Tentative Rulings for October 16, 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

Begin at the next page

(20)

<u>Tentative Ruling</u>

Re:	***Garza v. Cerutti & Sons Transportation Co., Inc.*** Superior Court Case No. 22CECG03793
Hearing Date:	October 16, 2025 (Dept. 503)
Motion:	By Defendants for Terminating Sanctions Against Anthony Garza

If oral argument is timely requested, it will be entertained on Thursday, October 30, 2025, at 3:30 p.m. in Department 503.

Tentative Ruling:

To grant defendants motion for terminating sanctions. Defendants shall submit to the Court, within ten (10) days of this order, a proposed order dismissing, with prejudice, this action as it relates to plaintiff Anthony Garza.

Explanation:

Noncompliance with compelled discovery justifies terminating sanctions. (See Code Civ. Proc., §§ 2023.010, subd. (d); 2023.030, subd. (d)(3).) This court is also guided by the principle that "[t]he sanctions the court may impose are such as are suitable and necessary to enable the party seeking discovery to obtain the objects of the discovery he seeks …." (*Caryl Richards, Inc. v. Superior Court* (1961) 188 Cal.App.2d 300, 304.)

According to defendants' uncontroverted evidence plaintiff Anthony Garza continues to fail to appear at his scheduled depositions, failed to provide discovery responses, and failed to pay sanctions, in plain disobedience with a court order to do so. In light of the evidence of intentional recalcitrance with statutorily authorized discovery and previous court orders, it appears that no lesser sanction would promote compliance and thus terminating sanctions are necessary and justified, at least as to plaintiff Anthony Garza. The motion 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: <u>JS</u> on <u>10/9/2025</u>.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Carter v. UCHealth Parkview Medical Center***
Superior Court Case No. 25CECG02624

Hearing Date: October 16, 2025 (Dept. 503)

Motion: By Specially Appearing Defendant UCHealth Parkview Medical Center to Quash Summons

If oral argument is timely requested, it will be entertained on Thursday, October 30, 2025, at 3:30 p.m. in Department 503.

Tentative Ruling:

To grant specially appearing defendant UCHealth Parkview Medical Center's motion to quash.

Explanation:

This motion arises out of a complaint in which Plaintiff acknowledges Defendant UCHealth Parkview Medical Center is located in the State of Colorado. (Complaint, ¶ 2.) Specially appearing defendant UCHealth Parkview Medical Center moves to quash service of summons for lack of personal jurisdiction over it. Defendant is a non-profit corporation located, with its principal place of business, in Colorado. (Sorkin Decl., ¶ 3.) It does not own or operate any medical facility in California, does not conduct business in California, does not own or lease offices in California, does not employ anyone in California, and does not sell products or direct marketing in California. (Id. at ¶¶ 4-7.)

When a nonresident defendant moves to quash service of process for lack of personal jurisdiction, the plaintiff has the initial burden of demonstrating facts justifying the exercise of jurisdiction. (*Snowney v. Harrah's Entertainment, Inc*. (2005) 35 Cal.4th 1054, 1062.) The plaintiff must do more than merely allege jurisdictional facts; plaintiff must provide affidavits and other authenticated documents demonstrating competent evidence of jurisdictional facts. (*BBA Aviation PLC v. Superior Court* (2010) 190 Cal.App.4th 421, 428-429.) If this is met, the defendant then has the burden of demonstrating that the exercise of jurisdiction would be unreasonable. (*Snowney v. Harrah's Entertainment, Inc, supra,* 35 Cal.4th 1054, 1062.)

California courts may exercise personal jurisdiction over out-of-state defendants only to the extent allowed under the State and Federal Constitutions. (Code Civ. Proc., § 410.10.) Namely, the exercise of jurisdiction over a nonresident defendant comports with constitutional concerns if the defendant has "such minimum contacts with the state that the assertion of jurisdiction does not violate 'traditional notions of fair play and substantial justice.' " (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, *quoting International Shoe Co. v. State of Wash., Office of Unemployment Compensation and Placement* (1945) 326 U.S. 310, 316.) The minimum contacts test, then, asks whether the "quality and nature" of defendant's activity in the state is such that it is "reasonable" and "fair" to require it to defend itself in that state. (*Kulko v. Superior Court of California In and For City and County of San Francisco* (1978) 436 U.S. 84, 92 [quoting *International Shoe Co. v. State of Wash., Office of Unemployment Compensation and Placement* (1945) 326 U.S. 310, 316-317.].)

The cases speak of both "general" and "specific" jurisdiction. (*See, e.g., Vons, supra,* 14 Cal.4th 434, 445.) A nonresident is subject to the forum's general jurisdiction, such that any and all causes of action may be asserted against him/her/it, where the nonresident's contacts are substantial, continuous, and systematic. *(DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 1090 [quoting *Perkins v. Benguet Mining Co.* (1952) 342 U.S. 437, 445].) General jurisdiction exists as to a corporation if its activities in the forum are so "continuous and systematic" that it can be said to be already "present" in that forum, in which case it can be served regarding all causes of action, even if not related to its forum activities. (*Elkman v. National States Ins. Co.* (2009) 173 Cal.App.4th 1305, 1314.)

Specific jurisdiction exists where a nonresident defendant's activities in the forum are not pervasive enough to justify the exercise of general jurisdiction, but the quality and nature of his activity in the forum with regard to the particular cause of action at issue on the motion to quash merits the exercise of jurisdiction. For this test, the court considers "the relationship among the defendant, the forum, and the litigation." (*Elkman*, *supra,* 173 Cal.App.4th 1305, 1314.) "A court may exercise specific jurisdiction over a nonresident defendant only if: (1) the defendant has *purposefully availed* himself or herself of forum benefits; (2) the controversy is related to or arises out of the defendant's contacts with the forum; and (3) the assertion of personal jurisdiction would comport with fair play and substantial justice. (*Id.*, emphasis in the original.)

Here, Plaintiff has not presented any evidence to the court regarding general or specific jurisdiction as to Defendant. Plaintiff has not met his burden of demonstrating facts justifying the exercise of jurisdiction over Defendant.

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

Tentative Ruling
Issued By: JS on 10/13/2025.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re:	***Lopez v. General Motors, LLC*** Case No. 24CECG00749
Hearing Date:	October 16, 2025 (Dept. 503)
Motion:	Plaintiffs' Motion to Compel Deposition of Defendant's Person Most Knowledgeable and for Sanctions against Defendant and Defendant's Counsel

If oral argument is timely requested, it will be entertained on Thursday, October 30, 2025, at 3:30 p.m. in Department 503.

Tentative Ruling:

To deny plaintiffs' motion to compel the deposition of defendant's person most knowledgeable, and the request for monetary sanctions against defendant and its counsel.

Explanation:

Under Code of Civil Procedure section 2025.450, "If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under Section 2025.230, without having served a valid objection under Section 2025.410, *fails to appear for examination,* or to proceed with it, or to produce for inspection any document, electronically stored information, or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document, electronically stored information, or tangible thing described in the deposition notice." (Code Civ. Proc., § 2025.450, subd. (a), italics added.)

"A motion under subdivision (a) shall comply with both of the following: … The motion shall be accompanied by a meet and confer declaration under Section 2016.040, *or, when the deponent fails to attend the deposition* and produce the documents, electronically stored information, or things described in the deposition notice, *by a declaration stating that the petitioner has contacted the deponent to inquire about the nonappearance*." (Code Civ. Proc., § 2025.450, subd. (b)(2), italics added.)

"If a motion under subdivision (a) is granted, the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) in favor of the party who noticed the deposition and against the deponent or the party with whom the deponent is affiliated, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code Civ. Proc., § 2025.450, subd. (g)(2).)

In the present case, plaintiffs originally served their deposition notice of defendant's PMK on ten separate topics on March 29, 2024. (Exhibit A to Diamse decl.) The deposition notice also included ten separate document requests. (*Ibid*.) Defendant responded with multiple objections on April 19, 2024. (Exhibit C to Diamse decl.) Plaintiffs' counsel then attempted without success to obtain defendant's agreement to alternative dates for the deposition. (Exhibit D to Diamse decl.) Plaintiffs' counsel later offered to limit the number of deposition categories to only the categories to which defendant had not objected. (Exhibit E to Diamse decl.) However, defense counsel did not respond to this request. The parties then entered into settlement negotiations, which were unsuccessful.

Eventually, on June 23, 2025, plaintiffs served another deposition notice, which again listed the original categories and set a new deposition date of August 1, 2025. (Exhibit F to Diamse decl.) Plaintiffs' counsel also sent a letter that requested alternative dates for the deposition. (Exhibit G to Diamse decl.) Defense counsel did not respond to the request, nor did defendant serve any objections to the latest deposition notice. (Diamse decl., ¶ 9.) However, plaintiffs' counsel never states that she attempted to take the PMK's deposition on August 1, 2025, or that the PMK failed to appear for the deposition.

Thus, according to plaintiffs' evidence, plaintiffs never actually attempted to take the deposition of defendant's PMK, and defendant never failed to produce the PMK. Plaintiffs' counsel served the latest deposition notice for defendant's PMK on June 23, 2025, setting a deposition date of August 1. 2025. However, there is no evidence that plaintiffs' counsel ever actually attempted to take the deposition on August 1, 2025, despite never receiving any objections or suggested alternative dates from defendant. Under section 2025.450(a), the deponent must fail to appear before the party who noticed the deposition may move to compel the deponent's appearance. Here, plaintiffs' counsel noticed the deposition for August 1, 2025, but she never sought to go forward with the deposition on that date or record the PMK's nonappearance.

As a result, plaintiffs have not met their burden of showing that they are entitled to compel the deposition of defendant's PMK, as the PMK never failed to appear for the deposition. Nor are plaintiffs entitled to sanctions, as they have not shown that the PMK unjustifiably failed to appear for the deposition. Consequently, the court intends to deny the motion to compel and request for sanctions.

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 10/14/2025 .
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Nicholas Gamber v. Lorena Juarez***
Superior Court Case No. 24CECG03534

Hearing Date: October 16, 2025 (Dept. 503)

Motion: by defendant Lorena Juarez to Compel Initial Responses to Form Interrogatories

If oral argument is timely requested, it will be entertained on Thursday, October 30, 2025, at 3:30 p.m. in Department 503.

Tentative Ruling:

To grant defendant Lorena Juarez's motion to compel initial responses to form interrogatories. Within 20 days of service of this order by the clerk, plaintiff Nicholas Gamber shall serve objection-free, verified responses to Form Interrogatories, Set One. To deny defendant's request for sanctions.

Explanation:

Within 30 days of service of interrogatories, the party to whom the interrogatories are propounded shall serve the original of the response to them on the propounding party. (Code Civ. Proc. § 2030.260.) To date, defendant Lorena Juarez has received no responses from plaintiff Nicholas Gamber, even after providing him with an extension of time to respond. (Guzman Decl., ¶¶ 5, 16, 17.) Accordingly, an order compelling initial responses is warranted. (Code Civ. Proc., § 2030.290, subd. (b).) All objections are waived. (*Id.*, § 2030.290, subd. (a).)

Sanctions for these types of motions are typically mandatory, unless the court "finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code Civ. Proc., § 2030.290 subd. (c).) "A request for a sanction shall, in the notice of motion, identify every person, party, and attorney against whom the sanction is sought, and specify the type of sanction sought. The notice of motion shall be supported by a memorandum of points and authorities, and accompanied by a declaration setting forth facts supporting the amount of any monetary sanction sought." (*Id*., § 2023.040.)

Defendant did not make a request for sanctions in her notice of motion, and thus did not put plaintiff on notice that sanctions would be sought or specify against whom. Without proper notice, the imposition of the sanctions would be unjust. For that reason, the court denies the request for sanctions.

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 10/14/2025 .
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: ***Paul Marquez v. Reyes Coca-Cola Bottling, L.L.C.***
Superior Court Case No. 25CECG01994

Hearing Date: October 16, 2025 (Dept. 503)

Motion: By Defendants to Compel Arbitration and Stay Proceedings

If oral argument is timely requested, it will be entertained on Thursday, October 30, 2025, at 3:30 p.m. in Department 503.

Tentative Ruling:

To grant defendants' motion to compel plaintiff to arbitrate his claims and to stay the pending court action until the arbitration is resolved.

Explanation:

Plaintiff, Paul Marquez (Plaintiff), sued defendants, Reyes Coca-Cola Bottling, L.L.C. (RCCB), Nayeli Jauregui (Jauregui), and Cipriano Bobadilla Jr. (Bobadilla) for employment-related claims. RCCB and Jauregui (together, Defendants), now move to compel Plaintiff to submit the claims in his complaint to arbitration based on the Arbitration of Disputes Agreement (Agreement) between Plaintiff and RCCB and to stay the proceedings currently before this court pending arbitration. Defendants bring their motion pursuant to the Federal Arbitration Act (9 U.S.C. § 1, et seq. [FAA]), and California Code of Civil Procedure sections 1281.2 through 1281.4 on the grounds that the claims in Plaintiff's lawsuit are subject to arbitration under the Agreement.

Plaintiff opposes the motion on two grounds: (1) Defendants fail to establish the existence of a valid arbitration agreement with him; and (2) the Agreement's arbitration provisions are unconscionable and unenforceable.

Discussion

Under California law, 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.) When a motion to compel arbitration is filed and accompanied by prima facie evidence of a written agreement to arbitrate the controversy, the court itself must determine: (1) whether the agreement exists, and (2) if any defense to its enforcement is raised, whether it is enforceable. The moving party bears the burden of proving the existence of an arbitration agreement by a preponderance of the evidence. The party claiming a defense bears the same burden to prove any fact necessary to the defense. (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413-414.)

Existence of Agreement

By its terms, the FAA governs the Agreement. (Yang decl., ex. B [Agreement, p. 2].) Section 2 of the FAA provides for enforcement of arbitration provisions in any contract "evidencing a transaction involving commerce." (9 U.S.C. § 2.) Even without the presence of interstate commerce, "the parties may also voluntarily elect to have the FAA govern enforcement of" an arbitration agreement, as the parties have done here. (*Victrola 89, LLC v. Jaman Properties 8 LLC* (2020) 46 Cal.App.5th 337, 355 [parties voluntarily agreed to have FAA govern enforcement of subject arbitration agreement].) Plaintiff does not challenge the governance of the FAA.

Under the FAA, the court must determine: "(1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at issue." (*Chiron Corp. v. Ortho Diagnostic Systems, Inc.* (9th Cir. 2000) 207 F.3d 1126, 1130.) 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 ["the FAA does not apply until the existence of an enforceable arbitration agreement is established under state law principles involving formation, revocation and enforcement of contracts generally"].)

In compliance with the requirements of Code of Civil Procedure section 1281.2 and California Rules of Court, rule 3.1330, a party may meet the initial burden to establish an arbitration agreement "by attaching a copy of the arbitration agreement purportedly bearing the opposing party's signature." (*Espejo v. Southern California Permanente Medical Group* (2016) 246 Cal.App.4th 1047, 1060 [defendant not required to establish authenticity of plaintiff's signature on arbitration agreement until challenged by plaintiff in opposition].) Defendants meet their initial burden by producing a copy of the Agreement with Plaintiff's electronic signature. (Yang decl., ex. B.)

Plaintiff challenges his electronic signature, claiming he does not recall completing or signing the Agreement. (Marquez decl., ¶ 6.) As Defendants explain in their reply memorandum, they have met their burden to establish that only Plaintiff could have electronically signed the Agreement:

> Under California's Uniform Electronic Transactions Act, "[a]n electronic record or electronic signature is attributable to a person if it was the act of the person" which "may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable." Cal. Civ. Code § 1633.9(a); *see also People v. Skiles*, 51 Cal. 4th 1178, 1187 (2011) ("a writing can be authenticated by circumstantial evidence and by its contents"); *B.D. v. Blizzard Entem't., Inc.*, 76 Cal. App. 5th 931, 951-53 (2022) (clicking "Continue" button on pop-up notice constituted acceptance of agreement with arbitration provision). The declaration of a company employee setting forth the steps the applicant or employee would have to take electronically to accept the agreement is "sufficient to authenticate electronic signatures." *Tagliabue v. J.C. Penney Corporation, Inc.*, Case No. 1:15-cv-01443-SAB, 2015 WL 8780577 at *2-*3 (E.D. Cal. Dec. 15, 2015).

> Plaintiff relies on his misplaced argument that Defendants have failed to satisfy the requirements set forth in *Espejo v. Southern California Permanente Medical Group*, 246 Cal. App. 4th 1047, 1062 (2016), which held that a declaration—similar to RCCB's declarations—was sufficient to establish an electronic signature. *Espejo* relied on the analysis set forth in *Ruiz v. Moss Bros. Auto Group*, 232 Cal. App. 4th 836 (2014), to conclude that only the plaintiff could have made the electronic signature based upon the description of the security process and the steps needed to enter an electronic signature on the document. *Espejo*, 246 Cal. App. 4th at 1061-62.
>
> Here, RCCB's declarations provide *exactly* the information that the Court found was missing in *Ruiz*. They describe how Plaintiff's name could only have been placed on the Agreement through CareerConnect by Plaintiff (1) logging in with his unique user ID and password, (2) opening up a document by clicking on a document name, and (3) keying in an electronic signature and date. (Yang Dec. ¶¶ 9, 11; Wilson Dec. ¶ 5.) Unlike in *Ruiz*, Defendants showed how employee personnel records, including personnel files and records relating to the Agreement, were created at or near the time of the event they recorded, and were maintained by RCCB in the regular course of business.

(Rpy., p. 2:4-28, emphasis original.)

Plaintiff presents evidence that he could not find the Agreement in his personal gmail account. (Marquez decl., ¶ 7.) Plaintiff's evidence includes a pre-employment email dated December 12, 2022, addressed to him, which advises him that the terms and conditions of his employment include the "execution of the [Agreement] and your agreement to submit to binding arbitration all claims of any kind whatsoever between you and RCCB, whether during or after your employment, that cannot be resolved by informal internal resolution[.]" (*Id.*; ex. A.) Thus, Plaintiff's own evidence shows he received advance notice that he would be required to sign the Agreement and agree to binding arbitration of disputes as a condition of his employment.

It is not surprising that Plaintiff cannot locate an email in his personal gmail account that included a copy of the Agreement because Defendants' evidence shows RCCB did not present the Agreement to Plaintiff using his gmail account. Defendants describe the process whereby the Agreement was presented to Plaintiff through RCCB's intranet website after Plaintiff accessed the CareerConnect platform with a unique, private password. (Yang decl., ¶ 6.) "If [Plaintiff] had not created a unique, personal password, he would not have been able to review and sign the onboarding documents online, including the [Agreement]." (*Id.* at ¶ 3, p. 3:8-10.).

Plaintiff's evidence that he does not recall seeing or signing the Agreement is insufficient to dispute Defendants' evidence that only Plaintiff could have electronically signed the Agreement. (*Prostek v. Lincare Inc.* (E.D. Cal. 2023) 662 F.Supp.3d 1100, 1114 [declaration that plaintiff did not recall signing arbitration agreement was insufficient to challenge agreement's formation; *Espejo v. Southern California Permanente Medical Group, supra,* 246 Cal.App.4th at pp. 1066-1062 [electronic signature on arbitration agreement was "the act of" plaintiff under Civ. Code, 1633.9, subd. (a), sufficient to validate arbitration agreement].)

Weighing the evidence, the court finds Defendants meet their burden to establish the existence of the Agreement. Thereafter, Plaintiff fails to meet his burden to prove the facts necessary to show no valid agreement to arbitrate was formed. Plaintiff's allegations that he cannot remember being presented with the Agreement or electronically signing it are relevant only to the question of whether the defense of unconscionability bars enforcement of the Agreement. Next, the court must resolve that question.[1]

Procedural Unconscionability

"Federal and California law treat valid arbitration agreements like any other contract and favor their enforcement." (*Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478, 492 (*Ramirez*).) Plaintiff claims the Agreement is unenforceable because it is procedurally and substantively unconscionable. As the California Supreme Court has explained, the defense 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, Inc.* (2000) 24 Cal.4th 83, 114 (*Armendariz*), quoting *A & M Produce Co. v. FMC Corp.* (1982) 135 Cal.App.3d 473, 486–487, internal quotation marks omitted.) To invalidate an arbitration agreement, the court must find *both procedural and substantive unconscionability*. (*Armendariz*, *supra,* at p. 122.)

> Both procedural and substantive elements must be present to conclude a term is unconscionable, but these required elements need not be present to the same degree. [Citation.] Courts apply a sliding scale analysis under which "the more substantively oppressive [a] term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa." (*Armendariz*, *supra*, 24 Cal.4th at p. 114.)

(*Ramirez, supra,* 16 Cal.5th at p. 493.) "The party resisting enforcement of an arbitration agreement has the burden to establish unconscionability." (*Id*. at p. 492.) "[A]dhesion alone generally indicates only a low degree of procedural unconscionability[.]" (*Id*. at p. 494.)

Plaintiff argues the Agreement is procedurally unconscionable because it is a contract of adhesion. In *Baltazar v. Forever 21, Inc.* (2016) 62 Cal.4th 1237, 1244, the Supreme Court explained that courts generally will enforce "ordinary contracts of adhesion":

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[1]Defendants meet their initial burden to show the Agreement covers Plaintiff's claims against the non-signatory individual defendants (Jauregui and Bobadilla) because RCCB is defined to include its supervisors, employees, and agents. (Agreement, p. 1; *Thomas v. Westlake* (2012) 204 Cal.App.4th 605, 614–615 ["a plaintiff's allegations of an agency relationship among defendants is sufficient to allow the alleged agents to invoke the benefit of an arbitration agreement executed by their principal even though the agents are not parties to the agreement."])

> "[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. [Citation.] ... [T]here are degrees of procedural unconscionability. At one end of the spectrum are contracts that have been freely negotiated by roughly equal parties, in which there is no procedural unconscionability.... Contracts of adhesion that involve surprise or other sharp practices lie on the other end of the spectrum. [Citation.] Ordinary contracts of adhesion, although they are indispensable facts of modern life that are generally enforced (see *Graham v. Scissor–Tail, Inc.* (1981) 28 Cal.3d 807, 817–818), contain a degree of procedural unconscionability even without any notable surprises, and 'bear within them the clear danger of oppression and overreaching.' (*Id.* at p. 818.)" [Citation.] We have instructed that courts must be "particularly attuned" to this danger in the employment setting, where "economic pressure exerted by employers on all but the most sought-after employees may be particularly acute." (*Armendariz, supra,* 24 Cal.4th at p. 115.)

(*Baltazar v. Forever 21, Inc.* (2016) 62 Cal.4th 1237, 1244.)

Plaintiff argues the Agreement here "is a textbook contract of adhesion imposed under conditions of maximum employer leverage." (Opp., p. 9:11-12.) Plaintiff suggests he was required to review and complete 19 separate documents during a 90-minute window. Plaintiff has not provided evidence to rebut Defendants' evidence that Plaintiff was given advance notice of the requirement to agree to arbitrate disputes on December 12, 2022, and was first assigned the task of signing the Agreement on January 3, 2023, with a due date of January 6, 2023. He did not complete the task until January 11, 2023—almost a month after the advance notice. (Supp. Yang. decl., ¶ 8, ex. A.)

Plaintiff also claims the failure to provide the arbitration rules or explain the Agreement's terms render the Agreement procedurally unconscionable. Defendants correctly cite *Serafin v. Balco Properties Ltd., LLC* (2015) 235 Cal.App.4th 165, 180, wherein the court held the "failure to attach the applicable AAA rules alone did not render the agreement procedurally unconscionable." And "t]he fact that [Plaintiff] either chose not to read or take the time to understand [the Agreement's] provisions is legally irrelevant." (*Harris v. TAP Worldwide, LLC* (2016) 248 Cal.App.4th 373, 383; *Randas v. YMCA of Metropolitan Los Angeles* (1993) 17 Cal.App.4th 158, 163 [" 'Ordinarily, one who accepts or signs an instrument, which on its face is a contract, is deemed to assent to all its terms, and cannot escape liability on the ground that he has not read it. If he cannot read, he should have it read or explained to him.' [Citation.]")

At best, Plaintiff's evidence slightly favors a finding of procedural unconscionability. But both procedural and substantive unconscionability must be present in order for a contract to be deemed unconscionable. (*Ramirez, supra,* 16 Cal.5th at p. 494 [finding of procedural unconscionability does not mean contract is unenforceable, but rather that courts will scrutinize substantive terms to ensure they are not manifestly unfair or one-sided].) To the extent the adhesive nature of the Agreement might be sufficient to establish some degree of procedural unconscionability, albeit low, the court will consider Plaintiff's claims of substantive unconscionability.

Substantive Unconscionability

Even mandatory arbitration clauses in employment contracts are enforceable if they provide essential fairness to the employee. (*Armendariz, 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) the agreement does not require employees to pay unreasonable costs of arbitration. (*Armendariz, supra,* 24 Cal.4th at p. 102.)

Plaintiff suggests three reasons to find substantive unconscionability: (1) the Agreement provides for limited discovery; (2) the Agreement requires Plaintiff to waive his statutory right to attorney fees; and (3) the Agreement lacks mutuality.

On the first issue of discovery, the Supreme Court has noted parties to an arbitration agreement are "permitted to agree to something *less than* the full panoply of discovery provided in Code of Civil Procedure section 1283.05." (*Armendariz, supra,* 24 Cal.4th at pp. 105–106, italics original.) "The fact that an arbitration may limit a party's discovery rights is not 'substantive unconscionability.'" (*Coast Plaza Doctors Hosp. v. Blue Cross of California* (2000) 83 Cal.App.4th 677, 690.) "Limited discovery rights are the hallmark of arbitration." (*Id.* at pp. 689-690.) On the second issue, the court finds the Agreement provides Plaintiff with adequate discovery to pursue his claims. The Agreement is consistent with statutory fee-shifting provisions and does not require Plaintiff to waive a statutory right to attorney fees. Finally, on the third issue of mutuality, the Agreement explicitly provides it does not cover claims for "injunctive relief in a court of law in accordance with applicable law." (Agreement, p. 1.) "[A]n arbitration agreement is not substantively unconscionable simply because it confirms the parties' ability to invoke undisputed statutory rights." (*Baltazar v. Forever 21, Inc., supra,* 62 Cal.4th at pp. 1247–1248 [holding agreement permitting both parties to seek injunctive relief was not unconscionable even if employer was "practically speaking," more like to pursue injunctive relief].)

Plaintiff addresses no other *Armendariz* requirements. The court finds the Agreement satisfies all of the *Armendariz* requirements and Plaintiff's evidence does not support his claim of substantive unconscionability.

<u>Evidentiary Objections</u>

The court overrules all of Plaintiff's evidentiary objections.

<u>Conclusion</u>

Defendants meet their burden to demonstrate the existence of a valid arbitration agreement covering the claims of Plaintiff's complaint. Plaintiff fails to meet his burden to show the Agreement is unconscionable. Therefore, the court grants Defendants' motions to compel arbitration and to stay the pending court action until the arbitration is resolved. (Code Civ. Proc., § 1281.4 [if court orders arbitration, upon motion court must also issue a stay]; 9 U.S.C. § 3 [when issue in a proceeding is referable to arbitration under a written agreement, court shall stay trial on application of one of the parties].)

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 10/14/2025 .
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Laura Singh v. Darren Goltiao, M.D.***
Superior Court Case No. 23CECG04900

Hearing Date: October 16, 2025 (Dept. 503)

Motion: by defendant Valley Children's Hospital for Summary Judgment

If oral argument is timely requested, it will be entertained on Thursday, October 30, 2025, at 3:30 p.m. in Department 503.

Tentative Ruling:

To grant summary judgment in favor of defendant Valley Children's Hospital. Moving party is directed to submit to this court, within five days of service of the minute order, a proposed judgment consistent with the court's summary judgment order.

Explanation:

"The standard of care in a medical malpractice case requires that physicians exercise in diagnosis and treatment that reasonable degree of skill, knowledge and care ordinarily possessed and exercised by members of the medical profession under similar circumstances. ' "The standard of care against which the acts of a physician are to be measured is a matter peculiarly within the knowledge of experts; it presents the basic issue in a malpractice action and can only be proved by their testimony, unless the conduct required by the particular circumstances is within the common knowledge of the layman." ' " (*Munro v. Regents of University of California* (1989) 215 Cal.App.3d 977, 983–984, internal citations omitted.)

Normally, the question of whether a medical professional's care and treatment of a patient fell within the standard of care or caused the plaintiff's injuries is a matter that can only be established through expert testimony. (*Landeros v. Flood* (1976) 17 Cal.3d 399, 410.) "California courts have incorporated the expert evidence requirement into their standard for summary judgment in medical malpractice cases. When a defendant moves for summary judgment and supports his motion with expert declarations that his conduct fell within the community standard of care, he is entitled to summary judgment unless the plaintiff comes forward with conflicting expert evidence." (*Hutchinson v. United States* (9th Cir. 1988) 838 F.2d 390, 392.)

Defendant Valley Children's Hospital submits an expert witness declaration by Nicole Coufal, M.D. in support of its motion for summary judgment. Dr. Coufal is a physician certified with the American Board of General Pediatrics and American Board of Pediatric Critical Care. (Coufal Decl., ¶ 4.) She is a Pediatric Critical Care Intensivist at Rady's Children's Hospital. (*Ibid*.) Dr. Coufal testified that Valley Children's Hospital's staff's care and treatment of the decedent were appropriate and did not fall below the standard of care. (*Id*., ¶¶ 12, 13, 14, 16, 17.) She further opined that any acts or omissions by the staff were not a substantial factor in the decedent's death. (*Id*., ¶ 18.) She relied on decedent's medical records when forming her opinion. (*Id*., ¶ 9, see Statement of Evidence, Exh. C.) The pertinent facts considered by Dr. Coufal's opinions were provided. (*Id*., ¶¶ 10, 11, 15.)

Defendant Valley Children's Hospital additionally submits that it cannot be held responsible for the acts of defendant Darren Goltiao, M.D., who was not an employee or agent of Valley Children's Hospital, but an independent contractor. (Colburn Decl., ¶¶ 1-3, 5.) The declaration of Maureen Colburn is used to establish the lack of agency. Ms. Colburn is the Employee Relations Manager at Valley Children's Hospital and testifies based on her personal knowledge. (*Id*., ¶¶ 1-2.) She is currently and historically familiar with the employment and agency status of individuals at Valley Children's Hospital, and states that a search of the records has demonstrated Darren Goltiao, M.D. was not an employee or agent at Valley Children's Hospital at all relevant times. (*Id*., ¶¶ 3, 5.)

Defendant Valley Children's Hospital has met its burden of showing that plaintiff cannot prevail on her claim against Valley Children's Hospital, as she cannot show that defendant's care and treatment of the decedent fell below the standard of care, and that defendant Darren Goltiao, M.D. was not an agent of Valley Children's Hospital.

The burden shifts to plaintiff to come forward with conflicting expert evidence. In response to the present motion, plaintiff filed an opposition without the support of expert evidence. Plaintiff only provides a declaration of her counsel, which is insufficient to counter the testimony of defendant's expert witness. In a medical malpractice action governed by California law, when the defendant supports its motion for summary judgment with declarations of an expert, the plaintiff who has presented no expert evidence concerning the required standard of care has failed to make a sufficient showing that there are genuine factual issues for trial. (*Hutchinson v. U.S.* (9th Cir. 1988) 838 F.2d 390, 393.)

Defendant has failed to meet its burden to demonstrate a triable issue of fact.

Plaintiff does provide opposition to the separate statement of undisputed material facts. "The opposition papers shall include a separate statement that responds to each of the material facts contended by the moving party to be undisputed, indicating if the opposing party agrees or disagrees that those facts are undisputed." (Code Civ. Proc., § 437c, subd. (b)(3).) However, "[e]ach material fact contended by the opposing party to be disputed shall be followed by a reference to the supporting evidence. Failure to comply with this requirement of a separate statement may constitute a sufficient ground, in the court's discretion, for granting the motion." (I*bid*.) Plaintiff's opposing separate statement does not include any reference to supporting evidence.

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 10/14/2025 .
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: ***Renaissance General Restoration Contracting, Inc. v. Carol Battaglia***
Superior Court Case No. 24CECG04564

Hearing Date: October 16, 2025 (Dept. 503)

Motion: By Plaintiff to Compel Arbitration and Stay Proceedings

If oral argument is timely requested, it will be entertained on Thursday, October 30, 2025, at 3:30 p.m. in Department 503.

Tentative Ruling:

To grant plaintiff's motion to compel arbitration of the claims asserted in the complaint and the first amended cross-complaint and to stay the pending court action until the arbitration is resolved.

Explanation:

This action concerns a construction project performed by plaintiff, Renaissance General Restoration Contracting, Inc. (Plaintiff or Renaissance), at real property (the Subject Property) owned by defendants, Carol Battaglia and Dominic Battaglia (together, Defendants or the Battaglias). In 2024 a dispute arose between Plaintiff and Defendants under a written agreement (Agreement) for Plaintiff to perform construction and restoration work on the Subject Property after significant fire damage. Plaintiff recorded a mechanics lien and filed its complaint with four causes of action, including breach of contract and foreclosure of mechanics lien (Complaint). Plaintiff now moves under Code of Civil Procedure section 1281 et seq. for an order compelling arbitration of the claims in the Complaint on the grounds the Agreement contains a clause requiring the parties to arbitrate any claims arising from the Agreement.

After Renaissance filed its motion, the Battaglias filed a cross-complaint with causes of action for breach of contract, negligence, and breach of fiduciary duty. The next day the Battaglias filed their operative first amended cross-complaint (FACC) to add a fourth cause of action against Renaissance. The Battaglias allege Renaissance has engaged in unlawful, unfair, and fraudulent business acts and practices in violation of Business and Professions Code section 17200 et seq. (the Unfair Competition Law [UCL]).

Discussion

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.) When a motion to compel arbitration is filed and accompanied by prima facie evidence of a written agreement to arbitrate the controversy, the court itself must determine: (1) whether the agreement exists, and (2) if any defense to its enforcement is raised, whether it is enforceable. The moving party bears the burden of proving the existence of an arbitration agreement by a preponderance of the evidence. The party claiming a defense bears the same burden to prove any fact necessary to the defense. (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413-414.)

(1) Does an Agreement Exist?

To rule 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.) In compliance with the requirements of Code of Civil Procedure section 1281.2 and California Rules of Court, rule 3.1330, a party may meet the initial burden to establish an arbitration agreement "by attaching a copy of the arbitration agreement purportedly bearing the opposing party's signature." (*Espejo v. Southern California Permanente Medical Group* (2016) 246 Cal.App.4th 1047, 1060 [defendants not required to establish authenticity of plaintiff's signature on arbitration agreement until challenged by plaintiff in opposition].) Renaissance meets its initial burden by producing a copy of the Agreement signed by the Battaglias. (Olson decl., ¶¶ 5, 6, ex. A, § 25.)

(2) Does a Litigant Raise a Defense to Enforcing the Agreement?

"Once the moving party has satisfied its burden, the litigant opposing arbitration must demonstrate grounds which require that the agreement to arbitrate not be enforced." (*Harris v. TAP Worldwide* (2016) 248 Cal.App.4th 373, 380-381; see also *Rosenthal v. Great Western Fin'l Securities Corp., supra,* 14 Cal.4th at pp. 413-414 [party opposing motion must then prove by preponderance of evidence that a ground to deny motion exists (e.g., fraud, unconscionability, etc.)].)

Here, The Battaglias do not dispute the validity of the arbitration clause in the Agreement set forth in section 25. They do not oppose Plaintiff's request to arbitrate the causes of action in the Complaint, nor do they oppose arbitration of the first three causes of action in the FACC. The Battaglias oppose the motion only with respect to their fourth UCL cause of action in the FACC because it "plainly seeks public injunctive relief, which is non-arbitrable under controlling California law." (Opp., p. 2:6-7.)

The arbitration clause provides, in part:

> Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

(Olson decl., ex. A, § 25.) The Battaglias contend this provision "effectively waives [their] right to pursue such relief in any forum[,]" and "renders the provision unenforceable as to the UCL Claim." (Opp., p. 2:11-13 [citing *McGill v. Citibank, N.A.* (2017) 2 Cal.5th 945, 952 (*McGill*)].) The issue in *McGill* was limited to the question of "whether the arbitration provision is valid and enforceable insofar as it purports to waive McGill's right to seek public injunctive relief *in any forum*." (*McGill, supra,* 2 Cal.5th at p. 956, italics original.) The California Supreme Court resolved the issue by holding an arbitration provision is invalid and unenforceable if it purports to waive a plaintiff's statutory right to seek public injunctive relief in any forum. (*Id.* at p. 961.)

In *McGill*, the California Supreme Court summarized the difference between public and private injunctive relief as follows:

> [P]ublic injunctive relief under the UCL . . . is relief that has "the primary purpose and effect of" prohibiting unlawful acts that threaten future injury to the general public. (*Broughton* [*v. Cigna Healthplans* (1999) 21 Cal.4th 1066,], 1077.) Relief that has the primary purpose or effect of redressing or preventing injury to an individual plaintiff—or to a group of individuals similarly situated to the plaintiff—does not constitute public injunctive relief.

(*McGill, supra,* 2 Cal.5th at p. 955.)

Renaissance correctly argues that here the Battaglias' UCL claim may be arbitrated whether it seeks public or private injunctive relief. As Renaissance explains, in *McGill*, the California Supreme Court did not disturb the appellate court's conclusion to order all claims to arbitration, including the UCL claim for public injunctive relief. (*McGill, supra,* 2 Cal.5th at p. 956.) The party opposing arbitration prevailed in *McGill* for a different reason. The provision in *McGill* was invalid and unenforceable under the "*McGill* rule" because it waived the plaintiff's right to request public injunctive relief in any forum. (*Id.* at p. 961.)

Here, the parties disagree on the interpretation of the arbitration provision. The Battaglias contend the arbitration Provision prohibits public injunctive relief in all forums—Renaissance disagrees. The court finds Renaissance's position is more persuasive. Unlike the facts in *McGill*, here the arbitration provision has no waiver of the Battaglias' right to seek public injunctive relief in arbitration. Instead, the language explicitly provides "[a]ny controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration." Therefore, the arbitrator may determine the Battaglias' UCL claim for injunctive relief, whether public or private. Because the Battaglias are not barred from seeking public injunctive relief in all forums, the *McGill* rule is inapplicable.

<u>Conclusion</u>

Renaissance meets its burden to demonstrate the existence of a valid arbitration agreement covering the claims of the Complaint and the FACC. The Battaglias fail to meet their burden to raise a defense to enforcing the arbitration provision. Therefore, the court grants Renaissance's motion to compel arbitration of the claims asserted in the Complaint and the FACC and to stay the pending court action until the arbitration is resolved. (Code Civ. Proc., § 1281.4 [if court orders arbitration, upon motion court must also issue a stay].)

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 10/15/2025 .
(Judge's initials) (Date)