

Tentative Rulings for October 15, 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.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 502

Begin at the next page

(41)

Tentative Ruling

Re: **Antonio Cruz vs. Carolina Cruz**
Superior Court Case No. 23CECG03225

Hearing Date: October 15, 2025 (Dept. 502)

Motion: Motions (Three) To Be Relieved as Counsel

Tentative Ruling:

To take off calendar.

Explanation:

A client has the right to change its attorney of record at any time, and the trial court generally has no discretion to refuse to accept a consensual substitution of attorney. (Code Civ. Proc., § 284, subd. 1; *Hock v. Superior Court* (1990) 221 Cal.App.3d 670, 673.) On the other hand, when an attorney seeks to withdraw without the client's consent, the attorney must file a motion and follow the procedure set forth in California Rules of Court, rule 3.1362. If the attorney requests withdrawal by motion, the court must exercise its discretion to determine whether ethical considerations limit the attorney's request. (*Mandell v. Superior Court* (1977) 67 Cal.App.3d 1, 4 [finding no prejudice or undue delay where counsel provided client with sufficient notice of intent to withdraw and no trial date been set].)

Using the required forms, defendants' attorney of record, Gilbert Zavala, filed and served three motions to be relieved as counsel on September 2, 2025. Thereafter, on September 24, 2025, each defendant—Amalia Day, Carolina Ester Cruz, and Gustavo Percastre, filed and served a substitution of attorney, with Mr. Zavala's consent, wherein each client agreed to self-representation. Therefore, the court finds the consensual substitutions of attorney render Mr. Zavala's motions to be relieved as counsel moot and takes the hearing off calendar.

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

Tentative Ruling

Issued By: KCK on 10/13/25
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Elorza-Pacheco v. Hyundai Motor America***
Superior Court Case No. 25CECG03146

Hearing Date: October 15, 2025 (Dept. 502)

Motion: By Defendant to Compel Arbitration

Tentative Ruling:

To deny.

Explanation:

Plaintiff Gabino Elorza-Pacheco filed the present action regarding the purchase of a 2023 Hyundai Tucson, which Plaintiff alleges came with manufacturer warranties. Problems with the vehicle ensued which form the basis of the instant complaint for damages. Plaintiff brought three causes of action against defendant Hyundai Motor America, for breach of express warranties afforded through the Song-Beverly Act, breach of implied warranties afforded through the Song-Beverly Act, and violation of section 1793.2 of the Civil Code.

Defendant Hyundai Motor America moves to compel arbitration pursuant to an agreement to do so in the Owner's Handbook and Warranty Information manual.

In moving to compel arbitration, Defendant must prove by a preponderance of evidence the existence of the arbitration agreement and that the dispute is 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.) (*Rosenthal v. Great Western Fin'l Securities Corp.* (1996) 14 Cal.4th 394, 413-414; *Hotels Nevada v. L.A. Pacific Ctr., Inc.* (2006) 144 Cal.App.4th 754, 758; *Villacreses v. Molinari* (2005) 132 Cal.App.4th 1223, 1230.)

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, in ruling on a motion to compel arbitration, the court must first determine whether the parties actually agreed to arbitrate the dispute. (*Mendez v. Mid-Wilshire Health Care Center* (2013) 220 Cal.App.4th 534, 541.)

Owner's Manual

Defendant submits that there is an arbitration provision housed in the Manual. A copy of a document titled "Owner's Handbook and Warranty Information" is attached as Exhibit 2 to the declaration of Ali Ameripour, counsel for Defendant. Plaintiff objects

for a lack of foundation. The objection is sustained. Nothing in counsel's declaration provides foundation to tie Exhibit 2 to the plaintiff.

Plaintiff has shifted the burden regarding the existence of an arbitration agreement by providing his declaration regarding his lack of knowledge of the arbitration agreement. Here, Defendant met its initial burden of presenting prima facie evidence of an agreement to arbitrate. Notably, at the first step, the burden is low for the moving party. (*Condee v. Longwood Management Corp.*, *supra*, 88 Cal.App.4th at p. 218.) A moving party can either provide a copy of the agreement or set forth the terms of the agreement, verbatim. (*Ibid.*) **At this step**, there is no requirement to follow the normal procedures to authenticate the document. (*Id.* at pp. 218-219.)¹ Thus the burden shifted to Plaintiff to challenge the authenticity of the agreement. (*Id.* at p. 219.) He did so.

Where the opposing party has sufficiently challenged the authenticity of the agreement, then the burden shifts back to the moving party to produce admissible evidence establishing the existence of the agreement by a preponderance of the evidence. (*Gamboa v. Northeast Community Clinic*, *supra*, 72 Cal.App.5th at pp. 165-166.) Defendant has not established that Plaintiff ever had any opportunity to see the agreement, let alone consent to it. Defendant has not produced a declaration of the sales representative who assisted Plaintiff with his transaction or any other declaration demonstrating Plaintiff had any opportunity to review the agreement. Additionally, Defendant's assertion that Plaintiff relies on the warranty in his complaint is insufficient to establish Plaintiff's knowledge and assent to the arbitration agreement found in the warranty section of the owner's manual. As such, Defendant has not established the existence of an agreement to arbitrate.

Unconscionability

Even if Defendant could establish the existence of an agreement to arbitrate, the agreement in question is unconscionable. The doctrine of unconscionability has "both a 'procedural' and a 'substantive' element," the former focusing on "oppression" or "surprise" due to unequal bargaining power, the latter on "overly harsh" or "one-sided" results." (*Armendariz v. Foundation Health Psychcare Services* (2000) 24 Cal.4th 83, 114.) To invalidate an arbitration agreement, the court must find both procedural and substantive unconscionability. (*Id.* at p. 122; *Stirlen v. Supercuts, Inc.* (1997) 51 Cal.App.4th 1519, 1533; *Mercuro v. Superior Court* (2002) 96 Cal.App.4th 167, 174.)

Plaintiff contends that the arbitration provision is procedurally unconscionable as a contract of adhesion. A contract of adhesion is oppressive as a matter of law. (*Madden v. Kaiser Foundation Hospitals* (1976) 17 Cal.3d 699, 711.) Additionally, the asserted agreement is located in Section 4, on pages 12-14 of the owner's manual. Also,

¹ The court would note that the decision in *Condee* was to find error for denying the petition to arbitrate where the trial court had determined the agreement was not properly authenticated at the first step. The matter was remanded and the trial court was instructed to consider the other objections raised to enforcement of the agreement. Thus, it primarily addresses the first step and does not reach the second or third steps. (*Ibid.*)

“ ‘ “The prevailing view is that [procedural and substantive unconscionability] 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.” [Citation.]’ ” (*Tiri v. Luck Chances, Inc.* (2014) 226 Cal.App.4th 231, 243–244.) “Both, however, need not be present to the same degree. A sliding scale is applied so that ‘ ‘ ‘the more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa.’ ” ’ ” (*Serafin v. Balco Properties Ltd., LLC* (2015) 235 Cal.App.4th 165, 178.) “The party opposing arbitration has the burden of proving unconscionability.” (*Tiri, supra*, at p. 244.)

Given the high level of procedural unconscionability and some substantive unconscionability, even if Defendant could establish the existence of the agreement, the purported agreement is unconscionable and thereby unenforceable.

Tentative Ruling

6

(03)

Tentative Ruling

Re: ***In the Matter of Kylan Landrum***
Case No. 25CECG04425

Hearing Date: October 15, 2025 (Dept. 502)

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

To deny the petition to compromise the minor's claim of Kylan Landrum, as it was filed in the wrong county. To order petitioner to either refile the petition in the correct county or bring a motion to transfer venue to the correct county. Based on the information provided in the petition, it appears that the petition could be properly brought in either Madera County or Nevada County.

Explanation:

Petitioner has brought the petition in the wrong county, so this court does not have jurisdiction to grant the petition. Under Probate Code section 3500, (b) "The compromise or covenant is valid only after it has been approved, upon the filing of a petition, by the superior court of either of the following counties: (1) The county where the minor resides when the petition is filed. (2) Any county where suit on the claim or matter properly could be brought." (Prob. Code, § 3500, subd. (b)(1), (2), paragraph breaks omitted.)

Here, the minor resides in Grass Valley, California, which is in Nevada County. The incident occurred in Oakhurst, California, which is in Madera County. There is no evidence that Fresno is the proper county to bring the action. It does not appear that Fresno County has any connection to the incident or the parties. Therefore, the petition should have been brought in either Madera County or Nevada County, not Fresno County. As a result, the court intends to deny the petition and instruct petitioner to either refile the matter in Nevada or Madera Counties, or file a motion to transfer the case to one of those counties.

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 10/13/25 .
(Judge's initials) (Date)

(47)

Tentative Ruling

Re: ***Jane Lucy v Douglas Cook***
Superior Court Case No. 24CECG05145

Hearing Date: October 15, 2025 (Dept. 502)

Motion: By Plaintiff to Reconsider

Tentative Ruling:

To Deny.

Explanation

Plaintiff moves for reconsideration of the court's August 13, 2025 order granting defendant's motions to compel initial discovery responses and for deemed admissions order. The motion was granted where plaintiff had not yet served responses to the discovery at issue. Plaintiff now moves for reconsideration of that order under Code of Civil Procedure section 1008, apparently only to the extent that the court imposed sanctions on defendant and his counsel.

Pursuant to Code of Civil Procedure section 1008, a party may bring a motion to reconsider, and a different order may be entered, if, subject to the following conditions, the motion is:

1. Brought before the same judge that made the order;
2. Made within 10 days after service upon the party of notice of the entry of the order;
3. Based on new or different facts, circumstances, or law; and
4. Made and decided before entry of judgment.

Plaintiff requests that the Court reconsider awarding sanctions due to new facts and circumstances. The new facts and circumstances plaintiff presents is that it is unfair to pay sanctions where the clerk supposedly "entered default judgement by mistake."

Plaintiff has not provided any new facts or circumstances. Sanctions were granted in the August 13, 2025 order because plaintiff failed to respond to defendant's requests for discovery.

Furthermore, self-representation is not a ground for lenient treatment and, as is the case with attorneys, a person who represents herself "must follow correct rules of procedure." *Nwosu v. Uba* (2004) 122 Cal. App.4th 1229, 1247.

Although plaintiff may have filed a "request for entry of default" on April 22, 2025, plaintiff was, or should have been fully aware that default judgment could very well be set aside where defendant had filed a responsive pleading on April 22, 2025. The Court did set aside default on July 9, 2025 for because of a clerical error.

(36)

Tentative Ruling

Re: ***Douglas v. ABC Cooling & Heating Services, LLC***
Superior Court Case No. 24CECG01926

Hearing Date: October 15, 2025 (Dept. 502)

Motions (x2): by Defendant Liberty Insurance Company Compelling
Plaintiffs Russell Douglas and Rachel Ebert's Responses to
Requests for Production of Documents, Set One, and for
Monetary Sanctions

Tentative Ruling:

To grant and to award monetary sanctions in the total amount of \$525 against plaintiffs Russell Douglas and Rachel Ebert payable within 20 days of the date of this order, with the time to run from the service of this minute order by the clerk.

Plaintiff Russell Douglas shall serve verified responses without objections, to defendant Liberty Insurance Corporation, erroneously sued as Liberty Insurance Company's ("Liberty") Requests for Production of Documents, Set One, no later than 20 days from the date of this order, with the time to run from the service of this minute order by the clerk.

Plaintiff Rachel Ebert shall serve verified responses without objections to defendant Liberty's Requests for Production of Documents, Set One, no later than 20 days from the date of this order, with the time to run from the service of this minute order by the clerk.

Explanation:

Document Production

Plaintiffs have had ample time to respond to the discovery propounded by defendant, and they have not done so. Failing to respond to discovery within the 30-day time limit waives objections to the discovery, including claims of privilege and work product protection. (Code Civ. Proc., §§ 2030.290, subd. (a), 2031.300, subd. (a); see *Leach v. Sup.Ct. (Markum)* (1980) 111 Cal.App.3d 902, 905-906.)

Monetary Sanctions

Sanctions are mandatory unless the court finds that the party acted "with substantial justification" or other circumstances that would render sanctions "unjust." (Code Civ. Proc., §§ 2030.290, subd. (c) [Interrogatories], 2031.300, subd. (c) [Document demands].) Since no opposition was filed, no facts were presented to warrant finding sanctions unjust. The court finds it reasonable to allow only 1.5 hours for the preparation of these simple discovery motions at the hourly rate of \$270, provided by counsel, and

\$120 for the cost of filing these motions. Therefore, the total amount of sanctions awarded is \$525.

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 10/14/25.
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: **Richard Huizar v. The California State University, Fresno Athletic Corporation**
Superior Court Case No. 22CECG03095

Hearing Date: October 15, 2025 (Dept. 502)

Motion: Amend

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 10/14/25
(Judge's initials) (Date)