

LOYR, APC

YOUNG W. RYU, ESQ. (SBN 266372)
young.ryu@loywr.com
ZACHARIAH E. MOURA (SBN 279508)
zach.moura@loywr.com
TIMOTHY J. TRAVERS (SBN 328413)
timothy.travers@loywr.com
KEE SEOK MAH, ESQ (SBN 345736)
kee.mah@loywr.com
1055 W. Seventh Street, Suite 2290
Los Angeles, California 90017
Telephone: (213) 318-5323
Facsimile: (800) 576-1170

Attorneys for Plaintiff DYLAN YEISER-FODNESS

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

DYLAN YEISER-FODNESS, an individual,

Plaintiff,

v.

MASTER DOG TRAINING, a California Corporation; 5 STAR K-9 ACADEMY, INC., a California Corporation; EKATERINA KOROTUN, an individual; and DOES 1 through 25, inclusive,

Defendants.

Case No.: 22STCV21852

Assigned for All Purposes to:
The Hon. Armen Tamzarian, Dept. 52

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION TO VACATE ORDER
COMPELLING ARBITRATION PER
CCP § 1281.97 AND LIFT STAY, AND
FOR AN AWARD OF MONETARY
SANCTIONS IN THE AMOUNT OF
\$16,605.65 AGAINST ALL
DEFENDANTS AND THEIR
COUNSEL OF RECORD;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: August 18, 2023
Time: 9:00 a.m.
Place: Dept. 52
RES ID: 086055158446

*[Filed Concurrently with Declaration of
Young W. Ryu in Support Thereof; and
[Proposed] Order]*

Complaint Filed: July 6, 2022
FAC Filed: April 7, 2023
Trial Date: None Set

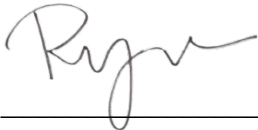
1 **I. TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:**

2 PLEASE TAKE NOTICE that on August 18, 2023, at 9:00 a.m. in Department 52 of
3 the Stanley Mosk Courthouse located at 111 N. Hill Street, Los Angeles, CA 90012,
4 Plaintiff DYLAN YEISER-FODNESS will move for an order vacating the order compelling
5 arbitration pursuant to CCP § 1281 et seq.

6 This motion is based on the notice, the memorandum of points and authorities, the
7 declaration of Young W. Ryu, the exhibits, the proposed order, the court file, and any
8 argument that the Court may receive.

9
10
11 DATED: July 6, 2023

LOYR, APC

12
13 
By: _____

14 Young W. Ryu, Esq.

15 Zachariah E. Moura, Esq.

16 Timothy Travers, Esq.

17 Kee Seok Mah, Esq.

18 Attorneys for Plaintiff DYLAN YEISER-
19 FODNESS
20
21
22
23
24
25
26
27
28

1 MEMORANDUM OF POINTS AN AUTHORITIES

2 **II. INTRODUCTION**

3 Defendants Master Dog Training, 5 Star K-9 Academy, Inc., and Ekaterina Korotun
4 (“Defendants”) compelled Plaintiff Dylan Yeiser-Fodness (“Plaintiff”) to individual
5 arbitration and out of proceeding with his lawsuit in this Court. Defendants are under a
6 legal obligation to pay their portion of the arbitration fees for the individual arbitrations
7 and have timely failed to do so. Plaintiff is entitled to a lift of the stay in his case and an
8 order permitting him to proceed with his claims in this Court. The law permits nothing
9 else. In essence, Plaintiff is entitled to elect his remedy upon Defendants’ failure to pay
10 the fees and costs in the arbitration within thirty (30) days of the arbitrator’s invoice due
11 date. Code of Civil Procedure (“CCP”) §1281.97. Among those remedies is the termination
12 of the arbitration proceedings, allowing Plaintiff to pursue his claims in this Court. This
13 is the remedy Plaintiff has elected. CCP §1281.97(b)(l).

14 There is no question that the elements of CCP §1281.97(a) have been met. This is
15 an employment arbitration that required, expressly or through application of law and/or
16 the rules of the arbitration provider (here, AAA, per party agreement) that Defendants
17 pay certain fees and costs during the initiation of the arbitration proceeding. Defendants
18 failed to timely pay those fees and as of June 29, 2023, and as a result, Plaintiff has
19 exercised his unilateral right to withdraw from arbitration proceedings to pursue his
20 claims in this Court per CCP §1281.97(a). The express and unequivocal language of CCP
21 §1281.97(a) provides that “if the fees or costs to initiate an arbitration proceeding are not
22 paid within 30 days after the due date **the drafting party is in material breach of the**
23 **arbitration agreement, is in default of the arbitration, and waives its right to**
24 **compel arbitration under Section 1281.2.”** CCP § 1281.97(a)(1) (emphasis added). In
25 the event of Defendants’ material breach and default under CCP §1281.97(a), then “the
26 employee may. . . **withdraw the claim from arbitration and proceed in a court of**
27 **appropriate jurisdiction.”** CCP §1281.97(b)(1) (emphasis added).

1 This is exactly what happened here, and Plaintiff is unilaterally entitled to elect his
2 remedy, to withdraw from the arbitration and proceed with this action in this Court. By
3 the express terms of the statute, this is not a discretionary issue for the Court nor is a
4 permissive standard applied before allowing Plaintiff to elect his remedy. Rather, the
5 election is expressly the employee's prerogative to make.

6 Further, sanctions are mandatory insofar as CCP §1281.99 provides that when the
7 drafting party of the underlying arbitration agreement is in material breach of the
8 agreement pursuant to CCP §1281.97(a), the court shall order it "to pay the reasonable
9 expenses, including attorney's fees and costs, incurred by the employee . . . as a result of
10 the material breach." CCP §1281.99. Accordingly, Plaintiff's motion to vacate the order
11 compelling arbitration and return the matter to the trial court for adjudication as a result
12 of Defendants' failure to pay the filing fee within 30 days of the deadlines should be
13 granted.

14 **III. STATEMENT OF FACTS**

15 Plaintiff filed the instant action against Defendants on April 7, 2023, asserting
16 several claims of retaliation and wrongful termination, as well as several Labor Code
17 violations. (Ryu Decl. ¶4). Specifically, Plaintiff was subjected to retaliation due to his
18 complaints about Defendants' unlawful business practices and for not being properly
19 compensated for missed meal and rest periods. (Ryu Decl. ¶5).

20 On October 14, 2022, Defendants filed a motion to compel the matter to arbitration
21 and to stay all proceedings. On November 11, 2022, Plaintiff filed his opposition to this
22 motion contending, among other things, that the arbitration agreement was
23 unconscionable and therefore unenforceable. On November 30, 2022, the Court issued a
24 ruling denying Defendants' Motion to Compel Arbitration because default had already
25 been entered against 5 Star K-9 Academy, Inc. (Ryu Decl. ¶6).

26 On March 19, 2023, Defendants filed another motion to compel the matter to
27 arbitration and to stay all proceedings. On April 21, 2023, Plaintiff filed another opposition
28 to this motion contending, among other things, that the arbitration agreement was

1 unconscionable and therefore unenforceable. On May 9, 2023, the Court issued a ruling
2 granted Defendants' Motion to Compel Arbitration. (Ryu Decl. ¶7).

3 On May 16, 2023, Plaintiff submitted his timely demand for arbitration with a copy
4 of Defendants' Arbitration Agreement and this Court's order compelling the parties to
5 arbitration to AAA. (Ryu Decl. ¶8).

6 On May 30, 2023, AAA acknowledged receipt of the demand and accepted matter
7 for arbitration. AAA issued an original invoice to Defendants for \$2,100.00 to serve as a
8 non-refundable filing fee, noting that "payment is due upon receipt." All parties were in
9 receipt of this invoice. (Ryu Decl. ¶9).

10 AAA's invoice also noted that "payment must be paid by June 29, 2023 or the AAA
11 will close the parties' case." (Ryu Decl. ¶9). By June 29, 2023, Defendants had not paid
12 their filing fee. (Ryu Decl. ¶10).

13 On July 5, 2023, AAA notified both parties with a letter saying it was closing the
14 file on this matter due to Defendants not paying their filing fee on time pursuant to CCP
15 §1281.97. (Ryu Decl. ¶10).

16 **IV. THE COURT IS EMPOWERED TO INSURE THE ORDERLY CONDUCT**
17 **OF PROCEEDINGS**

18 Code of Civil Procedure Section 128 provides that every court shall have the power
19 to do the following: to preserve order in its immediate presence; to enforce order in the
20 proceedings before it; and to provide for the orderly conduct of proceedings before it.

21 Additionally, all courts have inherent supervisory or administrative powers which
22 enable them to carry out their duties, and which exist apart from any statutory authority.
23 *Rutherford v. Owen-Illinois* (1997) 16 Cal.4th 953, 967; *Peat, Marwick, Mitchell & Co. v.*
24 *Superior Court* (1988) 200 Cal.App.3d 272, 287-288. Courts have inherent power to adopt
25 any method of practice if the procedure is not specified by statute or by rules adopted by
26 the Judicial Council. *Citizens Utilities Co. v. Superior Court* (1963) 59 Cal.2d 805, 812-813.
27 This inherent power entitles trial courts to exercise reasonable control over all proceedings
28 connected with pending litigation in order to insure the orderly administration of justice.

1 *See, Hays v. Superior Court* (1940) 16 Cal.2d 260, 264-265. Thus, courts are allowed to
2 decide the order in which issues are to be decided as this decision is left to their sound
3 discretion. *See, In re Jesusa V.* (2004) 32 Cal.4th 588, 621.

4 **V. DEFENDANTS' FAILURE TO PAY THE ARBITRATION FEES WITHIN**
5 **THE TIME FRAME SET FORTH IN CCP SECTION 1281.98 MANDATES**
6 **WITHDRAWAL FROM ARBITRATION**

7 On October 13, 2019, SB 707 was signed into law and became effective on January
8 1, 2020. It amended the California Code of Civil Procedure and added sections 1281.97
9 through 1281.99. Section 1281.97 covers failure to pay fees and costs before arbitration
10 can proceed, such as the case here. It holds the following in pertinent part:

11
12 (a)(1) In an employment or consumer arbitration that requires, either
13 expressly or through application of state or federal law or the rules of the
14 arbitration provider, the drafting party to pay certain fees and costs before
15 the arbitration can proceed, if the fees or costs to initiate an arbitration
16 proceeding are not paid within 30 days after the due date the drafting party
is in material breach of the arbitration agreement, is in default of the
arbitration, and waives its right to compel arbitration under Section 1281.2.

17 (2) After an employee or consumer meets the filing requirements necessary
18 to initiate an arbitration, the arbitration provider shall immediately provide
19 an invoice for any fees and costs required before the arbitration can proceed
20 to all of the parties to the arbitration. The invoice shall be provided in its
21 entirety, shall state the full amount owed and the date that payment is due,
22 and shall be sent to all parties by the same means on the same day. To avoid
23 delay, absent an express provision in the arbitration agreement stating the
24 number of days in which the parties to the arbitration must pay any required
25 fees or costs, the arbitration provider shall issue all invoices to the parties as
26 due upon receipt.

25 When, as in here, there is a material breach of the arbitration agreement, the
26 employee may either “(1) [w]ithdraw the claim from arbitration and proceed in a court of
27 appropriate jurisdiction” or “(2) [c]ompel arbitration in which the drafting party shall pay
28 reasonable attorney's fees and costs related to the arbitration.” CCP §1281.97(b). This

1 statute was passed because California’s lawmakers observed “a concerning and troubling
2 trend” in recent years undermining the goal of expedient proceedings in arbitration. The
3 very parties imposing mandatory arbitration provisions in contracts of adhesion (usually
4 in employment and consumer contexts) have then refused to pay the fees required to
5 commence the proceedings. This practice “effectively stymie[s] the ability of [claimants] to
6 assert their legal rights.” S. Judiciary Comm. Hr’g on SB 707, 2019–2020, at 6 (Cal. Apr.
7 23, 2019). The amendments thus sought to “deter drafting parties from renegeing on their
8 obligation to "pay" and “ensur[e] that the party that drafts the arbitration agreement
9 cannot delay adjudication of a dispute by refusing to participate in, or pay for, arbitration.”
10 Assemb. Judiciary Comm. Hr’g on SB 707, 2019-2020 at 1, 5, 8 (Cal. June 18, 2019). The
11 legislature explicitly declared “[i]t is the intent of the Legislature . . . to affirm the decision
12 in . . . *Sink v. Aden Enterprises, Inc.* that a company’s failure to pay arbitration fees . . .
13 constitutes a breach of the arbitration agreement and allows the non-breaching party to
14 bring a claim in court.” 4 SB 707 § 1(f).

15 Notably, the right to withdraw the action from arbitration is unilaterally Plaintiff’s,
16 and there is no exception in the statute permitting Defendants to avoid the consequences
17 of their failure to pay the arbitrator’s invoice within 30 days of its due date. Defendants
18 will likely argue that their violation of CCP Section 1281.97 should be excused because
19 their delay did not cause any prejudice or specific harm to Plaintiff or was an error.
20 Defendants will also likely argue the fact that they thought they paid the fee on time, but
21 some unforeseen misfortune caused error or delay. For the reasons discussed below, both
22 arguments fail, and this action must be returned to the trial court for adjudication.

23
24 **VI. DEFENDANTS MATERIALLY BREACHED THE ARBITRATION**
25 **AGREEMENT BY FAILING TO PAY THE ARBITRATION FEES AND**
26 **PLAINTIFF IS ENTITLED TO REMOVE THE MATTER FROM**
27 **ARBITRATION**
28

1 By failing to pay their arbitration fees within 30 days of their May 30, 2023 due
2 date, Defendants, and each of them, have materially breached the arbitration agreement
3 and Plaintiff is entitled to remove the matter from arbitration pursuant to CCP section
4 1281.97.

5 Here, the communications from AAA make it clear that Defendants failed to pay
6 the invoice issued on May 30, 2023, and due "upon receipt" and thereafter. (Ryu Decl. ¶¶9-
7 10). The 30 days lapsed on June 29, 2023. Thus, the fact that Defendants failed to timely
8 pay their fees is undisputed and any effort by Defendants to characterize their failure to
9 pay as a "mistake" or "nonprejudicial" is of no consequence. If the law permitted exceptions
10 for error or mistake, then CCP 1281.97 would be meaningless. It is Defendants' duty to
11 ensure that their payments are timely made to AAA, not Plaintiff's duty to inform
12 Defendants of their failure to do so. AAA even provides a safe and secure electronic
13 payment method, which is most commonly used.

14 It is clear that the Defendants do not take the allegations of the complaint seriously
15 and seeks to ignore their obligations. Plaintiff has waited patiently to adjudicate his case.
16 The plain language of CCP Section 1281.97 mandates withdrawal of the case from
17 arbitration at Plaintiff's request under these circumstances. Defendants' failure to pay the
18 arbitrator's invoice upon receipt or within the 30 days following receipt of the invoice,
19 constitutes a material breach of the arbitration agreement pursuant under CCP Section
20 1281.97.

21 CCP §1281.97 is applicable and is clear and explicit. The statute expressly permits
22 plaintiff to withdraw from an arbitration with no preconditions or limitations. Regardless
23 of whether Defendants eventually paid the fees, the Court should find as other trial courts
24 have found, that the employment arbitration required, either expressly or through
25 application of state or federal law or the rules of the arbitration provider, that Defendants
26 pay certain fees and costs during the pendency of the arbitration proceeding and that the
27 fees required to continue the arbitration proceeding were not paid within 30 days after the
28 due date. Thus, Defendants are in material breach of the arbitration agreement, are in

1 default of the arbitration, and have waived their right to compel Plaintiff to proceed with
2 arbitration as a result of their material breach. Respectfully, this court should find that
3 Plaintiff unilaterally elected to withdraw the matter from arbitration.

4 **VII. PLAINTIFF IS ENTITLED TO RECOVER HIS ATTORNEYS FEES AND**
5 **COSTS FOR THE ARBITRATION AND SANCTIONS RELATING TO**
6 **DEFENDANTS' MATERIAL BREACH OF THE AGREEMENT**

7 As set forth in both CCP Sections 1281.97, 1281.98 and 1281.99, a Defendant
8 employer shall pay monetary sanctions to an employee who elects to remove an action from
9 arbitration following the material breach by the Defendant employer and proceeds in a
10 court of appropriate jurisdiction. CCP 1281.97(d) & 1281.98(c). In the present case,
11 Plaintiff makes his request for attorneys' fees, costs, interest, and any evidentiary
12 sanctions, as permitted under Section 1281.98(b)(1), which provides: "(1) The employee or
13 consumer may bring a motion, or a separate action, to recover all attorney's fees and all
14 costs associated with the abandoned arbitration proceeding. The recovery of arbitration
15 fees, interest, and related attorney's fees shall be without regard to any findings on the
16 merits in the underlying action or arbitration."

17 Under section 1281.98(d), A material breach of the arbitration agreement for failure
18 to timely pay initiating fees, "[i]f the employee or consumer proceeds with an action in a
19 court of appropriate jurisdiction, **the court shall impose sanctions** on the drafting party
20 in accordance with Section 1281.99." (emphasis added). Section 1281.99 provides,

21
22 (a) The court shall impose a monetary sanction against a drafting party that
23 materially breaches an arbitration agreement pursuant to subdivision (a) of Section
24 1281.97 or subdivision (a) of Section 1281.98, by ordering the drafting party to pay
25 the reasonable expenses, including attorney's fees and costs, incurred by the
26 employee or consumer as a result of the material breach.

26 It further provides for evidentiary, terminating and contempt sanctions, "unless the
27 court finds that the one subject to the sanction acted with substantial justification or that
28

1 other circumstances make the imposition of the sanction unjust.” Cal. Civ. Proc. §
2 1281.99(b).

3 Plaintiff’s fees and costs associated with opposing Defendants’ motion to compel
4 arbitration, initiating arbitration, and in filing this Motion are \$16,605.65. [Ryu Decl., ¶¶
5 12-14.] Plaintiff requests monetary sanctions in that amount.

6 **VIII. CONCLUSION.**

7 As the foregoing demonstrates, Defendants have materially breached the
8 arbitration agreement by failing to pay the arbitrator’s deposit within 30 days of the May
9 30, 2023 invoice. Plaintiff is entitled to remove the matter from arbitration and recover
10 his attorneys’ fees and costs associated with the arbitration and arising from the breach
11 of the agreement. There is no “excusable neglect” exception, nor can Defendants offer any
12 permissible excuse to avoid the mandates of CCP 1281.97-99. Plaintiff respectfully
13 requests an Order, pursuant to CCP 1281.97(b)(1), granting this relief and reinstating this
14 matter to the civil Court.

15
16 DATED: July 6, 2023

LOYR, APC

17
18 

19
20 _____
21 Young W. Ryu, Esq.
22 Zachariah E. Moura, Esq.
23 Timothy Travers, Esq.
24 Kee Seok Mah, Esq.
25 Attorneys for Plaintiff, DYLAN YEISER-
26 FODNESS
27
28



Make a Reservation

DYLAN YEISER-FODNESS vs MASTER DOG TRAINING, A CALIFORNIA CORPORATION, et al.

Case Number: 22STCV21852 Case Type: Civil Unlimited Category: Wrongful Termination

Date Filed: 2022-07-06 Location: Stanley Mosk Courthouse - Department 52

Reservation

Case Name:

DYLAN YEISER-FODNESS vs MASTER DOG TRAINING, A CALIFORNIA CORPORATION, et al. Case Number: 22STCV21852

Type:

Motion to Vacate (ORDER COMPELLING ARBITRATION PER CCP § 1281.98, AND LIFT STAY) Status: RESERVED

Filing Party:

Dylan Yeiser-Fodness (Plaintiff) Location: Stanley Mosk Courthouse - Department 52

Date/Time:

08/18/2023 9:00 AM Number of Motions: 1

Reservation ID:

086055158446 Confirmation Code: CR-EMSKU3FRCZJDIBUHB

Fees

Description	Fee	Qty	Amount
Motion to Vacate (name extension)	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
TOTAL			\$61.65

Payment

Amount:

\$61.65 Type: Visa

Account Number:

XXXX6980 Authorization: 00165A

Payment Date:

1969-12-31

Print Receipt

Reserve Another Hearing

Chat

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I am over 18 years old and not a party to this action. My business address is 1055 West 7th Street, Suite 2290, Los Angeles, California 90017.

On July 6, 2023, I served the following on the interested party as follows:
**PLAINTIFF’S NOTICE OF MOTION AND MOTION TO VACATE ORDER
COMPELLING ARBITRATION PER CCP § 1281.97 AND LIFT STAY, AND FOR
AN AWARD OF MONETARY SANCTIONS IN THE AMOUNT OF \$16,605.65
AGAINST ALL DEFENDANTS AND THEIR COUNSEL OF RECORD;
MEMORANDUM OF POINTS AND AUTHORITIES**

Natalia Foley
nfoleylaw@gmail.com
LAW OFFICES OF NATALIA FOLEY
751 S Weir Canyon Rd Ste 157-455
Anaheim, CA 92808
Attorney for Defendants

BY U.S. MAIL:

I enclosed the foregoing document in a sealed envelope to the interest parties at the address listed above and deposited the sealed envelope for collection and mailing following my firm’s ordinary business practices. I am readily familiar with my firm’s business practices for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit.

BY ELECTRONIC SERVICE:

My electronic service address is martha.gutierrez@loywr.com. Per the parties’ agreement, through their respective counsel, to accept electronic service and pursuant to California Code of Civil Procedure section 1010.6, I served the foregoing document on the interested party at the electronic service addresses (e-mail addresses) listed above and did not receive Notice of Failure.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 6, 2023, in Los Angeles, California.



Martha Gutierrez