

Tentative Rulings
November 12, 2023
Department S-17
Judge Joseph Ortiz

Tentative Rulings for Department S-17 are posted on the court's website (<https://www.sb-court.org/divisions/civil/civil-tentative-rulings>) at 3:00 p.m. or at 7:00 p.m. the court day before the hearing. If no tentative ruling is posted at 3:00 p.m., please check again after 7:00 p.m.

If you wish to submit to the tentative, please call the Judicial Assistant at (909) 708-8715 in advance of the hearing. Unless you wish to submit on the tentative ruling, you must appear for the hearing either in person, CourtCall (888-882-6878 or www.courtcall.com), or by ZOOM. Failure to appear is deemed a waiver of oral argument. If all parties submit on a tentative ruling, it will become final. The tentative ruling may seek input on particular issues and direct appearance. If so directed, attendance at the hearing is mandatory. The party prevailing on a motion or other hearing shall serve written notice of the court's ruling unless all parties waive notice of the ruling.

ATTENTION: Since January 9, 2023, the court no longer provides an official Court Reporter to transcribe proceedings. Parties who wish to have a transcript must retain their own private reporter and must submit a "Stipulation and Order to Use Certified Shorthand Reporter." Please contact the Department if you need this form. Prior to the hearing, you can email the completed Stipulation to Department S-17 at jgarcez@sb-court.org. Parties who do not retain their own reporter have waived the right to one.

UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.

16. *Buck v. Supreme Auto Center, Inc., et al*, Case No. CIVSB2410508
Plaintiff's Motion to Compel Arbitration and Stay Proceedings
11/12/24, 9:00 a.m., Dept. S-17

The Court would **GRANT** this unopposed motion. However, the Court would **DENY** costs and fees, finding that whether to award such costs and fees would be an issue for the arbitrator.

This matter relates to the April 10, 2021, purchase of a used car from a dealer. Plaintiff alleges defects and failure to disclose the vehicle's true condition. As such, Plaintiff filed the instant complaint on March 28, 2024, alleging (1) violation of the Consumer Legal Remedies Act; (2) violation of the unfair competition law; (3) a claim against the surety; and (4) violation of Code of Civil Procedure, sections 1281.97 and 1281.99.

Relevant here, Plaintiff moved to compel arbitration pursuant to the terms of the Retail Installment Sales Agreement, which contains an arbitration provision. Importantly, there is no dispute over sending the matter to arbitration.

Defendant, however, objects to Plaintiff's request for an award of costs and fees. The objections are well taken: Under Code of Civil Procedure, section 1281.97, if the drafting party (here, Defendant) breaches the arbitration agreement, the employer or consumer may either withdraw from arbitration and proceed in court or, in the alternative, compel arbitration. If the party chooses to compel arbitration, the breaching party shall pay reasonable attorneys' fees and costs related to the arbitration.

According to the motion, the arbitrator has already indicated that Sections 1281.97 and 1281.99 apply. However, the arbitration has not yet started. The amount of fees and sanctions would be an issue for the arbitrator, not the court. At this point, no costs or fees could even be determined. Plaintiff also cannot recover costs and fees pursuant to Section 1293.2 because that requires a determination of the prevailing party. Since this matter will be heard by an arbitrator, no party has yet prevailed.
