Tentative Rulings for August 28, 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.

23CECG04737 ***Kevin Moore v. HSRE Pacifica Fresno OPCO LP*** **is continued to Wednesday, October 8, 2025, at 3:30 p.m. in Department 501.**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

Begin at the next page

(03)

Tentative Ruling

Re: ***Godines v. MVED, Inc.***
Case No. 23CECG05097

Hearing Date: August 28, 2025 (Dept. 501)

Motion: by Plaintiff for Order Compelling Further Responses to Form and Special Interrogatories, Set One, and for Sanctions

Tentative Ruling:

To continue the motions to compel further responses until October 30, 2025, at 3:30 p.m. in Department 501. To order plaintiff to file a request to enter defendant MVED, Inc.'s default, as its Answer has already been stricken.

Explanation:

While it appears that MVED has failed to provide full and complete answers to discovery, and thus would normally be subject to a motion to compel, MVED recently had its answer stricken for failure to appear through an attorney. At this time, MVED is not an active party to the case, as it no longer has an answer on file. Also, if plaintiff takes MVED's default, the discovery requests will be moot. There is no reason for the court to grant motions to compel MVED to provide further responses when it has had its answer stricken and its default is likely to be entered in the near future. Therefore, the court intends to continue the matter out for two months and instruct plaintiff to take MVED's default.

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 8/25/2025.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***C.M. v. County of Fresno***
Superior Court Case No. 22CECG03947

Hearing Date: August 28, 2025 (Dept. 501)

Motion: by Defendant for Judgment on the Pleadings

Tentative Ruling:

On its own motion, the court stays this matter pending the Supreme Court's review of *K.C. v. County of Merced* (2025) 109 Cal.App.5th 606.

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 8/26/2025.
(Judge's initials) (Date)

(47)

Tentative Ruling

Re: ***Kalos Specialized Services, Inc v Charis Wallace***
Superior Court Case No. 24CECG04476

Hearing Date: August 28, 2025 (Dept. 501)

Motion: by Defendant for Leave to Amend Answer

Tentative Ruling:

To grant, with the exception that the court does not grant the request to direct the clerk to file the document (the proposed Amended Answer) that is attached to the Order, nor does it grant the request to deem the Amended Answer filed as of the date of the Order. Instead, defendant must separately file the Amended Answer within 10 days from the clerk's service of the minute order granting this motion. New language in the Amended Answer must be set in **boldface** type.

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 (Judge's initials) on 8/26/2025 (Date).

(46)

Tentative Ruling

Re: ***Lourdes Andrade v. Coalinga Medical Center, LLC / COMPLEX***
Superior Court Case No. 23CECG05277

Hearing Date: August 28, 2025 (Dept. 501)

Motion: to Compel Arbitration

Tentative Ruling:

To deny the motion to compel arbitration and request for stay.

Explanation:

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, 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.) Presumptions are to be made in favor of arbitrability. (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 971-972.)

An Arbitration Agreement Exists

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 with plaintiff, executed by the parties on April 22, 2021. (Gill Decl., ¶ 4, Exh. A.) Plaintiff has not raised any challenges to the existence or authenticity of the agreement, however she does contend that her cause of action falls outside the scope of the agreement and is not subject to arbitration.

The Arbitration Agreement Excludes PAGA Claims

Defendant's position is that plaintiff has asserted individual PAGA claims that arose out of and are related to her employment, and the agreement is to arbitrate "all disputes, claims or controversies arising out of or relating to the employment relationship between Employee and Employer." (Memo. P&A, 19:22-25, (Gill Decl., Exh. A [Item 1, Section B].) Defendant notes that *Viking River Cruises, Inc. v. Moriana* (2022) 142 S.Ct. 1906 held that

an individual's PAGA claim may be separated from a representative proceeding and may be subject to arbitration. The Fifth District Court of Appeal has confirmed the definition of "individual PAGA claims" to mean those based on a violation suffered by the plaintiff. (*CRST Expedited, Inc. v. Superior Court of Fresno County* (2025) 112 Cal.App.5th 872.)

Plaintiff submits that her claims are not subject to arbitration because they fall outside the scope of the signed "Binding Arbitration Agreement," which specifically excludes PAGA claims from arbitration. Plaintiff points to Item 1, Section C of the Binding Arbitration Agreement, which specifies:

> C. Claims Not Covered
> [T]he Parties agree that this Agreement shall not apply to any claim that is not subject to arbitration pursuant to federal or state law(s), **including any claims relating to […] Private Attorney General Act claims**[.]
>
> (Gill Decl., Exh. A, emphasis added.)

Plaintiff argues that *Viking River*, *supra*, relied on by defendants to parse out her individual PAGA claims from the representative action, cannot disregard the contractual language of the agreement that explicitly excludes them from arbitration. "[A]rbitration is simply a matter of contract between the parties; it is a way to resolve those disputes—but only those disputes—that the parties have agreed to submit to arbitration." (*First Options of Chicago, Inc. v. Kaplan* (1995) 514 U.S. 938, 943.)

Here, the arbitration agreement specifically states that "Private Attorney General Act **claims**" are included in those not covered by the agreement. (Gill Decl., Exh. A [Item 1, Section C], emphasis added.) This does not distinguish individual and representative PAGA claims.

In *Duran v. EmployBridge Holding Co.* (2023) 92 Cal.App.5th 59, the court interpreted a PAGA carveout provision to find that it included all PAGA claims. The exclusion in *Duran* was worded similarly to the exclusion here: "Claims for unemployment compensation, claims under the National Labor Relations Act, *claims under PAGA*, claims for workers' compensation benefits, and any claim that is non-arbitrable under applicable state or federal law *are not arbitrable under this Agreement*." (*Duran*, *supra*, 92 Cal. App. 5th at 63 (emphasis in original).) The court in *Duran* held that "the language stating claims under PAGA are not arbitrable under the agreement is unambiguous." (*Id.,* at 66.) The language of the carveout provision in *Duran* is similar to the language here in the "Claims Not Covered" section of the arbitration agreement, which carves out "Private Attorney General Act **claims,**" individual and representative.

The Agreement Does Not Make Exception for Individual PAGA Claims

Defendant argues that individual claims are still subject to arbitration pursuant to language in the agreement. Defendant relies on the "Class Action Waiver" section of the agreement, which houses an individual claims limitation providing for arbitration of some of an employee's individual claims. (Gill Decl., Exh. A [Item 1, Section F].)

> F. Class Action Waiver
> [T]o the extent Employee is (otherwise) legally entitled to file a class action or to seek class certification of any disputes arising under this agreement, EMPLOYEE AND COMPANY VOLUNTARILY AGREE TO WAIVE ANY RIGHT TO PARTICIPATE IN SUCH CLASS ACTION OR COLLECTIVE ACTION AND/OR OTHER REPRESENTATIVE ACTIONS OR PROCEEDINGS AND INSTEAD **AGREE TO BINDING ARBITRATION OF EMPLOYEE'S INDIVIDUAL CLAIMS**, TO THE FULLEST EXTENT ALLOWED BY STATE AND FEDERAL LAWS. EMPLOYEE AND COMPANY, AS THE PARTIES TO THIS AGREEMENT, EXPRESSLY AND KNOWINGLY WAIVE ANY RIGHT TO BINDING ARBITRATION OF ANY CLASS ACTION PROCEEDINGS.
>
> (Gill Decl., Exh. A, emphasis added.)

The line relied on by defendant does not appear to apply to the present PAGA claims nor discount their exclusion from the claims covered by the agreement. The phrase preceding the agreement to arbitrate these individual claims is "to the extent Employee is (otherwise) legally entitled to **file a class action or to seek class certification** of any disputes arising under this agreement, EMPLOYEE AND COMPANY […] AGREE TO BINDING ARBITRATION OF EMPLOYEE'S INDIVIDUAL CLAIMS." (Gill Decl., Exh. A, [Item 1, Section F], emphasis added.) The limitation appears to be specifically applicable to class actions, which this case is not.

Plaintiff highlights the second paragraph of the same section of the agreement to reiterate her position that there is no distinction in PAGA claims excluded from arbitration.

> To the extent current and applicable law does not allow the parties to waive their rights as to certain representative claims, such as for claims under the California Private Attorneys General Act of 2004, **the parties agree that any such non-arbitrable claims for penalties** shall be bifurcated and stayed **in their entirety** (including discovery as to those claims) pending the resolution of the arbitration for all other claims alleged by either Employee or the Company against the other in any capacity (including, without limitation, a representative, class, collective, and/or individual capacity).
>
> (Gill Decl., Exh. A [Item 1, Section F], emphasis added.)

This section of the agreement references "claims for penalties" under PAGA, which are the nature of this action, and considers them "non-arbitrable claims for penalties" that "shall be bifurcated and stayed **in their entirety**." (*Ibid*.)

The language of the submitted arbitration agreement appears to explicitly exclude PAGA claims in their entirety. Therefore, the court intends to deny the motion to compel 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: DTT on 8/26/2025.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Alarcon, Sr. v. Monroe, et al.***
Superior Court Case No. 18CECG00898

Hearing Date: August 28, 2025 (Dept. 501)

Motion: by Defendant Fresno Skilled Nursing & Wellness Centre, LLC, individually and dba Healthcare Centre of Fresno for Summary Judgment, or in the Alternative, for Summary Adjudication

Tentative Ruling:

To deny without prejudice. (Code Civ. Proc., § 437c.)

Explanation:

"Notice of the motion and supporting papers shall be served on all other parties to the action at least 81 days before the time appointed for hearing." (Code Civ. Proc., § 437c, subd. (a)(2).) The evidence supporting the motion was not lodged until August 19, 2025, only nine days prior to the hearing. Accordingly, the motion is denied without prejudice for untimeliness.

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 8/26/2025.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Javier Reyes v. S. Stamoules Inc.***
Superior Court Case No. 21CECG00557

Hearing Date: August 28, 2025 (Dept. 501)

Motion: by Plaintiff to Certify Class

Tentative Ruling:

To deny, without prejudice.

Explanation:

Code of Civil Procedure section 382 permits class actions "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court …"

> To obtain certification, a party must establish the existence of both an ascertainable class and a well-defined community of interest among the class members. [citations.] The community of interest requirement involves three factors: "(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." [citation.] Other relevant considerations include the probability that each class member will come forward ultimately to prove his or her separate claim to a portion of the total recovery and whether the class approach would actually serve to deter and redress alleged wrongdoing. [citation.]

(*Linder v. Thrifty Oil Co*. (2000) 23 Cal.4th 429, 435.)

The party seeking certification of the class has the burden of establishing the required elements. (*Quacchia v. DaimlerChrysler Corp*. (2004) 122 Cal.App.4th 1442, 1449.) In ruling on a class certification motion, the court does not make determinations as to the merits of the claim. (*Sevidal v. Target Corp*. (2010) 189 Cal.App.4th 905, 917.)

"Whether a class is ascertainable is determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class members." (*Reyes v. Board of Supervisors* (1987) 196 Cal.App.3d 1263, 1271.) Ascertainability can best be achieved "by defining the class in terms of objective characteristics and common transactional facts," rather than defining it in such a way that proposed class members must establish the merits of their case in order to be considered part of the class. (*Hicks v. Kaufman & Broad Home Corp*. (2001) 89 Cal.App.4th 908, 914–915.) "A class representative has the burden to define an ascertainable class." (*Sevidal v. Target Corp., supra*, 189 Cal.App.4th at p. 918.) Class

certification is appropriately denied where the proposed class definition is overbroad. (*Miller v. Bank of America, N.A.* (2013) 213 Cal.App.4th 1, 7.)

Here, plaintiff proposes the following definition for the class:

> All persons employed by Defendant during the period February 25, 2018 through the date notice is mailed to the class who experienced one or more breaks in service initiated by Defendant during that period and received their wages for the last workweek worked after the date of a break in service. (For purposes of this class definition, the term "break in service" means when an employee has worked during a workweek and then does not return to work for one or more workweeks thereafter, and the term "workweek" means Defendant's workweek for seasonal workers from Monday through Sunday.)

Defendant asserts that this definition is overbroad and vague, especially focusing on the "break in service" language as potentially including situations where a break in service was not connected with a discharge of the employee. Plaintiff argues that the definition is objective and that class members would be able to self-identify. However, plaintiff also *clarifies* in the Reply that "Plaintiff only **seeks to** represent employees who were discharged." (Reply, p. 6, emphasis in original.) Plaintiff further offers that the court could redefine the class to "seasonal employees temporarily or permanently laid off by Stamoules and/or fired by Stamoules during the class period." (Ibid.)

The court agrees with defendant that the class definition is currently overbroad because "breaks in service initiated by Defendant" could include more than instances where defendant discharged an employee. Plaintiff's own arguments to the contrary confirm by arguing that plaintiff only intended to represent employees who were discharged. The court is also not inclined to revise the class definition, but would encourage plaintiff to do so in any future motions for class certification. The court also encourages the parties to meet and confer regarding same. As such, the court finds the class definition is overly broad and therefore denies plaintiff's motion to certify the class, without prejudice. As the size of the class and means of identifying potential class members would necessarily be determined based on the class definition, the court will not address these prongs.

In light of the finding that the class definition is overbroad, the court will also not address the community of interest issues at this time. The court recognizes that much of the arguments regarding whether a community of interest exists here were based on an understanding, or lack thereof, of "breaks in service initiated by Defendant".

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 8/26/2025.
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: ***K.A. v. Dmitri De La Cruz***
Superior Court Case No. 22CECG00877

Hearing Date: August 28, 2025 (Dept. 501)

Motion: Amended Petition to Compromise Minor's Claim

Tentative Ruling:

To grant the Amended Petition. The proposed Order will be signed. No appearances are necessary.

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 (Judge's initials) on 8/27/2025 (Date).