Tentative Rulings for October 21, 2026
Department 501

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, the remote appearance will be conducted through Zoom. 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.***

25CECG01195 ***Julie Kerkochian v. Flooring Liquidators, Inc*.**

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

24CECG03015 ***Manny Malhi v. American Honda Motor Co., Inc*. is continued to Wednesday, December 16, 2026, at 3:30 p.m. in Department 501.**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

Begin at the next page

(20)

Tentative Ruling

Re: ***Da Neea La Nai Scruggs v. Promesa Behavioral Health / LEAD***
Superior Court Case No. 25CECG02566

Hearing Date: October 21, 2026 (Dept. 501)

Motion: By Plaintiff to Compel Further Responses to Request for Production of Documents and Special Interrogatories

Tentative Ruling:

To grant both motions. Within 30 days of service of the order by the clerk, defendant Promesa Behavioral Health ("Promesa") shall serve further verified responses omitting all objections to Special Interrogatory nos. 1 and 2, and Request for Production nos. 1, 2-13, and produce all documents responsive to the document demands. (Code Civ. Proc., §§ 2030.300, 2031.310.) To overrule Promesa's objections to the reply evidence.

Explanation:

This is a wage and hour class action in which plaintiff Da Neea La Nai Scruggs alleges various wage and hour Labor Code violations against her former employer Promesa. Plaintiff propounded special interrogatories and production demands seeking contact information and evidence regarding policies and practices applicable to the putative class.

Promesa asserted a variety of objections to the production demands and interrogatories, including privacy, vagueness, relevance, overbreadth, privacy, beyond the scope of discovery, attorney-client privilege and work-product doctrine. The only objection that Promesa stands on, however, is the scope of discovery. Promesa does not attempt to justify any other objection.

> [A] civil litigant's right to discovery is broad. "[A]ny party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action ... if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." (Code Civ. Proc., § 2017.010; see *Davies v. Superior Court* (1984) 36 Cal.3d 291, 301, 204 Cal.Rptr. 154, 682 P.2d 349 ["discovery is not limited to admissible evidence"].)[2] This right includes an entitlement to learn "the identity and location of persons having knowledge of any discoverable matter." (§ 2017.010) Section 2017.010 and other statutes governing discovery "must be construed liberally in favor of disclosure unless the request is clearly improper by virtue of well-established causes for denial." (*Greyhound Corp. v. Superior Court*, *supra*, 56 Cal.2d at p. 377, 15 Cal.Rptr. 90, 364 P.2d 266.) This means that "disclosure is a matter of right unless statutory or public policy considerations clearly prohibit it." (*Id.* at p. 378, 15 Cal.Rptr. 90, 364 P.2d 266.)

> A party may use interrogatories to request the identity and location of those with knowledge of discoverable matters. (Code Civ. Proc., § 2030.010.) To show an interrogatory seeks relevant, discoverable information "is not the burden of [the party propounding interrogatories]. As a litigant, it is entitled to demand answers to its interrogatories, as a matter of right, and without a prior showing, unless the party on whom those interrogatories are served objects and shows cause why the questions are not within the purview of the code section." (*West Pico Furniture Co. v. Superior Court* (1961) 56 Cal.2d 407, 422, 15 Cal.Rptr. 119, 364 P.2d 295; see *Greyhound Corp. v. Superior Court*, *supra*, 56 Cal.2d at p. 388, 15 Cal.Rptr. 90, 364 P.2d 266.) While the party propounding interrogatories may have the burden of filing a motion to compel if it finds the answers it receives unsatisfactory, the burden of justifying any objection and failure to respond remains at all times with the party resisting an interrogatory. (*Coy v. Superior Court* (1962) 58 Cal.2d 210, 220–221, 23 Cal.Rptr. 393, 373 P.2d 457.)

(*Williams v. Superior Court* (2017) 3 Cal.5th 531, 541.)

The entirety of the discovery dispute with regards to both the production demands and the interrogatories is Promesa's refusal to provide information relating to employees other than those with the classification or job title of "Child Care Worker." Promesa explains that it operates residential homes providing care and supervision of minors. Plaintiff was employed as a Child Care Worker. Such workers provide direct care and supervision in those homes, including resident safety, daily-living assistance, meals, behavioral response, medication-related duties, transportation, documentation, potential unauthorized-absence response, and bed checks. Promesa also employees Headquarters Employees that perform administrative, clerical, case-management, counseling, and other nonresidential program functions through separate departments. Because the two workforces are separate with different job titles or job codes, workers' compensation classification, department, supervisor, assigned work location, and are subject to different Wage Orders, Promesa insists that it should only have to provide discovery relating to Child Care Workers. Promesa also points to plaintiff's deposition testimony where she could not identify or speak to the experience of any Headquarters Employees.

However, the Class as defined in the Complaint consists of "Plaintiff and all other persons who have been employed by any Defendant in California as an hourly-paid or non-exempt employee during the statute of limitations period applicable to the claims pleaded here." (Complaint ¶ 2.) Though plaintiff herself was a Child Care Worker, the class claims are not limited to that job classification.

Promesa fails to show that plaintiff is not entitled to investigate whether defendant's companywide Labor Code practices were lawfully administered across its entire non-exempt workforce. As explained in *Williams, supra,* the scope of discovery in a class or representative action is not limited to those working in the same position, job classification or worksite location as the named plaintiff. Where the "objection involves no claim of privilege, whether contact information for employees at other stores is discoverable turns in the first instance on whether the request for it is 'reasonably calculated to lead to the discovery of admissible evidence.'" (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 542; Code Civ. Proc., § 2017.010.) Under the Legislature's "very liberal

and flexible standard of relevancy," any "doubts as to relevance should generally be resolved in favor of permitting discovery." (*Pacific Tel. & Tel. Co. v. Superior Court* (1970) 2 Cal.3d 161, 173.)

Even if Promesa employs two groups of employees subject to different rules, policies and practices (which is debatable), plaintiff is not limited to discovery as to only one segment of the putative class. Promesa fails to produce authority so limiting class discovery. It may be that in the future plaintiff needs to designate subclasses for the two classes of employees, which is common in class actions. The court finds that plaintiff has shown good cause for the discovery and document production, and intends to grant both motions.

Promesa's oppositions make clear that its objections relate to this distinction it is seeking to carve out between the two groups of employees. The vagueness, relevance, overbreadth, privacy, and scope objections specifically relates to this issue. Promesa also asserts privacy, attorney-client privilege and work-product objections to certain demand, but makes clear that these objections are not the basis of withholding any production. (Oppo. re RPD pp. 15-16; Oppo. re Interrogatories pp. 12-13.) Since Promesa essentially concedes that these objections lack merit, and there is no need to produce a privilege log because nothing was withheld on these grounds. The court intends to order Promesa to provide further responses omitting these objections. The sole basis for withholding documents is the Child Care Worker / Headquarters Employee scope of discovery dispute, which the court resolves in plaintiff's favor.

The court notes that with the reply plaintiff submits new evidence, excerpts from five employee handbooks from 2021 through 2025 to show that the handbooks and policies therein apply to "all employees," and therefore refute Promesa's evidence that Child Care Workers and Headquarters Employees are subject to materially different operational and wage-and-hour practices. Promesa understandably objects to the submission of this reply evidence. Promesa requests that the court disregard the reply evidence and exhibits, or at least give Promesa a meaningful opportunity to respond during oral argument before the motions are decided, citing *Plenger v. Alza Corp*. (1992) 11 Cal.App.4th 349, 362, fn. 8, and *Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522 1538.) The court will adopt the latter suggestion. The court will consider the reply evidence, but allow Promesa to address it as it sees fit at oral argument. However, the court's ruling is not dependent on this reply evidence, and would be the same if it were not submitted.

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 10/20/26 .
(Judge's initials) (Date)

(20)

Tentative Ruling

Re: ***Adam Shahabzada v. Lyft, Inc.***
Superior Court Case No. 25CECG02136

Hearing Date: October 21, 2026 (Dept. 501)

Motion: Demurrer to Complaint

Tentative Ruling:

To overrule. (Code Civ. Proc., § 430.10, subd. (e).) Lyft, Inc., shall file its answer to the Complaint within 10 days of service of the order by the clerk.

Explanation:

Plaintiff Adam Shahabzada alleges in his Complaint that he used the Lyft App as a driver to respond to a rideshare request for a ride from a person named Allison. He picked up Allison and another person, sued herein as John Doe, and completed their ride. Afterwards, Allison messaged plaintiff through the Lyft App about a lost cell phone. Plaintiff allowed Allison to look in his vehicle for the missing cell phone, but Doe physically assaulted plaintiff after he and Allison could not find the cellphone. (See Complaint at ¶¶ 7-12.) Plaintiff sued Lyft for negligence and NIED (the fourth and fifth causes of action), alleging that Lyft owed plaintiff a duty to protect plaintiff against "unreasonable risk of harm." (Id. at ¶¶ 34, 55.)

Lyft demurs to the Complaint, contending that it owes no duty of care. As a general matter there "is no duty to act to protect others from the conduct of third parties." (*Delgado v. Trax Bar & Grill* (2005) 36 Cal.4th 224, 235.) Lyft relies primarily on *Al Shikha v. Lyft, Inc.* (2024) 102 Cal.App.5th 14, where the Court upheld dismissal of Lyft on a motion for judgment on the pleadings where the driver plaintiff was allegedly physically assaulted by a defendant passenger.

However, in *Al Shikha* the court was primarily addressing the plaintiff's theory of liability based on allegations of Lyft's failure to conduct criminal background checks on all passengers and failure to provide workers' compensation insurance. While the court did discuss foreseeability of assaults by passengers, it was in the context of an alleged obligation to conduct background checks and provide workers' compensation insurance, which the court found would have been too onerous.

Plaintiff does not allege these duties. Rather, in addition to alleging that Lyft is on notice that its passengers have been harassing and assaulting its drivers, plaintiff alleges,

> 38. Since learning of the assaults perpetrated by its passengers, LYFT never adapted or improved its safety procedures in any meaningful way.
> 39. LYFT does not require video monitoring of its drivers that cannot be turned off, nor provide emergency notification to LYFT and the authorities when a driver drastically veers off course from the passenger's destination or abruptly cancels the ride.

40. LYFT is very well aware of the dangers its passengers pose yet induces drivers like the Plaintiff to drive for LYFT. In doing so, LYFT fails to warn of the dangers of assault by LYFT's passengers.
41. In fact LYFT encourages drivers to use its services and passes itself of as safe. LYFT does not do any diligence to ensure its drivers do not use the platform for any nefarious purposes such as sexual assault or harassment.
42. LYFT did not verify the passenger's identity and was responsible for the passenger concealing their true name.
43. LYFT neither provides drivers with access to the passengers past complaints nor in any way inform them of prior instances of misconduct allegations.
44. LYFT collects complaints and allegations about passenger misconduct(s) but conceals them from its drivers in order to increase its market share.
45. LYFT does not cooperate with the police when a passenger commits an illegal attack on its drivers. Despite having the express right to disclose passenger information at LYFT's sole discretion, LYFT requires that extensive standards be met before the company will even consider law enforcement requests for information. Even after a report of assault has been made, LYFT generally requires a subpoena before it will release information. LYFT's policy of noncooperation discourages police agencies from making recommendations to District Attorney's offices to file complaints against LYFT passengers and provides LYFT's predatory passengers with tacit assurance that their illegal attacks will not be detected by law enforcement.
46. LYFT cultivates an environment that encourages its drivers to ignore signs of danger.
47. LYFT does not have a streamlined process to address driver reports of assaults by its passengers and continues to let dangerous predators ride for LYFT.

(Complaint ¶¶ 38-46.) It is for these reasons that plaintiff alleges Lyft breached its duty of reasonable care towards plaintiff. (Complaint ¶ 52.)

Lyft in its demurrer does not address these allegations at all. Plaintiff's actual theory of liability is essentially ignored. For this reason the demurrer is overruled.

The court also notes that Lyft's counsel made no attempt to meet and confer in person, by telephone, or by video conference with plaintiff or his then-counsel prior to filing the demurrer. (Code Civ. Proc., § 430.10, subd. (a); Moore Decl., ¶ 3, Exh. B.) The court requires actual compliance with the meet and confer statute.

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 10/20/26 .
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Cyrus Goodman v. Clovis Unified School District***
Superior Court Case No. 23CECG04735

Hearing Date: October 21, 2026 (Dept. 501)

Motion: Petition to Approve Compromise of Disputed Claim of Minor

Tentative Ruling:

To deny, without prejudice. Petitioner must file an amended petition, with appropriate supporting papers and proposed orders, and obtain a new hearing date for consideration of an amended petition. (Super. Ct. Fresno County, Local Rules, rule 2.8.4.) In the event oral argument is requested, the minor is excused from appearing.

Explanation:

Petitioner submits that the medical expenses for services provided by Dry Creek Medical Group were not properly billed to insurance, and therefore declined as untimely. (Bonakdar Decl., ¶¶ 20, 21.) Petitioner requests the outstanding balance to "be deemed zero." (Id., ¶ 28.)

Petitioner must evidence that the medical provider agreed not to assert a medical lien against the minor's settlement before the court will accept that they should be paid zero, as petitioner requests.[1]

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 10/20/26.
(Judge's initials) (Date)

[1] Petitioner also submits that the balance should be zeroed because the statute of limitations on any failure to pay the outstanding balance (i.e. breach of contract) has almost run. However, that is an unpersuasive argument. Not only is the statute of limitations not up, but there is no evidence to support the contention that there is "no written contract" for these medical services whereby the statute of limitations for oral contracts would apply. (Bonakdar Decl., ¶ 28.)

(34)

Tentative Ruling

Re: ***Guadalupe Villagomez v. Leonel Villagomez / LEAD CASE***
Superior Court Case No. 22CECG00485

Hearing Date: October 21, 2026 (Dept. 501)

Motion: by Plaintiff Guadalupe Villagomez to Reopen Discovery

Tentative Ruling:

To grant the limited reopening of discovery for outstanding records from Pacific Farm Management and Trinity Fruit.

Explanation:

Per Code Civil Procedure section 2024.020, subdivision (a), the discovery cutoff is 30 days before the initial trial date. The court can extend the discovery cutoff, taking into consideration the following:

> (1) The necessity and the reasons for the discovery.
>
> (2) The diligence or lack of diligence of the party seeking the discovery or the hearing of a discovery motion, and the reasons that the discovery was not completed or that the discovery motion was not heard earlier.
>
> (3) Any likelihood that permitting the discovery or hearing the discovery motion will prevent the case from going to trial on the date set, or otherwise interfere with the trial calendar, or result in prejudice to any other party.
>
> (4) The length of time that has elapsed between any date previously set, and the date presently set, for the trial of the action.

(Code Civ. Proc. § 2024.050, subd. (b).)

In December 2025, the parties stipulated to continue their February 2, 2026 trial and for the discovery cutoff date to remain set based on this original trial date with limited exceptions for pending noticed depositions, pending written discovery, and expert witness discovery. (Georgeson Decl., ¶ 3, Ex. 1, ¶ 15.) Plaintiff now moves to reopen discovery for all purposes with the cutoff date extended based on the current trial date of January 11, 2027.

Plaintiff identifies the following as additional discovery sought: outstanding records from Pacific Farm Management and Trinity Fruit, new records subpoenas to be issued to Banker's Life, Dalena Benik Insurance, Elite Tax, the Farm Labor Contractor's Board, Fence Masters, Placer Title, Pan American Relations Insurance, and Citi Bank. The reply adds records related to bank accounts and a workers compensation insurance business based in the Cayman Islands to this list. Defense counsel expressed a willingness to stipulate to

reopen discovery with respect to the outstanding records from Pacific Farm Management and Trinity Fruit.

Counsel's declaration details a series of events that necessitated the trial continuance and later caused delay in pursuing outstanding discovery following the parties' stipulation to continue the trial. The lengthy explanation does not detail what these records are, why they are necessary to bring the case to trial, or whether the case would be prevented from proceeding to trial on January 11, 2027 without the additional discovery. It is unclear whether the record subjects were identified before the December 2025 stipulation to continue the trial was signed and could have been included in the discovery to be conducted per the stipulation.

In the absence of evidence to support a broad reopening of discovery with no clear connection to the claims of the complaint the court is not inclined to grant the motion to reopen discovery in its entirety. However, consistent with the offered stipulation from defense counsel, the court intends to grant the motion to reopen discovery with respect to the outstanding Pacific Farm Management and Trinity Fruit records.

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 10/20/26.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Asa Baker v. ABC Cooling & Heating Services LLC***
Superior Court Case No. 25CECG04965

Hearing Date: October 21, 2026 (Dept. 501)

Motion: By Defendants to Compel Arbitration

Tentative Ruling:

To grant defendants' motion to compel arbitration. To order this action stayed pending the completion of arbitration. (9 U.S.C § 3.)

Explanation:

In moving to compel arbitration, defendants 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.)

There is a strong policy in favor of arbitration. (*AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 339.) Courts are to enforce arbitration agreements according to their terms. (*Ibid*.) 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, 540-543.)

Under the Federal Arbitration Act ("FAA"),

> A written provision in … a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, … shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

(9 U.S.C. § 2.)

Valid Agreement

In ruling on a motion to compel arbitration, the court must first address whether there was an agreement to arbitrate and whether the agreement covers the dispute. (*Omar v. Ralphs Grocery Co*. (2004) 118 Cal.App.4th 955, 960.) The moving party must first allege existence of an agreement to arbitrate. (C*ondee v. Longwood Management Corp*. (2001) 88 Cal.App.4th 215, 218.) Where the moving party has alleged the existence

of an arbitration agreement, the burden shifts to the opposing party to prove the falsity of the purported agreement. (*Id*. at p. 219.) The third step would be relevant where the opposing party has met its burden, then the burden shifts back to the moving party to "establish with admissible evidence a valid arbitration agreement between the parties." (*Gamboa v. Northeast Community Clinic* (2021) 72 Cal.App.5th 158, 165-166.)

Here, defendants alleged an agreement to arbitrate sufficiently meeting their prima facie burden. However, plaintiff filed an opposition which included plaintiff's declaration that he did not recall signing the purported agreement. (Baker Decl., ¶ 2.)

Here, defendants met their initial burden of presenting prima facie evidence of an agreement to arbitrate between plaintiffs and defendants. 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.)

Thus, the burden shifted to plaintiff to challenge the authenticity of the agreement. (*Id*. at p. 219.) Here, plaintiff has challenged that he signed the agreement. (Baker Decl., ¶ 2.) However, plaintiff does not deny his signature appears on the arbitration agreement. (See Baker Decl.) He states he does not recall signing an arbitration agreement. (Baker Decl., ¶ 2.) Plaintiff asserts he began his employment with defendant on or about June 16, 2024. (Id. at ¶ 1.) He recalls defendant Braun presenting him with documents on his first day of work and being told to sign these. (Id. at ¶ 3.) He believed these documents were regarding tools and equipment. (Ibid.) He claims no one reviewed documents with him and that he did not have time to review them because of pressure to start working quickly. (Id. at ¶¶ 4-5.) He concludes saying, "If I could have opted out and kept my job, then I would have but it was my understanding that signing the arbitration agreement was a condition of my employment with Defendant." (Id. at ¶ 12.)

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 a pp. 165-166.)

Defendants produced the declaration of Harleen Mangat, defendant's Human Resources Manager since November 2022. (Mangat Decl., ¶ 2.) Mangat's declaration states,

> "Plaintiff was employed by ABC from on or about May 7, 2024 until October 18, 2024. On May 7, 2024, Plaintiff came to ABC's office to complete onboarding documents. I personally presented information on each document and allowed Plaintiff time to review and ask questions. Plaintiff did not have any questions. I provided onboarding documents to Plaintiff in hardcopy form. I personally witnessed Plaintiff sign the

> onboarding documents, including the arbitration agreement."

(Mangat Decl., ¶ 3.)

The arbitration agreement appears to be signed by Asa Baker on May 7, 2024. (Mangat Decl., Exh. A.) This is consistent with the date described by Mangat.

Defendants have met their burden in showing a valid arbitration agreement exists. Further, the agreement explicitly states that it is to be governed by the Federal Arbitration Act. (Mangat Decl., Exh. A.)

Unconscionability

Plaintiff argues that the arbitration agreement is unconscionable, and thus cannot be enforced. "Because unconscionability is a reason for refusing to enforce contracts generally, it is also a valid reason for refusing to enforce an arbitration agreement under Code of Civil Procedure section 1281, which provides that arbitration agreements are 'valid, enforceable and irrevocable, save upon such grounds as exist for the revocation of any contract.' The United States Supreme Court, in interpreting the same language found in section 2 of the FAA (9 U.S.C. § 2), recognized that 'generally applicable contract defenses, such as fraud, duress, or *unconscionability*, may be applied to invalidate arbitration agreements ....'" (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 114, internal citation omitted, italics in original.)

"The party resisting arbitration bears the burden of proving unconscionability. Both procedural unconscionability and substantive unconscionability must be shown, but 'they need not be present in the same degree' and are evaluated on '"a sliding scale."' '[T]he 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.'" (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 247, internal citations omitted.)

Procedural unconscionability has to do with the manner in which the contract was negotiated and the parties' circumstances at that time, and focuses on the factors of oppression or surprise. (*Kinney v. United HealthCare Services, Inc.* (1999) 70 Cal.App.4th 1322, 1327; *Martinez v. Master Protection Corp.* (2004) 118 Cal.App.4th 107, 113.) Oppression "arises from an inequality of bargaining power of the parties to the contract and an absence of real negotiation or a meaningful choice on the part of the weaker party." (*Kinney v. United HealthCare Services, Inc.* (1999) 70 Cal.App.4th 1322, 1329.) "Surprise" involves the extent to which the supposedly agreed-upon terms are buried in an overly complex form; it deals with "the disappointed reasonable expectations of the weaker party. (*Harper v. Ultimo* (2003) 113 Cal.App.4th 1402, 1406.)

Plaintiff argues the agreement is procedurally unconscionable because it was presented on a "take it or leave it" basis. An agreement is adhesive where a standardized contract, drafted and imposed by the party with superior bargaining strength, gives the other party only an opportunity to adhere to the terms or to reject

them. (*Armendariz, supra*, 24 Cal.4th 83, 113.) Here, the agreement explicitly states it is voluntary. In all capital letters in the middle of the first page, it reads,

> "EMPLOYEE ENTERS INTO THIS AGREEMENT VOLUNTARILY AND NOT IN RELIANCE ON ANY PROMISES OR REPRESENTATIONS BY THE COMPANY OTHER THAN THOSE CONTAINED IN THIS AGREEMENT. EMPLOYEE UNDERSTANDS THAT EMPLOYEE IS NOT REQUIRED TO ENTER INTO THIS AGREEMENT AS A CONDITION OF EMPLOYMENT AND THAT THE COMPANY WILL NOT RETALIATE OR TAKE ANY ADVERSE ACTION AGAINST EMPLOYEE IF EMPLOYEE CHOOSES NOT TO EXECUTE THIS AGREEMENT."

(Mangat Decl., Exh. A.)

Additional language describing the voluntary nature of the agreement is also found on the last page. (Mangat Decl., Exh. A.) Given its explicit assertion as voluntary, this is not an adhesive contract.

Plaintiff also argues that the agreement is unconscionable because it fails to identify an arbitrator. However, the agreement provides for the selection of an arbitrator "by mutual agreement of the parties". (Mangat Decl., Exh. A.) Where the parties cannot agree, the court is to select an arbitrator. (Ibid.) The arbitrator must be either a retired judge or a lawyer with employment law experience. (Ibid.) Given the selection is either by mutual agreement or by court appointment, the failure to identify an arbitrator is not unconscionable.

Plaintiff also asserts the agreement is unconscionable because it does not provide a right to discovery. The agreement provides that the Federal Rules of Civil Procedure and Federal Rules of Evidence will be applied in arbitration. (Mangat Decl., Exh. A.) In the event these are not applicable, then the California Code of Civil Procedure and California Evidence Code shall be used. (Ibid.) Links to both the Federal and California rules were provided. As such, plaintiff has not demonstrated that the agreement is unconscionable.

Defendants' motion to compel arbitration is granted and the matter is 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: KCK on 10/20/26.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Flavio Ramirez v. Leo Tidwell Excavating Corporation***
Superior Court Case No. 24CECG01275

Hearing Date: October 21, 2026 (Dept. 501)

Motion: For Preliminary Approval of Class Settlement

Tentative Ruling:

To continue the matter to **Tuesday, November 17, 2026 at 3:30 p.m. in Department 501.** Plaintiff is to provide a supplemental declaration from its expert addressing the concerns noted below no later than November 5, 2026.

Explanation:

In support of the proposed settlement amounts, counsel has provided counsel's declaration. The declaration states that counsel reviewed the records and received input from an expert, Berger Consulting Group. (Patel Decl., ¶ 16.) A sampling of records was provided by defendant. (Id. at ¶ 6.) A declaration by an expert is required to rely on a sample to determine damages issues such as those before the Court here. **"**When using surveys or other forms of random sampling, it is crucial to utilize a properly credentialed expert who will be able to explain to the court the methods used to arrive at his or her conclusions and persuade the court concerning the soundness of the methodology." (Chin, Wiseman et al. Employment Litigation (TRG, 2017) section 19:975.3.)

> "The essence of the science of inferential statistics is that one may confidently draw inferences about the whole from a representative sample of the whole. Whether such inferences are supportable, however, depends on how representative the sample is. Inferences from the part to the whole are justified [only] when the sample is representative. Several considerations determine whether a sample is sufficiently representative to fairly support inferences about the underlying population."

(*Duran v. U.S. Bank National Ass'n.* (2014) 59 Cal.4th 1, 38.)

Those considerations include variability in the population, whether size of the sample is appropriate, whether the sample is random or infected by selection bias, and whether the margin of error in the statistical analysis is reasonable. (*Id*. at pp. 38–46.)

Here, expert Sean Berger has provided a declaration. However, the declaration merely addresses that Berger was retained to review the available data and that he may be asked for more analysis. (Berger Decl., ¶¶ 8-9.) This does not address whether the sample size was appropriate or any margin of error. The court seeks clarification as to the expert's assessment of the sample size here.

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 10/20/26.
(Judge's initials) (Date)