Tentative Rulings for July 21, 2026
Department 403

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

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

22CECG03588 ***Bachant v. Bachant*** **(Dept. 403)**

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

25CECG03158 ***Tony Romo v. Paul Croskrey*** **is continued to Tuesday, August 4, 2026, at 3:30 p.m. in Department 403.**

(Tentative Rulings begin at the next page)

<u>Tentative Rulings for Department 403</u>

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(48)

Tentative Ruling

Re: ***First Citizens Bank & Trust Co. v. Goncalves et al.***
Superior Court Case No. 26CECG00758

Hearing Date: July 21, 2026 (Dept. 403)

Motion: Plaintiff's Application for Writ of Possession

Tentative Ruling:

To deny in light of the entry of default against defendants Goncalves Living Trust LLC and Nathan Goncalves on June 9, 2026.

Explanation:

This motion requests a prejudgment writ of possession, which is proper before final adjudication of the claims sued upon. (*Sea Rail Truckloads, Inc. v. Pullman, Inc.* (1982) 131 Cal.App.3d 511, 514.) However, the default of both defendants was entered before the requisite hearing for plaintiff's writ of possession had taken place (defaults entered on June 9, 2026). The entry of default instantly cuts off a defendant's right to appear in the action or participate in the proceedings unless the default is set aside or judgment is entered (i.e., giving the defendant the right to appeal). (*Devlin v. Kearny Mesa AMC/Jeep/Renault, Inc.* (1984) 155 Cal.App.3d 381, 385.) Due process would not be served by allowing a plaintiff to give the defendant notice of a motion when defendant's right to defend itself regarding that motion had already been cut off. Plaintiff may proceed to obtain a judgment against defendants, and after judgment has been obtained it may proceed with all post-judgment enforcement procedures available.

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: SMC on July 20, 2026 .
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Alvarez v. AG Force, LLC***
Superior Court Case No. 25CECG05797

Hearing Date: July 21, 2026 (Dept. 403)

Motion: by Defendant to Compel Arbitration

Tentative Ruling:

To grant the motion to compel arbitration, and to stay proceedings pending arbitration of plaintiff's claims.

Explanation:

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

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

By its terms, the agreement is governed by the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1, et seq. Section 2 of the FAA provides for enforcement of arbitration provisions in any contract "evidencing a transaction involving commerce." (9 U.S.C. § 2.) To determine whether there is an enforceable arbitration agreement, courts apply state law principles related to formation, revocation, and enforcement of contracts. (*Banner*

Entertainment, Inc. v. Alchemy Filmworks, Inc. (1998) 62 Cal.App.4th 348, 357.) Moving defendants are not required to submit evidence of impact on interstate commerce to establish FAA preemption. (See *Valencia v. Smyth* (2010) 185 Cal.App.4th 153, 157; *Cronus Investments, Inc. v. Concierge Services* (2005) 35 Cal.4th 376, 387, 394.) Plaintiff does not challenge the governance of the FAA.

Here, defendant has met its burden of showing that there is an agreement to arbitrate the claims that plaintiff has raised in his complaint. Defendant has presented copies of the "Mutual Agreement to Arbitrate Employment Disputes" that plaintiff signed during onboarding upon being hired by defendant in June 2022 and August 2023. ((Rios Decl., ¶¶ 5-8, 11[1], and Exhibits A and B thereto.) The agreements signed by plaintiff are in Spanish. A copy of the agreement in English is also provided by defendant. (Zall Decl., ¶ 11, Ex. C.) The agreement states that plaintiff and defendant "mutually agree to resolve any and all claims, disputes or controversies arising out of or relating to Employee's employment and/or the termination of employment ("Employment Claims") exclusively by final and binding arbitration to the extent permitted by law." (*Id*., at Ex. C, ¶ 1.) The agreement excludes from arbitration those claims for which arbitration is not legally permitted, such as sexual harassment or sexual assault claims or those relating to unemployment or workers ' compensation benefits, or those brought by federal, state or local agencies as a result of a complaint by the employee. (*Id*., at Ex. C, ¶¶ 3a-b.) However, should that action arising from a complaint brought before an agency be brought by the employee, the agreement specifies that it is subject to the arbitration agreement. (*Id*., Ex. C, ¶ 3b[2].) Thus, the agreement clearly applies to the plaintiff's claims of violations of the California Fair Employment and Housing Act he is pursuing following his complaint to the California Civil Rights Department.

In his opposition, plaintiff does not deny that he signed the arbitration agreement. Plaintiff argues the agreement is not enforceable due to procedural and substantive unconscionability.

Procedural Unconscionability

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[1] Plaintiff's late-filed objections to the declaration of Mayra Rios are overruled for purposes of this motion, as plaintiff is not challenging the authenticity of the arbitration agreement attached thereto. "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.]" (*Iyere v. Wise Auto Group* (2023) 87 Cal.App.5th 747, 755, internal citations omitted.)

[2] Plaintiff references this section to argue the agreement lacks mutuality. When read in the context of the agreement, this section distinguishes claims arising from complaints to a government agency brought by the agency against the employer with those brought by the employee against the employer. The inclusion of this language does not support finding a lack of mutuality where the agreement otherwise includes all claims brought by employee or employer arising from the employment relationship.

The doctrine of unconscionability has " 'both a "procedural" and a "substantive" element,' the former focusing on ' "oppression" ' or ' "surprise" ' due to unequal bargaining power, the latter on ' "overly harsh" ' or ' "one-sided" ' results." (*Armendariz v. Foundation Health Psychcare Services* (2000) 24 Cal.4th 83, 114.) 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.)

Plaintiff contends that the arbitration provision is highly procedurally unconscionable as a contract of adhesion, presented without explanation in a group setting where he felt rushed to sign. Plaintiff argues any acceptance of the terms was the product of uninformed consent. Plaintiff cites to *OTO, LLC v. Kho* (2019) 8 Cal.5th 111 where the court found significant oppression where the employee was presented with an agreement containing an arbitration clause with little time to review the contract and no ability to negotiate its terms. (*Id*., at pp. 127-128.) Plaintiff additionally cites to Magno v. The College Network, Inc. (2016) 1 Cal.App.5th 277, *Dougherty v. Roseville Heritage Partners* (2020) 47 Cal.App.5th 93, and *Nelson v. Dual Diagnosis Treatment Center, Inc*. (2022) 77 Cal.App.5th 643, in support of his argument that there is significant procedural unconscionablity found where the party is rushed and given little time to review the documents containing the arbitration agreement.

Accepting plaintiff's attestations that he felt rushed and was not given enough time to read the documents during the onboarding process (Alvarez Decl., ¶¶ 7, 10, 15, 18), the facts here are distinguishable from those cases plaintiff relies upon. In contrast to the employee in *OTO, LLC v. Kho*, plaintiff was not a current employee presented with an agreement by a low-level employee for immediate signature and without time to review. (*OTO, LLC v. Kho*, *supra*, 8 Cal.5th at pp. 127-128.) Plaintiff was presented the document on both occasions he begin working for defendant in a meeting with other new hires and there were employees available to assist with the paperwork. (Alvarez Decl., ¶¶ 4, 6, 12, 13.) Unlike the low level employee sent to deliver the agreement to Kho, plaintiff was in a room with persons to assist him and he did not request assistance.

The circumstances plaintiff attests to are also readily distinguished from the cases where the rush to sign supported a high level of procedural unconscionability. In *Magno v. The College Network, Inc*., the arbitration provision was on the back of a preprinted enrollment agreement, without any separate signature or initial from the student, and presented by a sales person in connection with a limited time discount. (*Magno, supra*, 1 Cal.App.5th at p. 286.) In *Dougherty v. Roseville Heritage Partners*, the arbitration agreement was buried in 70 pages of admissions documents and the facility was told by Dougherty that residence was needed that day after two other facilities would not accept her father which greatly diminished her bargaining power. (*Dougherty*, *supra*, 47 Cal.App.5th at pp. 103-104.) In *Nelson v. Dual Diagnosis Treatment Center, Inc*., the arbitration agreement was presented to plaintiffs' son for signature without negotiation and noting he was in an agitated mental state and had issues with concentration. (*Nelson*, *supra*, 77 Cal.App.5th at pp. 661-662.) The court analogized the circumstances to presenting a written contract to a visually impaired person. (*Id.* at p. 662.)

The group setting with office employees available for assistance does not support plaintiff's argument that there was a high degree of procedural unconscionability in connection with the signing of the agreement. That plaintiff felt rushed, did not read the agreement and that no one explained the agreement to him likewise does not support finding a high degree of procedural unconscionability. The failure to read or understand the arbitration agreement is generally no defense to enforcement. (*Bolanos v. Khalatian* (1991) 231 Cal.App.3d 1586, 1590 [immaterial that plaintiff claimed an inability to read English at all and "only limited Spanish…with substantial difficulty," and that she did not remember signing the document]; *Madden v. Kaiser Foundation Hospitals* (1976) 17 Cal.3d 699, 710 [general rule is that a party who assents to a contract is bound by its provisions and cannot complain of unfamiliarity with its language]; *Gold v. Deutsche Aktiengesellschaft* (2d Cir. 2004) 365 F.3d 144, 149 [absent fraud or other wrongful act, employee signing written contract is conclusively presumed to know its contents and assent to them].)

There is some degree of procedural unconscionability where, as here, the contract was drafted by the employer and preprinted for plaintiff's signature. As such it can be considered a contract of adhesion. However, courts frequently enforce employment arbitration agreements that are contracts of adhesion, as long as they are not also substantively unconscionable. "Arbitration clauses in employment contracts have been upheld despite claims that the clauses were unconscionable because they were presented as part of an adhesion contract on a take-it-or-leave-it basis. In finding the arbitration clause in *Lagatree* was not unconscionable, the court noted that, 'as *Gilmer* and its progeny make clear, the compulsory nature of a predispute arbitration agreement does not render the agreement unenforceable on grounds of coercion or for lack of voluntariness.'" (*Giuliano v. Inland Empire Personnel, Inc.* (2007) 149 Cal.App.4th 1276, 1292, citations omitted.) That the plaintiff had the opportunity to opt out of the arbitration agreement by its terms reduced the degree of procedural unconscionability.

The evidence presented by plaintiff supports minimal procedural unconscionability.

Substantive Unconscionablity

Mandatory arbitration clauses in employment contracts are enforceable if they provide essential fairness to the employee. (*Armendariz v. Foundation Health Psychcare Services, Inc., supra,* 24 Cal.4th at pp. 90-91; see also *24 Hour Fitness v. Superior Court* (1998) 66 Cal.App.4th 1199, 1212 [arbitration clause in employee handbook was not unconscionable where it provided all parties with substantially same rights and remedies].) In the employment context, an agreement must include the following five minimum requirements designed to provide necessary safeguards to protect unwaivable statutory rights where important public policies are implicated: 1) a neutral arbitrator; 2) adequate discovery; 3) a written, reasoned, opinion from the arbitrator; 4) identical types of relief as available in a judicial forum; and 5) that undue costs of arbitration will not be placed on the employee. (*Armendariz, supra,* 24 Cal.4th at p. 102.)

Plaintiff argues these minimum standards are not met because if fails to provide for all types of relief that would otherwise be available in court and fails to limit the costs of the arbitration to the employee. Plaintiff argues the agreement's silence on the remedies available to claims must be interpreted as failing to guarantee all available remedies and thus, is not compliant with the requirements of *Armendariz*. The court disagrees. The agreement specifies that issues of state law will be governed by the law of the state in which the claim arose. (Zall Decl., Ex. C, ¶ 4b.) As such, plaintiff's claims for violations of California's Fair Employment and Housing Act will be governed by California law. Plaintiff's argument would have the court assume the arbitrator will rule inconsistent with the laws of California governing the claims.

Plaintiff argues the arbitration agreement allows the arbitrator to shift fees to the employer, inconsistent with Government Code section 12965, subdivision (c)(6), which limits an employer's entitlement to attorney fees to where the court finds the action was frivolous, unreasonable, or groundless when brought. (See Zall Decl., Ex. C, ¶ 8.) Again, plaintiff's interpretation assumes an order will be made inconsistent with the law governing plaintiff's claims. However, to the extent the terms of the agreement could be considered in conflict with FEHA's fee shifting provisions and take precedence, this can be remedies by severing the fee shifting provision from the arbitration agreement. The fee shifting provision can be fairly regarded as collateral to the purpose of the contract, and the provision can be stricken without affecting any of the other provisions. With that adjustment, there is no substantive unconscionability, and the agreement must be enforced.

Defendant has met its burden of demonstrating the existence of a valid arbitration agreement covering the claims of plaintiff's complaint. Plaintiff has not met his burden of showing that the agreement is unconscionable. (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413.) The motion to compel plaintiff to arbitrate his claims is granted.

Request for Evidentiary Hearing

The court declines to order an evidentiary hearing for examination of Mr. Zall and Ms. Rios. Plaintiff is not challenging the authenticity of his signature on either of the two arbitration agreements. To the extent plaintiff challenges their attestations as to the circumstances of the onboarding for purposes of his procedural unconscionability arguments, the court considered only plaintiff's declaration in determining whether the circumstances of his signing supported finding procedural unconscionability. There are no credibility or evidentiary issues to resolve.

Request for Judicial Notice

Defendant requests judicial notice of several ruling on other motions to compel arbitration to demonstrate that similar arbitration agreements have been enforced by this court. Although the rulings themselves are appropriately a subject of judicial notice, and the request is granted, the rulings are the product of the moving papers and facts specific to each case and have no bearing on whether the arbitration agreement before the court in this case is enforceable.

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: SMC on July 20, 2026 .
(Judge's initials) (Date)

(49)

<u>Tentative Ruling</u>

Re: ***Zinkin v. Pickett & Sons Construction, Inc., et al.***
Superior Court Case No. 23CECG03579

Hearing Date: July 21, 2026 (Dept. 403)

Motion: By Defendant Pickett & Sons Construction, Inc. to Bifurcate Trial

Tentative Ruling:

To deny without prejudice. (Code Civ. Proc., § 597.)

Explanation:

Defendant Pickett & Sons Construction, Inc. ("Defendant"), moves for an order bifurcating trial pursuant to Code of Civil Procedure section 597. Code of Civil Procedure section 597 states, in pertinent part:

> When the answer pleads that the action is barred by the statute of limitations… the court may, either upon its own motion or upon the motion of any party, proceed to the trial of the special defense… before the trial of any other issue in the case….

The decision to grant or deny a motion to bifurcate issues and to have separate trials, lies within the court's sound discretion. (Code Civ. Proc. §§ 598, 1048, subd. (b); *Grappo v. Coventry Financial Corp*. (1991) 235 Cal.App.3d 496, 503-504; *see also Cook v. Superior Court* (1971) 19 Cal.App.3d 832, 834.) The court also has the power to "provide for the orderly conduct of proceedings before it," and to "amend and control its process and orders so as to make them conform to law and justice." (Code Civ. Proc. § 128, subd. (a)(3),(8).)

Defendant has raised the statute of limitations and standing as defenses to plaintiff Dewayne Zinkin's ("Plaintiff") claims and requests a trial on the defenses before the trial of Plaintiff's claims and the cross-complaints. Plaintiff opposes on the basis that the witnesses and testimony Plaintiff would require to counter the statute of limitations defense are duplicative of Plaintiff's liability case and would include expert testimony about complex construction issues. Thus, Plaintiff argues a separate trial would not promote judicial economy. Defendant argues that such expert evidence is not necessary. Plaintiff also raises the possibility of adding the LLC that owns the building as a party of the lawsuit which would resolve the standing issue. Defendant argues that any motion filed by Plaintiff to add the LLC that owns the building would run into multiple issues and is not guaranteed to be granted.

The request for bifurcation made by Defendant is premature. The issue of standing may be made irrelevant by an intervening motion before trial. It is also not apparent, at this time, whether bifurcation of the statute of limitations defense would promote judicial economy. Defendant argues whether expert evidence should be presented for Plaintiff's argument against the statute of limitations. Witness and evidence issues are matters for trial readiness and motions in limine. Accordingly, the motion is denied, without prejudice to a possible motion in limine.

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: SMC on July 20, 2026 .
(Judge's initials) (Date)

(20) **Tentative Ruling**

Re: ***Ellis v. Planet Vegan, LLC, et al.***
Superior Court Case No. 24CECG02698

Hearing Date: July 21, 2026 (Dept. 403)

Motion: By Defendant Marshall Excelsior Company to Compel Further Response's to Request for Production of Documents, Set One

Tentative Ruling:

To deny. (Code Civ. Proc., § 2017.010, 2031.310.) To deny both parties' requests for sanctions.

Explanation:

Defendant Marshall Excelsior Company ("Marshall") moves to compel further responses from plaintiff to document demands seeking documentation of plaintiff's claim for lost wages. Prior to the pretrial discovery conference and defendant's filing of the motion to compel, plaintiff served supplemental responses waiving such damages, stating, "Responding Party is not making a claim for lost wages, lost income, future lost income and/or earning capacity and, therefore, this request for production is not applicable."

A party may obtain discovery regarding any relevant, non-privileged matter that reasonably could lead to the discovery of admissible evidence. (Code Civ. Proc., § 2017.010.) In light of plaintiff's amended responses, documentation relating lost wages is no longer relevant or within the scope of discovery.

The motion to compel is based on the assertion that "Plaintiff places his earnings and alleged loss of earnings directly at issue by seeking damages for lost wages, lost income, future lost income, and/or earning capacity." Since the service of the amended responses, this is categorically not true. Marshall's insistence that plaintiff execute an irrevocable waiver of any future ability to seek such damages is unnecessary, unreasonable, and unsupported by authority. In its January 16, 2026 Order After Pretrial Discovery Conference, the court stated, "Plaintiff recently amended his discovery responses wherein he took the position under penalty of perjury that he is not seeking loss of earnings damages against defendant [Marshall]. In the off chance (albeit remote) that plaintiff further amends his discovery responses to claim such damages against Marshall, the court will entertain, and likely grant, a motion by Marshall to continue the trial and reopen discovery at least on the issue of plaintiff's re-claimed loss of earnings damages." That is how things will proceed in the unlikely event that plaintiff subsequently walks back this waiver.

Given the court's ruling on the motion, Marshall's request for sanctions is denied. Plaintiff requests $2,500 in sanctions against Marshall. If a party properly asks for monetary sanctions, such sanction "shall" be imposed unless the court finds that party made or opposed the motion "with substantial justification" or other circumstances make the sanction "unjust." (Code Civ. Proc., § 2031.310, subd. (h).) While plaintiff's counsel filed a declaration in support of the opposition, the declaration does not address sanctions or provide evidence of the attorney fees incurred in opposing the motion to compel.

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: SMC on July 20, 2026 .
(Judge's initials) (Date)

(29)

Tentative Ruling

Re: ***Cortez v. Reyes***
Superior Court Case No. 24CECG02938

Hearing Date: July 21, 2026 (Dept. 403)

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

To grant the petition and sign the proposed order. No appearances necessary.

The court sets a status conference for Tuesday, October 20, 2026, in Department 403, for confirmation that the minor's funds have been invested as set forth in the petition. If petitioner files a declaration or documentation, at least five court days before the status conference, showing that the funds have been invested as ordered, 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: SMC on July 20, 2026 .
(Judge's initials) (Date)