TENTATIVE RULING(S) FOR DECEMBER 11, 2024
Department V11 – Judge Winston Keh

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

CIVSB2410977

MYLES v. DESERT PHYSICIANS

TENTATIVE RULING(S):

Motion: Motion to Stay the Case

Movant: Defendants Desert Physicians Management, LLC, Choice Healthcare Associates, Inc., and Corwin Medical Group, doing business as, Choice Medical Group (sued incorrectly as dba)

Respondent: Plaintiff Donna Myles

RELEVANT PROCEDURAL/FACTUAL BACKGROUND

This is an employment action. Plaintiff Donna Myles filed her Complaint on April 26, 2024, against Defendant Desert Physicians Managements, LLC, for: (1) Wrongful Termination in violation of Fair Employment and Housing Act (FEHA); (2) FEHA violations based upon Disability Discrimination; (3) Hostile Work Environment; (4) Failure to provide Reasonable Accommodations; (5) Failure to engage in a Goof Faith Interactive process; (6) FEHA violations based upon Retaliation; (7) Retaliation in violation of Labor Code section 1102.5; and (8) Wrongful Termination in violation of Public Policy.

Defendant Desert Physicians Managements, LLC (Desert Physicians) operates a medical clinical in Apple Valley. Defendant hired Plaintiff around September/October 2018, as a Utilization Management Coordinator, and then hired Plaintiff around February 24, 2019, as a permanent employee for the position of Quality Manager Coordinator and Utilization Management Coordinator. Plaintiff's job duties included grievances and appeals from patients regarding their treatment. Around March 13, 2020, Plaintiff was involved in an all-terrain vehicle accident that resulted in a serious spinal injury and required medical leave from work. Before the leave ended, Plaintiff requested to work remotely, but Defendant denied it, although several employees were working remotely due to the pandemic. Defendant stated Plaintiff's position was not one, which it could allow remote work. Plaintiff eventually returned in person around January 31, 2022, and asked for accommodations; however, Defendant failed to provide them. Around March 18, 2022, Defendant constructively terminated Plaintiff. (Compl. at ¶¶ 16-36.)

On May 21, 2024, Plaintiff amended the Complaint and identified Doe 2 as Choice Healthcare Associates, Inc. Subsequently, on May 23, 2024, Plaintiff identified Doe 1 as Choice Medical Group.

On September 3, 2024, Defendants Desert Physicians, Choice Healthcare Associates, Inc., and Corwin Medical Group, doing business as Choice Medical Group answered the Complaint. In addition, they filed a Notice of Related Case – this action is related to *Donna Myles v. Choice Physicians, et al.* Case No. CIVSB2213628.

Now at issue before the Court is Defendants' Motion to Stay the Case pending the outcome of the related action, named *Donna Myles v. Choice Physicians, et al.*, Case No. CIVSB2213628. In support of the motion, Defendants provide the Declaration of Counsel Allison Ross.

Plaintiff opposes the stay. In support of the opposition, Plaintiff provides the Declaration of Counsel Jonathan LaCour. Counsel LaCour authenticates the following: Exhibit A – Respondents Choice and Chhina's Informal Discovery Conference Brief

dated March 25, 2024; Exhibit B – Meet and Confer correspondence regarding the addition of Desert Physicians to the previous litigation; and Exhibit C – Desert Physicians' October 29 2024 Responses to Plaintiff's Special Interrogatories.

Defendants reply to the opposition and raise several evidentiary objections against Counsel LaCour's Declaration.

DISCUSSION

Defendants' Request for Judicial Notice

Defendants request that the Court take judicial notice of the following documents in support of their Motion to Stay pursuant to Evidence Code section 452, subdivision (d):

(1) Complaint filed June 29, 2022, in San Bernardino Superior Court, Case No. CIVSB2213628, captioned *Donna Myles v. Choice Physicians, et al.* (RJN, Exhibit A.);

(2) Complaint filed April 26, 2024, in San Bernardino Superior Court, Case No. CIVSB241097, captioned *Donna Myles v. Desert Physicians Management, LLC, et al*., and two Amendments to Complaint, filed May 21, 2024, and May 23, 2024, regarding Doe Defendants. (RJN, Exhibit B.); and

(3) Notice of Related Case filed by Defendants on September 3, 2024, in San Bernardino Superior Court, Case No. CIVSB241097, identifying Case No. CIVSB2213628 as a related case. (RJN, Exhibit C.)

Under Evidence Code section 452, subdivision (d), the court may take judicial notice of records of any court of this state or any court of record of the United States or of any state of the United States.

Under California Evidence Code section 453, the "trial court shall take judicial notice of any matter specified in section 452, if a party requests it and:

(a) Gives each adverse party sufficient notice of the request, through the pleadings or otherwise, to enable such adverse party to prepare to meet the request; and

(b) Furnishes the court with sufficient information to enable it to take judicial notice of the matter."

It is well settled that law and motion pleadings may rely in whole or in part upon matters judicially noticed by the trial court. (Weil & Brown, Civ. Proc. Bef. Trial, Ch. 9.l §9.54 (2005); see e.g., *Bistawros v. Greenberg* (1987) 189 Cal.App.3d 189, 192 [judicial notice of court files in sustaining demurrer].) In the case of court records, not all matters

contained therein (e.g., pleadings, affidavits, etc.) are indisputably true. While the existence of any document in a court file may be judicially noticed, the truth of matters asserted in such documents – including the factual findings of the judge who was sitting as the trier of fact – is not necessarily subject to judicial notice unless the document is an order, statement of decision, or judgment. (*Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1564-1569; *Garcia v. Sterling* (1985) 176 Cal.App.3d 17, 22.)

Based upon the foregoing, the Court GRANTS Defendants' Request for Judicial Notice as to Exhibits A through C pursuant to Evidence Code section 452, subdivision (d), as to their existence not the truth stated therein.

Defendants' Evidentiary Objections

Along with the reply, Defendants raise several evidentiary objections against Counsel LaCour's Declaration at paragraphs 4 to 10, including Exhibits A to C. The Court notes that Defendants failed to submit a proposed order with their evidentiary objections, as required by Rules of Court, rule 3.1354, subdivision (c). (See *Hodjat v. State Farm Mutual Automobile Ins. Co.* (2012) 211 Cal.App.4th 1, 7-9 [trial court did not abuse its discretion in refusing to rule on evidentiary objections for failure to comply with Rules of Court, rule 3.1354].) Nonetheless, the Court ruled on the objections in the interests of judicial economy and efficiency. After considering the objections, the Court OVERRULES all of Defendants' evidentiary objections as they lack merit.

Analysis

Defendants move to stay the instant matter as they contend the related matter in Arbitration includes the same Plaintiff, claims, and damages arising from Plaintiff's employment with Choice Physicians Network. Plaintiff's First Action was filed on June 29, 2022. (RJN, Exh. A.) Plaintiff's Second Action was filed on April 26, 2024. (RJN, Exh. B.) Defendants advised that the cases were related on September 3, 2024. (RJN, Exh. C.) Plaintiff's First Action is currently being arbitrated and scheduled for a status conference on March 7, 2025. (Ross Decl., at ¶¶ 3-5.) Thus, Defendants request this action be stayed pending the resolution of the First Action in Arbitration as the outcome may resolve issues in this action. Defendants as well state allowing the two matters to proceed concurrently would not only duplicate efforts, but could produce inconsistent results.

Plaintiff opposes the stay of this action as she contends the two matters are different. This is because the cases have different defendants – the First Action named Choice Physicians Network, Inc., and Mandeep Chhina as defendants while the Second Action named Desert Physicians Management, LLC, Choice Healthcare Associates, Inc., and Corwin Medical Group, as defendants. (See RJN, Exhs. A-B.) Plaintiff likewise says that Defendants have consistently acted in a manner that the First and Second

Actions are separate. (See LaCour Decl., at ¶¶ 4-10.) Thus, Plaintiff requests that this action not be stayed.

Here, there is enough good cause to stay the case because the allegations are similar. The findings from the arbitrator may narrow the issues for this Court. (*Landis*, *supra*, 299 U.S. 248, 254; *Adams*, *supra*, 11 Cal.4th 583, 593; *GT, Inc.*, *supra*, 151 Cal.App.3d 748, 754.) Both the First and Second Action present the same background allegations, which are that Plaintiff developed a spine injury after an all-terrain vehicle accident then sought to work remotely and/or requested accommodations, but were denied by the employer. (See RJN, Exh. A at ¶¶ 19-39 & Exh. B at ¶¶ 16-36.) The defendants are different; however, there is no requirement that the parties be identical in both actions for the court to order a stay. (*St. Paul Fire & Marine Ins. Co. v. AmerisourceBergen Corp.* (2022) 80 Cal.App.5th 1, 17, citing *Caiafa Prof. Law Corp. v. State Farm Fire & Cas. Co.* (1993) 15 Cal.App.4th 800, 807, fn. 5 (*Caiafa Prof. Law Corp.*).)

Both parties reference *Caiafa Prof. Law Corp.*, in their respective papers. Therein the Court of Appeal held that when one action is in a California court and one is in a federal court covering the same subject matter, the California court may stay its action, but it is not obligated to do so. (*Caiafa Prof. Law Corp.*, *supra*, 15 Cal.App.4th 800, 804.) The Court of Appeal reasoned the stay was appropriate as follows. First, the federal courts could determine the rights of the parties because of the nature of the subject matter of the two proceedings, which concerned counsel fees, as the resolution of the broader issues would determine the issues in the state court. Second, it would avoid unseemly conflicts with the courts of other jurisdictions. Third, the federal court was of equal convenience to the parties and witnesses as was the state court and its arbitrator. (*Id*. at pp. 806-808.)

Plaintiff is correct that the circumstances in *Caiafa Prof. Law Corp.*, are different from the present case. (See Opp. at p. 7:11-23.) However, *Caiafa Prof. Law Corp.*, still provides instructive information on whether to stay a case while another is pending. Although Plaintiff has conveyed that Defendants have consistently acted in a manner that the First and Second Actions are separate (See LaCour Decl., at ¶¶ 4-10), and Defendants dispute that they hired Plaintiff (See Mot. at p. 12:7-9), a decision from the arbitrator in the First Action could provide some guidance for the Second Action. Of note, the parties in the First Action submitted closing arbitration briefs on or before November 8, 2024. (Ross Decl., at ¶ 4.) The Court, therefore, believes the arbitrator should provide a decision relatively soon.

Moreover, as an example, if the arbitrator finds disability discrimination in the First Action, then Plaintiff may use similar evidence to find disability discrimination against Defendants in the Second Action. On the other hand, if the arbitrator does not find

disability discrimination, then Defendants may bring the appropriate motion to conclude the matter. The Court would then evaluate those arguments. A stay would thus be more judicially efficient.

To continue forward with this action also risks the possibility of different outcomes. Though the First Action is currently stayed with this Court, an arbitrator is deciding the case itself. It could be that the arbitrator finds for the Plaintiff, while the Court could find for the Defendants, if the case continues. Understandably, there could still be different findings as the defendants are different and there is a dispute whether these Defendants employed Plaintiff. However, the arbitrator should be given the opportunity to render its decision before the Court considers the merits of this case since the findings therein could narrow the issues in this case.

As such, the Court GRANTS Defendants' Motion to Stay the Case as the allegations are similar and the arbitrator in the First Action should render a decision soon, which may narrow the issues. (*Landis v. N. Am. Co.* (1946) 299 U.S. 248, 254; *Caiafa Prof. Law Corp. v. State Farm Fire & Cas. Co.* (1993) 15 Cal.App.4th 800, 804-807; *Adams v. Paul* (1995) 11 Cal.4th 583, 593.)

RULING

Based on the foregoing analysis, the Court rules as follows:

(1) GRANTS Defendants' Request for Judicial Notice as to Exhibits A through C pursuant to Evidence Code section 452, subdivision (d), as to their existence not necessarily the truth stated therein.

(2) OVERRULES all of Defendants' evidentiary objections to Plaintiff's declaration in support of the opposition.

(3) GRANTS Defendants' Motion to Stay the Case. The allegations in the First Action and this Action are similar; and the arbitrator in the First Action should render a decision soon, which may narrow the issues in this Action. (*Landis v. N. Am. Co.* (1946) 299 U.S. 248, 254; *Caiafa Prof. Law Corp. v. State Farm Fire & Cas. Co.* (1993) 15 Cal.App.4th 800, 804-807; *Adams v. Paul* (1995) 11 Cal.4th 583, 593.)

(4) CONTINUES the TSC to March 7, 2025, at 8:30 a.m., in Dept. V11.

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CIVSB2333272

LITTLEFIELD v. LLEVLYN

Motions: Motion to Compel Further Responses to Special Interrogatories
Motion to Compel Further Responses to Requests for Production of Documents

Movant: Plaintiff James Scott Littlefield

Respondent: Defendant United Parcel Service, Inc.

The Discovery Motions

Through the course of discovery, Littlefield propounded upon UPS a set of special interrogatories (SRog's) and requests for production of documents (RPD's). Responses were served on August 27, 2024. Unsatisfied, Littlefield sent UPS a meet and confer letter on September 16. A responsive letter was received by Littlefield, but no agreement was reached as to the sufficiency of the responses. Littlefield then filed the pending motions to compel further RPD and SRog responses on October 14.

The motions are supported by separate statements, declarations from attorney Andrew Alexandroff, the discovery and responses, meet and confer correspondence, the FAC, and the answer. The motions involve RPD No.'s 23, 24, 27, 28, 29, 31, 33, 38-42, and 46 and SRog No.'s 15-19, 21, 23, and 24.

The motions are opposed by UPS on the grounds that the meet and confer was inadequate, the responses to the discovery were proper, and the parties more recently agreed to limit the scope of the discovery. The oppositions are supported by declarations from attorney Eric Anvari and "objections" to Littlefield's separate statements, which are effectively responsive separate statements.

In the reply, Littlefield notes neither side is seeking sanctions and he also acknowledges the more recent agreement to limit discovery. Thus, Littlefield contends he is only seeking a "date certain" on which the responsive information and documents would be provided. (Reply at 2:1-8.)

DISCUSSION

Here, the discovery responses were served on August 27 and the motions were filed on October 14 or 48 days later which is timely, at least when adding the two court days due to the service of the responses via e-mail and when considering the intervening weekend. (See Code Civ. Proc., § 1010.6 [deadline to respond extended by two court days where service is via e-mail].) The motions are also supported by separate statements, the meet and confer declarations, and the correspondence.

As for the adequacy of the meet and confer efforts, Littlefield served one lengthy letter, but UPS responded and asked for clarification as to some of the issues. There was no follow up by Littlefield, no further explanations or clarification, no phone call, and not even further warning that the motions would be filed. The motions were also not filed until three weeks after UPS's responsive letter. As a result, the meet and confer efforts were inadequate and the Court could continue the matter for a further meet and confer or take the motions off calendar. (See Local Rule 560 [Court can take motion off

calendar if requisite meet and confer efforts are deemed deficient].) However, in the interests of judicial economy, the Court will address the merits of the motions.

The Motion to Compel Further SRog Responses

SRog No. 15

This request asks UPS to state how many UPS drivers typically take home or are allowed to take home their vehicles on a daily basis. In opposing the motion, UPS advances a privacy objection, but the request at-issue only asks for a number so no privacy rights are implicated.

UPS also contends that the information is not relevant since Littlefield alleges Llywelyn was acting as an employee at the time and therefore no negligent entrustment can arise. The first and most basic limitation on the scope of discovery is the information sought must be relevant to the "subject matter" of the pending action or to the determination of a motion in that action. (Code Civ. Proc., § 2017.010.) The phrase "subject matter" does not lend itself to precise definition. However, it is broader than relevancy to the issues (which determines admissibility of evidence at trial). (*Bridgestone/Firestone, Inc. v. Sup.Ct. (Rios)* (1992) 7 Cal.App.4th 1384, 1392.) For discovery purposes, information should be regarded as "relevant to the subject matter" if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement thereof. (*Gonzalez v. Sup.Ct. (City of San Fernando)* (1995) 33 Cal.App.4th 1539, 1546 (citing text); *Lipton v. Sup.Ct. (Lawyers' Mut. Ins. Co.)* (1996) 48 Cal.App.4th 1599, 1611.)

Here, even assuming the allegation that Llywelyn was acting as an employee at the time of the incident could undermine the negligent entrustment claim, as UPS suggests, Littlefield is entitled to allege inconsistent theories. (*Adams v. Paul* (1995) 11 Cal.4th 583, 593; *Crowley v. Katleman* (1994) 8 Cal.4th 666, 690-691 [factually and legally inconsistent theories].) As a result, he is also entitled to conduct discovery on each separate theory. In this regard, it is plausible that Llywelyn was not acting as a UPS employee at the time, but that UPS nevertheless negligently entrusted him with the vehicle. How many employees typically took home the vehicle at the time could show how flippant UPS was with the process or it could lead to evidence outlining what due diligence UPS typically undertook before allowing employees to take home vehicles. As a result, the motion is granted as to this request.

SRog No.'s 16-18

These requests ask UPS if it authorizes drivers to make mechanical repairs on company issued vehicles in their possession, the scope of those permitted repairs, and to state the policies related to whether drivers are permitted to make the repairs. The

only arguments advanced in UPS's opposing separate statement are the same as those outlined above, but the information would confirm whether UPS permitted the repairs at-issue in this case and thus if it entrusted the vehicle to Llywelyn. The motion is therefore be granted.

SRog No. 19

This request asks UPS if it maintains a physical address in the City of Big Bear, where the incident occurred. The same meritless objections are again asserted and the information could confirm whether Llywelyn took the truck home and why. The motion is therefore granted as to this request.

SRog No.'s 21 and 23-24

These request ask UPS to identify the UPS vehicle at-issue in the incident by VIN and license plate number in addition to outlining its repair history (including who performed the repairs) for five years before the incident. Again UPS's objections are meritless since the identity of the vehicle could lead to an inspection which, in-turn, could show that it was defective as the FAC suggests. The repair history could also confirm that the repairs as alleged in the FAC were undertaken.

As for the identity of the individual performing the repairs, such person(s) could be percipient witnesses to the repairs and "a percipient witness's willingness to participate in civil discovery has never been considered relevant—witnesses may be compelled to appear and testify whether they want to or not." (*Puerto v. Sup.Ct. (Wild Oats Markets, Inc.)* (2008) 158 Cal.App.4th 1242, 1251-1252 [error to require plaintiff to secure witnesses' consent to disclosure of their names and addresses].) The privacy objection is therefore without merit and the motion is granted as to these requests.

The Motion to Compel Further RPD Responses

RPD No.'s 23, 24, 28, 31, and 46

These requests all seek vehicle-specific documents, such as (No. 23) repair logs, (No. 24) maintenance records, (No. 28) documents showing recalls or mechanical defects for the vehicle, (No. 31) writings reflecting the installation of recording devices for the truck, (No. 33) writings reflecting service requests for the truck, and (No. 46) inspection checklists completed for the truck for three years before the incident.

The documents are relevant since they would tend to show the state of the truck, repairs needed, problems, etc., which in-turn would support Littlefield's claim that the vehicle was undergoing repairs at the time of the incident, that he was asked for help by a UPS employee, that the lights were misaligned, etc. Since the requests are vehicle specific and generally limited to the time frame of the incident and beforehand, the

discovery is also not overbroad. Good cause exists given the relevance of the requests and since Littlefield cannot obtain the discovery by other means.

As for the burden objection, evidence is generally required to support such objections and no evidence was submitted on point in this case. (See *W. Pico Furniture Co. v. Superior Court* (1961) 56 Cal.2d 407, 421 [outlining the evidence requirement].) For these reasons, the motion is granted as to these requests.

RPD No.'s 27, 29, and 38-42

These requests seek (No. 27) videos of training materials given to Llywelyn since the time of hiring (No. 29) writings reflecting Llywelyn's employment duties and responsibilities as of February 2023, (No. 38) writings reflecting when a driver is authorized to make repairs, (No. 39) writings requesting tools issued to Llywelyn in his possession at the time of the incident, (No.'s 40-41) documents reflecting the types of vehicle repairs drivers were authorized to make, and (No. 42) documents reflecting mechanic shops or repair facilities drivers are authorized to use in the Big Bear and Lake Arrowhead Region.

Again, the objections advanced in the opposition are limited and there is no evidence supporting the burden objection. The relevancy objections are without merit since the documents would tend to reflect Llywelyn's qualifications to make the repairs and his trainings (which could in-turn show whether he was instructed not to perform repairs on the street), what policies and procedures were in place to govern such repairs, etc. The documents also relate to Llywelyn's training or job functions, or UPS' specific policies and procedures for repairs, or documents reflecting who else would make repairs. Overall, and given the limited nature of the arguments advanced in the opposition, the motion is granted.

RULING

For all the reasons stated above, the Court rules as follows:

(1) Grants the motion as to SRog No.'s 15-19, 21, 23, and 24.

a. The objections are without merit or are unsubstantiated in the opposition, thus overruled.

(2) Grants the motion as to RPD No.'s 23, 24, 27, 28, 29, 31, 33, 38-42, and 46.

a. Good cause exists and the objections advanced in the opposition are without merit or are unsubstantiated, thus overruled.