

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Perez v. Trax Retail, Inc.

Perez · No. 24cv333-LL-DDL · Decided March 11, 2025

SUMMARY

The United States District Court for the Southern District of California denied Plaintiffs’ ex parte application for leave to file a sur-reply concerning Defendants’ motion to compel arbitration, dismiss class allegations, and stay PAGA proceedings. The court found that Defendants’ reply did not raise new facts or arguments and that Plaintiffs had already stated their position regarding the alleged unconscionability and unenforceability of the arbitration agreement.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Linda Lopez
JURISDICTION	United States District Court for the Southern District of California
DECIDED	March 11, 2025
DOCKET	24cv333-LL-DDL
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs sought ex parte leave to file a sur-reply in connection with defendants' motion to compel arbitration, dismiss class allegations, and stay PAGA proceedings.
STANDARD OF REVIEW	The decision whether to permit a sur-reply is within the district court's discretion.
PRECEDENTIAL VALUE	Unknown
PARTIES	Ana Perez and similarly situated plaintiffs v. Trax Retail, Inc. and Does 1-50

TOPICS

- civil procedure
- arbitration
- commercial litigation

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether plaintiffs should be permitted to file a sur-reply after defendants identified that plaintiffs had attached an outdated agreement in their opposition.
2. Whether defendants' reply raised new facts or arguments, or otherwise presented a valid reason warranting additional briefing.

HOLDINGS

1. Neither the Federal Rules of Civil Procedure nor the district's Local Rules provide a litigant a right to file a sur-reply; permission to file one rests within the district court's discretion and requires a valid reason for additional briefing.
2. Plaintiffs were not entitled to file a sur-reply because defendants' reply did not raise new facts or arguments, and plaintiffs had already clarified their position regarding the operative arbitration agreement.

KEY QUOTATIONS

“Because neither the Federal Rules of Civil Procedure nor this District's Local Rules provide litigants a right to file a sur-reply, which leaves the question of whether to “permit the filing of a sur-reply within the discretion of the district court.”” (at 2)

“Allowing the filing of a sur-reply is within the discretion of the district court, “but only where a valid reason for such additional briefing exists.”” (at 2)

FACTUAL BACKGROUND

Plaintiffs filed an opposition to defendants' motion to compel arbitration on February 21, 2025, but attached an outdated alleged Independent Contractor Agreement. Defendants pointed out the error in their February 28 reply. Plaintiffs then sought leave to file a sur-reply to address the operative agreement and asserted that they would suffer irreparable harm without additional briefing.

PROCEDURAL HISTORY

Plaintiffs opposed defendants' motion to compel arbitration but mistakenly attached an outdated Independent Contractor Agreement. After defendants identified the error in their reply, plaintiffs sought leave to file a sur-reply addressing the operative agreement and arbitration agreement. The district court denied the application, while noting that it could order additional briefing later if necessary.

DISPOSITION

other

CASES CITED

- Whitewater W. Indus. v. Pac. Surf Designs, Inc., 2018 WL 3198800, at *1 (S.D. Cal. June 26, 2019)
- Nat'l Cas. Co. v. Nat'l Strength Conditioning Ass'n, 2020 WL 2991508, at *1 (S.D. Cal. June 4, 2020)
- United States v. Venture One Mortg. Corp., 2015 WL 12532139, at *2 (S.D. Cal. Feb. 14, 2015)

OPINION

Perez v. Trax Retail, Inc.

PER CURIAM.

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5 UNITED STATES DISTRICT COURT

6 SOUTHERN DISTRICT OF CALIFORNIA

7 8 ANA PEREZ, an individual, et al., on Case No.: 24cv333-LL-DDL behalf of herself and all
others similarly 9 situated, ORDER DENYING PLAINTIFFS' EX

10 PARTE APPLICATION TO FILE

Plaintiffs,

SUR-REPLY

11 v. 12 [ECF No. 51] TRAX RETAIL, INC., a Delaware 13 corporation and Does 1-50, 14
Defendants. 15 16 17 Before the Court is Plaintiffs' Ex Parte Application for Leave to File Sur-
Reply in 18 connection with Defendants' Motion to Compel Arbitration, Dismiss Class
Allegations, 19 and Stay PAGA Proceedings. ECF No. 51. The reason for Plaintiffs' request is
because 20 they will purportedly "suffer irreparable harm if they are not allowed to provide
additional 21 briefing addressing the arguments presented in Defendants' Reply regarding the
operative 22 Independent Contractor Agreement and the Arbitration Agreement contained therein."
Id. 23 (citing Melmed Decl. ¶ 3). Plaintiffs state that they "timely filed their opposition [to 24
Defendants' Motion to Compel] on February 21, 2025, but mistakenly attached the 25 outdated
alleged Independent Contractor Agreement." Id. Plaintiffs further state that 26 "Defendants filed
their Reply on February 28, 2025, pointing out this error." Id. Defendants 27 filed an Opposition to
Plaintiffs' Ex Parte Application on March 4, 2025 stating that 28 Plaintiffs' Ex Parte Motion
should be denied because: (1) Plaintiffs failed to comply with 1 Court rules for Ex Parte relief; (2)
sur-replies are disfavored; (3) Plaintiffs cannot show 2 || excusable neglect; and (4) Plaintiffs will
not suffer prejudice. ECF No. 52. For the reasons 3 || stated below, the Court DENIES Plaintiffs'
Ex Parte Motion. 4 Because neither the Federal Rules of Civil Procedure nor this District's Local
Rules 5 || provide litigants a right to file a sur-reply, which leaves the question of whether to
"permit 6 || the filing of a sur-reply within the discretion of the district court." Whitewater W.
Indus., 7 v. Pac. Surf Designs, Inc., 2018 WL 3198800, at *1 (S.D. Cal. June 26, 2019). 8 ||
Allowing the filing of a sur-reply is within the discretion of the district court, "but only 9 || where a
valid reason for such additional briefing exists." Nat'l Cas. Co. v. Nat'l Strength 10 Conditioning
Ass'n, 2020 WL 2991508, at *1 (S.D. Cal. June 4, 2020) (quoting 11 || Whitewater W. Indus.,
2018 WL 3198800, at *1). 12 Here, the Court agrees with Defendant that the Reply does not raise

any new facts 13 arguments, which would be one valid reason to allow a movant's request for a surreply. 14 || See United States v. Venture One Mortg. Corp., 2015 WL 12532139, at *2 (S.D. Cal. Feb. 15 2015). Additionally, although Plaintiffs seek to supplement their briefing to address 16 specific provisions of the operative Arbitration Agreement, the Court finds that Plaintiffs 17 ||have already clarified the record to state that it is their position that even the applicable 18 || Arbitration Agreement "remains substantively and procedurally unconscionable." ECF No. 19 at 5. Plaintiffs state that "Defendants' Independent Contractor Agreement is Invalid, 20 || Regardless of the Version, Rendering the Arbitration Agreement Therein Unenforceable 21 Inseverable." Jd. at 4 4. At this time, the Court finds it unnecessary to allow Plaintiffs 22 file a Sur-Reply. To the extent the Court determines that it needs additional briefing 23 || from Plaintiffs on this issue upon further review of the Motion to Compel Arbitration, the 24 || Court will order additional briefing at that time.

25 || IT ISSO ORDERED. NO

26 Dated: March 11, 2025 Ce | 27 Honorable Linda Lopez 38 United States District Judge