Tentative Rulings for October 8, 2025
Department 502

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

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

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

25CECG00469 ***Garcia v. Singh et al.*** **is continued to Tuesday, October 14, 2025, 3:30 p.m. in Dept. 502**

22CECG00886 ***J & D Meat Company, Inc. v Vanderbilt Homes*** **is continued to Thursday, October 23, 2025 at 3:30 p.m. in Dept. 502**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 502

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(35)

Tentative Ruling

Re: ***Galpin v. Merced Hospice, Inc.***
Superior Court Case No. 24CECG04875

Hearing Date: October 8, 2025 (Dept. 502)

Motion: By Plaintiff Laren Cyr Galpin to Compel Further Responses to Special Interrogatories, Set One

Tentative Ruling:

To deny.

Explanation:

Plaintiff Laren Cyr Galpin ("Plaintiff") seeks to compel further responses to Special Interrogatories, Set One from defendant Merced Hospice, Inc. ("Defendant"). It is uncontested that the four interrogatories at issue, No. 14 to 17, relate to seeking information of Defendant's financial condition on claims arising under Civil Code section 3294, for punitive damages, and that would otherwise be authorized under Civil Code section 3295, subdivision (c).)

Civil Code section 3295, subdivision (c) specifies the procedure to obtain a court order allowing a plaintiff to seek pretrial discovery of the profits and financial condition of a defendant in connection with a prayer for Civil Code section 3294 punitive damages. To allow discovery of a defendant's financial condition, the court must find "on the basis of the supporting and opposing affidavits" that plaintiff has "established a substantial probability" of prevailing on the punitive damages claim. (Civ. Code, § 3295, subd. (c).) "Appropriate affidavits" in this context are affidavits sufficient to establish "oppression, fraud or malice" as defined by Civil Code section 3294. (*Ibid.*) The defendant must be given the opportunity to present opposing declarations. (Civ. Code, § 3295, subd. (c); *Jabro v. Superior Court* (2002) 95 Cal.App.4th 754, 758.)

Civil Code section 3294 defines malice as "conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." Section 3294 defines oppression as "despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." Section 3294 defines fraud as "an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury."

Here, as Defendant notes in its opposition, Plaintiff submits no appropriate affidavits to establish the presence of oppression, fraud, or malice within the meaning of Civil Code section 3294. Facts and evidence, either originally in possession of Plaintiff, or through the course and scope of discovery must first establish that Plaintiff is likely to prevail on the issue of punitive damages, in order to obtain further discovery as to the

scope of the awardable amount in punitive damages. Allegations alone are not sufficient to show a substantial probability of prevailing. (*Jabro v. Superior Court*, *supra*, 95 Cal.App.4th at p. 758 [finding that evidence must be weighed to establish a substantial probability of prevailing].) Accordingly, Plaintiff fails to establish a substantial probability of prevailing on the punitive damages claim to obtain an order for pretrial discovery of Defendant's financial condition. The motion is denied as to these propounded interrogatories. (*See e.g.*, *Mike Davidov Co. v. Issod* (2000) 78 Cal.App.4th 597, 609-610 [allowing for discovery of financial condition even after trial if a jury finds liability for punitive damages, that "once there has been a determination of liability by the trier of fact based on an actual weighing of the credibility of the witnesses, this kind of affidavit-and-hearing process is patently superfluous"].)

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 10/06/25.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Nash v. Adams, et al.***
Superior Court Case No. 25CECG02715

Hearing Date: October 8, 2025 (Dept. 502)

Motion: by Defendants Lithia Motors, Inc. and Lithia Motors Support Services, Inc. to Compel Arbitration and Stay Proceedings Pending Arbitration

Tentative Ruling:

To grant defendants Lithia Motors, Inc. and Lithia Motors Support Services, Inc.'s (hereinafter, "defendants") motion to compel plaintiff to arbitrate her claims, and to stay the pending court action until the arbitration is resolved.

Explanation:

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.)

Here, defendants have met their burden of showing that an agreement to arbitrate the parties' dispute exists. Defendants have presented evidence that plaintiff electronically signed an agreement to arbitrate employment related disputes. (Rummer Decl., ¶¶ 6-7 and Ex. 1.) Although plaintiff indicates that she does not recall signing an arbitration agreement, plaintiff does not dispute that an agreement to arbitrate exists. Instead, plaintiff argues that the agreement is both procedurally and substantively unconscionable and therefore the court should not enforce it.

"Unconscionability has generally been recognized to include an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party." (*Williams v. Walker-Thomas Furniture Company* (D.C. Cir. 1965) 350 F.2d 445, 449, fn. omitted.) "Phrased another way, unconscionability has both a 'procedural' and a 'substantive' element. (*A & M Produce Co. v. FMC Corp.* (1982) 135 Cal.App.3d 473, 486, citations omitted.) "The procedural element focuses on two factors: 'oppression' and 'surprise.' 'Oppression' arises from an inequality of bargaining power which results in no real negotiation and 'an absence of

meaningful choice.' 'Surprise' involves the extent to which the supposedly agreed-upon terms of the bargain are hidden in a prolix printed form drafted by the party seeking to enforce the disputed terms. Characteristically, the form contract is drafted by the party with the superior bargaining position." (*Ibid*, citations omitted.)

"A procedural unconscionability analysis begins with an inquiry into whether the contract is one of adhesion. An adhesive contract is standardized, generally on a preprinted form, and offered by the party with superior bargaining power 'on a take-it-or-leave-it basis.' Arbitration contracts imposed as a condition of employment are typically adhesive..." (*OTO, L.L.C. v. Kho*, *supra*, 8 Cal.5th at p. 126, citations and some quote marks omitted.)

"No precise definition of substantive unconscionability can be proffered. Cases have talked in terms of 'overly harsh' or 'one-sided' results. One commentator has pointed out, however, that '... unconscionability turns not only on a "one-sided" result, but also on an absence of "justification" for it.'" (*Id.* at p. 487, citations omitted.) Courts now follow "the traditional standard of unconscionability - contract terms so one-sided as to 'shock the conscience.'" (*Stirlen v. Supercuts, Inc.* (1997) 51 Cal.App.4th 1519, 1532, citations omitted.) "The prevailing view is that these two elements must *both* be present in order for a court to exercise its discretion to refuse to enforce a contract or clause under the doctrine of unconscionability." (*Id.* at p. 1533, citations omitted, italics in original.)

In the present case, the arbitration agreement has some degree of procedural unconscionability, since it was a preprinted contract drafted by defendants, the party with superior bargaining power, and it was allegedly presented to plaintiff as a condition of her employment. (Nash Decl., ¶¶ 3-4.) Plaintiff claims that the arbitration agreement was not negotiable and that she is aware of at least one instance where defendants refused to hire a candidate because he expressed a desire to opt out of the arbitration agreement. (*Id*., at ¶ 5.) Plaintiff asserts that she was not provided with an explanation of its terms or an opportunity to negotiate. No one told her anything about the arbitration agreement or advised her that she was giving up any rights. (*Id*., at ¶¶ 6-7.) Plaintiff also argues that the agreement is procedurally unconscionable since it fails to attach the International Institute for Conflict Prevention and Resolution Administered employment Arbitration Rules ("CPR Rules"); however, the failure to attach the arbitration rules where they are available on the internet does not support finding procedural unconscionability. (*Lane v. Francis Capital Mgmt. LLC* (2014) 224 Cal.App.4th 676, 689-690.) Nonetheless, plaintiff was not given a choice, and instead was required to sign the agreement in order to be allowed to work for defendants. The agreement did not include an opt-out clause, and it was presented as a preprinted contracted drafted by defendants, the party with superior bargaining power. Therefore, plaintiff has shown that the agreement was a procedurally unconscionable contract of adhesion.

On the other hand, just because the agreement was a contract of adhesion does not necessarily mean that it was so unconscionable as to make it unenforceable. As the California Supreme Court in *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83 has held, most employment arbitration agreements are contracts of adhesion and thus have elements of procedural unconscionability. (*Id*. at pp. 114-115.) However, they may still be enforced as long as they sufficiently provide for the vindication

of the employee's statutory rights, including rights under FEHA. (*Id*. at p. 100-103.) "Such an arbitration agreement is lawful if it '(1) provides for neutral arbitrators, (2) provides for more than minimal discovery, (3) requires a written award, (4) provides for all of the types of relief that would otherwise be available in court, and (5) does not require employees to pay either unreasonable costs or any arbitrators' fees or expenses as a condition of access to the arbitration forum.'" (*Id.* at p. 102, citation omitted.) The arbitration contract should also have at least a modicum of bilaterality in order to be enforceable. (*Id*. at pp. 117-118.) In other words, the contract should bind both sides and require both the employer and the employee to arbitrate all disputes, unless there is a reasonable justification for the lack of mutuality. (*Ibid*.)

Here, the arbitration agreement meets all of the requirements under *Armendariz*. It provides for the appointment of a neutral arbitrator, who has the power to grant more than minimal discovery including depositions, written discovery, and document production. (Rummer Decl., Ex. 1; Hanassab Decl., Ex. 1, CPR Rules, Rule 5-7 and 11.) The arbitrator must provide a written decision. (Rummer Decl., Ex. 1, ¶ 3; Hanassab Decl., Ex. 1, CPR Rules, Rule 15.2.) The CPR Rules provides that the arbitrator shall apply the substantive law(s) and that "[t]he arbitrator shall have the authority to award all legal and equitable relief that would be available in court under applicable law, including, but not limited to, attorney's fees and arbitration fees and costs." (Hanassab Decl., Ex. 1, CPR Rules, Rule 10.) The agreement also does not impose any unreasonable costs or fees on plaintiff, since the agreement requires defendants to pay any fees or costs of arbitration over the amount needed to pay for filing fees. (Rummer Decl., Ex. 1, ¶ 3.) The amount of filing fees paid by the plaintiff shall not exceed the amount of plaintiff's local court filing fees. (*Ibid*.)

However, plaintiff argues that the agreement is substantively unconscionable because it limits plaintiff's right to recovery of attorneys' fees, which infringes on the relief that would otherwise be available to plaintiff in court, severely limits discovery, and contains a class action waiver.

Attorneys' Fees Allocation

First, the agreement does not limit plaintiff's right to recovery of attorneys' fees. Plaintiff contends that CPR, Rule 19 provides the arbitrator with the authority to allocate attorneys' fees per his discretion, which plaintiff alleges impermissibly allows the arbitrator to limit plaintiff's statutory right to recover attorneys' fees under FEHA. However, the relevant portions of the arbitration agreement and the CPR Rules provide: "The Company and I shall each bear our own attorney fees in any arbitration proceeding unless otherwise required by law." (Rummer Decl., Ex. 1, ¶ 3.) "Unless otherwise . . . required by law, the arbitrator's award may allocate attorney's fees, and the expenses and costs of arbitration. . ." (Hanassab Decl., Ex. 1, CPR Rules, Rule 19.1.) "The arbitrator shall have the authority to award all legal and equitable relief that would be available in court under applicable law, including, but not limited to, attorney's fees and arbitration fees and costs." (Hanassab Decl., Ex. 1, CPR Rules, Rule 10.2.) Therefore, the agreement does not limit plaintiff's right to recover attorneys' fees.

Although plaintiff relies upon *Trivedi v. Curexo Technology Corp.* (2010) 189 Cal.App.4th 387 to contend that substantive unconscionability exists even where the

arbitration rules allow for the arbitrator to award fees and costs in accordance with applicable law, *Trivedi* is inapposite. In *Trivedi*, the arbitration clause included a mandatory attorney fee and cost provision allowing for the recovery of fees and costs by the prevailing party. (*Id.*, at p. 394.) There, the court held that the provision in the AAA rules, incorporated in the arbitration agreement by reference, allowing the arbitrator to award fees and costs in accordance with applicable law did not save the arbitration agreement since the arbitrator could apply AAA rules only where there was an adverse material inconsistency between the arbitration agreement and the AAA rules. (*Id.,* at pp. 394-396.) Here, however, the arbitration agreement does not include a mandatory attorney fee and cost provision in favor of the prevailing party. Accordingly, the agreement does not limit plaintiff's right to recover statutory attorneys' fees.

Minimal Discovery

Next, plaintiff contends that discovery is unconscionably limited since the CPR Rules presumes that each party is entitled to take one deposition. (Hanassab Decl., Ex. 1, CPR Rules, Rule 11.4.)

Under the arbitration agreement, "[d]iscovery . . . shall be conducted as permitted by the arbitrator to the extent he or she concludes such discovery is required to achieve an efficient and just resolution. . ." (Rummer Decl., Ex. 1, ¶ 3.) The CPR Rules provide that the parties shall cooperate in the voluntary exchange of documents and information as relevant to the claims and defenses made in arbitration, the parties shall meet and confer on the scope of discovery, "including the production of documents and the appropriateness of interrogatories or other discovery devices. . ." (Hanassab Decl., Ex. 1, CPR Rules, Rule 11.2.) Also, absent agreement between the parties, "the arbitrator will authorize such discovery as reasonably necessary for each party to prepare for, present, and respond to the parties' respective claims or defenses. . ." (*Ibid*.) Also, absent an agreement between the parties as to the number of depositions to be conducted, the arbitrator will determine the number of depositions allowable. (*Id*., at Rule 11.4.)

"*Armendariz, supra,* 24 Cal.4th 83, 99 provided a standard that many cases have used to evaluate the validity of discovery limits." (*Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478, 504.) "As to discovery, [the California Supreme Court] stated that parties to an arbitration clause can agree "to something less than the full panoply of discovery provided" in the Code of Civil Procedure [Citation.], but that "adequate discovery is indispensable for the vindication of FEHA claims" [Citation.]. (*Ibid*., citations and footnote omitted.) The Supreme Court in *Armendariz* "held that 'whether or not the employees [were] entitled to the full range of discovery provided in Code of Civil Procedure section 1283.05, they are at least entitled to discovery sufficient to adequately arbitrate their statutory claim, including access to essential documents and witnesses, as determined by the arbitrator(s).' [Citation.]" (*Ramirez, supra,* 16 Cal.5th at p. 505 citing *Armendariz, supra,* at p. 106.)

Therefore, "*Armendariz* stands for the principle that an arbitration agreement required as a condition of employment must generally permit employees sufficient discovery to adequately arbitrate any statutory claims. The scope of what discovery is sufficient is determined by the arbitrator." (*Ramirez, supra,* 16 Cal.5th at p. 505.)

Here, plaintiff argues that the discovery provision within the CPR Rules is substantively unconscionable because it presumes plaintiff is allowed only one deposition. Plaintiff is correct in her assertion that the limitation of number of deposition does not have a mutual effect, since " 'the employer [ordinarily] already has in its possession many of the documents relevant to an employment discrimination case as well as having in its employ many of the relevant witnesses.' [Citation.]" (*Fitz v. NCR Corp.* (2004) 118 Cal.App.4th 702, 716, citation omitted.) However, while the discovery provision *presumes* plaintiff is entitled to one deposition, it does not limit plaintiff to just one deposition. The California Supreme Court in *Ramirez* held that "giving the arbitrator authority to expand discovery based on *Armendariz*'s requirement is one way the adequacy [of discovery] concern can be addressed." (*Ramirez, supra,* at p. 506.) The parties here are required to meet and confer on the number of depositions, and absent any agreement between the parties, just as in *Ramirez,* the arbitrator has the authority to expand that number as reasonably necessary for the parties to present their claims and defenses. (Rummer Decl., Ex. 1, ¶ 3; (Hanassab Decl., Ex. 1, CPR Rules, Rule 11.) Therefore, the agreement does not unconscionably limit discovery beyond that allowable under *Armendariz*.

Class Action Waiver

Third, plaintiff relies upon *Discover Bank v. Superior Court* (2005) 36 Cal.4th 148, that the class action waiver provision in the arbitration agreement is substantively unconscionable. However, such class action waivers are enforceable, since the Federal Arbitration Act ("FAA") preempts California's rule classifying such waivers to be unconscionable. (*AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 340 abrogating *Discover Bank v. Superior Court* (2005) 36 Cal.4th 148.)

Accordingly, plaintiff has not met her burden in showing that unconscionability is a defense to enforcement of the arbitration agreement. Therefore, the court grants the motion to compel arbitration of plaintiff's claims and to stay the proceedings pending resolution of the arbitration.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 10/06/25.
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: ***Carin Hodge v. Dept. of Fish & Wildlife, State of CA***
Superior Court Case No. 25CECG02805

Hearing Date: October 8, 2025 (Dept. 502)

Motion: Demurrer

Tentative Ruling:

This motion is taken off calendar as it does not appear from the court's record that moving papers were filed.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 10/07/25.
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: ***Damian Rodriguez Burgos v. Jaguar Land Rover North America, LLC***
Superior Court Case No. 25CECG02935

Hearing Date: October 8, 2025 (Dept. 502)

Motion: Compel Arbitration

Tentative Ruling:

This motion is taken off calendar as it does not appear from the court's record that moving papers were filed.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 10/07/25.
(Judge's initials) (Date)