

TENTATIVE RULINGS

DEPT C12

Judge Layne H. Melzer

Court Reporters: Official court reporters (i.e., court reporters employed by the Court) are **NOT** typically provided for law and motion matters in this department. If a party desires a record of a law and motion proceeding, it will be the party’s responsibility to provide a court reporter. Parties must comply with the Court’s policy on the use of privately retained court reporters which can be found at:

- [Civil Court Reporter Pooling](#) and, see also the court’s website at [Court Reporter Interpreter Services](#) for additional information regarding the availability of court reporters.

Tentative rulings: The court endeavors to post tentative rulings on the court’s website in the morning, prior to the afternoon hearing. However, ongoing proceedings such as jury trials may prevent posting by that time. Tentative rulings may not be posted in every case. Please do not call the department for tentative rulings if tentative rulings have not been posted. The court will not entertain a request to continue a hearing or the filing of further documents once a tentative ruling has been posted.

Submitting on tentative rulings: If all counsel intend to submit on the tentative ruling and do not desire oral argument, please advise the Courtroom Clerk or Courtroom Attendant by calling (657) 622-5212. Please do not call the department unless all parties submit on the tentative ruling. If all sides submit on the tentative ruling and so advise the court, the tentative ruling shall become the court’s final ruling and the prevailing party shall give notice of the ruling and prepare an order for the court’s signature if appropriate under Cal. R. Ct. 3.1312.

Non-appearances: If nobody appears for the hearing and the court has not been notified that all parties submit on the tentative ruling, the court shall determine whether the matter is taken off calendar or the tentative ruling becomes the final ruling. The Court also might make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

APPEARANCES: Department C12 conducts non-evidentiary proceedings, such as law and motion, remotely, by Zoom videoconference pursuant to CCP §367.75 and Orange County Local Rule (OCLR) 375. All counsel and self-represented parties appearing for such hearings must check-in online through the Court's civil video appearance website at <https://www.occourts.org/media-relations/civil.html> prior to the commencement of their hearing. Once the online check-in is completed, participants will be prompted to join the courtroom’s Zoom hearing session. Participants will initially be directed to a virtual waiting room pending the start of their specific video hearing. Check-in instructions and instructional video are available at <https://www.occourts.org/media-relations/aci.html>. The Court’s “Appearance Procedures and Information--Civil Unlimited and Complex” (“Appearance Procedures”) and “Guidelines for Remote Appearances” (“Guidelines”) also available at <https://www.occourts.org/media-relations/aci.html> will be strictly enforced. Parties preferring to appear in-person for law and motion hearings may do so pursuant to CCP §367.75 and OCLR 375.

PUBLIC ACCESS: The courtroom remains open for all evidentiary and non-evidentiary proceedings.

No filming, broadcasting, photography, or electronic recording is permitted of the video session pursuant to California Rules of Court, rule 1.150 and Orange County Superior Court rule 180.

TENTATIVE RULINGS

April 25, 2024

#	Case Name
---	-----------

<p>1</p>	<p>2024-01374850</p> <p>Bella Vista Pools, Inc. vs. Molyneaux</p>	<p>Petitioner Bella Vista Pools, Inc Petition to Compel Arbitration</p> <p>Petitioner has submitted a proposed order on “stipulation” to compel arbitration on the petition. However, no stipulation has been provided. The Court will hear from the parties.</p>
<p>2</p>	<p>2024-01375902</p> <p>Cashman vs. Ellis</p>	<p>Petitioner Anthony Buccola Petition to Confirm Arbitration Award</p> <p>The Court grants Petitioners Jeff Ellis and Anthony Buccola’s, individually and as Trustees, Petition to confirm the arbitration award issued on January 26, 2024 by the Hon. Stephen J. Sundvold (Ret.) in favor of Petitioners and against Claimant/Respondent Cheryl Cashman, individually and as Trustee, in the amount of \$38,578.80 in costs and \$151,471.50 in fees.</p> <p>The procedure by which the prevailing party obtains an enforceable judgment is a petition to confirm the award. (CCP § 1286; 9 USC § 9; see Loeb v. Record (2008) 162 Cal.App.4th 431, 450 (citing text.))</p> <p>Unless a petition to correct or vacate the award has been timely filed, the court must render a judgment confirming the arbitrator's award. (See CCP § 1286—“the court shall confirm the award as made ...”; see also Valsan Partners Ltd. Partnership v. Calcor Space Facility, Inc. (1994) 25 Cal.App.4th 809, 818—no authority to alter terms of award absent petition to correct; Weinberg v. Safeco Ins. Co. (2004) 114 Cal.App.4th 1075, 1083-1084 (disapproved on other grounds by Barnett v. First Nat'l Ins. Co. of America (2010) 184 Cal.App.4th 1454, 1460-1461.))</p> <p>Here, Cashman appears and responds to the Petition, advising of a credit in the cost item from the 1/26/24 Award. Petitioners acknowledge a refund was provided in part, reducing the costs from \$56,342.89 to \$38,578.80.</p> <p>Cashman makes no other argument in opposition.</p> <p>The statutory requirements are met. (§§1285, 1285.4, 1292, 1292.2).</p> <p>Thus, the Petition is granted.</p> <p>The Court will sign the proposed Judgment submitted on 2/29/24.</p> <p>Petitioners are ordered to serve notice.</p>

<p>4</p>	<p>2022-01298277</p> <p>Hunter vs. Long</p>	<p>Petitioner Richard Hunter Petition to Confirm Arbitration Award</p> <p>The court notes that its prior order dismissing Petitioner Richard Hunter’s petition to confirm the arbitration award in his favor against respondents Jackson Long and North Shore Poke Co., Store 7, LLC was entered in error. That order will be corrected nunc pro tunc to reflect the continuance of the hearing on the petition.</p> <p>The petition and notice of hearing must be served at least 10 days before the hearing. Code Civ. Proc. § 1290.2.</p> <p>Where the arbitration agreement does not provide the manner in which service shall be made and the person on whom service is to be made has not previously appeared in the proceeding and has not previously been served in accordance with section 1290.4(a) of the Code of Civil Procedure, for service in California the petition and notice of hearing must be served in a manner provided by law for the service of summons in an action. Code Civ. Proc. § 1290.4(b).</p> <p>The Operating Agreement provides:</p> <p style="padding-left: 40px;">11.3 <u>Notices</u>. Except as otherwise provided herein, any notice to be given under this Agreement shall be made in writing and sent by express, registered or certified mail, return receipt requested, postage prepaid, facsimile (in which case a confirmed copy shall be sent on the same date by certified first class mail or express delivery), or commercial delivery service, or personally delivered, addressed as set forth below: If to the Company: North Shore Poke Co Store 7, LLC 11488 South Street Cerritos, CA 90703 Attn.: Managing Member If to any Member, the address of the Member appearing on Exhibit A hereto.</p> <p>[Petition, Ex. 4.B at p. 26 (emphasis added)..]</p> <p>Otherwise, a summons may be served on a corporation by personal delivery to the agent for service of process, the president, CEO or “other head of the corporation,” vice president, secretary, assistant secretary, treasurer, assistant treasurer, controller or CFO of the corporation. Code Civ. Proc. § 416.10(a), (b). Or substitute service may be made by leaving the summons and complaint with a personal apparently in charge and mailing a copy to the same address. Code Civ. Proc. 415.20(a).</p> <p>Service on an individual is made by personal delivery to that person, or someone authorized to accept service of process on his behalf. Code Civ. Proc. § 415.10. Service on an individual can also be made by mailing the summons and complaint with notice of and acknowledgment to be returned by the individual. Code Civ. Proc. §415.30.</p> <p>Proof of service must be filed five court days before the hearing. CRC 3.1300(c).</p>
-----------------	---	--

Petitioner has filed a proof of service showing personal service on Jackson Long on 2/24/24.

On the merits, the court is inclined to grant the petition in part.

A petition to confirm an arbitration award must

- (a) set forth the substance of or attach a copy of the arbitration agreement;
- (b) set forth the name of the arbitrators; and
- (c) set forth or attach a copy of the award and the written opinion of the arbitrators, if any. Code Civ. Proc. § 1285.4.

The petition meets these requirements. The allegations of the petition are deemed admitted in the absence of a response. Cal. Code Civ. Proc. § 1209. There has been no response.

The statutory rate for prejudgment interest would be 10% under Civ. Code §3289 (prejudgment interest rate after breach of contract).

The petition should be denied as to Petitioner's claim for "liquidated damages." There is no basis for the court to award damages based on the underlying arbitration as part of a petition confirming the arbitration award. Either those were damages/costs to be awarded by the arbitrator or, if they are in the nature of malicious prosecution damages, they would be damages to be pursued and proved in a separate action.

The law is clear that costs incurred in the arbitration itself must be awarded, if at all, in the arbitration by the arbitrator. *Corona v. Amherst Partners* (2003) 107 Cal. App. 4th 701, 704, 707; *Austin v. Allstate Ins. Co.* (1993) 16 Cal. App. 4th 1812 (affirming order taxing costs incurred during arbitration – such as expert fees – and permitting recovery only of filing fee for petition to confirm arbitration award).

"To establish a cause of action for the malicious prosecution of a civil proceeding, a plaintiff must plead and prove that the prior action (1) was commenced by or at the direction of the defendant and was pursued to a legal termination in plaintiff's favor; (2) was brought without probable cause; and (3) was initiated with malice." *Bertero vs. Nat'l Gen'l Corp.* (1974) 13 Cal. 3d 43, 50 (internal citations omitted).

As for the JAMS fees allocated to Respondents, it is not clear what – if any – amount should be added to the judgment. If the invoices were simply sent to Respondents for payment, then nothing need be added as Petitioner did not pay any costs allocated to Respondents. If Petitioner did pay some JAMS fees and needs to be reimbursed. He will need to provide evidence of the amounts to the court.

<p>5</p>	<p>2023-01353743</p> <p>In RE: 15205 Providence, Tustin, CA 92782-1795</p>	<p>Meriweather Neighborhood Association Motion for Claim of Surplus Funds</p> <p><u>Unresolved Claims</u></p> <p>On or about December 7, 2023, the Court granted the petition for order permitting petitioner Quality Loan Service Corp. to deposit with the court the surplus funds in the amount of \$33,114.51, from the trustee’s sale of the real property commonly known as 15205 Providence, Tustin, CA 92782-1795. The Court set a hearing for February 29, 2024, to determine the priority of any claims and distribution of the surplus proceeds, with all claims to be filed at least 15 days before the hearing date. (ROA 18.)</p> <p>On or about December 8, 2023, Quality Loan Service Corp. served notice of the 12/7/23 Ruling on all potential claimants. (ROA 16.)</p> <p>On or about December 28, 2023, Quality Loan Service Corp. deposited \$33,114.51 with the court, Transaction No. 13341362 and Receipt No. 13169501.</p> <p>On or about January 12, 2024, Real Time Resolutions, Inc. (“Claimant RTR”) filed a Creditor’s Claim in the amount of \$102,471.24. (ROA 27.) Claimant RTR states it is “the lender/beneficiary under a mortgage home loan note secured by a deed of trust recorded on 12/19/2006.” A copy of the Deed of Trust recorded on or about 12/19/06, Document No. 2006000848996 (the “12/19/06 Deed of Trust”), is attached thereto. The Creditor’s Claim fails to show that Claimant RTR is the “lender/beneficiary” under the 12/19/06 Deed of Trust, which lists “Mortgage Lenders Network USA, Inc.” as the “lender” and MERS as the beneficiary, solely as nominee for the lender and its successors and assigns. The Court finds, if Claimant RTR is able to offer satisfactory evidence it is the successor in interest to the lender/beneficiary of the 12/19/06 Deed of Trust, Claimant RTR is the first priority junior lienholder.</p> <p>The hearing is continued to 06/27/24 at 2:00 PM in Department C12.</p> <p>Claimant RTR shall file and serve evidence to support its interest under the 12/19/06 Deed of Trust by 06/04/24. Any opposing papers shall be filed and served by 06/13/24. Any reply papers shall be filed and served by 06/20/24.</p> <p>Claimant RTR shall give notice of the ruling to all claimants, including:</p> <p>Meriweather Neighborhood Association, c/o Feldscott, Lee & Nichter, 23161 Mill Creek Drive, Suite 300, Laguna Hills, CA 92653; and</p> <p>Elizabeth Vann, Deputy Attorney General, Department of Justice, 600 West Broadway, Suite 1800, San Diego, CA 92101.</p> <p>The Clerk shall give notice of this ruling to Claimant RTR’s counsel of record: ZBS Law, LLP, 30 Corporate Park, Suite 450, Irvine, CA 92606.</p>
-----------------	--	--

<p>6</p>	<p>2023-01370355</p> <p>In Re: 1762 Widdows Way N #2, Orange, CA 92865</p>	<p>Petitioner Quality Loan Service Corp. Motion re: Unresolved Claims and Deposit of Undistributed Surplus Proceeds</p> <p>Petitioner Quality Loan Service Corp.’s motion for order permitting it to deposit with the court surplus funds in the amount of in the amount of \$315,204.01 resulting from the trustee’s sale of real property commonly known as 1762 Widdows Way N # 2, Orange, CA 92865 is granted. The court finds that Petitioner complied with Civil Code §2924j(c).</p> <p>Upon deposit of the funds with the court and entry of this order, Quality Loan Service Corp. is discharged of further responsibility for the disbursement of the funds.</p> <p>The court will sign the proposed order submitted by Petitioner. [ROA #4.]</p> <p>A hearing is set for 7/11/24 at 2PM for consideration of any claims submitted and determination of the priority and distribution of the surplus proceeds. All claims must be filed with the court least 15 days prior to this hearing date.</p> <p>Petitioner Quality Loan Service Corp. shall give notice by mail to all potential claimants.</p>
<p>7</p>	<p>2024-01375898</p> <p>In Re: 9166 Cerritos Ave Unit 8, Anaheim, CA 92804</p>	<p>Petitioner Quality Loan Service Corp Motion re: Unresolved Claims and Deposit of Undistributed Surplus Proceeds</p> <p>Petitioner Quality Loan Service Corp.’s motion for order permitting it to deposit with the court surplus funds in the amount of in the amount of \$229,351.76 resulting from the trustee’s sale of real property commonly known as 9166 Cerritos Ave Unit 8, Anaheim, CA 92804 is granted. The court finds that Petitioner complied with Civil Code §2924j(c).</p> <p>Upon deposit of the funds with the court and entry of this order, Quality Loan Service Corp. is discharged of further responsibility for the disbursement of the funds.</p> <p>The court will sign the proposed order submitted by Petitioner. [ROA #4.]</p> <p>A hearing is set for 7/11/24 at 2PM for consideration of any claims submitted and determination of the priority and distribution of the surplus proceeds. All claims must be filed with the court least 15 days prior to this hearing date.</p> <p>Petitioner Quality Loan Service Corp. shall give notice by mail to all potential claimants.</p>

<p>8</p>	<p>2024-01375632</p> <p>In Re: J.G. Wentworth Originations, LLC</p>	<p>J.G. Wentworth Originations, LLC Motion or Approval for Transfer of Payment Rights</p> <p>Petitioner J.G. Wentworth Originations, LLC’s first amended petition for approval of the transfer of structured settlement payment rights by payee Kori Lynn Miller, as Trustee of the Kori Lynn Miller Trust, is granted. Petitioner is to submit a formal order.</p> <p>The court has reviewed and approves the First Amended Petition to sell to the transferee future payments. The court approves payee transferring the payee’s rights to structured settlement payments totaling \$275,000.00 in exchange for a purchase price of \$110,000.00.</p> <p>The Court finds that (Insurance Code § 10139.5(a)):</p> <ol style="list-style-type: none"> 1) The transfer is in the best interest of the payee taking into account the lack of dependents. 2) The payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received that advice or knowingly waived in writing the opportunity to receive the advice. 3) The transferee has complied with the notification requirements of Insurance Code § 10136 and the transfer agreement complies with Insurance Code §§ 10136 and 10138. 4) The transfer does not contravene any applicable statute or the order of any court or other government authority. 5) The payee understands the terms of the transfer agreement, including the terms set forth in the disclosure statement required by Insurance Code § 10136. 6) The payee understands and does not wish to exercise the payee’s right to cancel the transfer agreement. <p>Petitioner to give notice.</p>
<p>9</p>	<p>2024-01375275</p> <p>Mesa Shopping Center-East, LLC vs. Golf Realty Fund, LP</p>	<p>Petitioner Fainbarg III, LP Petition to Confirm Arbitration Award</p> <p>Before the Court is Petitioners Mesa Shopping Center-East, LLC, Mira Mesa Shopping Center-West, LLC, and The Fainbarg Trust, LP’s Petition to Confirm the December 20, 2023 Final Award issued by Arbitrator Honorable Raymond J. Ikola (Ret.) against Respondent Golf Realty Fund, LP. The Petition is granted.</p> <p>Petitioner shall submit an appropriate order.</p> <p>Petitioner shall provide notice.</p>

<p>10</p>	<p>2024-01373035</p> <p>Payne & Fears, LLP vs. Norris</p>	<p>Petitioner Payne & Fears, LLP Petition to Confirm Arbitration Award</p> <p>The petition by Petitioner Payne & Fears, LLP, to confirm the attorney-client fee arbitration award made on November 20, 2023, against respondents John Norris, John Covender, TestProcessOvernight, LLC, and Safely2Prosperity, LLC, is granted.</p> <p>The proof of service attached to the Arbitration Award reflects it was served on the parties to the arbitration on December 13, 2023. As such, the Court did not consider the untimely “amended response”/“verified petition to vacate arbitration award” filed by Respondents on April 17, 2024. (Code Civ. Proc. § 1288; <i>Eternity Investments, Inc. v. Brown</i> (2007) 151 Cal.App.4th 739, 746.)</p> <p>The Court finds the petition was timely filed and served at least 10 days, and no later than 4 years, after service of the award on the petitioner. (Code Civ. Proc., §§ 1288, 1288.4.) The petition and supporting documents reflect the parties participated in arbitration under the Mandatory Fee Arbitration Act and agreed in writing to be bound by the award of the arbitrator. (B&P Code § 6204, subd. (a).) Further, the petition sets forth the name of the arbitrator and attaches a copy of the Arbitration Award. (Code Civ. Proc., § 1285.4.) The Petition is granted and the award shall be confirmed as made. Judgment shall be entered in conformity with the award. (Code Civ. Proc., §§ 1286, 1287.4, and 1290.)</p> <p>The request for an award of \$544.60 in costs is denied without prejudice to Petitioner filing a memorandum of costs.</p> <p>Petitioner shall give notice of the ruling.</p>
<p>11</p>	<p>2023-01372225</p> <p>Petition of The Williamshire Owners Association</p>	<p>Petitioner The Williamshire Owners Association Motion for an Order Modifying Voting Requirements to Amend CC&Rs & Bylaws</p> <p>Petitioner The Williamshire Owners Association (“Petitioner”) seeks an order modifying the voting requirements to amend its CC&Rs and Bylaws pursuant to Corporations Code section 7515.</p> <p>Petitioner’s requests for judicial notice are denied. (<i>Bell v. Greg Agee Construction, Inc.</i> (2004) 125 Cal.App.4th 453, 459, fn. 2.)</p> <p>Petitioner may seek to amend its CC&Rs pursuant to Civil Code section 4275 and to amend its bylaws pursuant to Corporations Code section 7515. (<i>Fourth La Costa Condominium Owners Assn. v. Seith</i> (2008) 159 Cal.App.4th 563, 568-570 and 583.) Civil Code section 4275 and Corporations Code section 7515 are intended to overcome membership voting apathy. (<i>Id.</i>, at 583.)</p> <p>Petitioner’s request to amend the CC&Rs is denied. Petitioner did not show that members having more than 50 percent of the votes voted in favor of the amendment. (Civ. Code, § 4275, subd. (c)(4); <i>Peak Investments v. South Peak Homeowners Assn., Inc.</i> (2006) 140 Cal.App.4th 1363, 1369; McConnell Decl., ¶¶ 26 and 27, Exhibits 11 and 12.)</p>

		<p>The Court will set a hearing date and briefing schedule for the Petition to amend the Bylaws upon Petitioner’s filing of an amended Proposed Order.</p> <p>Given that the moving papers will only be made available to members upon request, Petitioner shall include a paragraph summary in the amended proposed order that summarizes the purpose of the Petition in layman’s terms.</p> <p>Petitioner shall file its amended proposed order, no later than Friday, May 10, 2024.</p>
12	<p>2024-01372612</p> <p>Pierce Bainbridge LLP vs. Wallace & Graham, PA</p>	<p>Petitioner Pierce Bainbridge LLP Motion to Vacate</p> <p>***Case Dismissed***</p>
14	<p>2023-01367022</p> <p>Badart vs. CDF Labor Law LLP</p>	<p>Petitioner Badart 1. Motion for Nunc Pro Tunc Order Deeming the Petition to Vacate timely filed Petitioner Wulffson, CDF Labor Law LLP 2. Motion to Quash Service of Petition</p> <p>Before the Court are Respondents CDF Labor Law LLP and Todd Wulffson’s Motion to quash service of the Petition to vacate the arbitration award between the parties and to dismiss the Petition and Petitioner Egan Badart competing Motion to deem his Petition to Vacate the arbitration award timely filed.</p> <p>The Court heard these Motions on 3/28/24 but continued the hearing to allow for further briefing on Petitioner’s new argument made for the first time at the hearing. (ROA 47) Petitioner argued that the Motion to Quash should be denied because the "general appearance" waived any objection to jurisdiction made in Respondents' Motion to Quash. The Court now considers that briefing in addition to the original briefing.</p> <p>A. Motion to Quash Service of Summons</p> <p>The Court grants Respondents CDF Labor Law LLP and Todd Wulffson’s Motion to quash service of the Petition to vacate the arbitration award between the parties and to dismiss the Petition.</p> <p><u>Legal Standard</u> Under CCP § 1286, the court must confirm, correct or vacate the award or dismiss the petition. (<i>Law Offices of David S. Karton v. Segreto</i> (2009) 176 CA4th 1, 9—§ 1286 is</p>

mandatory in this respect.) A court has the power to vacate or correct an arbitrator's award on specific grounds. (CCP § 1286.)

Unless a petition to correct or vacate the award has been timely filed, the court must render a judgment confirming the arbitrator's award. [See CCP § 1286—“the court shall confirm the award as made ...”; *see also Valsan Partners Ltd. Partnership v. Calcor Space Facility, Inc.* (1994) 25 CA4th 809, 818—no authority to alter terms of award absent petition to correct; *Weinberg v. Safeco Ins. Co.* (2004) 114 CA4th 1075, 1083-1084 (*disapproved on other grounds by Barnett v. First Nat'l Ins. Co. of America* (2010) 184 CA4th 1454, 1460-1461.)]

The petition and notice of hearing shall name as respondents all parties to the arbitration, and others bound by the award [Civ. Proc. Code, § 1285], and must set forth the grounds on which the request is made. [Civ. Proc. Code, § 1285.8] The petition must also set forth the substance of the arbitration agreement or have a copy attached, name the arbitrator, and set forth or have attached a copy of the award and the arbitrator's written opinion, if any. [Civ. Proc. Code, § 1285.4]

There are two ways to seek vacation or correction of an arbitration award:

- (1) Code Civ. Proc. § 1288 provides: “A petition to vacate an award or correct an award shall be served and filed not later than 100 days after the date of the service of a signed copy of the award on the petitioner,” or
- (2) Within 10 days of service of a party's petition to confirm the award, file and serve a timely response.

(Civ. Proc. Code, § 1290.6).

“A petition to vacate an award or to correct an award shall be served and filed not later than 100 days after the date of the service of a signed copy of the award on the petitioner.” (Civ. Proc. Code, § 1288, emphasis added). For service in California, the petition must be served as required by the arbitration agreement, or in the same manner as normal service during litigation (Civ. Proc. Code, § 1010), or as required for the *service of a summons* if the respondent has not previously appeared or been served. (Civ. Proc. Code, § 1290.4(b)(1).)

Merits

The Court finds that the Petition was never properly served. Unlike a regular complaint that tolls the statute when filed, a petition to vacate must be **filed and served** not later than 100 days after the date of the service of a signed copy of the award on the petitioner – **so here, November 27, 2023**. (CCP §1288). §1288).

Neither CDF Labor Law LLP nor Todd Wulffson have been personally served with the Petition. (Hagopian Decl., ¶¶ 3-4; Wulffson Decl., ¶ 3.) Nor has the Petition been delivered to CDF Labor Law LLP or Todd Wulffson in any other authorized manner. (Hagopian Decl., ¶¶ 3-4; Wulffson Decl., ¶ 3.)

Rather, a draft of the Petition to Vacate was served by email on November 17, 2023 to the two attorneys that represented Respondents in the underling arbitration. (Kinney Decl., ¶ 7 and Exs. D-G.)

Petitioner argues in opposition that Respondents’ arbitration Counsel expressly agreed to accept service; but it is clear to this Court that any agreement was for purposes of the arbitration only. Moreover, only a draft of the petition was served by email.

Respondents’ attorneys have not been authorized to accept service of a new action, including but not limited to the Petition. (Hagopian Decl., ¶ 5; Wulffson Decl., ¶ 4; Kinney Decl., ¶ 8; Waxler Decl., ¶ 3.)

Respondents’ counsel were not asked to accept service of the Petition, nor has their counsel ever agreed to accept service of the Petition. (See Kinney Decl., ¶ 8; Waxler Decl., ¶ 3.) The Court finds Petitioner’s arguments to the contrary wholly unavailing and not supported by the evidence.

Petitioner next argues that even if there was no express agreement, Respondents’ arbitration counsel had ostensible authority to accept service. Respondent cites *Estate of Moss* (2012) 204 Cal.App.4th 521, 534, for this proposition.

Moss, supra, however, has been distinguished by the Fourth District, Third Division Court of Appeal in *Abers v. Rohrs* (2013) 217 Cal.App.4th 1199, 1203. *Moss* held that “in circumstances such as exist in this case, in which a party and her attorney have already appeared in the action,... proper service of process on the party's attorney of record in that same case is sufficient as a matter of law under Code of Civil Procedure section 416.90.” (*Abers, supra*, 217 Cal.App.4th at p. 1207, *citing Moss, supra*, 204 Cal.App.4th at p. 534, italics added.)

“...the court in *Moss* took pains to “emphasize the narrowness of our holding” (*Moss, supra*, 204 Cal.App.4th at p. 533), explaining that it was expressly limited to circumstances in which the party to be served with the new petition had already appeared in the action. Unfortunately for the homeowners here, this case is distinguishable on that very point.” (*Abers, supra*, 217 Cal.App.4th at p. 1207 *citing Moss, supra*.)

Here, service on Respondents, not prior counsel, in a manner authorized for the service of a summons was required because Respondents have not previously appeared or been served in this new action. (Civ. Proc. Code, § 1290.4.)

Next, Petitioner argues in opposition that after his counsel read this motion, he “re-served” Respondents’ counsel with a “signed final copy of the Petition” on December 21, 2023. (Opp’n, p. 6:12-17; Maily Decl., ¶ 7.) Sending a copy of the “final petition” to Respondents’ counsel via email 23 days after the 100-day deadline expired does not constitute proper service of process under the law for the same reasons set forth above.

Thus, the Petition – even if construed as timely filed – was not timely served.

Finally, Petitioner argued at the hearing that Respondents made a general appearance and thus have “waived” any service defect.

The Court does not find this argument persuasive. While the 100-day limitation is not jurisdictional in the sense that the court can apply equitable doctrines, none of those equitable doctrines have merit here based on an analysis of all facts presented.

“We have described courts that violate procedural requirements, order relief that is unauthorized by statute or common law, or otherwise ‘fail[] to conduct [themselves] in the manner prescribed’ by law as acting ‘in excess of jurisdiction.’” ... Section 1288.2 speaks to the parties in mandatory terms, stating that a vacatur request “shall be served and filed not later than 100 days” after service of the award.” (*Law Finance Group, LLC v. Key* (2023) 14 Cal.5th 932, 951–952.)

This is not an objection to service of process that can be waived by a general appearance, but a jurisdictional issue for the Court.

Even assuming arguendo that the 100-day deadline could be waived somehow, as long as a motion to quash is timely filed before or concurrently with any other act, the defendant does not make a general appearance by participating in the litigation on the merits before the court rules on its motion to quash. (Code Civ. Proc., § 418.10, subd. (e)(1).) Here, the Response to the Motion to Vacate and the Motion to Quash were concurrently filed at 1:20 pm on 12/18/23. (ROA 7, 9.)

Thus, the Motion is granted.

B. Motion for a Nunc Pro Tunc Order Deeming the Petition to Vacate Timely Filed

The Court denies Petitioner Egan Badart motion to deem his Petition to Vacate the arbitration award timely filed.

Facts

On 12/4/23, Petitioner Egan Badart filed a Petition to Vacate an arbitration award issued against him and in favor of Respondent CDF Labor Law LLP and Todd Wulffson. Respondents represented Petitioner relating to and at an administrative hearing before the California Labor Commissioner’s Office for unpaid wages and penalties.

The Arbitration Award was issued on August 16, 2023 by Hon. Stephen J. Sundvold (Ret.), granting Respondents’ motion for summary judgment.

Respondents tell the final Award was electronically served on August 16, 2023, at 5:16 p.m. (Kinney Decl., ¶ 6 and Ex. C.) Petitioner acknowledges that the deadline for the Petition was November 27, 2023.

Petitioner’s Counsel says that he believed the Petition was filed on November 17, 2023; the date he received notification from One Legal indicating that the Court had received the Petition. (Maily Decl., Ex. A.)

When Petitioner's counsel had not received notice that the filing was accepted by November 22, he walked to the clerk's office to inquire why he had not received a conformed copy. The clerk at the filing window did not have the ability to provide any information and advised counsel to email the Court Clerk through the court website. (Maily Decl., ¶3) After inquiring through the Court's website, counsel received notification that clerk's office was backlogged and at the time was processing filings from early November. (Maily Decl. Ex. B.)

On Friday, *December 1*, counsel received notification that the filing was rejected because he had filed the Petition to Vacate and the Arbitration Record as two documents, rather than attaching the Arbitration Record as an attachment to the Petition to Vacate. (Maily Decl. Ex. C.)

The next court day, December 4, Petitioner refiled the Petition to Vacate and the Arbitration record in one document. (Maily Decl., ¶4)

Petitioner attempted to serve the Petition on November 17, 2023, but Petitioner admits that what was served was a draft of the Motion.

Merits

CCP §1010.6(b)(4)(E) is relevant; it says:

If the clerk of the court does not file a complaint or cross complaint because the complaint or cross complaint does not comply with applicable filing requirements or the required filing fee has not been paid, any statute of limitations applicable to the causes of action alleged in the complaint or cross complaint shall be tolled for the period beginning on the date on which the court received the document and as shown on the confirmation of receipt described in subparagraph (A), through the later of either the date on which the clerk of the court sent the notice of rejection described in subparagraph (C) or the date on which the electronic filing service provider or electronic filing manager sent the notice of rejection as described in subparagraph (D), plus one additional day if the complaint or cross complaint is subsequently submitted in a form that corrects the errors which caused the document to be rejected. *The party filing the complaint or cross complaint shall not make any change to the complaint or cross complaint other than those required to correct the errors which caused the document to be rejected.*

Based on the Supplemental Declaration of Cynthia D. Kinney, it is clear that changes were made to the Petition when it was refiled that do not meet the requirement of the statute above.

Additionally, even if the Court were to consider equitable relief, the relief requested would not prevent the dismissal of the Petition. In other words, even if the Court deemed the Petition filed on December 4, 2023 to have been filed on November 27, 2023 or earlier, the Petition would still be dismissed.

“A petition to vacate an award or to correct an award shall be served and filed not later than 100 days after the date of the service of a signed copy of the award on the petitioner.” (Civ. Proc. Code, § 1288).

For service in California, the petition must be served as required by the arbitration agreement, or in the same manner as normal service during litigation (Civ. Proc. Code, § 1010), or as required for the service of a summons if the respondent has not previously appeared or been served. (Civ. Proc. Code, § 1290.4(b)(1).)

Here, as set forth above, Petitioner has not shown that Respondents’ arbitration counsel agreed to accept service of the Petition in this new litigation.

		<p>Moreover, <i>Estate of Moss</i> (2012) 204 Cal.App.4th 521, 534 is distinguishable on the key point that an attorney can be served when the client and counsel have appeared in an action. (<i>Abers v. Rohrs</i> (2013) 217 Cal.App.4th 1199, 1207.)</p> <p>Further, what was served prior to the 100 day deadline was only a draft Motion and changes were made to the re-served version, which was also not personally served in the same manner as a summons and complaint.</p> <p>Thus, even if the Petition was deemed filed on November 27, 2023 or before, it would still be dismissed for failure to timely effectuate service.</p> <p>Respondents are ordered to serve notice of these rulings.</p>
15	<p>2024-01374417</p> <p>City of Buena Park vs. Tamayose</p>	<p>Petitioner City of Buena Park Motion to Appoint Receiver</p> <p>On petitioner City of Buena Park’s petition and motion to appoint a receiver, Richardson C. Griswold, Esq., and abatement of the real property commonly known as 6829 Mount Waterman Drive, Buena Park, California 90620-4233, identified by Assessor’s Parcel Number 134-233-05 (the “property”), the court will hear from counsel Petitioner and for Respondent Rick Tamayose as to (i) the City’s inspection of the property since the last hearing and (ii) Respondent’s further efforts and plans for clean-up and repair of the property since the last hearing.</p> <p>The court reiterates its concern that in the absence of appointing a receiver the property will remain a hazard to public health and safety but is open to considering a further continuance of the appointment if there has been substantial progress made.</p>