

Tentative Rulings for March 26, 2026
Department 403

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.

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(03)

Tentative Ruling

Re: **Miller v. Westmont Living, Inc.**
Case No. 24CECG05582

Hearing Date: March 26, 2026 (Dept. 403)

Motion: Defendant's Petition to Compel Arbitration and Stay Proceedings

Tentative Ruling:

To grant defendant Westmont Living, Inc.'s petition to compel arbitration and stay proceedings.

Explanation:

Under the Federal Arbitration Act (the FAA), "A written provision in ... a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract..., or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, ... shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract or as otherwise provided in chapter 4." (9 U.S.C.A. § 2 (West).)

"The FAA was designed 'to overrule the judiciary's long-standing refusal to enforce agreements to arbitrate,' and to place such agreements "'upon the same footing as other contracts.'" While Congress was no doubt aware that the Act would encourage the expeditious resolution of disputes, its passage 'was motivated, first and foremost, by a congressional desire to enforce agreements into which parties had entered.' Accordingly, we have recognized that the FAA does not require parties to arbitrate when they have not agreed to do so, nor does it prevent parties who do agree to arbitrate from excluding certain claims from the scope of their arbitration agreement. It simply requires courts to enforce privately negotiated agreements to arbitrate, like other contracts, in accordance with their terms." (*Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University* (1989) 489 U.S. 468, 478, citations omitted.)

The California Arbitration Act (the CAA) also embodies a public policy in favor of enforcing valid agreements to arbitrate disputes. Under California Code of Civil Procedure section 1281.2, "[o]n petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party thereto refuses to arbitrate such controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists, unless it determines that: (a) The right to compel arbitration has been waived by the petitioner; or (b) Grounds exist for the revocation of the agreement. (c) A party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact." (Cal. Code Civ. Proc., § 1281.2, paragraph breaks omitted.)

“[W]hen a petition to compel arbitration is filed and accompanied by prima facie evidence of a written agreement to arbitrate the controversy, the court itself must determine whether the agreement exists and, if any defense to its enforcement is raised, whether it is enforceable. Because the existence of the agreement is a statutory prerequisite to granting the petition, the petitioner bears the burden of proving its existence by a preponderance of the evidence. If the party opposing the petition raises a defense to enforcement - either fraud in the execution voiding the agreement, or a statutory defense of waiver or revocation (see § 1281.2, subds. (a), (b)) - that party bears the burden of producing evidence of, and proving by a preponderance of the evidence, any fact necessary to the defense.” (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal. 4th 394, 413.) Thus, in ruling on a motion to compel arbitration, the court must first determine whether the parties actually agreed to arbitrate the dispute, and general principles of California contract law guide the court in making this determination. (*Mendez v. Mid-Wilshire Health Care Center* (2013) 220 Cal.App.4th 534.)

Here, defendant has met its initial burden of showing that there was a valid agreement to arbitrate any disputes arising out of defendant's provision of care and services to decedent Janice Miller, including claims for personal injury and wrongful death. Plaintiff Christine Miller, who is the daughter and representative of Janice with durable power of attorney, signed the arbitration clause when Janice was admitted to defendant's facility on November 30, 2023. (Exhibit A to Petition to Compel Arbitration, Residency Agreement, Appendix N, Arbitration Clause, pp. 61-63.) The agreement expressly covers “any and all claims or disputes arising from or related to this Agreement or to your rights, obligations, care, or services at Westmont of Fresno” and states that such claims “shall be resolved by submission to neutral, binding arbitration in accordance with the Federal Arbitration Act. This agreement to arbitrate ... includes, without limitation, personal injury and wrongful death claims.” (*Id.* at p. 61, ¶ 1.) In addition, the agreement expressly provides that the FAA shall apply to the parties' agreement, unless the FAA does not permit arbitration, in which case “the matter shall be arbitrated in accordance with State law.” (*Ibid.*)

In addition, the agreement states that, “[u]nless excluded under subsection 2 of this Arbitration Clause [which excludes unlawful detainer claims, claims that may be brought in small claims court, and landlord-tenant claims], all claims relating to this Agreement or to your rights or obligations at Westmont of Fresno, including but not limited to claims involving the provision of care or services, shall be subject to arbitration.” (*Id.* at ¶ 3.) “By agreeing to this Arbitration Clause, the parties give up their constitutional right to have any such dispute decided in a court of law before a judge or jury, and instead accept the use of arbitration.” (*Id.* at ¶ 4.) Furthermore, “[a]fter termination of this Agreement, this Arbitration Clause shall remain in effect for the resolution of all claims and disputes that are unresolved as of that date.” (*Id.* at ¶ 9.)

Therefore, defendant has met its initial burden of showing that there is a valid arbitration clause that covers the types of claims brought by plaintiffs here, including claims for wrongful death and elder neglect or abandonment. Defendant has also shown that the FAA applies to the plaintiffs' claims, as the agreement clearly states several times that the FAA will apply to the claims unless the FAA does not permit

arbitration, in which case State law shall apply. As a result, the court will apply the FAA here in determining whether to compel arbitration.

Plaintiffs do not deny that Christine Miller signed the arbitration clause, or that she had authority to sign the agreement on behalf of her mother. However, plaintiffs argue that they have also brought their own personal claims for wrongful death, which are separate from the claims for elder abuse and survivorship brought on behalf of their mother. Since they did not sign the agreement in their own personal capacities, plaintiffs contend that they never agreed to arbitrate their claims and they cannot be compelled to arbitration. Also, because their claims cannot be compelled to arbitration, plaintiffs argue that the court should decline to send their mother's survivor claims to arbitration as well in order to avoid the risk of inconsistent rulings of fact and law. (Code Civ. Proc., § 1281.2, subd. (c).) Thus, they conclude that the court should deny the entire petition to compel arbitration.

Here, since plaintiffs Christine Miller and Kevin Miller did not sign the arbitration clause on their own behalf, and Kevin did not sign the agreement at all, they would normally not be required to arbitrate their claims. "Although '[t]he law favors contracts for arbitration of disputes between parties', 'there is no policy compelling persons to accept arbitration of controversies which they have not agreed to arbitrate'" (*Victoria v. Superior Court* (1985) 40 Cal.3d 734, 744, citations omitted.) Thus, an agreement to arbitrate disputes of a resident of a nursing home or assisted living facility does not usually bind a third party heir of the resident to arbitrate their claim for wrongful death of the resident. (*Daniels v. Sunrise Senior Living, Inc.* (2013) 212 Cal.App.4th 674, 680-681; *Avila v. Southern California Specialty Care, Inc.* (2018) 20 Cal.App.5th 835, 845.)

Likewise, here Christine Miller only signed the arbitration clause in her capacity as the representative of her mother, not in her personal capacity. Kevin Miller never signed the agreement at all. There is no evidence that either Christine or Kevin ever agreed to arbitrate their personal claims for wrongful death of their mother. Thus, their wrongful death claims would normally not be subject to arbitration, as they did not agree to arbitrate them.

Nevertheless, defendant argues that all of the plaintiffs' claims should be sent to arbitration, as Code of Civil Procedure section 1295, which is part of MICRA, applies here and requires arbitration where there is an agreement to arbitrate a patient's medical malpractice claims.

In *Ruiz v. Podolsky* (2010) 50 Cal.4th 838, the California Supreme Court held that "section 1295, construed in light of its purpose, is designed to permit patients who sign arbitration agreements to bind their heirs in wrongful death actions." (*Id.* at p. 849.) However, *Ruiz's* holding only applies where the decedent's heirs are bringing a wrongful death claim based on professional negligence. (*Ibid.*) Where the plaintiffs' claims are based on elder abuse or neglect as opposed to medical malpractice, section 1295 does not apply and the nonsignatory plaintiffs cannot be compelled to attend arbitration. (*Avila v. Southern California Specialty Care, Inc.*, *supra*, 20 Cal.App.5th at pp. 841-842; *Daniels v. Sunrise Senior Living*, *supra*, 212 Cal.App.4th at p. 682.)

“What matters is not the license status of the defendant, but the basis of the claims as pleaded in the complaint. If the primary basis for the wrongful death claim sounds in professional negligence as defined by MICRA, then section 1295 applies. If, as plaintiffs claim here, the primary basis is under the Elder Abuse and Dependent Adult Civil Protection Act (Welf. & Inst. Code, § 15600 et seq.) (the Act), then section 1295 does not apply and neither does *Ruiz*’s exception to the general rule that one who has not consented cannot be compelled to arbitrate.” (*Avila, supra*, at p. 842.)

The California Supreme Court in *Holland v. Silverscreen Healthcare, Inc.* (2025) 18 Cal.5th 364 recently agreed with the *Avila* court’s holding that section 1295 only applies to medical malpractice claims, not elder abuse claims. However, the Supreme Court clarified that a court ruling on an arbitration motion must examine the facts in the complaint carefully to determine what type of claim is actually being alleged. If the facts alleged in the complaint show that the claim is for elder abuse rather than medical malpractice because the gravamen of the claim is failure to fulfill custodial duties rather than failure to provide health care services, then section 1295 does not apply. (*Id.* at p. 380.) “The failure to provide basic necessities, such as assistance in personal hygiene, food, hydration, or clothing, are paradigmatic examples of a failure to fulfill custodial duties. The same is true of a failure to provide an adequate and habitable living space or protect from routine safety hazards. Similarly, a failure of staff to attend to, monitor, or assist a resident in obtaining appropriate medical care generally falls on the custodial side of the line because such omissions involve ‘not ... the undertaking of medical services, but ... the failure to provide medical care.’” (*Id.* at p. 380, citations omitted.) “In the context of a skilled nursing facility, the operative question is whether such duties are owed by virtue of being a medical services provider or by virtue of being the custodian of a dependent adult. Claims premised on the manner in which skilled nursing or other long-term care facilities protect the basic welfare and safety of residents fall outside the scope of section 1295(a), and thus outside the scope of *Ruiz*.” (*Id.* at p. 381.)

The Supreme Court also stated that, “[n]ot every claim of neglect against a long-term nursing facility — not even neglect that takes the form of failure to prevent falls or infection — will qualify as a claim of medical malpractice subject to *Ruiz*. The critical question remains whether the complaint alleges negligent acts or omissions by ‘health care providers in their capacity as providers’ rather than ‘against custodians and caregivers ... that may or may not, incidentally, also be health care providers.’” (*Id.* at p. 382, citations omitted, italics in original.)

More recently, in *Faiaipau v. THC-Orange County, LLC* (2025) 117 Cal.App.5th 292, the Court of Appeal held that plaintiffs’ wrongful death claims were based on professional negligence rather than elder abuse or neglect, and thus section 1295 applied and their claims should be compelled to arbitration despite the fact that they had not personally agreed to arbitrate their claims. The plaintiffs alleged that their mother died because defendant allowed her ventilator to become disconnected. (*Id.* at p. 305.) “We have little difficulty concluding that failing to monitor and reconnect a ventilator is professional negligence, not custodial neglect... The provision of a ventilator to assist a patient with breathing to maintain the patient’s life is, on its face, medical care, not a custodial act incidental to medical care.” (*Ibid*, citations omitted.) “Because Kindred’s alleged failure to monitor Ana’s ventilator that led to her death involved medical and not custodial care, the trial court erred by not ordering Jennifer and

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Tentative Ruling

Re: **Magallen v. Chandler**
Superior Court Case No. 21CECG03582

Hearing Date: March 26, 2026 (Dept. 403)

Motion: By Defendants for Terminating Sanctions

Tentative Ruling:

To deny the request for terminating sanctions. To impose monetary sanctions in the amount of \$1,650 to be paid within 30 days of the clerk's service of the minute order.

Explanation:

Once a motion to compel discovery is granted, continued failure to comply may support a request for more severe sanctions. Code of Civil Procedure section 2023.010, subdivision (g), makes "[d]isobeying a court order to provide discovery" a "misuse of the discovery process," but sanctions are only authorized to the extent permitted by each discovery procedure. For failure to obey the court's discovery orders, the court may:

"[M]ake those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of or in addition to that sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010)..."

(Code Civ. Proc. §§ 2025.450, subd. (d) [depositions]; 2030.290, subd. (c) [interrogatories]; and 2031.300, subd. (c) [production demands].) Factors relevant to determining which sanction is appropriate include:

1. The time which has elapsed since the discovery was served;
2. Whether the party received extensions of time to answer;
3. The amount of discovery propounded;
4. The importance of the discovery sought;
5. Whether the party failing to answer acted in good faith and with reasonable diligence (i.e. whether he or she was aware of the duty to furnish the requested information and had the ability to do so);
6. Whether answers were supplied that were evasive or incomplete;
7. The amount of unanswered discovery remaining;
8. Whether the unanswered discovery requested information that was difficult to obtain;
9. The existence of prior discovery orders and the responding party's compliance with those prior orders;
10. Whether the responding party was unable to comply with prior discovery orders;
11. Whether an order allowing more time to answer would enable the responding party to comply; and

12. Whether a sanction short of dismissal or default would be appropriate to the dereliction.

(Weil & Brown, California Practice Guide: Civil Procedure Before Trial (The Rutter Group 2022), ¶ 8:2205, citing *Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 796.)

Sanctions are supposed to further a legitimate purpose under the Discovery Act, i.e. to compel disclosure so that the party seeking the discovery can prepare their case, and secondarily to compensate the requesting party for the expenses incurred in enforcing discovery. Sanctions should not constitute a “windfall” to the requesting party; i.e. the choice of sanctions should not give that party more than would have been obtained had the discovery been answered. (Weil & Brown, *supra*, at ¶ 8:2212.) “The sanctions the court may impose are such as are suitable and necessary to enable the party seeking discovery to obtain the objects of the discovery he seeks but the court may not impose sanctions which are designed not to accomplish the objects of the discovery but to impose punishment.” (*Caryl Richards, Inc. v. Superior Court* (1961) 188 Cal.App.2d 300, 304.)

On March 11, 2025, defendants served Requests for Production on plaintiffs. (Holappa Decl., ¶ 2.) Several extensions were granted such that responses were due by May 26, 2025. (Ibid.) On May 28, 2025, responses were served late and were deficient. (Id. at ¶ 3.) Defense counsel sent a meet and confer letter on June 20, 2025 noting that documents were not produced for response numbers 23, 24, and 26. (Ibid.) Follow up emails were sent on four occasions in June and July of 2025. (Id. at ¶ 4.) On July 11, 2025, plaintiffs' counsel responded that the documents would be produced by July 16, 2025. (Ibid.) On July 16, 2025, defense counsel followed up again and plaintiffs' counsel requested an extension to July 29, 2025, which was granted. (Id. at ¶ 5.) On July 28, 2025, plaintiffs' counsel produced documents without amending the responses to reflect which documents were responsive to which request. (Id. at ¶ 6.) On August 5, 2025, the parties agreed to an extension of time for any motion to compel and plaintiffs' counsel was to respond to the meet and confer in the next couple of days. (Id. at ¶ 7.) Defense counsel followed up on August 13 and 15, 2025, but did not receive a response. (Ibid.) On August 19, 2025, counsel filed a Request for Pretrial Discovery Conference, which was granted. (Id. at ¶ 8.) The Conference was held on October 3, 2025 and plaintiffs' counsel agreed to amend the responses. (Ibid.) On October 14 and 27, 2025, defense counsel followed up, but did not receive a response. (Id. at ¶¶ 9-10.) On October 31, 2025, defendants filed a motion to compel further responses. On December 4, 2025, the court ordered plaintiffs Sonya Pierce, Maria “Coco” Magallen, and Otis Pierce to provide further responses to Requests for Production of Documents, Set Two, request numbers 23, 24, and 26. (Minute Order, December 4, 2025.) The court also ordered plaintiffs to pay \$1,200 in sanctions to opposing counsel. (Ibid.) As of the reply, filed March 19, 2026, neither the amended responses nor the sanctions have been received.

Despite this, the Court is not inclined at this time to implement the severe sanction of terminating sanctions. The Court is awarding the lesser sanction of monetary sanctions in the amount of \$1,650. Plaintiffs' assertion that they have provided sufficient discovery is inaccurate and there is no excuse for their failure to comply with this Court's previous orders. The Court confirms its December 4, 2025 order for plaintiffs to amend the responses to Requests for Production, Set Two, request numbers 23, 24, and 26; and

