

1. MANHA v. CRISP, SC20100258

**Appearance and Examination of Judgment Debtor**

**TENTATIVE RULING # 1: THE PERSONAL APPEARANCE OF THE JUDGMENT DEBTOR IS REQUIRED, PROVIDED PROOF OF SERVICE OF THE ORDER TO APPEAR FOR EXAMINATION IS FILED PRIOR TO THE HEARING SHOWING THAT PERSONAL SERVICE ON THE DEBTOR WAS EFFECTED NO LATER THAN 10 DAYS PRIOR TO THE HEARING DATE. (CODE OF CIV. PROC. § 708.110(d).) IF THE APPROPRIATE PROOF OF SERVICE IS NOT FILED, NO EXAMINATION WILL TAKE PLACE.**

**2. GETZ v. SERRANO EL DORADO OWNERS' ASSOC., ET AL., PC20170113**

**(A) Plaintiffs' Motion for Summary Adjudication**

**(B) Serrano Associates' Motion for Summary Adjudication**

**(C) Serrano El Dorado Owners' Association's Motion for Summary Adjudication**

On the court's own motion, matters are continued to June 3, 2022. The court apologizes for any inconvenience to the parties.

**TENTATIVE RULING # 2: MOTIONS ARE CONTINUED TO 1:30 P.M., FRIDAY, JUNE 3, 2022, IN DEPARTMENT FOUR.**

**3. BIERSMITH v. V3 ELECTRIC, INC., 21CV0364****Motion to Compel Binding Arbitration and to Stay Case**

Plaintiff Mark Biersmith's complaint asserts causes of action pursuant to California's Fair Employment and Housing Act ("FEHA"), Gov. Code § 12900, et seq., for (1) age discrimination, (2) retaliation on the basis of age, and (3) failure to prevent retaliation, as well as (4) retaliation in violation of Labor Code § 1102.5, (5) wrongful termination in violation of public policy, and (6) unfair business practices against defendant V3 Electric, Inc. ("V3"). Pending is V3's motion to compel binding arbitration and to stay all judicial proceedings until the completion of arbitration. The motion is opposed.

By way of background, in January 2021 Biersmith applied to V3 for the position of Chief Financial Officer ("CFO"). (Compl., ¶ 14.) V3 is a residential solar energy provider. On March 1, 2021, V3 offered Biersmith the position of CFO with an annual salary of \$175,000, along with bonuses and equity in V3. (*Id.*, ¶ 15.) Biersmith accepted the terms of employment on March 15, 2021. (*Ibid.*) His employment was terminated in May 2021. (*Id.*, ¶¶ 39, 40.)

On December 15, 2021, Biersmith received a Right to Sue letter from the California Department of Fair Employment and Housing. (*Id.*, ¶ 41.) This action following on December 30, 2021.

**1. Legal Principles**

V3's motion is made pursuant to the California Arbitration Act ("CAA"), Code of Civil Procedure § 1280, et seq. The CAA sets forth "a comprehensive scheme regulating private arbitration in this state." (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 9.) California has a "strong public policy in favor of arbitration as a speedy and relatively inexpensive means of dispute resolution." [Citations.] (*Ibid.*) "Consequently, courts will "indulge every intendment to give effect to such proceedings." (*Ibid.*) "In cases involving private arbitration, '[t]he scope of

arbitration is ... a matter of agreement between the parties' [citation] ...." (*Id.* at pp. 8–9.) "A written agreement to submit to arbitration an existing controversy or a controversy thereafter arising is valid, enforceable and irrevocable, save upon such grounds as exist for the revocation of any contract." (Code of Civ. Proc. § 1281.) Furthermore, except for specifically enumerated exceptions, the court must order the parties to arbitrate a controversy if the court finds that a written agreement to arbitrate the controversy exists. (Code of Civ. Proc. § 1281.2.)

Arbitration agreements are governed by state contract law and are "construed like other contracts to give effect to the intention of the parties." (*Crowell v. Downey Cmty. Hosp. Found.* (2002) 95 Cal.App.4th 730, 734, disapproved of on other grounds in *Cable Connection, Inc. v. DIRECTV, Inc.* (2008) 44 Cal.4th 1334.) A motion or petition "to compel arbitration is simply a suit in equity seeking specific performance of that contract." (*Engineers & Architects Ass'n v. Cmty. Dev. Dep't* (1994) 30 Cal.App.4th 644, 653.) If the contractual language is clear and explicit, it governs. (Civ. Code § 1638.) "'Absent a clear agreement to submit disputes to arbitration, courts will not infer that the right to a jury trial has been waived.' [Citations.]" (*Adajar v. RWR Homes, Inc.* (2008) 160 Cal.App.4th 563, 569.)

The moving party always bears the burden of persuasion to prove the existence of an arbitration agreement with the opposing party by a preponderance of the evidence. (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413.) The court's determination involves a three-step burden-shifting process.

In the first step of the process, the moving party bears the initial "burden of producing 'prima facie evidence of a written agreement to arbitrate the controversy.' [Citation.] The moving party 'can meet its initial burden by attaching to the [motion or] petition a copy of the arbitration agreement purporting to bear the [opposing party's] signature.' [Citation.] Alternatively, the moving party can meet its burden by setting forth the agreement's provisions in the motion. [Citations.] For this step, 'it is

not necessary to follow the normal procedures of document authentication.’ [Citation.] If the moving party meets its initial prima facie burden and the opposing party does not dispute the existence of the arbitration agreement, then nothing more is required for the moving party to meet its burden of persuasion.

“If the moving party meets its initial prima facie burden and the opposing party disputes the agreement, then in the second step, the opposing party bears the burden of producing evidence to challenge the authenticity of the agreement. [Citation.] The opposing party can do this in several ways. For example, the opposing party may testify under oath or declare under penalty of perjury that the party never saw or does not remember seeing the agreement, or that the party never signed or does not remember signing the agreement. [Citations.]

“If the opposing party meets its burden of producing evidence, then in the third step, the moving party must establish with admissible evidence a valid arbitration agreement between the parties. The burden of proving the agreement by a preponderance of the evidence remains with the moving party. [Citation.]” (*Gamboa v. Northeast Cmty. Clinic* (2021) 72 Cal.App.5th 158, 165–166.)

## **2. Discussion**

In support of the motion, V3’s in-house counsel declares that on March 13, 2021, V3 and Biersmith executed an arbitration agreement. (Mot., Decl. of Alec Smith, ¶ 2 & Ex. A.) V3 included a copy of the purported agreement with its moving papers. (*Id.*, Ex. A.) The claims covered by the agreement include “any and all disputes or claims between Employee and V3, including claims ... that arise out of or relate to Employee’s recruitment and/or hiring by, employment with or separation from V3. [¶] This Agreement also applies, without limitation, to disputes regarding any ... state or federal [laws or statutes addressing] ... termination, discrimination, harassment, ... and claims arising under ... Civil Rights Acts, ... Age Discrimination in Employment Act, Older Workers Benefit Protection Act, ... and any other state ... law or statute, if

any, addressing the same or similar subject matters, and all other similar federal, state and ... common law claims.... [¶] This Agreement is intended to require arbitration of every claim or dispute that lawfully can be arbitrated, except for those claims and disputes which by the terms of this Agreement are expressly excluded.” (*Id.*, Ex. A, p. 1, ¶¶ 3–5 [“Claims Covered By The Arbitration Agreement”].)

On the last page of the agreement, in capitalized letters, are provisions stating that the employee (i.e., Biersmith) and V3 agree they “HAVE BEEN ADVISED TO CONSULT WITH AN ATTORNEY OF THEIR OWN CHOOSING BEFORE SIGNING THIS AGREEMENT, AND EMPLOYEE AND V3 HAVE HAD AN OPPORTUNITY TO DO SO.... EACH HAS READ THIS AGREEMENT CAREFULLY AND UNDERSTANDS ITS TERMS, AND THAT BY SIGNING IT, EACH IS WAIVING ALL RIGHTS TO A TRIAL OR HEARING BEFORE A JUDGE OR A JURY OR ANY AND ALL DISPUTES AND CLAIMS SUBJECT TO ARBITRATION UNDER THIS AGREEMENT.” (*Id.*, Ex. A, p. 6, ¶ 1 [“Knowing and Voluntary Agreement”].)

Further, the agreement informs the employee that they have the right to opt out: “IN THE EVENT EMPLOYEE DECIDES AFTER EMPLOYEE EXECUTES THIS AGREEMENT THAT THE EMPLOYEE DOES NOT WANT TO BE COVERED BY THE BENEFITS OF ARBITRATION, EMPLOYEE MUST OPT OUT BY PROVIDING WRITTEN NOTICE ... NO LATER THAN 30 DAYS FROM WHEN EMPLOYEE INITIALLY SIGNED THIS AGREEMENT.... SHOULD EMPLOYEE NOT OPT OUT OF THIS AGREEMENT WITHIN THE 30-DAY PERIOD, EMPLOYEE AND V3 SHALL BE BOUND BY THE TERMS OF THE AGREEMENT. EMPLOYEE WILL NOT BE SUBJECT TO RETALIATION IF EMPLOYEE EXERCISES HIS/HER RIGHT TO ASSERT CLAIMS OR OPT OUT OF COVERAGE UNDER THIS AGREEMENT.” (*Id.*, p. 6, ¶ 2 [“Your Right To Opt Out of Arbitration”].)

“BY SIGNING THIS AGREEMENT ... EMPLOYEE ACKNOWLEDGES THAT EMPLOYEE HAS CAREFULLY READ AND FULLY UNDERSTANDS ALL OF THE PROVISIONS OF THIS AGREEMENT ... AND THAT THE EMPLOYEE IS VOLUNTARILY ENTERING INTO THIS AGREEMENT.” (*Id.*, p. 6, ¶ 3 [“Your Right To Opt Out of Arbitration”].)

Two representatives for V3 executed the agreement with wet signatures on March 13, 2021. (*Id.*, p. 6.) That same day, Biersmith e-signed the agreement. (*Id.*, p. 7.)

On February 25, 2022, after this action was commenced, V3’s counsel emailed Biersmith’s counsel invoking the arbitration agreement and included with the email a proposed stipulation to arbitrate Biersmith’s claims with JAMS. (Mot., Decl. of Lisa Bradner, ¶¶ 2–3 & Exs. A–B.) On March 24, 2022, Biersmith’s counsel responded that Biersmith would not agree to the stipulation, but did not state the basis for the refusal. (*Id.*, ¶ 4, Ex. C.)

Based on the foregoing, the court finds that V3 met its initial burden of producing prima facie evidence of the existence of a written agreement to arbitrate. The burden now shifts to Biersmith to establish a defense to the enforcement of the arbitration agreement, including the burden of demonstrating that an exemption from arbitration applies.

Biersmith first argues that the motion should be denied outright as V3 did not prove the existence of a valid agreement to arbitrate because V3 did not authenticate Biersmith’s electronic signature.

The court does not agree with Biersmith that V3’s motion should be denied outright on the basis of the authentication issue. Counsel for V3 declares that, when asked, Biersmith’s counsel did not provide an explanation as to why they believed the arbitration agreement was unenforceable. (Mot., Decl. of Lisa Bradner, ¶ 4 & Ex. C.) Further, counsel did not meet and confer about the enforceability issue because

Biersmith's counsel stated they would "address issues in our opposition papers." (*Id.*, Ex. C, p. 1.) Thus, when V3 filed its instant motion it had no specific knowledge as to the grounds for Biersmith's contention that the agreement is unenforceable. It would be unfair to V3 to deny its motion outright based on V3 not anticipating every potential basis upon which Biersmith disputes the validity of the arbitration agreement.

That said, the court finds that Biersmith has met his burden of producing evidence to challenge the authenticity of the agreement. In this regard, Biersmith declares that he "does not recall seeing, reviewing, or signing any arbitration agreement as part of the onboarding process ...." (Opp'n, Decl. of Mark Biersmith, ¶ 3.) "To the extent [he] may have clicked a button to electronically sign anything during the onboarding process, [he] was not aware [he] was signing an Arbitration Agreement, and [he] was not provided an opportunity to negotiate any terms. As far as [he] was aware, to the extent [he] signed any documents as part of the onboarding process, [he] was required to sign the forms as is to get the job." (*Id.*, ¶ 4)

The court finds that Biersmith's evidence is sufficient to shift the burden of production to V3 to establish with admissible evidence a valid arbitration agreement between the parties.

V3's Human Resources Manager, Hilary Touey, states that she has "responsibility for on-boarding new employees. In 2021, [V3] used ADP payroll services for electronic signatures and submittal of all new hire on-boarding documents, including At-Will Agreements, Arbitration Agreements, tax documents and elections, and other employment policies." (Reply, Decl. of Hilary Touey, ¶ 2.) On March 12, 2021, her last day at work prior to beginning maternity leave, she spoke to Biersmith and advised him that she would be sending his onboarding materials through a secure ADP link. Biersmith told her "he was familiar with ADP and would not have a problem accessing and completing the electronic on-boarding process." (*Id.*,

¶ 3.) That same day, Touey initiated Biersmith’s “on-boarding process through ADP. This process included in-putting Mr. Biersmith’s personal information and personal email address. [She] called Mr. Biersmith and advised him the on-boarding documents were ready for his review and signature. [She] then sent him an email containing a link to ADP with a unique log-in and password. Mr. Biersmith used the ADP link to complete setting up his private account using personal identifying information.” (*Id.*, ¶ 4.)

On March 13, 2021, Touey received an email from ADP confirming that Biersmith completed the onboarding process. (*Id.*, ¶ 6.) She also received copies of the documents executed by Biersmith, including his Arbitration Agreement, which was time-stamped. (*Id.*, ¶ 6 & Ex. B.) Touey states that each of Biersmith’s signatures on each of his onboarding documents was “verified by ADP, pursuant to its verification process. These signature timestamps are corroborated by ADP’s confirmation email.” (*Id.*, ¶ 6 & Ex. C.) Having received Biersmith’s e-signed arbitration agreement, Touey countersigned the agreement on March 13, 2021, and forwarded it to Biersmith’s electronic personnel file, where it has been maintained since that time. (*Id.*, ¶ 7) Based on her phone call with Biersmith on March 12, 2021, and based on her knowledge of ADP’s verification process, she attests the e-signature on Biersmith’s arbitration agreement is true and correct. (*Id.*, ¶ 10.)

The court finds that V3 has met its burden of persuasion of proving the existence of an arbitration agreement between the parties by a preponderance of the evidence. (*See Rosenthal, supra*, 14 Cal.4th at p. 413.)

It should be noted that while Biersmith states that he “does not recall seeing, reviewing, or signing any arbitration agreement as part of the onboarding process” (Opp’n, Decl. of Mark Biersmith, ¶3), he does claim that he did not sign the arbitration agreement. Biersmith’s failure to recall signing or reviewing the arbitration agreement does not raise a triable issue of fact as to his credibility, and his statement

about not recalling having signed or reviewed the agreement does not raise a triable issue of fact as it does not necessarily contradict V3's evidence that he did, in fact, sign the agreement. (*See Joseph E. Di Lorento, Inc. v. O'Neill* (1991) 1 Cal.App.4th 149, 160.) Accordingly, the court finds it is not necessary to conduct an evidentiary hearing on this issue.

Lastly, Biersmith argues the agreement is unenforceable because it is procedurally and substantively unconscionable.

The court disagrees. The arbitration agreement was not mandatory or involuntary. It provides an employee with the choice to opt out, along with an assurance that the employee will not be subject to retaliation for opting out. Biersmith is a highly educated, experienced, and sophisticated professional. Indeed, in his complaint Biersmith states he has had “a long and accomplished career in the fields of accounting and finance and became a [CFO] for the first time in the 1990's.... [¶] [Biersmith] is one of the few financiers in the world who have reached partner status in both a CPA firm (which only 1% CPAs achieve) and in private equity where he transacted with some of the most renowned private equity players in the world ....” (Compl., ¶¶ 16–17.)

In other words, Biersmith is not an entry level or even a mid-level employee who might well be surprised by the inclusion of an arbitration agreement in a new employee hire packet, or who may not fully appreciate the consequences of signing an arbitration agreement. It is not a leap in logic to state that Biersmith would be familiar with the general provisions of arbitration agreements and would not be surprised by the inclusion of such an agreement in his onboarding materials. Further, given Biersmith's credentials and experience he was not in an inferior bargaining position compared with V3.

Accordingly, the court finds that the arbitration agreement is not procedurally unconscionable. (Civ. Code § 1670.5(a); *Armendariz v. Found. Health Psychcare*

*Services, Inc.* (2000) 24 Cal.4th 83, 98; *Serpa v. Cal. Sur. Investigations, Inc.* (2013) 215 Cal.App.4th 695, 704.)

The agreement is also not substantively unconscionable. The agreement mandates both V3 and Biersmith to arbitrate. If the agreement is modified, it must be in writing and both parties must sign the amendment. The arbitration will be conducted in accordance with JAMS Employment Arbitration Rules and Procedures. The agreement provides that V3 will pay the arbitrator's fee and any other type of expense the employee would not bear if the matter was brought in court. The parties have the right to engage in discovery, including "three party or non-party witness depositions, unless a greater number is ordered by the arbitrator." The arbitrator has authority to award any damages authorized by law for the claims presented, including punitive damages. (Mot., Decl. of Alec Smith, Ex. A.) These are not all the arbitration procedures described in the parties' arbitration agreement.

Given the procedures and conditions of the arbitration, the court does not find that the arbitration agreement is substantively unconscionable. (*Serpa, supra*, 215 Cal.App.4th at pp. 704–710.)

In sum, the court finds that the arbitration agreement is valid and enforceable and is not unconscionable. V3's motion is granted.

**TENTATIVE RULING # 3: DEFENDANT V3 ELECTRIC'S MOTION TO COMPEL BINDING ARBITRATION AND TO STAY CASE IS GRANTED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN**

**INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON.  
PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT  
THE HEARING.**

**4. MATTER OF ENERSON, 22CV0412**

**OSC Re: Name Change**

To date, Proof of Publication is not in the court's file.

**TENTATIVE RULING # 4: APPEARANCES ARE REQUIRED AT 1:30 P.M.,  
FRIDAY, MAY 13, 2022, IN DEPARTMENT FOUR.**

**5. ROSEN v. RENTFROW, SC20200178****Plaintiff's Motion to Compel Compliance with Subpoena for Production of Business Records of Non-Party MRK Medical Consultants**

Plaintiff's complaint alleges that she sustained injuries at defendant's short-term rental when plaintiff tripped and fell over an unstable board that was under two doormats. Pending is plaintiff's motion to compel compliance with subpoena for production of business records of a non-party, MRK Medical Consultants ("MRK"). The motion is opposed.

By way of background, defendant utilized the services of MRK to retain Dr. Michael R. Klein, Jr., M.D., F.A.C.S., as a medical expert for this action. MRK is a company that matches the needs of its clients in the legal profession and insurance industry with medical professionals who are licensed to practice medicine in the relevant field of care.

Plaintiff issued a deposition subpoena to MRK to obtain documents and communications that fall into five categories: (1) demands seeking documents/communications between MRK and Dr. Klein about this case (Demand Nos. 1, 22, 23); (2) demands seeking documents/communications between MRK and Dr. Klein that are not specifically related to this case (Demand Nos. 2, 6, 17–21, 24–27); (3) demands seeking documents/communications between MRK and defense counsel about this case (Demand Nos. 3, 5, 7–9, 32); (4) demands seeking documents/communications between MRK and defense counsel that are not related to this case (Demand Nos. 4, 10, 11, 12, 13, 14, 15, 16); and (5) demands seeking document/communications between MRK and insurance companies in general that are not related to this case (Demand Nos. 28–31).

Having read and considered the parties' papers, the court rules as follows:

Category 1

The motion is denied as to Demand Numbers 1, 22, and 23 on the basis that the demands contravene the more specific Discovery Act provisions concerning privileged communication and the exchange of expert witness discovery (Code of Civ. Proc. § 2034.010, et seq.)

Category 2

The motion is denied as to Demand Numbers 2, 6, 17–21, and 24–27 on the basis of relevancy and overbroad as to subject matter and time period.

Categories 3 and 4

The motion is denied as to Demand Numbers 3–5, 7–16, and 32 on the basis of attorney work product and attorney-client privilege.

Category 5

The motion is denied as to Demand Numbers 28–31 on the basis of relevancy and overbroad as to subject matter and time period.

**Sanctions**

Given that plaintiff's motion is unsuccessful, the court finds that \$1,250.00 (5 hrs. x \$250/hr.) is a reasonable sanction against plaintiff under the Discovery Act.

**TENTATIVE RULING # 5: PLAINTIFF'S MOTION TO COMPEL COMPLIANCE WITH SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS OF MRK IS DENIED. PLAINTIFF MUST PAY DEFENDANT'S COUNSEL \$1,250.00 AS A SANCTION NO LATER THAN 10 DAYS FROM THE DATE OF SERVICE OF THE NOTICE OF ENTRY OF ORDER. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT**

**AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.**

**6. HOWARD v. MAGANA, SC20200037****(1) Defendant's Motion to Enforce Settlement Agreement****(2) Plaintiff's Motion to Enter Judgment & Enforce Settlement Agreement**

This is a partition action. There is also a related probate action involving the same parties. (See El Dorado County Superior Court Case No. SP20190024). On December 17, 2021, plaintiff Roseanne Howard filed a conditional Notice of Settlement of Entire Case. Pending are competing motions to enforce settlement agreement pursuant to Code of Civil Procedure § 664.6.

**1. Legal Principles**

The court may enter judgment pursuant to the terms of a settlement agreement and, if requested by the parties, retain jurisdiction to enforce the settlement. (Code of Civ. Proc. § 664.6.) Section 664.6 was enacted to provide a summary procedure for enforcing settlement agreements. In order to be enforceable under that statute, the settlement agreement must be either entered orally before a court or must be in writing and signed by the parties. (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 810.) The written settlement agreement must be signed by the parties themselves, and must be signed by the individual parties seeking enforcement and the individual parties against whom enforcement is sought. (*Levy v. Superior Court* (1995) 10 Cal.4th 578, 585–586; *Harris v. Rudin, Richman & Appel* (1999) 74 Cal.App.4th 299, 305.)

“Section 664.6 states that if the parties to pending litigation enter into a settlement either in a writing signed by the parties or orally before the court, the court, upon a motion, may enter judgment pursuant to the terms of the settlement. [Fn.] The court retains jurisdiction to enforce a settlement under the statute even after a dismissal, but only if the parties requested such a retention of jurisdiction before the dismissal. (*Ibid.*) Such a request must be made either in a writing signed

by the parties or orally before the court. [Citation.]” (*Hines v. Lukes* (2008) 167 Cal.App.4th 1174, 1182.)

## 2. Discussion

On February 24, 2022, defendant Daniel Magana filed his motion to enforce settlement. He contends that the terms of the settlement agreement (“April agreement”) provide that plaintiff is to receive one-half of the proceeds of the sale of real property, plus an additional \$20,000 from the sale proceeds. (Def. Mot., Ex. A.) Defendant is to receive the remaining proceeds of the sale. (*Ibid.*) He alleges that plaintiff and her counsel drafted a second settlement agreement in which plaintiff requests an additional \$125,000 more than in the original settlement agreement. He asserts that plaintiff and her counsel “should not be allowed to produce a second settlement agreement since there is already exists [*sic*] a fully executed and enforceable settlement agreement.” (Def. Mot., p. ii.)

On March 28, 2022, plaintiff filed her opposition to defendant’s motion and motion to enter judgment and enforce settlement agreement. In support of plaintiff’s motion, she provided a copy of reporter’s transcript which sets forth the terms of the April agreement and the parties’ oral consent to the agreement. (Pl. Mot., Ex. A at 3:16–4:25.) The parties also agreed that the attorneys would prepare a written settlement agreement for signature. (*Ibid.*)

Plaintiff states that a written settlement agreement was sent to defendant’s counsel on May 18, 2021. Subsequently, on August 19 and 20, 2021, both of defendant’s now former attorneys each sent emails to plaintiff’s attorney and explicitly stated that defendant decided not to sign the April agreement. (Pl. Mot., Ex. B.) Plaintiff did not seek to enforce the April agreement because its terms were not stated in the presence of the court and the agreement was not on a signed writing. (Pl. Mot., p. 3, fn. 2.)

At a Mandatory Settlement Conference (“MSC”) on December 13, 2021, the parties reached a new agreement (“December agreement”). The court minute order indicates that defendant was present via video, and plaintiff was present in person with both of her attorneys. (Pl. Mot., Ex. C.) The court minute order states that the “[p]arties have come to a stipulated agreement[,]” and it sets forth the terms of the stipulated agreement, including that plaintiff would receive an additional \$125,000. (*Ibid.*) Plaintiff’s attorney agreed to prepare the settlement documents. (*Ibid.*) Thereafter, defendant apparently refused to sign the December agreement. William Cherry, Esq., who presided over the MSC on December 13, 2021, states in a declaration that the settlement agreement attached as Exhibit D to plaintiff’s motion accurately reflects the material terms which plaintiff and defendant agreed to in December 2021. (Decl. of William Cherry, Esq., ¶¶ 1, 2.)

Defendant’s assertions in support of his motion are not credible. In defendant’s declaration he states, “On July 29, 2021, both the Plaintiff and her attorney, Preston Matthews, signed the proposed settlement. I also signed the document.” (Def. Mot., Decl. of Daniel Magana, ¶ 3.) Conspicuously missing is defendant’s sworn statement as to when he signed the agreement. In the April agreement attached as Exhibit A to his motion, defendant also did not date his signature. Even so, if he had executed the April agreement in July 2021, defendant did not bother informing or delivering a copy of the agreement to either of his attorneys or to plaintiff or plaintiff’s attorneys. Moreover, in August 2021, after defendant claims he signed the April agreement, both of defendant’s attorneys unambiguously stated in writing to plaintiff’s attorney that defendant decided not to sign the April agreement. Plaintiff states it was not until defendant filed his instant motion that plaintiff even saw a signed copy of the April agreement from defendant.

Further, defendant’s subsequent conduct does not support his assertion that the April agreement is the parties’ valid and enforceable settlement agreement. It makes

no sense that defendant would appear at a MSC in December 2021 if he honestly and in good faith believed that the parties already had a settlement agreement in effect. It is also inexplicable that he remained wholly silent about the April agreement at the MSC. Neither the court minutes nor Mr. Cherry's declaration indicate there was any objection or statement from defendant at the MSC about the purported April agreement.

Defendant claims that, as a nonlawyer, he was confused and did not understand what the MSC was for. The court is not persuaded. This judge has presided over both this matter and the probate action. Although defendant is not an attorney, the court has observed him to possess some legal knowledge beyond that of the typical self-represented litigant. Even so, “[w]hen a litigant is appearing in propria persona, he is entitled to the same, but no greater, consideration than other litigants and attorneys [citations]. Further, the in propria persona litigant is held to the same restrictive rules of procedure as an attorney [citation].’ [Citations.]” (*County of Orange v. Smith* (2005) 132 Cal.App.4th 1434, 1444.) When a party is self-represented, they accept the risks of proceeding without counsel and they are “stuck with the outcome, and ha[ve] no greater opportunity to cast off an unfavorable judgment than [they] would if represented by counsel.” (*Burnete v. La Casa Dana Apartments* (2007) 148 Cal.App.4th 1262, 1267.)

For the foregoing reasons, the court finds that the parties' valid and enforceable agreement is the December agreement. The court notes that because defendant appeared by video at the MSC, he was not present at the MSC to sign the settlement agreement. (See Pl. Mot., Ex. C.) Even though defendant refused to sign the written settlement agreement following the MSC, the parties entered into the settlement agreement orally before the court, and therefore the court may enter judgment pursuant to the terms of the settlement. (See *Hines, supra*, 167 Cal.App.4th at p. 1182.)

Accordingly, plaintiff's motion is granted and defendant's motion is denied. Pursuant to Code of Civil Procedure § 664.6, the court will enter judgment pursuant to the terms and conditions set forth in the confidential settlement agreement and release attached as Exhibit D to plaintiff's motion.

**TENTATIVE RULING # 6: DEFENDANT'S MOTION TO ENFORCE SETTLEMENT AGREEMENT IS DENIED. PLAINTIFF'S MOTION TO ENTER JUDGMENT AND TO ENFORCE SETTLEMENT AGREEMENT IS GRANTED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.**