Tentative Rulings for December 10, 2025
Department 501

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 501

Begin at the next page

(03)

Tentative Ruling

Re: ***Nwadei v. Okonkwo***
Case No. 25CECG00907

Hearing Date: December 10, 2025 (Dept. 501)

Motion: Defendants' Demurrer and Motion to Strike Portions of First Amended Complaint

Tentative Ruling:

To overrule defendants' demurrer to the First Amended Complaint, in its entirety. To deny the motion to strike the references to Natasha Okonkwo from the First Amended Complaint. To order defendants to serve and file their answer within 10 days of the date of service of this order.

If oral argument is timely requested, such argument will be entertained on Thursday, December 11, 2025, at 3:30 p.m.

Explanation:

Plaintiff has alleged claims for (1) intentional misrepresentation, (2) false promise, (3) financial elder abuse, (4) breach of oral contract, (5) money had and received, and (6) account stated against both defendants.

Defendants argue that plaintiff has alleged nothing more than hearsay and legal conclusions, and that there are no facts alleged that show that Natasha was aware of plaintiff's dealings with Henry or that she was involved in the alleged fraud and breach of contract. However, plaintiff has alleged that Natasha and Henry both received the money from him to buy the Maybach, and that they assured him that the money was safe. (FAC, ¶¶ 12, 13.) Henry later informed plaintiff that Natasha had invested the money with an investment company, and that they would make efforts to recover the money and perform as agreed. (*Id*. at ¶ 16.) Natasha was aware of the fact that the money used for the investment was intended to be used to purchase the vehicle. (*Id*. at ¶ 17.) Natasha and Henry were acting as agents of each other, and both were acting in concert with each other at all times. (*Id*. at ¶¶ 3, 8.) Thus, plaintiff has alleged sufficient facts to show that Natasha was involved in the alleged fraud and breach of contract.

While defendants argue that these allegations are nothing more than hearsay, their argument is without merit. Hearsay is an evidentiary objection, not a valid basis for a demurrer. A general demurrer assumes that all properly pleaded facts are true. (*Kiseskey v. Carpenters' Trust for So. California* (1983) 144 Cal.App.3d 222, 228.) Thus, the court does not consider whether the facts might be subject to evidentiary objections like hearsay at the demurrer stage. As a result, defendants' hearsay objection has not been properly raised here.

Also, to the extent that defendants argue that plaintiff's allegations are nothing more than legal conclusions rather than allegations of fact, plaintiff has alleged facts indicating that Natasha was involved in the alleged fraud and breach of contract. He alleges that Natasha accepted money from him that she knew was intended to be used to purchase the vehicle, and she instead invested the money with an investment company. Natasha and Henry also allegedly promised to refund the money to plaintiff on request, but then defendants refused to refund the money when he asked for a refund. These allegations are sufficient to support a claim against both Natasha and Henry, as they were allegedly acting in concert and as agents of each other at all times.

Moreover, to the extent that defendants argue that the accusatory pleading is uncertain and vague, demurrers for uncertainty are disfavored and will not be sustained unless the complaint is so vague and ambiguous that it is impossible for the defendants to determine what is being alleged against them or to respond to the complaint. "A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures." (*Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616, citation omitted.) Here, the FAC is not so vague or uncertain that defendants cannot determine what they allegedly did wrong, nor is it impossible for them to respond to his claims.

The First Amended Complaint clearly alleges the essential facts of plaintiff's fraud claims, including that defendants made misrepresentations to him, that they knew the representations were false when they made them, that they intended that plaintiff would rely on the representations, that plaintiff did not know that the representations were false, that defendants concealed the fact that there was no vehicle and that they had no intention of purchasing any vehicle for him, and that he relied on their representations to his harm by paying thousands of dollars to defendants that they refused to return. (FAC, ¶¶ 23-30, 32-37.) Plaintiff has also alleged facts to support his financial elder abuse claim, since he alleges that he is over the age of 65, that defendants obtained funds from him, that they took the money with the intent of defrauding him, and that he was harmed as a result of their conduct. (*Id*. at ¶¶ 38-42.) He has also alleged facts to support the breach of oral contract claim, including the formation of the contract, the essential terms of the contract, his performance of the contract duties, and defendants' breach of the contract with resulting harm to him. (*Id*. at ¶¶ 43-48.) Plaintiff has also alleged facts to support his money had and received and account stated claims, as he has alleged that he paid $73,500 to defendants and they failed to use the money for his benefit or return the money to him despite his repeated demands. (*Id*. at ¶¶ 50-58.) Therefore, the court intends to overrule the demurrer as to both Henry and Natasha.

Finally, the court intends to deny the motion to strike the allegations against Natasha. First, defendants' motion to strike is procedurally improper, as they did not file a separate notice of motion to strike that quotes in full the specific allegations that they seek to strike. (Cal. Rules of Court, rule 3.1322(a).) Instead, they have improperly filed a hybrid demurrer and motion to strike as a single motion. In addition, the court intends to deny the motion to strike for the same reasons that it will overrule the demurrer, as plaintiff

has alleged sufficient facts to support his claims against Natasha, and therefore there is no basis for striking the references to her from the First Amended Complaint.

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: DTT on 12/4/2025.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Carillo v. Jireh Packing Company***
Superior Court Case No. 24CECG01937

Hearing Date: December 10, 2025 (Dept. 501)

Motion: for Preliminary Approval of Class Settlement

Tentative Ruling:

To deny, without prejudice.

If oral argument is timely requested, such argument will be entertained on Thursday, December 11, 2025, at 3:30 p.m.

Explanation:

1. Class Certification

Settlements preceding class certification are scrutinized more carefully to make sure that absent class members' rights are adequately protected, although there is less scrutiny of manageability issues. (*Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 240; see *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1803, fn. 9.) The trial court has a "fiduciary responsibility" as the guardian of the absentee class members' rights to decide whether to approve a settlement of a class action. (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 95.)

A precertification settlement may stipulate that a defined class be conditionally certified for settlement purposes. The court may make an order approving or denying certification of a provisional settlement class after the preliminary settlement hearing. (Cal. Rules of Court, rule 3.769(d).) Before the court may approve the settlement, however, the settlement class must satisfy the normal prerequisites for a class action. (*Amchem Products, Inc. v. Windsor* (1997) 521 US 591, 625-627.)

"Class certification requires proof (1) of a sufficiently numerous, ascertainable class, (2) of a well-defined community of interest, and (3) that certification will provide substantial benefits to litigants and the courts, i.e., that proceeding as a class is superior to other methods. In turn, the community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*In re Tobacco II Cases* (2009) 46 Cal.4th 298, 313.)

Plaintiffs bear the burden of establishing the propriety of class treatment *with* admissible evidence. (*Richmond v. Dart Industries, Inc*. (1981) 29 Cal.3d 462, 470 [trial court's ruling on certification supported by substantial evidence generally not disturbed

on appeal]; *Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1107-1108 [plaintiff's burden to produce substantial evidence].)

Here, the class members are all non-exempt hourly paid employees who worked for Jireh Packing Company in the State of California from October 1, 2023, to April 4, 2025, excluding employees placed directly or indirectly by any staffing agency, farm labor contractor, or professional employer organization. Class members can be ascertained from defendants' records. The putative class consists of an estimated 188 members. (Shirian Decl., ¶ 5.) The numerosity and ascertainability criteria are satisfied.

Under the community of interest requirement, the class representative must be able to represent the class adequately. (*Caro v. Procter & Gamble* (1993) 18 Cal.App.4th 644, 669.) "[I]t has never been the law in California that the class representative must have identical interests with the class members . . . The focus of the typicality requirement entails inquiry as to whether the plaintiff's individual circumstances are markedly different or whether the legal theory upon which the claims are based differ from that upon which the claims of the other class members will be based." (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.)

Usually, in wage and hour class actions, the distinctive feature that permits class certification is that the employees have the same job title or perform similar jobs, and the employer treats all in that discrete group in the same allegedly unlawful fashion. In *Brinker Restaurant v. Superior Court* (2012) 53 Cal.4th 1004, 1017, "no evidence of common policies or means of proof was supplied, and the trial court therefore erred in certifying a subclass."

Common questions in this class include that defendant failed to pay overtime and minimum wages, failed to provide meal breaks, rest breaks, or compensation in lieu thereof, waiting time penalties, wage statement violations, failed to timely pay wages during employment, and unfair competition. (Shirian Decl., ¶ 3.) The motion is supported by a declaration from counsel. However, plaintiff's declaration is insufficient. First, it is unsigned. Second, it does not establish a basis for plaintiff's belief that other employees had similar experiences.

The adequacy of representation component of the community of interest requirement for class certification comes into play when the party opposing certification brings forth evidence indicating widespread antagonism to the class suit. "'The adequacy inquiry … serves to uncover conflicts of interest between named parties and the class they seek to represent. To assure "adequate" representation, the class representative's personal claim must not be inconsistent with the claims of other members of the class." (*J.P. Morgan & Co., Inc. v. Superior Court* (2003) 113 Cal.App.4th 195, 212, citations omitted.)

"[T]he adequacy inquiry should focus on the abilities of the class representative's counsel and the existence of conflicts between the representative and other class members." (*Caro v. Procter & Gamble Co.* (1993) 18 Cal.App.4th 644, 669.) Counsel has shown that the law firm is experienced and that the firm has successfully litigated other class actions. (Shirian Decl., ¶¶47-59.) Therefore, it does appear that class counsel has

shown that the firm is adequate to represent the interests of the class. However, the issue remains that plaintiff's declaration is insufficient to establish a community of interest here.

The community of interest element is not satisfied.

2. Settlement Approval

"[I]n the final analysis it is the Court that bears the responsibility to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing litigation. The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement." (*Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal.App.4th 116, 129.) "[T]o protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished … [therefore] the factual record must be before the … court must be sufficiently developed." (*Id.* at p. 130.)

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 unnamed expert. (Shirian Decl., ¶ 13.) A sampling of records was provided by defendant. (Ibid.) 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.)

In the case at bench the declaration provides that there are 188 class members. There is limited discussion of the average hours worked, hourly wages of the class members and limited discussion of the evidence supporting the figures used by the parties to arrive at the settlement before the court. Plaintiff has not submitted an expert declaration or provided sufficient discussion or analysis as to how the information submitted supports plaintiff's counsel's damages estimates. Additionally, while counsel

indicates that an expert was consulted, no information is provided about this unnamed expert's qualifications.

Plaintiffs' counsel seeks a fee award based on 35% of the gross settlement. While it is true that courts have found fee awards based on a percentage of the common fund are reasonable, the California Supreme Court has also found that the trial court has discretion to conduct a lodestar "cross-check" to double check the reasonableness of the requested fees. (*Laffitte v. Robert Half Intern. Inc*. (2016) 1 Cal.5th 480, 503-504 [although class counsel may obtain fees based on a percentage of the class settlement, courts may also perform a lodestar cross-check to ensure that the fees are reasonable in light of the number of hours worked and the attorneys' reasonable hourly rates].) Here, plaintiff's counsel has not provided any information about the amount of work done on the case, the hourly rates charged, or whether a lodestar multiplier is sought. Plaintiff's counsel simply seeks a percentage of the total gross settlement as fees without any evidence linking that number to the actual work done in the case. Failure to provide such information makes it impossible for the court to double check the requested fees against some objective evidence of the work done in the case. With any final approval motion, counsel shall submit a full lodestar analysis, supported by full and complete billing records and evidence supporting the hourly rates claimed.

The motion seeks preliminary approval of a $7,500 "service award" to plaintiff. This award is in addition to plaintiff's share of the settlement fund as a class member. There is no "presumption of fairness" in review of an incentive fee award. (*Clark v. Residential Services LLC* (2009) 175 Cal.App.4th 785, 806.) This amount is high, particularly where plaintiff claims approximately 30 hours were spent in assisting counsel, in his unsigned declaration. (Carrillo Decl., ¶ 19.) A lower amount may be awarded at final approval, as there is limited evidence indicating any substantive contributions by plaintiff during the period of time between the case being filed and ultimately settled, neither is there evidence of any real risk to plaintiff in being named in a representative action apart from the theoretical.

The parties agreed to use ILYM Group, Inc., as settlement administrator. The motion represents that the cost of administration will not exceed $6,000. A declaration from a representative at ILYM Group was included to address what costs are anticipated by the settlement administrator. Therefore, the court finds this information sufficient at this time.

Plaintiff has not provided sufficient information to establish whether there is a community of interest in this matter. Also, plaintiff's counsel has not presented sufficient evidence for the determination of whether the settlement agreement is fair. Therefore,

the court denies the motion for preliminary approval of the class action settlement agreement, without prejudice.

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

Tentative Ruling
Issued By: DTT on 12/5/2025.
(Judge's initials) (Date)

(47)

Tentative Ruling

Re: ***Medallion Bank v. Jeanette Butcher***
Superior Court Case No. 25CECG03987

Hearing Date: December 10, 2025 (Dept. 501)

Motion: by Plaintiff for Writ of Possession Against Defendant

Tentative Ruling:

To deny in light of the entry of default against defendant Jeanette Butcher entered on December 2, 2025.

If oral argument is timely requested, such argument will be entertained on Thursday, December 11, 2025, at 3:30 p.m.

Explanation:

This motion requests a prejudgment writ of possession, which is proper to request before final adjudication of the claims sued upon. (*Kemp Bros. Const., Inc. v. Titan Elec. Corp.* (2007) 146 Cal.App.4th 1474, 1476.) However, after serving the moving papers on defendant, plaintiff requested entry of defendant's default. The clerk entered default on December 2, 2025. The entry of default instantly cuts off a defendant's right to appear in the action or participate in the proceedings unless the default is set aside or judgment is entered (i.e., giving the defendant the right to appeal). (*Devlin v. Kearny Mesa AMC/Jeep/Renault, Inc.* (1984) 155 Cal.App.3d 381, 385.) Due process would not be served by allowing plaintiff to give defendant notice of a motion, but then cut off their right to defend themselves regarding that motion. Post-judgment enforcement procedures following judgment are available to plaintiff, if necessary.

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: DTT on 12/8/2025.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Doe, et al. v. Spatafore, et al.***
Superior Court Case No. 21CECG03118

Hearing Date: December 10, 2025 (Dept. 501)

Motions (x6): by Defendant Community Hospitals of Central California to Compel Plaintiffs John Doe, Jane Doe, and Daughter Doe's Further Responses to Requests for Production of Documents, Set One and Special Interrogatories, Set Three

Tentative Ruling:

To deny. (Code Civ. Proc., §§ 2030.300, subd. (c); 2031.310, subd. (c).)

If oral argument is timely requested, such argument will be entertained on Thursday, December 11, 2025, at 3:30 p.m.

Explanation:

A notice of motion to compel further responses must be served within 45 days after the responses in question, or any supplemental responses, were served, unless the parties agree in writing to extend the time. (Code Civ. Proc., §§ 2030.300, subd. (c)—Interrogatories; 2031.310, subd. (c)—Inspection Demands.) Delaying in filing the motion beyond the 45-day time limit waives the right to compel a further response to the discovery. This time is mandatory and jurisdictional, and thus the court has no authority to grant a late motion. (*Sexton v. Superior Court* (1997) 58 Cal.App.4th 1403, 1409.)

The 45-day deadline runs from the date the response is served, not from the date originally set for production or inspection. (*Standon Co. v. Superior Court* (1990) 225 Cal.App.3d 898, 901.) The deadline is extended depending on the manner in which the responses were served. (Code Civ. Proc., §§ 1013, 1010.6, subd. (a)(3)(B) [two court day extension for electronic service].) The time for filing is also tolled during the time in which the moving party was complying with the Superior Court of Fresno County, Local Rules, rule 2.1.17 ("Local Rule 2.1.17"). Finally, it is further extended based on the manner in which the Order on the Request for Pretrial Discovery Conference is served (generally by mail). (Code Civ. Proc., §§ 1010.6, subd. (a)(3)(B), 1013, 1013a, subd. (4) [statutory extensions for service includes service made by clerk of the court].)

The court's authority to toll the jurisdictional time limit in the context of informal discovery conferences has now been codified in Code of Civil Procedure section 2016.080. This statutory authority does not give the court permission to *extend* the 45-day time limit, or to *set a new deadline,* but merely allows it to "stop the clock" on it. As the California Supreme Court has explained, "Tolling may be analogized to a clock that is stopped and then restarted. Whatever period of time that remained when the clock is stopped is available when the clock is restarted, that is, when the tolling period has ended." (*Woods v. Young* (1991) 53 Cal.3d 315, 326, fn 3.) For example, as explained by

the Court in *Woods v. Young*, if a plaintiff serves a pre-filing notice of intent to sue (which "stops the clock") on the last day of the limitations period, then she will only have one day to file her complaint once the tolling period ends and the clock "starts" again. (*Ibid.*) Accordingly, if a party waits until close to the end of that 45-day limit before asking for an informal discovery conference, she does so at her own peril: utilizing the example given in *Woods v. Young*, if the Request for Pretrial Discovery Conference is filed on the 45th day, the moving party only has one day (plus the extension for the service of the discovery responses and the extension for the service of the Order on the Request for Pretrial Discovery Conference) to file the motion to compel.

Here, the discovery responses were served on June 9, 2025. (Webb Decl., filed on Sept. 16, 2025, ¶ 4.) The responses were electronically served. (*Id*., at Exh. A., which meant the 45-day time limit to file the motions to compel further responses began on June 11, 2025 (date of electronic service plus two court days pursuant to Code Civil Procedure section 1010.6, subdivision (a)(3)(B).) The moving party "stopped the clock" on July 23, 2025 by filing its Request for Pretrial Discovery Conference, which was day 42 of the 45-day time limit, leaving it with three more days of the statutory period (as further enlarged by statutory extensions for the service of the Order on the Pretrial Discovery Conference).

The court's Order on the Pretrial Discovery Conference was issued on August 29, 2025.[1] The clerk mailed the order on that same day.[2] Accounting for the statutory five-day extension for service of the order by mail, tolling of the time for Community Hospitals of Central California ("CHCC") to file its motion to compel ended on Wednesday, September 3, 2025. From there, the clock started ticking again, and CHCC had three days left of its statutory time limit to file its motions, which meant the deadline for the motions was on September 6, 2025. Since the 45th day was on a Saturday, the jurisdictional time limit to file the discovery motions is rolled forward to Monday, September 8, 2025. However, the motions were not filed until September 16, 2025, and thus were untimely and cannot be heard.

The court does not find that sanctions against any party are warranted. Although the motions cannot be granted, there is sufficient evidence showing that CHCC engaged in substantial meet and confer efforts in order to seek responses from plaintiffs. The court finds CHCC's actions to be in good faith and despite the delay in bringing the

[1] Although CHCC in its reply inadvertently attaches an Order on the Pretrial Discovery Conference regarding a different discovery dispute between CHCC and John Christopher Spatafore, the court's record reflects that an order regarding the special interrogatories and document production requests propounded on plaintiffs was also issued on August 29, 2025. All reference to the Order on the Pretrial Discovery Conference within this ruling pertains to the order on the latter.
[2] The information regarding tolling reflected on the Order on Request for Pretrial Discovery Conference merely allows the court to specify what the tolling period actually turned out to be, i.e., the court simply counts the number of days from the filing of CHCC's Request for Pretrial Discovery Conference (July 23, 2025) and the date the court issued its order (August 29, 2025), which was *37 days*.

motions, CHCC acted with substantial justification in repeatedly attempting to resolve the discovery dispute informally. Therefore, no sanctions are awarded.

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: DTT on 12/8/2025.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Houck, et al. v. Humangood, et al.***
Superior Court Case No. 24CECG05489

Hearing Date: December 10, 2025 (Dept. 501)

Motion: by Defendants to Compel Arbitration

Tentative Ruling:

To continue the matter to Thursday, January 29, 2026, at 3:30 p.m., in Department 501, to allow the parties to complete discovery on Margaret Houck's capacity to execute the January 8, 2024, arbitration agreement. Plaintiffs may submit supplemental evidence or briefing on the issue no later than on Thursday, January 15, 2026, and defendants may submit a response no later than on Thursday, January 22, 2026. Any additional papers submitted are limited to the issue of Ms. Houck's capacity to contract.

If oral argument is timely requested, such argument will be entertained on Thursday, December 11, 2025, at 3:30 p.m.

Explanation:

Existence of Arbitration Agreement

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, 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 as to the defense. (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413-414.)

"[W]hen a petition to compel arbitration is filed and accompanied by prima facie evidence of a written agreement to arbitrate the controversy, the court itself must determine whether the agreement exists and, if any defense to its enforcement is raised, whether it is enforceable. Because the existence of the agreement is a statutory prerequisite to granting the petition, the petitioner bears the burden of proving its existence by a preponderance of the evidence. If the party opposing the petition raises a defense to enforcement - either fraud in the execution voiding the agreement, or a statutory defense of waiver or revocation (see § 1281.2, subds. (a), (b)) - that party bears the burden of producing evidence of, and proving by a preponderance of the evidence, any fact necessary to the defense." (*Rosenthal v. Great Western Fin. Securities*

Corp. (1996)14 Cal. 4th 394, 413.) Thus, in ruling on a motion to compel arbitration, the court must first determine whether the parties actually agreed to arbitrate the dispute, and general principles of California contract law guide the court in making this determination. (*Mendez v. Mid-Wilshire Health Care Center* (2013) 220 Cal.App.4th 534.)

"First, the moving party bears the burden of producing 'prima facie evidence of a written agreement to arbitrate the controversy.' The moving party 'can meet its initial burden by attaching to the [motion or] petition a copy of the arbitration agreement purporting to bear the [opposing party's] signature.' Alternatively, the moving party can meet its burden by setting forth the agreement's provisions in the motion. For this step, 'it is not necessary to follow the normal procedures of document authentication.' If the moving party meets its initial prima facie burden and the opposing party does not dispute the existence of the arbitration agreement, then nothing more is required for the moving party to meet its burden of persuasion." (*Gamboa v. Northeast Community Clinic* (2021) 72 Cal.App.5th 158, 165, citations omitted; see also *Condee v. Longwood Management Corp.* (2001) 88 Cal.App.4th 215, 218-219.)

"If the moving party meets its initial prima facie burden and the opposing party disputes the agreement, then in the second step, the opposing party bears the burden of producing evidence to challenge the authenticity of the agreement. The opposing party can do this in several ways. For example, the opposing party may testify under oath or declare under penalty of perjury that the party never saw or does not remember seeing the agreement, or that the party never signed or does not remember signing the agreement." (*Ibid*, citations omitted.)

"If the opposing party meets its burden of producing evidence, then in the third step, the moving party must establish with admissible evidence a valid arbitration agreement between the parties. The burden of proving the agreement by a preponderance of the evidence remains with the moving party." (*Id.* at pp. 165–166, citation omitted.)

Here, defendants have met their initial burden by simply submitting a copy of the arbitration agreement between Margaret Houck and defendants. (Isfeld Decl., Ex. A.) The burden then shifts to plaintiffs to challenge the authenticity of the signature by "prov[ing] the falsity of the purported agreement." (*Condee, supra,* 88 Cal.App.4th at p. 219.) However, just as plaintiffs concede, Ms. Houck is deceased and therefore cannot dispute her own signature. Plaintiffs do not otherwise claim that the agreement was not signed by Ms. Houck. Nor do they present any other evidence to indicate as such. Therefore, plaintiffs have not met their burden in challenging the authenticity of the arbitration agreement at issue and defendants need not establish the existence of a valid arbitration agreement with admissible evidence. It is sufficient that defendants met the initial burden of showing that an arbitration agreement between defendants and Ms. Houck exists. (*Id*., at pp. 218-219 ["the court is only required to make a finding of the agreement's existence, not an evidentiary determination of its validity"].)

Mental Capacity to Contract

Plaintiffs also argue that the agreement is unenforceable, because Ms. Houck lacked the mental capacity to enter into a contract at the time she executed the

arbitration agreement. Plaintiffs contend that Ms. Houck had dementia and was suffering from cognitive decline over the years.

There is a rebuttable presumption that "all persons have the capacity to make decisions and to be responsible for their acts or decisions." (Prob. Code, § 810, subd. (a); *Sterling v. Sterling* (2015) 242 Cal.App.4th 185, 195.) "A judicial determination that a person is totally without understanding, or is of unsound mind, or suffers from one or more mental deficits so substantial that, under the circumstances, the person should be deemed to lack the legal capacity to perform a specific act, should be based on *evidence of a deficit in one or more of the person's mental functions rather than on a diagnosis of a person's mental or physical disorder.***"** (*Id*., subd. (c), emphasis added.) These mental functions include:

> (1) Alertness and attention, including, but not limited to, the following:
>
> (A) Level of arousal or consciousness.
> (B) Orientation to time, place, person, and situation.
> (C) Ability to attend and concentrate.
>
> (2) Information processing, including, but not limited to, the following:
>
> (A) Short- and long-term memory, including immediate recall.
> (B) Ability to understand or communicate with others, either verbally or otherwise.
> (C) Recognition of familiar objects and familiar persons.
> (D) Ability to understand and appreciate quantities.
> (E) Ability to reason using abstract concepts.
> (F) Ability to plan, organize, and carry out actions in one's own rational self-interest.
> (G) Ability to reason logically.
>
> (3) Thought processes. Deficits in these functions may be demonstrated by the presence of the following:
>
> (A) Severely disorganized thinking.
> (B) Hallucinations.
> (C) Delusions.
> (D) Uncontrollable, repetitive, or intrusive thoughts.
>
> (4) Ability to modulate mood and affect.

(Prob. Code, § 811, subd. (a).)

Moreover, the moving party must also provide "evidence of a correlation between the deficit or deficits and the decision or acts in questions…" (*Ibid.*.) "A deficit in the mental functions listed above may be considered only if the deficit, by itself or in combination with one or more other mental function deficits, significantly impairs the person's ability to understand and appreciate the consequences of his or her actions with regard to the type of act or decision in question." (*Id*., subd. (b).)

Here, the arbitration agreement presented by defendants reflects that Ms. Houck signed the agreement on January 8, 2024. (Isfeld Decl., Ex. 2.) Ms. Houck's daughter, Victoria Johns declares that Ms. Houck was diagnosed with dementia in 2020, and that her cognitive function had continued to worsen throughout the years. (Johns Decl., ¶¶ 3-4.) She indicates that Ms. Houck was confused and disorientated on most days from the end of 2023 through 2024, and that Ms. Houck was unable to recall conversations she had just minutes prior. (*Id*., at ¶ 5.) Ms. Johns provides that in January 2024, Ms. Johns had been managing most of Ms. Houck's complex affairs including financial and some medical conditions. (*Id*., at ¶ 7.)

Plaintiffs submit copies of various documents that they purport to be Ms. Houck's medical reports (Exhibit A), and Ms. Houck's admissions documents into hospice care on or around January 29, 2024 (Exhibit B) to show that Ms. Houck was incapable of executing the arbitration agreement. (See Opp., Exs. A, B.) Plaintiffs contend that these documents show that Ms. Houck had dementia, suffered from forgetfulness, memory loss, and confusion, lacked the capacity to manage cash recourses, was experiencing some loss of cognitive function, and lacked the ability to understand others or make decisions. (Opp., Ex. A, at 001692, 001696, 001698, 001818, 003516, 003517, 003540, 003542, 003545, 003548, 003644.)

However, none of this evidence is authenticated, as these documents are simply attached to plaintiffs' opposition. Some of the documents are illegible or almost illegible. (*Id.*, at Ex. A, 002128, 002130, 002438, 002440, 002861, 002862.) And while other forms may be legible, it is unknown exactly what the form is, who drafted the form, and/or whether it actually pertains to Ms. Houck. For example, only pages 12 and 13 of an unentitled form are attached as Exhibit A, 000947 and 000948, which may suggest that there may be a need or desire to "arrange for some assistance with legal/financial affairs as appropriate." (*Ibid*.) However, it is not known what this form is, when it was drafted, and whether it even pertains to Ms. Houck. The documents entitled "CAA Worksheet" attached as Exhibit A at 003516, 003540, 003541, 003545, 003548, do not identify what a "CAA worksheet" is and who filled out the forms, as the section entitled "Person Completing CAA" is left blank. The same is true for the document entitled "N Adv – Long Term Care Evaluation" attached as Exhibit A, beginning at 003641. Finally, there appears to be a notation in Ms. Houck's admission papers to hospice care that the patient was unable to sign due to "disease progression", but it is unclear who actually wrote that notation. For example, it is possible that the notation was written by Ms. Johns upon signing on behalf of Ms. Houck. Even if it were notated by a staff member of the hospice care, it is unknown who this staff member was, what experience this staff member had, and whether this staff member concluded that Ms. Houck could not sign the admissions papers due to the deficits enumerated in Probate Code section 811, as little more is provided for this staff member than an illegible signature. (*Id*., at Ex. B.)

Accordingly, it is unclear who filled out the various documents submitted, the experience and professional background of these individuals, whether these individuals concluded that Ms. Houck lacked the capacity to understand and execute the arbitration agreement on January 8, 2024, and whether these individuals had considered Probate Code, section 811 in reaching these conclusions.

Also, expert testimony is not provided on the issue and any correlation between the medical records presented and Ms. Houck's capacity to contract is explained only in the memorandum of points and authorities supporting the opposition, the author of which has not been established as a qualified expert in the field.

Therefore, plaintiffs have not provided evidence sufficient to overcome the presumption that "all persons [such as Ms. Houck] have the capacity to make decisions and to be responsible for their acts or decisions." (Prob. Code, § 810, subd. (a).)

Plaintiffs alternatively request time to complete discovery to oppose the motion. The court intends to grant plaintiffs' request, continue the matter and allow the parties an opportunity to submit supplemental evidence/briefing. However, any additional papers submitted is limited to the issue of Ms. Houck's capacity to contract.

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: DTT on 12/8/2025.
(Judge's initials) (Date)