Tentative Rulings for May 6, 2025
Department 501

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.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

Begin at the next page

(03)

Tentative Ruling

Re: ***Smith v. Kelso***
Case No. 13CECG03237

Hearing Date: May 6, 2025 (Dept. 501)

Motion: by Plaintiff for Recovery of Filing Fees

Tentative Ruling:

To deny plaintiff's motion for recovery of his filing fees.

If oral argument is timely requested, such argument will be entertained on Wednesday, May 7, 2025, at 3:30 p.m. in Department 501.

Explanation:

While the motion is somewhat vague and confusing, it appears that plaintiff is seeking recovery of his filing fees for opening the present case in the Superior Court. However, he bases his request for fees on the Court of Appeal's October 7, 2019 remittitur, which states "Appellant(s) to recover costs." Yet the Court of Appeal's order only allowed plaintiff to recover his costs incurred in connection with the appeal, not his costs incurred in the Superior Court case. Thus, the Court of Appeal's order does *not* require this court to refund his filing fees for bringing the present action. At most, plaintiff could recover his costs from the first appeal.

Also, plaintiff has no statutory right to recover his costs incurred in this action under Code of Civil Procedure section 1032, as he was not the prevailing party in the action. Code of Civil Procedure section 1032 states that, "[e]xcept as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding." (Code Civ. Proc., § 1032, subd. (b).) "'Prevailing party' includes the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant." (Code Civ. Proc., § 1032, subd. (a)(4).)

In this case, defendants were the "prevailing parties", as they obtained a judgment in their favor after the court granted their motion for summary judgment. Plaintiff, on the other hand, recovered nothing against defendants. As a result, plaintiff was not the prevailing party in the action and he has no right to recover his costs from defendants or anyone else.

In addition, to the extent that plaintiff is seeking to recover his costs incurred on the first appeal as provided under the Court of Appeal's remittitur, his request is untimely. The remittitur issued on October 7, 2019. As a result, plaintiff had 40 days from entry of the remittitur to file his memorandum of costs. (Cal. Rules of Court, rule 8.278(c)(1).) He did not file his memorandum of costs until August 4, 2020, almost ten months after the

remittitur issued. He then filed another memorandum of costs attached to the present motion on March 7, 2025, more than five years after the Court of Appeal issued its remittitur. As a result, plaintiff's request for his costs is untimely. Therefore, the court intends to deny plaintiff's motion for recovery of his filing fees.

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: DTT on 4/27/2025.
(Judge's initials) (Date)

(20)

Tentative Ruling

Re: ***Rivera v. Netafim Irrigation, Inc.***
Superior Court Case No. 24CECG04917

Hearing Date: May 6, 2025 (Dept. 501)

Motion: by Defendant Netafim Irrigation, Inc., for an Order Compelling Arbitration and Staying Representative Claims

Tentative Ruling:

To grant and order plaintiff Christopher Rivera to arbitrate his individual claims against defendant. This action, including the representative PAGA claim, is stayed pending completion of arbitration.

If oral argument is timely requested, such argument will be entertained on Wednesday, May 7, 2025, at 3:30 p.m. in Department 501.

Explanation:

Plaintiff Christopher Rivera brings an action alleging a cause of action under the Private Attorney General Act ("PAGA") as defined by Labor Code section 2698 *et seq*., on behalf of herself and all aggrieved employees, based on various Labor Code violations. Defendant now seeks an order compelling plaintiff to private arbitration of his individual PAGA claims, and to stay the representative portion of the action.

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, when a motion to compel arbitration is filed and accompanied by prima facie evidence of a written agreement to arbitrate the controversy, the court itself must determine: (1) whether the agreement exists, and (2) if any defense to its enforcement is raised, whether it is enforceable. The moving party bears the burden of proving the existence of an arbitration agreement by a preponderance of the evidence. The party claiming a defense bears the same burden as to the defense. (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413-414.)

Unless there is a dispute over authenticity, the mere recitation of the terms is sufficient for a party to move to compel arbitration. (*Sprunk v. Prisma LLC* (2017) 14 Cal.App.5th 785, 793.) Here, defendant submits a written agreement to arbitrate. Plaintiff does not dispute that he electronically executed the agreement.

Defendant contends, and plaintiff does not dispute, that the Federal Arbitration Act ("FAA") applies. Pursuant to the Federal Arbitration Act ("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 transaction, or the refusal to perform the whole or any part thereof, … shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

(9 U.S.C., § 2.)

> [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 [Code Civ. Proc.,] § 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.)

A valid contract exists when: (1) there was mutual consent; (2) the contract had a lawful objective; (3) the contract was supported by sufficient cause or consideration; and (4) the parties were capable of contracting. (*Ortiz v. Hobby Lobby Stores, Inc.* (E.D. Cal. 2014) 52 F.Supp.3d 1070, 1077; *Stewart v. Preston Pipeline Inc.* (2005) 134 Cal.App.4th 1565, 1585-86.) "[A]bsence of contractual consent renders arbitration, by its very definition, inapplicable to resolve the issue." (*Toal v. Tardif* (2009) 178 13 Cal.App.4th 1208, 1221.)

Plaintiff contends there is no mutual assent and therefore no contract, due to ambiguities in the agreement. Plaintiff relies on *Flores v. Nature's Best Distribution, LLC* (2016) 7 Cal.App.5th 1, 9-10, where the Agreement required the plaintiff to "submit all legal, equitable and administrative disputes to the American Arbitration Association for mediation and binding arbitration. This applies to all employee disputes, except those actually covered by the grievance and arbitration procedure in the Agreement between Nature's Best and Teamster's Local 692, hereinafter referred to as the 'Collective Bargaining Agreement.' " The court noted that the agreement failed to define which disputes would be subject to arbitration before the AAA, and which would be subject to resolution through the grievance and arbitration procedure in the CBA. The defendants in *Flores* failed to provide any analysis on the issue, and asserted inconsistent positions, rendering it unclear which CBA should be considered in interpreting the scope of the arbitration provision.

Plaintiff's reliance on *Flores* is misplaced. Here there is no ambiguity as to which claims would be subject to arbitration. And the failure of the Agreement to define "Employee" is does not create any ambiguity as to who it applies to, as the agreement was specifically presented to plaintiff who signed it. Plaintiff does not deny signing the document; only that he did not understand it. The document, presented by Netafim, states "Agreed: Netafim Irrigation, Inc." right above plaintiff's signature. The parties to the

agreement are clear enough. While "the intention of the parties is to be ascertained from the writing alone, if possible" (Civil Code, § 1639), "[a] contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates." (Civil Code, § 1647.)

Plaintiff is correct that the agreement does not specify the rules of the arbitration forum. Plaintiff boldly claims,

> Arbitration is not a monolithic process. It can vary widely depending on the governing rules and administering forum. For example, the AAA's Employment Rules include provisions for discovery, neutral appointment, and cost-sharing, JAMS Rules may provide for more limited discovery or different hearing procedures. Some rules mandate confidentiality, while others do not. And crucially, fee structures can differ significantly placing an undue financial burden on an employee if not specified.
>
> Without knowing which rules apply, Plaintiff had no reasonable opportunity to understand the nature of the arbitration he was purportedly agreeing to. Was it a fair, neutral process or one stacked in favor of the employer? Would he have access to discovery, legal representation, or an impartial arbitrator?

(Oppo. 3:2-11.)

This assertion ignores the clear language of the arbitration agreement, which ensures plaintiff has these rights. Under section 3, "Selecting The Arbitrator," plaintiff has equal say as to the arbitration forum and applicable rules, as it merely provides that the parties will agree on an arbitrator, and if the parties cannot agree, a court may select an arbitrator. This provision actually gives plaintiff greater bargaining power in choosing the arbitration forum and rules than is typically present in an arbitration agreement that specifies the forum. Moreover, the agreement also provides at section 5 that "the parties will have the right to conduct adequate civil discovery, bring dispositive motions, and present witnesses and evidence as needed to present their cases and defenses, and any disputes in this regard shall be resolved by the Arbitrator. At a party's request or on the Arbitrator's own initiative, the Arbitrator may subpoena witnesses or documents for discovery purposes or for the arbitration hearing." Section 7 provides that plaintiff can seek all remedies that he could seek in the court of law. Accordingly, plaintiff will have substantively the same procedural rights as in a judicial forum.

In *Armendariz v. Found. Health Psychcare Serv., Inc*. (2000) 24 Cal.4th 83, 100, the court held an arbitration agreement must, at a minimum, provide for neutral arbitrators, adequate discovery, a written award subject to limited judicial review, the same types of relief which would be available from a court, and the employees must not be required to bear any type of expense they would not be required to bear if their claims were brought in a court. These requirements do not apply to just FEHA claims. (*Mercuro v. Superior Court* (2002) 96 Cal.App.4th 167, 180.) It is undisputed that the agreement satisfies the *Armendariz* requirements. In Flores, supra, ambiguity was created by the agreement's reference to external rules, with no evidence that those rules existed. (*Flores, supra*, at p. 10.) Such is not the case here.

The court finds that an agreement to arbitrate does exist here, despite plaintiff's assertions of ambiguities.

> Once the existence of a valid arbitration clause has been established, "[t]he burden is on 'the party opposing arbitration to demonstrate that an arbitration clause *cannot* be interpreted to require arbitration of the dispute.' " (*Buckhorn v. St. Jude Heritage Medical Group* (2004) 121 Cal.App.4th 1401, 1406, 18 Cal.Rptr.3d 215.) In other words, "an order to arbitrate a particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." (*Dryer v. Los Angeles Rams* (1985) 40 Cal.3d 406, 414, 220 Cal.Rptr. 807, 709 P.2d 826.)

(*Titolo v. Cano* (2007) 157 Cal.App.4th 310, 316–317.)

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.)

"If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result." (Civ. Code, § 1670.5, subd. (a).) The doctrine of unconscionability " '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.) To invalidate an arbitration agreement, the court must find both procedural and substantive unconscionability. (*Id*. 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; *Mission Viejo Emergency Medical Assoc. v. Beta Healthcare Group* (2011) 197 Cal.App.4th 1146, 1158 [even though contract may have been adhesive, it was enforceable because not substantively unconscionable]; *Nelsen v. Legacy Partners Residential, Inc.* (2012) 207 Cal.App.4th 1115, 1124 [accord].) But they need not be present in equal amounts; essentially a sliding scale is used, and where there is substantive unconscionability, less procedural unconscionable need be shown. (*Armendariz, supra,* at pp. 113-114.)

Here, the court finds no procedural unconscionability. Plaintiff contends that the arbitration agreement was a contract of adhesion, presented as a requirement of employment that plaintiff was required to sign. (See Oppo. 4:16-5:10; Rivera Decl., ¶¶ 12.) These claims are not supported by evidence, but are based on the conclusory claims of plaintiff in his declaration, which ignore the specific evidence submitted with the moving papers.

According to the moving papers, plaintiff signed Netafim's arbitration agreement as part of the onboarding process. The onboarding was done online through Paylocity. On 11/14/2022 Anna Manquero, who oversees the onboarding of Netafim employees, sent plaintiff an email letting him know that he should have received two emails from

Paylocity with instructions for logging in and that he could review the onboarding documents (including Netafim's voluntary arbitration agreement) provided in advance of the onboarding meeting on 11/21/2022. (Manquero Decl., ¶ 3.) Plaintiff completed his onboarding and signing of various documents on 11/21/22 in a private conference room provided by Netafim. Manquero did not stay and watch plaintiff as he reviewed the agreement and other onboarding documents on a company provided electronic device, and they are not pressured to finish within a certain amount of time. (Id. at ¶¶ 7-8.) Manquero showed Plaintiff where her office was located and let him know that he could ask her any questions he had while reviewing the provided documents. (Id. at ¶¶ 7, 9.) Plaintiff electronically signed the arbitration agreement. (Id. ¶ 10.) Plaintiff does not dispute this.

Plaintiff claims he was not "presented with the opportunity to or an ability to opt-out of the Non-Disclosure Agreement." (Rivera Decl., ¶ 13.) Yet the arbitration agreement clearly states that it is *not* a condition of employment, there will be no negative employment consequences to not agreeing to arbitrate, and that even if the employee signs the agreement, he may opt out within 30 days.

Plaintiff's complaints that he did not know what arbitration means or that there was an agreement to arbitrate do not evidence procedural unconscionability, especially where he had a week to review the documents prior to the onboarding meeting (Manquero Decl., ¶ 3). Plaintiff's assertion that he was not in a financial position to refuse employment or to pay for an attorney to review the onboarding documents ignore the facts that the agreement was not compulsory and he had the option of opting out after signing, and that he had a week with the documents before the onboarding meeting. The opposition's claims do not appear to be grounded in reality.

Plaintiff contends that procedural unconscionability is found in the failure to provide the rules of the arbitration forum. "Numerous cases have held that the failure to provide a copy of the arbitration rules to which the employee would be bound supported a finding of procedural unconscionability." (*Trivedi v. Curexo Technology Corp.* (2010) 189 Cal.App.4th 387, 393, citing cases.) But in *Trivedi* and the decisions cited therein, the plaintiff's unconscionability claim depended in some manner on the arbitration rules in question. (*Id*. at pp. 395–396.) Here, however, as pointed out above, the very procedural issues that plaintiff claims are implicated by failure to provide the rules are spelled out and protected in the arbitration agreement itself. Plaintiff identifies no procedural unconscionability with these safeguards in place in the arbitration agreement.

The court finds that there is no procedural unconscionability. Without any procedural unconscionability, the agreement cannot be found substantively unconscionable. (*Armendariz, supra,* 24 Cal.4th at p. 122.) It is therefore unnecessary to address plaintiff's substantive unconscionability arguments. The court intends to grant the motion to compel arbitration.

PAGA claims cannot be waived in an employment arbitration agreement. (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 360, 382-384.) However, plaintiffs can be compelled to arbitrate their individual PAGA claims. (*Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639, 659-662.) "[T]he trial court may exercise its discretion to stay the non-individual claims pending the outcome of the arbitration pursuant to

section 1281.4 of the Code of Civil Procedure." (*Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104, 1120-1121, 1123.)

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: DTT on 5/2/2025.
(Judge's initials) (Date)