Tentative Rulings for October 9, 2025
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.***

24CECG00562 ***Raynaldo Hernandez, et al. v. Chenwi Ambe, M.D., et al.***
(Appearance required – also see below for tentative ruling.)

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

23CECG01010 ***Ragina Bell v Lisa Spoors*** **is continued to Thursday, October 30, 2025 in Department 403**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

Begin at the next page

(03)

Tentative Ruling

Re: ***Cabrera, et al. v. K. Hovananian at Valle Del Sol, LLC***
Case No. 19CECG00801

Hearing Date: October 9, 2025 (Dept. 403)

Motion: Defendants' Motion to Dismiss

Tentative Ruling:

To deny defendants' motion to dismiss the action.

Explanation:

Under Code of Civil Procedure section 583.310, "[a]n action shall be brought to trial within five years after the action is commenced against the defendant." (Code Civ. Proc., § 583.310.) Also, under section 583.360, "[a]n action shall be dismissed by the court on its own motion or on motion of the defendant, after notice to the parties, if the action is not brought to trial within the time prescribed in this article." (Code Civ. Proc., § 583.360, subd. (a).) "The requirements of this article are mandatory and are not subject to extension, excuse, or exception except as expressly provided by statute." (Code Civ. Proc., § 583.360, subd. (b).)

"In computing the time within which an action must be brought to trial pursuant to this article, there shall be excluded the time during which any of the following conditions existed: (a) The jurisdiction of the court to try the action was suspended. (b) Prosecution or trial of the action was stayed or enjoined. (c) Bringing the action to trial, for any other reason, was impossible, impracticable, or futile." (Code Civ. Proc., § 583.340, subds. (a)-(c), paragraph breaks omitted.)

Also, "[t]he parties may extend the time within which an action must be brought to trial pursuant to this article by the following means: (a) By written stipulation. ... (b) By oral agreement made in open court, if entered in the minutes of the court or a transcript is made." (Code Civ. Proc., § 583.330, subds. (a), (b), paragraph breaks omitted.)

In the present case, the plaintiffs filed their complaint on March 5, 2019. The deadline to bring the case to trial would normally have been March 5, 2024. However, Emergency Rule 10(a), enacted due to the Covid pandemic, added six months to the five-year statute for cases filed on or before April 6, 2020. Thus, the five-year deadline expired on September 5, 2024, assuming that none of the exceptions listed in sections 583.340 apply and the parties did not agree to extend the deadline.

However, there is no dispute that the parties agreed to stay the action in July of 2020 while they worked to comply with the mandatory procedures for construction defect cases under SB 800. The court signed the stipulated order staying the action on July 7, 2020. (See Joint Stipulation and Order to Stay Pending Compliance with SB 800's Pre-Litigation Procedures filed July 7, 2020.) The stipulated order states that "IT IS HEREBY STIPULATED AND AGREED by and between Plaintiffs and K. Hovananian that this case

shall be stayed pending the parties' compliance with SB 800's pre-litigation procedures." (*Id*. at p. 3, lines 19-21.)

There is no indication that the parties did not intend to stay the entire action, or that they intended to proceed with some aspects of the case despite the stay. Instead, it appears that the stipulated order meant what it said, and that the parties fully intended to stay the entire case while they complied with the procedures under SB 800. Thus, the stay tolled the running of the five-year statutory time period until it was lifted on April 17, 2024. (Code Civ. Proc., § 583.340, subd. (b).) After taking into account the time during which the stay was in effect, the case will have been pending for less than five years by the time it goes to trial on October 20, 2025.

Nevertheless, defendants argue that the stay was only "partial" and that plaintiffs could have lifted the stay at any time by complying promptly with SB 800's requirements or moving the court to lift the stay. Defendants contend that a stay that is imposed voluntarily by the parties and that is not the result of extrinsic circumstances is not sufficient to toll the running of the five-year statute. (*Gaines v. Fidelity National Title Ins. Co.* (2016) 62 Cal.4th 1081, 1091-1092.)

"Under section 583.340(b), a stay of the trial halts the running of the five-year period. By contrast, a continuance generally does not." (*Ibid*, citations omitted.) "The long-standing judicial understanding of the term stay in the context of the five-year statute is that it refers to those postponements that freeze a proceeding for an indefinite period, until the occurrence of an event that is usually extrinsic to the litigation and beyond the plaintiff's control." (*Id*. at p. 1092.)

In *Gaines*, the Supreme Court held that the trial court's order striking the trial date was a continuance rather than a stay for the purpose of the five-year statute, as the trial date was taken off calendar for a defined period while the parties attended mediation and conducted discovery. (*Id*. at p. 1093.) "Although the order did not set a new trial date, it identified a date certain to resume proceedings by calendaring a July 16, 2008 trial-setting conference. This stipulated trial postponement, agreed to by the parties and not occasioned by an extrinsic proceeding, court order, or law barring action, does not qualify for automatic tolling." (*Id.* at p.1094.)

Here, defendants argue that the parties agreed to the stay voluntarily and that plaintiffs could have lifted the stay at any time, and thus the stay was not due to extrinsic circumstances beyond plaintiffs' control. Yet defendants ignore the fact that the stay was granted because the requirements of SB 800 are mandatory, and thus the parties had to comply with SB 800's procedures before the stay could be lifted. In fact, if plaintiffs had refused to agree to the stay, defendants could have moved to stay the action and the court would have been required to grant the motion. (Civil Code, § 930, subd. (b); *Elliott Homes, Inc. v. Superior Court* (2016) 6 Cal.App.5th 333, 345.) Once the court granted the order staying pursuant to the parties' stipulation, the stay remained in effect until the court lifted it. There was no defined time period for the stay to remain in effect, and the civil case was entirely suspended until the parties complied with all of the requirements of SB 800. Thus, since the case was entirely stayed from July 7, 2020 to April 17, 2024, the five-year time period was tolled during that time, and the case is not subject to dismissal under the five-year statute.

Also, even if the stay did not toll the five-year period, defendants agreed to the case management order (CMO), which included the October 20, 2025 trial date. (See CMO filed December 4, 2024, p. 27.) Defendants also agreed to amend the CMO timelines in the Revised CMO filed on April 21, 2025, but they did not object to or seek to change the October 20, 2025 trial date. (See Revised CMO filed April 21, 2025.) The parties thus clearly agreed in writing to a trial date that was past the five-year statute, assuming that the stay did not toll the five-year statute from running. (Code Civ. Proc., § 583.330, subd. (a).) Even though the CMO did not expressly refer to the five-year statute or state that the defendants were waiving the right to move to dismiss the case under the statute, the fact that they agreed to a trial date that was more than five years after the filing of the complaint indicates that they were waiving the five-year statutory deadline. (*Munoz v. City of Tracy* (2015) 238 Cal.App.4th 354, 361-362 [holding parties do not have to expressly state they are waiving the five-year statute as long as they agree to a trial date beyond the five-year period]; see also *Smith v. Bear Valley Milling & Lumber Co.* (1945) 26 Cal.2d 590, 599 [same].)

As a result, since the defendants agreed in writing to a trial date that was more than five years after the complaint was filed, they waived the right to move to dismiss the action for failure to bring the case to trial within five years. Consequently, the court intends to deny the motion to dismiss the action.

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: lmg on 10-8-25.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***Zupaniac v. Gold***
Case No. 24CECG04902

Hearing Date: October 9, 2025 (Dept. 403)

Motion: Defendant's Motion for Summary Judgment, in the Alternative, Summary Adjudication

Tentative Ruling:

To deny defendant's motion for summary judgment, and the alternative motion for summary adjudication.

Explanation:

Defendant argues that she is entitled to summary judgment of the entire complaint because plaintiff cannot prevail on her professional negligence claim, as the trial court in the underlying *Labiak* action found that plaintiff failed to file her complaint within the statute of limitations, which was solely due to plaintiff's own negligence. Defendant alleges that she was not retained by plaintiff in the underlying action until May of 2023, over three years after plaintiff had filed her complaint, so she did not cause the action to be filed outside of the statute. (Defendant's Undisputed Material Fact Nos. 1-4, 11.) Defendant also contends that plaintiff cannot show that she was negligent in failing to bring a motion for reconsideration of the court's order granting summary judgment, a motion to set aside the court's order, or an appeal, as there was no legal or factual basis for the motions or an appeal. In addition, defendant argues that plaintiff's other allegations fail to show that defendant caused her anything other than nominal damages, which are insufficient to support a professional malpractice cause of action.

However, defendant has not met her burden of showing that she did not negligently cause the court to grant summary judgment in the underlying *Labiak* case. The key allegation of plaintiff's complaint is that defendant failed to make an argument in her opposition brief or at oral argument that might have defeated Labiak's summary judgment motion. Specifically, plaintiff alleges that she asked defendant to argue in opposition to the summary judgment motion that Labiak had given her legal advice during their last meeting on December 7, 2018 before he gave her the settlement check. (Complaint, ¶¶ 4-6.) If Labiak had given legal advice to plaintiff during their meeting, then the statute would not have started to run until December 7, 2018, and her complaint against Labiak would have been timely filed. (*Id*. at ¶¶ 4, 5.) However, defendant failed to make this argument when opposing the summary judgment motion, which resulted in the trial court granting Labiak's motion. (*Id*. at ¶¶ 5, 6.)

Defendant has not addressed any of these allegations in her motion for summary judgment or presented any evidence or arguments that would show that her failure to make the argument as plaintiff requested did not constitute negligence, or did not cause the trial court in the *Labiak* case to grant summary judgment against plaintiff. She simply

argues that she did not cause the complaint to be filed outside of the statute of limitations, but ignores plaintiff's allegation that her failure to make a key argument resulted in the trial court finding that the statute had run. Since defendant has failed to address the central allegations of plaintiff's complaint, she has not met her burden of showing that she is entitled to summary judgment of the entire complaint and the court must deny the motion.

Also, even if defendant had met her burden, plaintiff has submitted evidence that raises a triable issue of material fact with regard to whether defendant failed to raise the argument in opposition to the summary judgment motion. Plaintiff has provided defendant's responses to Requests for Admissions numbers 18 to 21, in which defendant admitted that she did not make the argument that Labiak gave legal advice to plaintiff during their last meeting on December 7, 2018, and that the argument might have caused the trial court to find that plaintiff's complaint was timely and deny Labiak's summary judgment motion. (See Exhibit D to plaintiff's decl., defendant's responses to Requests for Admission, Nos. 18-21.) Thus, there is a triable issue of material fact with regard to whether defendant caused the court in the *Labiak* action to grant summary judgment by failing to raise the requested argument.

In her reply, defendant argues for the first time that she could not have made the argument that plaintiff asked her to make to the court in good faith, as it was unsupported by the law and it would have constituted a violation of her duties under the Business and Professions Code and the Rules of Professional Conduct to do so. She contends that she found the trial court's reasoning to be unassailable, that she was unable to find any statute or case law that would have supported plaintiff's contention that her last conversation with Labiak constituted legal advice, and therefore she could not argue in good faith that the court was wrong.

However, since defendant has raised this argument for the first time in her reply brief and she did not provide any argument or evidence to support her contention in her opening brief, the court cannot consider it now when ruling on the summary judgment motion. "New arguments may not be raised for the first time in an appellant's reply brief. '"Obvious considerations of fairness in argument demand that the appellant present all of his [or her] points in the opening brief. To withhold a point until the closing brief would deprive the respondent of his [or her] opportunity to answer it or require the effort and delay of an additional brief by permission. Hence the rule is that points raised in the reply brief for the first time will not be considered, unless good reason is shown for failure to present them before.' " (*High Sierra Rural Alliance v. County of Plumas* (2018) 29 Cal.App.5th 102, 112, fn 2; quoting *Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 764.)

Therefore, the court will not allow defendant to raise a new argument in her reply brief in a belated attempt to refute plaintiff's claim that defendant was negligent in failing to make the argument in opposition to Labiak's motion. Instead, it intends to find that defendant has failed to meet her burden of showing that she is entitled to summary judgment of the entire complaint, and it will deny defendant's motion for summary judgment.

The court also intends to deny defendant's alternative motion for summary adjudication of the punitive damage claim. Defendant moves for summary adjudication

of the prayer for punitive damages, contending that plaintiff has no evidence that defendant acted with malice, fraud, or oppression when she represented plaintiff in the underlying action. (Civil Code, § 3294.) However, defendant's motion is procedurally defective and therefore must be denied.

Under Rule of Court 3.1350(b), "If summary adjudication is sought, whether separately or as an alternative to the motion for summary judgment, the specific cause of action, affirmative defense, claims for damages, or issues of duty must be stated specifically in the notice of motion and be repeated, verbatim, in the separate statement of undisputed material facts." (Cal. Rules of Court, Rule 3.1350(b).) Also, under Rule 3.1350(d)(1), "The Separate Statement of Undisputed Material Facts in support of a motion must separately identify: (A) Each cause of action, claim for damages, issue of duty, or affirmative defense that is the subject of the motion; and (B) Each supporting material fact claimed to be without dispute with respect to the cause of action, claim for damages, issue of duty, or affirmative defense that is the subject of the motion." (Cal. Rules of Court, Rule 3.1350(d)(1), para. breaks omitted.)

Here, defendant moves for summary adjudication of the claim for punitive damages, which is permitted under Code of Civil Procedure section 437c, subdivision (f)(1). However, defendant's separate statement of material facts does not include a separate portion that discusses the motion for summary adjudication of the punitive damage claim. Nor does the separate statement set forth facts that are claimed to be undisputed that relate to the claim for punitive damages. Nor is it apparent from the defendant's memorandum of points and authorities which facts support her motion for summary adjudication of the punitive damage claim. Therefore, since defendant has not complied with the mandatory requirements of the Rules of Court with regard to motions for summary adjudication, the court intends to deny the motion for summary adjudication of the punitive damage claim.

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: lmg on 10-8-25.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Ramirez v. Daniels, et al.***
Superior Court Case No. 25CECG03112

Hearing Date: October 9, 2025 (Dept. 403)

Motion: Preliminary Injunction

Tentative Ruling:

To deny.

Explanation:

As a threshold matter, the motion does not appear to have been properly noticed. "No preliminary injunction shall be granted without notice to the opposing party." (Code Civ. Proc., § 527, subd. (a).)

There is no evidence defendants have been served with the summons or with notice of the motion for a preliminary injunction. In the absence of notice to the defendants the motion must be denied.

Substantively, the moving papers are deficient as well. As there is no cause of action for an injunction, there must be at least one well-pled cause of action within the complaint for which injunctive relief is available. The complaint filed July 10, 2025 indicates plaintiff is attempting to obtain payments from an unidentified person for a vehicle. There are no clear causes of action pled in the complaint.

The concurrently filed motion for preliminary injunction indicates the vehicle is in the possession of defendant Michael James Daniels who has neither paid an agreed balance of payments for plaintiff's vehicle nor returned the vehicle when demanded by plaintiff. (Ramirez Decl., ¶¶ 6-7, 11.) Plaintiff is seeking an injunction based on a belief Daniels may sell the vehicle. (*Id*. at ¶ 12.)

"An injunction cannot issue in a vacuum based on the proponents' fears about something that may happen in the future. It must be supported by actual evidence that there is a realistic prospect that the party enjoined intends to engage in the prohibited activity." (*Korean Philadelphia Presbyterian Church v. California Presbytery* (2000) 77 Cal.App.4th 1069, 1084.) As such, had plaintiff stated a cause of action that would allow the court to proceed with the merits of the injunction, the motion would be denied. Plaintiff's speculation that plaintiff may attempt to sell the vehicle will not support an injunction.

Accordingly, the motion for a preliminary injunction is denied without prejudice.

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: lmg on 10-8-25.
(Judge's initials) (Date)

(47) **Tentative Ruling**

Re: ***Sunny Le v Amarjeet Singh***
Superior Court Case No. 25CECG00342

Hearing Date: October 9, 2025 (Dept. 403)

Motion: Motion to Deem Requests for Admission Admitted

Tentative Ruling:

Motion is moot, except to grant reasonable sanctions in the sum of $472.50 against plaintiffs in favor of Intervenor, Accredited Specialty Insurance Company, to be paid to Intervenor's counsel within 30 days of service of the minute order by the clerk.

Explanation

Defendant has provided responses to the aforementioned requests.

The court may award sanctions against a party that fails to provide discovery responses. (Code Civ. Proc. § 2023.010(d), (h).) The court must impose a monetary sanction against the party or attorney, or both, whose failure to respond necessitated the motion to deem matters admitted. (Code Civ. Proc. §2033.280(c).) Where responding party provided the requested discovery after the motion to compel was filed, the court is authorized to award sanctions. (Cal. Rules of Court, rule 3.1348(a).)

Reasonable sanctions are warranted under Code of Civil Procedure, sections 2023.030(a) and (c), which as plaintiffs counsel points out, is the time used to prepare for this motion, as well as the filing fees.

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

Tentative Ruling
Issued By: lmg on 10-8-25 .
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Ruben Gutierrez v. Fresno Community Hospital and Medical Center***
Superior Court Case No. 24CECG00942

Hearing Date: October 9, 2025 (Dept. 403)

Motion: by defendant Fresno Community Hospital and Medical Center for Summary Judgment

Tentative Ruling:

To grant defendant Fresno Community Hospital and Medical Center's Motion for Summary Judgment. (Code Civ. Proc., § 437c, subd. (c).)

Explanation:

Defendant Fresno Community Hospital and Medical Center dba Clovis Community Medical Center ("defendant" or "Clovis Community") moves for summary judgment on the complaint[1] filed by plaintiffs Ruben Gutierrez, Dave Gutierrez, Nicolas Gutierrez, Felicia Gutierrez, Celena Gutierrez, and Christopher Gutierrez ("plaintiffs").

As the moving party, defendant bears the initial burden of proof to show that plaintiffs cannot establish one or more elements of their cause of action or to show that there is a complete defense. (Code Civ. Proc., § 437c, subd. (p)(2).) Only after the moving party has carried this burden of proof does the burden of proof shift to the other party to show that a triable issue of one or more material facts exists – and this must be shown via specific facts and not mere allegations. (*Ibid.*)

Where the moving party produces competent expert opinion declarations showing that there is no triable issue of fact on an essential element of the opposing party's claim (e.g. that a medical defendant's treatment fell within the applicable standard of care), the opposing party's burden is to produce competent expert opinion declarations to the contrary. (*Ochoa v. Pacific Gas & Elec. Co.* (1998) 61 Cal.App.4th 1480, 1487.)

In determining whether any triable issues of material fact exist, the court must strictly construe the moving papers and liberally construe the declarations of the party opposing summary judgment. (*Barber v. Marina Sailing, Inc.* (1995) 36 Cal.App.4th 558, 562.) Any doubts as to whether a triable issue of material fact exist are to be resolved in favor of the party opposing summary judgment. (*Ibid*.)

"Failure to file opposition including a separate statement of disputed material facts […] 'may constitute a sufficient ground, in the court's discretion, for granting the

[1] Defendant's request for judicial notice is granted.

motion.'" (*Cravens v. State Bd. of Education* (1997) 52 Cal.App.4th 253, 257, quoting Code of Civil Procedure § 437c, subd. (c).)

Here, decedent signed a "Conditions of Admission or Service" which sets forth that "All physicians and surgeons furnishing services to me […] are not employees or agents of the hospital." (Pollara Decl., Exh. A, PDF p. 44/81, see Undisputed Material Facts ["UMF"] 22, 24, 25.) Thus, in question is the conduct of the hospital and its nursing staff. (Pollara Decl., Exh. A, PDF p. 44/81.)

Defendant Clovis Community relies on the declaration of Dorothy A. Dennin, a California Registered Nurse, licensed Critical Care Registered Nurse, and Registered Nurse in the Trauma and Neuroscience Intensive Care Unit of John Muir Health. (Dennin Decl., ¶ 1.) Ms. Dennin relied upon the decedent's medical records to arrive at her opinion. (*Id*., ¶ 4.) Copies of these medical records are provided with the declaration of Dominique A. Pollara, accompanied by the affidavit of the custodian of records for Clovis Community, Leticia Alvary. (See Pollara Decl., ¶ 4, Exh. A.)

Ms. Dennin opines that the care and treatment provided to decedent by Clovis Community's nursing staff complied with the standard of care in all respects, as they "continually assessed, reassessed, intervened, administered medications, alerted physicians to abnormalities, and took vital signs at regular intervals, all in accordance with the standard of care." (Dennin Decl., ¶¶ 5, 13, 14, see UMF ¶ 13.) Ms. Dennin opines that her review of the medical records reveals that all of the nursing staff properly carried out the physician orders for decedent. (*Id*., ¶ 7.) In her declaration, Ms. Dennin walks through the various procedures and protocols followed by the nursing staff of Clovis Community to describe and support her opinion. (See *id*., ¶ 4.)

Ms. Dennin's opinion as an expert is sufficient to shift the burden to the plaintiffs as to the existence of a triable issue of fact. Plaintiffs, however, filed a statement of non-opposition whereby they do not oppose the motion for summary judgment. They did not file an opposing statement of material fact. Thus, plaintiffs seemingly affirm the merits of Clovis Community's motion. (*Cravens v. State Bd. of Education* (1997) 52 Cal.App.4th 253, 257.)

The motion for summary judgment is therefore granted.

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: lmg on 10-8-25.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Bairos, et al. v. Pitman, et al.***
Superior Court Case No. 15CECG02642

Hearing Date: October 9, 2025 (Dept. 403)

Motions (x3): Petitions for Compromise of Minor and Disabled Adult

Tentative Ruling:

To grant. Orders signed. No appearances necessary for these compromise petitions.

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: lmg on 10-8-25.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Hernandez, et al. v. Chenwi Ambe, M.D., et al.***
Superior Court Case No. 24CECG00562

Hearing Date: October 9, 2025 (Dept. 403)

Motions (x2): (1) by Defendant Gillian Gutowski, P.A. for Summary Judgment; and
(2) by Plaintiffs for Leave to Amend

Tentative Ruling:

Plaintiffs' motion for leave to amend is rendered moot by the stipulation and order dated October 1, 2025, permitting plaintiffs to file their Second Amended Complaint. **The parties are instructed to appear at the hearing** to discuss the amended pleading's effect on the motion for summary judgment.

Explanation:

On June 11, 2025, Defendant Gutowski filed his motion for summary judgment as to the First Amended Complaint. Soon thereafter, plaintiffs' counsel notified this court of plaintiff Raynaldo Hernandez's passing. On September 8, 2025, plaintiffs filed a motion for leave to file a Second Amended Complaint to substitute heirs and/or successors-in-interest for the deceased plaintiff and to join nominal defendant(s). An opposition was not filed against either motion. On October 1, 2025, the parties filed a stipulation and order permitting plaintiffs to file their Second Amended Complaint. The order was signed on October 1, 2025.

Accordingly, plaintiffs' motion for leave to amend is rendered moot. Ordinarily, this would also render the motion for summary judgment moot since the summary judgment motion is made as to the First Amended Complaint; however, since the proposed amendments of the complaint would not affect the substance of the allegations against Defendant Gutowski, the parties are instructed to appear at the hearing to discuss a continuance of the motion for summary judgment and whether the parties are agreeable to stipulating to deeming the motion for summary judgment as being made against the Second Amended Complaint (once it is 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: lmg on 10-8-25.
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: ***Prince Raymond Williams v. California Department of Child Support Services***
Superior Court Case No. 25CECG01299

Hearing Date: October 9, 2025 (Dept. 403)

Motion: Demurrer by Defendants Kari Gilbert and Lisa Sprague to Plaintiff's First Amended Complaint

Tentative Ruling:

To strike the second amended complaint filed on July 23, 2025, as unauthorized; and to sustain the demurrer to the first amended complaint, with leave to amend as determined below. Plaintiff is granted leave of 20 days to file a new second amended complaint, which shall run from service by the clerk of the minute order.

Explanation:

The Court Strikes the Unauthorized Second Amended Complaint

A party may amend the party's pleading *once* at any time after a demurrer or motion to strike is filed but before the demurrer or motion to strike is heard if the amended pleading is filed and served no later than the date for filing an opposition. (Code Civ. Proc., § 472, subd. (a).) In addition "[a] party may amend the pleading after the date for filing an opposition to the demurrer or motion to strike, upon stipulation by the parties." (*Ibid*.) Here the self-represented plaintiff, Prince Paul Raymond Williams (Plaintiff), exercised his right to amend his original complaint by filing a first amended complaint (FAC) on May 5, 2025. In his 77-page FAC, Plaintiff sues one governmental entity, California Department of Child Support Services (Fresno County DCSS), and eight individual defendants. The individual defendants include "Director Kari Gilbert" (Gilbert) and "Director Lisa Sprague" (Sprague) (together, Defendants). Defendants demurred to the FAC on July 15, 2025. On July 23, 2025, without leave of court, Plaintiff filed and served a second amended complaint in lieu of opposing Defendants' demurrer.

"Plaintiff [is] authorized to amend without leave of court only once." (*Hodges v. County of Placer* (2019) 41 Cal.App.5th 537, 544 [finding trial court correctly struck amended complaint filed without leave of court where demurrer had been sustained without leave to file an amended complaint]; *Hedwall v. PCMV, LLC* (2018) 22 Cal.App.5th 564, 579 [court may strike improperly filed amended pleadings].) Without a stipulation by the parties, "[a]fter expiration of the time in which a pleading can be amended as a matter of course, the pleading can only be amended by obtaining the permission of the court." (*Hodges v. County of Placer, supra,* 41 Cal.App.5th at p. 544.)

Defendants' counsel, Kyle R. Roberson, submitted a declaration to establish that counsel met and conferred with Plaintiff by telephone at least five days before a

responsive pleading was due to be filed, but was unable to reach an agreement resolving the matters raised by the demurrer. Counsel followed up with emails and telephone calls to Plaintiff to summarize the pleading deficiencies raised in Defendants' demurrer and to request further contact by phone or email. Although Plaintiff failed to respond to counsel's subsequent efforts, counsel's efforts satisfy the requirements of Code of Civil Procedure section 430.41 for the demurring party to meet and confer in person, by telephone, or by video conference with the opposing party. However, in the future, Plaintiff is advised to respond promptly to meet-and-confer efforts by a demurring party's counsel—as required by the statute—in person, by telephone, or by video conference.

The court has no record that the meet-and-confer process resulted in a stipulation for Plaintiff to file the SAC. Because Plaintiff has already amended his original complaint as a matter of right, and the court has no record of a stipulation, the court strikes the unauthorized SAC as filed without leave of court. (*Hodges v. County of Placer, supra,* 41 Cal.App.5th at p. 544.)

Demurrer to First Amended Complaint

In California, a complaint shall contain a statement of the facts constituting the cause of action, in ordinary and *concise* language; and a demand for judgment for the relief to which the pleader claims to be entitled. (Code Civ. Proc., §425.10.) If the recovery of money or damages is demanded, the amount demanded shall be stated unless it is an action brought to recover actual or punitive damages for personal injury or wrongful death, in which case the amounts sought shall not be stated. (*Id*.) In other words, a cause of action must allege every fact that the plaintiff is required to prove in order to allege the facts, or elements, necessary to constitute a cause of action. Where the plaintiff fails to allege essential facts, the pleading is subject to demurrer. (See Code Civ. Proc., §§ 425.10, 430.10.)

In testing a pleading against a demurrer, the facts alleged are deemed to be true, "however improbable they may be." (*Del E. Webb Corp. v. Structural Materials* Co. (1981) 123 Cal.App.3d 593, 604.) A demurrer tests only the legal sufficiency of the pleading--not the truth of the plaintiff's allegations or the accuracy of the plaintiff's description of the defendant's conduct. (*Quelimane Co. v. Stewart Title Guaranty Co*. (1998) 19 Cal.4th 26, 47.)

To be "demurrer-proof," a complaint must allege sufficient *ultimate facts* to state a cause of action under a statute or case law. (*People ex rel. Dept. of Transportation v. Superior Court* (1992) 5 Cal.App.4th 1480, 1484 [adoption of official forms does not relieve plaintiff from alleging essential ultimate facts to state cause of action]; Code Civ. Proc., § 425.10, subd. (a).) Although California courts take a liberal view of inartfully-drawn complaints, "[i]t remains essential...that a complaint set forth the actionable facts relied upon with sufficient precision to inform the defendant of . . . what remedies are being sought." (*Signal Hill Aviation Co. v. Stroppe* (1979) 96 Cal.App.3d 627, 636.) Courts indulge in great liberality in allowing amendments to a complaint in order that no litigant is deprived of its day in court due to pleading technicalities. (*Saari v. Superior Court* (1960) 178 Cal.App.2d 175, 178.) Where the complaint alleges facts showing the plaintiff is entitled to relief under a possible legal theory, the court should permit amendment. (*Ibid*.; see also *Smith v. Wells Fargo Bank, N.A*. (2005) 135 Cal.App.4th 1463, 1485.)

As one who represents himself in propria persona, Plaintiff is "entitled to the same, *but no greater*, rights than represented litigants[.]" (*Wantuch v. Davis* (1995) 32 Cal.App.4th 786, 795, italics added.) Self-representation "is not a ground for exceptionally lenient treatment. Except when a particular rule provides otherwise, the rules of civil procedure must apply equally to parties represented by counsel and those who forgo attorney representation." (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984–985.)

Demurrer to Entire FAC

Plaintiff's rambling FAC refers to 28 separately-alleged causes of action as "Counts." As did Defendants, the court will similarly refer to Plaintiff's causes of action as "Counts." In the FAC, Plaintiff attempts to collaterally attack and relitigate adverse orders by the Family Law Division of this court for child support and child custody. Defendants demur generally to the entire FAC for lack of subject matter jurisdiction under Code of Civil Procedure section 430.10, subdivision (a); and specially because another action is pending between the same parties on similar claims under section 430.10, subdivision (c).

Defendants also rely on the broad doctrine of exclusive concurrent jurisdiction, which provides that "[w]here two or more courts have concurrent jurisdiction, it is the rule that the court first assuming jurisdiction retains it to the exclusion of all other courts in which the action might have been initiated. [Citations.]" (*Kresteller v. Superior Court, City and County of San Francisco* (1967) 248 Cal.App.2d 545, 549.) As Defendants explain, the Family Law Division of this court has exclusive concurrent jurisdiction of the challenged child support and child custody orders in this case:[2]

> As a general rule, one trial judge cannot reconsider and overrule an order of another trial judge; this rule discourages forum shopping, conserves judicial resources, prevents one judge from interfering with a case ongoing before another judge, and prevents a second judge from ignoring or arbitrarily rejecting the order of a previous judge. (*Alvarez v Superior Court* (2004) 117 Cal.App.4th 1107, 1111.) A superior court, though comprised of a number of judges, is a single court and one member of that court cannot sit in review on the actions of another member of that same court. (*In re Alberto* (2002) 102 Cal.App.4th 421, 427-428, as mod. Sept. 30, 2002.)

[2] The court grants Defendants' request for judicial notice (RJN), which includes the following facts: On July 2, 2014, the Fresno County DCSS filed a complaint with the Family Law Division of this court, against Plaintiff in *County of Fresno v. Prince Paul Raymond Williams*, case number 14CEFS01741, to establish financial support for his minor child, Aamirah. (RJN, ex. 1.) On January 6, 2015, the Family Support Department entered a final judgment against Plaintiff for an order to pay child support for Aamirah. (RJN, ex. 2.) On July 19, 2018, the Family Court Services Department, in case number 14CEFS01741, entered an Order Re: Child Custody and Visitation to order that the mother shall have sole legal and physical custody of Aamirah. Plaintiff was ordered to have supervised visits. (RJN, ex. 3.) On July 14, 2021, the Family Law Division entered an order against Plaintiff to pay half of Aamirah's medical expenses based on receipts submitted by the mother. (RJN, ex. 4.) On May 16, 2025, the Family Law Division denied Plaintiff's motion to modify child support without prejudice. (RJN, ex. 5.)

> California recognizes the judicially made doctrine of "exclusive concurrent jurisdiction." (*Franklin & Franklin v. 7 Eleven Owners for Fair Franchising* (2000) 85 Cal.App.4th 1168, 1175.) When two or more courts have subject matter jurisdiction over a dispute, the court that first asserts jurisdiction assumes it to the exclusion of the others. (*Ibid*.) This rule is based upon the public policies of avoiding conflicts that might arise between courts if they were free to make contradictory decisions or awards relating to the same controversy and preventing vexatious litigation and multiplicity of suits. (*BBBB Bonding Corp. v. Caldwell* (2021) 73 Cal.App.5th 349, 374.) Although the rule of exclusive concurrent jurisdiction is similar to the statutory plea in abatement pursuant to Code of Civil Procedure section 430.10, subdivision (c), it has been applied more broadly. (*Shaw v. Superior Court of Contra Costa County* (2022) 78 Cal.App.5th 245, 256.)
>
> The family court's jurisdiction over child support matters is exclusive once it attaches in … a family law action. (*Kresteller v. Superior Court (Feldman*) (1967) 248 Cal.App.2d 545, 549-550.) An independent child support action ordinarily may not be brought in a different superior court or by a general civil action. (*In re Marriage of Armato* (2001) 88 Cal.App.4th 1030, 1039 [disputes over the modification of child support should ordinarily be heard in the family law action in which the original support obligation was imposed].) For child support purposes, the family court action remains pending throughout the child's minority as a matter of law. (*Id.,* at pp. 1040-1042.) A limited exception exists to authorize local child support agencies and parents to bring an independent action under other Family Code provisions to litigate issues of support, custody, visitation, or protective orders. (Fam. Code, § 17404, subd (d).)
>
> Through this civil lawsuit, Plaintiff attempts to relitigate the child support and child custody orders issued by the Family Law Division in *County of Fresno v. Prince Paul Raymond Williams,* case number 14CEFS01741. With the child support and custody matters in case number 14CEFS01741 predating this civil action, the Family Law Division has exclusive jurisdiction over Plaintiff's child support and child custody issues. Allowing this action to continue would result in a prohibited review by this Court over the orders issued by the Family Law Division bench. Dismissal of this lawsuit does not leave Plaintiff without legal recourse. Plaintiff may petition for relief in the 14CEFS01741 matter to request a judicial determination of his child support arrearages pursuant to Family Code section 17526, subdivision (c).

(Mem., pp. 11:27-13:7, as modified to correct case number per Defendants' errata notice filed August 29, 2025.)[3] Based on Defendants' persuasive argument, the court sustains Defendants' demurrer to the entire FAC.

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[3] In *Shaw v. Superior Court of Contra Costa County, supra,* 78 Cal.App.5th at page 256, footnote 5, the court explained many "courts have held that the rule of exclusive concurrent jurisdiction is subject to waiver and should be raised by demurrer where the issue appears on the face of the complaint[.]"

Demurrer to Counts Based on Title 18 of the United States Code

The court sustains Defendants' demurrer to Counts I, II, XIV, XV, XVI, XVII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, XXVI for alleged violations Title 18 of the United States Code. (Plaintiff attempts to allege violations of the following code sections: 18 U.S.C. §§ 241, 242, 246, 287, 514, 912, 1001, 1341, 1581, 1584, 1589, 1590, 1651, and 2261A.) Title 18 is a federal criminal statute that does not provide for a private right of action. (*Del Elmer v. Metzger* (S.D. Cal. 1997) 967 F.Supp. 398, 403 ["Civil causes of action . . . do not generally lie under the criminal statutes contained in Title 18 of the United States Code."]) The court sustains Defendants' demurrer to the listed causes of action, *without leave to amend*, because Plaintiff lacks standing to sue under these federal criminal statutes. (Code Civ. Proc., § 430.10, subds. (b), (d).)

Demurrer to Counts III, IV, V, VI, VII, VIII – Claims under the Federal Fair Credit Reporting Act

In Counts III, IV, V, VI, VII, and VIII, Plaintiff sues Defendants under the federal Fair Credit Reporting Act (FCRA). The court sustains Defendants' general demurrer to these Counts for failure to state a cause of action against Defendants because Plaintiff fails to plead facts to support the bare legal conclusions that Defendants are "credit reporting agencies" or "furnishers of Information" to impose liability under the FCRA. (Code Civ. Proc., § 430.10, subd. (e) ["pleading does not state facts sufficient to constitute a cause of action."]

Demurrer to Count IX– Claim under the Federal Fair Debt Collection Practices Act

The court sustains Defendants' demurrer to Count IX under the Fair Debt Collection Practices Act (FDCPA) for failure to state a cause of action because child support payments do not qualify as "debts" under the FDCPA. (*Turner v. Cook* (9th Cir. 2004) 362 F.3d 1219, 1227, citing *Mabe v. G.C. Servs. Ltd. P'ship* (4th Cir. 1994) 32 F.3d 86, 88.) The court sustains the demurrer to Count IX *without leave to amend*.

Demurrer to Counts X, XI, XII– Claims under the Federal Consumer Financial Protection Act

The court sustains Defendants' demurrer to Counts X, XI, and XII for alleged violations of the federal Consumer Financial Protection Act (CFPA), *without leave to amend*, because the "CFPA is not itself a cause of action nor does it provide a private right of action." (*Williams v. Lobel Financial Corp*. (C.D. Cal. May 15, 2023) 673 F.Supp.3d 1101, 1106, quoting *Normela Upshaw v. U.S. Dep't of Educ.* (C.D. Cal. Sept. 18, 2017) 2017 WL 7171525, at p. 3.)

Demurrer to Count XIII– Claims under Section 1664 of Title 15 of the United States Code

The court sustains Defendants' demurrer to Count XIII for alleged violations of 15 U.S.C. section 1664, *without leave to amend*. Plaintiff lacks standing to sue under Count XIII. This section is a criminal statute and provides criminal penalties for the unauthorized use of a credit card. (*U.S. v. Green* (5th Cir. 1974) 494 F.2d 820, 826. Federal criminal

statutes generally do not provide a private right of action. (*Del Elmer v. Metzger, supra,* 967 F.Supp. at p. 403.)

Demurrer to Count XVIII – Claims under Section 3720D of Title 31 of the United States Code

The court sustains Defendants' demurrer to Count XVIII for alleged violations of 31 U.S.C. section 3720D, *without leave to amend*, because section 3720D is limited to debts owed to the United States and garnishment actions by the heads of agencies of the United States. (*Blanca Telephone Company v. Federal Communications Comm*. (10th Cir. 2021) 991 F.3d 1097, 1112 [under 31 U.S.C. § 3701(b)(1) "debt" as defined by § 3720D is limited to amounts owed to the United States].) Plaintiff's grievances about the amount and collection of his child support obligations are not debts owed to the United States.

Demurrer to Counts XXVII, XXVIII – Claims Under Section 1983 of Title 42 of the United States Code, and the Fifth and Fourteenth Amendments of the United States Constitution

The court sustains Defendants' demurrer to Plaintiff's Fourteenth Amendment claims because Defendants are immune from liability for Plaintiff's civil rights claims based on any claims related to the collection of child support payments. (*Kaplan v. LaBarbera (*1997) 58 Cal.App.4th 175, 180 ["Because the public employees are immune from liability, the district attorney's office and its family support division are also immune."]) The court sustains Defendants' demurrer to the FAC for the additional reasons stated in Plaintiff's moving papers.

Leave to Amend

Plaintiff's self-styled FAC includes pages of citations to state and federal cases and statutes, the Bible, the Constitution, the Magna Carta, the Synod of Bishops, quotations from United States presidents, maxims, and references to other authorities, interspersed with a disjointed narrative of events that occurred regarding Plaintiff's child support obligations, custody matters, and his credit history. For example, the first paragraph of the FAC begins, "Peace, Peace, Peace be unto all men and women in this world." In the next sentence, Plaintiff quotes Psalm 98, verse 9 (King James Version). The FAC has numbered paragraphs but no numbered lines. The FAC includes citations to authorities and argument, in lieu of causes of action with supporting facts about Defendants' alleged conduct. Plaintiff's inartfully-pleaded "Counts" fail to state as to each separate cause of action the party or parties to whom it is directed, as required by California Rules of Court, rule 2.112.

It is the opposing party's responsibility to request leave to amend, and to show how the pleading can be amended to cure its defects. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Ordinarily, given the court's liberal policy of amendment, the court will grant leave to amend an original complaint. (See *McDonald v. Superior Court* (1986) 180 Cal.App.3d 297, 303-304 ["Liberality in permitting amendment is the rule" unless complaint "shows on its face that it is incapable of amendment"].) The court is skeptical that Plaintiff can remedy the deficiencies set forth above. Because this is Plaintiff's first

opportunity to respond to a demurrer, and given the court's liberal policy of amendment, except where otherwise stated in this ruling, the court grants leave to amend.

The second amended complaint must contain "[a] *statement of the facts* constituting the cause of action, in ordinary and concise language." (Code Civ. Proc., § 425.10, subd. (a)(1), emphasis added.) For example, if Plaintiff contends *Defendants* have held Plaintiff "to conditions of involuntary servitude, peonage and slavery," (e.g., FAC, ¶ 40), he should allege the ultimate facts sufficient to support a cause of action against the demurring Defendants to show they held Plaintiff against his will and forced him to perform labor for no compensation or to satisfy a debt. The format of the second amended complaint should comply with the California Rules of Court, including rule 2.112 (regarding headings, separately-stated and numbered causes of action, and identity of parties against whom claim asserted). The amended pleading should *not* include legal argument or citation to authorities, nor should it include any of the causes of action that the court has determined are subject to Defendants' demurrer without leave to amend.

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: lmg on 10-8-25.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Bertha Vizcarra Hernandez v. Western Valley Meat Company***
Superior Court Case No. 25CECG01242

Hearing Date: October 9, 2025 (Dept. 403)

Motion: to Compel Arbitration and Stay the Action

Tentative Ruling:

To grant and order plaintiff Bertha Vizcarra Hernandez to arbitrate her claims against defendant Western Valley Meat Company. This action is stayed pending completion of arbitration. (Code Civ. Proc. § 1281.4.)

Explanation:

Request for Judicial Notice

Defendant's request for judicial notice is granted, pursuant to Evidence Code section 452, subdivision (d).

Evidentiary Objections

Plaintiff's initial evidentiary objections 1-5 are overruled.

Defendant's evidentiary objections 1-2, 6-8 to the declaration of Bertha Vizcarra Hernandez are overruled. Defendant's evidentiary objections 3-5 to the same declaration are sustained as irrelevant, only as they relate to this motion. Defendant's evidentiary objection to the declaration of Aram Rostomyan is overruled.

Plaintiff's evidentiary objections 1-3 to the supplemental declaration of Polo Salazar are overruled. The court will not rule on plaintiff's evidentiary objections to the supplemental declaration of Marisa L. Balch, as the supplemental declaration was not signed by Ms. Balch and therefore disregarded.

Legal Standard

In moving to compel arbitration, the moving party must prove by a preponderance of evidence the existence of the arbitration agreement and that the disputes are covered by the agreement. The party opposing the motion must then prove by a preponderance of evidence that a ground for denial of the motion exists (e.g., fraud, unconscionability, etc.) (*Hotels Nevada v. L.A. Pacific Center, Inc.* (2006) 144 Cal.App.4th 754, 758; *Rosenthal v. Great Western Fin'l Securities Corp.* (1996) 14 Cal.4th 394, 413-414.)

Arbitration Agreement and Authenticity

The moving party has the burden of proving the existence of a valid arbitration agreement. (*Pinnacle Museum Tower Assn v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 236.) 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.)

"Although the party seeking arbitration bears the ultimate burden of proof as to the existence of an arbitration agreement, the burden of producing evidence on the issue may shift pursuant to a three-step process recognized by California courts. The first step requires the party seeking arbitration to carry the initial burden of presenting prima facie evidence of a written agreement to arbitrate the controversy. If that initial burden is met, the second step requires the party opposing arbitration to carry the burden of producing evidence to challenge the authenticity of the agreement. If the opposing party meets the burden of producing sufficient evidence, the third step requires the party seeking arbitration to prove by a preponderance of the evidence that the parties formed a valid contract to arbitrate their dispute." (*Ramirez v. Golden Queen Mining Co., LLC* (2024) 102 Cal.App.5th 821, 830, internal citations omitted.)

Defendant made the initial showing by attaching the signed, written agreement to arbitrate to the declaration of Polo Salazar. (Salazar Decl., ¶ 8, Exh. A.) Plaintiff has now challenged the authenticity of the arbitration agreement, and declared under penalty of perjury that she does not remember ever seeing or signing the arbitration agreement. (Hernandez Decl., ¶ 16.) She professes that one of two signatures on the agreement she knows to not be hers, and that she is "suspicious" of the other signature. (*Id*., ¶¶ 15, 16.)

However, "if a plaintiff presented with a handwritten signature on an arbitration agreement is unable to allege the signature is inauthentic or forged, the plaintiff's failure to recall signing the agreement 'neither creates a factual dispute as to the signature's authenticity nor affords an independent basis to find that a contract was not formed.'" (*Ramirez v. Golden Queen Mining Co., LLC*, *supra*, 102 Cal.App.5th at p. 835.)

Here, plaintiff purports that the signature "on the right-hand side at the bottom of the document" is not her signature as she does not draw a line through it, and it "appears" someone was imitating or attempting to resemble her signature. (Hernandez Decl., ¶¶ 14, 16.) She then claims this makes her "suspicious" of the left-most signature on the document. (*Id*., ¶ 16.) This speculation is not a sufficient allegation that someone attempted to forge her signature or that her left-most signature is inauthentic. The court is inclined to agree with defendant that it is a reasonable explanation for the right-hand signature to have a line drawn through it because it is in the wrong place on the agreement – the challenged crossed-out signature is in the employer's signature space. Plaintiff cannot explicitly state that she does not recognize the left-hand signature, only that she is "suspicious" of it. The court finds this to be insufficient to demonstrate the signatures inauthenticity, and thus plaintiff's failure to remember signing the agreement is also insufficient to sustain a challenge to the arbitration agreement's authenticity.

Unconscionability

If the court finds as a matter of law that a contract or any portion of it was unconscionable at the time it was made, the court may refuse to enforce it, or may enforce the contract without the unconscionable provisions, or limit their application to avoid any unconscionable result. (Civ. Code § 1670.5, subd. (a).) There are two prongs considered in this analysis: procedural unconscionability and substantive unconscionability. Both must be present for a court to exercise its discretion to refuse to enforce an arbitration agreement under the doctrine of unconscionability. (*Armendariz v. Foundation Health Psychcare Services., Inc.* (2000) 24 Cal.4th 83, 113.) They need not be present in equal amounts; essentially a sliding scale is used, and where there is substantive unconscionability, less procedural unconscionable need be shown. (*Id.* at pp. 113-114.)

Plaintiff argues that the arbitration agreement is procedurally unconscionable because the arbitration agreement is a contract of adhesion. A contract of adhesion is one imposed and drafted by the party of superior bargaining strength, and relegates to the subscribing party only the opportunity to adhere to the contract or reject it. (*Mission Viejo Emergency Medical Associates v. Beta Healthcare Group* (2011) 197 Cal.App.4th 1146, 1159.) Adhesion does not *per se* render the arbitration agreement unenforceable, since such contracts "are an inevitable fact of life for all citizens, businessman and consumer alike." (*Graham v. Scissor-Tail, Inc.* (1981) 28 Cal.3d 807, 817-818.) Thus, a finding of procedural unconscionability does not mean that a contract will not be enforced, but rather that courts will scrutinize the substantive terms of the contract to ensure they are not manifestly unfair or one-sided. (*Baltazar v. Forever 21, Inc.* (2016) 62 Cal.4th 1237, 1244.) In other words, there must also be substantive unconscionability. (*Armendariz*, *supra*, 24 Cal.4th at p. 114.)

The substantive inquiry considers whether the overall bargain is overly harsh or unreasonably one sided. (*Armendariz*, *supra*, 24 Cal.4th at p. 114.) California courts have stated the standard variously, defining it as, for example: so one sided as to shock the conscience (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 246); unduly oppressive (*Perdue v. Crocker National Bank* (1985) 38 Cal.3d 913, 925); and unfairly one-sided (*Little v. Auto Stiegler, Inc.* (2003) 29 Cal.4th 1064, 1071). The California Supreme Court has acknowledged these variations and has clarified the differing formulations mean the same thing. (*Sanchez v. Valencia Holding Co., LLC* (2015) 61 Cal.4th 899, 911.)

In the employment context specifically, to avoid a finding of substantive unconscionability, the 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 raises four provisions she contends are substantively unconscionable: (1) defendant's agreement to pay the arbitrator's fee within 90 days of receipt of the invoice; (2) the provision providing for the award of attorney's fees as ordered by the arbitrator;

(3) the alleged lack of provision providing for discovery; and (4) a question whether the agreement waives an employee's right to bring a representative claim under PAGA.

Time to Pay Arbitrator's Fees

The portion of the agreement at issue reads that "the Company shall bear the costs of the arbitration, including the arbitrator's fees, which will be paid within 90 days of receipt of the invoice." (Salazar Decl., ¶ Exhs. A-B, ¶ 5.)

Code of Civil Procedure section 1281.98 subdivision (a)(1), relied upon by plaintiff to challenge this provision, states that "if the fees or costs required to continue the arbitration proceeding are not paid within 30 days after the due date, the drafting party is in material breach of the arbitration agreement, [etc.]." But, as pointed out by defendant, the code section continues to say that "[t]he invoice shall be provided in its entirety, shall state the full amount owed and the date that payment is due, and shall be sent to all parties by the same means on the same day. To avoid delay, absent an express provision in the arbitration agreement stating the number of days in which the parties to the arbitration must pay any required fees or costs, the arbitration provider shall issue all invoices to the parties as due upon receipt." (Code Civ. Proc., § 1281.98, subd. (a)(2).)

A provision providing that defendant pay the arbitrator's fees and costs and specifying the time in which to make said payment does not render the agreement substantively unconscionable.

Award of Attorney's Fees

The next portion of the agreement at issue states, "[e]ach party shall be responsible for compensating their own attorneys and witnesses unless the arbitrator orders otherwise." (Salazar Decl., ¶ Exhs. A-B, ¶ 5.) The agreement also provides that "The arbitrator **shall** apply the substantive law (and the law of remedies, if applicable) in the state in which the claim arose, or federal law, or both, as applicable to the claim(s) asserted." (*Id*., Exhs. A-B, ¶ 2, emphasis added.) "The arbitrator shall have the power to assess either Party the same type of costs and/or attorneys' fees as if either Party had brought the matter before a court of competent jurisdiction." (*Id*., Exhs. A-B, ¶ 5.) Thus, it seems the agreement protects plaintiff's right (if she prevails) to recover her attorney's fees.

Right to Discovery

Plaintiff argues that the agreement "contains no provision providing any discovery and fails to adopt a set of governing rules that would so provide." (Opp., 11:5-6.) The agreement does state that "[t]he arbitrator shall conduct the arbitration proceedings pursuant to the Federal Arbitration Act. This includes the right to conduct discovery as allowed by the arbitrator." (Salazar Decl., ¶ Exhs. A-B, ¶ 5.)

Question as to Whether PAGA Claims are Waived

Plaintiff states that "**while unclear**, the agreement appears to waive an employee's right to bring a representative claim under PAGA." (Opp., 11:14-15.) The

court does not give weight to this contention, as plaintiff cannot even tell with certainty if the agreement waives this right.

Plaintiff addresses no other *Armendariz* factors. For the foregoing reasons, the court finds that regardless of any minimal unconscionability to exist in this agreement, the arbitration agreement is not so unconscionable as to be unenforceable.

Waiver

When ruling on a motion to compel arbitration, a court "should separately evaluate each generally applicable state contract law defense raised by the party opposing arbitration. It should not lump distinct legal defenses into a catch-all category called 'waiver.' (*Quach v. California Commerce Club, Inc*. (2024) 16 Cal.5th 562, 583–584.)

Waiver then may be established by the party opposing enforcement who must prove by clear and convincing evidence that the waiving party knew of the contractual right and intentionally relinquished or abandoned it. (*Quach v. California Commerce Club, Inc*. *supra,* 16 Cal.5th at p. 584.) The waiving party's knowledge of the right may be actual or constructive, and its intentional relinquishment or abandonment of the right may be proved by evidence of words expressing an intent to relinquish the right or of conduct that is so inconsistent with an intent to enforce the contractual right as to lead a reasonable factfinder to conclude that the party had abandoned it. (*Ibid.*) The waiver inquiry is exclusively focused on the waiving party's words or conduct; neither the effect of that conduct on the party seeking to avoid enforcement of the contractual right nor that party's subjective evaluation of the waiving party's intent is relevant. (*Id*., at p. 585.)

Plaintiff argues that defendant's answer to the complaint "made no mention of any arbitration agreement." (Opp., 12:14-15.) Defendant's answer, in fact, raises "No Waiver of Arbitration" as its fourth-fourth affirmative defense, asserting that "the pertinent agreement(s) between Defendant and Plaintiff contains arbitration provisions which are applicable to the claims asserted in the Complaint. Therefore, the claims asserted by Plaintiff against Defendant are barred and precluded in this forum by said arbitration provisions." (Answer, 10:6-11.) Defendant clearly had knowledge of its contractual right to arbitrate.

There is no evidence of any intentional relinquishment or abandonment on the part of defendant of the right to arbitrate. Plaintiff has offered no authority to support that the initiation of discovery is conduct sufficiently contradictory with an intent to enforce the right to arbitrate. The court does not find that defendant waived its right to arbitration.

Accordingly, the court intends to grant the motion to compel arbitration of plaintiff's claims. Where the court orders arbitration, the court must also issue a stay upon motion of the same. (Code Civ. Proc. § 1281.4.) As such, the matter will be stayed pending 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: lmg on 10-8-25.
(Judge's initials) (Date)