Tentative Rulings for July 21, 2026
Department 6

To request oral argument, you must notify Judicial Secretary Crystal Marias at (760) 904-5722 and inform all other counsel no later than 4:30 p.m.

This court follows California Rules of Court, Rule 3.1308 (a) (1) for tentative rulings (see Riverside Superior Court Local Rule 3316). Tentative Rulings for each law & motion matter are posted on the Internet by 3:00 p.m. on the court day immediately before the hearing at Riverside Superior Court-Tentative Rulings.. If you do not have Internet access, you may obtain the tentative ruling by telephone at (760) 904-5722.

To request oral argument, no later than 4:30 p.m. on the court day before the hearing you must (1) notify the judicial secretary for Department 6 at (760) 904-5722 and (2) inform all other parties of the request and of their need to appear remotely, as stated below. If no request for oral argument is made by 4:30 p.m., the tentative ruling **will become the final ruling** on the matter effective the date of the hearing. **UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.**

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Please **MUTE** your phone until your case is called and it is your turn to speak. It is important to note that you must call fifteen (15) minutes prior to the scheduled hearing time to check in or there may be a delay in your case being heard.

Riverside Superior Court provides official court reporters for hearings on law and motion matters only for litigants who have been granted fee waivers and only upon their timely request. (See General Administrative Order No. 2021-19-1) Other parties desiring a record of the hearing must retain a reporter pro tempore.

1.

CASE #	CASE NAME	HEARING NAME
CVRI2301029	FREEDOM MORTGAGE CORPORATION vs ROSS	MOTION TO AMEND JUDGMENT

Tentative Ruling:

Motion granted. Proposed Judgment submitted has been signed and ordered filed. Moving party to provide notice to all parties.

2.

CASE #	CASE NAME	HEARING NAME
CVRI2403763	HERNANDEZ vs BEAUTY ON A BUDGET	MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE SUMMARY ADJUDICATION

Tentative Ruling:

Moving party: Defendants Issam J. Rafeedie and Lydia Rafeedie
Responding party: Plaintiff Hortencia Duarte Hernandez

Plaintiff Hortencia Duarte Hernandez initiated this personal injury action on June 28, 2024 against Defendants Beauty on a Burdge ("Beauty"), Issam J. Rafeedie and Lydia L. Rafeedie (collectively, the "Rafeedies"). The Form Complaint alleges that on January 15, 2024, Plaintiff was at Beauty located in Riverside (the "Premises"), walking towards the restroom when "she stepped on unmarked and/or unsecure wires, cables and/or similar objects causing her to trip and fall, thereby causing Plaintiff to endure severe injury and pain" (the "Incident"). (Compl., pg. 6.) The Complaint further alleges Defendants had exclusive control of Beauty and negligently owned, maintained, managed, and operated the Premises and failed to warn of the dangerous condition. The Complaint asserts causes of action for (1) general negligence and (2) premises liability.

Trial is not currently set.

The Rafeedies now move for summary judgment or, in the alternative, summary adjudication of Plaintiff's Complaint on the grounds: (1) they do not owe Plaintiff a duty because they do not control the interior of the Premises where the Incident occurred; (2) their actions were not a substantial factor in causing Plaintiff's injuries; and (3) Plaintiff tripped over a hairdryer cord that belongs to third party Teresa Robles (Robles), which was the independent intervening force breaking the chain of causation.

In opposition, Plaintiff maintains the Rafeedies have a nondelegable duty to maintain the Premises in a reasonably safe condition because they have control of the

Premises as owners and lessors. Plaintiff argues the Rafeedies had constructive notice of the dangerous condition, and that triable issues of material fact exist.

In reply, the Rafeedies generally repeat their arguments in moving papers.

Analysis

I. Standard

From commencement to conclusion, the party moving for summary judgment bears the burden of persuasion. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 855.)

A defendant can meet the initial burden by showing that one or more elements of the causes of action cannot be established, or that there is a complete defense. (Code Civ. Proc., § 437c, subd. (p)(2).) To demonstrate that a cause of action cannot be established, the defendant must either negate an essential element of the plaintiff's cause of action or show that the plaintiff lacks evidence. (*Chavez v. Glock, Inc.* (2012) 207 Cal.App.4th 1283, 1301.) To negate an element, the defendant must establish that plaintiff's claim fails as a matter of law. (*Erikkson v. Nunnick* (2011) 191 Cal.App.4th 826, 849.) To demonstrate that the plaintiff lacks evidence, the defendant must show that the plaintiff does not possess and cannot reasonably obtain needed evidence. (*Aguilar, supra,* 25 Cal.4th at 855.) A defendant may not simply point to an absence of evidence but must show that the plaintiff cannot reasonably obtain such evidence. (*Gaggero v. Yura* (2003) 108 Cal.App.4th 884, 891.)

A motion for summary judgment should be granted if no triable issue exists as to any material fact and the moving party is entitled to a judgment as a matter of law. (*Kahn v. East Side Union High School Dist.* (2003) 31 Cal.4th 990, 1002-1003.) "The moving party bears the burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact." (*Aguilar, supra,* 25 Cal.4th at 850.) Once this burden has been met, the burden shifts to the opposing party to make a prima facie showing of the existence of a triable issue of material fact. (*Ibid.*) "Any doubts as to the propriety of granting the motion are resolved in favor of the party opposing the motion." (*American Airline v. Sheppard, Mullin, Richter & Hampton* (2002) 96 Cal.App.4th 1017, 1048.) It is improper for the court to weigh the evidence or determine the credibility on a motion for summary judgment or adjudication. (*Binder v. Aetna Life Insurance Co.* (1999) 75 Cal.App.4th 832, 840.)

II. The Rafeedies' Request for Judicial Notice ("RJN")

The Court **DENIES** the RJN as to Exhibit A, Plaintiff's Complaint, as unnecessary because the Court has authority to look through its own file. (See *Davis v. Southern California Edison Company* (2011) 236 Cal.App.4th 619, 632, fn. 11 [judicial notice of document included in appellate record is unnecessary].)

III. Plaintiff's Evidentiary Objections

Plaintiff objects and moves to strike various portions of the separate declarations submitted by the Rafeedies on the grounds of misstates evidence, secondary evidence rule, hearsay, lacks personal knowledge, improper legal conclusion, lacks foundation, relevance, and improper opinion. The Court **SUSTAINS** objections 3 and 8 as lacks personal knowledge as phrased and **OVERRULE** the remainder of the objections as meritless.

IV. Plaintiff's Opposition to the Rafeedies' Separate Statement

Plaintiff disputes a number of the Rafeedies' Undisputed Facts ("UF"). However, many of these disputes are not true disputes because they are either consistent with the Rafeedies' evidence or the evidence Plaintiff provides does not dispute the UF.

For example, UF #3 for the MSJ portion states, "Plaintiff's Complaint alleges that, as she was 'walking towards the restroom within the subject premises, she stepped on unmarked and/or unsecured wires, cables and/or similar objects causing her to trip and fall." Plaintiff disputed this UF as incomplete and copies and pastes the entire narrative found on page 6 of the Complaint. Plaintiff does the same with UF #4, 5, 6, 10, 11. Plaintiff repeats this same pattern for a number of the UF under each MSA issue. The cited evidence does not actually contradict the UF in dispute.

"The opposing party's responses to the separate statement must be in good faith, responsive and material. Responses should directly address the fact stated, and if that fact is not in dispute, **the opposing party must so admit**. It is completely unhelpful to evade the stated fact in an attempt to create a dispute where none exists." (*Beltran v. Hard Rock Hotel Licensing, Inc.* (2023) 97 Cal.App.5th 865, 875-876.) "Courts should…not hesitate to disregard attempts to game the system by the opposing party claiming facts are 'disputed' when the uncontroverted evidence clearly shows otherwise." (*Id.* at 876.)

Accordingly, analysis on the merits is done by reliance on the evidence in support of the UF to determine if there truly is a factual dispute.

V. Merits

Plaintiff's Complaint contains two causes of action that are premised upon the same factual allegations: negligence and premises liability.

The elements of a cause of action for negligence are: (1) defendant's legal duty of care toward plaintiff, (2) defendant's breach of duty (the negligent act or omission), (3) injury to plaintiff as a result of the breach (proximate or legal cause), and (4) damage to plaintiff. (*County of Santa Clara v. Atlantic Richfield Co.* (2006) 137 Cal.App.4th 292, 318.)

Premises liability is a form of negligence wherein the owner of the premises is under a duty to exercise reasonable care in the management of such premises to avoid exposing persons to an unreasonable risk of harm. (Civ. Code § 1714, subd. (a); *Brooks v. Eugene Burger Management Corp.* (1989) 215 Cal.App.3d 1611, 1619.) To establish premises liability, a plaintiff must prove (a) the defendant was the owner, occupier, or lessor of the premises, (b) the defendant was negligent in the use, maintenance, or management of the premises, and (c) that the negligence was the cause of injury, damage, loss, or harm to the plaintiff. (*Brooks, supra,* 215 Cal.App.3d at 1619.)

a. Issue 3: Duty

The Rafeedies argue that because they did not control the interior of the Premises, no duty exists, citing *Steinmetz v. Stockton City Chamber of Commerce* (1985) 169 Cal.App.3d 1142 and *Gray v. American West Airlines, Inc.* (1989) 209 Cal.App.3d 76. However, *Steinmetz* involved a death that occurred on a premises that was not owned, possessed, or controlled by the defendants and is thus distinguishable. (*Steinmetz, supra,* 169 Cal.App.3d at 1146-1147.)

In contrast, Plaintiff argues that as the property owners and lessors, the Rafeedies have a nondelegable duty to maintain their premises in a reasonably safe condition, citing *Schreiber v. Lee* (2020) 47 Cal.App.5th 745, 757-758. However, *Schreiber* addressed duty in the context of a landlord delegating his duty to an independent contractor to safely maintain the property and is thus distinguishable.

Here, it is undisputed that the Rafeedies own the property where Beauty is located but leased the property to Amber Lopez for the operation of Beauty salon. (UF #1, 9.) Moreover, the Commercial Lease provides that the lessee is to maintain the premises in a safe condition and be responsible for all repairs. (UF #10-11.)

The facts here are analogous to *Gray, supra,* 209 Cal.App.3d 76. In *Gray,* an airline customer who tripped over luggage negligently left unattended by an unknown third party near the ticket counter sued the airline and port district which operated the airport. (*Id.* at 76, 79-80.) The airline leased its ticket counter from the port district, the operator of the airport, and had no control over the independent contractor the port district employed to maintain the concourse area where plaintiff was injured. (*Id.* at 80.) Plaintiff presented the port district's discovery response asserting the airline was responsible for managing the ticket counter area. (*Id.*) Even liberally construing plaintiff's evidence, the appellate court found it was insufficient to impose a duty on the airline based on foreseeability of the type of accident involved. (*Id.* at 83, 85.) The court held the airline showed it lacked control over the port district's concourse, and plaintiff failed to rebut that showing. (*Id.* at 84.)

Here, it is undisputed that Plaintiff finished her hair appointment with third party Teresa Robles, the owner of Beauty, when she stood up from the salon chair and tripped over a hairdryer cord wrapped around the chair. (UF #8, 12-13; Plaintiff Undisputed Fact ["PUF"] #1-4, 19-20, 22.) Robles was using that hairdryer. (Kershaw Decl., Exh. C, "Plaintiff Depo", pgs. 22:16-23:24; 24:17-25:17; PUF #10.) The Rafeedies also present evidence that the lessee, Lopez, and Robles controlled the interior of the Beauty salon, not the Rafeedies. (Lydia Rafeedie Decl., ¶6; Issam J. Rafeedie Decl., ¶6.)

Indeed, Plaintiff presents evidence that Robles has been the "owner, manager, and a cosmetologist" at Beauty since 1993 and her duties include "performing cleaning." (PUF #19, 20, 22; Plaintiff Appendix of Exhibits ["PAOE"], Exh. C., Robles Depo, pgs. 31:14-16; 33:8-11; 37:2-9.) Robles cleans and disinfects the shop after closing six days a week. (*Id.* at pg. 37:10-16.) Robles conducts inspections at Beauty. (*Id.* at pg. 133:14-18.)

Like the airline in *Gray*, the Rafeedies present evidence that they had no control over the interior of Beauty. Like *Gray*, the plaintiff here failed to rebut the Rafeedies' showing of no control. If anything, Plaintiff's presentation of Robles's deposition transcript evinces only Robles had control of the interior of Beauty. Applying *Gray*, Plaintiff's evidence is insufficient to impose a legal duty on the Rafeedies. The Court **GRANTS** the MSA as to Issue 3. Because issue 3 addresses whether a duty exists and is an element of negligence and premises liability that the Rafeedies have negated, Plaintiff's causes of action fail for purposes of Issues 1 (negligence cause of action) and 2 (premises liability cause of action).

b. Causation

i. Substantial Factor

The Rafeedies argue that they were not a substantial factor in causing Plaintiff's injuries.

"In order for a plaintiff to satisfy the causation element of a negligence cause of action, he or she must show the defendant's act or omission was a substantial factor in bringing about the plaintiff's harm…In other words, [the] plaintiff must show some substantial link or nexus between omission and injury." (*Leyva v. Garcia* (2018) 20 Cal.App.5th 1095, 1104.) To prevail on a claim for negligence or premises liability, the "injured plaintiff has the burden of showing that the owner had notice of the defect in sufficient time to correct it but failed to take reasonable steps to do so." (*Howard v. Omni Hotels Management Corp.* (2012) 203 Cal.App.4th 403, 431.) "Because the owner is not the insurer of the visitor's personal safety [citation], the owner's actual or constructive knowledge of the dangerous condition is a key to establishing its liability." (*Ortega v. Kmart Corp.* (2001) 26 Cal.4th at 1206; see *Getchell v. Rogers Jewelry* (2012) 203 Cal.App.4th 381, 385 ["property owner must have actual or constructive knowledge of a dangerous condition before liability will be imposed"].)

Constructive knowledge exists when the dangerous condition was present long enough for a reasonably prudent person to have discovered it. (*Ortega, supra,* 26 Cal.4th at 1206-1207.) The owner must inspect the premises or take other proper action to ascertain their condition, and if, by the exercise of reasonable care, the owner would have discovered the condition, he is liable for failing to correct it." (*Id.* at 1207.)

Plaintiff argues the Rafeedies' failure to inspect the interior at Beauty constitutes constructive notice of the dangerous condition, citing *Ortega, supra,* 26 Cal.4th at 1212-1213. However, this is not the precise holding in *Ortega.* In *Ortega,* a supermarket patron was injured when he slipped on a puddle of mud on the floor and sued the supermarket operator. (*Id.* at 1204.) The *Ortega* court specifically held that a plaintiff has the "burden of producing evidence that the dangerous condition existed for at least a sufficient time to support a finding that the defendant had constructive notice of the hazardous condition." (*Id.* at 1212.) It further held that a plaintiff may still demonstrate a storekeeper had constructive notice of a dangerous condition by showing that the site had not been inspected *within a reasonable period of time* so that a person exercising due care would have discovered and corrected the hazard. (*Ibid,* emphasis added.)

Plaintiff fails to present evidence that the Rafeedies had actual or constructive knowledge of the dangerous condition or have been able by the exercise of ordinary care to discovery the condition. Plaintiff argues the failure by the Rafeedies to do any inspection equates to actual or constructive knowledge. This is stretching the *Ortega* holding. Indeed, Plaintiff's evidence demonstrates there was no time for the Rafeedies to have actual and or constructive notice of the dangerous condition. (See undisputed UF #13; Robles Depo, pg. 51:7-9, ["But the minute she got up, she -- she slipped and ended up in between the first station and the middle station directly behind me"] and 20-21 ["At the time, it happened really fast, so we didn't -- we didn't understand what happened]; pg. 150: 12-17 [plaintiff got up from the chair and took one or two steps before she fell].) Applying *Ortega,* Plaintiff fails to present evidence that the Rafeedies were a substantial factor in causing Plaintiff's injuries.

ii. Independent Intervening Force

A superseding cause is an independent event that intervenes in the chain of causation, producing harm of a kind and degree so far beyond the risk the original wrongdoer should have foreseen that the law deems it unfair to hold him responsible. (*Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 573.) "In order to be 'independent' the intervening cause must be 'unforeseeable…an extraordinary and abnormal occurrence, which rises to the level of an exonerating, superseding causes.'" (*People v. Cervantes* (2001) 26 Cal.4th 860, 871.)

"The existence of an intervening act does not necessarily attenuate a defendant's negligence. Rather, 'the touchstone of the analysis is the foreseeability of that intervening conduct.'" (*Regents of University of California v. Superior Court* (2018) 4 Cal.5th 607, 631.) The question of foreseeability must be determined from a reasonable standard such that if injury is likely to occur. (*Sakiyama v. AMF Bowling Centers, Inc.* (2003) 110 Cal.App.4th 398, 406.)

The Rafeedies argue Plaintiff's injuries resulted from Robles's conduct in wrapping the hairdryer cord around Plaintiff's chair is a superseding cause for which the Rafeedies are not liable, citing *Suite v. Los Angeles Company* (1947) 79 Cal.App.2d 195. There, the plaintiff sustained injuries while riding as a passenger on when the bus suddenly stopped, throwing her to the floor. (*Id.* at 196.) The trial court found that the sole proximate cause of the accident was the negligence of a third party in turning an automobile without warning into the path of the bus, causing the operator to stop quickly to avoid a collision, which the Court of Appeal held is conclusive on appeal. (*Id.* at 200.) Because the trial court there weighed evidence at a bench trial (*id.* at 196), this case cannot be applied here for summary judgment where the trial court cannot weigh evidence. (*Binder, supra,* 75 Cal.App.4th at 840 [It is improper for the court to weigh evidence on a motion for summary judgment or adjudication].)

Likewise, the Rafeedies' reliance on *Hayden v. Paramount Productions Inc.* (1939) 33 Cal.App.2d 287, 293 is inapplicable here because the court in *Hayden* found the plaintiff knew of the dangerous condition and deliberately moved toward the danger. The Rafeedies thus fail to present legal authority applicable to the facts of the instant case.

In opposition, Plaintiff again relies on *Ortega* and argues that because the Rafeedies had constructive knowledge of the dangerous condition, the injury was foreseeable, and the Rafeedies are liable. However, as discussed previously, Plaintiff misapplies *Ortega* and in fact presented evidence that there was no reasonable time for the Rafeedies to have notice of the dangerous condition.

Given the foregoing, a trial issue of material fact exists as to the existence of an independent intervening act.

The motion for summary judgment is **GRANTED**. Moving party is ordered to give notice of ruling within 10 days of this order. Defendants Issam and Lydia Rafeedie are ordered to submit a **proposed judgment in their favor within 30 days of this order**.

3.

CASE #	CASE NAME	HEARING NAME
CVRI2501418	PATTERSON DENTAL SUPPLY, INC vs ZAREH	MOTION FOR ORDER FOR ATTORNEY'S FEES AND COSTS OF ENFORCING JUDGMENT

Tentative Ruling:

This motion is unopposed. Motion is granted. Proposed order granting motion has been signed and ordered filed with the Court. Moving party to give notice of ruling. Moving party to submit a proposed amended judgment within 30 days of this order. The matter is set for an OSC on 8/24/2026 regarding receipt of a proposed amended judgment.

4.

CASE #	CASE NAME	HEARING NAME
CVRI2600575	CORTEZ vs ASBURY MANAGEMENT SERVICES, LLC	MOTION TO COMPEL ARBITRATION

Tentative Ruling:

Moving party: Defendant, Asbury Management Services, LLC ("Defendant")
Responding party: Plaintiff, Robert Cortez ("Plaintiff")

Defendant brings a motion to compel arbitration of Plaintiff's claims. This is a representative action under the California Private Attorneys General Act of 2004 (["PAGA"], Lab. Code, § 2698 et seq.). On January 23, 2026, Plaintiff filed his Complaint in this action, alleging a single cause of action for violation of PAGA against the alleged employer Asbury Management Services, LLC. Plaintiff's claim is based on alleged violations of the various wage and hour regulations under the Labor Code, including (1) the failure to pay wages for all hours worked at the legal minimum wage, (2) failure to pay wages for overtime hours worked at the overtime rate of pay and/or failure to pay overtime wages at the proper rate of pay, (3) failure to pay wages to hourly non-exempt employees for workdays that Defendants failed to provide legally required and compliant meal periods and/or failure to pay period premium wages, (4) failure to pay wages to hourly non-exempt employees for workdays that Defendants failed to provide legally required and compliant rest periods and/or failure to pay rest period premium, (5) failure to indemnify for losses and expenditures incurred as part of employment, (6) failure to timely pay earned wages during employment, (7) secret payment of lower wages than designated by statute, (8) failure to provide complete and accurate wage statements, and (9) failure to pay employees all wages due at time of termination/resignation. (See Complaint, ¶¶ 10-39.)

In response to the Complaint, Defendant has filed the instant motion to compel Plaintiff to arbitrate his individual PAGA claims. Defendants argue that Plaintiff's claims must be compelled to arbitration because he executed a valid arbitration agreement as part of his ongoing employment that covers all claims whether or not they arise out of the employment relationship. Defendant argues that the Court has proper grounds to compel Plaintiff's individual PAGA claims to arbitration in light of the U.S. Supreme Court decision in *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639 (Viking River). Defendants argue that the nonindividual PAGA claims which remain pending in court must be stayed until the resolution of the arbitration proceeding. (*Adolph v. Uber Technologies, Inc*. (2023) 14 Cal.5th 1104, 1121-1122 [plaintiff who is compelled to arbitrate his individual PAGA claims does not lose standing simply by being compelled to arbitration individual claims]; Code Civ. Proc., 1281.4.)

Plaintiff, in opposition, argues that the motion should be denied on multiple grounds. Plaintiff first points out that the agreement expressly excludes from the scope of arbitrable claims any disputes brought on a "private attorney general basis" and based thereon argues that the claims asserted in this action is not covered by the arbitration agreement as such phrase refers generally to both individual and non-individual claims brought under PAGA because even individual claims are necessarily brought on a "private attorney general basis." Plaintiff argues that the U.S. Supreme Court's holding in *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639 does not lead to a different result because the arbitration agreement in this case excludes PAGA actions generally and did not contemplate the individual PAGA claim versus nonindividual PAGA claim distinction and an order severing Plaintiff's individual claim to be subject to arbitration would be rewriting the contract. Moreover, Plaintiff argues that the agreement is unenforceable on unconscionability grounds. Plaintiff argues that the manner in which the agreement was presented to him as condition to continual employment indicates that the agreement is a contract of adhesion and therefore procedurally unconscionable. Plaintiff also argues that the agreement's language requiring that an employee's claims be brought solely in an individual capacity, and not "in a private attorney general capacity," is tantamount to a wholesale waiver of representative claim under PAGA which is unenforceable under California law, and hence substantively unconscionable. Plaintiff argues that, because the illegal waiver cannot be severed from the agreement, such substantively unconscionable term permeates the agreement and warrants denial of the motion.

Defendant argues that the language Plaintiff relies on does not narrow the scope of arbitrable claims under the agreement but only restricts the claims from being brought on a representative basis. It argues that, even if the language of the agreement is ambiguous, the severability clause preserves the ability to arbitrate Plaintiff's individual claim. Defendant also argues that the arbitration agreement is not unconscionable as it meets the standards set forth *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 114 (Armendariz).

The motion will be denied.

<u>Analysis</u>

I. **The motion to compel arbitration is denied**.

a. *A valid arbitration agreement exists between Defendants and Plaintiff*.

In ruling on a motion to compel arbitration, the trial court considers the two " 'gateway issues' of arbitrability: (1) whether there is an agreement to arbitrate between the parties, and (2) whether the agreement covered the dispute at issue." (*Omar v. Ralphs Grocery Co*. (2004) 118 Cal.App.4th 955, 960, citing *Howsam v. Dean Witter Reynolds, Inc.* (2002) 537 U.S. 79, 84.) As such, the first threshold question when presented with a petition to compel arbitration is whether there is an agreement to arbitrate. (*Cheng-Canindin v. Renaissance Hotel Associates* (1996) 50 Cal.App.4th 676, 684; See 9 USC §2; Code Civ. Proc., §1281.) "Under the FAA, state contract law applies in order to ' "determine whether the parties have entered a binding agreement to arbitrate." [Citations.]" ' [Citation.]" (*Marenco v. DirecTV LLC* (2015) 233 Cal.App.4th 1409, 1412.) Here, as Defendant argues, the arbitration agreement in question should be governed by the Federal Arbitration Act ("FAA"). This point is not disputed by Plaintiff.

"In California, '[g]eneral principles of contract law determine whether the parties have entered a binding agreement to arbitrate.'[Citation.]" (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US) LLC* (2012) 55 Cal.4th 2223, 236; Code Civ. Proc., §1281.2 [requiring court to order arbitration "if it determines that an agreement to arbitrate exists"].) The party seeking to enforce the arbitration clause bears the burden of proving the existence of an arbitration agreement, and the party opposing enforcement bears the burden of proving any defense such as unconscionability. (*Ibid*.)

"As a preliminary matter the [trial] court is only required to make a finding of the agreement's existence, not an evidentiary determination of its validity. [Citation.]" (*Espejo v. Southern California Permanente Medical Group* (2016) 246 Cal.App.4th 1047, 1058 [defendant employer met its initial burden by attaching to petition to arbitrate a copy of the purported arbitration agreement bearing employee's electronic signature]; *Condee v. Longwood Management Corp*. (2001) 88 Cal.App.4th 215, 218-219.)

Here, Defendant has made the preliminary showing necessary for the court to find that an arbitration agreement exists between the parties by attaching a copy of the arbitration agreement to the supporting declaration of Defendant's Human Resources Director, Eric Coleman, whose responsibility is to maintain compliance of Defendants' online employee management and the onboarding of employees through the use of a platform called Dayforce. (Coleman Decl., ¶¶ 9-10.) Further according to the declaration, Coleman is familiar with and has access to Defendant's employee files and has reviewed Plaintiff's employment files containing a copy of the arbitration agreement electronically executed by Plaintiff on March 05, 2026. A copy of the arbitration agreement is attached to the declaration as an exhibit. (Coleman Decl., ¶ 12, Ex. A.)

Plaintiff does not deny signing the arbitration agreement. Instead, Plaintiff argues that Defendant has not met the showing that Plaintiff's claims alleged in his Complaint are covered by the scope of the arbitration agreement.

b. The Agreement does not cover the PAGA claims alleged in the Complaint as arbitrable claims.

The language of the arbitration agreement should determine whether it applies to a particular dispute. (*See Rebolledo v. Tilly's, Inc*. (2014) 228 Cal.App.4th 900, 913 [the parties' intention is determined from the writing alone (Civ. Code, §1639)].) The burden is on the party opposing a petition to compel arbitration to show the arbitration agreement cannot be interpreted to cover the dispute in question. (*Buckhorn v. St. Jude Heritage Medical Group* (2004) 121 Cal.App.4th 1401, 1406.)

Here, the arbitration agreement contains broadly worded language to include all claims between the parties, whether or not they arise out of the employment relationship:

> 2. DISPUTES SUBJECT TO ARBITRATION.
>
> A. Disputes subject to arbitration are all Disputes between the parties which may otherwise be brought in a court or before a governmental agency, whether or not arising out of ore related to the Individual's application for employment, employment, or termination of employment with the Company, and whether or not arising before, during or after any employment relationship between the parties. Also subject to arbitration are disputes involving any person or entity whose liability or right of recovery derives from a Dispute that is covered by this Agreement (e.g., spouse, heir, partner, agent, subsidiary or parent corporation, affiliate, shareholder, successor or

assign of a party. (Coleman Decl., ¶ 12, Ex. A [Arbitration Agreement, Section 2.A.].)

The agreement also includes language regarding waiver of class, collective, or representative action, by which Plaintiff agreed to bring any disputes on an individual basis only:

> D. Disputes submitted to arbitration pursuant to this Agreement shall be arbitrated on an individual basis and not on a consolidated, class, collective, or private attorney general basis, unless the parties agree otherwise in a writing signed by all parties. The parties expressly waive any right to arbitrate as a class representative, as a class member, in a collective action, or in or pursuant to a private attorney general capacity, and there shall be no joinder or consolidation of parties. Any arbitration shall be brought on a separate and individual basis. In the event an arbitrator or court determines a claim may be brought as a class or in a collective action, then the agreement to arbitrate that claim is null and void and such class or collective action must be brought in the appropriate court system and not in arbitration. In such case, the provision of Section 7, Waiver of Jury Trial set forth below shall still apply. (Id. at Section 2.D.)

Defendant argues that the above language is broadly worded to include any claims brought by an employee on an individual basis. Defendant argues that in light of the U.S. Supreme Court's holding in *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639, Plaintiff is required to arbitrate his "individual PAGA claims," separate from the non-individual PAGA claims of the aggrieved employees.

It has been the law in California that arbitration agreement requiring employees, as condition of employment, to agree to a wholesale waiver of right to bring PAGA representative action against the employer is unenforceable. As held by the California Supreme Court in *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, a waiver of PAGA claims are unenforceable and not preempted by the FAA. Before *Viking River* was decided, in California a single representative PAGA claim could not be "split into an arbitrable individual claim and a nonarbitrable representative claim." (*Williams v. Superior Court (Pinkerton Governmental Services, Inc.)* (2015) 237 Cal.App.4th 642, 649.)

On June 15, 2022, *Viking River, supra*, 596 U.S. 639 was decided by the U.S. Supreme Court, which held that an arbitration agreement between a former employer and employee that purportedly waived PAGA representative claims was invalid only insofar as it was a wholesale waiver of PAGA claims, but the agreement is enforceable insofar as it required arbitration of the employee's individual PAGA claim alleging a Labor Code violation. (*Id.* at 1924.) As such, under *Viking River*, *Iskanian* continues to be controlling as to the unenforceability of a wholesale waiver of PAGA claims, and only the former California rule that suggests that a single representative PAGA claim cannot be split into an arbitrable individual claim and a nonarbitrable representative claim has been abrogated. (*Ibid*.) Here, Defendant argues, based on the U.S. Supreme Court's holding, despite the agreement's restrictions on collective or representative actions, Plaintiff can still be compelled to arbitrate his individual PAGA claims.

Plaintiff opposes Defendant's interpretation and argues that the PAGA claims asserted against Defendants are not covered by the arbitration agreement to satisfy the second element of the showing required to compel arbitration. Plaintiff points out that the agreement, in Section 2.D., expressly excludes from the scope of arbitrable claims any disputes brought on a "private attorney general basis" and based thereon argues that the claims asserted in this action is not covered by the arbitration agreement as such phrase must be interpreted to refer generally to both individual and non-individual claims brought under PAGA because even individual claims are necessarily brought on a "private attorney general basis." Plaintiff argues that the U.S. Supreme Court's holding in *Viking River* does not lead to a different result because the arbitration agreement in this case excludes PAGA actions generally and did not contemplate the individual PAGA claim versus nonindividual PAGA claim distinction and an order severing Plaintiff's individual claim to be subject to arbitration would be rewriting the contract.

Plaintiff's interpretation is supported by the case of *Hasty v. American Automobile Assn. of Northern California* (2023) 98 Cal.App.5th 1041 (Hasty) in which the court interpreted the same phrase "in a private attorney general capacity" as meaning that "an employee may not bring a claim … either as an individual or as a nonindividual" given that an individual PAGA claim still meant that the individual is pursuing the claim in an "individual 'representative' capacity under the Act." (*Id.* at 1063.) The court noted that *Viking River* only "dealt with whether an employer could require an employee to bring Act claims in arbitration, when the employee brings such claim in his, her, or their individual 'representative' capacity under the Act." (*Ibid*.)

In reply, Defendant does not address the interpretation given by the court in *Hasty, supra*. Nor does Defendant provide a persuasive argument to adopt the interpretation that the phrase "in a private attorney general capacity" to mean that an employee is prohibited from arbitrating only the non-individual PAGA claims of other aggrieved employees. As noted by the court in *LaCour v. Marshalls of CA, LLC* (2025) 117 Cal.App.5th 505, "[t]he fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties at the time of contract formation. (Civ. Code, § 1636.)" (*Id.* at 521.) Court "ascertain that intention solely from the written contract if possible, but also consider the circumstances under which the contract was made and the matter to which it relates." (*Ibid*.) Here, the agreement is ambiguous and fails to be explicit as to whether it was meant to distinguish arbitrable PAGA claim versus those which are not. *Viking River* was decided before the subject arbitration agreement was drafted, and this is not the situation where foresight was lacking as to the "two separate constituent pieces of a PAGA action." (*Id*. at 522.) Ascertaining the parties' mutual intent must take into account the temporal benchmark existing and known at the time. (*Ibid*.)

c. The agreement is unenforceable on the ground of unconscionability.

"Unconscionable arbitration agreements are not enforceable." (*Wherry v. Award, Inc.* (2011) 192 Cal.App.4th 1242, 1245.) "To be voided on this ground, the agreement must be both procedurally and substantively unconscionable." (*Ibid*.) "But they need not be present to the same degree." (*Armendariz, supra,* 24 Cal.4th at 114.) Rather, the court invokes a "sliding scale" to determine unconscionability: "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, and vice versa." (*Ibid*.)

The same language discussed above also renders the agreement substantively unconscionable. Based on the interpretation provided in *Hasty, supra,* 98 Cal.App.5th 1041, the disputed language of arbitration agreement herein can only be interpreted to impose a wholesale waiver of PAGA claims which is unenforceable under existing California law.

Plaintiff also demonstrates that the arbitration agreement is at least minimally procedurally unconscionable to some degree as it was presented to him as a contract of adhesion. In support, Plaintiff submits his own declaration describing the circumstances in which the agreement was presented to him on a take-it-or-leave it basis. He states that he was already employed by Defendant when he was required to electronically sign the agreement. (Cortez Decl., ¶ 5.) He signed the arbitration agreement at work while he was busy performing his job duties. (Id. at 7, 17-19.) He claims that no one explained the agreement or the terms of the arbitration requiring him to waive his rights to a jury, or that he was agreeing to a waiver of class or representative action and did not understand the legal significance of the agreement. (Id. at ¶¶ 9-10.) Defendant did not tell Plaintiff he could negotiate any term, change the agreement, consult an attorney, or opt out. (Id. at ¶ 11.) He felt rushed when he signed and did not have time to carefully read and understand the agreement before signing and believed he had no realistic choice if he wanted to keep his job.

"The procedural element of an unconscionable contract generally takes the form of a contract of adhesion, which was imposed and drafted by the party of superior bargaining strength, relegates to the subscribing party only the opportunity to adhere to the contract or reject it." (*Little v. Auto Stiegler, Inc*. (2003) 29 Cal.4th 1064, 1071.) Plaintiff's declaration shows that contract was of an adhesive nature.

Here, Plaintiff has demonstrated the agreement contains both procedural and substantive unconscionability. Although, Plaintiff raises a wide array of other issues present in the agreement that goes to the question of unconscionability, those issues will not be addressed.

Moreover, the unconscionability permeates the entire agreement. The chances of a court severing an unenforceable clause while preserving the remainder of the agreement decrease as the circumstances and provisions that are viewed as "rife with unconscionability" requiring the arbitration agreement to be rejected. (*Wherry v. Award, Inc., supra,* 192 Cal.App.4th at 1250.) Here, the illegal language of cannot be severed to render the remaining portion of the agreement enforceable as the agreement expressly provide: “In the event an arbitrator or court determines a claim may be brought as a class or in a collective action, then the agreement to arbitrate that claim is null and void and such class or collective action must be brought in the appropriate court system and not in arbitration.” (Id. at Section 2.D.)

Based on the foregoing, the motion is denied.

5.

CASE #	**CASE NAME**	**HEARING NAME**
CVRI2602868	STELLANTIS FINANCIAL SERVICES, INC vs PYLES	NOTICE OF APPLICATION FOR WRIT OF POSSESSION - CLAIM AND DELIVERY

Tentative Ruling:

Writ of Possession is granted. Submitted order to the Court has been signed and ordered filed. Moving party to give notice.