TENTATIVE RULINGS

FOR: September 3, 2020

If you do not see a tentative ruling for a scheduled matter, then attendance at the hearing is required.

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PROBATE CALENDAR – Hon. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.

Conservatorship of Elizabeth P. Hilton **17PR000064**

SECOND ACCOUNT AND REPORT OF CONSERVATOR AND PETITION FOR ITS SETTLEMENT AND FOR FEES

TENTATIVE RULING: The Petition is GRANTED, including fees as prayed.

Based on the report of the court investigator, the Court determines by clear and convincing evidence that the Conservatee cannot communicate, with or without reasonable accommodation, a desire to participate in the voting process, and therefore orders the Conservatee disqualified from voting pursuant to Elections Code section 2208.

After a review of the matter, the Court finds the Conservator is acting in the best interest of the Conservatee. Thus, the matter is set for a biennial review hearing and an accounting in two years on September 2, 2022, at 8:30 a.m. in Dept. A. All accounting documents must be filed at least 30 days prior to the hearing. The court investigator shall prepare a biennial investigator report for the next hearing date. The clerk is directed to send notice to the parties.

Estate of Ronald W. Miller **19PR000254**

FIRST AND FINAL REPORT OF EXECUTOR ON WAIVER OF ACCOUNT AND PETITION FOR ITS SETTLEMENT, FOR ALLOWANCE OF ATTORNEY'S FEES FOR ORDINARY SERVICES, REIMBURSEMENT OF COSTS ADVANCED BY ATTORNEYS, AND FOR FINAL DISTRIBUTION

TENTATIVE RULING: GRANT petition, including fees as prayed.

CIVIL LAW & MOTION CALENDAR – Hon. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.

Francis Wang v. Peter Peletta, *et al*. **19CV000342**

DEFENDANT'S MOTION TO COMPEL DISCOVERY RESPONSES

TENTATIVE RULING: The motion to compel responses is GRANTED. Plaintiff is ordered to produce, within 10 court days of notice of entry of this order, responses to the Supplemental Interrogatories, Set One, and Supplemental Request for Production, Set One served on February 19, 2020. The request for monetary sanctions is also GRANTED. Plaintiff is ordered to pay to Defendant's counsel, within 10 court days of notice of entry of this order, sanctions in the amount of $1,810.00.

Defendant and Cross-Complainant Peter Peletta moves the Court for an order compelling Plaintiff Francis Wang to respond to Supplemental Interrogatories, Set One, and Supplemental Requests for Production, Set One, and for monetary sanctions.

Through her opposition, Plaintiff acknowledges that on or about February 19, 2020, Defendant served her with Supplemental Form Interrogatories, Supplemental Special Interrogatories and Supplemental Document Production Requests. (Opposition at 2:3-5.) "In addition to the number of interrogatories permitted by Sections 2030.030 and 2030.040, a party may propound a supplemental interrogatory to elicit any later acquired information bearing on all answers previously made by any party in response to interrogatories." (Code Civ. Proc. §2030.070, subd. (a).) Similarly, "[i]n addition to the demands for inspection, copying, testing, or sampling permitted by this chapter, a party may propound a supplemental demand to inspect, copy, test, or sample any later acquired or discovered documents, tangible things, land or other

property, or electronically stored information in the possession, custody, or control of the party on whom the demand is made." (Code Civ. Proc. §2031.050, subd. (a).)

It is apparent from Plaintiff's opposition that, as of the filing of the present Motion, Plaintiff had not served answers to that discovery. (*Id*. at 3:18-4:3.) The only rationale offered by Plaintiff for her failure to respond is as follows. "The current pieces of discovery which are the subject of this motion were rendered substantially out of date by the filing of the First Amended Complaint, because the initial discovery requests were based on the original Complaint." (*Id*. at 3:10-13.) Plaintiff does not provide the Court with authority suggesting that the filing of an amended complaint relieves the pleading party of her obligations to respond to discovery. The Court knows of none.

For the foregoing reasons, Defendant's motion to compel responses is GRANTED.

Defendant's request for monetary sanctions is also GRANTED. "The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a response" to interrogatories and/or a demand for inspection, "unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code Civ. Proc. §§2030.290, subd. (c), 2031.300, subd. (c).)

In arguing that sanctions would be unjust, Plaintiff asserts only that "[t]he supplemental discovery requests were extensive, and totally ignored the fact that they were largely out-of-date because of the filing of the First Amended Complaint." (Opposition at 5:11-12.) The Court concludes that the argument is made without substantial justification based on the lack of authority supporting Plaintiff's position. Moreover, the Court notes Plaintiff's counsel's admission that "[b]efore this Motion was filed, I prepared answers to the Supplemental Form Interrogatories, Supplemental Special Interrogatories and Supplemental Document Requests and counsel for Defendant knew this." (Spohn Decl. at ¶15.) Plaintiff does not, however, provide any explanation as to why such answers were not served on Defendant. The Court finds the foregoing constitutes misuse of the discovery process. (Code Civ. Proc. §2023.030.)

The Court finds that Defendant has incurred expenses, including attorneys' fees, in the amount of $1,810.00 as a result of Plaintiff's misuse of the discovery process as described herein above. (Smith Decl. at ¶17.) The Court finds this amount reasonable. (Code Civ. Proc. §2023.030, subd. (a).)

Autovest, L.L.C. v. Francisco Garcia, *et al.* **20CV000274**

CROSS-DEFENDANTS' MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS

TENTATIVE RULING: The matter is on after continuance from August 13, 2020. At that hearing, the parties asked to continue the matter in order to attempt to reach an agreement on

the pending issues. There is no indication in the Court's file that any such agreement has been reached. Therefore, the Court posts the following Tentative Ruling.

Plaintiff and Cross-Defendant Autovest, L.L.C. (Autovest) and Cross-Defendant First Investors Financial Services, Inc. (First Investors) (collectively Cross-Defendants) move the Court, pursuant to the Federal Arbitration Act, for an order compelling Defendants and Cross-Complainants Garcia and Asuncion Garcia (collectively the Garcias) to arbitrate the claims asserted in this action on an individual non-class basis. Cross-Defendants further seek an order staying the action pending the completion of arbitration.

The motion for an order compelling the Garcias to arbitrate the claims asserted in this action is GRANTED. Cross-Defendant's request for an order staying the proceedings is GRANTED IN PART. The proceedings are stayed, pending the completion of arbitration, for all purposes other than any motion or application for a Court order appointing an arbitrator. The matter is set for status conference on February 12, 2021, 8:30 a.m. in Dept. A.

A. Evidentiary Objections

The Court rules as follows on Cross-Defendants' objections to the Declaration of Francisco Garcia.

Objection No. 1: OVERRULED. Evidence Code §1523 addresses the admissibility of the "content of a writing." The quoted passage does not address the content of the subject documents, but rather their form.

Objection No. 2-3: OVERRULED. Statements against interest by ostensible agent(s) of Cross-Defendants.

Objection No. 4-5: OVERRULED. Neither of the stated grounds are applicable to the statement.

The Court rules as follows on Cross-Defendants' objections to the Declaration of Adam McNeile.

Objection No. 1-4: GRANTED. Moreover, none of the subject statements are relevant to the Court's resolution of the issues raised by the motion.

B. Factual and Procedural Background

This case arises out of the breakdown of an automobile financing relationship entered into by and between the Garcias and First Investors. The following general facts appear undisputed for purposes of this motion. In March 2015, the Garcias purchased a 2008 GMC Yukon. The Garcias financed the purchase through First Investors. (See Declaration of Blaise G. Rodon (Rodon Decl.) at ¶5, Exh. 1.) Cross-Defendants here assert that at the time of the purchase and financing, the Garcias and First Investors also entered into an arbitration agreement (Arbitration Agreement). (*Id*. at ¶6, Exh. 2.) The Garcias present evidence that Mrs. Garcia did not participate in any part of the negotiations or transaction, other than to provide her signature. (Declaration of Francisco Garcia (Garcia Decl.) at ¶8.) Mr. Garcia declares that he does not

remember seeing the arbitration agreement at the time of the vehicle purchase. (*Ibid*.) Mr. Garcia further declares as follows:

> The dealership did not instruct me or allow me sufficient time to read any of the purchase documents. After presenting these documents to sign, the dealership quickly flipped through them. He never explained any of the documents that I was signing and simply told me to sign and initial the documents in numerous places. The dealership did not show me any document that contains an arbitration clause, or explain to me that I was agreeing to any arbitration clause. (*Id*. at ¶7.)

Finally, Mr. Garcia declares that "I retained the documents that the dealership provided me, and the arbitration agreement is not among those documents." (*Ibid*.)

Importantly, however, the Garcias do not contend that they did not sign the Arbitration Agreement; Nor do the Garcias raise any suspicion regarding the authenticity of those signatures.

The Garcias were unable to stay current on their payments under the financing agreement. (See Support Memo at 2:21.) In or around June 2016, First Investors repossessed the vehicle, and sold it. Cross-Defendants assert that after the sale proceeds were applied to the outstanding balance, a deficiency of $15,036.38 remained. Cross-Defendants further assert that in May 2017, all rights under the financing agreement were sold to Autovest. (Support Memo at 5:2-5.)

Autovest filed the Complaint in this action against the Garcias seeking to recover the deficiency balance. The Garcias then filed a class action cross-complaint against Cross-Defendants claiming that certain aspects of the foreclosure and repossession process violated California's Rees-Levering Automobile Sales Finance Act, Rosenthal Fair Debt Collection Practices Act, and Unfair Competition Law. (See Cross-Complaint.)

This motion followed.

C. Legal Analysis

A proceeding to compel arbitration is, in essence, a suit in equity to compel specific performance of a contract. (*California Teachers Assn. v. Governing Bd.* (1984) 161 Cal.App.3d 393, 399.) On a motion to compel arbitration, supported by prima facie evidence of a written agreement to arbitrate the underlying controversy, the court must determine whether the agreement exists and, if any defense to its enforcement is raised, whether the agreement is enforceable. (*Rosenthal v. Great Western Financial Sec. Corp.* (1996) 14 Cal.4th 394, 413.) The moving party bears the burden of proving the existence of the agreement by a preponderance of the evidence. (*Ibid.*) The opposing party bears the burden of producing evidence of and proving (by a preponderance) any fact necessary to any defense raised. (*Ibid.*)

Both California and federal law strongly favor arbitration. (*Prima Donna Development Corp. v. Wells Fargo Bank, N.A.* (2019) 42 Cal.App.5th 22, 35 (*Prima Donna*).) It appears uncontroverted that the Federal Arbitration Act (FAA) governs the arbitration agreement at issue in this case. By its terms, the Arbitration Agreement provided that "[a]ny arbitration under this Agreement shall be governed by the Federal Arbitration Act (9 U.S.C. §1, *et. seq*.) and not by any state law concerning arbitration." (Rodon Decl. at Exh. 2.) The FAA requires that courts

enforce arbitration agreements according to their terms. (*Volt Info. Sciences v. Leland Stanford Jr. U.* (1989) 489 U.S. 468, 478 [103 L.Ed.2d 488, 109 S.Ct. 1248] (*Volt*).) No other provision in the arbitration agreement suggests the parties intended to incorporate any other body of arbitration law, and therefore the FAA controls our interpretation of the agreement. (See *Rodriguez v. American Technologies, Inc.* (2006) 136 Cal.App.4th 1110, 1121–1122.)

The FAA generally restricts states' rights to limit the enforceability of arbitration agreements or clauses. (See *Prima Donna*, *supra*, 42 Cal.App.5th at 36.) However, "the FAA contains a 'saving clause,' which 'permits agreements to arbitrate to be invalidated by generally applicable contract defenses, such as fraud, duress, or unconscionability.'" (*Id.*, quoting *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 339.)

Cross-Defendants present *prima facie* evidence that the parties entered into the Arbitration Agreement on or about March 18, 2015. (See Rodon Decl. at Exh. 2.) In opposing the motion, the Garcias raise two main defenses to the agreement's enforcement: (1) that no arbitration forum will accept this matter; and (2) that the arbitration provision is unconscionable.

1. *The Arbitration Agreement Explicitly Provides for the Court to Appoint an Arbitrator if the Parties Are Unable to Agree*

The Garcias first contend that the arbitration agreement cannot be enforced because neither of the two arbitration forums identified in the Arbitration Agreement will accept this arbitration, and the Garcias refuse to select another forum. The relevant portion of the Arbitration Agreement reads as follows: "[Garcias] may choose one of the following arbitration organizations and its applicable rules: The National Arbitration Forum…, the American Arbitration Association…, *or any other organization [Garcias] may choose, subject to [First Investor's or their Assignee's] approval. If [the parties] are unable to agree on any other organization, then the arbitrator will be appointed by the court.*" (Rodon Decl. at Exh. 2, italics added.)

The Garcias assert that neither the National Arbitration Forum (NAF, nor the American Arbitration Association (AAA) "can – or will – accept this arbitration." (Opposition at 4:13.) Even assuming, *arguendo*, that the Garcia's assertions regarding those two forums are accurate, the argument fails.

The Garcias rely on the holding in *Alan v. Super. Ct.* (2003) 111 Cal.App.4th 217, 228 (*Alan*). That holding stands for the proposition that where an arbitration provision or arbitration agreement exclusively identifies an arbitrator or arbitrators (or arbitration organization or organizations) and those persons cannot or refuse to serve as arbitrator over the dispute, and further where the arbitrator selection term is "not an ancillary logistical concern but rather is as important a consideration as the agreement to arbitrate itself, a court will not sever the failed term from the rest of the agreement and the entire arbitration provision will fail." (*Id.* at 228.)

Alan involved a civil action by the heir of a deceased investor against the investor's brokers, alleging mismanagement of the investor's accounts. (*Alan*, *supra*, 111 Cal.App.4th at 219.) The investment agreements signed by the investor required that all controversies be decided by arbitration before one of the securities industry self-regulatory organizations (SRO's).

Specifically, the arbitration provision provided that "[a]ny arbitration under this agreement shall be held under and pursuant to and be governed by the Federal Arbitration Act, and shall be conducted before an arbitration panel convened by the New York Stock Exchange, Inc. (NYSE), or the National Association of Securities Dealers, Inc. (NASD)." (*Id*. at 220.) The agreement further provided that the investor "may also select any other national securities exchange's arbitration forum upon which CSC is legally required to arbitrate the controversy…." (*Ibid*.) The Court noted that, "[h]ere, plaintiff chose to file a civil action to resolve the parties' dispute and did not elect an SRO forum in the first instance. Defendants…moved to compel arbitration pursuant to the Federal Arbitration Act, seeking to have the dispute heard under the auspices of the NASD." (*Id*. at 223.) In this context the Court found that the arbitration provision obligated the parties to "arbitrate before the SRO that [Defendant] elected, namely, the NASD, after plaintiff declined to choose an arbitral forum in the first instance. But the NASD 'refused the use of its facilities in California to arbitrate the dispute in question.' Because the NASD so refuses, there is no further promise to arbitrate in another arbitral forum, for example, the American Arbitration Association (AAA).'" (*Id*. at 226, quoting *Gutfreund v. Weiner (In re Salomon Inc. Shareholders' Derivative Litig.)* (1995) 68 F.3d 554, 557-558.)

The Arbitration Agreement at issue here is materially different. It is to be construed in accordance with its plain meaning. (*Alan*, *supra*, 111 Cal.App.4th at 224.) Here, the plain language of the agreement provides that the Garcias may choose the NAF, may choose the AAA, or may choose "any other organization," subject to First Investor's approval (or the approval of any assignee of First Investor's interests in the Agreement). (Rodon Decl. at Exh. 2.) Again, The Garcias claim that the NAF is prohibited from hearing consumer arbitrations and that AAA will likely refuse to hear this arbitration. The Garcias go on to argue that "the language is permissive not mandatory. The consumer does not have to select another forum." (Opposition at 7, fn6.) That is correct.

But critically, the Arbitration Agreement provides for the circumstance where the consumer refuses to select a forum. "If [the parties] are unable to agree on any other organization, then the arbitrator will be appointed by the court." (Rodon Decl. at Exh. 2, italics added.) This provision is consistent with the FAA. "If in the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed; but *if…a method be provided and any party thereto shall fail to avail himself of such method*, or if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or umpire, or in filling a vacancy, then upon the application of either party to the controversy the court shall designate and appoint an arbitrator or arbitrators or umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein; and unless otherwise provided in the agreement the arbitration shall be by a single arbitrator." (9 U.S.C.S. §5, italics added.)

While no party has formally requested the Court undertake to appoint the arbitrator, the Arbitration Agreement's provision of this possibility undermines the Garcia's argument that the agreement fails because (purportedly) neither the FAA nor the AAA will accept the arbitration and the Garcias refuse to select another forum.

2. *The Garcias Fail to Show That the Agreement is Unconscionable*

The Garcias next argue that "[t]he arbitration provision is unenforceable because several of the provisions violate California's law against unconscionable contract terms." (Opposition at 7:18-19.)

The central inquiry in resolving a claim of unconscionability is whether the contract provision was unconscionable at the time it was made. (*Sonic-Calabasas A, Inc. v. Moreno* (2013) 57 Cal.4th 1109, 1133–1134.) The defense is "inherently fact specific." (*OTO, L.L.C. v. Kho*, 8 Cal.5th 111, 138.) "The burden of proving unconscionability rests upon the party asserting it." (*Id*. at 126.) Under the FAA, unconscionability claims are to be resolved by the trial court before enforcing an arbitration agreement. (*Id.* at 138.)

"A contract is unconscionable if one of the parties lacked a meaningful choice in deciding whether to agree and the contract contains terms that are unreasonably favorable to the other party." (*OTO, L.L.C. v. Kho*, *supra*, 8 Cal.5th at 125.) Thus, the doctrine of unconscionability has both a procedural and a substantive element. (*Ibid*.) "'The procedural element addresses the circumstances of contract negotiation and formation, focusing on oppression or surprise due to unequal bargaining power. [Citations.] Substantive unconscionability pertains to the fairness of an agreement's actual terms and to assessments of whether they are overly harsh or one-sided.' [Citation.]"

For procedural unconscionability, the "pertinent question" is "whether circumstances of the contract's formation created such oppression or surprise that closer scrutiny of its overall fairness is required." (*OTO, L.L.C. v. Kho*, *supra*, 8 Cal.5th at 126.)

The Court finds that the Garcias have presented evidence of such surprise compelling closer scrutiny of the Arbitration Agreement's fairness.[1] (See Garcia Decl. at ¶¶6-8.)

However, "[b]oth procedural and substantive unconscionability must be shown for the defense to be established." (*OTO, L.L.C. v. Kho*, *supra*, 8 Cal.5th at 125.) Following such closer scrutiny, the Court is unable to find that the Arbitration Agreement is substantively unconscionable.

"Substantive unconscionability examines the fairness of a contract's terms. This analysis 'ensures that contracts, particularly contracts of adhesion, do not impose terms that have been variously described as 'overly harsh,' 'unduly oppressive,' 'so one-sided as to shock the conscience,' or 'unfairly one-sided.' All of these formulations point to the central idea that the unconscionability doctrine is concerned not with 'a simple old-fashioned bad bargain,' but with terms that are 'unreasonably favorable to the more powerful party.'" (*OTO, L.L.C. v. Kho*, *supra*,

[1] On Reply, Cross-Defendants argue that the agreement "is not procedurally unconscionable, because Cross-Complainants could have opted out by simply mailing their request to First Investors within 30 days, but they did not." (Reply at 6:4-6.) The Court agrees with Cross-Defendants that the opt-out provision defeats any claim that the Arbitration Agreement is a contract of adhesion. However, the Court is unprepared, on the record and arguments before it, to conclude that the opt-out provision defeats a claim that the contract is procedurally unconscionable based on surprise, where evidence of the surprise, as here, includes evidence of the lack of awareness of the opt-out provision itself. Ultimately, however, because the Court finds no evidence of substantive unconscionability, as discussed below, it need not delve further into this issue.

8 Cal.5th at 129–130.) A provision is not "unfairly one-sided merely because one side is, as a practical matter, more likely to make use of it." (*Baltazar v. Forever 21, Inc.* (2016) 62 Cal.4th 1237, 1248, fn. 4.0)

The Garcias fail to point to any provision of the Arbitration Agreement that is "overly harsh, unduly oppressive, so one-sided as to shock the conscience, or unfairly one-sided." (*OTO, L.L.C. v. Kho, supra,* 8 Cal.5th at 129-130.) The Garcias suggest that the agreement unconscionably shifts the costs of the arbitration to the Consumer. The Court disagrees. In fact, the agreement provides that Cross-Defendants will advance up to $1,500 in the administrative costs associated with arbitration. It compels the arbitrator to award the consumer any amounts they may be entitled to by law. It provides that if the consumer is the prevailing party, "the arbitrator may award [the consumer] their reasonable attorneys' fees even if the consumer is not entitled to them by law. (See Rodon Decl. at Exh. 2.) To the extent that the Agreement shifts the costs, or risks of costs of arbitration, it appears to shift them away from the consumer and towards Cross-Defendants.

The Garcias suggest that the Arbitration Agreement is substantively unconscionable because of their exposure to "potentially unlimited arbitration costs." (Opposition at 12:4-12.) However, the Court finds that the arbitrator-selection provision effectively safeguards the Garcias against any such result. Again, the agreement provides the *Garcias* the first opportunity to select the arbitrator. It further provides that if they do not agree with Cross-Defendants on an arbitrator, they may have the Court appoint one. (See Rodon Decl. at Exh. 2.) The Court sees no reason why it could not, in such circumstance, consider issues relating to the costs of various arbitrators in the context of the amounts at issue in the case.

The Garcias next argue that the Arbitration Agreement "gives First Investors *exclusive veto power on any selection by the consumer* of an arbitrator" and that by doing so it "unconscionably removes from the consumer any choice regarding the arbitral forum and the rules that will apply." (Opposition at 12:17-24.) For the reasons discussed in detail herein above, the Court disagrees. Again, the agreement gives the Garcias the first opportunity to select an arbitrator. If Cross-Defendants do not agree, then the agreement anticipates that the Court will select an arbitrator. Such provision is anything but "overly harsh, unduly oppressive, so one-sided as to shock the conscience, or unfairly one-sided." (*OTO, L.L.C. v. Kho, supra,* 8 Cal.5th at 129-130.)

Finally, the Garcias argue that the Arbitration Agreement is substantively unconscionable because it prohibits the Garcias from obtaining any form of "public injunctive relief." (Opposition at 13: 7-9.) *McGill v. Citibank, N.A.* (2017) 2 Cal.5th 945, cited by the Garcias held that an arbitration agreement is invalid and unenforceable insofar as it purports to waive a consumer's right to request, in any forum, public injunctive relief. (*Id*. at 961.)

On Reply, Cross-Defendants argue that the Cross-Complaint does not seek public injunctive relief. (See Reply at 9:7-8.) Private injunctive relief is "relief that primarily 'resolve[s] a private dispute' between the parties and 'rectif[ies] individual wrongs.' (Citations omitted.)" (*McGill v. Citibank, N.A., supra,* 2 Cal.5th at 955.) Public injunctive relief, on the other hand, is

"relief that 'by and large' benefits the general public and that benefits the plaintiff, 'if at all,' only 'incidental[ly]' and/or as 'a member of the general public.' (Citations omitted.)" (*Ibid*.)

Reviewing the allegations of the Cross-Complaint cited by the Garcias, and the Prayer for Relief, it is not at all clear to the Court that the Garcias have prayed for public injunctive relief. (See Cross-Complaint at ¶¶4,76, Prayer for Relief ¶4.) Apparently sensing this possibility, in Opposition, Plaintiffs noted that, "if the Court is inclined to grant Cross-Defendants' Motion, Cross-Complainants request that the Court grant Cross-Complainants leave to amend their Cross-Complaint to clarify their request for public injunctive relief." (Opposition at 13, fn. 8.)

Ultimately, the Court finds that whether Garcias have, or can, pray for public injunctive relief is immaterial because the Garcias have not shown that the Arbitration Agreement prohibits them from seeking it through arbitration.

The Garcias argue that the definition of the term "claim" provided in the Arbitration Agreement is broad enough to include claims for public injunctive relief. (Opposition at 13:7-9.) The Garcias next argue that the Arbitration Agreement "mandates that Cross-Complainants only be allowed to arbitrate claims 'on an individual basis," thereby barring Cross-Complainants from bringing any claims for public injunctive relief in arbitration" in violation of established public policy. (Opposition at 14:4-7.)

The context of the quoted passage, omitted by the Garcias, is meaningful. "Any claim or dispute is to be arbitrated by a single arbitrator on an individual basis and not as a class action." (Rodon Decl. at Exh. 2.) The Court finds that the plain language of this provision prohibits the assertion of class-action claims. It is silent as to public injunctive relief. In this context, the Court simply does not find support in this language for the Garcias' argument. The Garcias appear free to pray for public injunctive relief through the arbitration so long as they do not do so on a class-action basis.

D. Conclusion

The Court finds that Cross-Defendants have presented prima facie evidence of a written agreement to arbitrate the underlying controversy. As discussed herein above, the Court further finds that the Arbitration Agreement exists and that it is neither unenforceable for want of an arbitration forum nor unconscionable. (*Rosenthal v. Great Western Financial Sec. Corp.*, *supra*, 14 Cal.4th at 413.) For the foregoing reasons Defendant's motion for an order compelling arbitration is GRANTED.

The Court notes the possibility that the parties may be unable to agree on an arbitrator and may thereafter request that the Court appoint one, pursuant to the terms of the Arbitration Agreement. For this reason, Cross-Defendant's request for an order staying the proceedings is GRANTED IN PART. The proceedings are stayed for all purposes other than a motion or application, by either party, seeking a Court order appointing an arbitrator.

PROBATE CALENDAR – Hon. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.

Conservatorship of Marcia "Lucille" Morgan **17PR000033**

SECOND AND FINAL ACCOUNTING AND REPORT OF CONSERVATOR; PETITION FOR ALLOWANCE OF FEES TO CONSERVATOR OF PERSON AND ESTATE, FOR ATTORNEY'S FEES, AND FOR TERMINATION OF CONSERVATORSHIP

TENTATIVE RULING: GRANT petition, including fees as prayed. The conservatorship is terminated.

Estate of Alfred Evangelist Leveque, Jr. **20PR000139**

AMENDED PETITION FOR LETTERS OF ADMINISTRATION WITH GENERAL POWERS AND AUTHORIZATION TO ADMINISTER UNDER THE INDEPENDENT ADMINISTRATION OF ESTATES ACT

TENTATIVE RULING: The Court could not locate Attachment 3e(3) containing the waivers of bond. The matter is continued to September 17, 2020, at 8:30 a.m. in Dept. B to allow for the filing of the waivers of bond. Petitioners also shall file the proposed letters (DE-150) conforming to the amended petition.

Conservatorship of Duenas, Janelli **26-47375**

REVIEW HEARING

TENTATIVE RULING: After a review of the matter, the Court finds the conservator is acting in the best interest of the conservatee. Thus, the case is set for a biennial review hearing in two years, on September 2, 2022 at 8:30 a.m. in Dept. B. The court investigator shall prepare a biennial investigator report for the next hearing date. The clerk is directed to send notice to the parties.

Conservatorship of Neller, Adam Thomas **26-52441**

REVIEW HEARING

TENTATIVE RULING: After a review of the matter, the Court finds the conservator is acting in the best interest of the Conservatee. Thus, the case is set for a biennial review hearing in two years, on September 2, 2022 at 8:30 a.m. in Dept. B. The court investigator shall prepare a biennial investigator report for the next hearing date. The clerk is directed to send notice to the parties.

CIVIL LAW & MOTION CALENDAR – Hon. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.

John P. McGill, et al. v. Gene Webb **19CV000903**

MOTION TO FILE FIRST AMENDED COMPLAINT

TENTATIVE RULING: Plaintiffs John P. and Wanda McGill's (individually and as trustees for the McGill Family Trust 2018) motion to file a first amended complaint is GRANTED. (See *Bd. of Trustees v. Super. Ct.* (2007) 149 Cal.App.4th 1154, 1163 [detailing that it is a rare case in which "a court will be justified in refusing a party leave to amend his or her pleading so that he or she may properly present his or her case"].) It is unfortunate the parties could not stipulate to the filing of the amended complaint considering the policy of great liberality in permitting amendments to a pleading. Plaintiffs shall file their proposed first amended complaint within 5 calendar days.

The September 3, 2020 case management conference shall remain on calendar.

Travis Howell v. Nationstar Mortgage, LLC, et al. **19CV001647**

MOTION FOR JUDGMENT ON THE PLEADINGS

TENTATIVE RULING: Defendants Nationstar Mortgage, LLC and Deutsche Bank National Trust Company's (as indentured trustee for American Home Mortgage Investment Trust 2005-1) motion for judgment on the pleadings as to the "Complaint" as a whole on the ground of failure to state sufficient facts is GRANTED WITH LEAVE TO AMEND.[2] Plaintiff Travis Howell currently lacks standing. Plaintiff did not enter into the loan as the exhibit shows the loan was obtained by non-party Robert Howell. (First Amended Compl., Ex. A.) Plaintiff has not alleged he is a party to the loan contract, is a successor-in-interest, or has a relationship with defendants upon which he can base his causes of action following the death of borrower Robert Howell. Moreover, the deed of trust specifically requires the lender's approval in writing for a successor-in-interest to assume the borrower's obligations under the security instrument. Plaintiff has not alleged he obtained written approval to assume the loan as a successor-in-interest. (*Id*., Ex. A, ¶ 13.)

Defendants' request for judicial notice is GRANTED as to the deeds of trust, grant deed, assignment, notice of default, and notice of trustee's sales (Exhibits 1-5), but not necessarily for the truth of the matters asserted therein.

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[2] The Court construes the motion as being made to the first amended complaint. The Court notes there are only six causes of action alleged in the first amended complaint, not seven as stated in the notice of motion. The Court construes the meet and confer declaration as stating an attempt was made to discuss the motion as to the amended complaint, not the original complaint. Any further attempt to meet and confer would be fruitless.

If plaintiff elects to do so, he shall file his second amended complaint within 30 calendar days of service of notice of entry of order. (Code Civ. Proc., § 438, subd. (h)(2).)