Tentative Rulings for May 14, 2024
Department 503

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.

24CECG00521 ***Thalia Vargas Sage v. Hannah Romias*** **is continued to Tuesday, July 9, 2024, at 3:30 p.m. in Department 503**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 503

Begin at the next page

(20) **Tentative Ruling**

Re: ***Rivas v. Kalos Specialized Services, Inc., et al.***
Superior Court Case No. 23CECG05199

Hearing Date: May 14, 2024 (Dept. 503)

Motion: Defendants' Motion to Compel Arbitration and Stay Action

Tentative Ruling:

To grant and order plaintiff Yvonne Rivas to arbitrate her individual claims against defendants. This action, including the representative PAGA claim, is stayed pending completion of arbitration.

Explanation:

Defendants Kalos Specialized Services, Inc., a corporation, and Amy Corpus, an individual, move for an order compelling arbitration under the Federal Arbitration Act ("FAA"), and request to stay the action pending arbitration. Pursuant to 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 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.)

Plaintiff does not dispute applicability of the FAA.

"In recognition of Congress' principal purpose of ensuring that private arbitration agreements are enforced according to their terms, we have held that the FAA pre-empts state laws which 'require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration.'" (*Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University* (1989) 489 U.S. 468, 478, internal citations omitted.)

"California courts traditionally have maintained a strong preference for arbitration as a speedy and inexpensive method of dispute resolution. To this end, 'arbitration agreements should be liberally construed', with 'doubts concerning the scope of arbitrable issues [being] resolved in favor of arbitration.'" (*Market Ins. Corp. v. Integrity Ins. Co*. (1987) 188 Cal.App.3d 1095, 1098, internal citations omitted.) "This strong policy has resulted in the general rule that arbitration should be upheld 'unless it can be said with assurance that an arbitration clause is not susceptible to an interpretation covering the asserted dispute. [Citation.]' [Citations.] [¶] It seems clear that the burden must fall upon the party opposing arbitration to demonstrate that an arbitration clause *cannot* be interpreted to require arbitration of the dispute.…'" (*Bono v. David* (2007) 147 Cal.App.4th 1055, 1062.)

> [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.)

Defendants contend that on February 7, 2023, plaintiff signed a document agreeing to arbitrate all disputes arising out of her employment and waiving class claims, that the agreement covers all of the claims that plaintiff has raised in the complaint (with the exception of representative PAGA claims), that the agreement is not unconscionable or unenforceable, and that all defendants are entitled to enforce the agreement, so that the court should order the parties to arbitrate plaintiff's claims. On the other hand, plaintiff vehemently denies signing the arbitration agreement, that the agreement was ever presented to her, and even meeting with defendants' representatives on February 7, 2023. She further states that had she been presented with the arbitration agreement, she would not have signed it. Plaintiff argues that the agreement is both procedurally and substantively unconscionable.

"If a party to a civil action asks the court to compel arbitration of the pending claim, the court must determine in a summary proceeding whether an 'agreement to arbitrate the controversy exists.'" (*Iyere v. Wise Auto Group* (2023) 87 Cal.App.5th 747, 754.) "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 ... that party bears the burden of producing evidence of, and proving by a preponderance of the evidence, any fact necessary to the defense." (*Ibid*., citing *Rosenthal, supra,* 14 Cal.4th 394, 413.) "The trial court sits as the trier of fact, weighing all the affidavits, declarations, and other documentary evidence, and any oral testimony the court may receive as its discretion, to reach a final determination." (*Ruiz v. Moss Bros. Auto Group, Inc.* (2014) 232 Cal.App.4th 836, 842, internal citations omitted.)

"As to the existence of an agreement, [defendants] b[ear] the ultimate burden of proof, but the court [is] obliged to resolve the dispute using a three-step burden-shifting process." (*Iyere, supra,* 87 Cal.App.5th at p. 755, citing *Espejo v. Southern California Permanente Medical Group* (2016) 246 Cal.App.4th 1047, 1056.) "The arbitration proponent must first recite verbatim, or provide a copy of, the alleged agreement. [Citations.] A movant can bear this initial burden 'by attaching a copy of the arbitration agreement purportedly bearing the opposing party's signature.' [Citation.] At this step, a movant need not 'follow the normal procedures of document authentication' and need only 'allege the existence of an agreement and support the allegation as provided in [California Rules of Court,] rule [3.1330].' [Citation.]" (*Ibid*., internal citations omitted.)

"If the movant bears its initial burden, the burden shifts to the party opposing arbitration to identify a factual dispute as to the agreement's existence—in this instance, by disputing the authenticity of [his] signature[]. To bear this burden, the arbitration opponent must offer admissible evidence creating a factual dispute as to the authenticity of their signatures. The opponent need not *prove* that his or her purported signature is not authentic, but must submit sufficient evidence to create a factual dispute and shift the burden back to the arbitration proponent, who retains the ultimate burden of proving, by a preponderance of the evidence, the authenticity of the signature. [Citation.]" (*Ibid*.)

Defendants meet their initial burden by producing the arbitration agreement, the Alternative Dispute Resolution Policy, and providing evidence by way of the declarations of Melissa Bond, the Company Office Manager, and Valene Madrid, the On-Boarding Supervisor, that plaintiff voluntarily signed the agreement at a meeting that took place on February 7, 2023.

The signature on the agreement appears to be handwritten, and plaintiff denies signing the document. Given plaintiff's sworn denials, the court finds that plaintiff has effectively challenged the authenticity of the arbitration agreement and defendants have the burden of presenting evidence showing that plaintiff did sign the agreement to arbitration. (*Iyere, supra*, at p. 755.) The court notes, however, that while plaintiff denies signing the document, she does not clearly claim that the signature does not appear to be hers.

Plaintiff states that she did attend a workplace meeting on February 7, 2023, but that neither Bond nor Madrid were in attendance at the meeting, and there was no discussion of arbitration at this meeting. Plaintiff's husband, who also works for defendants, submits a declaration stating that he also attended this meeting, but does not recall the Alternative Dispute Resolution Policy or arbitration being discussed.

It appears that, to put it mildly, the declarations of plaintiff and her husband are less than truthful. With the reply defendants submit substantial and convincing evidence that the Bond and Madrid were at the February 7, 2023, staff meeting, that plaintiff attended this meeting, that plaintiff's husband did not attend the meeting, that the Alternative Dispute Resolution Policy was in fact discussed and presented to plaintiff and other employees at attendance. (See Declarations of Michelle Guzman, Lisa Martinez, Ron Wilson, Jerry Llanes, and Andres Savageau.)

"A writing may be authenticated by anyone who saw the writing made or executed, including a subscribing witness." (Evid. Code, § 1413.) When "a subscribing witness is required by statute to authenticate a writing and the subscribing witness denies or does not recollect the execution of the writing, the writing may be authenticated by other evidence." (Evid. Code, § 1412.) Plaintiff's signature is sufficiently authenticated by Bond and Madrid, who remember meeting with plaintiff, discussing the Agreement, and watching her sign the Agreement. (Bond Decl., ¶¶ 6-7; Madrid Decl., ¶¶ 6-7.) Defendants submit other documents that plaintiff has signed in Bond's presence. (See Supp. Bond Decl., Exhs. 3, 4, 7, 8.) Other employees corroborate the declarations of Bond and Madrid. (See Guzman, Martinez, Wilson, Llanes, and Savageau Decls.) Defendants also submit

documentary evidence showing that plaintiff's husband was not in fact in attendance at the staff meeting in question. (See Supp. Bond Decl., ¶ 3, Exh. 1.)

This evidence submitted by defendants is substantial and compelling, refuting the representations of plaintiff and her husband.

While ordinarily reply evidence is not allowed, it is permissible to fill in the gaps and respond to unanticipated evidence submitted with the opposition. (See *Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537-1538; *RGC Gaslamp, LLC v. Ehmcke Sheet Metal Co., Inc.* (2020) 56 Cal.App.5th 413, 432.) It does not appear that further responsive evidence from plaintiff should be necessary. Plaintiff already submitted her evidence that she did not sign the Alternative Dispute Resolution Policy, and conspicuously chose not to address the issue of authenticity of her signature in the opposition. It was in the opposition that plaintiff should have addressed that issue. Accordingly, the court is not inclined to hold an evidentiary hearing. Substantial and detailed evidence on the issue has already been presented by both sides.

Based on the compelling evidence presented, the court finds that plaintiff did sign the Alternative Dispute Resolution Policy, and did so voluntarily, of her own free will and choice, without compulsion. It was explained to plaintiff that signing the agreement was voluntary, and the agreement itself makes clear that signing it is not required, and that plaintiff's employment is not contingent on agreeing to the arbitration policy. Accordingly, the court finds that there is an agreement to arbitrate.

Plaintiff argues that one of the parties seeking to enforce the arbitration agreement, Kalos Specialized Services, Inc., is not a party to the agreement. The agreement on its face is between plaintiff on the one hand and "Amy Corpus dba KALOS Specialized Services" on the other. (See Madrid Decl., Exh. 1.) The question is whether Kalos Specialized Services, Inc., is a party with standing to enforce the arbitration agreement.

Nonsignatories may enforce arbitration agreements "where a benefit is conferred on the nonsignatory as a result of the agreement, making the nonsignatory a third party beneficiary of the arbitration agreement." (*Jarboe v. Hanlees Auto Group* (2020) 53 Cal.App.5th 539, 549.) Additionally, "the equitable estoppel doctrine applies and a nonsignatory is allowed to enforce an arbitration clause because the claims against the nonsignatory are dependent on, or inextricably intertwined with, the contractual obligations of the agreement containing the arbitration clause." (*Ibid*.)

It "is not necessary that the beneficiary be named and identified as an individual. A third party may enforce a contract where he shows that he is a member of a class of persons for whose benefit it was made." (*Ronay Family Limited Partnership v. Tweed* (2013) 216 Cal.App.4th 830, 838-839, quoting *Garratt v. Baker* (1936) 5 Cal.2d 745, 748.) The arbitration agreement states that it encompasses any employment-related dispute that might raise in relation to plaintiff's employment. Plaintiff alleges that she was employed by Kalos Specialized Services, Inc. (Rivas Decl., ¶ 2.) The arbitration agreement was clearly signed during the time period in which plaintiff was employed by defendants. Plaintiff has not alleged any change in her employment due to being employed by "Kalos Specialized Services, Inc.", as she alleges that she worked for the corporate entity

since 2013. The court therefore finds that defendants, including the corporate employer, have standing to enforce the arbitration agreement.

Plaintiff argues that the agreement cannot be enforced because it is unconscionable.

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 Associates 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].)

Here, the court finds that there is *no* degree of procedural unconscionability. The agreement states:

> I understand that signing this ADR Policy is not required to become or continue to be an employee of the Company and applicants and employees who choose to not sign this ADR Policy will not suffer any retaliation or be denied any employee benefit. I am voluntarily signing this ADR Policy so that all disagreements are resolved under the procedures in this ADR Policy. Therefore, this is not a standard adhesion contract required to be signed by a party with superior bargaining power and was not offered on a "take-it-or-leave-it-basis." The Agreement repeatedly stated the Agreement was voluntary.

(Corpus Decl., Exhs. 1 and 2, pp. 2, 10, and 11.) Plaintiff was explicitly told that signing the agreement was voluntary. (Madrid Decl., ¶ 6; Bond Decl., ¶ 6.) Another employee confirms that she was told at the same meeting that signing was voluntary. (Guzman Decl., ¶ 3.)

Contrary to plaintiff's assertion, the agreement is not a contract of adhesion. Given that there is no procedural unconscionability, the court need not address plaintiff's substantive unconscionability arguments, as both procedural and substantive unconscionability must be present in order to find an agreement unconscionable.

This action was filed as a class action, including individual and representative claims under the PAGA claims. The arbitration agreement includes a waiver of class and representative claims, including PAGA. (Corpus Decl., Exh. 1, p. 10.) Plaintiff does not challenge the waiver of class claims. (See *Kinecta Alternative Financial Solutions, Inc. v. Superior Court* (2012) 205 Cal.App.4th 506, 519.) 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.) Plaintiff recognizes that "the 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.) The court intends to do so here.

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: jyh on 5/13/24 .
(Judge's initials) (Date)

(27) **Tentative Ruling**

Re: ***Sharon Richardson v. Joan Kevorkian***
Superior Court Case No. 22CECG00280

Hearing Date: May 14, 2024 (Dept. 503)

Motion: (1) Defendant County of Fresno's Demurrer to the Second Amended Complaint

(2) Defendant State of California's Demurrer to the Second Amended Complaint

Tentative Ruling:

To take Defendant County of Fresno's demurrer off calendar in light of the dismissal filed on January 29, 2024.

To overrule the demurrer by Defendant State of California. State of California shall file responsive pleadings within twenty (20) days from the date of this order.

Explanation:

Plaintiffs Second Amended Complaint ("SAC") alleges that, in the years preceding the subject fire, defendant California Department of Housing and Community Development ("HCD") had received numerous complaints of specific fire hazards by community members, park residents, and municipal police and fire department staff. Despite receiving these complaints, HCD did nothing to notify the appropriate governing entity (SAC, p. 4:18-20, ¶ 27), which plaintiffs allege violated HCD's mandatory duties required by statute and regulation and is sufficient to state a cause of action pursuant to section 815.6 of the Government Code. Because this is a demurrer, the court "take[s] as true all well-pleaded factual allegations of the complaint." (*Haggis v. City of Los Angeles* (2000) 22 Cal.4th 490, 495; *Guzman v. County of Monterey* (2009) 46 Cal.4th 887, 894.)

Liability under section 815.6 requires three elements: "(1) an enactment must impose a mandatory, not discretionary, duty ...; (2) the enactment must intend to protect against the kind of risk of injury suffered by the party asserting section 815.6 as a basis for liability ...; and (3) breach of the mandatory duty must be a proximate cause of the injury suffered.'" (*Walt Rankin & Associates, Inc. v. City of Murrieta* (2000) 84 Cal.App.4th 605, 614.) For purposes of section 815.6, a mandatory duty is one that "'refers to an obligatory duty which a governmental entity is required to perform, as opposed to a permissive power which a governmental entity may exercise or not as it chooses.'" (*Braman v. State of California* (1994) 28 Cal.App.4th 344, 349.)

In essence, "[a] plaintiff seeking to hold a public entity liable under Government Code section 815.6 must specifically identify the statute or regulation alleged to create a mandatory duty." (*In re Groundwater Cases* (2007) 154 Cal.App.4th 659, 689.) "'[T]he mandatory nature of the duty must be phrased in explicit and forceful language.'" (*Ibid*.) Furthermore, while not per se dispositive (see *Cochran v. Herzog Engraving Co*.

(1984) 155 Cal.App.3d 405, 411, (*Herzog*) [dictum]), generally the Legislature's inclusion of the term "shall" imparts mandatory obligation. (See Gov. Code, § 14; *People v. Howe* (1987) 191 Cal.App.3d 345, 350.) Finally, interpretations which render the protectionary acts by a public entity "meaningless" have been disregarded. (*Walt Rankin, supra,* 84 Cal.App.4th at p. 621.)

The SAC alleges a mandatory duty visible across regulatory material as well as the Mobilehome Parks Act (Health & Saf. Code, § 18200 et seq.). (See SAC, at p. 2:21-24, ¶ 32, fn. 1 [citing Health & Saf. Code, §§ 18250, 18400.1(a), 18400.1(b), 18400.3 and 18402.) The statutes demonstrate a legislative objective "to assure their health, safety, general welfare, and a decent living environment" of mobilehome park residents. (§ 18250.) In particular, the cited regulation's plain and unambiguous referral, "to an appropriate governing entity[]" (Cal. Code Regs., tit. 25, § 1004.5, subd. (a)(1)) demonstrates interagency communication reasonably implicit in the fulfillment of the Legislature's stated objective. Furthermore, nuisance abatement is specifically delegated to the county in which the park is situated. (Health & Saf. Code, § 18402.)

The California Supreme Court has held that the establishment of a mandatory duty turns on whether the enactment "*require[s],* rather than merely authorize or permit, that a particular action be taken or not taken." (*Haggis, supra,* 22 Cal.4th at p. 498.) Accordingly, when the Legislature's unambiguous objective in enacting the Mobilehome Parks Act to "assure the health and safety" is read in conjunction with the explicit regulatory language to refer matters to the appropriate governing entity, the reasonable conclusion reached is that HCD was under a mandatory duty to notify the County of Fresno of the violations. Any other interpretation, in essence, would render the provision meaningless. (*Walt Rankin, supra,* 84 Cal.App.4th at p. 621.) The SAC alleges that such referral never occurred, despite years of complaints and HCD's issuance of multiple violations (SAC, p. 4:18-20, ¶ 27), and thus prevented the one agency delegated to abate nuisances from acting. Accordingly, plaintiffs have now alleged sufficient statutory and regulatory language to establish a mandatory duty.

In addition, the allegation that the decedent was a park visitor reasonably demonstrates he fell within the zone of protected interests, and, that his death was caused by the reported (yet disregarded) accumulation of hazardous material is one of multiple reasonable conclusions. (*Braman, supra,* 28 Cal.App.4th at pp. 355-356 [fatal self-induced shooting satisfied the zone of protected and causation elements as applied to state firearm restriction law].)

HCD also asserts immunity under the reasoning of the summary judgment motion in *Herzog, supra,* 155 Cal.App.3d 405. However, such reliance is inapposite because in *Herzog* the plaintiff alleged that the defendant negligently failed to sufficiently provide "appropriate recommendations" to mitigate fire hazards pursuant to a mandatory duty. (*Id*. at p. 410.) The First District held that inspection immunity encompassed the sufficiency of recommendations. (*Id*. at pp. 411-412.) Here, in comparison, plaintiffs have not just alleged insufficient recommendations, but rather a complete failure to even attempt fulfillment of the mandatory duty to notify an appropriate entity. (SAC, at p. 4:18-20.) The alleged absence of notification or referral distinguishes the alleged facts (which the court must assume true) from the summary judgment evidence received in *Herzog*.

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: jyh on 5/13/24.
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: ***Ginger Mongelli v. Beautologie Fresno, Inc.***
Superior Court Case No. 23CECG04792

Hearing Date: May 14, 2024 (Dept. 503)

Motion: By Defendant to Compel Arbitration

Tentative Ruling:

To grant the motion to compel arbitration and order plaintiff to arbitrate her claims against defendant. The action is stayed pending completion of arbitration.

Explanation:

California courts traditionally have maintained a strong preference for arbitration as a speedy and inexpensive method of dispute resolution. To this end, 'arbitration agreements should be liberally construed', with 'doubts concerning the scope of arbitrable issues [being] resolved in favor of arbitration [citations].'" (*Market Ins. Corp. v. Integrity Ins. Co*. (1987) 188 Cal. App. 3d 1095, 1098, internal citations omitted.)

In essence, "[t]he petitioner bears the burden of proving the existence of a valid arbitration agreement by a preponderance of the evidence, while a party opposing the petition bears the burden of proving by a preponderance of the evidence any fact necessary to its defense. The trial court sits as the trier of fact, weighing all the affidavits, declarations, and other documentary evidence, and any oral testimony the court may receive at its discretion, to reach a final determination." (*Ruiz v. Moss Bros. Auto Group, Inc.* (2014) 232 Cal.App.4th 836, 842, (*Ruiz*) internal citations omitted.)

"'In California, "[g]eneral principles of contract law determine whether the parties have entered a binding agreement to arbitrate,"' and the party seeking arbitration bears the burden of proving the existence of an arbitration agreement." (*Ruiz, supra,* 232 Cal.App.4th at p. 842*,* internal citations omitted.) Where the moving party relies on a written agreement purportedly signed by the plaintiff, the moving party must authenticate the agreement before it may be received into evidence. (*Id*. at p. 843.) " 'Authentication of a writing means (a) the introduction of evidence *sufficient to sustain a finding that it is the writing that the proponent of the evidence claims it is* or (b) the establishment of such facts by any other means provided by law.'" (*Ibid*, internal citations omitted.)

Defendant's motion asserts the subject stand-alone arbitration agreement, which is boldly entitled "Mutual Agreement to Arbitrate Employment-related Disputes." (See Atkinson, Decl., Ex. A.) Plaintiff contends she was never informed of the arbitration agreement, which she describes as "inconspicuous" (Opp. at p. 6:25), although the subject agreement contains an employee signature dated June 6, 2021 – the day of plaintiff's admitted hiring. (Mongelli, Decl., ¶ 2.)

Despite plaintiff's contention, defendant's evidence provides sufficient authentication through the declaration from Jessica Atkinson ("Atkinson"), who is defendant's Chief Operating Officer and overseer of its human resources department. Atkinson attests to her assigned responsibility for overseeing the company's hiring and onboarding process and new hire orientation. She also is one of the custodian of records for employee personnel records.

Atkinson's declaration explains that defendant's practice is to allow new employees "as much time as necessary to review the arbitration agreement and employees are not given a deadline for signing the arbitration agreement." (Atkinson, Decl. ¶ 22.) Atkinson believes this was the practice followed for plaintiff specifically, based upon training from Atkinson's predecessor, the signor on defendant's behalf. (*Id*. at ¶¶ 20, 23.) Atkinson also explains that plaintiff legally changed her name during her employment, thus explaining why the employee signature on the subject agreement resembles Ginger Valenzuela rather than plaintiff's name stated in this case, Ginger Mongelli. (*Id*. at ¶19.) Accordingly, the information provided by this declaration and its attachment is sufficient to sustain a finding that it is plaintiff's signature affixed to the subject arbitration agreement.

In addition, plaintiff contends the arbitration agreement is unconscionable because she does not recall its existence, that it gives discovery discretion to the arbitrator, and it does not specify the degree of judicial review. However, as discussed above, defendant's evidence of the onboarding process is sufficient to authenticate plaintiff's signature and plaintiff presents no evidence that the arbitrator will deny her discovery rights nor fail to comply with written findings and conclusions provision expressly included in the arbitration agreement. (See Atkinson, Decl. Ex. A, ¶ 10; *Armendariz v. Foundation Health Psychcare Services, Inc*. (2000) 24 Cal.4th 83, 106-107.) Consequently, plaintiff has not shown an adequate defense to enforcement of the agreement to arbitrate.

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: jyh on 5/13/24.
(Judge's initials) (Date)

(29)

Tentative Ruling

Re: ***In re: Anthony Melgoza***
Superior Court Case No. 24CECG01592

Hearing Date: May 14, 2024 (Dept. 503)

Motion: Petition to Approve Compromise of Disputed Claim of Minor

Tentative Ruling:

To grant. Orders signed. No appearances necessary.

The court sets a status conference for Tuesday, August 13, 2024, at 3:30 p.m., in Department 503, for confirmation of deposit of claimant's funds into the blocked account. If petitioner files the Acknowledgment of Receipt of Order and Funds for Deposit in Blocked Account (MC-356) at least five court days before the hearing, the status conference will come off calendar.

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: jyh on 5/13/24.
(Judge's initials) (Date)