Tentative Rulings for April 30, 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.***

24CECG01765 ***G. Simon Bachir v. William Etiz, D.O.*** **(Dept. 502)**

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

25CECG04350 ***Borton Petrini, LLP v. Muhammad Arshad*** **is continued to Thursday, May 28, 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: ***Pentamerous, LLC v. Priest***
Case No. 21CECG02205

Hearing Date: April 30, 2026 (Dept. 502)

Motion: Plaintiff's Motion for Reconsideration of Order Granting Motion to Expunge the Lis Pendens

Plaintiff's Motions to Compel Further Responses to Special Interrogatories and Requests for Production of Documents

Tentative Ruling:

To deny plaintiff's motion for reconsideration of the order granting the motion to expunge lis pendens. To deny plaintiff's motions to compel further responses to special interrogatories and requests for production of documents. To grant sanctions against plaintiff and in favor of Dr. Barnett, in the amount of $1,212.50. Plaintiff shall pay sanctions to Dr. Barnett's counsel within 30 days of the date of service of this order.

Explanation:

Motion for Reconsideration: Under Code of Civil Procedure section 1008, subdivision (a), a party moving for reconsideration of a court order must show that there are "new or different facts, circumstances, or law" that justify reconsideration of the order. (Code Civ. Proc. § 1008, subd. (a).) "The party making the application shall state by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown." (Code Civ. Proc. § 1008, subd. (a).) Failure to submit an affidavit that complies with the requirements of section 1008(a) renders the motion invalid and deprives the court of jurisdiction to hear the motion. (*Branner v. Regents of University of California* (2009) 175 Cal.App.4th 1043, 1048.)

"Section 1008's purpose is '"'to conserve judicial resources by constraining litigants who would endlessly bring the same motions over and over, or move for reconsideration of every adverse order and then appeal the denial of the motion to reconsider.'" To state that purpose strongly, the Legislature made section 1008 expressly jurisdictional…" (*Id*. at pp. 839–840.) Thus, failure to comply with the requirement of demonstrating new facts, circumstances, or law requires denial of a motion for reconsideration. (*Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1104.)

In the present case, plaintiff moves for reconsideration based on "new facts", namely two declarations that it claims it was unable to present in time for the last hearing on the motion to expunge. One of the declarations is from Virginia Shubin Barnett and the other is from Candice Scelzi. Plaintiff contends that these newly obtained declarations show that Virginia did in fact execute the Virginia Shubin Barnett Living Trust,

which is the Trust that allegedly sold the subject properties to plaintiff, and that she authorized Tonie Priest to act as the Trustee in the event that she became incapacitated. Plaintiff also claims that Virginia's declaration shows that Priest was a longtime friend of hers and that she freely gave him control over the Trust if she became incapacitated. Scelzi's declaration also allegedly shows that she found that Virginia had become incapacitated, and that she informed Priest of this fact in writing, so Priest was authorized to sell the properties to plaintiff on behalf of the Trust. Thus, plaintiff contends that the court should grant reconsideration of the order granting the motion to expunge.

However, to the extent that plaintiff relies on Scelzi's declaration as a "new fact" supporting reconsideration, plaintiff admits that it filed Scelzi's declaration with the court prior to the court issuing its decision on the motion to expunge. Plaintiff filed the Scelzi declaration on December 11, 2025, the same day that the court heard oral argument on the motion. Thus, Scelzi's declaration is not a "new fact" that would justify reconsideration, as it was presented to the court before the hearing on the motion to expunge. The court considered the declaration and determined that it was insufficient to meet plaintiff's burden of showing that its real property claim was probably valid. Therefore, the court finds that Scelzi's declaration is not a "new fact" that justifies reconsideration of its decision.

Also, even if Scelzi's declaration is a new fact, the court finds that the declaration fails to show that plaintiff's claim is probably valid. (Code Civ. Proc., § 405.32.) Scelzi purports to verify that Priest was a longtime friend of Virginia, that she witnessed the creation of the Trust, and that she later determined that Virginia was incompetent and informed Priest of Virginia's incompetence in writing. However, Scelzi's statements are directly contradicted by Virginia's own verified answer and declaration filed in the case in October of 2021, where she denied forming the Trust or making Priest Successor Trustee, and claimed that she does not know and has never met Priest. (See Virginia Shubin Barnett decl. filed October 12, 2021, and verified answer filed October 27, 2021.) Also, Priest has admitted that Scelzi is his current or former girlfriend, and he stated in a social media post that he is engaged to Scelzi. (Exhibit A to Streiff decl.; Exhibit A to Mireles decl., p. 17.) Given Priest's own credibility problems and his obvious personal interest in having the Trust declared to be valid, and in light of his apparently intimate relationship with Scelzi, as well as the fact that her statements are contradicted by Virginia's own sworn statements, the court intends to find that Scelzi's declaration is not credible and does not support reconsidering the decision to expunge the lis pendens.

Next, while the alleged new declaration of Virginia does qualify as a "new fact", the court finds that it lacks credibility and fails to support reconsideration of the court's prior order. First, the new declaration completely contradicts Virginia's prior declaration and verified answer filed in October of 2021. As mentioned above, Virginia previously stated that she did not execute the Trust, that the Trust is fraudulent, and that she did not transfer her properties into the Trust. She also denied ever meeting or knowing Priest, and denied that she designated him as Successor Trustee for the Trust. (Virginia Shubin Barnett decl. of October 12, 2021, ¶¶ 17- 23.) She made similar statements in her verified answer to the complaint. (Verified Answer filed October 27, 2021.)

However, in her new purported declaration, Virginia states that she did execute the Trust, and that she has known Priest for many years and that she designated him as Successor Trustee in the event she became incapacitated. (Virginia Shubin Barnett decl. filed on January 5, 2026, ¶¶ 2, 3.) She also claims that her signatures appear on the

transfers of properties into the Trust. (*Id*. at ¶ 4.) She admits that she did sign the declaration to support the motion to expunge lis pendens in 2021, but she now claims that she did not review or understand the contents of the declaration, and that she was financially pressured into signing by Global Discoveries, which was paying her legal fees at the time. (*Id*. at ¶ 6.) She felt pressured and taken advantage of by Global Discoveries, and she eventually abandoned any involvement in the case because of the pressure. (*Ibid*.) "To the extent that there are any discrepancies between this declaration and the 2021 Declaration, this declaration should govern." (*Ibid*.)

Yet there are several reasons why Virginia's new declaration is not credible and therefore the court intends to disregard it. First, the court has already found that Virginia is incompetent, which renders any statements that she makes now suspect, especially since she is no longer represented by counsel. Plaintiff's owners, Ruben and Alec Mireles, claim that they located Virginia and obtained her declaration, but they do not state how they located her or how they persuaded her to provide them with a declaration that appears to help them at her expense. There appears to be a real possibility that they might have pressured her into a signing a declaration that favors them, and that contradicts her prior declaration.

Also, while Virginia has now claimed that she was pressured into signing the October 2021 declaration by Global Discoveries, which was allegedly funding her defense, Virginia's former attorney, Jordan Bennett, has denied that Global Discoveries funded Virginia's defense or that it exerted any pressure or had any influence on her declaration. (Bennett decl., ¶¶ 1-7.) Bennett drafted the declaration for Virginia, and he states that she had an adequate opportunity to review the declaration and raise any questions or concerns with him. (*Id*. at ¶ 2.) He has no concerns that her declaration was improperly influenced or coerced in any way. (*Ibid*.) He did not share her declaration with anyone other than Virginia before it was filed, and therefore he has no reason to believe that there was any outside influence on her declaration. (*Id*. at ¶ 3.) Global Discoveries and Andrew Katakis had no dealings with Bennett, and Virginia never mentioned Katakis or Global Discoveries at any time during his representation of her. (*Id*. at ¶ 4.) Bennett also states that Virginia was personally responsible for paying her legal bills, and he has no knowledge of any third-party payors or guarantors involved in the representation. (*Id*. at ¶ 5.) In fact, Bennett eventually withdrew from his representation of Virginia because she was not paying for his services, among other reasons. (*Id*. at ¶ 6.) Thus, Bennett concludes that neither Katakis nor Global Discoveries was involved in Virginia's defense. (*Id*. at ¶ 7.)

Katakis and Byerly have also filed their own declarations, in which they deny paying for or being involved in Virginia's defense at the time the declaration was filed. They deny any knowledge of the declaration before it was filed, and deny that they had any influence or what Virginia said in the declaration.

Thus, there is strong evidence that Virginia was not unduly influenced or coerced by Katakis or Global Discoveries into signing the declaration that she signed in October of 2021. Also, Virginia's verified answer repeats many of the same statements made in her declaration, including that the Trust is fraudulent and that she did not intend to authorize anyone to transfer the properties without her knowledge and consent. Plaintiff has not provided any explanation for why Virginia would made these statements under penalty of perjury if they were not true, especially when she was represented by counsel and she was paying for her own defense at the time. It seems far more likely that her

new declaration is false or the product of undue influence, as she is now unrepresented and incompetent and thus easier to manipulate into signing a false declaration.

In addition, plaintiff has submitted the declaration of a forensic document examiner, Sean Espley. Espley states that, based on his comparison of the signature on the purported Trust, the Last Will and Testament, the assignments of property dated August 4, 2010, the quitclaim deed from Virginia to Priest, and Virginia's new declaration with other examples of her signature, there is strong evidence that Virginia did not sign the questioned documents. (Espley decl., ¶ 6.) He believes that it is more likely than not that someone other than Virginia signed the new declaration and the Trust documents. (*Id*. at ¶¶ 6-9.)

As a result, the court intends to find that Virginia's new declaration is not credible, as it is contradicted by her own prior declaration and verified answer, and the new declaration does not provide a credible explanation for the complete change in her position. While the new declaration claims that Virginia was pressured by Global Discoveries into signing the October 2021 declaration, this claim is rebutted by the testimony of Virginia's former counsel as well as the agents of Global Discoveries. Indeed, it seems much more likely that the new declaration is the product of undue influence or coercion, as Virginia is now unrepresented by counsel and incompetent to manage her own affairs. The testimony of the forensic document examiner also supports the conclusion that Virginia did not sign the new declaration. Therefore, the court intends to disregard Virginia's new declaration.

Without the new declaration, there are no "new facts" to support the motion for reconsideration. The other evidence that plaintiff cites in its motion are documents and evidence that the court has already considered and rejected as irrelevant, such as the alleged texts from Katakis to Priest and the filings in the prior unlawful detainer action filed by Dr. Barnett against Virginia. None of this evidence is new, and in any event it has no bearing on whether plaintiff has a probability of prevailing on its real property claims. Therefore, the court intends to deny the motion for reconsideration.

Motions to Compel Further Responses: The court also intends to deny plaintiff's motions to compel further responses to the special interrogatories and requests for production of documents. The motions were not timely filed, so the court has no jurisdiction to consider them. Under Code of Civil Procedure section 2030.300, subdivision (c), "Unless notice of this motion is given within 45 days of the service of the verified response, or any supplemental verified response, or on or before any specific later date to which the propounding party and the responding party have agreed in writing, the propounding party waives any right to compel a further response to the interrogatories." There is an identical 45-day deadline to bring motions to compel further responses to requests for production of documents. (Code Civ. Proc., §§ 2031.310, subd. (c)).)

Thus, if the propounding party fails to bring their motion to compel further responses within 45 days of service of the responses, or any later date agreed to in writing by the parties, the party waives any right to move to compel a further response to the disputed requests. The 45-day deadline to bring a motion to compel is mandatory. The court has no jurisdiction to grant a motion brought after the deadline has run, and such an untimely motion must be denied. (*Golf & Tennis Pro Shop, Inc. v. Superior Court* (2022) 84 Cal.App.5th 127, 137; *Vidal Sassoon, Inc. v. Superior Court* (1983) 147 Cal.App.3d 683.)

Here, Dr. Barnett served his responses to the discovery on October 21, 2025 by electronic delivery and regular United States mail. (Exhibits C and D to Yeager decl.) Thus, plaintiff had 47 days from October 21, 2025 in which to file its motions to compel further responses. There is no evidence that the parties ever agreed in writing to extend the filing deadline.

On the other hand, the running of the deadline for filing the motions was tolled from the date of filing of plaintiff's request for pretrial discovery conference until the court ruled on the request. (Fresno Sup. Ct. Local Rule 2.1.17 G.) The court issued its order denying the request for a pretrial discovery conference and granting leave to file the motions on December 10, 2025. The court also stated in its order that the time to file the motions had been tolled by 15 days. (December 10, 2025 Order Denying Pretrial Discovery Conference.) Thus, plaintiff had until December 22, 2025 in which to file its motions to compel further responses to the discovery.

However, plaintiff did not file its motions to compel further responses until January 5, 2026, two weeks after the deadline expired. While the court was partially closed due to reduced staffing during the holidays, the clerk's office was still accepting filings on December 22, 2025. Therefore, since plaintiff did not file its motions until January 5, 2026, its motions are untimely and the court has no jurisdiction to hear their merits.

Finally, the court intends to grant sanctions in favor of Dr. Barnett, as plaintiff has brought an untimely motion to compel without any substantial justification. (Code Civ. Proc., § 2030.300, subd. (d); 2031.310, subd. (h).) The court will grant sanctions in favor of Dr. Barnett and against plaintiff in the amount of $1,212.50 based on two and a half hours of attorney time billed at $485 per hour. (Streiff decl., ¶ 7.)

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 04/27/26.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Nicole Rodriguez Jimenez v. Camilla Marquez, M.D.***
Superior Court Case No. 25CECG01250

Hearing Date: April 30, 2026 (Dept. 502)

Motion: Demurrer to First Amended Complaint

Tentative Ruling:

To sustain the demurrer as to the Second Cause of Action of the First Amended Complaint, with leave to amend. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiffs are granted fifteen (15) days leave to file a Second Amended Complaint. The time in which the complaint may be amended will run from service of the order by the clerk.

Explanation:

Defendant Saint Agnes Medical Center ("defendant") demurs to the Second Cause of Action for Lack of Informed Consent raised in the First Amended Complaint[1] filed by plaintiffs Nicole Rodriguez Jimenez and Jose Rodriguez Jimenez ("plaintiffs"), on the basis of Code of Civil Procedure section 430.10 subdivision (e).

Any Notice Defects Have Been Waived

Plaintiffs in their opposition argue that the Notice of Demurrer stated an incorrect hearing date and department location, and thus should fail on this procedural basis. Defendant on reply argues that plaintiffs' opposition was untimely and should be disregarded.

Ultimately, both parties have waived any notice defects by addressing the merits of the demurrer in their respectively filed opposition and reply. "It is well settled that the appearance of a party at the hearing of a motion and his or her opposition to the motion on its merits is a waiver of any defects or irregularities in the notice of motion." (*Alliance Bank v. Murray* (1984) 161 Cal.App.3d 1, 7, internal citations omitted.) If the opposing party appears at all, they should limit their argument to objections based on the defective notice. Otherwise, the court will treat their opposition on the merits as a waiver of the defects.

Applicable Laws for Demurrers

In determining a demurrer, the court assumes the truth of the facts alleged in the complaint and the reasonable inferences that may be drawn from those facts. (*Miklosy v. Regents of Univ. of Cal.* (2008) 44 Cal.4th 876, 883.) On demurrer, the court must determine if the factual allegations of the complaint are adequate to state a cause of

[1] Defendant's request for judicial notice is granted.

action under any legal theory. (*Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 103.)

On a demurrer, a court's function is limited to testing the legal sufficiency of the complaint. A demurrer is simply not the appropriate procedure for determining the truth of disputed facts. (*Fremont Indemnity Co. v. Fremont General Corp*. (2007) 148 Cal.App.4th 97, 113-114.) It is error to sustain a demurrer where plaintiff "has stated a cause of action under any possible legal theory. In assessing the sufficiency of a demurrer, all material facts pleaded in the complaint and those which arise by reasonable implication are deemed true." (*Bush v. California Conservation Corps* (1982) 136 Cal.App.3d 194, 200.)

A plaintiff is not required to plead evidentiary facts supporting the allegation of ultimate fact; the pleading is adequate if it apprises defendant of the factual basis for plaintiff's claim. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) Stated another way, a plaintiff is required only to set forth the essential facts of his case with reasonable precision and with particularity sufficient to acquaint a defendant with the nature, source, and extent of his cause of action. (*Youngman v. Nevada Irrigation Dist.* (1969) 70 Cal.2d 240, 245.)

Demurrer to Second Cause of Action

Defendant demurs to the Second Cause of Action for Lack of Informed Consent on the grounds that the First Amended Complaint ("FAC") fails to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430, subd. (e).)

Defendant argues that a duty to obtain informed consent belongs to physicians, not the nursing staff, and to provide a patient with informed consent would be outside the scope of their practice. Defendant cites to multiple cases that specify it is a physician's duty to disclose material information and obtain informed consent for medical procedures.

Plaintiffs first contend that in the present case, defendant (through its personnel) engaged in affirmative misrepresentation as opposed to mere nondisclosure. However, the purpose of this argument is unclear. Plaintiffs in their own opposition identify a cause of action for lack of informed consent as arising from the failure to disclose material information necessary for an informed decision. (Opp., 3:10-12.) Plaintiffs have not established that providing misleading information is an element of this cause of action, or why it is relevant here.

Plaintiffs further argue that defendant's staff "participated in the events surrounding the recommendation and administration of the epidural and the communications provided to Plaintiff at that time." (Opp., 4:7-11.) Even if the "formal duty" belonged to the physician, the hospital staff knew critical facts and failed to escalate the patient plaintiff's condition, failed to communicate with plaintiffs, and allowed the procedure to proceed. (*Id*., 4:12-14; 23, 25.)

The FAC loosely alleges that defendant's personnel "recommended and administered an epidural anesthesia procedure to Plaintiff[.]" (FAC, ¶ 31.) This allegation,

when taken as true at the pleading stage, has the potential of creating some type of responsibility, if the decision to perform the procedure fell squarely in the hands of defendant's staff without any physician's involvement (which is not alleged). However, the FAC further alleges that the nurses "failed to advise or warn the anesthesiologist of the absent fetal heart rate, failed to delay the procedure pending confirmation of fetal well-being, and failed to escalate the situation[.]" (FAC, ¶ 31C, emphasis added.) The language of these allegations suggests that the nurses' failures included or were limited to communicating with others in charge of the procedure.

Defendant has cited to multiple cases to support its position that informed consent is an obligation and responsibility of a physician. Plaintiffs have failed to cite to any authorities that impart this responsibility on a hospital's staff. The allegations of the FAC are insufficiently pled to establish a cause of action for lack of informed consent against defendant. Accordingly, the court intends to sustain the demurrer, with leave to amend.

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 04/29/26.
(Judge's initials) (Date)

(47)

Tentative Ruling

Re: ***Green v. Tuff Shed, Inc.***
Superior Court Case No. 25CECG04836

Hearing Date: April 30, 2026 (Dept. 502)

Motion: By Defendant Tuff Shed, Inc. to Compel Arbitration, and Request for Stay

Tentative Ruling:

To grant Tuff Shed, Inc.'s motion to compel arbitration of all of plaintiff Cassandra Danielle Green's individual claims, including her individual Class and Private Attorney General Act ("PAGA") claims; and to stay plaintiff Cassandra Danielle Green's non-individual (representative) class and PAGA claims pending completion of arbitration, is granted. The Court hereby stays the entire action pending resolution of the arbitration proceeding.

Explanation:

On October 14, 2025, plaintiff Cassandra Danielle Green ("Green" or "plaintiff") filed a class action lawsuit alleging various causes of action pertaining to violations of the California Labor Code. Defendant Tuff Shed, Inc., ("Tuff Shed" or "defendant") filed this motion to compel arbitration on December 10, 2025, pursuant to the Federal Arbitration Act. (9 U.S.C. section 1, et seq.)

Legal Standard

A trial court is required to grant a motion to compel arbitration "if it determines that an agreement to arbitrate the controversy exists." (Code Civ. Proc., § 1281.2.) However, there is "no public policy in favor of forcing arbitration of issues the parties have not agreed to arbitrate." (*Garlach v. Sports Club Co.* (2012) 209 Cal.App.4th 1497, 1505) "Thus, in ruling on a motion to compel arbitration, the court must first determine whether the parties actually agreed to arbitrate the dispute." (*Mendez v. Mid-Wilshire Health Care Center* (2013) 220 Cal.App.4th 534, 541.)

The party moving to compel arbitration bears the burden of proving by a preponderance of the evidence the existence of an arbitration agreement. (*Fleming v. Oliphant Financial, LLC* (2023) 88 Cal.App.5th 13, 18; *Lane v. Francis Capital Management LLC* (2014) 224 Cal.App.4th 676, 683.) After the moving party establishes the existence of an arbitration agreement between the parties, then the burden shifts to the opposing party to show that the agreement is otherwise unenforceable. (*Condee v. Longwood Management Corp.* (2001) 88 Cal.App.4th 215, 219.)

Existence of an Agreement to Arbitrate

Tuff Shed argues that the present action is subject to an arbitration dispute. Green began working for Tuff Shed on April 11, 2023. As part of the onboarding process with Tuff Shed, Green received the Arbitration Agreement at onboarding, was able to review and signed indicating she had done so, and returned the Arbitration Agreement via DocuSign. (Holli Hoglund Decl., ¶¶ 6, 9, 11-13.) There was no time limit placed on Green to review and sign the Arbitration Agreement. Green could sign onto Dayforce at any time and take all the time she needed to review the Arbitration Agreement. (Hoglund Decl., ¶ 8.) The Arbitration Agreement was not a condition of employment, and Green had the option to opt-out. (Hoglund Decl., ¶¶ 9-12.) Green electronically signed the arbitration agreement. (Hoglund Decl., ¶13, Ex. A.) That agreement ("Arbitration Agreement") is the subject of this petition.

Because Tuff Shed has adequately established the existence of an Arbitration Agreement that is governed by the FAA, the burden now shifts to Green to establish any defenses to the enforcement of this provision. In opposition, Green argues that arbitration should be denied because the Arbitration Agreement is both procedurally and substantively unconscionable.

Unconscionability

"[P]rocedural and substantive unconscionability must both be present in order for a court to exercise its discretion to refuse to enforce a contract or clause under the doctrine of unconscionability." (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 102.) Courts invoke a sliding scale which disregards the regularity of the procedural process of the contract formation, that creates the terms, in proportion to the greater harshness or unreasonableness of the substantive terms themselves, i.e., the more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to conclude that the term is unenforceable, and vice versa. (*Id*., at pg. 114.) Plaintiff bears the burden of proving that the provision at issue is both procedurally and substantively unconscionable.

Procedural Unconscionability

Green argues that the agreement is procedurally unconscionable because it is a contract of adhesion, and Tuff Shed did not provide Green with a copy of the arbitration rules. A "contract of adhesion" is "a standardized contract, which, imposed and drafted by the party of superior bargaining strength, relegates to the subscribing party only the opportunity to adhere to the contract or reject it." (*Armendariz*, *supra,* 24 Cal.4th at 113.)

Green cites *Haydon v. Elegance at Dublin* (2023) 97 Cal.App.5th 1280 ("*Haydon*"), where it the court held as procedurally unconscionable that a skilled nursing facility buried the arbitration provision "as the last of over 20 unrelated "miscellaneous" provisions spanning several pages at the end of the agreement," and did not explain the opt-out provision or procedure to the resident when the agreement was being signed. (*Id*. at p. 1288.) Green argues that her case is similar to *Haydon* where she was required to click on boxes on a computer as a condition of starting her employment, she was placed in front of a computer to sign the documents and "reasonably believed that failure to sign-even to request clarification would result in not being hired." (Green Decl., ¶¶ 4-5.)

However, Green's case is different than *Haydon*. Unlike *Haydon*, the terms of the Arbitration Agreement are not interspersed with numerous miscellaneous provisions. The plain terms of the Arbitration Agreement are very simple. First, the second sentence of the first paragraph states that the employee's signature of the Arbitration Agreement indicates Green was "voluntarily entering into this Agreement" and that she could "opt out if [she did] not wish to participate." (Hoglund Decl., ¶13, Ex. A.) The Arbitration Agreement further states in bolded text two pages later that "[a]cceptance of this Arbitration Agreement is not a mandatory condition of employment at the Company, and therefore an Employee may submit a statement notifying the Company that Employee wishes to opt out and not be subject to mandatory arbitration under this Agreement." (Hoglund Decl., ¶13, Ex. A, section 8.) Immediately thereafter, it outlined in simple terms that Green merely needed to submit a signed and dated letter to the company's general counsel notifying them of her intention to opt out and included the address for mailing. (Hoglund Decl., ¶13, Ex. A, section 8.)

Green further argues that the Arbitration Agreement was procedurally unconscionable where she asserts that the governing rules were not attached to the Arbitration Agreement. Green asserts that she was not provided with any copy of rules, nor was she directed to a website or resource where she could review them. (Green Decl., ¶ 7.) Green argues that as a result of this omission, she did not have a fair opportunity to "understand the scope, procedures, or limitations of arbitration." (Green's Opposition Papers, pg. 4, ln. 27.)

However, Green's contentions are misplaced. The Arbitration Agreement provides for the description of the arbitral process from start to finish, including initiating the arbitration process, the discovery process, payment of arbitration fees, the rules of the hearing itself, and arbitral awards. (Hoglund Decl., ¶13, Ex. A, sections 1-5.)

Accordingly, the Court finds a very low level of procedural unconscionability typical of enforceable employment arbitration agreements.

Substantive Unconscionability

Substantive unconscionability focuses on overly harsh or one-sided results. (*Armendariz, supra*, 24 Cal.4th at p. 114.) Green argues that the Arbitration Agreement is substantively unconscionable because it the Arbitration Agreement lacks mutuality; the Arbitration Agreement is indefinite in time; and because the Arbitration Agreement precludes Green from pursuing an individual Private Attorney General Act claim. Each of these contentions are analyzed in turn.

Mutuality

Green argues that the agreement lacks mutuality under *Cook v. University of Southern California* (2024) 102 Cal.App.5th 312., and is therefore unconscionable. The court in that case found an arbitration agreement lacking in mutuality because: "The agreement requires Cook to arbitrate any and all claims she may have against USC 'or any of its related entities, including but not limited to faculty practice plans, or its or their officers, trustees, administrators, employees or agents, in their capacity as such or otherwise.' However, the agreement does not require USC's 'related entities' to arbitrate

their claims against Cook." (*Id.* at p. 326.) "This confers a benefit on USC and its broadly defined 'related entities' that is not mutually afforded to Cook." (*Id.* at p. 327.)

Green argues that the Arbitration Agreement is one-sided because Green is obliged to arbitrate her claims, (Green's Moving papers, pg. 5, lns. 15-16), but "none of the third party entities, such as affiliates, subsidiaries, related companies or parent companies, do not have the obligation to arbitrate their claims against Plaintiff." (*Id.,* pg. 6, lns. 1-2.)

However, that is not the case, and either party can enforce the Arbitration Agreement:

> "This Agreement applies to any legal dispute arising out of or related to Employee's employment with Tuff Shed, Inc. or one of its affiliates, subsidiaries, related companies or parent companies (the "Company") or termination of employment.
> [. . .]
> I . . UNDERSTAND THAT the Company and I are giving up our rights to a court or jury trial and agreeing to arbitrate claims and disputes covered by THISAgreement [sic]."

(Hoglund Decl., ¶13, Ex. A, Section 1 & Acknowledgment Section.)

Green further argues that the Arbitration Agreement lacks mutuality by analogizing her situation to *Mercuro v. Sup. Ct*. (2002) 96 Cal. App. 4th 167. In *Mercuro*, "[t]he arbitration agreement specifically cover[ed] claims for breach of express or implied contracts or covenants, tort claims, claims of discrimination based on race, sex, age or disability, and claims for violation of any federal, state or other governmental constitution, statute, ordinance, regulation or public policy." (*Id*. at pp. 175-176.) But it "specifically exclude[d] 'claims for injunctive and/or other equitable relief for intellectual property violations, unfair competition and/or the use and/or unauthorized disclosure of trade secrets or confidential information…' " (*Id*. at p. 176.) The court ultimately held the arbitration agreement unconscionable and unenforceable.

Green argues that *Mercuro* applies because the Arbitration Agreement states:

> The Sole Limitation of this Agreement's application shall be that either you or the Company may seek in a court of competent jurisdiction temporary, preliminary or permanent injunctive relief or any other form of equitable relief, with regard to claims arising out of related to trade secrets, unfair competition and related covenants such as any covenants of nondisclosure, not to compete or not to solicit;

(Hoglund Decl., ¶13, Ex. A, Section 1, ¶3.)

Like *Mercuro*, the carve-out provision specifically applies only to claims normally brought by employers.

Tuff Shed's efforts to downplay *Mercuro*'s applicability are unavailing. In *Ronderos v. USF Reddaway, Inc*. (9th Cir. 2024) 114 F.4th 1080, the Ninth Circuit found the arbitration agreement before it to be both procedurally and substantively unconscionable, so it is hardly authority for the principle that "modern courts" have "repeatedly" found carve outs for "things like intellectual property rights are only unlawful when" they apply only to employers. (Tuff Shed's Reply Papers, pg. 5, lns. 24-28.) *Ly v. Tesla, Inc.* (ND. Cal. 2024) 757 F.Supp.3d 1033, does not assist Tuff Shed either, as that court's ruling was based on the carve-out provision merely restating Code of Civil Procedure section 1281.8, and the court did not endorse a broad approval of asymmetrical provisions. Finally, *Cisco Systems, Inc. v. Chung* (ND. Cal. 2020) 462 F.Supp.3d 1024, turned on an ambiguity in the arbitration agreement and did not consider mutuality in the context of determining unconscionability. Cases are not authority for unaddressed propositions.

Finally, Tuff Shed analogizing to the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (EFAA) does nothing to advance its arguments. The EFAA renders arbitration agreements unenforceable "at the election of the person alleging" sexual assault or harassment with respect to those specific claims. (9 U.S.C. § 402(a).) It is an election statute, not a prohibition – it allows a proponent of a covered claim to escape an arbitration provision; it does not prohibit such arbitration provisions. It does not make arbitration agreements covering such claims illegal.

Green's argument is that the specific carve-out provisions apply only to claims normally brought by employers, not employees. Sexual assault and harassment claims are generally brought by employees rather than employers.

Tuff Shed offers no business justification for the agreement's lack of mutuality, as this carve-out *effectively* allows employers one-sided access to court. Accordingly, this Court determines that provision is substantively unconscionable.

Arbitration Agreement Duration

Green further argues that the Arbitration Agreement is substantively unconscionable because it does not specify a duration. (Green's Opposition Papers, pg. 7, lns. 23-27.)

The clause at issue states as follows:

> The Agreement also applies, without limitation excepting only the sole limitation set forth below (the "Sole Limitation"), to disputes with the Company or any entity or individual employed by or affiliated with the Company, arising out of or related to an application for employment, background check, privacy, an employment relationship involving the Company or the termination of that relationship (including post-employment defamation or retaliation), ...

(Hoglund Decl., ¶13, Ex. A, Section 1, ¶1.)

Here, there is no substantial unconscionability as this specific clause compels post-employment claims to arbitration where those claims are "rooted in the employment relationship." (*Buckhorn v. St. Jude Heritage Medical Group* (2004) 121 Cal.App.4th 1401, 1406-07.) This is different than Cook, *supra* (2024) 102 Cal.App.5th at 347, where the Arbitration Agreement's scope is limited to claims arising out of Green's employment.

PAGA Waiver

Green asserts the Arbitration Agreement contains a wholesale waiver of the right to bring a PAGA action. The Arbitration Agreement provides a PAGA specific clause under section 7, which reads as follows:

> There will be no right or authority for any dispute to be brought, heard or arbitrated as representative or as a private attorney general representative action ("Private Attorney General Waiver"). Notwithstanding any other provision of this Agreement or the AAA Rules, disputes regarding the validity, enforceability or breach of the Private Attorney General Waiver may be resolved only by a civil court of competent jurisdiction and not by an arbitrator. The Private Attorney General Waiver does not apply to any claim you bring in arbitration as a private attorney general solely on your own behalf and not on behalf of or regarding others. This Private Attorney General Waiver shall be severable from this Agreement in any case in which a civil court of competent jurisdiction finds this Private Attorney General Waiver is invalid, unenforceable, unconscionable, void, or voidable. In such instances and where the claim is brought as a private attorney general, such private attorney general claim must be litigated in a civil court of competent jurisdiction.

(Hoglund Decl., ¶13, Ex. A, Section 7.)

Section 7 does not strip Green of PAGA standing. It waives the right to bring a dispute as a "private attorney general representative action," but then expressly carves out individual PAGA claims brought "solely on your own behalf and not on behalf of or regarding others." It further provides that if a court determines the waiver is unenforceable, representative PAGA claims "must be litigated in a civil court of competent jurisdiction."

In *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639 (*Viking*), the United States Supreme Court held that "the FAA preempts the rule of [*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348] insofar as it precludes division of PAGA actions into individual and non-individual claims through an agreement to arbitrate." (*Id*. at p. 662.)

The express terms of Section 7 of the Arbitration Agreement and case law support the finding that the Arbitration Agreement only applies to representative PAGA claims and is not a invalid PAGA waiver. Therefore, the Arbitration Agreement is valid and the

Green's individual PAGA claims can be compelled to arbitration. Accordingly, Green has failed to prove that the PAGA provisions of the Arbitration Agreement are substantively unconscionable.

Severability

Where appropriate, courts have discretion to sever or limit the application of unconscionable provisions and enforce the remainder of an arbitration agreement under Civil Code section 1670.5, subdivision (a). The court in *Armendariz* noted that invalidating the entire agreement is reserved for "when an agreement is 'permeated' by unconscionability." (*Armendariz*, *supra*, (2000) 24 Cal.4th at p. 122.) As discussed above, the only unconscionable provision in the agreement is the "injunctive relief" provision. Particularly as the Arbitration Agreement has a severability clause (Hoglund Decl., ¶13, Ex. A, Section 13), and only one term is unenforceable, the injunctive relief provision can be severed and the remainder of the agreement is left intact

Stay

If a court of competent jurisdiction has ordered arbitration of an issue involved in a pending action, the court, upon motion of a party to the action, shall stay the action until an arbitration is had in accordance with the order to arbitrate. (Code Civ. Proc., § 1281.4.) "The trial court may exercise its discretion to stay the non-individual [PAGA] claims pending the outcome of the arbitration [of plaintiff's individual PAGA claims] pursuant to section 1281.4 of the Code of Civil Procedure." (*Adolph v. Uber Technologies, Inc.* ("*Adolph*") (2023) 14 Cal.5th 1104, 1123.) The opposing party would need to present a convincing argument as to why this would be an impractical manner of proceeding. (*Id.*, at 1124.)

Based on the foregoing, Tuff Shed's motion to compel arbitration is granted. This action is stayed pending the completion of arbitration.

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 04/29/26.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Timed Out LLC v. Copa Cabana Entertainment, LLC***
Superior Court Case No. 23CECG02585

Hearing Date: April 30, 2026 (Dept. 502)

Motion: By Plaintiff to Compel Further Responses to Requests for Production and Special Interrogatories and for Monetary Sanctions

Tentative Ruling:

To take the matter off calendar for failure to file moving papers.

Explanation:

Plaintiff has filed an incomplete motion, consisting only of declarations. A motion must consist of 1) notice, 2) the motion itself, 3) a memorandum, and 4) any other supporting documents. (Cal. Rules of Ct., rule 3.1112.) Additionally, while plaintiff requested a hearing date for motions to compel further responses, and previously requested a pretrial discovery conference consistent with Local Rule 2.1.17, the declarations appear to indicate the appropriate request would be to compel initial discovery for lack of responses. (Code Civ. Proc., § 2030.290.)

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 04/29/26.
(Judge's initials) (Date)