SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 09/17/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV2103777

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: ANGELINA MARTINEZ vs. DEFENDANT: NOVATO HEALTHCARE CENTER, LLC, ET AL	

NATURE OF PROCEEDINGS: MOTION – SEVERE/BIFURCATE

RULING

Defendants filed a motion to bifurcate trial into two phases to determine liability and compensatory damages in the first phase, and punitive damages and alter ego in the second phase. Plaintiff filed a statement of non-opposition, stating they do not oppose Defendants' motion. A failure to oppose a motion may be deemed a consent to the granting of the motion. (Cal. Rules of Court, rule 8.54, subd. (c).)

In light of the non-opposition, the motion is granted.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for September 2025 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1615487764?pwd=Ob4B5J7LLKcpnkxzJjjEOSHNzEGafG.1

Meeting ID: 161 548 7764
Passcode: 502070

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 09/17/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0000941

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: GABBY BUNNELL, ET AL	
vs.	
DEFENDANT: PETER LEVI PLUMBING, LLC	

NATURE OF PROCEEDINGS: MOTION - DISMISS

RULING

Plaintiffs Gabby Bunnell and Vince Recendez ("Plaintiffs") filed a notice of motion to approve dismissal of class and PAGA claims. Plaintiffs request dismissal of the entire action, including the alleged class claims and PAGA claims with prejudice to them, and without prejudice to the class members and aggrieved employees. Plaintiffs individually resolved these claims and many of the potential class members have also executed releases releasing their wage claims. Additionally, potential class members were never notified of this pendency and therefore will not suffer prejudice from the dismissal without prejudice.

Additionally, no opposition has been filed. In light of the above, the court grants Plaintiffs' motion and orders dismissal of the Plaintiffs' complaint with prejudice, and of class members without prejudice. Plaintiffs shall submit a proposed order for signature.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 09/17/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0001681

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: SUSAN OLIN vs. DEFENDANT: MARIN POST ACUTE, ET AL	

NATURE OF PROCEEDINGS: MOTION – COMPEL

RULING

Defendants Marinidence OPCO, LLC (d/b/a Marin Post Acute); Providence Group, Inc.; Egan Properties, Inc.; PACS Group, Inc.; Providence Group North, LLC; and Ethan Flake's (together, "Defendants") motion to compel arbitration is GRANTED as to any claims brought by Susan Olin (deceased) through Joseph Olin as her personal representative. (9 U.S.C. §§ 3, 4.) It is DENIED as to any claims brought by Joseph Olin in his individual capacity. Litigation of this entire action is stayed pending arbitration of Susan Olin's claims. (9 U.S.C. § 3; *Moses H. Cone Memorial Hosp. v. Mercery Constr. Corp.* (1983) 460 U.S. 1, 20, fn. 23.)

BACKGROUND

Plaintiffs Susan and Joseph Olin's (together, "Plaintiffs") First Amended Complaint ("FAC") alleges that Defendants operated Marin Post Acute, a skilled nursing facility in San Rafael. (FAC, ¶ 11.) On December 5, 2021, Susan Olin, who is now deceased, was admitted to Marin Post Acute for rehabilitative care after fracturing her neck. (*Id.* at ¶¶ 12, 15.) During her time in the facility, Ms. Olin allegedly developed pressure injuries that became infected and caused her death. (*Id.* at ¶ 16.) The FAC asserts causes of action for statutory dependent adult abuse (Welf. & Inst. Code, § 15600, *et seq.*); violation of the Patients' Bill of Rights (Health & Saf. Code, § 1430; Cal. Code Regs., tit. 22, § 72527, subd. (a)); negligence; and a claim denominated "Survival Action."[1]

[1] "In California, 'a survival action is not an independent cause of action, it is a procedural vehicle to ensure that "a cause of action for or against a person is not lost by reason of the person's death, but survives subject to the applicable limitations period." ' " (*Saurman v. Peter's Landing Property Owner, LLC* (2024) 103 Cal.App.5th 1148, 1165; see also *San Diego Gas & Electric Co. v. Superior Court* (2007) 146 Cal.App.4th 1545, 1544.)

On December 7, 2021, Susan Olin signed an arbitration agreement with Marin Post Acute. (Truong Dec., ¶ 10 & Ex. I.) Defendants now move to compel arbitration of all causes of action in the FAC and to stay this action pending arbitration.

LEGAL STANDARD

A party to an arbitration agreement may seek a court order compelling the parties to arbitrate a dispute covered by the agreement. (Code Civ. Proc., § 1281.) A written agreement to submit future controversies to arbitration is valid, enforceable, and irrevocable, save upon such grounds as exist for the revocation of any contract. (*Ibid.*) When deciding whether an agreement to arbitrate exists, state courts are to apply the ordinary principles of state law that govern the formation and enforcement of contracts. (*Sandquist v. Lebo Automotive, Inc.* (2016) 1 Cal.5th 233, 244; *Duffens v. Valenti* (2008) 161 Cal.App.4th 434, 443.) If the Federal Arbitration Act ("FAA"), as opposed to state law, governs the contract, the court is required to compel arbitration "upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue" and to order a stay pending the outcome of the arbitration. (9 U.S.C. §§ 3, 4.)

On a motion to compel arbitration, the moving party must prove by a preponderance of evidence the existence of the arbitration agreement and that the dispute is covered by the agreement. The burden then shifts to the resisting party to prove by a preponderance of evidence a ground for denial (e.g., fraud, unconscionability, etc.). (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413-414); *Hotels Nevada v. L.A. Pacific Center, Inc.* (2006) 144 Cal.App.4th 754, 758.)

DISCUSSION

Procedural Matters

The FAC does not identify, for "[e]ach separately stated cause of action," "[t]he party asserting it" and "[t]he party or parties to whom it is directed[.]" (Cal. Rules of Court, rule 2.112.) Identifying which parties are asserting which claims was required here because "more than one party is represented in the pleading": (1) Susan Olin, through Joseph, and (2) Joseph in his individual capacity. Plaintiffs are reminded to follow all applicable rules when filing documents before the Court.

Joseph Olin's Claims

The parties dispute whether Joseph Olin can be compelled to arbitrate his individual claim for wrongful death.[2] The "general rule" is "that third party nonsignatories to an arbitration

[2] This motion to compel postdates the FAC by over a year, but the parties write as though the original complaint remains operative. The original complaint, filed December 27, 2023, asserted five causes of action: violation of the Patient's Bill of Rights; statutory elder abuse and neglect; negligence; *wrongful death*; and a cause of action labeled "survivorship." The FAC, filed June 20, 2024, states four causes of action. It removed the cause of action for wrongful death from the body of the complaint, although it is still listed in the pleading's caption. Regardless, in their moving brief, Defendants state that the FAC lists *five* causes of action, including one for wrongful death, and Plaintiffs agree that Joseph Olin asserts a wrongful death claim in his individual capacity. (Memorandum, p. 2:

agreement cannot be bound by it." (*Daniels v. Sunrise Senior Living, Inc.* (2013) 212 Cal.App.4th 674, 681.) The Supreme Court recognized an exception to this general rule in *Ruiz v. Podolsky* (2010) 50 Cal.4th 838. *Ruiz* concerned Code of Civil Procedure, section 1295 ("Section 1295"), which insulates certain arbitration provisions from being deemed adhesive, unconscionable, or "otherwise improper" provided they appear in a specified form. Section 1295 applies to any "provision for arbitration of any dispute as to professional negligence of a health care provider" appearing in a "contract for medical services[.]" (Code Civ. Proc., § 1295, subd. (a).) *Ruiz* held that where a patient enters into an arbitration agreement covered by Section 1295 and compliant with that statute's requirements, and the arbitration agreement contains language binding nonsignatory wrongful death claimants, that language is enforceable. (*Ruiz, supra*, 50 Cal.4th 838, 841; see also *Daniels, supra*, 212 Cal.App.4th 674, 682 [discussing *Ruiz*].)

Ruiz does not apply "to arbitration agreements not governed by section 1295, or that are entered into with a person other than a health care provider for claims other than medical malpractice." (*Daniels, supra*, 212 Cal.App.4th 674, 683.) *Daniels* recognized that Section 1295's definition of "health care provider" does not cover residential care facilities for the elderly, so claims arising out of the conduct of such facilities fall outside the statute's reach. (212 Cal.App.4th 674, 684.)

Plaintiffs argue that Marin Post Acute is a "residential care facility" that does not qualify as a "health care provider" under Section 1295. Defendants do not respond to this argument except to say, without citation to authority, that "this case involves a skilled nursing facility that qualifies as a healthcare provider under California law." (Reply, p. 4.)

The party relying on Section 1295 has the burden of showing that it applies. (*Swain v. LaserAway Medical Group, Inc.* (2020) 57 Cal.App.5th 59, 76.) Defendants have not offered any evidence to establish that Marin Post Acute is a "health care provider" as defined in Code of Civil Procedure, section 1295, subdivision (g)(1). Accordingly, under *Daniels*, *Ruiz*'s exception to the general rule that nonsignatories to an arbitration agreement cannot be compelled to arbitrate is inapplicable here.

Because Defendants have not mounted any argument for the compelled arbitration of any of Joseph Olin's individual claims divorced from Section 1295, the motion is denied as to all of his individual claims.

Susan Olin's Claims

Lack of Capacity and Undue Influence

To enter into a contract, a person must be "mentally competent to deal with the subject before him with a full understanding of his rights" and must "actually [understand] the nature, purpose and effect" of what he is signing. (*Drum v. Bummer* (1946) 77 Cal.App.2d 453, 460; see also Civ. Code, § 38.) There is a rebuttable presumption "that all persons have the capacity to make decisions and to be responsible for their acts or decisions." (Prob. Code, § 810, subd. (a).)

Opposition, p. 9.) Based on the wording of the FAC, the Court understands the FAC's Third Cause of Action ("Negligence") to constitute Joseph Olin's individual cause of action for wrongful death.

Plaintiffs argue that Ms. Olin lacked capacity to contract at the time she signed the arbitration agreement. Ms. Olin, aged nearly 82, had a fractured femur and sacrum and was severely malnourished, on top of having several other conditions typical of advanced age (osteoporosis, generalized muscle weakness, etc.). (Clause Dec., Ex. 2 [Retana deposition transcript excerpts] at Ex. 7.) Two days earlier, the day she was admitted, she had been prescribed mirtazapine for depression and hydrocodone for severe pain. (Clause Dec., Ex. 3.)

There is no evidence of Ms. Olin's actual mental state at the time she signed the arbitration agreement. The bare fact that she was 82 years old is not probative of her soundness of mind. The same goes for her poor physical condition. (See Prob. Code, § 810, subd. (c) [a judgment that a person lacks the legal capacity to perform an act "should be based on evidence of a deficit in one or more of the person's mental functions rather than on a diagnosis of a person's mental or physical disorder"].) There is no evidence before the Court regarding the effects, generally speaking, of the medications she had been prescribed, nor is there evidence that they were causing Ms. Olin to be drowsy or confused. It is unclear whether Ms. Olin was even on the hydrocodone at the time she signed these papers. One presumes the facility administered the medication to her as prescribed, and her prescription instructed that she take it only "every 4 hours as needed for Severe Pain." (Clause Dec., Ex. 3.) There is no evidence that she was still taking it by the third day of her hospital stay. Plaintiffs have not rebutted the presumption that Ms. Olin had capacity to contract.

For similar reasons, the Court finds Plaintiffs' undue influence argument unconvincing. " 'Undue influence' means excessive persuasion that causes another person to act or refrain from acting by overcoming that person's free will and results in inequity." (Welf. & Inst. Code, § 15610.70; see also Civ. Code, § 1575.) "In determining whether a result was produced by undue influence[,]" the Court is required to consider the victim's vulnerability; "[t]he influencer's apparent authority"; the actions or tactics the influencer used; and the equity of the result. (Welf. & Inst. Code, § 15610.70.) Ms. Olin was vulnerable in that she was elderly, injured, and dependent on others for care. (See Welf. & Inst. Code, § 15610.70, subd. (a)(1).) Defendants' role as a healthcare provider lends an element of authority to the transaction. (Welf. & Inst. Code, § 15610.70, subd. (a)(2).) But if this were enough for a finding of undue influence, no elderly adult with an injury would be able to enter valid contracts for their own care, regardless of their mental soundness. All that remains is the fact that Ms. Olin was presented with the arbitration agreement in a hasty manner and at an inappropriate time (while she was having her vitals taken). (Welf. & Inst. Code, § 15610.70, subd. (a)(3)(C).) These circumstances do not rise to the level of undue influence.

Unconscionability

"Because unconscionability is a reason for refusing to enforce contracts generally, it is also a valid reason for refusing to enforce an arbitration agreement[.]" (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 114; see also Code Civ. Proc., § 1281.) The prevailing view is that for a court to refuse to enforce a contract due to unconscionability, each of two types of unconscionability must be present, but not necessarily to the same degree. (*Armendariz, supra*, 24 Cal.4th 83, 114.) "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, 793.)

"Substantive unconscionability arises when a contract imposes unduly harsh, oppressive, or one-sided terms." (*Id.* at p. 795.) "[T]he 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." (*Armendariz, supra,* 24 Cal.4th 83, 114.)

Plaintiffs argue that Ms. Olin was presented with the arbitration agreement under circumstances that gave her no meaningful opportunity to understand it. Marin Post Acute's Admissions Coordinator, Sarah Retana, presented the documents to Ms. Olin on an iPad and invited her to sign by tapping the screen. (Clause Dec., Ex. 2, 28:10-13, 36:8-15; Truong Dec., Ex. H, ¶ 12.) Retana had no memory of her interaction with Ms. Olin, but has given evidence as to her typical practices. (Truong Dec., Ex. H, ¶ 6.) When she uses an iPad to execute admissions paperwork with patients, it is her practice to scroll through the documents herself while describing them and presenting them for signature. (Truong Dec., Ex. G, 33:24-34:9.) This means she controls the speed at which the documents are presented to the patient. It is also her practice to explain, while presenting the arbitration agreement, that signing the agreement is optional and the patient does not have to sign to be admitted. (Truong Dec., Ex. H, ¶¶ 15-17.) She explains that in the event of a dispute, the parties will proceed through a third-party arbitrator, and signing means the patient is waiving her right to litigate disputes through the court system. (*Ibid.*) Similar statements appear in large text on the arbitration agreement itself. (See Truong Dec., Ex. I.) Sarah Retana testified that when she goes over the arbitration agreement with a patient, it typically takes at least 30 seconds and up to two minutes, assuming the patient did not ask any questions. (Clause Dec., Ex. 2, 58:7-10.)

The evidence strongly suggests that whatever Retana's regular practice is, in Ms. Olin's case, she was simply scrolling through the paperwork and collecting signatures in a manner that was not conducive to Ms. Olin's understanding what she was signing. At the same time, there is no evidence that Ms. Olin was prevented from demanding Retana slow down, come back when the nurses were finished working, and/or allow Ms. Olin time to read the contracts herself, either on the iPad or in hard copy. The law imposes on those who sign contracts a duty to read them. (*Desert Outdoor Advertising v. Superior Court* (2011) 196 Cal.App.4th 866, 872 ["A cardinal rule of contract law is that a party's failure to read a contract, or to carefully read a contract, before signing it is no defense to the contract's enforcement."].) As discussed, all indications are that Ms. Olin was mentally competent to contract, so the Court does not see why she should be absolved of the responsibility to facilitate her own meaningful opportunity to read the documents under the circumstances presented here.

Finally, Plaintiffs have not argued that the arbitration agreement is substantively unconscionable. He would need overwhelming evidence of procedural unconscionability to invalidate the contract on that basis, given the prevailing view that both forms of unconscionability must be present. (*Armendariz, supra,* 24 Cal.4th 83, 114.)

Because Ms. Olin signed the arbitration agreement and there is no dispute that it covers her claims, an agreement to arbitrate existed. The Court concludes that Ms. Olin can be compelled to arbitrate her claims.

Code of Civil Procedure, section 1281.2

Plaintiffs argue that if the Court concludes, as it has, that Joseph Olin cannot be compelled to arbitrate his personal wrongful death claim, the Court should refuse to compel arbitration of Susan Olin's claims. They rely on Code of Civil Procedure, section 1281.2, subdivision (c). That statute gives a court discretion to refuse to arbitrate a controversy, even where it determines that the parties have in fact agreed to arbitrate, under specified circumstances.

The arbitration agreement provides that "this Agreement shall be construed and enforced in accordance with and governed by the F.A.A. and . . . the procedures set forth in the F.A.A. shall govern any petition to compel arbitration." (Truong Dec., Ex. I, § 4.) It further includes the following language:

> "The parties agree that the California Code of Civil Procedure shall not govern this Agreement. Accordingly, the parties agree that California Code of Civil Procedure §1281.2(c) is excluded from this Agreement. The parties do not want any claims not subject to arbitration to impede any and all other claims from being ordered to binding contractual arbitration."

(Truong Dec., Ex. I, § 5.)

Parties to an arbitration agreement "may 'expressly designate that any arbitration proceeding [may] move forward under the FAA's procedural provisions rather than under state procedural law.'" (*Valencia v. Smyth* (2010) 185 Cal.App.4th 153, 174 [quoting *Cronus Investments, Inc. v. Concierge Services* (2005) 35 Cal.4th 376, 394] [emphasis and alteration in original].) Here, the arbitration agreement both expressly adopted the FAA's procedural rules for petitions to compel arbitration and expressly disavowed California's procedural rules, including specifically Section 1281.2(c). The Court concludes that Section 1281.2(c) is inapplicable here.

Scope of Stay

The FAA requires that a court stay litigation of any arbitrable claims pending the outcome of the arbitration. (9 U.S.C. § 3.) Whether to stay *nonarbitrable* claims pending arbitration of the arbitrable claims is "soundly vested in the court's discretionary authority to control it's [*sic*] docket." (*Benson Pump Co. v. South Cent. Pool Supply, Inc.* (D.Nev. 2004) 325 F.Supp.2d 1152, 1160; *Moses H. Cone, supra,* 460 U.S. 1, 20, fn. 23 [103 S.Ct. 927] [superseded by statute on unrelated grounds as stated in *Bradford-Scott Data Corp., Inc. v. Physician Computer Networks, Inc.* (7th Cir. 1997) 128 F.3d 504, 506].) That the arbitration is likely to resolve questions of fact that are also at issue in the nonarbitrable portion of the case may suggest that all proceedings should be stayed until the arbitration is completed. (*American Home Assur. Co. v. Vecco Concrete Const. Co., Inc. of Virginia* (4th.Cir 1980) 629 F.2d 961, 964.)

Here, the same factual questions are likely to come up in both the arbitration of Susan Olin's claims and the litigation of Joseph Olin's. In the interest of judicial efficiency, it is appropriate to stay this entire case pending the arbitration of Susan Olin's claims.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.20(B) to contest the tentative decision. Parties who request oral argument are required to appear in

person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 09/17/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0005602

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: JORDAN KRETCHMER vs. DEFENDANT: SAN FRANCISCO INVESTMENT DEVELOPMENT, INC.	

NATURE OF PROCEEDINGS: MOTION – REIMBURSEMENT OF COSTS

RULING

Plaintiff filed a motion to recover expenses in the amount of $3,806,98 incurred in serving Defendants. As set forth in Plaintiffs' proof of service, a notice of hearing was served on all parties on July 15, 2025. No opposition was filed to the motion. A failure to oppose a motion may be deemed a consent to the granting of the motion. (Cal. Rules of Court, rule 8.54, subd. (c).) Failure to oppose a motion may also lead to the presumption that [plaintiff] has no meritorious arguments. (See *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal. App. 3d 481, 489, disapproved of by *Garcia v. McCutchen* (1997) 16 Cal.4th 469, on other grounds.)

In light of the failure to file an opposition, Plaintiff's motion to recover $3,806.98 is granted, to be paid within 30 days of the date of this order.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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