

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, July 15, 2026 3:00 pm
Courtroom 19 –Hon. Oscar A. Pardo
3055 Cleveland Avenue, Santa Rosa**

The 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, **YOU MUST NOTIFY** the Judge’s Judicial Assistant by telephone at **(707) 521-6602**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

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

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1. 24CV01487, Jasso v. Santa Rosaidence OPCO, LLC

Plaintiff Daniel Jasso (“Plaintiff”) moves for an order granting final approval of a class action and PAGA settlement. The motion first came before the Court for hearing on June 24, 2026. The Court issued a tentative ruling the day prior and Plaintiff’s counsel, Ms. Marta Manus, Esq., timely called to request oral argument. At the hearing, Ms. Manus argued against the Court’s reduction of the requested attorney fee amount of \$131,667.00 and also indicated it request consideration of late-filed [second] supplemental declaration purporting to show additional attorney time not provided with the original motion.

The motion is GRANTED, with modification of attorney fees. Attorney fees are granted in the amount of \$98,750.

1. Complaint

On October 31, 2024, Plaintiff filed his first amended complaint for: 1) Failure to Pay Hourly Wages and Overtime (Lab. Code §§ 204, 223, 510, 1194, 1194.2, 1197, 1197.1 and 1198); 2) Failure to Provide Meal Periods (Lab.Code §§ 204, 223, 226.7, 512 and 1198); 3) Failure to Provide Rest Periods (Lab.Code §§ 204, 223, 226.7 and 1198); 4) Failure to Properly Pay Sick

Pay (Lab.Code § 246); 5) Failure to Indemnify (Lab. Code § 2802); 6) Failure to Provide Accurate Wage Statements (Lab. Code §§ 226(a)); 7) Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203); 8) Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*); and, 9) Civil Penalties (Lab. Code § 2698, *et seq.*).

2. Settlement

On November 8, 2024, the parties participated in private mediation before Jill Sperber, Esq., a respected and highly experienced mediator in wage and hour class actions. (Manus decl., ¶4.) The mediation was successful, and the parties agreed to a resolution. (*Ibid.*)

The mediation resulted in a non-reversionary Gross Settlement Amount of \$395,000.00 on a class wide and PAGA representative basis. (Manus decl., ¶¶5, 6.) The Class Period is defined as February 29, 2020, through November 8, 2024. (*Ibid.*) Aggrieved Employees means a person employed by Defendant in California and classified as an hourly, non-exempt employee, who worked for Defendant during the PAGA Period. (*Ibid.*)

The Class consists of the named Plaintiff and all current and former non-exempt employees of Defendant who worked in the state of California at any time during the Class Period and who did not sign an arbitration agreement. (*Id.*, ¶6.)

On October 15, 2025, the Court granted Preliminary Approval of this settlement, approved the Notice of Class Action and related forms, appointed Plaintiff Daniel Jasso as the Class Representative, appointed Class Counsel, approved Apex Class Action Administration (“Apex”) as the Administrator, and set timelines for the settlement administration process, pursuant to the Settlement Agreement. (Manus Decl., ¶ 9.)

3. Final Fairness Hearing Standards

After preliminary approval, the court determines whether the settlement is fair, adequate, and reasonable in a final hearing. (CRC 3.769(g); *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; see also *Officers for Justice v. Civil Service Com.* (9th Cir. 1982) 688 F. 2d 615, 625; Fed. Rule of Civ. Proc., Rule 23(e).) The trial court has broad powers to determine whether the settlement is fair. (*Dunk v. Ford, supra*, at 1801; *Mallick v. Superior Court* (1979) 89 Cal.App.3d 434.) The purpose of this requirement is “the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties.” (*Officers for Justice v. Civil Service Com., supra*, 688 F. 2d at 624.)

At this hearing, the court should consider relevant factors, such as the strength of 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. However, the list is not fixed and the factors which the court considers must be tailored to each case. (*Dunk v. Ford, supra*, at 1801.) Ultimately, “the inquiry ‘must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.’ [Citation.]” (*Ibid.*) The determination

is in the end “an amalgam of delicate balancing, gross approximations and rough justice.” (*Officers for Justice v. Civil Service Com.* (9th Cir.1982) 688 F.2d 615, 625; see also *Dunk v. Ford, supra*, at 1801, quoting *Officers for Justice, supra*.) However, while the party seeking settlement approval has the burden of showing the settlement is “fair and reasonable,” nevertheless “there is a presumption of fairness when: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the trial court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” (*Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337; see also *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43; *Dunk v. Ford, supra*, at 1801.)

4. Notice to Class

Apex served as the Settlement Administrator. (Tran decl., ¶1.) It reviewed the data provided by Class Counsel and determined the class consisted of 370 individuals. (Tran Supp. Decl., ¶9.) On March 20, 2026, the Class Notice was sent to all individuals listed in the Class Data via U.S First Class Mail. (Tran Supp. Decl., ¶3) After skip tracing returned mailing, 63 Class Notices were considered undeliverable. (Tran Supp. Decl., ¶3. Apex performed skip tracing and obtained addresses for re-mailing for 56 of them. (Tran Supp. Decl., ¶3).

The Response Deadline was May 19, 2026. (Tran decl., ¶10.) An extended Response Deadline for Class Members who received a re-mailed notice was June 2, 2026. (*Ibid.*) As of the date of this declaration, Apex has received one Request for Exclusion from Reyna Alcala-Sanchez and as not received any objections or disputes. (Tran Supp. Decl., ¶6-¶89.)

5. Settlement

The total number of work weeks worked by Participating Class Members during the Class Period is 12,740. (Tran, ¶15.) The Net Settlement Amount available to Participating Class Members is estimated to be \$211,295.64 and was calculated by subtracting the requested Class Counsel Fees Payment (\$131,666.67), the amount requested for Class Counsel Litigation Expenses Payment (\$20,357.69), the requested Class Representative Service Payment (\$5,000.00), the requested Administration Expenses Payment (\$6,680.00), and the PAGA Penalties (\$20,000.00) from the Gross Settlement Amount of \$395,000.00. (*Ibid.*)

The highest Individual Class Payment to a Participating Class Member is approximately \$4,063.38, the average Individual Class Payment is approximately \$1,235.65, and the lowest Individual Class Payment is approximately \$16.59. (Tran decl., ¶16.) These amounts are subject to employee-side tax and withholdings. (*Ibid.*)

Pursuant to the Agreement, 25% of the PAGA Payment (\$5,000.00) will be allocated to Aggrieved Employees regardless of whether they opt out of the Class settlement. (Tran decl., ¶17.) The highest Individual PAGA Payment to an Aggrieved Employee is approximately \$37.55 the average Individual PAGA Payment is approximately \$15.58, and the lowest Individual PAGA Payment is approximately \$0.59. (*Id.*, ¶18.)

6. Presumption of Fairness

As detailed in this court's preliminary approval of the settlement, a presumption of fairness exists in this case as the settlement was reached through arm's-length bargaining with the help of an experienced mediator; investigation and discovery were sufficient to allow counsel and the trial court to act intelligently; and, counsel is experienced in similar litigation. In addition, none of the class members have objected to the settlement.

7. Attorney Costs and Fees

Class Counsel requests \$131,666.67 in attorney fees and \$20,357.69 in expenses. (Manus decl., ¶¶7, 19.) The attorney fee request is one-third of the Gross Settlement Amount.

A finding that the settlement is fair is not dispositive of the attorney fees issue. This court assumes a fiduciary role for the class members in evaluating a request for an award of attorney's fees from the common fund. (*In re Mercury Interactive Corp. Securities Litigation* (9th Cir. 2010) 618 F.3d 988, 994.) The distribution of fees must bear some relationship to the services rendered. (*Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1142.)

Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 254.) The latter method is most commonly used in statutory fee-shifting schemes to reward attorneys for engaging in socially useful litigation. It is also applied when the type of recovery does not allow easy calculation of the settlement's value.

Class Counsel are seeking a percentage of the settlement fund. In determining what percentage is reasonable, courts commonly consider: the percentage likely to have been negotiated between private parties in a similar case (e.g., 30-40% in tort cases); percentages applied in other class actions (usually around 25%); the quality of class counsel; and the size of the award. (See Weil, et al, Civil Procedure Before Trial, (TRG 2024) § 14:145.3, citing *In re Ikon Office Solutions, Inc. Secur. Litig.* (ED PA 2000) 194 FRD 166, 193.)

Use of the percentage method is particularly appropriate in “common fund” cases such as this one, as it simply awards counsel some percentage of the settlement fund. (*In re Ikon Office Solutions, Inc. Secur. Litig. supra*, at p. 193.) This method theoretically aligns the interests of counsel and class more closely than does the lodestar method: a larger recovery with fewer hours expended benefits all parties. (*Ibid.*)

The question is whether thirty-three percent is an appropriate percentage for Class Counsel in this action. This determination is somewhat elastic and depends largely on the facts of a given case, but certain factors are commonly considered. Specifically, the court may address the percentage likely to have been negotiated between private parties in a similar case, percentages applied in other class actions, the quality of class counsel, and the size of the award. (See *In re Ikon Office Solutions, supra*, at p. 193.)

The Ninth Circuit has consistently approved a “benchmark” award of 25 percent of the common fund. (*Bellinghausen v. Tractor Supply Company* (N.D. Cal. 2015) 306 F.R.D. 245, 260.) However, that percentage is often higher for smaller cases where recovery is under \$10 million. (*Haro v. Walmart, Inc.* (E.D. Cal., Jan. 10, 2025, No. 1:21-CV-00239-KES-SKO) 2025 WL 73109, at *13.)

With respect to the contingent nature of litigation, courts tend to find above-market-value fee awards more appropriate in this context given the need to encourage counsel to take on contingency-fee cases for plaintiffs who otherwise could not afford to pay hourly fees. (*Bellinghausen v. Tractor Supply Company* (N.D. Cal. 2015) 306 F.R.D. 245, 260.) Moreover, when counsel takes cases on a contingency fee basis, and litigation is protracted, the risk of non-payment after years of litigation justifies a significant fee award. (*Ibid.*)

In cross-checking the attorney fee request, “the ‘lodestar’ is calculated by multiplying the number of hours ... reasonably expended on the litigation by a reasonable hourly rate.” (*Id.* at p. 261.) In determining the reasonable hourly rate, the district court should be guided by the rate prevailing in the community for similar work performed by attorneys of comparable skill, experience, and reputation. (*Ibid.*) “Once the court has fixed the lodestar, it may increase or decrease that amount by applying a positive or negative ‘multiplier’ to take into account a variety of other factors, including the quality of the representation, the novelty and complexity of the issues, the results obtained, and the contingent risk presented.” (*Ibid.*)

Here, the attorney’s hourly rates are excessive for this area, especially for Counsels Keledjian, Kim, and Manus. The prevailing partner rate in Sonoma County hovers around \$550 - \$650/hr. range while senior associates like Counsel Arakelyn would be around the \$450-\$500/hr. range. Had the Court entertained a lodestar analysis the base amount would have been considerably less than the \$72,750.50 claimed for total attorney time, even accounting for the additional hours for Counsel Keledjian and excluding litigation support. (Manus Decl. ¶39; Manus Supp. Decl. ¶ 5). Total lodestar amount with litigation support would be \$79,393.00.

The Court is mindful of the *Bellinghausen* benchmark of 25% but upon consideration of the case factors and the market-litigation incentives the Court determines that 30% common fund recovery amount is appropriate. This amount 118,500.00 is still significantly larger than a straight Class Counsel’s lodestar calculation.

The moderate percentage is appropriate in this case. Counsel’s declaration indicates that Class Counsel spent approximately 90 hours on this case, which was filed over two years ago. In addition, large expenses were made for the mediator and a consultant.

Attorney fees of 30% of the net settlement amount, calculated as \$118,500.00, are granted.

8. Administrative Fees

Apex fees amount to \$6,680.00. (Tran decl., ¶19.)

9. Representative Fee

Plaintiff seeks \$5,000 as a representative service payment. Plaintiff’s declaration supports the requested fee award based upon Plaintiff’s assistance to counsel and the risk associated with litigating the action.

10. Conclusion

Based on this court's review of the motion and the terms of the settlement, the settlement is "fair, adequate and reasonable" and the rights of the class members have been protected such that there is no sign of fraud, collusion, or unfairness. Accordingly, the motion for final approval of the class action settlement is **GRANTED** with a modification of the requested amount of attorney fees.

This court will enter final judgment in this case in accordance with the terms of the Settlement Agreement, the order of preliminary approval and this order.

Class counsel is directed to submit a revised order and judgment consistent with this ruling.

2. 24CV01964, Cannistra v. Aragon

Plaintiff Robyn Cannistra ("Plaintiff") individually and on behalf of Jordan Cannistra ("Minor") as his guardian in fact, filed the currently operative second amended complaint (the "SAC") in this action against defendants the Tomas Aragon ("Aragon¹") in his official capacity as the Department of Public Health (the "Department") director and as the State Public Health Officer, Petaluma City Schools ("PCS", together with Aragon, "Defendants"), and Does 1-20, for multiple alleged causes of action arising out a controversy related to vaccination requirements under Health & Saf. Code ("HSC") § 120335. The matter is on calendar for Plaintiff's cause of action for writ of administrative mandamus under CCP § 1094.5.

The Writ of Mandate is **DENIED**.

I. Legal Standards

A. Writ of Mandate

Writ proceedings of administrative bodies are governed by CCP § 1094.5. In such proceedings, the trial court's review "shall extend to the questions whether the respondent has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion." CCP § 1094.5(b). An abuse of discretion can occur three different ways: (1) "the respondent has not proceeded in the manner required by law," (2) the "decision is not supported by the findings," or (3) "the findings are not supported by the evidence." *Ibid*; *Martis Camp Community Association v. County of Placer* (2020) 53 Cal.App.5th 569, 593 (findings not supported by evidence must not be supported by "substantial evidence in light of the whole record").

"When there is no ministerial duty and review is for abuse of discretion, such limited review is grounded in the doctrine of separation of powers, acknowledges the expertise of the agency, and derives from the view that '[c]ourts should let administrative boards and officers work out their problems with as little judicial interference as possible....' (*Citation*.) It also recognizes that a challenged administrative agency action comes before the court with a strong presumption that

¹ Aragon has been replaced as director of Public Health by Dr. Erica Pan, but the complaint remains directed at the director of the Department.

the agency's official duty has been regularly performed and the burden is on appellants to show the agency's action is invalid. (Citation.)” *Alejo v. Torlakson* (2013) 212 Cal.App.4th 768, 780.

“The appropriate type of mandate is determined by the nature of the administrative action or decision under review. In general, ‘quasi-judicial’ or ‘adjudicative acts,’ that is, acts that involve the actual application of a rule to a specific set of existing facts are reviewed by administrative mandamus under Code of Civil Procedure section 1094.5. [Citation.] [¶] More specifically, a petition for administrative mandamus under Code of Civil Procedure section 1094.5 is appropriate when the party seeks review of a final ‘determination, finding, or decision of a public agency, made as a result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in a public agency’ ” *California Water Impact Network v. Newhall County Water Dist.* (2008) 161 Cal.App.4th 1464, 1482 (*California Water*).

"The determination of whether Code of Civil Procedure section 1094.5 or 1085 applies does not depend on whether the agency is required by statute to hold an evidentiary hearing in the matter, but instead turns on the nature of the challenged action." *California Water, supra*, 161 Cal.App.4th at p. 1483, fn. 19; *Southern California Cement Masons Joint Apprenticeship Committee v. California Apprenticeship Council* (2013) 213 Cal.App.4th 1531, 1541 ["[T]raditional mandamus under section 1085 applies to '[q]uasi-legislative' decisions, defined as those involving 'the formulation of a rule to be applied to all future cases,' while administrative mandamus under section 1094.5 applies to 'quasi-judicial' decisions, which involve 'the actual application of such a rule to a specific set of existing facts.' "].

B. School Health

“The governing authority shall not unconditionally admit any person as a pupil of any private or public elementary or secondary school, child care center, day nursery, nursery school, family day care home, or development center, unless, prior to his or her first admission to that institution, he or she has been fully immunized.” Health & Saf. Code (“HSC”) § 120335 (b). “The department may specify the immunizing agents that may be utilized and the manner in which immunizations are administered.” HSC § 120335 (e).

Parties may submit requests for exemption from immunization requirements. HSC § 120372. Each request for exemption shall include “(a) description of the medical basis for which the exemption for each individual immunization is sought. Each specific immunization shall be listed separately and space on the form shall be provided to allow for the inclusion of descriptive information for each immunization for which the exemption is sought.” HSC § 120372 (a)(2)(F). “The department shall identify those medical exemption forms that do not meet applicable CDC, ACIP, or AAP criteria for appropriate medical exemptions.” HSC, § 120372 (d)(3)(A). Thereafter, a reviewing department physician may revoke the medical exemption. HSC, § 120372 (d)(3)(C). A parent or guardian of the minor at issue may then appeal. HSC § 120372.05.

“The governing authority of each school or institution included in Section 120335 shall prohibit from further attendance any pupil admitted conditionally who failed to obtain the required immunizations within the time limits allowed in the regulations of the department until that pupil

has been fully immunized against all of the diseases listed in Section 120335, unless the pupil is exempted under Section 120370 or 120372.” HSC, § 120375 (b). “The governing authority **shall** exclude any pupil who does not meet the requirements for admission or continued attendance as specified in Article 2 of this subchapter and Health and Safety Code section 120335.” Cal. Code Regs., tit. 17, § 6055. Four doses of the Polio vaccine, or three doses if the last dose was given after the fourth birthday, are required for unconditional admission. Cal. Code Regs., tit. 17, § 6035.

C. Standard of Review

As stated in *Shapell Industries, Inc. v. Governing Board* (1991) 1 Cal.App.4th 218, at 231, “[i]f fundamental rights are implicated the court may be authorized to exercise its independent judgment to determine whether the findings are supported by the weight of the evidence.” Otherwise, in an action for administrative mandate pursuant to section 1094.5, “the inquiry is directed to whether substantial evidence supports the decision.” *Bunnett v. Regents of Univ. of California* (1995) 35 Cal.App.4th 843, 849. This is not de novo review, however, and in applying independent judgment, “a trial court must afford a strong presumption of correctness concerning the administrative findings, and the party challenging the administrative decision bears the burden of convincing the court that the administrative findings are contrary to the weight of the evidence.” *Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817. “In exercising its independent judgment the trial court had the power to draw its own reasonable inferences from the evidence and to make its own determinations as to the credibility of the witnesses.” *Morrison v. Housing Authority of the City of Los Angeles Bd. of Comrs.* (2003) 107 Cal.App.4th 860, 868.

II. Statement of Facts

Minor received doses of the inactivated Polio Vaccine (“IPV”) on December 6, 2013, April 16, 2015, and Sept 3, 2015. JC ME 0032. Minor was under four years of age at the time of all three vaccinations. *Ibid.* He received a single does of the MMR Vaccine on December 6, 2013. *Ibid.* Minor undertook serological titer testing in February 2023. JC ME 0037-0041. Minor displayed immunity to Measles, Mumps, Rubella, and Polio Types 1 and 3. *Ibid.* Testing for Polio Type 2 is increasingly rare as the WHO’s guidance recommending destruction of all laboratory samples makes live virus testing unfeasible. JC ME 0012-13. On March 8, 2023, Minor received a medical exemption based on the opinion of Minor’s treating physician that Minor’s titer testing results were sufficient to show immunity. JC ME 0001. On April 6, 2023, the exemption was reviewed due to both low vaccination rates at Minor’s school, and because the treating physician had issued five or more exemptions in the prior calendar year. JC ME 0002. On review, the exemption was revoked. JC ME 0001. The exemption was found not to meet the required criteria for an exemption. JC ME 0005.

Plaintiff filed an appeal of the revocation, averring that Minor was immune to both the diseases covered by the MMR and Polio. JC ME 0027-0029. The Department responded, asking for: 1) Minor’s immunization record; 2) his titer test results for Polio Type 2; and 3) his complete medical records from both the treating physician and other physicians. JC ME 0030. Plaintiff responded providing everything they had, and noting that testing for Polio Type 2 is unavailable, but that Minor received the IPV with all three virus types. JC ME 0031. The appeal was

reviewed by the Independent Medical Review (the “IMR”), which provided a six-page decision analyzing the propriety of the exemption and its revocation. JC ME 0043-0048. Minor’s medical history was examined, including the submitted vaccination and titer test results. JC ME 0044-0045. The IMR particularly cites to the Advisory Committee on Immunization Practices (“ACIP Guidelines”, JC ME 0101-104 and JC ME 0012-0015), quoting: “Demonstrating antibodies to poliovirus types 1 and 3 does not reliably indicate protection against poliovirus type 2, because countries might have used a combination of monovalent oral poliovirus vaccine (mOPV), bOPV, or tOPV for routine programs and immunization campaigns. In the absence of the availability of testing for antibodies to all 3 serotypes, serologic testing is no longer recommended to assess immunity.” JC ME ¶ 0046. The IMR determined that according to CDC guidance, the Polio vaccinations had not conformed to the CDC schedule, and that there was no evidence Minor had immunity to Polio Type 2. JC ME 0047. They found no contraindications which would militate against further Polio vaccination. *Ibid.* The IMR also found that the titer tests submitted for Minor as to the MMR vaccinations were sufficient to display immunity, but that Plaintiff would have to submit a separate exemption, as the Department evaluates all exemption appeals as a complete record. *Ibid.* The IMR was issued June 20, 2023.

The administrative record also contains the authorities relied upon by the IMR in coming to its decision. JC ME 0049-0114. These cover the vaccination recommendations and scholarship on the underlying diseases for MMR and Polio, and vaccination requirements and schedules. Of particular note the ACIP Guidelines (JC ME 0101-104, replicated at JC ME 0012-0015) discusses the continued recommendation of vaccination in the United States, particularly due to the risks caused by oral Polio vaccinations and incidences of Polio Type 2. It contains the quotation relied upon by the IMR. CDC Guidance recommends a vaccination schedule of four doses of the IPV, or three doses where the last dose was given after four years of age and more than six months after the preceding dose. JC ME 0068.

Plaintiff filed the complaint on August 14, 2023, in Sacramento Superior Court. The Department moved for change of venue to Sonoma County, which was granted. After multiple demurrers to the complaint, the remaining causes of action are for writ of administrative mandamus under CCP § 1094.5 against both Defendants, Violation of Education Code § 220 against PCS, and Violation of Government Code § 11135 against PCS.

III. Writ of Mandate under CCP § 1094.5

Plaintiff avers that there are eight errors within the administrative process which require issuance of a writ. Many of the averred errors substantially overlap and rely on interrelated contentions of law and fact. Accordingly, the Court addresses them under broader subject headings than those contended by Plaintiff to consistently apply the analysis efficiently on overlapping issues.

A. Standard of Review

Both parties appear to agree that the matter relates to the right to education, and as such falls under independent review. Accordingly, the Court exercises independent review, analyzing the evidence presented to determine whether the administrative finding is contrary to the weight of the evidence.

B. Defendants' Affirmative Arguments

Defendants each make arguments affecting the scope and viability of the writ review, and therefore it is proper to address them at the outset. PCS makes arguments regarding the remaining causes of action, but those appear outside the scope of the writ. Accordingly, there is no basis to expand the scope of this decision to address those matters at this time. The Department argues that Plaintiff failed to exhaust administrative remedies by failing to submit a separate exemption for MMR. This too is unpersuasive. Essentially, the Department would ask that the Court foreclose Plaintiff's ability to have the Polio vaccination requirement reviewed at all, only allowing them to obtain a determination on an exemption which the Department is more inclined to grant. This is not the nature of exhaustion of administrative remedies. Plaintiff has pursued this matter through the entire administrative process. They are not required to restart the process because the Department *may* come to a different determination on a narrower claim.

C. Denial of the MMR Exemption

In both the first and eighth argued errors, Plaintiff avers that the MMR exemption was sufficiently proven, and that denial of the exemption as to MMR vaccines was improper. The IMR particularly stated that the exemptions are reviewed as a whole, and therefore if any part of the exemption does not meet the required standard of care, the entire exemption application must be denied.

Plaintiff's position fails to display error on the part of the Defendants. Whether discussing the IMR or the original requested exemption, Plaintiff provides no authority showing that an exemption is not submitted, considered, and decided as an overarching, cohesive request. Partial revocation of the exemption is not contemplated by the statutes because they do not contemplate partial exemptions. The exemption statute contemplates that the "medical exemption certification form" is transmitted to the Department. HSC § 120372 (a)(1). The remainder of the statute describes review of "the medical exemption". Nothing within the statute appears to contemplate a la carte consideration of multiple vaccinations sought to be exempted. Indeed, the considerations required at both the review and appeal stage indicate the opposite.

Plaintiff cites to HSC § 120372(d)(3)(A) (Petitioner's Opening Brief, pg. 16:5-7), but includes language that is **not** part of the current version of the statute. Relies on the September 17, 2025 version. Regardless, neither version of the statute supports Plaintiff's contention that the Department is *required* to consider exemption applications vaccination by vaccination, as opposed to holistically. Other language in the statutes indicates the inverse, stating that the Department "may accept a medical exemption that is based on other contraindications or precautions, including consideration of family medical history..." Health & Saf. Code, § 120372 (d)(3)(B). However, line by line review of an exemption would potentially lead to absurd or confusing results.

Plaintiff appears to have misapprehended the burden on this issue. Plaintiff contends that nothing *allows* the Department to revoke an exemption when it is partially meritorious. The inverse is also true, nothing within the statute allows the Department to partially approve an exemption

application, to say nothing of requiring them to do so. To the contrary, the language of the statute generally contemplates an exemption as a single application, indicates that an application needs to be reviewed holistically, and finding that the Department had the power to line item veto particular parts of an exemption application would vest the Department with *more* power, not less. There is no cohesive reason presented by Plaintiff why the Department cannot and should not consider exemptions in totality, reviewing them as a whole request.

The Court need not, and does not, determine whether the Department *must* determine the entire exemption as opposed to piecemeal consideration, only that the process does not abuse their discretion when reviewed with independent judgment. As indicated above, consideration of an exemption application as a whole appears logical and reasoned. There is nothing in the record to indicate that the denial of the instant appeal was with prejudice to an exemption for MMR vaccines alone. Indeed, the IMR decision indicates the contrary.

D. Revocation of Exemption for Failure to Show Immunity to Polio Type 2.

Plaintiff avers in their second, fifth, and sixth² arguments that the requirement to show immunity for Polio, Type 2 was erroneous. Plaintiff first contends that the unavailability of the serologic testing should preclude denial of exemption on these grounds. Plaintiff also argues that due to the provision of three doses which included Type 2 antigens and display of titer immunity to Types 1 and 3, further immunizations would be redundant and unnecessarily harmful.

As an initial matter, the contention that Polio, Type 2 is non-existent is not sufficiently supported by the administrative record. Every indication within the record shows that vaccine-derived Polio, Type 2 is an ongoing threat, and that the most certain way to avoid infection is through administration of the IPV on the U.S. IPV schedule. Plaintiff argues that the requirement of titer testing for Type 2 is a “Manufactured Impossibility”. Opening Brief, pg. 10:22-23. This line of argument has a conspiratorial tenor, averring that “the WHO and CDC have deliberately phased out the very test the IMR panel demanded.” Opening Brief, pg. 11:10-11. This fails for two reasons. First, that WHO found that Polio Type 2 should not be stored in laboratory settings as would be required for titer testing cuts *against* Plaintiff. Plaintiff appears to rely on some presumptive right to titer test rather than vaccinate, which is unsupported by any authority. Nor does Plaintiff provide any citation to authority showing that the Department is obligated to ensure there is a titer test available for all prescribed vaccinations. Indeed, Plaintiff’s entire theory that there is a *right* to avoid vaccination while attending public school is misplaced. The statute does not even indicate that where Plaintiff *does* provide a titer test, they would be *entitled* to an exemption. That is a question not at issue here. Instead, the entire issue revolves around the standard of care.

Analysis turns to the weight of Minor’s evidence of immunity. The Court notes that Minor’s treating physician states, that Minor had “seroconverted” both the MMR and IPV. JC ME 0036. However, as has been already addressed, the titer tests provided offer no evidence of Polio Type 2 immunity. JC ME 0038-0041. Plaintiff offers no authority showing that the Department must

² While the fifth and sixth are separately argued in the summary of argument, they appear to be argued under a single heading in the substantive portion of the Opening Brief.

deviate from promulgated immunization guidelines based on the treating physician's hypothesis unsupported by direct evidence.

In the fifth and sixth arguments, Plaintiff avers that the provision of the IPV doses and Plaintiff's displayed immunity to Polio Types 1 and 3 means exemption must be granted. While Plaintiff stridently argues that Minor has received the IPV, Minor has not received it on the schedule promulgated by the CDC. Plaintiff's position requires that this Court not just ignore the determination of the Department's experts, but the advisement of the Center for Disease Control. There is no evidence in the administrative record to support the contention that titer tests for Polio Types 1 and 3 are indicative of immunity to Polio Type 2. The evidence shows the opposite is true in particular circumstances not at issue here. JC ME 0013; JC ME 0046. While Plaintiff argues that the ACIP Guidance advisement is specifically intended only for children vaccinated with the oral Polio vaccinations, this requires a leap of logic. The lack of testing for Polio Type 2, and associated recommendation that serologic testing not be used to assess immunity, might have countless considerations not explored in the IMR. It is improper to speculate that the conclusion of the ACIP is entirely predicated on the application of oral vaccinations to the patient. More importantly, Plaintiff fails to show that there *is* a correlation in immunities between Polio types. It is Plaintiff's burden to show that the weight of the evidence supports mandamus, and Plaintiff fails to make an affirmative showing rebutting the reasoning of the IMR in this regard.

In making this argument, Plaintiff conflates *exposure* to Polio Type 2 vaccinations, to *immunity*. Plaintiff opines that Minor has been exposed to the IPV on three occasions, that the IPV contains all three types of Polio, and that Minor's immunity is displayed by the response to Types 1 and 3. Minor's exposure is insufficient without evidence of an immune response. This fundamentally still requires the Court to follow Plaintiff's supposition that immune responses for the three types of Polio are correlated. Nothing within the record supports that leap.

Plaintiff's reply avers that the IMR was erroneous because it misapplied the standards of the ACIP Guidance. Plaintiff points back to the indication that serological testing was both available and accepted according to the ACIP guidance issued in 2011. JC ME 0013. Plaintiff quotes that document, pointing out the following sentence: "This guidance is not new policy and does not change the recommendations of ACIP for poliovirus vaccination in the United States." JC ME 0012. Unfortunately for Plaintiff, this selective reading ignores the sentences that follow which includes, "(i)n the absence of vaccination records indicating receipt of these vaccines, only vaccination or revaccination in accordance with the age-appropriate U.S. IPV schedule is recommended." *Ibid*. As the first sentence indicates, the recommendations of ACIP are for age-appropriate scheduled application of the IPV vaccine. Given that Minor has not received the vaccinations on the required schedule, it is not error to require them to conform to the ACIP, CDC and Cal. Code Regs., tit. 17, § 6035 required vaccination. There is no indication that the 2011 Guidance, on which Plaintiff relies through scraps reflected in the ACIP Guidance, allowed for serological testing of only types 1 and 3 without any testing for Type 2. Given that Plaintiff has failed to make this showing, it is improper to assume error by the IMR.

Plaintiff's contention that the reliance on the CDC Guidance on Polio is error because it is treated as more than a guideline fails to present any error on the part of the IMR. Plaintiff has

presented *no* evidence within the administrative record which would support deviation from the recommendations of the CDC. The IMR clearly addresses the relevance of the CDC guidance, opining that said guidance is instructive on the standard of care. The standard of care is the appropriate method of evaluation of such exemptions reviews and appeals. HSC § 120372 (d)(3)(B); HSC § 120372.05(c). The record contains no indication that the IMR did not faithfully and accurately apply the standard of care based on the guidance and facts available to them. No error is displayed here through the application of CDC guidance.

E. Administrative Procedures Act

As the fourth error, Plaintiff argues that the requirement that Polio vaccination is the only method of complying with the immunizations required by regulation is an “underground regulation”. Plaintiff argues that this violates the Administrative Procedures Act (“APA”). This is an entirely new argument from Plaintiff, not stated in the currently operative Second Amended Complaint. Even reaching the merits of the argument, Plaintiff does not support this contention within the record, the appeals process is expressly exempt from the APA, and this contention does not relate to a quasi-judicial function, and therefore is not appropriately addressed under a writ of administrative mandate.

First, and most fundamentally, Plaintiff alleged no facts underlying this argument in the SAC, and accordingly the remaining cause of action does not fit the argument. Plaintiff attacks the very principle that there is some “unspoken” regulation disallowing immunity for Polio being displayed through titer testing. Promulgation of regulations is typically legislative in nature. The cause of action for writ of mandate under CCP § 1094.5 is the only matter before the Court at this juncture. Given that no facts were alleged to support the new contention, the writ of administrative mandamus appears ill targeted to the issue of adoption of a new rule in contravention of the APA.

Plaintiff’s position appears further undermined by the very language of the statutes at issue. The writ targets, with particularity, the issue of whether an exemption was appropriately reviewed and revoked, along with the subsequent IMR appeal. The statutes governing these provisions are HSC §§ 120372 and 120372.05. “For purposes of administering this section, the department and the California Health and Human Services Agency appeals process shall be exempt from the rulemaking and administrative adjudication provisions in the Administrative Procedure Act...” HSC § 120372 (j). The IMR appeal is similarly exempt. “For purposes for administering (HSC § 120372.05), the department and the California Health and Human Services Agency appeals process shall be exempt from the rulemaking and administrative adjudication provisions in the Administrative Procedure Act...” HSC § 120372.05 (f). Given that the issue of *exemption* is specifically at issue, the applicable statutes are clearly exempt from the APA. Even if there were a basis to find an unpromulgated regulation, exemptions are not subject to the APA’s rulemaking requirements.

Plaintiff’s argument regarding the APA also requires the record to support a finding that the refusal to accept a *lack* of titer test for Polio Type 2 derives from the Department’s decision making, and that the unavailability of tests is a matter within their control. The impossibility of titer testing is not a burden imposed on the Department in the statutes. The statute for exemptions

requires that the Department review exemptions for whether they comport with the standard of care. Plaintiff's position requires the Court to assume that the Department's use of CDC guidance as indicative of the standard of care requires adoption of a rule. Even if the proposition that the unavailability of Polio Type 2 immunity relates to a right to be heard on the issue, nothing vests this Court with the authority to review such a determination in the context of a writ under CCP § 1094.5.

F. Lack of Individual Assessment

Plaintiff argues that the review here was subject to individual assessment. Plaintiff repeatedly contends that the recommendation of the treating physician is entitled to significant weight, as it is individualized care that is tailored to the Minor's needs. Plaintiff provides neither authority nor evidentiary support for the contention that the treating physician is entitled to some, or greater, deference in this process. Plaintiff's citation to HSC § 120372.05 is misplaced as it contains *no* indication that the treating physician is entitled to any form of deference in review on IMR appeal.

Indeed, the entire structure of the exemption review and appeal process is *predicated* on the principle that it operates as a check on improper assessment of exemptions by treating physicians. The statute, HSC § 120372, and not the regulation, requires the Department to review **all** exemptions submitted by a physician who has submitted five or more exemptions in a calendar year. HSC § 120372 (d)(2)(B). Nothing within either the exemption statute or the appeal statute opines that the treating physician is entitled to deference. Quite the opposite, in finding that revocation of the exemption is required, the Department is entitled to the strong presumption of correctness. *Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817. Here, Minor's treating physician states, without any evidence in support, that Minor is immune to Polio Type 2. The administrative record, which forms the basis for the decision, reflects that Plaintiff knew Polio Type 2 immunity was not supported by any direct evidence, instead relying on it was "very reasonable to think that he would also have titers for type 2..." JC ME 0031. Finding defect in this reasoning based on the record is not a failure to perform individualized assessment.

Plaintiff's argument that there was no individualized assessment here is unsupported by the record. The IMR decision makes abundantly clear that the exemption request as to Minor was assessed based on the exemption application and review of his medical file. The IMR accurately relays, as has already been addressed by the Court above, that Minor was given Polio vaccinations at the ages of 1 ½, 3 and 3 ½. JC ME 0032; JC ME 0044. Per the CDC, a person is only considered fully vaccinated against Poliovirus if they have had 4 doses of the vaccination, or three doses with the last dose being administered after 4 years of age. JC ME 0068; JC ME 0046. Minor did not display immunity to Polio Type 2 with titer testing. JC ME 0045. Given that these *individual* factors were all delineated in the IMR decision, and these facts are more than sufficient to show the exemption was considered and denied for valid reasons, Plaintiff's argument that there was no "individual" assessment is not supported by the record.

G. Inconsistent Standards

As the Seventh argument, Plaintiff avers that the MMR vaccine and Polio vaccine were treated inconsistently in the IMR because titer tests were accepted for the MMR vaccines and not accepted for the Polio vaccine. The treatment of the two types of vaccinations are entirely consistent based on the record. Minor showed immunity to all the diseases covered by the MMR vaccine. Minor only displayed immunity to two out of three types of Polio covered by the Polio vaccine. To find that the MMR vaccine might be subject to exemption due to displayed immunity is *not* inconsistent with the finding that there is no evidence of immunity to Polio Type 2. Plaintiff fails to show that the revocation of the exemption was erroneous. The evidence strongly supports the conclusion of the IMR distinguishing the two vaccinations. Plaintiff does not show that two combined vaccinations, supported by distinguishable sets of titer tests, are not properly treated differently as a result of those titer test results. If Plaintiff were to have failed to obtain a titer test for Rubella, the record would not otherwise support issuance of a writ due to displayed immunity to the MMR vaccine. Plaintiff having not provided a titer test for Polio Type 2, the IPV vaccination is distinguishable from the MMR vaccination based on the record.

IV. Conclusion

In summation, the promulgated regulation for unconditional admission is clear, and as is extensively addressed Minor does not meet its requirements. Health & Saf. Code, §§ 120335, 120375; Cal. Code Regs., tit. 17, § 6025. Minor must obtain an exemption for school attendance. Health & Saf. Code, § 120375. The Department has discretion in the acceptance of exemptions, so long as those exemptions conform to the standard of care. Health & Saf. Code, § 120372 (d)(3)(B). The Department has determined that Minor has no evidence of immunity to Polio, Type 2, has not received the number of vaccinations on the required schedule, and has not shown contraindications sufficient to receive an exemption. Nothing within the record contradicts this. The IMR's conclusion that an exemption is inappropriate based on the standard of care is supported by the weight of the evidence.

Having reviewed the briefs of the parties and the administrative record, Plaintiff displays no error in the administrative decision. The writ of administrative mandamus under CCP § 1094.5 is **DENIED**.

Aragon's counsel 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).

3. 24CV03100, Jooblay, Inc. v. Sanchez

Plaintiff, Jooblay, Inc. ("Plaintiff"), has filed the currently operative first amended complaint ("FAC") against defendants Julianna Alders ("Alders"), Christine Baker ("Baker"), Steven D. Skolnik ("Skolnik"), as Trustee of the Steven D. Skolnik Revocable Trust 1997; Tad Ravazzini ("Ravazzini"), Ann Wendell ("Wendell"), as Trustee of the Living Trust of Ellen L. Wendell, dated 04/11/2001, Roberta M. Flinn and Robert H. Flinn (the "Flinns"), as Trustees or their Successors of the Robo Trust dated 11/11/2017; Elise Maxwell Rosenthal ("Rosenthal" together with all preceding defendants, the "Lender Beneficiaries"), as Trustee of the Elise Maxwell Rosenthal Revocable Trust dated 11/07/2003; Pacific Private Money, Inc. ("PPMI"), Pacific Freedom Fund, LLC ("PFF", together with PPMI and Lender Beneficiaries, "Moving

Defendants”), Edward Sanchez (“Sanchez”), individually and as Trustee of Pacific Trust, Forge Trust Co., (“Forge”), all other claimants of whatsoever kind and character who may have an interest in real properties commonly known as 9579 Ross Station, Sebastopol, CA 95472 and 1551 Laguna Road, Santa Rosa, CA 95401 (together, the “Properties”), County of Sonoma; and DOES 1 to 20 (all together “Defendants”), with seven causes of action for relating to real property conveyance.

This matter is on calendar for the motion by non-party Redwood Credit Union (“Redwood”) to intervene for the purpose of expunging lis pendens from the Properties.

As an initial matter, there is no proof of service in the file reflecting that any other party was served the hearing date of the above motions by Redwood. There is no proof of service for the motion after filing of the motion on March 26, 2026, and the clerk did not assign the hearing date until April 9, 2026. Parties are required to provide notice of a motion, including the hearing date assigned by the Clerk. See Code of Civil Procedure §§ 1005, 1010; Cal. Rule of Court, Rule 3.1300(a); Sonoma Court Local Rule 5.1 (B). The proof of service was required to be filed on July 8, 2026. Cal. Rule of Court, Rule 3.1300(c). On July 8, 2026, Redwood filed a notice of non-opposition, which was served to all parties, that would not give notice of the hearing date until July 8. To be timely, some form of service of the hearing date had to have occurred between April 9, 2026 and June 22, 2026. CCP § 1005. The motion having not been served in accordance with CCP § 1010, the Court cannot consider the merits. As a result, the motion is **DENIED** without prejudice.

4. 25CV05616, MacDonald v. Mercedes-Benz USA, LLC

Plaintiff Dianna MacDonald (“Plaintiff”) filed the complaint in this action against defendant Kia Mercedes-Benz USA, LLC (“Defendant”), with causes of action arising under the Song-Beverly Act. This matter is on calendar for Plaintiff’s motion for attorneys’ fees and costs pursuant to the parties’ settlement agreement and Cal. Civ. Code § 1794.

The parties are **REQUIRED TO APPEAR** to address why no notice of settlement was filed.

Tentatively, the Motion is **GRANTED**, in the amount of **\$30,506.53**.

I. Procedural and Evidentiary Issues

The parties executed the settlement on March 2, 2026. Plaintiff filed the instant motion on March 27, 2026. Case management statements indicating settlement were filed by the parties on April 29 and April 30. Despite this, there is no filing in the case for notice of settlement. Under California Rule of Court, Rule 3.1385 (a)(1), “(i)f an entire case is settled or otherwise disposed of, each plaintiff or other party seeking affirmative relief must immediately file written notice of the settlement or other disposition with the court and serve the notice on all parties...” This includes notices of conditional settlement. California Rule of Court, Rule 3.1385 (c)(1). The Court has noticed a pattern of this occurrence, particularly in cases with Plaintiff’s Counsel. The parties are required to appear to address why no notice of settlement was filed.

II. The Basis for Fees

Cal. Civ. Code §1794(d) provides: “If the buyer prevails in an action under this section, the buyer shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney’s fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action.” This statute “is consistent with California’s approach to determining a reasonable attorney fee in various statutory and contractual contexts, which approach ‘ordinarily begins with the “lodestar,” *i.e.*, the number of hours *reasonably* expended multiplied by the *reasonable* hourly rate.’” *Warren v. Kia Motors Am., Inc.* (2018) 30 Cal.App.5th 24, 36 *quoting* *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095 (emphasis by the *Warren* court). The statute also permits use of a multiplier of the lodestar figure. *Robertson v. Fleetwood Travel Trailers of California, Inc.* (2006) 144 Cal.App.4th 785, 822.

The parties settled the case in principle on March 2, 2026, requiring Defendant to pay Plaintiff \$41,000.00, and entitling Plaintiff to bring a motion for attorney fees from Defendant under Cal. Civ. Code § 1794. Plaintiff brought the instant motion on March 27, 2026.

According to the Motion, two attorneys worked on the case for Plaintiffs, accruing billed hours of 43.1 hours for billed fees of 28,015.00, 2.5 prospective hours for \$1,625, with a requested multiplier of 1.3 (\$8,892.00) for a total fee request of \$38,532.00, plus \$1058.53 in accrued costs, for a total of \$39,590.53.

Defendant’s opposition raises a number of arguments (addressed below) resulting in adjustments that the award be reduced by fifty percent. The Court gives this contention only the consideration shown by Defendant in making it, addressing those matters where Defendant has shown an excess, or where one is apparent from the Court’s review of Plaintiff’s filing. Defendant’s general contention of a flat rate cut is not supported by their argument or any citation to authority.

III. The Rates Requested Slightly Exceed What is Reasonable

Beginning with counsel’s rates, “[t]he reasonable hourly rate is that prevailing in the community for similar work.” *PLCM*, 22 Cal.4th at 1095. Plaintiffs have had 2 attorneys work on this case. Plaintiffs request a billing rate of \$650 per hour for both their Counsel. See Declaration of John Hendrickson ¶ 6, 9.

The Court finds that the hourly rates are not reasonable based on the expected rate in Sonoma County for similar work. The “experienced trial judge is the best judge of the value of professional services rendered in his court...” *Serrano v. Priest* (1977) 20 Cal.3d 25, 49 (internal citation omitted). A court is entitled to rely on its own practical experience in determining what is a proper rate within the community. See *Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 1009 (*Heritage Pacific Financial*) [“The court may rely on its own knowledge and familiarity with the legal market in setting a reasonable hourly rate”];

accord, *569 East County Boulevard LLC v. Backcountry Against the Dump, Inc.* (2016) 6 Cal.App.5th 426, 437 (*569 East County Boulevard*).

Defendant generally argues that the rate is excessive based on Plaintiff's prior orders included as examples. While the Court is not entirely persuaded, as counsel is of course entitled to raise their fees over time as they accrue more experience and the general legal market trends that direction. While Defendant implies that this rate is above what is charged in Song-Beverly cases by plaintiff's counsel, the Court relies on its experience in the local market and Song-Beverly cases particularly. The Court looks to the particular facts and circumstances of the case.

Both of the attorneys in this case are partners in their small, specialty practice, and each have more than fifteen years of experience practicing law, but less than twenty. Declaration of John Hendrickson ¶ 2, 4. While the rate requested exceeds what the Court would expect of these counsel, the difference is not as chasmal as Defendant argues. The Court finds that with the qualifications and experience set forth in the Hendrickson Declaration, the appropriate comparable rate is \$600 per hour. The Court finds \$600 per hour as the reasonable rate in this case.

IV. The Hours Were Reasonably Expended

Defendant particularly relies upon *Morris v. Hyundai Motor America* (2019) 41 Cal.App.5th 24, stridently arguing that reduction is appropriate because of the simplicity of the case and the experience of Plaintiff's counsel. Defendant grossly oversimplifies the holding in *Morris*. Like most cases related to an award of fees, the Court of Appeal merely reviews for whether the trial court has abused its discretion. *Id.* at 35. The trial court in that case articulated *several* bases for the resulting reduction in fee awards, including billing from eleven attorneys. Defendant, as is addressed below, provides little in the form of meritorious detractions from Plaintiff's request. They certainly fail to provide a factual basis for a 50%, across the board deduction.

Plaintiff seeks to recover for a total of 43.1 hours, plus 2.5 additional hours for the hearing and a reply. The vast majority of the time billed appears necessary. Some of the requested time should be disallowed based on the record. While Defendant broadly opines that the time catalogue included with the Hendrickson Declaration is vague and fails to provide adequate detail of the task performed, that is generally unpersuasive. Defendant argues that the time is not sufficiently described in the motion itself. The time entries are of substantially greater detail than could have been accomplished by some form of narrative recounting, providing individualized entries for every billed moment. One of the needles which Defendant targets the "exhaustive detail of 'draft complaint'" as a time entry, followed by the preparation of exhibits for the Complaint, totaling 3.1 hours between them. Opposition, pg. 7:17-19. It is perplexing what Defendant finds vague about such a description. The Court notes that Defendants have not offered their own time expended as a comparative measure.

The Court agrees with Defendant that 2.6 hours of deposition preparation for a two-hour PMQ deposition under CCP § 871.26 appears to exceed what is reasonable for a seasoned practitioner of Song-Beverly claims. A reduction of one hour is proper. Defendant also challenges the 2.1 hours spent on Plaintiff's CCP § 871.26 disclosures for "client review". Some preparation of the

documents into a cohesive and code-complaint format is to be expected before the Plaintiff can verify the responses for Defendant's consumption. This doesn't appear, without further articulation, to be an unreasonable amount of time for such a task.

The Court also notes the extraordinary number of billings of 0.1 or 0.2 hours for correspondence in this case. Based on the frequency of the entry, there is a presumed brevity to the multitudinous correspondence, and an associated inefficiency in spreading the communications out in such a manner. The Court reduces the time by one further hour as unreasonable management of time on communications.

The Court also notes that there is a 0.2 time entry for what appears to be an unrelated case on March 3, 2026, referring to "Pellegrino v. Chevrolet". This does not appear to be supported fees for recovery in *this* case.

Plaintiff has filed a reply. At the time of this tentative ruling, no hearing has occurred, and the reply does not disclose the amount of time expended in its preparation. While the Court requires appearance of the parties, the time does not appear reasonable, as it derives from the need to address the conduct of both counsel. The Court reduces the prospectively requested time by one further hour. Therefore, the Court finds the reasonable hours of 40.9 hours, plus 1.5 hours for reviewing opposition and the reply, for a total of 42.4 hours. This results in base fees of \$24,540.00.

V. Some Multiplier is Proper

Plaintiff seeks a multiplier of 1.3. Defendants argue against a multiplier on the basis that the work "did not involve any novel or complex issues"; Song-Beverly litigation is comprised of largely routine facts, the issues are framed by the statute, the proof is straightforward, and the stakes are limited. While Defendants are correct that the case is uncomplicated, the Court concludes that a multiplier of 1.1 is appropriate under the considerations set forth in *Serrano v. Priest* (1977) 20 Cal.3d 25, 42-47.

The evidence submitted shows that Defendant initially rejected the repurchase requests, most of the work occurred while the result was uncertain in a contingency matter, that Plaintiff achieved significant recovery, and that both the contingent nature of the case and the results achieved are factors supporting a multiplier. The Court is not awarding the full 1.3 multiplier requested, as the case appears to be fairly routine for Song-Beverly matters. *See Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 (lodestar determination may be adjusted upward based on the following factors: 1) the novelty and difficulty of the questions involved; 2) the skill displayed in presenting them; 3) the extent to which the nature of the litigation precluded other employment by the attorneys; and 4) the contingent nature of the fee award). Plaintiff filed no motions before settlement. The contingent nature of the of the case inherently represents some basis for a multiplier. Therefore, the multiplier of 1.2 is appropriate.

\$24,540 in fees are properly applied at the 1.2 multiplier, resulting in those fees totaling \$29,448.

VI. Costs

While Defendant objects to costs, they provide no case specific articulation as to why costs should not be recoverable here. The settlement agreement of the parties clearly designates Plaintiff as the prevailing party for the purposes of a motion for attorney's costs and fees. Settlement Agreement, ¶ 2. Defendant casually ignores that "a prevailing party is entitled as a matter of right to recover costs in any action or proceeding." CCP, § 1032 (b). While Defendant correctly states that the costs must be reasonable, they simply conclude that the costs are unreasonable without addressing any of the costs actually incurred.

Plaintiff seeks \$998.53 in actual costs, plus \$60 for the instant motion. Hendrickson Decl. ¶ 15. Defendants do not provide a specific objection to any of the costs. Given that it is the filing fee for the case, the same for this motion, and court reporter costs for the PMQ deposition, they appear reasonable. Therefore, the Court grants costs of \$1,058.53.

VII. Conclusion

Plaintiff's motion for fees and costs is **GRANTED**. Total fees are granted in the amount of \$29,448. Costs are granted in the amount of \$1,058.53. The total cost and fee award is therefore **\$30,506.53**.

Plaintiff's counsel 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).

5. **26CV00193, Guzman v. Aurora Behavioral Healthcare-Santa Rosa, LLC**

Plaintiff Alejandra Guzman ("Plaintiff"), individually and on behalf of other all other similarly situated, filed the complaint against defendants Aurora Behavioral Healthcare - Santa Rosa, LLC (together "Defendants"), and Does 1-100 for causes of action arising out of Defendants' alleged Labor Code violations (the "Complaint").

This matter is on calendar for the petition (styled as a "motion") by the Defendant to compel arbitration pursuant to Federal Arbitration Act ("FAA"), 9 USC §§ 1-16. The motion is **DENIED**.

I. Facts and Procedure

This matter arises out of an employment relationship between the parties. Plaintiff worked for Defendants starting May 20, 2025. On her first day, Plaintiff, as part of her onboarding process, signed an arbitration agreement. Declaration of Mick Jones in Support, Ex. A (the "Arbitration Agreement"). The Arbitration Agreement was four substantive pages, with reasonably sized text and headings. By its terms, the parties "voluntarily agree to the resolution by arbitration of all claims, disputes, and/or controversies (collectively "claims"), whether or not arising out of Employee's employment or its termination, that Company may have against Employee or that Employee may have against Company, its subsidiaries or affiliated entities, or against its current or former employees or agents in their capacity." Arbitration Agreement § 1. It was governed by the JAMS Employment Arbitration Rules and Procedures, and the Federal Arbitration Act

(“FAA”). It provides methods of discovery, deposition, and a written ruling from the arbitrator. It expressly survives the termination of Plaintiff’s employment. Arbitration Agreement § 11. It also waives Plaintiff’s ability to bring class claims. Arbitration Agreement § 2.

Plaintiff signed that agreement during her onboarding along with ten other employees. It was presented with 12 other documents to review and sign, amounting to 172 pages total. Onboarding did not proceed until all the employees had completed their paperwork.

Defendants contend that the Arbitration Agreement is governed by the FAA.

II. Governing Law

A. Compelling Arbitration

A party seeking to compel arbitration pursuant to CCP § 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 party seeking to compel arbitration has the initial burden to plead and prove the existence of a valid arbitration agreement that applies to the dispute.” *Dennison v. Rosland Cap. LLC* (2020) 47 Cal.App.5th 204, 209; see also, *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 972; *Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 236. “Once that burden is satisfied, the party opposing arbitration must prove any defense to the agreement’s enforcement, such as unconscionability [or waiver].” *Id.*; see also, *Avery v. Integrated Healthcare Holdings, Inc.* (2013) 218 Cal.App.4th 50, 59. “Doubts are resolved in favor of arbitration” and “[t]he court should order [the parties] to arbitrate unless it is clear that the arbitration clause cannot be interpreted to cover the dispute.” *San Francisco Police Officers’ Assn. v. San Francisco Police Com.* (2018) 27 Cal.App.5th 676, 683, quoting *California Correctional Peace Officers Assn. v. State of California* (2006) 142 Cal.App.4th 198, 204–205. “California has a strong public policy in favor of arbitration and 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. “(T)he state policy ‘favoring’ arbitration, like the federal policy, ‘is about treating arbitration contracts like all others, not about fostering arbitration.’” *Quach v. California Commerce Club, Inc.* (2024) 16 Cal.5th 562, 580. Therefore, “a court should treat the arbitration agreement as it would any other contract, without applying any special rules based on a policy favoring arbitration. That is, courts should apply the same procedural rules that they would apply to any other contract.” *Id.* at 583. The filing of a lawsuit by a plaintiff is sufficient to show that plaintiff has refused to arbitrate claims, allowing a defendant to move for arbitration. *Hyundai Amco America, Inc. v. S3H, Inc.* (2014) 232 Cal.App.4th 572, 577.

B. Federal Arbitration Act (“FAA”)

Under the Federal Arbitration Act (“FAA”), “(a) written provision in ... a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, ... shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the

revocation of any contract...” 9 U.S.C § 2. “This saving clause permits agreements to arbitrate to be invalidated by ‘generally applicable contract defenses, such as fraud, duress, or unconscionability,’ but not by defenses that apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue.” *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 339 (“*Concepcion*”), quoting *Doctor's Associates, Inc. v. Casarotto* (1996) 517 U.S. 681, 687.

The FAA supports a general policy favoring arbitration. *Granite Rock Co. v. International Broth. of Teamsters* (2010) 561 U.S. 287, 302. However, this policy only reflects the general deference given to the terms of contracts within courts and does not establish special “arbitration-preferring procedural rules”. *Morgan v. Sundance, Inc.* (2022) 596 U.S. 411, 418; citing *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.* (1983) 460 U.S. 1, 24.

Under the Supremacy Clause of the U.S. Constitution, “the FAA preempts contrary state law.” *Ferguson v. Corinthian Colleges, Inc.* (9th Cir. 2013) 733 F.3d 928, 932. In cases involving the FAA, state statutes that invalidate arbitration clauses specifically cannot be applied. *Allied-Bruce Terminix Companies, Inc. v. Dobson* (1995) 513 U.S. 265, 281. Nor may state courts do what the legislature cannot, and create jurisprudence which discriminates against arbitration specifically. *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 341. “What States may not do is decide that a contract is fair enough to enforce all its basic terms (price, service, credit), but not fair enough to enforce its arbitration clause.” *Allied-Bruce Terminix Companies, Inc. v. Dobson* (1995) 513 U.S. 265, 281.

C. Contract Construction

“An interpretation which gives effect is preferred to one which makes void.” Civ. Code, § 3541; see also *City of San Diego v. Rider* (1996) 47 Cal.App.4th 1473, 1490 (“Under basic rules of statutory and contract construction, provisions subject to both lawful and unlawful interpretations are to be interpreted in a manner which makes them lawful.”). “A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done without violating the intention of the parties.” Civ. Code, § 1643. However, this only applies “when a contract contains a genuine ambiguity. (*Citation.*) It does not apply when ambiguity is absent.” *Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478, 502 (Citations omitted). “The purpose of construction is to explain and not add or subtract terms.” *Katz v. Haskell* (1961) 196 Cal.App.2d 144, 158; see also *Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478, 517 (applying principle to arbitration agreements).

D. Unconscionability Standards

Unconscionability is a defense under California contract law. See Civ. Code, § 1670.5. As applied to arbitration, two elements must be shown, procedural unconscionability and substantive unconscionability. *Baltazar v. Forever 21, Inc.* (2016) 62 Cal.4th 1237, 1243 (“*Baltazar*”). Whether an agreement is unconscionable depends on circumstances at the time it was made. *Abramson v. Juniper Networks, Inc.* (2004) 115 Cal.App.4th 638, 655 (“*Abramson*”). Both procedural and substantive unconscionability must be present before a court can refuse to enforce an arbitration provision based on unconscionability. *Baltazar, supra*, 62 Cal.4th at 1243.

However, the two elements need not be present in the same degree; courts use a “sliding scale” approach in assessing the two elements. *Id.* at 1243-1244. The more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable. *Id.* at 1244; *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal. 4th 83, 114 (“*Armendariz*”); *Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478, 492 (“*Ramirez*”).

1. Procedural Unconscionability

“Procedural unconscionability pertains to the making of the agreement; it focuses on the oppression that arises from unequal bargaining power and the surprise to the weaker party that results from hidden terms or the lack of informed choice.” *Ajamian v. CantorCO2e, L.P.* (2012) 203 Cal.App.4th 771, 795. The first step in determining procedural unconscionability is an inquiry into whether the contract is one of adhesion. *OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 126 (“*OTO*”). “An adhesive contract is standardized, generally on a preprinted form, and offered by the party with superior bargaining power ‘on a take-it-or-leave-it basis.’” *Id.*; quoting *Baltazar, supra*, 62 Cal.4th at 1245. “Arbitration contracts imposed as a condition of employment are typically adhesive.” *OTO, supra*, 8 Cal.5th at 126. Once the court determines the contract is one of adhesion, the question becomes whether the circumstances of the contract’s formation created such oppression or surprise that the overall fairness must be subject to closer scrutiny. *Id.* “Oppression occurs where a contract involves lack of negotiation and meaningful choice, surprise where the allegedly unconscionable provision is hidden within a prolix printed form.” *Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 247.

The circumstances relevant to establishing oppression include, but are not limited to (1) the amount of time the party is given to consider the proposed contract; (2) the amount and type of pressure exerted on the party to sign the proposed contract; (3) the length of the proposed contract and the length and complexity of the challenged provision; (4) the education and experience of the party; and (5) whether the party's review of the proposed contract was aided by an attorney.

Grand Prospect Partners, L.P. v. Ross Dress for Less, Inc. (2015) 232 Cal.App.4th 1332, 1348.

Both pre-employment and continued employment arbitration contracts often represent disproportionate bargaining power for all but the most sought-after employees, as the employer has substantial advantages as a result of economic pressures. *OTO supra*, 8 Cal.5th at 127. The failure to provide all the rules of the arbitration at the time the contract was signed speaks to procedural unconscionability. *Patterson v. ITT Consumer Financial Corp.* (1993) 14 Cal.App.4th 1659, 1665.

2. Substantive Unconscionability

“Substantive unconscionability pertains to the fairness of an agreement's actual terms and to assessments of whether they are overly harsh or one-sided.” *Pinnacle Museum Tower Assn. v.*

Pinnacle Market Development (US), LLC (2012) 55 Cal.4th 223, 246. Mere unequal benefit is insufficient to show substantive unconscionability, rather, the terms must be “so one-sided as to shock the conscience.” *24 Hour Fitness, Inc. v. Superior Court* (1998) 66 Cal.App.4th 1199, 1213. Though many factors go into determining substantive unconscionability, the primary consideration in assessing substantive unconscionability is mutuality. *Abramson, supra*, 115 Cal.App.4th at 657. Lack of mutuality, unlimited duration, and broad scope of claims covered are all factors which may be considered substantively unconscionable within an arbitration provision. *Cook v. University of Southern California* (2024) 102 Cal.App.5th 312, 321-328. Even if the arbitration provision exempts particular claims both parties from arbitration, if those claims unduly benefit the employer such that the claims brought by the employer are more likely to be exempt, the agreement is substantively unconscionable. *Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478, 498.

3. Severance

“Courts are to look to the various purposes of the contract. If the central purpose of the contract is tainted with illegality, then the contract as a whole cannot be enforced. If the illegality is collateral to the main purpose of the contract, and the illegal provision can be extirpated from the contract by means of severance or restriction, then such severance and restriction are appropriate.” *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 124. “Accordingly, courts may liberally sever any unconscionable portion of a contract and enforce the rest when: the illegality is collateral to the contract's main purpose; it is possible to cure the illegality by means of severance; and enforcing the balance of the contract would be in the interests of justice.” *Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478, 517. “(I)n the case of the agreement's lack of mutuality, such permeation is indicated by the fact that there is no single provision a court can strike or restrict in order to remove the unconscionable taint from the agreement. Rather, the court would have to, in effect, reform the contract, not through severance or restriction, but by augmenting it with additional terms.” *Armendariz, supra*, 24 Cal.4th at 124–125.

III. Analysis

Defendant has moved to compel arbitration under the Arbitration Agreement. Defendant argues that the Court must compel arbitration without examining whether the arbitration agreement is enforceable, because the Arbitration Agreement delegates decisions regarding arbitrability to the arbitrator. Defendant contends that regardless of the nature of Plaintiff's claims, Plaintiff waived her ability to bring a class action as part of the Arbitration Agreement. Plaintiff opposes Defendant's motion averring that the Arbitration Agreement is both procedurally and substantively unconscionable, and therefore it should not be enforced.

As a preliminary matter, Defendant has shown that an arbitration agreement exists, and that it was Plaintiff that signed it. Therefore, Plaintiff bears the burden of showing that the contract should not be enforced, and Plaintiff thereon relies on arguments that the contract is procedurally and substantively unconscionable.

A. *The FAA Applies*

Defendant, in moving to compel arbitration, argues that the arbitration agreement is governed by the Federal Arbitration Act, as the contract sufficiently relates to interstate commerce. For this proposition, Plaintiff offers no substantive argument to the contrary. The analysis is therefore controlled by the FAA, and Defendant urges the Court to compel arbitration.

However, this is only true if the Court finds that the agreement is not unconscionable. Traditional defenses to contract such as the unconscionability analyzed in *Armendariz*, are allowed under 9 USC § 2. *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 339. If Plaintiff can show procedural and substantive unconscionability each in sufficient amounts to justify the defense to enforcement of the contract, she should not be bound to its terms.

B. Procedural Unconscionability

Turning to the substance, Plaintiff first avers that there is high procedural unconscionability. Plaintiff provides significant evidence regarding the circumstances under which she signed the Arbitration Agreement. Plaintiff argues that the arbitration agreement is procedurally unconscionable because it was presented with a large volume of other papers, each of which Plaintiff was required to sign as part of a group on-boarding, before proceeding to employment, and it is an adhesive contract. Defendant attempts to argue that none of these factors appropriately apply, and that the contract is not procedurally unconscionable at all. Plaintiff's arguments come to varying results.

As an initial matter, the contract is clearly one of adhesion, and Defendant's contention to the contrary is without merit. Plaintiff was presented with a form contract, required for her new employment. While the Arbitration Agreement offers language opining that it is "voluntary", that carries little weight given the factual circumstances under which the Arbitration Agreement occurred. Employment contracts are very often adhesive in nature purely due to the financial pressure to which the employee is subject. *OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 127. Plaintiff's choices were to agree to the form, take it or leave it contract, or lose her new employment.

While Plaintiff avers that she did not "feel like [she] could ask questions", this is not persuasive. Plaintiff does not opine that questions were discouraged, nor that she was given false information. Contra, *Velarde v. Monroe Operations, LLC* (2025) 111 Cal.App.5th 1009, 1015. This doesn't appear sufficient to show that Defendant actively prohibited questions. The social pressures of the group onboarding may have contributed to Plaintiff's reticence, but there is insufficient evidence to make a material impact on the unconscionability for Plaintiff's ability to ask questions. Indeed, Plaintiff was so rushed that she had no apparent awareness that the Arbitration Agreement existed due to the method in which it was presented.

In contrast, there are *several* facts here which show procedural unconscionability. Plaintiff was offered a large number of documents to review, with limited time to do so, as onboarding did not continue until all ten of the new employees had signed all their onboarding documents. Plaintiff's Dec., ¶ 3, 6. This appears particularly significant because Plaintiff did not just have the pressure of the human resources representative waiting on her, but nine other employees.

While the length of the Arbitration Agreement does not by itself appear to be procedurally unconscionable, as would be required in the increasingly precise requirements for addressing the substance of arbitration, it was certainly long enough that when presented with a number of other documents and limited time, Plaintiff was not offered a genuine opportunity to review the agreement. Plaintiff also appropriately raises that the terms and rules of the arbitration were hidden behind vocabulary having significance only to a sophisticated reader, and that the rules of arbitration were not provided. *Patterson v. ITT Consumer Financial Corp.* (1993) 14 Cal.App.4th 1659, 1665.

While Defendants aver that Plaintiff relies on inference, Defendant's evidence relies on a generalized declaration dealing with the signing "process", with no actual evidence of what occurred in Plaintiff's case. See Declaration of Mick Jones, ¶ 4. Plaintiff has the impression that she was required to sign and move on, and that she did not have time to truly review matters. The impression, based on the group setting of onboarding and that onboarding did not proceed until all the employees had signed all the forms, is reasonable and relevant. *OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 128.

On Reply, Defendant's reliance on *Ayala-Ventura v. Superior Court* (2026) 119 Cal.App.5th 241, for procedural unconscionability is misplaced. While Defendant avers that the case shows that the Arbitration Agreement, separately presented, is not procedurally unconscionable, that is an inaccurate recounting of the facts at issue here. The agreement in *Ayala-Ventura* was separately presented, with no evidence of time pressures. *Id* at 254. Here, the Arbitration Agreement was presented with 12 other onboarding documents, and onboarding would not continue until all the employees completed the forms. *Ayala-Ventura* is inapposite as to procedural unconscionability.

This is more than moderate imbalance, and therefore analysis turns to substantive unconscionability as high procedural unconscionability has been found.

C. Substantive Unconscionability

Plaintiff avers numerous basis for substantive unconscionability. Defendant argues that all the provisions are facially bilateral, and they meet the factors addressed by our supreme court in *Armendariz*. "But 'nothing in *Armendariz* supports the conclusion that the presence of a modicum of bilaterality renders an agreement per se conscionable. The presence of a modicum of bilaterality will not save a clause that is, in practical effect, unjustifiably one sided.'" *Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478, 498–499, citing with approval *Cook v. University of Southern California* (2024) 102 Cal.App.5th 312, 327.

Defendant strenuously argues that *Cook v. University of Southern California* (2024) 102 Cal.App.5th 312, has been narrowed by *Ayala-Ventura v. Superior Court* (2026) 119 Cal.App.5th 241, 257, but this is one Court of Appeal decision among several, most of which cite *Cook* with approval. See *Stoker v. Blue Origin, LLC* (2026) 120 Cal.App.5th 91, 109; *Phan v. Knight Sacramento SU Inc.* (Cal. Ct. App., June 5, 2026, No. C103401) (certified for publication, citation pending). *Cook* is appropriate to apply where the facts are analogous, and

Ayala-Ventura says nothing to the contrary. The facts here are more similar to *Cook* than *Ayala-Ventura*, but analysis proceeds issue by issue.

Plaintiff is not persuasive that the term for “a non-mutual notice requirement” is substantively unconscionable. Defendant is a corporation, and Plaintiff is an individual. The Arbitration Agreement requires Plaintiff to receive notice from Defendant if Defendant wishes to arbitrate a claim. Plaintiff must provide notice in a specified manner, but that does not appear prejudicial. Instead, it appears to be a method by which Defendant might receive actual notice of the intent to arbitrate. If Plaintiff brought a Complaint after the passage of the statute of limitations, the result would be similar, and the methods do not appear as unilateral as Plaintiff would argue.

The “third-party” language appears to be only minimally unconscionable. Plaintiff avers that the inclusion of any third parties is an unconscionable provision, because Plaintiff would have significantly more difficulty bringing arbitration of claims against those third parties than their ability to exercise the Arbitration Agreement as third party beneficiaries. *Cook*, *supra*, 102 Cal.App.5th at 319. The language here is largely like that in *Cook*, covering all “related entities”, and various permutations of that term. *Cook* included specifically but not exclusively “officers, trustees, administrators, employees, and agents.” *Id.* at 319. Here, the language only specifies parents and subsidiaries. Based on the included examples, the agreement in *Cook* appears somewhat broader than that in the instant case, as the plain language of “related entities” would arguably not include the various individuals listed in *Cook*. The section is still unconscionable in protecting entities which Plaintiff cannot in turn compel to arbitration, but it is less so than the provision in *Cook*.

Plaintiff also persuasively argues that the Arbitration Agreement is unlimited in duration, which is substantively unconscionable. The agreement has no express restriction on duration, and expressly limits the ability of the agreement to end, just like the agreement in *Cook*. Defendant argues that the Arbitration Agreement has a limited duration by nature of the statute of limitations and its subject matters restrictions. Defendant avers for both subject matter and duration that the Arbitration Agreement “is plainly limited to employment-related disputes”, meaning a limit on duration would naturally occur. Reply, pg. 5:17-19. That interpretation requires ignoring the *express* language of the Arbitration Agreement. Defendant had control of the language of the Arbitration Agreement, and ensured that it covered “all claims, disputes, and/or controversies (collectively “claims”), **whether or not arising out of Employee's employment or its termination...**” Arbitration Agreement, § 1 (emphasis added). Civ. Code § 1643 only applies to interpret contracts in a lawful manner “if it can be done without violating the intention of the parties.” Civ. Code, § 1643. It cannot add or subtract terms, or create ambiguity where ambiguity is absent. *Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478, 502. It does not require the Court to excise Defendant’s express unconscionable intention. Defendant asks that the Court interpret the Arbitration Agreement to *create* terms to rescue its substantively unconscionable nature. The agreement covers all claims Plaintiff may *ever* bring against Defendant, which, just like in *Cook*, is a hospital at which Plaintiff may some day become a patient. The scope of the Arbitration Agreement is both broad and unlimited, and as such is substantively unconscionable.

The question is not whether the Arbitration Agreement is unconscionable, but the degree to which it is substantively unconscionable. Given that the circumstances leading to signing are highly unconscionable, moderate substantive unconscionability is sufficient. The provisions here are of at least moderate unconscionability, and combined with the high level of procedural unconscionability, is sufficient basis to find the agreement unconscionable.

D. Severance

Severance here appears inappropriate. First, even if the Court were to be able to sufficiently sever the substantively unconscionable terms, even minimal remaining prejudice would preclude enforcement. The Arbitration Agreement has a severance provision, but that does not divest the Court of the ability to determine that severance does not cure the issue. *Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478, 517. Here, it appears that “curing the unconscionable provisions would require substantive rewriting of the arbitration agreement to contradict its plain language, and that severance would provide a windfall to [Defendant].” *Cook v. University of Southern California* (2024) 102 Cal.App.5th 312, 330. That the controversy before the Court falls within the intended scope of the agreement according to Defendant does not unravel the structural advantage that may have been exercised otherwise.

The motion to compel arbitration is DENIED.

E. Stay

Issuance of the requested stay is mandatory upon hearing the motion. CCP § 1281.4; see also *OTO, supra*, 8 Cal.5th at 140. The motion to compel has been denied, and accordingly, the request to stay is DENIED.

IV. Conclusion

The motion to compel arbitration is **DENIED**. The mandatory stay is **DENIED**.

Plaintiff 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).

6. **26CV00876, Lamburth v. Davis**

Plaintiff’s Counsel seeks to be relieved on the basis of an irreparable breakdown in the attorney client relationship. The Court notes that the Declaration in Support states that Plaintiff was served via mail at his last known address by mail, return receipt requested. Counsel has undergone reasonable steps attempting to confirm the validity of the address. That would appear sufficient. However, service occurred before the clerk’s office assigned the hearing date on April 11, 2026. There is no subsequent proof of service in the file. It appears that there was no attempt to serve Plaintiff with the hearing date, and therefore he would not be capable of either appearing or opposing the motion. Therefore, Counsel’s motion to be relieved as counsel for Plaintiff is **DENIED without prejudice**.

7. SCV-272132, Depina v. Fedex Ground Package System, Inc.

Plaintiff Clara Depina (“Plaintiff”), individually and on behalf of other all other similarly situated, including employees pursuant to the California Private Attorney General Act, filed the currently operative second amended complaint against defendant Fedex Ground Package System (“Defendant”), and Does 1-50 for causes of action arising out of Defendant’s alleged Labor Code violations, and civil penalties thereon (the “Complaint”). This matter is on calendar for Plaintiffs’ unopposed motion for conditional certification of the class and preliminary approval of the class action settlement (the “Motion”).

This matter was previously removed to federal court in the Northern District of California (“Federal Court”) on January 13, 2023. There is no copy of an order from the Federal Court remanding the matter back to state court in the papers submitted, nor is there evidence that the Federal Court case has been dismissed. While the Declaration of Shaun Setareh states that the federal case would be dismissed, there is no actual averment that the dismissal occurred. The Court requires concrete evidence that the Federal Court no longer has jurisdiction over the controversy. Further, the Federal Court denied class certification, and this Court would appear to need to be appraised by the contents of that order in order to ensure that the class can nonetheless be certified for the purposes of settlement.

More perturbing, the Settlement Agreement also states that an amended complaint would be filed in this case, but no amended Complaint has been received by the Court. See Settlement Agreement, ¶ 25. This is a precursor to the Plaintiff being able to move for preliminary approval. Settlement Agreement, ¶ 25-26. The Addendum further affirms the necessity of the filing of the Amended Complaint. See, Addendum, ¶ 2. The Court will not grant preliminary approval in express violation of the terms of the settlement agreement.

Preliminary approval is **DENIED** without prejudice to Plaintiff filing the motion after performing the conditions precedent required in the Settlement Agreement. Any subsequent motions will contain *all* orders of the District Court.

8-9. SCV-273878, Parks v. Ensign

Plaintiff Michael Parks (“Plaintiff”), as successor-in-interest to decedent Robert Parks (“Decedent”), filed the presently operative second amended complaint (the “SAC”) against defendants Ensign Montgomery, LLC (“Montgomery”), Flagstone Healthcare North, Inc. (“Flagstone”), The Ensign Group (“TEG”), Luke Ensign (“Individual Defendant”), Ensign Services, Inc. (“ESI”, together with other named defendants “Defendants”), and Does 1-50, arising out of Defendants’ care of Decedent. The SAC contains causes of action for: 1) elder neglect/abuse; 2) negligence; 3) Violations of the Patient’s Bill of Rights; 4) Violations of California’s Unfair Competition Law under Business and Professions Code § 17200 *et seq.* (the “UCL”); 5) fraud; and 6) wrongful death. A demurrer to the fraud cause of action has been sustained without leave to amend.

This matter is on calendar for the motions by the TEG and ESI (“Moving Defendants”) for summary judgment or adjudication of Plaintiff’s SAC pursuant to Cal. Code Civ. Proc. (“CCP”) § 437(c).

I. Evidentiary Issues

Plaintiff has filed numerous objections to ESI and TEG’s evidence in support. The decision on the motion does not rely on the results of the objections, and accordingly the Court need not address them at this juncture. CCP § 437c(q).

II. Governing Law

Summary judgment or 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 drawn 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.

“(T)he pleadings determine the scope of relevant issues on a summary judgment motion.” *Nieto v. Blue Shield of California Life & Health Ins. Co.* (2010) 181 Cal.App.4th 60, 74. “It is well established that an amendatory pleading supersedes the original one, which ceases to perform any function as a pleading.” *Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 884. “An amended complaint supersedes the original and furnishes the sole basis for the cause of action,”

and the prior complaint, “ceases to have any effect as a pleading, or as a basis for a judgment.” *Anmaco, Inc. v. Bohlken* (1993) 13 Cal.App.4th 891, 901. “Because there is but one complaint in a civil action (*Citation*), the filing of an amended complaint moots a motion directed to a prior complaint.” *State Compensation Ins. Fund v. Superior Court* (2010) 184 Cal.App.4th 1124, 1131 (Citations omitted).

III. Analysis

ESI and TEG each move for summary judgment as they aver that Plaintiff neither has nor can produce evidence that ESI and TEG participated in the conduct alleged in the Complaint, or is vicariously liable for the conduct of the other Defendants. Plaintiff argues multiple procedural and substantive bases for denial of the motion.

Among the procedural arguments, Plaintiff points out, accurately, that the complaint has been amended since the filing of the motion due to Defendants’ motion for judgment on the pleadings. The motion for judgment on the pleadings was filed on April 25, 2025, and had a hearing date set for June 25, 2025. ESI and TEG then filed their motions for summary judgment on June 20, 2025, with the obvious risk that the motion for judgment on the pleadings would be granted with leave to amend just five days later. That is precisely what occurred. The filing of an amended complaint renders any motion for summary adjudication of that complaint moot. *State Compensation Ins. Fund v. Superior Court* (2010) 184 Cal.App.4th 1124, 1131. When the SAC was filed on December 24, 2025, the summary judgment motions became moot.

While TEG and ESI argue that this places “form over substance”, they do so without citation to any authority contradicting Plaintiff’s argument. To the degree it is relevant at all, form over substance should be shown by the moving parties. *See State Compensation Ins. Fund v. Superior Court* (2010) 184 Cal.App.4th 1124, 1131. TEG and ESI provide no particular citation to the SAC showing what facts were changed, and accordingly whether this Court can still address their motion. While the judgment on the pleadings was targeted to the fraud cause of action, it is not immediately apparent from the record if any of the underlying facts have been changed in a manner relevant to the other causes of action, and Moving Defendant’s request for summary judgment thereon. Any summary judgment targeted to changed causes of action is void. *Perry v. Atkinson* (1987) 195 Cal.App.3d 14, 18. While the underlying facts may not have been materially changed, TEG and ESI must properly place the matter before the Court.

The amended complaint derives from the conduct of Defendants, not Plaintiff. Plaintiff did not file any motion requesting to amend the complaint. Instead, ESI and TEG filed the instant motions as to the First Amended Complaint while having simultaneously placed that same pleading at issue. The subsequent amendment appears to be a natural consequence of Defendants’ motion for judgment on the pleadings. Defendants are not left without a remedy. “After a cause of action is amended, the court may rule in favor of the defendant if, *upon subsequent motion, or perhaps renewal of the earlier motion if appropriately framed*, it is shown ... there are no triable material issues of fact which would permit recovery on that theory.” *State Compensation Ins. Fund v. Superior Court* (2010) 184 Cal.App.4th 1124, 1131. It is entirely possible that ESI and TEG may believe that their motion for summary judgment is still viable.

Their remedy is to raise the issue in a procedurally viable manner, not to pivot the already mooted motion.

Therefore, the motion is **MOOT**. The motion is accordingly dropped from calendar.

Plaintiff 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).

****This is the end of the Tentative Rulings.****