

## PROPOSED TENTATIVE

The court has read the motion to compel arbitration, filed by defendant Express Services, Inc., the opposition, filed by plaintiffs Bryan Tapia and Adrian Velasquez, and the reply, filed by defendant. The parties have overlooked the impact of the following language in the arbitration agreement, which appears to constitute a delegation clause: “. . . Except as noted in the following paragraph, the arbitrator, and not the federal, state, or local court, shall have exclusive authority to resolve any dispute relating to the formation, enforceability, applicability, or interpretation of this agreement.” (Emphasis added.) Parties to an arbitration agreement may agree to delegate to the arbitrator, instead of a court, questions regarding the enforceability of the agreement, which is the inquiry at issue. For a delegation clause to be effective, however, the language of the clause must be (1) clear and unmistakable, and (2) not be revocable under state contract defenses to enforcement, including unconscionability. (*Pinela v. Neiman Marcus Group, Inc.* (2015) 238 Cal.App.4th 227, 239-240.)

The court continues the matter (a motion to compel arbitration) and directs the parties to submit supplemental briefing to address the impact of this language as a delegation clause, namely whether the delegation clause is enforceable, and, if it is, what impact it has on the issues raised by the parties in the briefing submitted to date. The court will continue the present motion to Tuesday, September 30, 2025, at 8:30 a.m. in this Department. Defendant is directed to submit no more than a 10-page supplemental letter brief addressing these issues, which must be filed and served no later than Wednesday, September 3, 2025, by 5:00 p.m. Plaintiff must submit an opposition supplemental letter brief on the subject (no more than 10 pages) by Thursday, September 18, 2025, at 5:00 p.m. No other briefing is authorized.

The parties are directed to appear in person or by Zoom at the August 19, 2025 hearing, as there is a CMC scheduled.