plaintiffs assert that defendant offered to settle his DLSE claims against both plaintiffs and release each in writing from any and all claims by defendant in exchange for a payment of $22,000, payable in 12 monthly installments. (*Id.*, ¶ 7.) That same day, plaintiffs accepted defendant's offer in writing. (*Id.*, ¶ 8.)

Subsequently, defendant purportedly refused to proceed with and complete the settlement agreement. (*Id.*, ¶ 10.) Plaintiffs state they remain ready, willing, and able to perform pursuant to the terms of the settlement. (*Id.*, ¶ 11.) This action was commenced in April 2022.

2. LEGAL PRINCIPLES

Plaintiffs' motion is made pursuant to the California Arbitration Act ("CAA"), Code of Civil Procedure § 1280, et seq. The CAA sets forth "a comprehensive scheme regulating private arbitration in this state." (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 9.) California has a " 'strong public policy in favor of arbitration as a speedy and relatively inexpensive means of dispute resolution.' [Citations.]" (*Ibid*.) "Consequently, courts will ' "indulge every intendment to give effect to such proceedings." ' " (*Ibid*.) "In cases involving private arbitration, '[t]he scope of arbitration is ... a matter of agreement between the parties' [citation] …." (*Id*. at pp. 8–9.) "A written agreement to submit to arbitration an existing controversy or a controversy thereafter arising is valid, enforceable and irrevocable, save upon such grounds as exist for the revocation of any contract." (Code Civ. Proc., § 1281.) Furthermore, except for specifically enumerated exceptions, the court must order the parties to arbitrate a controversy if the court finds that a written agreement to arbitrate the controversy exists. (Code Civ. Proc., § 1281.2.)

Arbitration agreements are governed by state contract law and are "construed like other contracts to give effect to the intention of the parties." (*Crowell v. Downey Cmty. Hosp. Found.* (2002) 95 Cal.App.4th 730, 734, disapproved of on other grounds in *Cable Connection*, *Inc. v. DIRECTV*, *Inc*. (2008) 44 Cal.4th 1334.) A motion or petition "to compel arbitration is simply a suit in equity seeking specific performance of that contract."

(*Engineers & Architects Assn. v. Cmty. Dev. Dep't* (1994) 30 Cal.App.4th 644, 653.) If the contractual language is clear and explicit, it governs. (Civ. Code, § 1638.) " 'Absent a clear agreement to submit disputes to arbitration, courts will not infer that the right to a jury trial has been waived.' [Citations.]" (*Adajar v. RWR Homes*, *Inc*. (2008) 160 Cal.App.4th 563, 569.)

The moving party always bears the burden of persuasion to prove the existence of an arbitration agreement with the opposing party by a preponderance of the evidence. (*Rosenthal v. Great Western Fin. Securities Corp*. (1996) 14 Cal.4th 394, 413.) The court's determination involves a three-step burden-shifting process.

In the first step of the process, the moving party bears the initial "burden of producing 'prima facie evidence of a written agreement to arbitrate the controversy.' [Citation.] The moving party 'can meet its initial burden by attaching to the [motion or] petition a copy of the arbitration agreement purporting to bear the [opposing party's] signature.' [Citation.] Alternatively, the moving party can meet its burden by setting forth the agreement's provisions in the motion. [Citations.] For this step, 'it is not necessary to follow the normal procedures of document authentication.' [Citation.] If the moving party meets its initial prima facie burden and the opposing party does not dispute the existence of the arbitration agreement, then nothing more is required for the moving party to meet its burden of persuasion.

"If the moving party meets its initial prima facie burden and the opposing party disputes the agreement, then in the second step, the opposing party bears the burden of producing evidence to challenge the authenticity of the agreement. [Citation.] The opposing party can do this in several ways. For example, the opposing party may testify under oath or declare under penalty of perjury that the party never saw or does not remember seeing the agreement, or that the party never signed or does not remember signing the agreement. [Citations.]

"If the opposing party meets its burden of producing evidence, then in the third step, the moving party must establish with admissible evidence a valid arbitration agreement between the parties. The burden of proving the agreement by a preponderance of the evidence remains with the moving party. [Citation.]" (*Gamboa v. Northeast Cmty. Clinic* (2021) 72 Cal.App.5th 158, 165–166.)

3. DISCUSSION

As a preliminary issue, defendant argues that plaintiffs have waived the right to arbitrate as evidenced by their conduct in unreasonably delaying their demand to arbitrate.

The court does not agree. Plaintiffs state that multiple times in 2018 and 2019 TST attempted to resolve defendant's trip invoices with him and tried to come to an agreement on a reasonable amount to offset from the costs of defendant's 2017 accident. (Reply, Fletcher Reply Decl., ¶ 14.) Although defendant filed his DLSE complaint in December 2020, plaintiffs state they were not given notice of the complaint until late 2021. (*Ibid.*) Plaintiffs participated at the DLSE settlement conference in January 2022, and contend that a settlement agreement was reached. (Mot., Loveless Decl., ¶¶ 2–6 & Ex. B; Reply, Fletcher Reply Decl., ¶ 13.) It was only after defendant reneged on his alleged offer to settle that this litigation was filed on April 28, 2022. The instant motion was filed on August 9, 2022.

Based on the foregoing, the court finds that plaintiffs' conduct is not inconsistent with the intent to arbitrate, and plaintiffs did not waive the right to arbitrate.

Moving on, in the first step of the process plaintiffs have the burden of producing prima facie evidence of the existence of a written agreement to arbitrate the controversy. Plaintiff Fletcher declares that defendant signed the Operating Agreement for Tahoe Sierra Transportation, LLC ("Agreement"), effective January 1, 2017. (Mot., Fletcher Decl., ¶ 2 & Ex. A, p. 28.) Plaintiffs included a copy of the Agreement with its moving papers. (*Id.*, Ex. A.) Broadly speaking, the Agreement includes provisions addressing TST's organization, capitalization, members and voting, management and control of the

company, accounts and records, allocation and distribution of profits and losses, transfer of membership interests, dissolution and winding up, and dispute resolution. (*Id.*, Ex. A, p. 4.) The dispute resolution provision states that it applies to "any dispute arising out of the Agreement." (*Ibid*.) This language is broad enough to encompass defendant's wage claims as well as any additional claims related to his work terms or conditions at TST.

Based on the foregoing, the court finds that plaintiffs met their initial burden of producing prima facie evidence of the existence of a written agreement to arbitrate.

For the second step of the process, the burden now shifts to defendant to establish a defense to the enforcement of the arbitration agreement, including the burden of demonstrating that an exemption from arbitration applies.

Defendant contends that when Fletcher approached him about becoming a Member of TST, he asked for time to review the documents before signing. (Opp'n, Declaration of Brian Fox, ¶ 4.) He states that Fletcher pressured him to quickly sign the Agreement, defendant never read the Agreement before signing, he does not recall ever reading the dispute resolution provision of the Agreement, and even after reading that provision he did not understand that he was waiving his right to have employment claims adjudicated in court or with the state Labor Commissioner. (*Ibid.*)

The court finds that defendant's evidence is sufficient to shift the burden of production to plaintiffs to establish with admissible evidence a valid arbitration agreement between the parties.

Plaintiff Fletcher declares that defendant telephoned him in 2016 about driving for TST. At that time, he explained the unique business model to defendant and encouraged defendant to talk with other Members of TST, which defendant did. (Reply, Fletcher Reply Decl., ¶¶ 3–4.) He further explains there were no documents to review when defendant joined TST in 2016, so there was no pressure for defendant to sign any documents. (*Id.*, ¶ 8.) Fletcher explained to defendant that he would not be an employee of TST, but rather a Member of TST. (*Id.*, ¶ 4.) All drivers/Members paid for their own gasoline and other car

expenses. (*Id.*, ¶ 5.) For each trip, a Member submitted an invoice detailing the trip and, based on these invoices, payments to the drivers were made. (*Ibid.*) Drivers/Members had control over whether to accept or decline shifts. (*Id.*, ¶¶ 5, 9.)

Initially, TST's business model was part of an oral operating agreement. (*Id.*, ¶ 6.) In March and April 2019 TST's counsel advised TST to put the operating agreement in writing. (*Ibid.*) In April 2019 Fletcher went to defendant's construction worksite and personally presented defendant with a copy of the Agreement and a workers' compensation waiver to sign. (*Id.*, ¶ 8; Mot., Fletcher Decl., ¶ 2.) At the same time, Fletcher provided defendant with a copy of the Agreement for his own records and use. (Mot., Fletcher Decl., ¶ 2.) Fletcher states that defendant was not under pressure to sign and he did not ask for time to review the documents before signing. (Mot., Fletcher Decl., ¶ 2; Reply, Fletcher Reply Decl., ¶ 8.)

Based on this evidence, the court finds that plaintiffs have met their burden of persuasion of proving the existence of a dispute resolution provision, which includes arbitration, between the parties by a preponderance of the evidence. (See *Rosenthal*, *supra*, 14 Cal.4th at p. 413.)

It should be noted that while defendant states that he did not read the Agreement before signing and he does not recall ever reading the dispute resolution provision, he does not claim that he never signed the Agreement. Defendant's failure to recall ever reading the dispute resolution provision does not raise a triable issue of fact as it does not necessarily contradict plaintiffs' evidence that he did, in fact, sign the Agreement. (See *Joseph E. Di Lorento*, *Inc. v. O'Neill* (1991) 1 Cal.App.4th 149, 160.) Accordingly, the court finds it is not necessary to conduct an evidentiary hearing on this issue.

Lastly, defendant argues the agreement is unenforceable because it is procedurally and substantively unconscionable.

Civil Code section 1670.5 codifies unconscionability as a reason for refusing a contract's enforcement. It states: "If the court as a matter of law finds the contract or any

clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result." (*Id.*, subd. (a).) This provision applies to arbitration agreements.

" '[U]nconscionability has both a "procedural" and a "substantive" element,' the former focusing on ' "oppression" ' or ' "surprise" ' due to unequal bargaining power, the latter on ' "overly harsh" ' or ' "one-sided" ' results. [Citation.] 'The prevailing view is that [procedural and substantive unconscionability] must both be present in order for a court to exercise its discretion to refuse to enforce a contract or clause under the doctrine of unconscionability.' [Citation.] But they need not be present in the same degree.... [T]he more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa." (*Armendariz v. Found. Health Psychcare Services*, *Inc*. (2000) 24 Cal.4th 83, 114, abrogated in part on other grounds by *AT & T Mobility LLC v. Concepcion* (2011) 563 U.S. 333.)

" ' "Procedural unconscionability" concerns the manner in which the contract was negotiated and the circumstances of the parties at that time. [Citation.] It focuses on factors of oppression and surprise. [Citation.] The oppression component arises from an inequality of bargaining power of the parties to the contract and an absence of real negotiation or a meaningful choice on the part of the weaker party.' [Citation.]" (*Morris v. Redwood Empire Bancorp* (2005) 128 Cal.App.4th 1305, 1319.)

While procedural unconscionability focuses on how the agreement was obtained and executed, "[s]ubstantive unconscionability focuses on whether the provision is overly harsh or one-sided and is shown if the disputed provision of the contract falls outside the 'reasonable expectations' of the nondrafting party or is 'unduly oppressive.' [Citations.]" (*Gutierrez v. Autowest*, *Inc*. (2003) 114 Cal.App.4th 77, 88.) "Substantively

unconscionable terms may take various forms, but may generally be described as unfairly one-sided." (*Little v. Auto Stiegler*, *Inc*. (2003) 29 Cal.4th 1064, 1071.) "Where a party with superior bargaining power has imposed contractual terms on another, courts must carefully assess claims that one or more of these provisions are one-sided and unreasonable." (*Gutierrez*, *supra*, 114 Cal.App.4th at p. 88.) "[T]he paramount consideration in assessing [substantive] conscionability is mutuality." (*Abramson v. Juniper Networks*, *Inc*. (2004) 115 Cal.App.4th 638, 657.)

Though courts refuse to enforce agreements that are both procedurally and substantively unconscionable, the two factors need not each exist to the same degree. "[T]he more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa." (*Armendariz*, *supra*, 24 Cal.4th at p. 114.)

Here, there is nothing indicating that the dispute resolution provision is a contract of adhesion. A contract of adhesion is " 'a standardized contract, which, imposed and drafted by the party of superior bargaining strength, relegates to the subscribing party only the opportunity to adhere to the contract or reject it.' [Citation.]" (*Armendariz*, *supra*, 24 Cal.4th at p. 113.) Neither the Agreement nor the provision state that Members must agree to the dispute resolution provision or else they could not be drivers/Members. Defendant was provided a copy of the entire Agreement, which contains the dispute resolution provision. Defendant was apparently employed at another driving job when he asked about joining TST and then later when he signed the Agreement, and thus he was not desperate for employment and he did not have unequal bargaining power.

While defendant states that he does not recall reviewing the Agreement or reading the dispute resolution provision, "simply because a provision within a contract … is not read or understood by the nondrafting party does not justify a refusal to enforce it. The unbargained-for term may only be denied enforcement if it is also *substantively* unreasonable." (*Gutierrez*, *supra*, 114 Cal.App.4th at p. 88 [italics in original].)

The dispute resolution provision is not one-sided or overly harsh and it applies equally to Members/drivers and TST. The entire dispute resolution scheme is not confusing and is straightforward. The provision states that the Members and TST "agree to meet and confer in good faith to attempt to resolve any dispute arising out of the Agreement." (Mot., Fletcher Decl., Ex. A, p. 26.) If meeting and conferring is unsuccessful, then the dispute "shall be submitted to mediation … under a mutually agreeable mediator, or, if one cannot be found, under the rules and through the assistance of Resolution Remedies; or, if a mediator is not available through Resolution Remedies, then a mediator selected through [JAMS]. If a dispute cannot be resolved by mediation, the dispute shall be submitted to binding arbitration … in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction." (*Ibid.*)

Although judicial review is limited, it is sufficient to ensure that arbitrators comply with the rights at issue. (*Armendariz*, *supra*, 24 Cal.4th at p. 98.)

This court is familiar with AAA's arbitration rules, which include, inter alia, the arbitrator's authority to order discovery. (Evid. Code, § 452(h).) Further, the dispute resolution provision does not in any way limit remedies to defendant. It also provides that the arbitrator has "full discretion to award the prevailing party all or any portion of that party's attorney fees and costs, including arbitration fees, depending upon what the arbitrator finds is just and equitable." (*Ibid.*) If the dispute resolution provision was to be modified, it must be in writing and approved by a majority of the Members, which included defendant. (*Id.*, Ex. A, p. 26, § 11.1.)

Given these procedures and conditions, the court does not find that the dispute resolution provision is either procedurally or substantively unconscionable. (Civ. Code, § 1670.5(a); *Armendariz*, *supra*, 24 Cal.4th at p. 98; *Serpa v. Cal. Sur. Investigations*, *Inc*. (2013) 215 Cal.App.4th 695, 704–710.)

In sum, the court finds that the arbitration agreement is valid and enforceable and is not unconscionable. Plaintiffs' motion is granted. This action and the DLSE proceedings are stayed pending the conclusion of arbitration.

TENTATIVE RULING # 7: PLAINTIFFS' MOTION TO COMPEL ARBITRATION AND TO STAY PROCEEDINGS 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.