TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, March 5, 2025 3:00 p.m.
Courtroom 17 – Hon. Jane Gaskell
3035 Cleveland Avenue, Santa Rosa

PLEASE NOTE: In accordance with the Order of the Presiding Judge, a party or representative of a party may appear in Department 17 in person or remotely by Zoom, a web conferencing platform. Whether a party or their representative will be appearing in person or by Zoom must be part of the notification given to the Court and other parties as stated below.

CourtCall is not permitted for this calendar.

If the tentative ruling is accepted, no appearance is necessary via Zoom unless otherwise indicated.

TO JOIN ZOOM ONLINE:

D17 – Law & Motion
Meeting ID: 161 126 4123
Passcode: 062178
https://sonomacourt-org.zoomgov.com/j/1611264123

TO JOIN ZOOM BY PHONE:
By Phone (same meeting ID and password as listed for each calendar):
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The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, **YOU MUST NOTIFY** Judge Gaskell's Judicial Assistant by telephone at **(707) 521-6723**, and all other opposing parties of your intent to appear, and **whether that appearance is in person or via Zoom**, by ***4:00 p.m. the court day immediately preceding the day of the hearing.***

1. 23CV00791, Morales v. Cornerstone Certified Vineyard

The Court **GRANTS** Plaintiff Morales's motion for final approval of class action and PAGA settlement ("Settlement").

PROCEDURAL HISTORY

Plaintiff Morales brought this class action against Defendant Cornerstone Certified Vineyard for labor code violations seeking the recovery of unpaid wages and penalties. (Amended Complaint, ¶ 1.) After informal discovery, exchanging documents, and an arm's-length mediation session with an experienced third-party mediator, the parties reached a proposed class action and PAGA settlement for $650,000.00 to resolve all disputed claims. (Motion, 1:4-14.) This Court granted Plaintiff's motion for preliminary approval of the class action and PAGA settlement on November 6, 2024. (Motion, 1:7-9.) Plaintiff now moves for final approval of the class action and PAGA settlement. (*Id*. at 1:22-27.)

ANALYSIS

Legal Standard for Final Fairness and Approval

After preliminary approval of a settlement, the court must determine the settlement is fair, adequate, and reasonable. (C.R.C., Rule 3.769(g); *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) A presumption of fairness exists where: 1) the settlement is reached through arm's length bargaining; 2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; 3) counsel is experienced in similar litigation; and 4) the percentage of objectors is small. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) The test is not for the maximum amount plaintiff might have obtained at trial on the complaint but, rather, whether the settlement is reasonable under all of the circumstances. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 250, disapproved of by *Hernandez v. Restoration Hardware, Inc*. (2018) 4 Cal.5th 260.) In making this determination, the court considers all relevant factors including "the strength of [the] plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.)

Final Approval Considerations in Plaintiff's Motion

The Court considers the following for final approval of Plaintiff's motion regarding settlement:

1. Class Members

The "Settlement Class" is defined as "all individuals employed by Cornerstone as non-exempt employees in California during the Class Period. The Settlement Class shall include both current and former employees." (Declaration of Haulk, ¶ 33, Exhibit 1.) The total number of Class Members is 195. (*Id*. at ¶ 34.)

2. Settlement

The Gross Settlement Amount is $650,000.00. (Declaration of Haulk, ¶ 10(b), Exhibit 1.)

3. Administrator

ILYM Group, Inc. is charged with administering the Class Notice and Notice of Final Judgment for the Settlement. (Declaration of Haulk, ¶ 10(i), Exhibit 1.) Administration costs are $7,650.00. (*Id*.)

4. Attorney Fees and Costs

Class Counsel requests, without objection from Defendant, fees in the amount of $216,667.00 (1/3 of the total settlement) and costs of $4,772.44. (Motion, 1:22-27.)

5. PAGA Penalties/LWDA

A total of $50,000.00 are agreed to for PAGA Penalties and of this amount 75% (or $37,500.00) will be for LWDA and 25% (or $12,500) will be for aggrieved employees. (Declaration of Haulk, ¶ 10(l),

Exhibit 1.) The estimated average payment to aggrieved employees covered by PAGA is $120.19, with an estimated highest payment of $288.60. (Motion, 1:13-14.)

6. Class Representative Service Payment

Plaintiff is Class Representative. Per the Settlement, the Class Representative incentive award is $10,000.00. (Declaration of Haulk, ¶ 10(j), Exhibit 1.)

7. Net Settlement Amount

The average gross payment per Class Member is $1,834.27 with the highest gross payment as $8,248.00. (Motion, 1:10-14.)

8. Notice

Per California Rules of Court, rule 3.769(e), "if the court grants preliminary approval, its order must include the time, date, and place of the final approval hearing; the notice to be given to the class; and any other matters deemed necessary for the proper conduct of a settlement hearing." Additionally, rule 3.769(f) states that, "if the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement."

The Settlement Administrator received a data file from defense counsel containing the name, social security number, last known mailing address, the number of workweeks worked for each Class Member during the Class Period and the number of Pay Periods worked for each PAGA Employee during the PAGA Period. (Motion, 2:18-21.) The Class List contained 195 individuals, of whom 104 were aggrieved employees. (*Id*. at 2:21-23.) The Administrator mailed the Class Notice packet via U.S. First Class Mail, in both English and Spanish, to all of the last known mailing addresses of the Class Members. (*Id*. at 2:24-28.) Ultimately, 27 of the Notice Packets were deemed undeliverable and an updated address could not be obtained. (*Id*. at 3:1-5.) The Administrator did not receive any Requests for Exclusion ("Opt-Outs") or Objections by the listed deadline of January 25, 2025. (*Id*. at 3:6-10.)

9. Fair, Adequate, and Reasonable

Class Counsel declares that they have diligently investigated into and considered class member claims, the disputed factual and legal issues in the action, the substantial risks in further prosecution, and the benefits of settlement. (Declaration of Haulk, ¶¶ 11-18.) The parties informally exchanged documents through the discovery process and evaluated the information exchanged. (*Id*. at ¶¶ 13-14.) Afterwards, the parties participated in arm's length negotiations with a mediator to reach settlement. (*Id*. at ¶ 15.) The Settlement Administrator mailed out the court-approved Class Notice and did not receive any objections or opt-outs, and only 27 packets were deemed undeliverable. Plaintiff argues that the settlement is fair, reasonable, and adequate as a result.

<u>Application</u>

Based on the above, there is a presumption of fairness. The parties participated in arm's length mediation with an experienced mediator and extensive discovery prior to reaching settlement. The settlement amount is substantial in total and both sides faced uncertainty and risks absent settlement. Class Counsel also has extensive experience in Class Action litigation. Overall, the Court finds that the settlement, payment of fees and costs, and distribution of funds is fair, reasonable, and adequate, and is in the best interests of the Class Members.

CONCLUSION

Final approval of Plaintiff's class action settlement is **GRANTED**. Unless oral argument is requested, the Court will sign the proposed order and proposed judgment lodged with this motion.

2. 24CV01074, Zerah v. Guerneville School District

Plaintiffs Jerry Zerah ("Zerah") and John Ross Mendenhall ("Mendenhall", together with Zerah, "Plaintiffs") filed the currently operative "Second Amended Complaint"[1] (the "Complaint") in this action against defendants the County of Sonoma ("County"), Sonoma County Water Agency ("Water Agency", together with County, "County Defendants"), Guerneville Unified School District ("School District", together with County Defendants, "Defendants"), and Does 1-10,000, for multiple alleged causes of action arising out of damage following the 2023 flooding of Plaintiffs' properties.

This matter is on calendar for the School District's motion to consolidate this case with *Zerah v. Guerneville School District.*, 24CV03721, pending in Department 18 (the "Associated Action") pursuant to Cal. Code Civ. Proc. ("CCP") §1048, for all purposes. The Associated Action is filed by Plaintiffs against Defendants for flooding which occurred in 2024.

I. The Motion

The basis for the Motion is the School District's contention that this action and the Associated Action involve the same transaction or incident, and that consolidation will promote judicial economy, and avoid unnecessary costs and delay. CCP § 1048(a) provides: "When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay."

The School District requests consolidation for all purposes, or in the alternative, only for trial. No opposition has been filed.

II. Governing Law

An order of complete consolidation results in separate actions becoming a single action, the pleadings in the various actions being considered as an overall set of pleadings, and a single verdict and

[1] The Court notes that while Plaintiffs have entitled the operative complaint their Second Amended Complaint, this is the first actual amendment since the filing of the original complaint.

judgment issuing for all parties on all issues. *Kropp v. Sterling Sav. & Loan Ass'n* (1970) 9 Cal.App.3d 1033, 1046-47. Consolidation for all purposes is proper where the parties are the same and the causes of action could have been joined. *See, e.g. Sanchez v. Sup. Ct.* (1988) 203 Cal.App.3d 1391, 1396 (distinguishing complete consolidation and partial consolidation); *Hamilton v. Asbestos Corp. Ltd.* (2000) 22 Cal.4th 1127, 1147-48. In contrast, matters may be ordered only consolidated for pre-trial matters or trial. Where consolidation only for trial, "the pleadings, verdicts, findings **and judgments are kept separate**; the actions are simply tried together for the sake of convenience and judicial economy." *Sanchez v. Superior Court* (1988) 203 Cal.App.3d 1391, 1396 (emphasis added).

Factors ordinarily considered by the court in deciding whether to order consolidation are the timeliness of the motion (*i.e.* whether granting consolidation would delay trial or whether discovery in one or more cases has proceeded without all parties present), complexity (*i.e.* whether joining the actions involved would make trial too confusing or complex), and prejudice (*i.e.* whether consolidation would adversely affect the rights of any party). *See* Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (Rutter Group 2020) ¶ 12:362. Decisions regarding consolidation sit within the court's sound discretion. *Fellner v. Steinbaum* (1955) 132 Cal.App.2d 509, 511.

III. Analysis

While School District requests that the matters be consolidated, it is not apparent to the Court that consolidation is appropriate at this time. The pleadings in both of theses cases are not yet settled, but it is apparent that the County and the School District are asserting defenses in this action which are not being asserted in the Associated Action. Defendants in the instant action have tendered defenses to the majority of Plaintiffs' claims based on the Government Claims Act. See Gov. Code § 810, *et seq*. The lone exception to those defenses is Plaintiffs' cause of action for inverse condemnation. There are two demurrers and a motion to strike as to Plaintiff's Second Amended Complaint set for March 26, 2025. In the Associated Action, School District has filed an answer to Plaintiffs' first amended complaint. The County Defendants have a demurrer calendared for April 11, 2025. On a cursory review, the County's demurrer in that action is predicated on substantially different legal theories.

The two actions are based on Plaintiffs' damages resulting from the 2023 (this case) and 2024 (the Associated Case) floods. While the Court understands the School District's position that the Plaintiffs' actions are related because they both relate to flooding damage resulting from the same structure or public work, the motion appears premature. The pleadings are not yet settled, and the defenses asserted are currently adequately distinguishable. The function of combining the currently unsettled pleadings does not appear practicable. However, while the motion is premature, the issue will likely ripen as the cases progress.

Therefore, the motion to consolidate cases is **DENIED without prejudice**. The Court will prepare a written order consistent with this tentative ruling.

3. 24CV02964, Reyes v. Pyramid Cleveland Ave Management L.P.

Defendant Pyramid Cleveland Ave Management, LP's ("Defendant" or "Pyramid") motion to compel arbitration on Plaintiff Alizon Reyes' ("Plaintiff") individual claims, to strike class action claims, and to stay proceedings regarding Plaintiff's non-individual PAGA claim is **GRANTED**.

Defendant's motion to strike is **GRANTED** as to Paragraphs 2 and 21 through 29 and Prayer for Relief, Paragraphs 1 through 3 in their entirety.

PROCEDURAL HISTORY

Pyramid states in the motion that it provides accommodations and services to guests travelling from various states and facilitates interstate commerce. (Memorandum of Points and Authorities in Support of Motion ["MPA"], 2:4-13.) Plaintiff was a "Room Attendant" employed with Pyramid for housekeeping services. (MPA, 2:14-20.) Pyramid claims that, as a part of Plaintiff's onboarding process with Pyramid, Plaintiff reviewed and accepted various employment-related documents, including an Arbitration Agreement. (*Id*. at 2:22-26.) Pyramid gave Plaintiff 21 days to review and sign the Arbitration Agreement, and 7 days after that period to revoke her consent. (MPA, 2:26-27, 3:2.) Pyramid states that Plaintiff signed the Arbitration Agreement on November 2, 2023, and never revoked her consent. (*Id*. at 3:2-3.)

In the First Amended Complaint, Plaintiff alleges that Pyramid failed to pay minimum wages, to pay overtime compensation, to provide meal periods, to authorize and permit rest breaks, to indemnify necessary business expenses, to timely pay final wages at termination, and to provide accurate itemized wage statements. (First Amended Complaint ["FAC"], ¶¶ 31-103.) Pyramid argues that the claims alleged in the FAC are expressly covered by language contained in the Arbitration Agreement, specifically that it covers "any and all claims related to or arising out of the parties' employment relationship, including but not limited to, claims involving…wages… and any other claims which could be asserted by one party against the other in any court." (MPA, 3:4-15) The Arbitration Agreement contains a statement that the parties agree "this Agreement does not permit class, collective, representative, joined or group actions and the Arbitrator shall not have the authority to hear or consolidate the claims of an employee with those of any other employee." (*Id*. at 3:16-20.)

Pyramid's counsel met and conferred with Plaintiff's counsel requesting that Plaintiff submit the matter to binding arbitration per the signed Arbitration Agreement. Pyramid then requested that Plaintiff stipulate to arbitration. Ultimately Plaintiff did not stipulate to arbitration and stated not remembering the Arbitration Agreement. (MPA, 3:16-27, 4:1-9.) Plaintiff is a Spanish speaker with limited ability to speak and read English. (Opposition, 1:5-6.) Plaintiff argues that Defendant failed to prove she signed the Arbitration Agreement because the time stamp states that it was signed at "9:59 P.M." when Plaintiff never signed any documents after her shift at 5:00 p.m. (*Id*. at 1:11-16.)

Pyramid now requests that this Court compel Plaintiff's individual claims to arbitration under the Arbitration Agreement, that the Court strike Plaintiff's class allegations and claims from the FAC, that the Court stay all proceedings in this action, including Plaintiff's representative-only PAGA claims, pending this motion and completion of arbitration, and finally to retain jurisdiction over this matter to enforce any arbitration award. (MPA, 1:24-27, 2:1.) Plaintiff opposes the motion and Pyramid submitted a reply to opposition.

ANALYSIS

Pyramid's motion is made pursuant to C.C.P. sections 1281.2 and 1281.4, the Federal Arbitration Act, 9 U.S.C. §§ 1-16, the California Arbitration Act, and *Viking River Cruises*. (Notice of Motion, 2:5-14.) Pyramid argues that Plaintiff agreed by way of a valid and enforceable arbitration agreement to submit all claims, including employment-related disputes, against Defendant to individual arbitration. (*Id.*) Pyramid also claims that Plaintiff is contractually precluded from maintaining her claims as a class action, so requests to strike Paragraphs 2 and 21 to 29 in their entirety from the FAC, as well as Paragraphs 1 through 3 from the Prayer for Relief. (*Id.* at 2:15-20.)

1. *Validity of Plaintiff's Electronic Signature*

As a rule, the validity of the signature in an arbitration agreement is a foundational fact when compelling arbitration and the petitioner bears the burden of proving the authenticity. (*Ruiz v. Moss Bros. Auto Group, Inc.* (2014) 232 Cal.App.4th 836, 842-843, 836.) Per Civil Code section 1633.9(a), "an electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable." The Court of Appeal has held that even showing evidence based on witnesses who said that a plaintiff was the same individual who completed the on-boarding forms was not enough to prove authenticity because that plaintiff did not have a unique username and password assigned to complete the forms. (*Bannister v. Marinidence Opco, LLC* (2021) 64 Cal.App.5th 541, 546.)

Defendant argues that Plaintiff's electronic signature on the Arbitration Agreement is valid as it comports with the California Uniform Electronic Transactions Act ("UETA"), under which an electronic record satisfies a requirement that a record be in writing and that an electronic signature satisfies the law where legally a writing requires a signature. (Civ. Code § 1633.1 *et seq*.)

Plaintiff argues that Defendant cannot prove by a preponderance of evidence that Plaintiff signed the Arbitration Agreement because enough evidence was not submitted to show that the electronic signature was the act of Plaintiff. (Opposition, 3:25-27.) First, Plaintiff argues that the Declaration of Rob Foley failed to satisfy the burden to show Plaintiff signed the Arbitration Agreement by failing to fill the "gap in evidence" that can explain how the electronic signature came to exist on the document signed when Plaintiff does not recall ever signing it. (*Id.* at 2:4-22.) Plaintiff states that Mr. Foley's testimony that iCIMS secures personnel files behind a security wall and that only select staff have access to those personnel files does not show that *only* Plaintiff had access to the personnel file at the time she signed the document. (*Id.*) Furthermore, Plaintiff points out that the Arbitration Agreement was signed at 9:59 p.m., but that Plaintiff never signed any documents after her shift ended at 5:00 p.m. (*Id.* at 3:1-12.) More so, Plaintiff notes that according to Ms. Serrano's declaration, Plaintiff and her interpreter reviewed the

Arbitration Agreement over "Workday" and not iCIMS, which are different platforms, so due to this inconsistency, Defendant failed to authenticate the signature. (*Id*. at 3:13-27.)

In the Reply, Pyramid argues that it has satisfied any burden it has to authenticate Plaintiff's electronic signature. (Reply, 3:21-23.) Pyramid clarifies that both the Workday and iCIMS system require unique login credentials and only employees have knowledge of their personal login credentials required to access and sign electronic paperwork on both iCIMS and Workday. (*Id*. at 2:15-17.) It was the iCIMS system that was used by employees to access and review their onboarding documents, including the Arbitration Agreement, and according to Pyramid, Plaintiff electronically signed the Arbitration Agreement through the iCIMS portal at 7:59 p.m. Pacific Standard Time (or 9:59 p.m. Central Time) 13 minutes after receiving an invitation to create her iCIMS login credentials. (Reply, 2:18-28.) Plaintiff in the Opposition does not affirmatively deny signing the agreement, but instead states that she does not remember signing it and lacks an understanding of the iCIMS and Workday systems. (*Id*. at 3:13-18.)

The Court finds that Pyramid has met its burden of showing that the electronic signature was authentic. Unique login credentials were required to access either iCIMS or Workday, and there was an electronic signature added to the Arbitration Agreement through the iCIMS platform shortly after Plaintiff received the email to create her login credentials.

2. *Language Barrier Issues*

Pyramid states in the motion that Plaintiff's limited ability to read or speak English does not render the Arbitration Agreement unenforceable because Pyramid provided Plaintiff a translator, Ms. Serrano Lopez, throughout her onboarding process. Plaintiff met with that translator but did not request her translation assistance during the onboarding process. (MPA, pp. 16-18.)

In the Opposition, Plaintiff does not deny that translation services were available to her and that she did not request them but rather states that Ms. Serrano Lopez's declaration is not credible because her memory of the onboarding process is not certain. (Opposition, 5:17-28, 6:1-8.)

In the Reply, Pyramid points out that it is undisputed that the translation of the Arbitration Agreement was made available to Plaintiff through the interpreter. (Reply, 6:10-27, 7:1-6.)

The Court does not find that Plaintiff's limited ability to read or speak English impacts the enforceability of the Arbitration Agreement, because Plaintiff understood some English and also had a translator available during the entire onboarding process who she could ask to clarify the meaning of the document but chose not to use her services.

3. *Federal Arbitration Act (9 U.S.C. § 1 et seq.)*

The FAA applies to any "contract evidencing a transaction involving commerce" which contains an arbitration clause. (9 U.S.C. § 2.) The FAA favors the enforcement of arbitration agreements affecting interstate commerce. (*Cronus Investments, Inc. v. Concierge Services* (2005) 35 Cal.4th 376, 380.) When it applies, the FAA preempts state laws that purport to create alternative grounds for confirming or vacating arbitration awards. (*C.T. Shipping, Ltd. v. DMI (USA) Ltd.* (S.D.N.Y. 1991) 774 F.Supp. 146, 148-149.) Furthermore, in *Viking River Cruises, Inc. v. Moriana* (2022) 142 S.Ct. 1906 ("*Viking River*"), the U.S. Supreme Court determined that an employer may enforce an arbitration agreement as to an employee's individual PAGA claim, allowing the division of individual and non-individual PAGA claims. Additionally, in the matter of *Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104 ("*Uber*"), the U.S. Supreme Court also held that the court should impose a stay on a plaintiff's non-individual PAGA claims when his/her individual PAGA claims are compelled to arbitration.

Pyramid states that the Arbitration Agreement signed by Plaintiff had a term that expressly declares it is governed by the FAA. (MPA, 6:27, 7:1.) Pyramid argues that because Plaintiff and Defendant were involved in interstate commerce within the meaning of the FAA by operating a hotel that services guests traveling from throughout the country, the FAA governs the Arbitration Agreement. (*Id*. at 8:23-27.)

The Opposition did not make any argument for whether the FAA applies to the Arbitration Agreement.

The Court finds that the Arbitration Agreement is subject to the FAA and that the Court may require Plaintiff to arbitrate on her individual PAGA claims separately from her non-individual PAGA claims.

4. *Arbitration Under California Law*

Generally, California has a strong public policy in favor of arbitration; any doubts regarding the arbitrability of a dispute are resolved in favor of arbitration. (*Howard v. Goldbloom* (2018) 30 Cal.App.5th 659, 663, citing *Aanderud v. Superior Court* (2017) 13 Cal.App.5th 880, 890.) C.C.P. section 1280 et seq. governs arbitration in California. Sections 1281.2 and 1281.4 allow a party to move to compel arbitration per an arbitration agreement, and to stay legal proceedings pending the arbitration's conclusion. A party seeking to compel arbitration pursuant to C.C.P. section 1281.2 must "plead and prove a prior demand for arbitration under the parties' arbitration agreement and a refusal to arbitrate under the agreement." (*Mansouri v. Sup. Ct.* (2010) 181 Cal.App.4th 633, 640-641.) The petitioner must also prove by a preponderance of evidence that the arbitration agreement exists and that the dispute is covered by the agreement. (*Cruise v. Kroger Co.* (2015) 233 Cal.App.4th 390, 396-397, 399-400.) The petitioner can satisfy this burden by alleging the existence of an arbitration agreement and setting it forth verbatim or attaching a signed copy of it even if the signing party does not recall the agreement. (*Condee v. Longwood Management Corp.* (2001) 88 Cal.App.4th 215, 218–19.) If the petitioner satisfies this burden, the opposing party must prove a defense to its enforceability, such as unconscionability or waiver. (*Ibid*; see also, *Avery v. Integrated Healthcare Holdings, Inc.* (2013) 218 Cal.App.4th 50, 59.)

Pyramid argues that the Arbitration Agreement satisfies the requirements under the California Arbitration Act, as set forth in *Armendariz v. Foundation Health Psychcare Services* (2000) 24 Cal.4th 83, 91 ("*Armendariz*"). (MPA, 10:8-13.) Per *Armendariz*, to be enforceable in the employment context, an arbitration agreement must: (1) provide for a neutral arbitrator; (2) provide for adequate discovery; (3)

require the arbitrator to issue a written decision; (4) provide for the same remedies that would otherwise be available to the employee in court; and (5) not require the employee to bear costs unique to arbitration. (*Armendariz*, *supra*, 24 Cal. 4th at 102–13.) The motion explains in detail why the Arbitration Agreement meets or exceeds all of these requirements. (*Id*. at pp. 11-13.) Pyramid also states that the Court can sever any offending term of the Arbitration Agreement should it be declared as invalid. (*Id*. at 13:5-14.)

Plaintiff does not deny that the Arbitration Agreement itself meets the minimum requirements under the California Arbitration Act but rather makes arguments that the Arbitration Agreement is unconscionable, which is discussed below.

The Court finds that the Arbitration Agreement itself is subject to the California Arbitration Act under *Armendariz*.

5. *Unconscionability*

Whether an arbitration agreement is unconscionable depends on circumstances. (*Abramson v. Juniper Networks, Inc.* (2004) 115 Cal.App.4th 638, 655.) Both procedural and substantive unconscionability must be present for a court to refuse to enforce an arbitration provision based on unconscionability, but the more substantively oppressive the agreement is, the less evidence is required of procedural unconscionability. (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal. 4th 83, 114.)

a. Procedural Unconscionability

The relevant factors of procedural unconscionability are oppression and surprise, but where an agreement is oppressive, surprise does not need to be shown. (*Abramson v. Juniper Networks, Inc.* (2004) 115 Cal.App.4th 638, 656.) Oppression arises from an inequality of bargaining power between the parties and an absence of real negotiation or a meaningful choice on the part of the weaker party. (*Abramson*, at 656.) Surprise arises when the challenged terms are hidden by the parties seeking to enforce them. (*Ibid*.)

In the Opposition, Plaintiff claims that the Arbitration Agreement is procedurally unconscionable because of the language barrier and because Pyramid did not provide a Spanish version of the Arbitration Agreement, which shows oppression and surprise amounting to procedural unconscionability. (Opposition, 4:19-24, 5:1-4.) Plaintiff claims that the translation services offered by Pyramid were “dubious” because it is unclear what was translated and how the terms were translated. (*Id*. at 5:5-16.) Plaintiff also argues that Ms. Serrano Lopez’s declaration was unreliable and not credible. (*Id*. at 5:17-28, 6:1-8.)

Pyramid argues that the Plaintiff did not establish procedural unconscionability because, as held in *Caballero v. Premier Care Simi Valley LLC* (2021) 69 Cal.App.5th 512, 519, deciding to sign a document that one cannot read is not a basis for avoiding an arbitration agreement. (Reply, 7:25-28, 8:1-20.) Plaintiff has a limited ability to read and speak English, but it still able to read and speak some English and otherwise had an interpreter available to answer questions about what Plaintiff was not able to understand. (*Id*.)

The Court is not persuaded by Plaintiff's arguments that the Arbitration Agreement is procedurally unconscionable. Though Plaintiff claims to have a limited ability to speak and read in English, Plaintiff does understand some English. She otherwise had an interpreter available throughout the onboarding process to ask questions about documents. She chose not to ask the interpreter questions, the Arbitration Agreement was electronically signed using her unique login credentials, and she never revoked her consent to it. Plaintiff cannot now avoid enforcement by claiming she signed something she could not understand.

Thus, the Court does not find the Arbitration Agreement is procedurally unconscionable.

b. <u>Substantive Unconscionability</u>

Substantive unconscionability focuses on whether the terms are so one-sided as to shock the conscience. (*Abramson v. Juniper Networks, Inc.* (2004) 115 Cal.App.4th 638, 657.) There is a lack of required mutuality for an enforceable agreement when only the weaker party's claims are subject to arbitration without any reasonable justification for it. (*Ibid*.)

Plaintiff argues that the Arbitration Agreement lacks mutuality because: (1) only the employee accepted the requirement to arbitrate; (2) it requires arbitration only for the claims of the weaker party but a choice of forums for the claims of the stronger party; (3) it requires employees to discuss with Pyramid any "issue or concern" before they may submit the issue or problem to arbitration; and (4) if the employee is interested in mediation after filing a demand for arbitration, the employee is required to notify HR "promptly." (Opposition, pp. 6-8.) Plaintiff also contends that these provisions cannot be severed from the Arbitration Agreement because there are so many unlawful provisions and unconscionable terms that there is no single provision this Court can strike or restrict in order to remove the unconscionability. (*Id*. at 8:8-19.)

In the Reply, Pyramid argues that Plaintiff has not established substantive unconscionability. Pyramid argues that Section 11 of the Arbitration Agreement specifically states that: "the Company's Mutual Arbitration Policy and the parties' mutual commitment to submit all unresolved disputes to arbitration applies to any and all claims related to or arising out of the parties' employment relationship." (Reply, 9:1-9.) Pyramid also contends that the inclusion of Pyramid's company procedures for informally resolving claims does not render the Arbitration Agreement as unconscionable because these procedures are made known to employees on the Arbitration Agreement, because employees are provided these options prior to filing, and because these procedures are not prerequisites for commencing arbitration. (*Id*. at 8:10-13.)

The Court does not find that the Arbitration Agreement was substantively unconscionable. There is mutuality because both parties expressly agreed to arbitrate their claims relating out of the employment and Pyramid's procedures are not stated as prerequisites to commencing arbitration.

6. Class Arbitration

Pyramid argues that the Arbitration Agreement does not allow for Class Arbitration unless all parties expressly agreed to do so. (MPA, 13:15-27.) As the Arbitration Agreement does not allow for the arbitration to proceed on a class or representative action basis, Pyramid states that Plaintiff expressly waived the right to assert class action claims against Pyramid. (*Id*. at 14:24-27, 15:1-9.) For that reason Pyramid also argues that the Court must strike any paragraph in the FAC that references Class Claims, per C.C.P. section 435(a). (*Id*. at 15:10-27.)

Plaintiff does not make arguments as to Class Arbitration in the Opposition and only generally argues that the Arbitration Agreement was unconscionable for the reasons discussed above.

As Plaintiff expressly waived her right to a class action, the Court will grant the motion to strike as to the Paragraphs 2 and 21 through 29 and Prayer for Relief, Paragraphs 1 through 3 in their entirety as requested in the Notice of Motion.

7. *Stay of Action*

Pyramid requests to stay Plaintiff's representative PAGA claim and the entire action pending resolution of the arbitration. (MPA, pp. 18-20.) Plaintiff's representative PAGA claim is not waivable per *Viking River* and *Uber*. (*Id*. at 18:17-23.) Furthermore, C.C.P. section 1281.4 is a mandatory rather than permissive statute and requires the imposition of a stay until the application for an order to arbitration is determined, and if arbitration is ordered, until it is completed. (*Id*. at 20:1-15.)

Per C.C.P. section 1281.4, the Court will stay Plaintiff's representative PAGA claim and the entire action until completion of arbitration on Plaintiff's individual PAGA claims.

CONCLUSION

Pyramid's motion is **GRANTED** to compel arbitration of Plaintiff's individual claims, to strike class action claims due to waiver, and to stay proceedings pending the arbitration.

Pyramid's motion to strike is **GRANTED** as to Paragraphs 2 and 21 through 29 and Prayer for Relief, Paragraphs 1 through 3 in their entirety.

Pyramid shall submit a proposed order on these motions consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

4. 24CV03151, Zabala v. Task Mortgage and Investment Inc.

Defendant Task Mortgage and Investment Inc.'s ("Defendant") unopposed motion to compel Plaintiff Zabala's responses to discovery requests and production of documents is **GRANTED**. Sanctions are **GRANTED** for $3,435.00. Plaintiff shall serve objection-free responses to outstanding discovery requests within 20 days of receiving notice of entry of this order.

PROCEDURAL HISTORY

Plaintiff commenced this action in May 2024 against Defendant and other individuals alleging breach of fiduciary duty, negligent misrepresentation, and elder abuse. (Motion, 2:19-20.) To investigate Plaintiff's claims, Defendant propounded discovery on Plaintiff by mail and sent courtesy copies to Plaintiff's counsel by email on November 22, 2024. (*Id.* at 3:3-7.) The discovery requests included Form Interrogatories and Requests for Production. (Motion, 3:3-7.) Plaintiff failed to serve any responses or produce any documents responsive to the requests by the deadline on December 27, 2024. (*Id.* at 3:8-10.) Plaintiff's counsel never requested any extensions prior to the deadline, but due to the lack of response, Defendant's counsel met and conferred with Plaintiff's counsel and voluntarily provided an extension until January 7, 2025, to respond to the discovery requests and warned that Defendant would file a motion to compel if Plaintiff did not respond. (*Id.* at 3:13-17.) Plaintiff's counsel claimed that the requests were not received in the first place and asked that they be sent again, so Defendant's counsel sent the requests again despite having already served the requests on Plaintiff both by mail and email . (*Id.* at 3:18-20.) On or about January 6, Defendant's counsel contacted Plaintiff's counsel to confirm that Plaintiff would be responding, but Plaintiff did not confirm and to date has neither provided any responses to the requests nor produced any documents. (*Id.* at 3:21-23.)

Defendant now moves to compel Plaintiff's responses and production of documents, and requests sanctions for Plaintiff's failure to engage in the discovery process. (Motion, 3:24-28, 4:1-6.) Plaintiff has not opposed the motion, though Defendant timely and properly served the moving papers on Plaintiff via counsel on January 10 and 21, 2025.

ANALYSIS

Legal Standard

Interrogatories

A party who fails to serve a timely response to interrogatories absent evidence showing mistake, inadvertence, or excusable neglect, waives any right to object to the interrogatory, including objections based on privilege or work product, and the court shall impose monetary sanctions upon the party who unsuccessfully opposes a motion to compel initial the responses. (C.C.P. § 2030.290.)

Demand for Production of Documents

A party to whom a document demand is directed must respond to each item in the demand with an agreement to comply, a representation of inability to comply, or an objection. (C.C.P. §2031.210(a).) If a responding party is not able to comply with a particular request, or part thereof, that party "shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand." (C.C.P. § 2031.230.) The statement shall also specify "whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party," and shall also set forth "the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item." (*Ibid*.) Otherwise, if a responding party is objecting to a demand only, then the responding party must identify the demanded document, tangible thing, land, or electronically stored information to which an objection is being made, set forth the grounds for objection, and if privileged, provide a privilege log for the demanded items that are privileged. (C.C.P. § 2031.240.)

Sanctions

The court may impose sanctions after notice to any affected party, person, or attorney, and after an opportunity for hearing, against anyone engaging in conduct that is a misuse of the discovery process. (C.C.P. § 2023.030.) Sanctions may include reasonable expenses, including attorney's fees. (C.C.P. § 2023.030(a).) A request for sanctions under the discovery act 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. (C.C.P. § 2023.040.) The notice of motion for a request for sanctions 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*.)

<u>Defendant's Motion to Compel Initial Discovery Responses</u>

Defendant requests that the Court compel Plaintiff to respond to the outstanding form interrogatories and requests for production of documents. (MPA, 5:27-28.) Plaintiff also requests sanctions in the amount of $3,435.00, for Plaintiff's lack of engagement in the discovery process without justification. (*Id*. at 6:1-3.) The requested sanctions includes $3,375.00 in attorney's fees for 7.5 hours of work at a rate of $450.00 and $60.00 in costs of filing the motion.

Plaintiff did not file an opposition.

<u>Application</u>

Since Plaintiff has still not responded to discovery requests served nearly four months ago without any justification, the Court will grant the motion compelling Plaintiff to serve objection-free responses to all outstanding discovery requests, to produce all responsive documents, and to pay sanctions of $3,435.00 as requested in the motion.

<u>CONCLUSION</u>

Defendant's motion to compel responses and production is **GRANTED** and the request for sanctions is **GRANTED**. Plaintiff shall serve objection-free responses to the discovery requests within 20 days of receiving the notice of entry of this Court's order on the motion. Defendant shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

<u>5. 24CV04525, WeFewVintners, LLC v. Kawala</u>

Plaintiff WeFewVintners, LLC ("Plaintiff") filed the presently operative complaint ("Complaint") against defendants Maker Wine Company ("Maker"), Zoe Victor ("Victor"), Kendra Kawala ("Kawala", together with Maker and Victor, "Defendants"), and Does 1-20. Default was entered against Victor on October 24, 2024. This matter is on calendar for the motions by Victor under Code Civ. Proc. ("CCP") §

473 (b) to set aside the default on the basis of mistake, inadvertence or excusable neglect. The Motion is **GRANTED**.

I. Procedural History

Victor was served via substitute service on August 31, 2024, followed by the required mail service on September 3, 2024. Plaintiff requested to take Victor's default on October 24, 2024. Victor filed the instant motion for relief from default on December 19, 2024.

II. Governing Law

> "The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken."

CCP § 473 (b).

"Moreover, because the law strongly favors trial and disposition on the merits, any doubts in applying section 473 must be resolved in favor of the party seeking relief from default." *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233. "Stated another way, the policy of the law is to have every litigated case tried upon its merits, and it looks with disfavor upon a party, who, regardless of the merits of the case, attempts to take advantage of the mistake, surprise, inadvertence, or neglect of his adversary." *Weitz v. Yankosky* (1966) 63 Cal.2d 849, 854-55.

Courts will generally indulge all presumptions and resolve all doubts in favor of orders setting aside defaults and an order setting aside a default under section 473 will not be reversed unless the record clearly shows an abuse of discretion. *Pearson v. Continental Airlines* (1970) 11 Cal.App.3d 613, 619. "(A)s for inadvertence or neglect, '[t]o warrant relief under section 473 a litigant's neglect must have been such as might have been the act of a reasonably prudent person under the same circumstances. The inadvertence contemplated by the statute does not mean mere inadvertence in the abstract. If it is wholly inexcusable it does not justify relief.'" *Hearn v. Howard* (2009) 177 Cal.App.4th 1193, 1206. "[A]lthough the party moving for relief under section 473 has the burden to show that the mistake, inadvertence, surprise, or neglect was excusable (*Citations*), any doubts as to that showing must be resolved in favor of the moving party." *New Albertsons, Inc. v. Superior Court* (2008) 168 Cal.App.4th 1403, 1420 (internal citations omitted).

III. Moving Defendant makes sufficient showing for relief under CCP § 473(b).

Victor's burden is to display that that her default was taken due to "excusable neglect". Here, Victor offers evidence that despite legally sufficient substitute service having occurred, it did not result in *actual* notice. While service statutes do not require actual notice to occur (*AO Alfa-Bank v. Yakovlev* (2018) 21 Cal.App.5th 189, 195), Victor does not attempt to challenge personal jurisdiction but merely seeks the opportunity to mount a defense on the merits as opposed to relegating her case to a lost cause due to procedural failures. The failure to respond appears excusable when Victor was unaware of the suit in order to file her responsive pleading.

Default was entered on October 24, 2024. Victor avers that she only personally became aware of the lawsuit on December 13, 2024. This motion was filed on December 19, 2024. The motion appears timely both within the mandatory cutoff provided by the statute, and within a "reasonable time".

Plaintiff, based on supposition and negative inferences, argues that Victor knew about the lawsuit because the other defendants had been served, and therefore she has not displayed any excusable neglect. Plaintiff requests that the Court infer that the size of Maker results in a certainty that actual notice was achieved. No citation to law is proffered for Plaintiff's various arguments. Plaintiff argues that between the substitute service, required mail service, service of the default request on Victor, and the service on Maker, there was substantial likelihood that Victor received actual notice. Plaintiff postulates that Victor's declaration is therefore perjurious. As the Court notes above, doubts as to Victor's showing are resolved in favor of setting aside default so the matter may be determined on its merits. *New Albertsons, Inc. v. Superior Court* (2008) 168 Cal.App.4th 1403, 1420. While the Court agrees that all the processes undertaken are likely to result in actual notice, meeting the purpose of the statute, this does not make actual notice a certainty.

Plaintiff displays no prejudice, as other defendants have filed answers and there does not appear to be any additional delay resulting from setting aside Victor's default.

Therefore, based on a showing of excusable neglect, set aside is proper. Victor's motion is GRANTED.

IV. <u>Conclusion</u>

Based on the foregoing, motion is **GRANTED**. Victor shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

<u>6. 24CV05683, Jones v. Deutsche Bank National Trust Company</u>

Plaintiff's motion for sanctions is DENIED. Plaintiff's objection to Deutsche Bank National Trust Company ("Deutsche Bank")'s opposition is OVERRULED. Deutsche Bank's request for judicial notice is DENIED since the motion is being denied as being legally deficient. Counsel for Deutsche Bank shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

Plaintiff's motion fails to state a legal ground upon which it is made. The notice of motion does not state the legal grounds for the motion, as required by Code of Civil Procedure (CCP) § 1010. This deficiency can sometimes be overlooked when the memorandum of points and authorities sufficiently notifies the opposing party of the grounds for the motion. (*Carrasco v. Craft* (1985) 164 Cal.App.3d 796, 808.) However, Plaintiff also failed to state the grounds for the motion in the memorandum. The opposing party cannot adequately respond to a motion that does not state the legal grounds upon which it is made. Moreover, the Court cannot grant a motion if the Court is not informed of the legal grounds upon which it is made. Finally, the motion is not supported by a declaration. Therefore, any factual assertions made within the memorandum lack evidentiary foundation. As such, the motion is denied.

<u>7-8. SCV-269934, Matthews v. Providence St. Joseph Health</u>

Plaintiff Colleen Matthews ("Plaintiff") as Successor-in-Interest to the Estate of Richard Matthews ("Decedent") filed the complaint (the "Complaint") in this action against Petaluma Valley Hospital ("Petaluma Valley"), Norcal Health Connect LLC ("Norcal"), Providence St. Joseph Health ("Providence", together with Norcal and Petaluma Valley, "Defendants"), and Does 1 through 100 for causes of action arising from the alleged wrongful death of Decedent while under the care of Defendants.

This matter is on calendar for the motion by Plaintiff for the Court to appoint an attorney for Plaintiff. The Motion is **DENIED**.

This matter is also on calendar for motion by Defendants for summary judgment or, in the alternative, adjudication pursuant to Cal. Code Civ. Proc. ("CCP") § 437c. Defendants' motion for summary judgment is **GRANTED**.

<u>PLAINTIFF'S MOTION TO APPOINT COUNSEL</u>

I. <u>Governing Authorities</u>

"(T)he general rule is that there is no due process right to counsel in civil cases. (*Citation*.) Generally speaking, the right to counsel has been recognized to exist only where the litigant may lose his physical liberty if he loses the litigation." *Walker v. State Bar* (1989) 49 Cal.3d 1107, 1116; *Dominguez v. Bonta* (2022) 87 Cal.App.5th 389, 416.

II. <u>Analysis</u>

Plaintiff requests the Court to appoint counsel on her behalf. The Court is not aware of any authority providing it the power to do so. Plaintiff's citations to law do not provide authorities which would allow the Court to appoint counsel in this case.

In requesting appointment of counsel, Plaintiff cites to Civil Code § 20230.040. There is no statute under that number in either the Civil Code or the Code of Civil Procedure. Indeed, generally speaking, there is no right to representation in a civil suit. *Walker v. State Bar* (1989) 49 Cal.3d 1107, 1116. The lone exception to this principle appears to be where a plaintiff is incarcerated. See *Smith v. Ogbuehi* (2019) 38 Cal.App.5th 453, 465. Plaintiff has offered no evidence that this consideration applies here. There is no authority allowing the Court to appoint counsel in this civil case.

Therefore, Plaintiff's motion for appointment of counsel is **DENIED**. The Court's minute order shall constitute the Order of the Court.

<u>DEFENDANT'S MOTION FOR SUMMARY JUDGMENT</u>

I. <u>Evidentiary and Procedural Issues</u>

Plaintiff has filed no separate statement in response to Defendants' motion. This alone would constitute a sufficient ground for the Court to grant the motion. See CCP § 437c (b)(3). While Plaintiff makes multiple evidentiary contentions within her opposition, the opposition is not submitted with a declaration, and the opposition document is not "under penalty of perjury" as is required for an affidavit which provides evidentiary value. See CCP § 2015.5. As such, the statements within the Defendants' Separate Statement are treated as admitted. *Thompson v. Ioane* (2017) 11 Cal.App.5th 1180, 1186, fn. 4. Therefore, the analysis turns to whether the separate statement presents facts sufficient to shift Defendants' burden. *Ibid*.

II. <u>Underlying Facts</u>

On December 29, 2018, Decedent passed away at Santa Rosa Memorial Hospital. Defendants' Separate Statement of Undisputed Facts, Undisputed Material Fact ("DUMF") ¶ 1. On December 27, 2019, Plaintiff sent a notice under CCP § 364 to Petaluma Valley. DUMF ¶ 2. Plaintiff believed that Defendants were responsible for Decedent's injuries on December 15, 2018, before his death. DUMF ¶ 6. Plaintiff believed that Petaluma Valley's negligence caused Decedent's death as of December 27, 2019. DUMF ¶ 3. Plaintiff filed the Complaint on January 3, 2022. Defendants filed an Answer on September 12, 2022, asserting the affirmative defense of statute of limitations. DUMF ¶ 5.

III. <u>The Burdens and Standards on Summary Judgment and Adjudication</u>

A. <u>Generally</u>

Summary adjudication "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CCP § 437c (c). All evidence and inferences reasonably drawn therefrom must be viewed in the light most favorable to the party opposing summary adjudication. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843 ("*Aguilar*").

A moving defendant meets its initial burden to show that one or more elements of a cause of action "cannot be established" (CCP § 437c (p)(2)) by presenting evidence that, if uncontradicted, would constitute a preponderance of evidence that an essential element of the plaintiff's case cannot be established. *Aguilar, supra,* 25 Cal.4th at 851; *Kids Universe v. In2Labs* (2002) 95 Cal.App.4th 870, 879. Alternatively, a defendant may show that there is a "complete defense" to a cause of action. CCP § 437c (p)(2). To show a complete defense, a defendant must present admissible evidence of each essential element of the defense upon which it bears the burden of proof at trial. *See, e.g. Anderson v. Metalclad Insulation Corp.* (1999) 72 Cal.App.4th 284, 289. A defendant cannot base its "showing" on the plaintiff's lack of evidence to disprove its claimed defense. *Consumer Cause, Inc. v. SmileCare* (2001) 91

Cal.App.4th 454, 472.

A moving party does not meet its initial burden if some "reasonable inference" can be drawn from the moving party's own evidence which creates a triable issue of material fact. *See, e.g. Conn v. National Can Corp*. (1981) 124 Cal.App.3d 630, 637; *Binder v. Aetna Life Ins. Co*. (1999) 75 Cal.App.4th 832, 840.

If a defendant meets its initial burden to show a "complete defense," the burden shifts to the plaintiff to provide sufficient evidence to raise a triable issue of fact as to the defense asserted. CCP § 437c +(p)(2). *Consumer Cause, Inc.*, 91 Cal.App.4th at 468. An issue of fact exists if "the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." *Aguilar*, 25 Cal.4th at 845.

"[W]hen discovery has produced an admission or concession on the part of the party opposing summary judgment, which demonstrates that there is no factual issue to be tried, certain of those stern requirements applicable in a normal case are relaxed or altered in their operation." *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 21. Where a plaintiff's showing to controvert a substantive discovery admission is through a bare affidavit not supported by other evidence, the court may find that the plaintiff has failed to raise a triable issue of material fact. *Ibid*.

B. Statute of Limitations

Plaintiffs must bring claims within the statute of limitations applicable to their causes of action. CCP § 312. "In ordinary tort and contract actions, the statute of limitations . . . begins to run upon the occurrence of the last element essential to the cause of action." *Neel v. Magana, Olney, Levy, Cathcart & Gelfand* (1971) 6 Cal.3d 176, 187. "An exception to the general rule for defining the accrual of a cause of action — indeed, the "most important" one — is the discovery rule." *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397.

The discovery rule "postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action." *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397. "Under the discovery rule, suspicion of one or more of the elements of a cause of action, coupled with knowledge of any remaining elements, will generally trigger the statute of limitations period." *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 807. A plaintiff "has reason to suspect when he has notice or information of circumstances to put a reasonable person *on inquiry* (*Citation*); he need not know the specific facts necessary to establish the cause of action; rather, he may seek to learn such facts through the process contemplated by pretrial discovery; but, within the applicable limitations period, he must indeed seek to learn the facts necessary to bring the cause of action in the first place — he cannot wait for them to find him and sit on his rights; he must go find them himself if he can and file suit if he does (*Citation*)." *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 398 (internal citations and quotations omitted). "Rather than examining whether the plaintiffs suspect facts supporting each specific legal element of a particular cause of action, we look to whether the plaintiffs have reason to at least suspect that a type of wrongdoing has injured them." *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 807.

"In an action for injury or death against a health care provider based upon such person's alleged professional negligence, the time for the commencement of action shall be three years after the date of injury or one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first." CCP, § 340.5. If Plaintiff serves a notice under CCP § 364 within 90 days of expiration of the statute of limitations, "the time for the commencement of the action shall be extended 90 days from the service of the notice." CCP § 364 (d). Service of a second notice under CCP § 364 is void, and does not extend the limitations period further. *Bennett v. Shahhal* (1999) 75 Cal.App.4th 384, 390.

"(T)he statute of limitations on a wrongful death action begins to run at the time of death, and not at the time of injury which caused the death, for it is only on the date of death that the action is complete in all of its elements." *Kincaid v. Kincaid* (2011) 197 Cal.App.4th 75, 80–81. In contrast, actions under CCP § 340.5 begin to run "when the plaintiff actually knows or suspects, or reasonably should know or suspect, the injury was caused by wrongdoing." *Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 413. "Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020." Emergency Rules Related to COVID-19, Emergency Rule 9 (a).

IV. <u>Analysis</u>

Defendants argue that Plaintiff cannot prevail because the statute of limitations had run on both Plaintiff's causes of action at the time that the Complaint was filed, and Plaintiff has no evidence to support claims of delayed discovery or other abrogation of the affirmative defense. Plaintiff has filed an opposition.

A. <u>Defendants Shift Their Burden</u>

Both of Plaintiff's claims, as pled, are clearly controlled by CCP § 340.5, as Plaintiff's claims relate to the "injury or death" of Decedent resulting from "alleged professional negligence". Defendants offer adequate evidence that Plaintiff's claims are precluded by the statute of limitations. Plaintiff admitted that she believed that Defendants were responsible for Decedent's injuries and resulting death as of December 15, 2018. Decedent passed away on December 29, 2018. The cause of action began accruing at that point. Plaintiff's claims are subject to a statute of limitations of "one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury. . ." Code Civ. Proc., § 340.5. The Complaint was not filed until January 2022, outside of the one-year statute of limitations, or any applicable extension.

Plaintiff argues that Emergency Rule 9 extended the statute of limitations for civil causes of action. This is not sufficient to show that Defendants affirmative defense does not apply. Plaintiff has admitted facts sufficient to show that her causes of action accrued effective December 29, 2018. Plaintiff served a notice under CCP § 364 on December 27, 2019, extending the statute of limitations 90 days from that date. This means that the statute of limitations expired effective March 26, 2020. Emergency Rule 9 tolls the statute of limitations effective April 6, 2020. Plaintiff's claims had expired before the effective date of Emergency Rule 9, and therefore it provides no extension to the statute of limitations. Defendants have shifted the initial burden showing a complete defense.

Analysis turns to Plaintiff's opposition, and whether they meet the shifted burden.

B. Plaintiff Fails to Meet the Shifted Burden

Plaintiff attempts to argue that she did not discover Defendants' negligence until such time that she was engaged in discovery in 2023. Both as a legal proposition and an evidentiary issue. Plaintiff's contentions fail.

Plaintiff has submitted no admissible evidence of delayed discovery. As is covered above, Plaintiff's submissions do not meet evidentiary standards, and therefore cannot create a triable issue of material fact. Moreover, even if Plaintiff's affidavit were not procedurally deficient, the evidence provided by Defendants appear to contain an uncontroverted admission that Plaintiff believed that she had a cause of action upon Defendant's death as of December 29, 2018. This is an admission which cannot create a triable issue of fact through Plaintiff's declaration alone. *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 21.

Second, Plaintiff's contentions fail based on legal principles. Even if the Court were to indulge Plaintiff's contention that she was not aware of the existence of a cause of action at the time of Decedent's passing, she served her notice under CCP § 364 on December 27, 2019. If Plaintiff has served a notice affirming the belief that she has a cause of action, she cannot claim to be ignorant of "notice or information of circumstances to put a reasonable person *on inquiry*". *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 398. Even if the statute of limitations were to run beginning on December 27, 2019, the statute of limitations for Plaintiff's claims would have expired on June 25, 2021. This action was not filed until January 3, 2022. The statute of limitations expired prior to the filing of this action even if the facts were construed in the manner most beneficial to Plaintiff.

Plaintiff's contention regarding needing to participate in discovery in order to affirm her claims is equally unpersuasive. Plaintiff cannot claim to be unable to initiate the suit until she participates in discovery, which she could only undertake by initiating the suit. Plaintiff "cannot wait for (facts) to find (her) and sit on (her) rights; (s)he must go find them (her)self if (s)he can and file suit if (s)he does." *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 398. Plaintiff may not contend that she needed discovery as a precursor to filing the action.

Plaintiff has not met the shifted burden as to any cause of action. Defendants' motion for summary judgment is GRANTED.

V. Conclusion

Defendants' motion for summary judgment is **GRANTED**. Defendants shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

9. SCV-272254, Singletary v. The Estate of Georgia Marsha Simons

Defendant Estate of Georgia Marsha Simons' ("Defendant") motion for leave to file a Cross-Complaint against Plaintiffs Paul and Lori Singletary is **GRANTED** pursuant to Code of Civil Procedure ("C.C.P.") sections 428.10, 426.50, and 428.50. Within 10 days of serving notice of the entry of the Court's order on this motion, Defendant shall file and serve the proposed Cross-Complaint attached as Exhibit A to the Declaration of Harris.

PROCEDURE HISTORY

This action arises out of a motor vehicle accident that occurred in Graton, California, on August 22, 2021. (Memorandum of Points and Authorities ["MPA"], 1:19-21.) Plaintiff Paul Singletary alleges that he suffered from personal injuries as a result of the accident. (*Id*. at 1:25-27.) In a response to an interrogatory, Plaintiff stated that he was involved in a subsequent accident in Florida on May 24, 2022, due to which he claimed he sustained injuries to his "neck, upper and lower back, bilateral shoulders, knee, and hip." (Harris Declaration, Exhibit C.) Per his interrogatory responses, Plaintiff claims to have sustained similar injuries as a result of both the California and Florida accidents. (Harris Declaration, Exhibit C.)

Now Defendant moves for leave to file the proposed Cross-Complaint, attached as Exhibit A to the Declaration of Harris, to seek indemnity and contribution from non-party "Michael Santangelo" (referred to as "Michael Satangelo" in the proposed Cross-Complaint), who was involved in the Florida accident which Plaintiff claims caused similar injuries to those he claims he sustained in the California accident that is the subject of this action. (Harris Declaration, Exhibit A.) Plaintiff opposes the motion.

LEGAL ANALYSIS

Standard for Filing or Seeking Leave to File Cross-Complaint

C.C.P. section 428.10 allows a defendant against whom a cause of action has been asserted in a complaint to file a cross-complaint setting forth a cause of action against the plaintiff or other related third parties. A cross-complainant must obtain leave of court before filing a cross-complaint unless it is filed at the same time as their answer to the complaint. (C.C.P. § 428.50(a)-(c).) Leave may be granted for a permissive cross-complaint in the interest of justice at any time during the course of the action. (C.C.P. § 428.50(c).) If a defendant's cause of action is related to the subject matter of the complaint, it is compulsory and must be raised by cross-complaint as the failure to plead it will bar the defendant from asserting that cause of action in any later lawsuit. (C.C.P. §§ 426.30, 426.50.) A defendant's cause of action is related if it "arises out of the same transaction, occurrence, or series of transactions or occurrences as the cause of action…in [the] complaint." (C.C.P. § 426.10(c).) California courts have generally approved a broad and liberal interpretation of sections 426.50 and 428.10 to permit a cross-complaint to allow the resolution of related disputes in a single action. (C.C.P. § 426.50; *Santa Barbara Channelkeeper v. City of San Buenaventura* (2018) 19 Cal.App.5th 1176, 1187.)

Moving Papers

Defendant seeks leave to file a Cross-Complaint against non-party "Michael Santangelo" alleging causes of action for indemnity and contribution based on facts that relate directly to the causes of actions alleged in the Third Amended Complaint. (MPA, 5:5-10.) Defendant argues that it is in the interests of justice for this Court to grant this motion because doing so will prevent separate actions in the future and conserve judicial resources. (*Id*. at 5:12-20.)

Plaintiff argues in the Opposition that the Florida accident is a different transaction or occurrence to this matter because of the significant temporal and geographical separation between the events. (Opposition, 3:1-19.) Furthermore, Plaintiff signed a release regarding the Florida accident, so it would be futile to bring a claim against a party that has already been released by Plaintiffs. (*Id*. at 3:19-25.)

<u>Application</u>

The Court finds that Defendant sufficiently demonstrated that leave to file their proposed Cross-Complaint is both warranted and in the interests of justice. The causes of action in the proposed Cross-Complaint directly relate to the claims made in Plaintiff's Third Amended Complaint because Plaintiff claims that the same injuries were sustained in two separate motor vehicle accidents. Even if Plaintiff signed a release regarding that matter and if the two accidents occurred at different times and different locations, it would be in the interests of justice to permit leave to file a Cross-Complaint to allow non-party Michael Santangelo to be joined. This would allow all disputes between involved parties to be resolved in the same action, if Plaintiff's claimed injuries were actually a result of the subsequent accident from Florida rather than the California accident.

CONCLUSION

The motion is **GRANTED**. Defendant shall file and serve their proposed Cross-Complaint within ten (10) days of service of notice of entry of the Court's order on this motion. Unless oral argument is requested, the Court will sign the proposed order lodged with this motion.