Tentative Rulings for March 19, 2026
Department 502

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) ***The above rule also applies to cases listed in this "must appear" section.***

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

23CECG00336 ***Amy Swan v. Will Stoll*** **is continued to Wednesday, April 22, 2026, at 3:30 p.m. in Department 502.**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 502

Begin at the next page

(03)

Tentative Ruling

Re: ***Mukai v. Nonini***
Case No. 23CECG05196

Hearing Date: March 19, 2026 (Dept. 502)

Motion: Defendants' Demurrer to Third Amended Complaint

Tentative Ruling:

To overrule defendants' demurrer to the third amended complaint in its entirety. To order defendants to file their answer within 10 days of the date of service of this order.

Explanation:

Defendants argue that the third amended complaint fails to state any valid claims because plaintiff has not alleged any facts showing that she suffered damage from their conduct. Defendants contend that plaintiff's allegations of damages are insufficient, as plaintiff has not yet suffered any damages from the alleged failure to record the deed of trust on the subject property, as there has not yet been a default and foreclosure on the deed of trust. While plaintiff has alleged that defendants failed to record a deed of trust on the subject property and instead recorded a deed of trust on a different property in Madera County, they argue that it is possible that the Madera property is worth as much as the subject property, in which case it will be sufficient to cover the balance of the loan and plaintiff will not be damaged from the alleged failure to record a deed of trust on the subject property. In addition, defendants note that the loan agreement does not include a schedule for them to repay the loan, so plaintiff's allegation that they failed to make monthly payments on the loan is inconsistent with the language of the agreement and is insufficient to show that she suffered any damage. Without any facts showing that she suffered damages from the breach, defendants contend that plaintiff has not stated a claim for breach of contract. Furthermore, they argue that all of the other claims are derivative of the breach of contract claim, so plaintiff's entire third amended complaint fails to state a claim.

"[T]he essential elements of such a cause of action [for breach of contract are]: (1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff." (*Reichert v. General Ins. Co. of America* (1968) 68 Cal.2d 822, 830, citations omitted.)

Here, plaintiff alleges that defendants breached the loan agreement and real property purchase agreement by (1) failing to record a deed of trust on the subject property as they had promised to do and instead recording a deed of trust on a different property in Madera County that does not provide adequate security for the loan, and (2) by failing to make monthly payments of $1,033 on the loan. (TAC, ¶¶ 27-28, 32.) Defendants also allegedly deceived decedent into paying them additional money as rent so that he could stay on the property after he sold it to them, while also failing to pay him under the terms of the loan. (*Id*. at ¶ 30.) Plaintiff also alleges that she suffered

damages from the breaches, as the $240,000 loan has not been paid off, and defendants have now allowed encumbrances of the subject property by third parties, as well as by preventing plaintiff from foreclosing on the subject property and selling it without court intervention. (*Id*. at ¶ 34.) Plaintiff has also incurred attorney's fees and costs as a result of the breach. (*Id*. at ¶ 35.)

Thus, plaintiff has alleged that she was injured by the defendants' breach of the agreement, which is sufficient to support her claim for breach of contract. Nevertheless, defendants argue that plaintiff's allegations of damages are speculative and hypothetical because she will only suffer harm from the failure to record a deed of trust on the subject property if they default on the loan and plaintiff attempts to foreclose on the property, and if the Madera property fails to sell for more than the balance due on the loan. They note that none of these events has occurred yet, so plaintiff's claim is not yet ripe. They also point out that the loan agreement does not include a repayment schedule, so plaintiff's allegation that they failed to make payments of $1,033 on the loan should be disregarded as inconsistent with the complaint.

However, plaintiff has alleged that she has been damaged in the amount of $240,000 because defendants have failed to repay the loan. (TAC, ¶27-28, 32-34.) Regardless of whether there was a specific payment schedule for repayments in the loan agreement, defendants still agreed to repay the $245,000 loan with interest. (*Id*. at ¶ 24, and Exhibit 2 to the TAC.) Defendants also agreed to record a deed of trust on the subject property to secure the loan. (*Ibid*.) Plaintiff has alleged that defendants have not paid off the loan, and that they still owe $240,000 on it. (*Id*. at ¶¶ 33-34.) In fact, defendants allegedly tricked decedent, who was in poor mental and physical health and who trusted them as close friends, into paying them money for rent when they still owed him money on the loan that they never paid. (*Id*. at ¶ 30.) They also allegedly recorded a deed of trust on a different property in Madera County that was not as desirable as the subject property, as it was landlocked and defendants had been unable to sell it for years. (*Id*. at ¶ 27.) The Madera property is allegedly insufficient to cover the loan balance even if plaintiff did foreclose on it. (*Id*. at ¶ 32.) Defendants also allowed a third party to record an encumbrance on the subject property to secure a different loan, which will make it more difficult for plaintiff to foreclose on the subject property to cover the loan. (*Id*. at ¶ 34.) Thus, plaintiff has adequately alleged that she has been harmed by defendant's alleged breaches of the agreements.

If defendants' argument were correct, then they would effectively never have to repay the $245,000 loan that they obtained from decedent, as they would not have to make any payments on the loan and there would be no way to declare them to be in default on the loan terms. The loan agreement apparently does not include a repayment schedule, but it clearly contemplates that defendants would repay the loan at some point, as it includes a requirement to record a deed of trust on the subject property to secure repayment. It also includes a provision for interest on the loan. Thus, the parties obviously intended defendants to repay the loan with interest. Otherwise, the loan would be effectively a gift to defendants of $245,000.

Plaintiff has alleged that defendants have yet to make any payments on the loan, despite the fact that the agreement was executed in October of 2018, more than seven years ago. In fact, defendants allegedly tricked decedent into paying them money to stay on the property and also gave themselves double credits against the loan balance. (*Id*. at ¶ 30.) She will also have difficulty foreclosing on the loan due to the lack of

adequate security because defendants recorded a deed of trust on a less valuable property. Thus, plaintiff has alleged that she was harmed by the failure to pay off the balance of the loan, even if there was no specific schedule for repayment of the loan. She will also have to incur attorney's fees and costs to enforce the loan. Consequently, the court will not sustain the demurrer based on plaintiff's purported failure to allege facts showing damages.

Defendants also demur to the breach of contract claim, and, by extension, the other causes of action, on the ground that it is barred by the statute of limitations. Defendants point out that plaintiff has alleged that they breached the loan and sale agreements in October 22, 2018 when they failed to record a deed of trust on the subject property, as well as failing to make payments on the loan. (TAC, ¶¶ 27, 28.) They also point out that plaintiff did not file her complaint until December 20, 2023, more than five years after the alleged breaches of the agreements. Since there is a four-year statute of limitations for breaches of written contract (Code Civ. Proc., § 337, subd. (a)), defendants conclude that plaintiff's claims are time-barred.

However, while the complaint was not filed within four years of the alleged breach, plaintiff has adequately alleged facts showing that the delayed discovery rule applies and thus the cause of action did not accrue until plaintiff first discovered the breaches in November of 2023.

"Generally speaking, a cause of action accrues at 'the time when the cause of action is complete with all of its elements.' An important exception to the general rule of accrual is the 'discovery rule,' which postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action." (*Fox v. Ethicon Endo-Surgery, Inc*. (2005) 35 Cal.4th 797, 806–807, citations omitted.)

"A plaintiff has reason to discover a cause of action when he or she "has reason at least to suspect a factual basis for its elements." Under the discovery rule, suspicion of one or more of the elements of a cause of action, coupled with knowledge of any remaining elements, will generally trigger the statute of limitations period. *Norgart* explained that by discussing the discovery rule in terms of a plaintiff's suspicion of 'elements' of a cause of action, it was referring to the 'generic' elements of wrongdoing, causation, and harm. In so using the term 'elements,' we do not take a hypertechnical approach to the application of the discovery rule. Rather than examining whether the plaintiffs suspect facts supporting each specific legal element of a particular cause of action, we look to whether the plaintiffs have reason to at least suspect that a type of wrongdoing has injured them." (*Id.* at p. 807, citations omitted.)

"The discovery rule only delays accrual until the plaintiff has, or should have, inquiry notice of the cause of action. The discovery rule does not encourage dilatory tactics because plaintiffs are charged with presumptive knowledge of an injury if they have 'information of circumstances to put [them] on inquiry' or if they have 'the opportunity to obtain knowledge from sources open to [their] investigation.' In other words, plaintiffs are required to conduct a reasonable investigation after becoming aware of an injury, and are charged with knowledge of the information that would have been revealed by such an investigation." (*Id*. at pp. 807–808, citations and some quote marks omitted.)

Also, "the discovery rule may be applied to breaches [of contract] which can be, and are, committed in secret and, moreover, where the harm flowing from those

breaches will not be reasonably discoverable by plaintiffs until a future time." (*April Enterprises, Inc. v. KTTV* (1983) 147 Cal.App.3d 805, 832.)

Here, plaintiff has alleged that she did not discover defendants' breaches of the contracts until November 30, 2023, when she took over as personal representative of decedent Douglas Mori's estate after his death. (TAC, ¶ 30.) She also alleges that Mori was in poor mental and physical health at the time he entered into the contracts with defendants, that he was unable to manage his farm or other affairs, and that defendants deliberately took advantage of their close friendship with him to persuade him to enter into the agreements. (*Id*. at ¶¶ 18-26.) The deed of trust that defendants recorded on the Madera property was not signed by decedent, and instead was only signed by defendants. (*Id*. at ¶ 27, and Exhibit 5 to TAC.) Thus, defendants concealed their breach of the contracts from decedent and there was no reason for him to believe that they had not recorded a deed against the subject property as they had promised to do. (*Id*. at ¶ 31.)

As a result, plaintiff has adequately alleged that neither she nor decedent discovered the defendants' breaches until November 30, 2023. Under the circumstances, decedent was not necessarily on notice that the deed of trust had been recorded against a different property or that the loan was not properly secured. Plaintiff did not discover the failure to record the deed of trust on the subject property until she took over as personal representative of decedent's estate in November of 2023. She filed the complaint against defendants about a month later. Therefore, plaintiff has alleged enough facts to support application of the delayed discovery rule, and the statute of limitations does not necessarily bar the plaintiff's claim for breach of contract.

Defendants have also demurred to the other causes of action in the third amended complaint, which they contend fail to state a claim because they are derivative of the allegedly defective breach of contract claim. However, since their demurrer to the breach of contract claim will be overruled, the demurrer to the other causes of action will also be overruled.

Finally, the court intends to overrule the demurrer of defendants Pernon Investments, Inc., Ge-No Farms, and Sierra Valley Sun, Inc. Defendants argue that the third amended complaint fails to allege any facts showing that the entity defendants did anything to harm plaintiff, and therefore the entire complaint should be dismissed as to the entities. However, plaintiff has alleged that the corporate entity defendants are the alter egos of the individual defendants, who are the sole shareholders, officers, directors, employees, and authorized agents of the corporations, and thus the corporations are also liable for the allegedly unfair and fraudulent actions of the individual defendants. (TAC, ¶¶ 5-13.) Therefore, the court intends to find that plaintiff has adequately alleged claims against the corporate defendants.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 03/17/26.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Cyrus Goodman v. Clovis Unified School District***
Superior Court Case No. 23CECG04735

Hearing Date: March 19, 2026 (Dept. 502)

Motion: Petition to Approve Compromise of Disputed Claim of Minor

Tentative Ruling:

To deny, without prejudice. Petitioner must file an amended petition, with appropriate supporting papers and proposed orders, and obtain a new hearing date for consideration of the amended petition. (Super. Ct. Fresno County, Local Rules, rule 2.8.4.)

Explanation:

Petition Item 12b(5) Remains Insufficiently Supported

Item 12b(5) of the petition contains multiple discrepancies in the amounts indicated to have been charged, paid, and reduced by the medical treatment providers, as detailed below. The Supplemental Declaration filed by counsel for petitioner does not sufficiently cure all the discrepancies previously identified by the court. It is insufficient for counsel to state that the Guardian Ad Litem "confirms" there is a zero balance for any particular facility or provider.

1. **Valley Children's Healthcare:** Petitioner provides 10 invoices for hospital and professional charges, including the charges for **Michael Hazboun, M.D.** and **Melanie Morgan, M.D.** Eight of the invoices reflect payment adjustments or payments that zero out the balance charged; however, there is no demonstration of payment of the "Hospital Charges" from February 2, 2023 and April 21, 2023. (See Supp. Decl., PDF pp. 8/51 and 12/51.) Further, the charges, payments, and reduction totals claimed in Item 12b(5)(B)(i) do not amount to the totals reflected by the combined invoices.
2. **Crystal Farrell, M.D. (Wishon Radiology):** Petitioner claims to not have a copy of her billing. This should be obtained and evidenced.
3. **Barbara Morlan, M.D. (Dry Creek Medical and Urgent Care):** Petitioner does not attach a copy of the charges and payments/adjustments for this provider.
4. **Radiology Billing Services:** Petitioner provides billing records for this service/ provider who is not listed in the Petition at Item 12b(5). The records appear to correspond with Dr. Morlan's care, but it is not clear from the Petition or the Supplemental Declaration whether this document is supposed to demonstrate the charges for her services or otherwise. The records reflect total charges to insurance of $9,610.19 with a net balance of $8,063, and total charges to patient of $85.00 with a net balance of $25.00. This does not correspond with the insurance payment to Dr. Morlan as reflected on the insurance payment printout, nor Item 12b(5)(B)(iv) of the Petition. The records reflect outstanding balances.

5. **A Mind Above:** The single billing record provided indicates that $3,940.00 was charged and paid/adjusted. The Petition at Item 12b(5)(B)(vi) claims $5,380.00 was charged by this provider and $4,162.17 was paid by insurance. It is unclear if there is another invoice for these additional charges that was not attached.
6. **Advance Medical Imaging—Magnolia (California Imaging Institute):** Petitioner attaches a billing record reflecting no balance remaining due to insurance payments and adjustments. This provider should be listed in any amended petition at Item 12b(5).

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 03/17/26.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***New Age AG Service, LLC v. Westway Feed Products, LLC***
Superior Court Case No. 25CECG03035

Hearing Date: March 19, 2026 (Dept. 502)

Motion: by Defendant to Compel Arbitration and Stay

Tentative Ruling:

To grant the motion to compel arbitration as to the second, third, fourth and fifth causes of action involving the Equipment Use Agreements and Equipment Purchase Agreements.

To delay ordering arbitration until the resolution of the claims of the plaintiff's first cause of action, which are not subject to arbitration and the resolution of which may make arbitration unnecessary. (Code Civ. Proc. § 1281.2, subd. (d).)

Explanation:

In moving to compel arbitration, a party must prove by a preponderance of evidence the existence of the arbitration agreement and that the dispute is covered by the agreement. The party opposing the motion must then prove by a preponderance of evidence that a ground for denial of the motion exists (e.g., fraud, unconscionability, etc.). (*Rosenthal v. Great Western Fin'l Securities Corp.* (1996) 14 Cal.4th 394, 413-414; *Hotels Nevada v. L.A. Pacific Ctr., Inc.* (2006) 144 Cal.App.4th 754, 758; *Villacreses v. Molinari* (2005) 132 Cal.App.4th 1223, 1230.)

In the case at bench, defendant Westway Feed Products, LLC moves to compel arbitration pursuant to an arbitration provision within Equipment Use Agreements and Equipment Purchase Agreements entered into between the parties. (Mitchell Decl., ¶¶ 5-7, Ex. D.) Defendant asserts the references to the Equipment Use Agreement within the allegations of the complaint demonstrates the disputes within the complaint to be arbitrated are "related to" the Equipment Use Agreement(s). The arbitration provision to be enforced states, "Westway and Customer agree that the sole remedy to resolution of any and all disagreements or disputes arising under or related to this Agreement shall be through arbitration proceedings before the National Grain and Feed Association (NGFA) pursuant to the NGFA Arbitration Rules." (*Id*., Ex. D, p. 4 "Standard Terms and Conditions," ¶ 15(H).)

The complaint alleges the parties entered into an agreement for the purchase of a liquid fertilizer product, UAN 32, at a price of $195.00 per ton and that plaintiff paid the agreed price when ordering the product but the product delivered was not UAN 32 but another fertilizer product. (Complaint, ¶¶ 10, 12.) The complaint alleges the plaintiff relied on the agreement in purchasing equipment to store the product and pre-selling the product to customers before delivery and learning the product was not UAN 32. (*Id*., ¶ 11.) Plaintiff alleges it was forced to purchase UAN 32 from another supplier at a higher

cost to fulfill the pre-delivery orders. (*Id*., ¶ 13.) Entering into the Equipment Use Agreements, purchasing equipment, and plaintiff Ben Letizia's signing a promissory note guaranteeing payment of the Equipment Use Agreements are alleged as damages as a result of the defendant's failure to provide the UAN 32 product as contracted. (*Id*., ¶ 19.) Plaintiffs allege causes of action for breach of contract, as to the agreement to purchase UAN 32, causes of action for rescission of the Equipment Use Agreements and personal guaranty based on unilateral and bilateral mistake as to defendant's ability to provide UAN 32, and causes of action alleging intentional misrepresentation, and negligent misrepresentation as to defendant's ability to provide UAN 32 upon which plaintiffs relied in entering in to the Equipment Use/Purchase Agreements and personal guaranty.

Although defendant asserts that all disputes of the complaint are related to the Equipment Use Agreements sufficient to invoke the arbitration provision this is not borne out in the court's review of the complaint. There is no disagreement or dispute arising out of the Equipment Use Agreements alleged in the first cause of action of the complaint. The complaint invokes the Equipment Use/Purchase Agreements in alleging reliance on defendant's representations regarding UAN 32 and damages based upon the financial obligation memorialized in the agreement. This reference does not support finding the alleged breach of the agreement to purchase UAN 32 relates to the Equipment Use/Purchase Agreements sufficient to invoke the arbitration provision found therein. The second, third, fourth and fifth causes of action specific to the Equipment Use Agreements relate to the agreements and would be subject to arbitration.

In its opposition to the motion to compel arbitration, plaintiffs argue defendant has waived its right to compel arbitration and that the agreement to arbitrate is unconscionable and should not be enforced.

Waiver

Waiver is the "intentional relinquishment or abandonment of a known right." (*Morgan v. Sundance, Inc*. (2022) 596 U.S. 411, 417, quoting *United States v. Olano* (1993) 507 U.S. 725, 733.) When considering whether waiver has occurred, the United States Supreme Court has noted the focus is on the actions of the party who held a right. (*Ibid*.) In its ruling in *Morgan*, the Supreme Court has clarified that prejudice is not a requirement when considering the federal rule of waiver in the arbitration context. (*Id*. at p. 1714.) State and federal law both have a policy of favoring arbitration agreements and doubts regarding whether a waiver has occurred are to be resolved in favor of arbitration. (*St. Agnes Medical Center v. PacifiCare of California* (2003) 31 Cal.4th 1187, 1195.)

When determining whether a party holding the right to arbitrate has waived said right, the courts consider, 1) whether the party's actions are inconsistent with that right, 2) how far along the parties are in litigation before notice of an intent to arbitrate, 3) any delays in seeking arbitration, 4) whether the party seeking arbitration has filed a counterclaim, and 5) whether important intervening steps have occurred.[1] (*St. Agnes Medical Center v. PacifiCare of California, supra*, 31 Cal.4th at p. 1196.)

[1] California case law also has included whether the other party was prejudiced, but as noted in *Morgan*, there should be no prejudice requirement when considering waiver in an arbitration context.

Plaintiff argues that defendant has acted inconsistently with the right to arbitrate because it has participated in discovery without an objection based on the intention to arbitrate. Plaintiffs have provided evidence that defendant provided substantive responses to discovery propounded by plaintiffs. (Vote Decl., ¶¶ 3-4.) Plaintiffs argue that because the NGFA rules do not provide any discovery procedures the participation in discovery in this action is sufficient to waive the right to enforce the arbitration provision. The court does not find that defendant providing discovery responses adequately evinces the intention to relinquish the right to compel arbitration or to abandon it. (*Hofer v. Boladian* (2025) 111 Cal.App.5th 1, 10.)

Plaintiffs have not met their burden to demonstrate a waiver of the right to compel arbitration.

Procedural Unconscionability

The doctrine of unconscionability has " 'both a "procedural" and a "substantive" element,' the former focusing on ' "oppression" ' or ' "surprise" ' due to unequal bargaining power, the latter on ' "overly harsh" ' or ' "one-sided" ' results." (*Armendariz v. Foundation Health Psychcare Services* (2000) 24 Cal.4th 83, 114.) " ' "Oppression occurs where a contract involves lack of negotiation and meaningful choice." ' " (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 247.) "[S]urprise" is present when an agreement's meaning is difficult to ascertain, such as when " ' "the allegedly unconscionable provision is hidden within a prolix printed form." ' " (*Id.,* at p. 247.) "Ultimately, the question is whether [the nondrafting party], through oppression and surprise, was coerced or misled into making an unfair bargain." (*OTO, LLC v. Kho* (2019) 8 Cal.5th 111, 136.)

To invalidate an arbitration agreement, the court must find both procedural and substantive unconscionability. (*Armendariz v. Foundation Health Psychcare Services*, *supra*, 24 Cal.4th at p. 122; *Stirlen v. Supercuts, Inc*. (1997) 51 Cal.App.4th 1519, 1533; *Mercuro v. Superior Court* (2002) 96 Cal.App.4th 167, 174.)

Plaintiff contends that the arbitration provision is procedurally unconscionable as it failed to attach the NGFA arbitration rules and was drafted by defendant. (Letizia Decl., ¶ 12.) Plaintiffs provide no evidence that they were not given an opportunity to review the terms of the contract or review the NGFA arbitration rules before executing the agreement in January 2024 and the subsequent agreements in March and April of 2024. The evidence provided by defendant indicates to the contrary that there was no deadline for the execution of the agreements or restriction on plaintiffs' ability to review the agreement and its terms with legal counsel. (Mitchell Decl., ¶ 8.) Further, defendant provided evidence that plaintiffs requested changes to the terms of the agreements with respect to pricing and equipment during negotiations and made no requests to negotiate the arbitration provision within the agreement. (*Id*., ¶ 9.)

The evidence demonstrates plaintiffs had the ability to negotiate and review the agreement with counsel which does not support finding oppression or surprise in the formation of the agreement. Plaintiffs have not met their burden in demonstrating the agreement is procedurally unconscionable. Without any procedural unconscionability,

the agreement cannot be invalidated on the basis of unconscionability. (*Armendariz, supra,* 24 Cal.4th at p. 122.) It is therefore unnecessary to address plaintiff's substantive unconscionability arguments.

Personal Guaranty

Plaintiff Ben Letizia challenges the applicability of the arbitration provision to his guaranty of payment of the Equipment Use Agreements and Equipment Sale Agreements. Letizia signed the Equipment Use Agreements in his capacity as a member of the plaintiff limited liability company and asserts he is not a party to the agreement in his individual capacity. Although the guarantees clearly relate to the Equipment Use Agreements, Letizia individually is not a party to the agreements with an arbitration provision and there is no agreement to arbitrate found within the personal guaranty.

Code of Civil Procedure § 1281.2

"If the court determines that there are other issues between the petitioner and the respondent which are not subject to arbitration and which are the subject of a pending action or special proceeding between the petitioner and the respondent and that a determination of such issues may make the arbitration unnecessary, the court may delay its order to arbitrate until the determination of such other issues or until such earlier time as the court specifies." (Code Civ. Proc., § 1281.2, subd. (d).)

Although the arbitration provision within the Equipment Use Agreements is enforceable as it relates to the causes of action for rescission and alleging misrepresentation in the formation of those agreements the arbitration may ultimately be unnecessary. The defendant has not demonstrated that the first cause of action related to the breach of the agreement to purchase UAN 32 arises from or relates to the Equipment Use/Purchase Agreements to compel this dispute to arbitration. The resolution of the issues raised in the first cause of action appear to have the ability to resolve the causes of action regarding the subsequent contracts. As such, the court will delay its order to arbitrate until the resolution of the disputes within the plaintiff's first cause of action have been resolved. (Code Civ. Proc. § 1281.2, subd. (d).)

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 03/17/26.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***S.N. v. Fresno Unified School District***
Superior Court Case No. 22CECG02655

Hearing Date: March 19, 2026 (Dept. 502)

Motion: By Plaintiff S.N. to Strike or Tax Costs

Tentative Ruling:

To deny the motion to strike costs. To grant the motion to tax costs in part and tax costs in the amount of $9,192.06.

Explanation:

Defendant Fresno Unified School District ("Defendant") lodged a memorandum of costs following entry of judgment against plaintiff S.N. ("Plaintiff"). Plaintiff filed the instant motion to strike or tax costs.

If the items on a verified memorandum of costs appear to be proper charges, the memorandum is prima facie evidence of their propriety and the burden is on the party contesting them to show that they were not reasonable or necessary. (*Hooked Media Group, Inc. v. Apple Inc.* (2020) 55 Cal.App.5th 323, 338.) The losing party does not meet this burden by arguing that the costs were not necessary or reasonable but must present evidence to prove that the costs are not recoverable. (*Litt v. Eisenhower Med. Ctr.* (2015) 237 Cal.App.4th 1217, 1224.) If the claimed items are not expressly allowed by statute and are objected to by a motion to tax costs, the burden of proof is on the party claiming them as costs to show that the charges were reasonable and necessary. (*Foothill-De Anza Community College Dist. v. Emerich* (2007) 158 Cal.App.4th 11, 29.)

Here, costs are sought as follows.

LINE 1 – Filing and motion fees	$	447.06
LINE 2 – Jury Fees	$	150.00
LINE 4 – Deposition Costs	$	4,415.03
LINE 5 – Service of process	$	460.00
LINE 8 – Witness fees	$	20,694.50
LINE 15 – Other	$	7,647.40
TOTAL	$	33,813.99

The court initially notes that Plaintiff does not challenge LINE 2. Accordingly, the motion to strike costs is denied. Plaintiff otherwise objects to several entries as follows.

As to LINE 1, Plaintiff submits that of the $447.06 claimed, $239.85 should be taxed. Plaintiff submits that CourtCall expenses, notices of remote appearances, or notices of

entry of judgment in duplicate are not reasonable. Telephonic costs are disallowed. (Code Civ. Proc., § 1033.5, subd. (b)(3); *see also id.*, § 367.6 [repealed 2022].) The filing cost of a notice of remote appearance is allowed. (Code Civ. Proc., § 1033.5, subd. (a)(4).) Defendant concedes a duplicate entry as to the filing of a notice of entry of judgment.[1] The motion to tax costs is granted in part as to LINE 1, in the amount of $233.90.

As to LINE 4, Plaintiff submits that of the $4,415.03 claimed, $1,220.63 should be taxed. Plaintiff submits that medical records that were the product of deposition subpoenas for business records were actually trial preparation materials and therefore photocopying costs. Business records deposition subpoenas are depositions within the meaning of the Civil Discovery Act. (*Naser v. Lakeridge Athletic Club* (2014) 227 Cal.App.4th 571, 578 ["We agree that obtaining business records through a deposition subpoena is a 'deposition' within the plain meaning of the Civil Discovery Act."]) The records submitted appear to be business records from Baart Cartwright Avenue Clinic; David M. Cardona, M.D.; and Center Learning Adult School Site. The motion to tax costs is denied as to these entries. Defendant otherwise concedes that the $850.76 in costs related to Defendant's motion for summary judgment were not incurred. The motion to tax costs is granted in part as to LINE 4, in the amount of $850.76.

As to LINE 5, Plaintiff submits that the entirety of the $460.00 should be taxed. Plaintiff submits that Defendant charged for hand delivery of its motion for summary judgment, despite the parties' agreement to free electronic service. Defendant submits confusion as to physical addresses for counsel for Plaintiff. Defendant submits that in an abundance of caution due to the unorthodox addresses, Defendant elected for hand delivery service. Defendant also served the motion by electronic service. It appears that personal service was a convenience. The motion to tax costs is granted as to LINE 5 in its entirety, for $460.00.

As to LINE 8, Plaintiff submits that the entirety of the $20,694.50 should be taxed. Plaintiff submits that Defendant charged its expert fees. Fees of experts are only recoverable to the extent they are ordered by the court. (Code Civ. Proc., § 1033.5, subd. (a)(8).) Fees of experts are otherwise not recoverable. (*Id.*, § 1033.5, subd. (b)(1).) Here, the memorandum of costs does not identify any basis for the seeking of expert fees. Accordingly, Plaintiff's moving burden is met in challenging the presumption of the reasonableness of the costs submitted, and the burden shifts to Defendant.

The parties acknowledge that a Code of Civil Procedure section 998 offer was made. Defendant submits an Offer to Compromise pursuant to Code of Civil Procedure section 998. (Berger Decl., ¶ 6, and Ex. E thereto.) The offer is dated December 13, 2024. (*Ibid.*) The memorandum of costs report the work by Suzanne M. Dupree, M.D. occurred after January 13, 2025. Defendant further submits invoices from Dr. Dupree that post-dates January 13, 2025, with the exception of 1 hour, dated January 10, 2025. (*Id.*, Ex. G.) The hours appear to comport with the report of 21.05 hours of specifically work product, as well as 2.5 hours of travel time. Defendant sufficiently submits evidence to support a finding of the reasonableness of the expert fees incurred. The motion to tax costs as to LINE 8 is denied.

[1] Defendant's Request for Judicial Notice is denied.

As to LINE 15, Plaintiff submits that the entirety of the $7,647.40 should be taxed. LINE 15 seeks mediation fees in the amount of $7,000.00 constituting Defendant's share of the mediator fees, and a room fee for the mediation of $647.40. No statute authorizes mediation fees. The presumption is sufficiently rebutted on its face and the burden shifts to Defendant to demonstrate that the costs are recoverable. Defendant appears to suggest that mediation fees were reasonable and necessary to the litigation. (*Ladas v. Cal. State Auto. Assn.* (1993) 19 Cal.App.4th 761, 774.) Accordingly, the legal basis for the claim for mediation costs are discretionary. (*Id.*; Code Civ. Proc., § 1033.5, subd. (c)(4).) A discretionary award of costs is determined based on the facts and circumstances. (*Berkeley Cement, Inc. v. Regents of the Univ. of Cal.* (2019) 30 Cal.App.5th 1133, 1143 ["*Berkeley*"].)

Defendant only submits that mediation occurred while Defendant's motion for summary judgment was pending, and there was substantial risk to both sides. Defendant otherwise merely remarks that the fact both parties paid their share of mediation costs is not relevant to recovery of those costs.

The court finds that Defendant fails its burden to demonstrate a discretionary basis. Defendant recognizes through the cases cited that "[e]ncouraging the parties to resolve lawsuits at the earliest time and before a costly and time-consuming trial, is a necessary part of litigation as conducted in this state." (*Berkeley*, *supra*, 30 Cal.App5th at pp. 1142-1143 [internal citations omitted].) Mediation likely occurs only where the parties believe there is a realistic potential for reaching a settlement of the litigation. (*Id.* at p. 1141.) As Plaintiff suggests in the moving papers, to charge the costs of mediation against the losing party would disincentive the parties from participation. Unlike arbitration, a mediation does not necessarily result in a disposition. It is a risk borne equally by both parties, in good faith, to avoid the costs of trial. While the court acknowledges the importance and the benefits to alternative dispute resolution, the motion to tax costs is granted as to LINE 15 in its entirety, for $7,647.40.

Based on the above, the motion to tax costs is granted in part, and the court taxes a sum total of $9,192.06.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 03/17/26.
(Judge's initials) (Date)