TENTATIVE RULINGS
SPECIAL SET LAW & MOTION
Friday, January 31, 2025, 9:00 a.m.
Courtroom 16 –Hon. Rene A. Chouteau
3035 Cleveland Avenue, Suite 200, Santa Rosa

TO JOIN "ZOOM" ONLINE,
Courtroom 16
Meeting ID: 161-460-6380
Passcode: 840359
https://sonomacourt-org.zoomgov.com/j/1614606380?pwd=NUdpOEZ0RGxnVjBzNnN6dHZ6c0ZQZz09

TO JOIN "ZOOM" BY PHONE,
By Phone (same meeting ID and password as listed above):
(669) 254-5252 US (San Jose)

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, YOU MUST notify the Court by telephone at **(707) 521-6729**, and all other opposing parties of your intent to appear by 4:00 p.m. the court day immediately before the day of the hearing.
Parties in motions for claims of exemption are exempt from this requirement.

PLEASE NOTE: The Court WILL NOT provide a court reporter for this calendar. If there are any concerns, please contact the Court at the number provided above.

1. **SCV-269821, County of Sonoma v Leckner**

County moves the Court for Attorney's fees in the amount of $176,073.50 and staff costs in the amount of $31,822.89. County has filed billing statements in support of its motion for attorney's fees but has not submitted similar documentation to support its motion for staff costs.

Leckner objects to the amount of attorney's fees on the following basis:

1. County's fees should be denied or greatly reduced because County did not prevail on some of the alleged code violations and recovered penalties far less than those claimed by County.
2. County's motion to compel discovery was frivolous and ultimately withdrawn by County.
3. A portion of the hours claimed should be attributed to County's defense of the Cross Complaint.
4. Inefficiencies caused by County's assignment of 15 attorneys to the abatement action should reduce the amount of attorney's fees.
5. County's practice of "block billing" provides insufficient information to support its Motion.
6. Staff costs are not supported by billing records.

The Court has considered the papers filed herein and oral arguments and makes the following ruling:

County is entitled to reasonable attorney's fees in this action. California Government Code 25845. SCC 1-7(f). The hourly rates charged by County are reasonable ($284 and $314 for different time periods). While County has not included a claim for time charged by Petra Bruggisser, it fails to recognize that during discovery and trial the hours charged by other attorneys were devoted to defense of the civil rights cross complaint as well as the abatement action. A reasonable allocation of time and effort is 50% devoted to each. Leckner is correct in arguing that County failed to prevail on some of the nuisance claims and also received far less in penalties than it claimed. County should not be compensated for fees attributable to its unsuccessful discovery motion. The Court finds Leckner's "block billing" argument and the argument related to the excessive assignment of attorneys to be unpersuasive.

The Court makes the following determinations regarding staff costs:

1. The Court accepts the hourly rates claimed for Todd Hoffman and Tyra Herrington.
2. No time sheets have been submitted to support staff costs.
3. The hours claimed by each staff member were in defense of the cross complaint as well as the abatement action.
4. Both Hoffman and Herrington attended the trial for extended periods as observers in addition to the time that they were testifying.

Based on the above, the Court awards attorney's fees to County as follows:

Amount Requested	$176,073
Reduction for 24.7 hours previously	
Billed and paid by Leckner attributable to	
Cross complaint	- -$6965.40
Reduction for time in current billing	
Attributable to cross complaint	-$88,035.00
Reduction at 7% interest on amounts	
Improperly billed and paid by Leckner	-$5,735.54

	$75,512.43
Reduction for limited recovery by County	-24,861.4
	_____
	50,651.01

In conclusion, The court awards attorney's fees in the amount of $50,651. The court awards staff costs for time spent in discovery, trial preparation and testifying and testifying in the amount of $10,000. The Court will prepare and issue the order.

2. <u>24CV04157, Scorza v Goldbarg</u>

APPEARANCES REQUIRED.

I. <u>MOTION FOR TRIAL PREFERENCE</u>

Plaintiff Larry Scorza's ("Plaintiff") motion for preference in setting this matter for trial per Code of Civil Procedure ("C.C.P.") section 36(e) is **DENIED**. Appearances are required for the purpose of setting an early trial date, taking into account the parties' needs for adequate discovery and pretrial motions.

PROCEDURAL HISTORY

Plaintiff brought this action against St. Joseph Health Northern California LLC, doing business as Providence Queen of the Valley Medical Center, ("St. Joseph") and against Ensign Sonoma, LLC, Flagstone Healthcare North, Inc., The Ensign Group, Inc., and Ryan Goldbarg ("Other Defendants") alleging causes of action for dependent adult abuse/neglect, negligence, and violation of patient's rights. (Plaintiff's Memorandum of Points and Authorities ["MPA"], 4:3-8.) Plaintiff was admitted to Defendants' medical facilities between May 17, 2023, and June 19, 2023, after knee replacement surgery and alleges that during his stay he developed new complications due to inadequate nutrition, hydration, and hygiene, and lack of repositioning by facilities staff. (MPA, 2:24-26, 5:1-26, 6:1-2.) Plaintiff submitted medical notes from Providence Queen of the Valley Medical Center that detail his medical diagnoses. (Scorza Declaration, Exhibit A.)

Plaintiff is currently 65 years old and suffers from various medical issues including, type 2 diabetes, hyperlipidemia, hypertension, osteoarthritis, peripheral vascular disease, sleep apnea, and a history of two hip replacements. (Scorza Declaration, ¶ 2.) In the past two years, Plaintiff claims he has had eight separate surgeries and that his health continues to steadily decline. (*Id.*)

Plaintiff therefore requests preferential trial setting per C.C.P. section 36(e) to prevent prejudicing his interest in this litigation because he argues he is likely to become further incapacitated and not be able to survive trial. St. Joseph's, doing business as Queen of the Valley Medical Center, opposes the motion. Other Defendants served both a non-opposition and subsequent supplemental opposition to the motion. Plaintiff replied to all oppositions.

ANALYSIS

<u>Legal Standard</u>

Per C.C.P. section 36, a party may move for preference in trial setting for several reasons, including the following:

1. A party that is over 70 years of age, has a substantial interest in the action, and has health issues such that a preference is necessary to prevent prejudicing the party's interest in the litigation may move for preference. (C.C.P. § 36(a)(1)-(2).)

2. A party that is under 14 years of age and is involved in a civil action to recover damages for wrongful death or personal injury, unless there is no substantial interest in the case, may move for preference. (C.C.P. § 36(b).)

3. The court may in its discretion grant a motion for preference that is accompanied by clear and convincing medical documentation that shows that one of the parties suffers from an illness or condition that raises substantial medical doubt of survival beyond six months if the court is satisfied that the interests of justice will be served by granting the preference. (C.C.P. § 36(d).)

4. The court may in its discretion grant a motion for preference that is supported by a showing that satisfies the court that the interests of justice will be served by granting preference. (C.C.P. § 36(e).)

If preference is granted per C.C.P. section 36(e), then the court shall set the matter for trial not more than 120 days from that date and there shall be no continuance beyond 120 days from the granting of the motion for preference except for physical disability of a party or a party's attorney or other good cause stated in the record. (C.C.P. § 36(f).)

Plaintiff's Motion for Preferential Trial Setting

Plaintiff moves per C.C.P. section 36(e) for preference in trial setting arguing that the interests of justice will be served by granting preference due to Plaintiff's declining physical health. (MPA, 4:11-16.) Plaintiff claims that without preferential status, there is substantial doubt that Plaintiff will have his day in court before his demise. (*Id*.) Plaintiff cites the case *Warren v. Schecter* (1997) 57 Cal.App.4th 1189, 1199, in which the Court of Appeal held that "the remedial provision of Code of Civil Procedure section 36 is a legislative recognition of the maxim that 'justice delayed is justice denied.'" Plaintiff also argues that he has a substantial interest in litigating and resolving this case during his lifetime because the benefits from any settlement or verdict would pay for his care and needs. (MPA, 5:22-25.)

Defendants' Oppositions

St. Joseph's Opposition

St. Joseph, doing business as Providence Queen of the Valley Medical Center, requests that the Court deny Plaintiff's motion for failing to meet any of the requirements of section 36. (St. Joseph's Opposition, 3:13-17.)

St. Joseph notes that Plaintiff argues prejudice in the motion, but that courts only consider whether a party will be prejudiced by a denial of preference is in the context of section 36(a) which allows a party of 70 years of age to move for preference. (C.C.P § 36(a); St. Joseph's Opposition, 3:20-26, 4:1.) Plaintiff is 65, so section 36(a) does not apply to him. (*Id*.)

St. Joseph also contends that Plaintiff's argument fails that there is substantial doubt that he will have his day in court without preferential status because this type of consideration is taken when a party move for preference under section 36(d), which also does not apply here. (St. Joseph's Opposition, 4:2-8.) Section 36(d) requires clear and convincing medical documentation, including a doctor's declaration per *Fox v. Superior Court* (2018) 21 Cal.App.5th 529, 533-534, which all conclude that moving party will not survive beyond six months. (*Id*. at 4:8-15.) St. Joseph's position is that Plaintiff has not submitted sufficient evidence to show this because, instead of submitting any doctor's declaration, Plaintiff only submitted doctor's notes listing his current diagnoses and Plaintiff's own declaration claiming that his overall condition continues to steadily decline. (*Id*. at 4:15-26, 5:1-18.)

St. Joseph points out that, while Plaintiff has expressly moved for trial preference under section 36(e), that it is not a "catch-all" subdivision as Plaintiff suggests and that Plaintiff's attempts to argue elements of the other subdivisions of section 36 even though his motion is brought under section 36(e) are not successful. (St. Joseph's Opposition, 5:19-23.) St. Joseph argues that Plaintiff's condition is not different from many other medical negligence plaintiffs and Plaintiff has not conclusively shown that his poor health and medical issues will prevent him from participation in trial. (*Id*. at 7:18-24.)

Finally, St. Joseph's argues that granting trial preference would violate its due process rights because this is a potentially complex negligence and elder abuse/neglect case, so an advanced trial date will not provide adequate time to complete discovery, gather key evidence, secure expert witnesses, obtain and evaluate expert opinions, and prepare for trial. (*Id*. at p. 7-9.)

Other Defendants' Non-Opposition and Supplemental Opposition

Other Defendants do not dispute that Plaintiff likely meets qualifications for preference but argue that discovery-related challenges will deprive Other Defendants of their due process rights if a preferential trial is granted. (Other Defendants' Non-Opposition, 2:2-5.) Other Defendants also request that should trial preference be granted, then the trial date ought to be set out as far as possible per the 120-day limitation set by section 36(f). (*Id*. at 3:20-28, 4:1.) Also, Other Defendants request that preference status be vacated if Plaintiff passes before the preferential trial date is set. (*Id*. at 4:2-8.)

Other Defendants' supplemental opposition argues that C.C.P. section 1281.4 mandates a stay in this action until Defendants' petition to compel arbitration has been determined because if the petition is granted, then it will render this request for trial preference as moot. (Supplemental Opposition, 2:1-5.)

Plaintiff's Replies

Plaintiff replies to both oppositions stating that Plaintiff clearly meets the elements required for preference under section 36(e) for the reasons outlined in the motion and argues that Plaintiff's declaration is sufficient as supportive evidence. (Replies, pp. 2-6.) Plaintiff also argues that Defendants' potential failure to complete discovery or other pre-trial matters do not affect Plaintiff's statutory rights under section 36(e). (*Id*. at pp. 6-7.)

In the supplemental reply to the Other Defendants' supplemental opposition, Plaintiff states that as both the motion for preference and petition to compel arbitration (which Plaintiff argues is

meritless) are to be heard on the same date, so there is no reason to delay the motion or stay the action. (Supplemental Reply, pp. 1-3.)

Application

The Court finds that Plaintiff does not qualify for preference in trial setting under any portion of C.C.P. section 36. Plaintiff argues how elements under the various subdivisions of section 36 partially apply to his situation. However, the Court is not persuaded by Plaintiff's arguments.

No part of subsection (a) or (b) applies to Plaintiff because he is neither over the age of 70 nor under the age of 14. Plaintiff also cannot meet the requirements of subsection (d) because Plaintiff has not submitted any clear and convincing documentation that Plaintiff will not survive past six months.

Thus, Plaintiff has expressly brought this motion under the only remaining available subsection, which is subsection (e). While the Court understands that Plaintiff has undergone many medical hardships over the past two years and continues to suffer in poor health from various medical conditions, the Court does not find that granting preference based on Plaintiff's condition is in the interests of justice and will not result in any prejudice to any of the Defendants. First, Plaintiff has not conclusively shown with medical documentation that he will not survive long enough to participate in a trial that is set beyond 120 days. Second, at least six parties are involved in this litigation and setting trial within 120 days as is required under subsection (f) will substantially limit the time in which all discovery must be completed in this matter. This may not allow for all parties to depose their relevant witnesses or adequately prepare for trial.

For the above reasons, the Court denies Plaintiff's motion for preferential trial setting.

CONCLUSION

Plaintiff's motion for preference is **DENIED**. The parties shall also appear for setting for an early date for trial based on their need for adequate discovery and time to prepare pre-trial motions. Moving Defendants shall submit a written order within five days on Plaintiff's motion to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b). Trial shall be set on the following date (determined at hearing).

II. MOTION TO COMPEL ARBITRATION

Defendants Ensign Sonoma, Flagstone, Ensign Group and Goldbarg ("Moving Defendants") moves (or petitions) to compel arbitration pursuant to Code of Civil Procedure ("C.C.P.") section 1281.2. The Court **DENIES** the petition to compel arbitration and stay proceedings.

PROCEDURAL HISTORY

Plaintiff Larry Scorza ("Plaintiff") was admitted to Moving Defendants' medical facilities between May 17, 2023, and June 19, 2023, after knee replacement surgery and alleges that he developed new complications during his stay (e.g. pressure ulcers, deep tissue injury, etc.). (Opposition, 5:18-20; Complaint, ¶¶ 28-29.) Plaintiff alleges that Moving Defendants failed to provide his needed

adequate nutrition, hydration, hygiene, and repositioning every two hours for pressure relief, and stated that their failure was due to being short-staffed. (Complaint, ¶ 30.) Plaintiff sustained injuries allegedly due to Defendants' conduct, which worsened and became infected resulting in Plaintiff developing sepsis. (Opposition, 5:18-25.)

Plaintiff brought this action against all named defendants alleging causes of action for dependent adult abuse/neglect, negligence, and violation of patient's rights. (Memorandum of Points and Authorities [MPA"], 6:24-28.) Moving Defendants argue that Plaintiff allegedly signed an Arbitration Agreement (the "Agreement") on June 1, 2023. (Sanchez Declaration, Exhibit A.)

Moving Defendants now petition to compel arbitration and stay the proceedings based on the Agreement. Plaintiff opposes the motion arguing that the Agreement contains fraudulent signatures and is otherwise unconscionable.

EVIDENTIARY OBJECTIONS

The Court rules as follows on the Plaintiff's objections to evidence:

1. Plaintiff's objections that Paragraph 5 of the Declaration of Ana Sanchez referencing a copy of the Arbitration Agreement as Exhibit A lacks foundation, is speculative, and is a self-serving conclusion is **SUSTAINED**.

2. Plaintiff's other objection regarding Paragraph 5 of the Declaration of Ana Sanchez referencing a copy of the Arbitration Agreement as Exhibit is **OVERRULED**.

ANALYSIS

Legal Standard

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

The FAA applies to any "contract evidencing a transaction involving commerce" which contains an arbitration clause. (9 U.S.C. § 2.) The FAA favors the enforcement of arbitration agreements affecting interstate commerce. (*Cronus Investments, Inc. v. Concierge Services* (2005) 35 Cal.4th 376, 380.) When it applies, the FAA preempts state laws that purport to create alternative grounds for confirming or vacating arbitration awards. (*C.T. Shipping, Ltd. v. DMI (USA) Ltd.* (S.D.N.Y. 1991) 774 F.Supp. 146, 148-149.)

Arbitration in California

Generally, California has a strong public policy in favor of arbitration; any doubts regarding the arbitrability of a dispute are resolved in favor of arbitration. (*Howard v. Goldbloom* (2018) 30 Cal.App.5th 659, 663, citing *Aanderud v. Superior Court* (2017) 13 Cal.App.5th 880, 890.) C.C.P. section 1280 et seq. governs arbitration in California. Sections 1281.2 and 1281.4 allow a party to move to compel arbitration per an arbitration agreement, and to stay legal proceedings pending the arbitration's conclusion.

A party seeking to compel arbitration pursuant to C.C.P. section 1281.2 must "plead and prove a prior demand for arbitration under the parties' arbitration agreement and a refusal to arbitrate under the agreement." (*Mansouri v. Sup. Ct.* (2010) 181 Cal.App.4th 633, 640-641.) The petitioner must also prove by a preponderance of evidence that the arbitration agreement exists and that the dispute is covered by the agreement. (*Cruise v. Kroger Co.* (2015) 233 Cal.App.4th 390, 396-397, 399-400.) The petitioner can satisfy this burden by alleging the existence of an arbitration agreement and setting it forth verbatim or attaching a signed copy of it even if the signing party does not recall the agreement. (*Condee v. Longwood Management Corp.* (2001) 88 Cal.App.4th 215, 218–19; *Espejo v. S. Cal. Permanento Med. Grp.* (2016) 246 Cal.App.4th 1047, 1060.) If the petitioner satisfies this burden, the opposing party must prove a defense to its enforceability, such as unconscionability or waiver. (*Ibid*; see also, *Avery v. Integrated Healthcare Holdings, Inc.* (2013) 218 Cal.App.4th 50, 59.)

Unconscionability

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

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

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

Authenticity of Signature

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

Moving Defendants' Motion to Compel Arbitration

Moving Defendants seek to compel arbitration on Plaintiff's claims and request a stay in the proceedings. (Motion Memorandum of Points and Authorities [MPA"], 6:3-7.) They submit the "Agreement to Arbitrate Disputes Related to Medical Malpractice" claiming that Plaintiff signed it on June 1, 2023. (Sanchez Declaration, Exhibit A.) Based on this Agreement, they argue that Plaintiff is required to arbitrate his claims because the Agreement expressly states that all claims arising out of the care and treatment and services rendered must be arbitrated. (MPA, 8:26-28.)

Moving Defendants claim the executed Agreement is valid and enforceable under both state and federal law. (MPA, pp. 9-10.) They state that Plaintiff cannot avoid the enforcement of the Agreement by claiming that he failed to read or understand the instrument because he signed and assented to its terms. (*Id*. at 11:2-19.) Finally, Moving Defendants contend that the Agreement is neither procedurally nor substantively unconscionable because the Agreement was voluntary with a right of rescission and because there is no lack of mutuality when the Court can sever out any portion of the Agreement the Court finds unconscionable. (*Id*. at pp. 12-14.)

Plaintiff's Opposition

Plaintiff does not agree that he ever signed the Agreement and has submitted evidence showing his authentic electronic signature. On closer inspection of the Agreement submitted by Moving Defendants, there are two electronic signatures, one for Plaintiff and the other for Jose Huerta titled "Legal Representative or Agent," and neither of these signatures matches Plaintiff's claimed authentic signature. (Sanchez Declaration, Exhibit A.) Attached to the Agreement is a "Document History" listing all events that occurred on the document. (*Id*.) The most relevant events are titled "Signed the Document" and these events occurred at the exact same time down to the second with the timestamps reading "06/01/2023 23:49:47." Plaintiff argues that this suggests that the same person entered both signatures for representative and Plaintiff, and that it was not Plaintiff who entered those signatures.

To further support this argument, Plaintiff points to the signed "California Standard Admission Agreement for Skilled Nursing Facilities and Intermediate Care Facilities" ("Admission Agreement") that Moving Defendants submitted. (Sanchez Declaration, Exhibit B.) Plaintiff's electronic signature appears on page 4 of the Admissions Agreement, and it matches exactly the authentic electronic signature Plaintiff provides as evidence in his declaration. (*Id*.) However, on a separate page of the Admissions Agreement, there are signatures for "Representative of the Facility" and "Resident" entered by Jose Huerta which look exactly like the two signatures contained in the Arbitration Agreement. (*Id*.) As Plaintiff argues in the Opposition, these inconsistencies make it questionable whether Plaintiff actually electronically signed the Arbitration Agreement, or whether it was signed by the Representative of the Facility, whose two signatures on the Arbitration Agreement are identical to those on the Admissions Agreement. (Opposition, pp. 6-10.) Furthermore, Moving Defendants did not meet their burden of proof in that they failed to provide testimony from Jose Huerta that explains why the signature that he entered has the same timestamp as the signature attributed to Plaintiff.

Plaintiff also argues that it could not be true that the Agreement was adequately explained to Plaintiff because the Moving Defendants' person most knowledgeable, Ms. Sanchez, provided

deposition testimony that she herself did not understand the Agreement, much less train her assistant Jose Huerta how to explain the terms. (Opposition, pp. 10-12.)

Plaintiff also argues that if the Court should find that the signature was authentic, then the Court should also find that the execution of the Agreement is a product of undue influence under Welfare & Institutions Code section 15610.70, Probate Code section 86 (which refers to the Welf. & Inst. Code definition), and Civil Code section 1575. (Opposition, 12:7-21.) Plaintiff argues that it is undisputed that he was physically and mentally vulnerable as a bed-bound resident at Moving Defendants' facilities and that they had apparent authority as a health care professional and expert on the admissions paperwork. (*Id*. at 12:21-26, 13:1.) Plaintiff claims that the Moving Defendants controlled his necessities, including critical pain medication, food, and rehabilitation, and that the documents, which Plaintiff still argues he did not sign, were signed in haste or secrecy or while Plaintiff was heavily medicated on opioids and unknowingly waived his right. (*Id*. at 13:2-14.)

Plaintiff's position is also that the Agreement is both procedurally and substantively unconscionable. (Opposition, 14:7-26, 15:1-5.) Plaintiff argues that the Agreement, which he did not sign, is procedurally unconscionable because even if he had signed it, he was heavily medicated, isolated, and alone in a bed and depended on Moving Defendants for pain medication, food, and wound treatment, along with other necessary care at the time, so he did not have an authentic informed choice. (*Id*. at 15:7-26.) Furthermore, as stated above, Plaintiff argues that the terms of the Agreement were never adequately explained to him by Ms. Sanchez or Jose Huerta. (*Id*. at 16:1-9.)

Finally, Plaintiff asks the Court to refuse to enforce the Agreement due to the possibility of conflicting rulings. (MPA, 18:13-26, 19:1-15.)

Reply to Opposition

In the Reply, Moving Defendants continue to argue that the Agreement is valid and enforceable. They argue they have met their burden of authentication by submitting the written and signed Agreement and claiming that the signatures contained in it were not forged or falsified. They argue that the Agreement was signed at a time Plaintiff's identity could easily be verified by the written admission agreement and discharge paperwork. They also argue that the signature looks a little different because it was signed on an iPad. They reaffirm their arguments made in the motion for why Plaintiff cannot avoid the Court enforcing the Agreement and why there is no substantive or procedural unconscionability.

Application

Moving Defendants met their initial burden by producing a signed and written Arbitration Agreement allegedly signed by Plaintiff. However, they failed to refute Plaintiff's arguments that the electronic signature claimed to be his is not authentic and that there are issues as to unconscionability with this Agreement.

As discussed above, both Moving Defendants and Plaintiff have submitted examples of Plaintiff's electronic signature. The two electronic signatures contained in the Agreement do not match Plaintiff's authentic electronic signature. However, the signature on the Admissions Agreement for Plaintiff does match Plaintiff's authentic electronic signature, while at the same time, the other two separate signatures contained on a different page of the Admissions Agreement signed by the

"Representative of the Facility" are identical to the two signatures contained in the Arbitration Agreement. As mentioned above, the timestamps for the two signatures on the Arbitration Agreement are also the exact same down to the second. These facts put into question whether the same Representative of the Facility signed the Agreement instead of Plaintiff. As Moving Defendants failed to sufficiently explain these inconsistences, they did not meet their burden of proving authenticity as to the signature. Furthermore, Moving Defendants have not met their burden of proof as to the authenticity of Plaintiff's signature in that they fail to provide testimony by their employee, Jose Huerta, who signed the Arbitration Agreement at the exact time that Plaintiff allegedly signed it. Mr. Huerta would be the witness best able to confirm the validity of Plaintiff's signature.

Moving Defendants also did not sufficiently show that there was no procedural or substantive unconscionability. Given Plaintiff's vulnerable physical and mental condition while he was staying at Moving Defendants' facilities, and that he was entirely dependent on them for all of his necessities, it is not entirely certain that Plaintiff had any meaningful choice or bargaining power regarding the Agreement, which he claims he did not sign in the first place. Moving Defendants' argument that there is no lack of mutuality because the Court can just sever any portion of the agreement that is unconscionable is also inadequate because Moving Defendants fail to explain what part of the Agreement does show that the required mutuality existed to make the agreement enforceable. Even if the Plaintiff did sign the Agreement, Plaintiff would have signed around midnight while he was sick with medical issues, on heavy pain, and wholly dependent on Moving Defendants for care. Under such circumstances, the Court does not conclude that Plaintiff's choice would have been either meaningful or mutual.

CONCLUSION

The petition to compel arbitration and stay the proceedings is **DENIED**. Plaintiff shall submit a written order within five days on Moving Defendants' motion to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).