Tentative Rulings for April 23, 2025
Department 403

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 403

Begin at the next page

(34)

<u>Tentative Ruling</u>

Re:	***February v. Anselmo*** Superior Court Case No. 23CECG04919
Hearing Date:	April 23, 2025 (Dept. 403)
Motion:	by Defendant for an Order Compelling Plaintiff's Responses to Discovery and an Order Deeming Requests for Admissions Admitted

Tentative Ruling:

To grant Plaintiff Stacy Anselmo's motion to compel Plaintiff Jeffery February to provide initial verified responses to Form Interrogatories, Set Two. (Code Civ. Proc. §§ 2030.290, subd. (b); 2031.300, subd. (b).) Plaintiff is ordered to serve complete verified responses to the discovery set forth above, without objection, within 20 days of the clerk's service of the minute order.

To deem Defendant's Request for Admissions, Set One, admitted by Plaintiff Jeffrey February, unless plaintiff serves, before the hearing, a proposed response to the requests for admission that is in substantial compliance with Code of Civil Procedure, section 2033.220. (Code Civ. Proc. §2033.280, subd. (b) and (c).)

To impose monetary sanctions in favor of Defendant and against Plaintiff Jeffrey February. (Code Civ. Proc. §§ 2023.010, subd. (d), 2030.290, subd. (c), 2033.280, subd. (c).) Plaintiff is ordered to pay $462.38 in sanctions to Jeanette N. Little & Associates within 30 days of the clerk's service of the minute order.

Explanation:

A party that fails to serve a timely response to a discovery request waives "any objection" to the request. (Code Civ. Proc. §§ 2030.290(a), 2033.280(a).) The propounding party may move for an order compelling a party to respond to the discovery request. (Code Civ. Proc. § 2030.290(b).) In the case of requests for admission, the propounding party may move for an order that the truth of any matters specified in the requests be deemed admitted. (Code Civ. Proc. § 2033.280(b).)

Where responses are served after the motion is filed, the motion to compel may still properly be heard. (*Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 409.) Unless the propounding party takes the matter off calendar, the court may determine whether the responses are legally sufficient, and award sanctions for the failure to respond on time. (*Ibid*.)

The discovery at issue was served on plaintiff Jeffrey February on December 6, 2024. (Hitchcock Decl., ¶ 4, Exh. A.) Despite defendant's efforts to address the lack of responses informally, plaintiff has failed to serve any responses. (*Id*. at ¶¶ 6-7, Exh. B.) Therefore, defendant is entitled to an order compelling plaintiff to respond to the

discovery, including Form Interrogatories, Set Two. (Code Civ. Proc. § 2030.290, subd. (b).) Defendant is likewise entitled to an order deeming Requests for Admission, Set One, admitted by plaintiff Jeffrey February unless plaintiff serves, before the hearing, a proposed response to the requests for admission that is in substantial compliance with Code of Civil Procedure, Section 2033.220. (Code Civ. Proc. § 2033.280, subd. (b) and (c).)

In addition, since plaintiff did not respond to the discovery in a timely manner, he has waived all objections. (Code Civ. Proc. §§ 2030.290, subd. (a), 2031.300, subd. (a), 2033.280, subd. (a).)

<u>Sanctions</u>

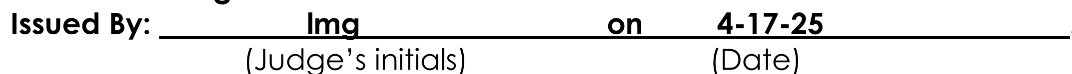
The court may award sanctions against a party that fails to provide discovery responses. (Code Civ. Proc. § 2023.010(d), (h).) The court must impose a monetary sanction against the party or attorney, or both, whose failure to respond necessitated the motion to deem matters admitted. (Code Civ. Proc. §2033.280(c).)

Where responding party provided the requested discovery after the motion to compel was filed, the court is authorized to award sanctions. (Cal. Rules of Court, rule 3.1348(a).)

Defendant's requests for sanctions in connection with the motions at bench is granted. The court finds it reasonable to award sanctions for two hours of attorney time preparing the largely-identical motions to compel and motion to deem admissions admitted at counsel's hourly rate of $171.19 as well as the filing fees associated with each motion. (Hitchcock Decl., ¶ 10.) Plaintiff is ordered to pay $462.38 in sanctions to Jeanette N. Little & Associates within 30 days of the clerk's service of the minute order.

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: ___lmg___ on ___4-17-25___.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***In re: Emmanuel Nunez***
Superior Court Case No. 25CECG01490

Hearing Date: April 23, 2025 (Dept. 403)

Motion: Petition to Approve Compromise of Disputed Claim of Minor

Tentative Ruling:

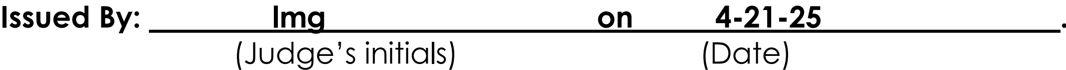
To deny without prejudice.

Explanation:

Petitioner must clarify and substantiate his personal claim for reimbursement for medical expenses from the minor's settlement. Petitioner Jose Karim Nunez seeks reimbursement in the amount of $1,005.48 for the medical expenses he alleges to have personally paid. However, petitioner has not demonstrated that he was the person to have made these payments, and the amounts of "private payments" reflected in the petition (see Petition PDF pages 75-83) do not amount to $1,005.48.

Petitioner also failed to lodge a Proposed Order to Deposit Money into Blocked Account (Judicial Council Form MC-355).

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: **lmg** **on** **4-21-25** .

(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Wintz v. Hyundai Motor America***
Superior Court Case No. 25CECG00220

Hearing Date: April 23, 2025 (Dept. 403)

Motion: by Defendant to Compel Arbitration

Tentative Ruling:

To deny.

Explanation:

Plaintiffs Janet Lee Wintz and Kenneth Paul Wintz filed the present action regarding the purchase of a 2022 Hyundai Tucson, which plaintiffs alleges came with manufacturer warranties. Problems with the vehicle ensued which form the basis of the instant complaint for damages. Plaintiffs brought three causes of action against defendant Hyundai Motor America, for breach of express warranties afforded through the Song-Beverly Act; breach of implied warranties afforded through the Song-Beverly Act, and violation of section 1793.2 of the Civil Code.

Defendant Hyundai Motor America moves to compel arbitration pursuant to plaintiffs' agreement to do so in the Owner's Handbook and Warranty Information manual ("the Manual"). A copy of a document titled "Owner's Handbook and Warranty Information" is attached as Exhibit 2 to the declaration of Ali Ameripour, counsel for defendant. Plaintiffs object for a lack of foundation. The objection is sustained. Nothing in counsel's declaration provides foundation to tie Exhibit 2 to the plaintiffs. There is no statement that the declarant, the litigation attorney, has any basis to know whether the agreement was executed by plaintiffs or even whether the copy provided is in fact "true and correct".

However, defendant contends that the motion must be granted even in the face of the evidentiary objection because the moving party need not show whether an arbitration agreement actually existed, but merely *allege* that it existed. The burden of proving the existence of an arbitration agreement is addressed below.

In moving to compel arbitration, defendant must prove by a preponderance of evidence the existence of the arbitration agreement and that the dispute is covered by the agreement. The party opposing the motion must then prove by a preponderance of evidence that a ground for denial of the motion exists (e.g., fraud, unconscionability, etc.) (*Rosenthal v. Great Western Fin'l Securities Corp.* (1996) 14 Cal.4th 394, 413-414 ("*Rosenthal*"); *Hotels Nevada v. L.A. Pacific Ctr., Inc.* (2006) 144 Cal.App.4th 754, 758; *Villacreses v. Molinari* (2005) 132 Cal.App.4th 1223, 1230.)

A trial court is required to grant a motion to compel arbitration "if it determines that an agreement to arbitrate the controversy exists." (Code Civ. Proc. § 1281.2) However, there is "no public policy in favor of forcing arbitration of issues the parties have not agreed to arbitrate." (*Garlach v. Sports Club Co.* (2012) 209 Ca1.App.4th 1497, 1505) Thus, in ruling on a motion to compel arbitration, the court must first determine whether the parties actually agreed to arbitrate the dispute. (*Mendez v. Mid-Wilshire Health Care Center* (2013) 220 Cal.App.4th 534, 541.)

"The burden of persuasion is always on the moving party to prove the existence of an arbitration agreement with the opposing party by a preponderance of the evidence: 'Because the existence of the agreement is a statutory prerequisite to granting the [motion or] petition, the [party seeking arbitration] bears the burden of proving its existence by a preponderance of the evidence.' [Citation.]" (*Gamboa v. Northeast Community Clinic, supra*, 72 Cal.App.5th at p. 164–165 ("*Gamboa*") citing *Rosenthal, supra,* at p. 413.)

The Second District Court of Appeal in *Gamboa* outlines a three-step burden shifting process as follows:

"First, the moving party bears the burden of producing 'prima facie evidence of a written agreement to arbitrate the controversy.' [Citation.] 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.' [Citations.]" (*Gamboa, supra,* at p. 165, citations omitted.) "Alternatively, the moving party can meet its burden by setting forth the agreement's provisions in the motion. (*Condee v. Longwood Management Corp.* (2001) 88 Cal.App.4th 215, 219 ("*Condee*"); see also Cal. Rules of Court, rule 3.1330 ['The provisions must be stated verbatim or a copy must be physically or electronically attached to the petition and incorporated by reference.'].)" (*Gamboa, supra,* at p. 165.) "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." (*Ibid*.)

"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. [Citation.] 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." (*Gamboa, supra,* at p. 165 citing *Condee, supra,* at p. 219.)

"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. [Citation.]" (*Gamboa, supra,* at p. 165-166 citing *Rosenthal, supra,* at p. 413.)

Here, it is undisputed that defendant adequately meets its initial burden of setting forth the arbitration agreement's provisions in the motion. Plaintiffs have challenged the authenticity of the purported agreement by submitting declarations indicating that they

were never presented with copies of the Manual. (K. Wintz Decl., ¶ 5; J. Wintz Decl., ¶ 5.) Plaintiffs expressly reject that they ever signed any agreement under the Manual. (K. Wintz Decl., ¶ 6; J. Wintz Decl., ¶ 6.) Plaintiffs further declared that they had no notice from either the non-party seller nor defendant that there was any agreement to arbitrate in the Manual, and that their failure to opt out constituted an agreement. (K. Wintz Decl., ¶ 5; J. Wintz Decl., ¶ 5.) Accordingly, the burden then shifts back to the moving party to establish the existence of a valid arbitration agreement between the parties with admissible evidence. (*Gamboa, supra,* at p. 165-165.) No such evidence is presented. Defendant's reliance upon *Condee* in its reply is inapposite, since in that case, the authenticity of the arbitration agreement was never challenged. (*Condee, supra,* at p. 218.)

Therefore, defendant has not met its burden in submitting admissible evidence to establish the existence of a valid arbitration agreement and the motion is denied.[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: lmg on 4-21-25.
(Judge's initials) (Date)

[1] Based on the present findings, the court does not address the parties' arguments regarding enforceability, unconscionability, waiver and preemption.

(46)

Tentative Ruling

Re: ***Beatrice Carranza v. Sunnyside Rehab of Fresno, LLC***
Superior Court Case No. 24CECG04131

Hearing Date: April 23, 2025 (Dept. 403)

Motion: by Plaintiffs for Orders Compelling Defendant Sunnyside Rehab of Fresno LLC to Provide Initial Verified Responses to Form Interrogatories, Set One; Special Interrogatories, Set One; and Demand for Inspection of Documents, Set One.

Tentative Ruling:

To grant plaintiffs' motions to compel defendant Sunnyside Rehab of Fresno LLC dba Grace Healthcare Center fka Sunnyside Convalescent Hospital's initial verified responses to Form Interrogatories, Set One; Special Interrogatories, Set One; and Requests For Production, Set One. Within 20 days of service of this order by the clerk, defendant Sunnyside Rehab of Fresno LLC dba Grace Healthcare Center fka Sunnyside Convalescent Hospital shall serve **objection-free verified responses** to Form Interrogatories, Set One; Special Interrogatories, Set One; and Requests for Production, Set One.

To deny the request for imposition of sanctions.

Explanation:

Legal Standard

A propounding party may move for an order compelling response to its propounded interrogatories and/or demand. (Code Civ. Proc., §§ 2030.290, 2031.300.) For a motion to compel initial responses, no meet and confer is required. All that needs to be shown is that a set of interrogatories was properly served on the opposing party, that the time to respond has expired, and that no response of any kind has been served. (*Leach v. Superior Court* (1980) 111 Cal.App.3d 902, 905-906.) Timely and verified responses are due from the party on which discovery is propounded within 30 days after service, plus an additional 5 days for service by mail. (Code Civ. Proc. §§ 2030.260, 2031.260, 1013.) Failing to respond to discovery within the 30-day time limit waives objections to the discovery, including claims of privilege and work product protection. (Code Civ. Proc., §§ 2030.290 subd. (a), 2031.300 subd. (a).)

Application

Plaintiffs to this action, Noelia Nonato and Beatrice/Beatriz Carranza (by and through her Successor-in-Interest, Noelia Nonato) ("plaintiffs"), served the underlying discovery on Sunnyside Rehab of Fresno LLC dba Grace Healthcare Center fka Sunnyside Convalescent Hospital ("defendant") via USPS mail on January 27, 2025, consisting of (1)

Form Interrogatories, Set One; (2) Special Interrogatories, Set One; and (3) Request for Production of Documents, Set One. (Hafner Decls., ¶ 2, see also Exhs. 1, 2.) Defendant has had ample time to respond to the discovery propounded by plaintiffs and has not done so. Plaintiffs filed and served the instant motions on March 13, 2025. Defendant has not filed opposition to these motions; therefore, the court intends to grant the motions to compel initial responses.

Monetary Sanctions

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), 2031.300 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.)

First, plaintiffs did not make a request for sanctions in their notices of motion. For that reason alone, the court intends to deny the request for sanctions. In addition, plaintiffs did not offer any explanation for why they are pursuing discovery in this instance. As defendant was served but has not yet appeared in this action, it is unclear why plaintiffs chose the avenue of discovery and the court leans towards a finding that the motions were unnecessary and thus make the imposition of a sanction unjust.

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: lmg on 4-21-25.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re:	***Valdivias v. Bartlett et al.*** Superior Court Case No. 23CECG04561
Hearing Date:	April 23, 2025 (Dept. 403)
Motion:	By Defendant Uber Technologies, Inc. to Compel Arbitration; and Request for Stay

Tentative Ruling:

To grant and order plaintiff Evonne Valdivias to arbitrate her claims against defendant Uber Technologies, Inc. This action is stayed pending completion of arbitration. To set an Arbitration Status Conference for October 21, 2025, 3:30 p.m. in Department 403.

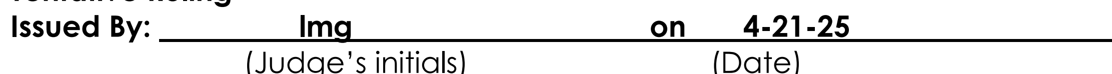
Explanation:

Plaintiff Evonne Valdivias ("Plaintiff") filed the instant action for a motor vehicle collision and negligence claim against, among others, defendant Uber Technologies, Inc. ("Defendant"). Defendant now seek to compel Plaintiff to arbitrate her claims against it.

Unless there is a dispute over authenticity, the mere recitation of the terms is sufficient for a party to move to compel arbitration. (*Sprunk v. Prisma LLC* (2017) 14 Cal.App.5th 785, 793.) The moving party has the burden of proving the existence of a valid arbitration agreement. (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 236.) A party opposing arbitration has the burden of showing that the arbitration provision cannot be interpreted to cover the claims in the complaint. (*Aanderud v. Superior Court* (2017) 13 Cal.App.5th 880, 890.)

Defendant submits a written agreement to arbitrate any dispute, claim or controversy arising out of or relating to a contract for services. (*See generally* Yu Decl., and exhibits thereto.) No opposition was filed. Accordingly, the court finds that there is a valid agreement to arbitrate that applies to the issues raised in the Complaint. The motion to compel arbitration is therefore granted, and Plaintiff and Defendant are ordered to arbitration of Plaintiff's claims against Defendant. The matter is stayed pending completion of arbitration. (Code Civ. Proc. § 1281.4.)

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: **lmg** **on** **4-21-25** .

(Judge's initials) (Date)