State of California v. Fresh Start Harvesting, Inc. 22CV02246
Hearing Date: February 25, 2025
Motion to Strike "Answer"

PROPOSED TENTATIVE

The original complaint was filed by plaintiff Lizbeth Balderas, on behalf of the State of California under the Private Attorney General Act (the PAGA), against defendant Fresh Start Harvesting, Inc. (Fresh Start). Plaintiff, on behalf of herself and approximately 500 aggrieved employees, is seeking civil penalties for defendant's alleged failure to provide meal and rest periods and accurate wage statements, to pay timely wages, and to pay wages at termination. Defendant Fresh Start filed a petition to compel arbitration, asking the court to compel arbitration for individual PAGA claims and dismiss the PAGA representative action because plaintiff, without an individual PAGA claim, had no standing to advance a PAGA representative action. After briefing from both sides, and after taking the mater under submission, the court issued an order on December 30, 2022. The court did not compel arbitration, as plaintiff had not advanced individual PAGA claims; further, the PAGA representative action could not be sent to arbitration, pursuant to *Vikings Rivers Cruises v. Moriana* (2022) 596 U.S. 639 [143 S.Ct. 1906, 213 L.Ed.2d 179]. However, the court *on its own motion* struck plaintiff's operative pleading, concluding plaintiff did not have standing to advance a PAGA representative action without advancing individual PAGA claims, under the United States Supreme Court's interpretation of California law as articulated in *Vikings Rivers Cruises, supra*, 142 S.Ct. at p. 1925. Plaintiff appealed. The Court of Appeal reversed the court's order striking the pleading, concluding plaintiff did have standing to advance a PAGA representative action, pursuant to *Adolph v. Uber Technologies, Inc*. (2023) 14 Cal.5th 1104, 1119, which was decided after this court's decision. *Adolph* concluded that *Viking River Cruises* was incorrect in its interpretation of California law. According to the *Adolph*, plaintiff did not have to advance individual PAGA claims in order to have standing to advance a PAGA representative action for aggrieved employees. (*Balderas v. Fresh Start Harvesting, Inc.* (2024) 101 Cal.App.5th 533, 536 ["we hold that an employee who does not bring an individual claim against her employer may nevertheless bring a PAGA action for herself and other employees of the company"].) The Court of Appeal remanded back to this court, and the remittitur was filed on June 27, 2024.

On September 3, 2024, counsel for Fresh Start Harvesting, Gregory Francisco Gillett, filed a motion to be relieved as counsel. A hearing was held on October 15, 2024, and this court granted the request. In a signed order dated October 24, 2024 (filed the next day), which was served on Mr. Victor Landey on behalf of Fresh Start Harvesting, Inc. (Victor Landey was present at the October 15, 2024, hearing as well), the latter was put on notice that a corporation could not appear or participate without counsel. On October 15, 2024, plaintiff substituted Mr. Victor Landey for Doe 1. Mr. Landy was personally served with the lawsuit at the address of

Fresh Start Harvesting, Inc., 2940 Betteravia Rd., Santa Maria. On December 26, 2022, entry of default against Victor Landey was made.

On January 15, 2025, plaintiff filed a notice of motion and motion to strike the "answer" allegedly filed by Fresh Start Harvesting, Inc. Plaintiff acknowledges that defendant Fresh Start Harvesting had actually at no time filed an answer, but argues, in footnote 1 of its motion, that the "motion to compel arbitration" is essentially the functional equivalent of an answer. With that, plaintiff notes that a motion to strike is appropriate when a corporation is not represented by counsel, and "a corporation's pleading must be stricken unless it hires a lawyer to appear on its behalf in court." As defendant Fresh Start Harvesting, Inc., is no longer represented by counsel, opines plaintiff, the "answer" (i.e., the motion to compel arbitration masquerading as an answer) should be stricken. In a declaration from attorney Ruben Escobedo (plaintiff's counsel), Mr. Escobedo declares that he attempted to reach out to representatives of defendant Fresh Start Harvesting, Inc., on January 2, 2025, and on January 9, 2025, at the Fresh Start Harvesting, Inc.'s "email address listed on Mr. Gillett' motion to be relieved a counsel"; and via a telephone call, "no one from Fresh Start Harvesting, Inc., has reached out to . . . discuss this matter." No opposition has been filed as of this writing.

The entire premise upon which plaintiff's motion to strike rests is encapsulated in footnote 1 of his motion. Distilled to its bedrock essence, plaintiff believes that a motion to compel arbitration is the "functional equivalent" of an answer, and thus, the court should grant the motion to strike under the authority *of CLD Construction, Inc. v. City of Ramon* (2004) 120 Cal.App.4th 1141, 1146. Plaintiff's premise is erroneous, however, for a motion to compel arbitration is not the functional equivalent of an answer. In *Doe v. Second Street Corp* (2024) 105 Cal.App.5th 552, 578, a case overlooked by plaintiff, the appellate court rejected a similar argument in an analogous context. ""The hotel contends that its motion to compel arbitration was 'the functional equivalent of an [a]nswer,' and therefore because defendants had filed a motion to compel, plaintiff could not file an amended complaint without court permission. ***The hotel cites no case authority for this proposition, which we reject. . . .***" (Emphasis added.)[1] *Doe*'s observations seem dispositive in the present context. Plaintiff cites no authority to support

[1] The court in *Doe* went on to conclude in the alternative as follows: "In any event, the trial court expressly granted plaintiff leave to file a FAC; thus, even if court permission were required, it was granted." (*Doe, supra,* 105 Cal.App.5th at p. 578.) Alternative holdings are equally binding on the trial court. (G*reyhound Lines, Inc. v. County of Santa Clara* (1986) 187 Cal.App.3d 480, 485.) "It is well settled that where two independent reasons are given for a decision, neither one is to be considered mere dictum, since there is no more reason for calling one ground the real basis of the decision than the other. The ruling on both grounds is the judgment of the court and each is of equal validity." (*Bank of Italy etc. Assn. v. Bentley* (1933) 217 Cal. 644, 650; see also *Woods v. Interstate Realty Co*. (1949) 337 U.S. 535, 537 ["[W]here a decision rests on two or more grounds, none can be relegated to the category of *obiter dictum*"]; *Greyhound Lines, Inc. v. County of Santa Clara* (1986) 187 Cal.App.3d 480, 485 ["When an appellate court bases its decision on alternative grounds, none is dictum"]; see 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 512, pp. 577-578; see also *People v. Mendoza* (2020) 44 Cal.App.5th 1044, 1056, fn. 5.)

the claim that a motion to compel arbitration is the functional equivalent of an answer. More to the point, *Doe* has expressly rejected a claim that it is, meaning it does not have the effect of precluding plaintiff's ability to amend without leave of court. *Doe*'s conclusion applies equally well in this context -- there is nothing to strike because a motion to compel arbitration is not an answer. Per *Doe*, there is nothing to strike because Fresh Start Harvest's motion to compel arbitration is not an answer.

With this conclusion, the real issue before the court is this: Will the court allow plaintiff to seek entry of default because defendant has failed to answer (or, in a related vein, if entry of default is obtained, whether the court would grant a future motion to vacate entry of default (and perhaps default judgment) pursuant to Code of Civil Procedure section 473, subdivision (d), should one be filed defendant?). It is this question the court needs to address, and not whether to strike an "answer" that was never filed.

In addressing ***this*** question, *CLC Construction, Inc. v. City of San Ramon, supra,* 120 Cal.App.4th 1141 provides useful guidance. Under a long standing rule in this state, a corporation cannot represent itself before courts of record in propria persona, nor can it represent itself through a corporate officer, director, or other employee who is not an attorney. It must be represented by licensed counsel. The appellate court in *CLC Construction* made the following relevant observations that appear apt in the present context: "Given the weight of nationwide authority and this state's increasing acceptance of the view that representation of the corporation by the attorney *is not an absolute prerequisite to the court's fundamental power to hear or determine a case*, *we are persuaded it is more appropriate and just to treat a corporation's failure to be represented by an attorney as a defect that may be corrected, on such terms as are just in the sound discretion of the court.*" (*Id.*at p. 1149, italics and underscore added.) Indeed, according to *CLC Construction*, "the absence of legal representation at the threshold step of a lawsuit – filing the complaint – *rarely prejudices the opposing party*. *At such an early stage, denial of a motion to strike or granting leave to amend to show representation by counsel on such terms as the trial court deems just will not* frustrate the rule's purpose of guarding against the unlicensed practice of law and preventing its attendant problems. To the extent the opposing party is burdened by having to bring a motion to strike the complaint of a corporation not represented by counsel, the court, as a condition for granting leave to amend, may order the corporation to pay the opposing party's expenses for bringing the motion . . . ." (*Id*. at p. 1150.) To this list we can add a corporation's delay in filing an answer in the first place, the need for plaintiff to secure an entry of default, with the ultimate possibility that the corporation can file a motion to vacate such default because it has not answered by failing to secure representation. Given the exhortations, observations, and general rules outlined in *CLC Construction*, the court approaches the current problem firmly but incrementally.

As of this writing ***it is has been over four months*** since Mr. Gillett was removed as counsel for defendant Fresh Start Harvesting, Inc, a corporation. At the same time, defendant Fresh Start Harvesting, Inc. has not had to make an appearance before this court, something that likely would have spurred it to seek counsel. We have now reached the point that defendant Fresh Start Harvesting can no longer delay. Action is required. If an attorney for defendant Fresh Start Harvesting, Inc. appears at today's hearing, the court directs new counsel to file a substitution of counsel immediately and then submit an answer by the end of the week (Friday). If only a corporate representative from defendant Fresh Start Harvesting, Inc. appears at the hearing, that representative will be directed to explain to the court what efforts are being made to secure counsel; the clock is ticking, and the court will allow time to secure counsel – but counsel must be obtained. If ***no*** representative from defendant Fresh Start Harvesting, Inc. appears at the hearing, the court will issue an OSC mandating an appearance by the corporate representative, with directions to explain to this court what efforts are being made to secure counsel. It appears that Mr. Victor Landey is the corporate representative best situated to give sufficient answers to these questions, and the OSC will be directed at and to Mr. Victor Landey, ***to be drafted and served by plaintiff***. The OSC hearing will be scheduled for Tuesday, March 25, 2025, at 8:30 a.m. in Department 2. If Mr. Landey fails to appear, the court will authorize plaintiff to seek entry of default (and thereafter a default judgment). The court finds this staggered/incremental course an appropriate and measured response to address the problem of nonattorney representation by a corporation under the circumstances.

Summary:

Because a motion to compel arbitration is not an answer under existing published authority, the motion to strike is denied. There is nothing to strike.

That being said, the real issue before the court is whether it will allow plaintiff to seek entry of default (or ultimately whether motion to vacate any entry of default is appropriate pursuant to Code of Civil Procedure section 473(b)), based on defendant Fresh Start Harvesting's failure to file an answer (caused in turn by the fact it has failed to obtain/secure counsel since October 15, 2024). The principles in *CLC Construction, Inc. v. City of San Ramon* provide guidance to this court, while at the same time urging caution. The time has come for action, and the court will take a firm but incremental approach to the problem of Fresh Start Harvesting Inc.'s nonattorney representation. If an attorney for Fresh Start Harvesting, Inc. appears at today's hearing, the court directs new counsel to file a substitution of counsel immediately and then submit an answer by the end of the week (Friday). If only a corporate representative from Fresh Start Harvesting, Inc. appears at the hearing, that representative will be directed to explain to the court what efforts are being made to secure counsel; time will be limited (say, a month) -- *but counsel must be secured.* If no representative from Fresh Start Harvesting, Inc. appears at the hearing, the court will issue an OSC mandating an appearance by a corporate representative

from Fresh Start Harvesting, with directions to explain what efforts are being made to secure counsel. It appears that Victor Landey is the corporate representative best situated to provide sufficient explanations to these issues, and the OSC will be directed at Victor Landey, ***to be drafted and personally served by plaintiff at least 10 days before the hearing.*** The OSC hearing will be scheduled for Tuesday, March 25, 2025, at 8:30 a.m. in Department 2. If Mr. Landey fails to appear at the March 25, 2025, hearing, the court will permit plaintiff to seek entry of default (and thereafter a default judgment).