

# Superior Court of California County of San Benito



## Tentative Decisions for July 12, 2024

### Courtroom #2: Judge Pro Tempore Page Galloway

**CL-23-00290**            **JP Morgan Chase Bank, N.A, v. Tony Beal**

Plaintiff:            Alexander Balzer Carr

Defendant:          Pro Per.

Matter on calendar for Defendant's 5-13-24 motion to compel arbitration and stay proceedings.

The underlying case is a consumer credit collections action. 8-10-23 Plaintiff filed a complaint for common counts ( Account stated, Open Book.)

5-13-24 Defendant moved to compel arbitration and stay proceedings, he requests JAMS arbitration. The Plaintiff filed on 6-28-24 a limited opposition. While agreeing to both the arbitration and the stay of proceedings pending arbitration, but notes that the current iteration of the agreement, as attached, states that the party filing the claim must select either JAMS or AAA as the administrator. Notably , AAA is more cost effective. Pursuant to *AT&T Mobility, LLC. v. Concepcion* (2011) 563 U.S. 33,347, fn 6, states must treat arbitration provisions as binding contracts, and a statute is invalid if it conflicts with the FAA ( Federal Arbitration Act), or frustrates its purposes to ensure that arbitration agreements are enforced according to their terms. In this instance, the contract's terms define that the *Plaintiff* is the claimant, and the claimant selects the arbitration administrator.

Legal Authority: CCP §1281.4, an action must be stayed upon motion of a party to the dispute, not dismissed, pending arbitration after a motion to compel arbitration is granted. ( *Jones v. Catholic Healthcare West* (2007) 147 Cal App. 4<sup>th</sup> 300, 307. [the court regularly construes "shall" or "must" as denoting mandatory, and "may" as permissive].) Either party, pursuant to statute, may make the request for a mandatory stay. The FAA is controlling law with regard to arbitration agreements, and as interpreted by case law, the court must enforce arbitration contracts according to their terms. (*AT&T Mobility, LLC. v. Concepcion, supra*, at 347, fn. 6.)

Page 1 of 3

**\*Please contact Judicial Courtroom Assistant, Wendy S. Guerrero, at  
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any objections or concerns**

Analysis: The parties do not have substantive dispute as to whether the arbitration provision in the contract should be applied, or whether the matter is subject to mandatory stay pending arbitration. The only dispute is who will administer the arbitration. In reviewing the contract which governs the arbitration provisions the Defendant seeks to enforce, the contract vests the claimant with the power to select the arbitration administrator. (Plaintiff's Ex 1). Therefore, arbitration will proceed with AAA as the arbitration administrator.

The court grants the motion with AAA selected as the arbitration administrator. Matter may be returned to calendar with a request for further case management conference on the results of the arbitration and further setting.

**CL-23-000381 Credit Corp. Solutions, Inc. Assignee of Synchrony Bank . v. Maribel Munoz**

Plaintiff: Alison K. Schlick

Defendant: Amy L.B. Ginsburg

On Calendar for Plaintiff's motion to deem matters admitted (CCP§§2023.010(d), 2033.280(a)-(c).)

Underlying action is a consumer credit debt collection. Complaint filed 9-23-23 for 1) Account Stated; 2) Open Book Account. Defendant's Answer filed 10-25-23, presenting 12 affirmative defenses, and stating they are unable to admit or deny, and therefore denies the allegations of the complaint.

4-12-24 Plaintiff filed their motion for the court to deem the matters in the request for admissions admitted. The motion is unopposed as of this writing. Plaintiff served Defendant with a request for admissions as part of the regular discovery process. The time for response has elapsed as of 2-17-24, and no responses have been served. Plaintiff therefore requests that the court order that the matters in the request for admissions be deemed admitted, pursuant to statute.

Legal Authority: CCP §2033.280 states that if a party fails to timely serve a response to a request for admissions, that the responding party has waived all objections to the requests for admission. (*Id.* at sub (a).) Further, that the party propounding the request, if no responses are served, may move the court to have the matters deemed admitted and the genuineness of any documents, if sought, deemed genuine. (*Ibid* at sub (b).) However, if the responding party serves code compliant responses prior to the date of the hearing, the court must deny the motion to deem admitted. However, the court must impose monetary sanction on the party or attorney who failed to serve a timely response. (CCP§2033.280 sub (c).) The failure to respond to an authorized method of discovery is considered to be an abuse of discovery process and can subject the offending party or attorney to sanctions by the court. (CCP§2023.010 sub (d).)

Analysis: Plaintiff served their request for admissions on the Defendant, through counsel, on 1-3-24, with responses due by 2-17-24. As of the date of the motion there has been no response to these requests for admissions. Nor has there been any communication with the court from the

Page 2 of 3

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Plaintiff indicating that there has been late compliance with the request for admissions. Pursuant to statute, it is appropriate for the court to grant the motion to deem admitted as prayed by the Plaintiff. No request for monetary sanction was made by the plaintiff, and in light of the nature of the case at bar, the court declines at this time to issue an order for monetary sanctions against either the Defendant or her counsel.

The court will grant the motion as prayed.

**END OF TENTATIVE RULING**