Tentative Rulings for October 9, 2025
Department 503

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

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

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

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 503

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(35)

Tentative Ruling

Re: ***Quinn v. Central Valley Medical Transport et al.***
Superior Court Case No. 23CECG00932

Hearing Date: October 9, 2025 (Dept. 503)

Motion: By Defendant Awilda Madril for Realigment

Tentative Ruling:

To grant. Order signed. No appearances necessary.

Explanation:

Defendant Awilda Madril, erroneously sued as Awilda Ramos ("Defendant") seeks realignment as a plaintiff in the action. "If the consent of any one who should have been joined as plaintiff cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint…" (Code Civ. Proc., § 382.) "[H]eirs who file a wrongful death action 'have a mandatory duty to join all known omitted heirs in the "single action" for wrongful death. If an heir refuses to participate in the suit as a plaintiff, he or she may be named as a [nominal] defendant so that all heirs are before the court in the same action. An heir named as a defendant in a wrongful [death] action is, in reality, a plaintiff.'" (*Hall v. Superior Court* (2003) 108 Cal.App.4th 706, 715, footnotes and citations omitted.)

Here, it appears that Defendant was named as a nominal defendant, as the surviving spouse of decedent Anthony Madril, but was so named prior to her retention of counsel. Defendant willingly joins the litigation, and therefore seeks realignment. No opposition was filed. Accordingly, the motion is granted. Defendant Awilda Madril is ordered reclassified as a plaintiff in this 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: JS (Judge's initials) on 10/7/2025 (Date).

(37)

Tentative Ruling

Re: ***Cook v. Ivna Home Care Services, Inc.***
Superior Court Case No. 25CECG03034

Hearing Date: October 9, 2025 (Dept. 503)

Motion: Defendant Ivna Home Care Services, Inc.'s Motion to Strike

Tentative Ruling:

To continue to Tuesday, November 4, 2025 at 3:30 p.m. in Department 503, in order to allow Defendant to meet and confer in person or by telephone, as required. If this resolves the issues, Defendant shall call the court to take the demurrer off calendar. If it does not resolve the issues, counsel for Defendant shall file a declaration on or before October 21, 2025, stating, with detail, the efforts made.

Explanation:

Code of Civil Procedure section 435.5 makes it clear that meet and confer must be conducted "in person, by telephone, or by video conference." (*Id.*, subd. (a).) The moving party is not excused from this requirement unless they show that the plaintiff failed to respond to the meet and confer request or otherwise failed to meet and confer in good faith. (*Id.*, subd. (a)(3)(B).) While counsel indicates a meet and confer email was sent to plaintiff's counsel, this does not comply with the requirement that meet and confer occur either in person or by telephone. The parties must engage in good faith meet and confer, in person or by telephone or video conference, as set forth in the statute. The court's normal practice in such instances is to take the motion off calendar, subject to being re-calendared once the parties have met and conferred. However, given the congestion in the court's calendar currently, the court will instead continue the hearing to allow the parties to meet and confer, and only if efforts are unsuccessful will it rule on the merits.

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: JS on 10/7/2025.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Munoz v. Rick Berry, Inc.***
Superior Court Case No. 25CECG01330

Hearing Date: October 9, 2025 (Dept. 503)

Motion: by Defendant to Compel Arbitration

Tentative Ruling:

To grant defendant Rick Berry, Inc.'s motion to compel arbitration of plaintiff's claims and stay plaintiff's court action pending the arbitration of plaintiff's claims.

Explanation:

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

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

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

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

Here, defendant has met its burden of showing that there is an agreement to arbitrate the claims that plaintiff has raised in his complaint. Defendant has presented a copy of the "Alternative Dispute resolution Policy and Agreement" that plaintiff signed during orientation upon being hired by defendant. (Garcia decl., ¶¶ 4-6, and Exhibit A thereto.) The agreement states that plaintiff and defendant agree to arbitrate "all disputes that may arise within the employment context" … "unless Employee has a right to file a complaint outside of arbitration (examples: workers' compensation, unemployment insurance, National Labor Relations Board, PAGA claims, the Department of Fair Employment and Housing, and the Equal Employment Opportunity Commission)." (*Id*. at Ex. A, p. 2.) "In addition, except as otherwise required under applicable law, (1) employee and [defendant] expressly intend and agree that class action and representative action procedures shall not be asserted, nor will they apply, in any civil action (all civil actions except PAGA claims are barred by this agreement to arbitrate) or in any arbitration pursuant to this agreement to arbitrate; (2) employee and [defendant] agree that each will not assert class action or representative action claims against the other in arbitration or otherwise; and (3) employee and [defendant] shall only submit their own, individual claims in arbitration and will not seek to represent the interests of any other person. (*Id*. at pp. 2-3.) "Employee and [defendant] agree that the arbitrator has the exclusive authority and exclusive jurisdiction to resolve disputes concerning whether the parties agreed to binding arbitration of all disagreements and whether a particular disagreement is subject to mandatory and binding arbitration." (*Id*. at p. 2.) Thus, the agreement clearly applies to the plaintiff's claims for unpaid wages, missed meal and rest breaks, and other claims under the Labor Code or Unfair Competition Law. The parties also agreed that disputes as to whether a disagreement is subject to arbitration are delegated to the arbitrator.

In his opposition, plaintiff does not deny that he signed the arbitration agreement. Plaintiff argues the agreement is not enforceable against his PAGA claims and is unenforceable due to procedural and substantive unconscionability. Plaintiff argues the agreement is procedurally unconscionable as a contract of adhesion buried in other onboarding paperwork and without a prominent header that it was an Arbitration agreement. Plaintiff additionally argues the pre-dispute jury waiver and inadequate discovery make the agreement substantively unconscionable. The unconscionable provisions cannot be severed to make the agreement enforceable. However, plaintiff's opposition fails to meet his burden of showing that he did not agree to arbitrate his claims, or that the agreement is unenforceable.

To the extent that plaintiff argues that he was not given an opportunity to negotiate the terms of the contract and it is one of adhesion and mandatory for employment, courts will generally enforce mandatory arbitration clauses in employment contracts as long as there are no other factors that render the agreement unconscionable. "[A]s *Gilmer* and its progeny make clear, the compulsory nature of a predispute arbitration agreement does not render the agreement unenforceable on

grounds of coercion or for lack of voluntariness." (*Lagatree v. Luce, Forward, Hamilton & Scripps* (1999) 74 Cal.App.4th 1105, 1129.) "As one federal court has accurately noted: 'Arbitration clauses such as the one in *Gilmer* are, for the average employee, not the product of bargaining but a non-negotiable adhesion contract. Consent to the arbitration clause is the price for obtaining or retaining employment.' Even so, the courts have characterized the arbitration agreement in *Gilmer*—despite its compulsory nature—as consensual and voluntary." (*Ibid*, citations omitted.) Therefore, the fact that the agreement is a contract of adhesion does not render the agreement unenforceable.

Plaintiff additionally argues procedural unconscionably by characterizing the arbitration agreement as buried in the onboarding paperwork and non-descript. Plaintiff has not provided evidence to support this characterization or rebut the Declaration of Jimmy Garcia, plaintiff's manager, who attests to presenting each policy during the onboarding process and explaining each, including the arbitration agreement. (Garcia decl., ¶ 4.) In the absence of evidence to support the argument, it is disregarded.

As the agreement is a contract of adhesion this supports finding a minimal amount of procedural unconscionablity. However, courts frequently enforce employment arbitration agreements that are contracts of adhesion, as long as they are not also substantively unconscionable. "Arbitration clauses in employment contracts have been upheld despite claims that the clauses were unconscionable because they were presented as part of an adhesion contract on a take-it-or-leave-it basis. In finding the arbitration clause in *Lagatree* was not unconscionable, the court noted that, 'as *Gilmer* and its progeny make clear, the compulsory nature of a predispute arbitration agreement does not render the agreement unenforceable on grounds of coercion or for lack of voluntariness.'" (*Giuliano v. Inland Empire Personnel, Inc.* (2007) 149 Cal.App.4th 1276, 1292, citations omitted.)

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

Plaintiff argues these minimum standards are not met because there is inadequate discovery is permitted. The agreement allows each party to obtain responses to specifies numbers of requests for written discovery, one deposition, and third party discovery through subpoenas issued by the arbitrator. (Garcia Decl., Ex. A, § G.) In the event a party's needs exceed the number of requests, leave may be obtained from the arbitrator to propound additional requests. (Ibid.) The agreement additionally incorporates California Code of Civil Procedure sections 1282.6, 1283, and 1283.05 regarding subpoenas and discovery in the conduct of arbitration. These provision to not support finding there will not be adequate discovery.

Accordingly, the court finds the arbitration agreement meets the minimum requirements set forth in *Armendariz*.

Plaintiff's argument that the arbitration agreement is substantively unconscionable as a pre-dispute waiver of a jury trial is without merit. This characterization would act functionally render all arbitration agreements substantively unconscionable and the court is not willing to make such a determination. In the absence of evidence of substantive unconscionability the court finds the agreement is enforceable as to those claims the parties have agreed to arbitrate.

In moving to compel arbitration, defendant requests the court order the plaintiff's PAGA claims severed into individual and representative claims with the individual claim sent to arbitration and the representative claim stayed. (*Viking River Cruises, Inc. v. Moriana* (2022) 142 S.Ct. 1906, 1925.) Plaintiff argues the language of the agreement specifically excludes PAGA claims from arbitration and, thus, rather than splitting the claim into individual and representative components the court should find that there is no agreement to arbitrate this claim. Defendant asserts that the arbitration agreement specifically allows for changes in the law to be incorporated into the agreement and that any questions of arbitrability are delegated to the arbitrator.

The agreement states in pertinent part:

> This means that all disagreements and claims that may be asserted by CCT against Employee and all disagreements and claims that may be asserted by Employee against CCT or any of CCT's employees will be resolved by binding arbitration unless Employee has a right to file a complaint outside of arbitration (examples: workers' compensation, unemployment insurance, National Labor Relations Board, PAGA claims, the Department of Fair Employment and Housing, and the Equal Employment Opportunity Commission). I If Employee has a right to file a complaint outside of arbitration, any civil claims asserted by Employee for damages must still be resolved by binding arbitration to the fullest extent legally possible under applicable law at the time Employee is seeking civil damages or other civil relief.
> []
> Employee and CCT agree that the arbitrator has the exclusive authority and exclusive jurisdiction to resolve disputes concerning whether the parties agreed to binding arbitration of all disagreements and whether a particular disagreement is subject to mandatory and binding arbitration.
> []
> The parties agree that this policy may be amended to conform to changes in the law regarding mandatory arbitration of disagreements at any time, and no new consideration is necessary to support revisions made necessary by changes in the law.

(See, Garcia decl., Ex. A, p. 2-3.)

Consistent with the terms of the agreement, the parties' dispute as to whether the PAGA claim should be severed pursuant to *Viking River* or stayed in its entirety as excepted from the agreement to arbitrate is a dispute to be resolved by the arbitrator.

The court intends to order the parties to attend arbitration pursuant to the terms of the agreement. The court will stay the pending court action until the arbitration has been resolved with the arbitrator to determine whether the remaining PAGA claim includes both the individual and representative claims or the representative PAGA claim only.

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: JS on 10/7/2025.
(Judge's initials) (Date)