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20 Attorneys for Plaintiffs, Cathy R. Holmes, as Administrator of the Estate of Marjorie J. Wahler,  
Cathy R. Holmes, in her individual capacity; Richard G. Wahler, and Linda Jean Vollaire

21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
22 **COUNTY OF ORANGE, CIVIL COMPLEX CENTER**  
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24 CATHY R. HOLMES, as Administrator of the  
Estate of MARJORIE J. WAHLER; CATHY  
25 R. HOLMES, in her individual capacity;  
26 RICHARD G. WAHLER, an individual; and  
LINDA JEAN VOLLAIRE, an individual,  
27  
28 Plaintiffs,

Case No. 30-2015-00794832-CU-EN-CXC  
Related to Case Nos.  
30-2015-00798136-CU-EN-CXC  
30-2015-00769258-CU-BT-CXC  
30-2015-00798191-CU-BT-CXC  
30-2015-00806637-CU-OR-CXC  
30-2015-00766893-PR-NC-CXC

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v.

VALAREE A. WAHLER, as Trustee of  
The Wahler Family Trust dated April 9, 1976;  
VALAREE A. WAHLER, as Trustee of the  
Robert and Valaree Wahler Trust dated  
November 6, 2007; and VALAREE A.  
WAHLER, in her individual capacity; and  
DOES 1 through 50, Inclusive,  
  
Defendants.

30-2015-00766869-PR-NC-CXC  
30-2015-00782701-PR-PW-CXC  
30-2015-00809532-PR-TR-CXC

Assigned for all purposes to the Honorable  
Randall Sherman in Department CX105

Arbitrator Honorable Stuart T. Waldrip (Ret.)

**NOTICE OF RULING**

**Date: November 16, 2018**

**Time: 10:00 a.m.**

**Dept.: CX105**

**TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

PLEASE TAKE NOTICE that on November 16, 2018, the hearings on: 1) Plaintiffs  
Richard G. Wahler’s, Linda J. Vollaire’s and Cathy R. Holmes’ (hereinafter collectively referred  
to as “Plaintiffs”) Motion for an Order Compelling Valaree A. Wahler and Elizabeth Wahler to  
Return to Arbitration; 2) Plaintiffs’ Motion for an Order Staying Litigation Pending Resolution of  
an Ongoing Arbitration; and 3) Motion by Defendant Valaree Wahler for Summary Judgment,  
came on for hearing in Department CX-105 of the above-entitled Court, Honorable Randall J.  
Sherman presiding.

Attorneys James Daily and Christopher Walsh of the Daily Law Group, Alyssa C.  
Westover of Alyssa C. Westover, APC, Alyssa Milman White of Angelo & White, APC and  
Kenneth Halpern of Stris and Maher appeared for the Plaintiffs Cathy R. Holmes (individually and  
as Administrator of the Estate of Marjorie J. Wahler), Richard G. Wahler and Linda J. Vollaire.  
Attorneys Donald Hamman of Stuart Kane LLP and Mark Mazda of Law Office of Mark Mazda  
appeared for Defendant Valaree A. Wahler (individually and as Trustee of the Wahler Family  
Trust dated April 9, 1976 and as Trustee of the Robert and Valaree Wahler Trust dated November  
6, 2007). Attorney Erik C. Swanholt of Foley & Lardner LLP appeared for Elizabeth Wahler.  
Attorney J. Douglas Kirk of Kirk & Toberty appeared for Peri Grace Corso. Attorney Larry Liu  
appeared (telephonically) for Elba, LLC. There were no other appearances.

1 After reading the moving, opposition and reply papers, and hearing oral arguments, the  
2 Court adopted its tentative ruling, issuing the following orders:

3 **1. Plaintiffs’ Motion for an Order Compelling Valaree A. Wahler and Elizabeth**  
4 **Wahler to Return to Arbitration.**

5 Plaintiffs’ Petition for Order Compelling Valaree A. Wahler (hereinafter referred to as  
6 “Valaree”) and Elizabeth K. Wahler (hereinafter referred to as “Elizabeth”) to Arbitrate is  
7 **GRANTED.**

8 The Court’s Tentative Ruling, which is adopted as its final ruling, states as follows:

9 “In the Stipulation to Settlement signed by Plaintiffs and Valaree on July 19, 2017 (at 2  
10 a.m.), they agreed to work toward a final and complete settlement agreement, and agreed (on p.  
11 12) that if they could not agree on the final language or interpretation of any additional settlement  
12 documentation, or had a dispute about the Stipulation to Settlement, they would submit that dispute  
13 to Judge Waldrip for determination, without the right of appeal. This language constitutes an  
14 arbitration agreement which plaintiffs may enforce.

15 “Valaree contends the agreement is unenforceable because (per p. 1) it was ‘subject to’  
16 Valaree obtaining Elizabeth’s signature. The court accepts plaintiffs’ argument that this clause  
17 refers to the envisioned final agreement, not the Stipulation to Settlement. (But the court is not  
18 concluding at this time that if Elizabeth fails to sign any final agreement, Valaree is not bound by  
19 it. It might have been Valaree’s obligation to obtain Elizabeth’s signature, precluding Valaree  
20 from backing out based on her own failure to comply with this clause.) Valaree’s argument that  
21 Elizabeth was required to sign the Stipulation to Settlement for it to be enforceable against Valaree  
22 is unconvincing, since Elizabeth was not at the mediation that led to the signing, and there were  
23 many other people not at the mediation who were intended to sign documents as part of a final  
24 settlement. Elizabeth is bound by the arbitration clause, without regard to whether she is bound  
25 by any final settlement agreement, because she participated through counsel in the arbitration for  
26 a meaningful period time (see Judge Waldrip’s Order Confirming Continued Stay of Proceedings  
27 at 3:20-22), based on the authority of Douglass v. Serenivision, Inc.(2018) 20 Cal. App. 5th 376,  
28 387, in which the court held that an agreement to arbitrate can be implied in fact through a person’s

1 conduct. Valaree’s continued participation in the arbitration proceedings before Judge Waldrip  
2 also constitutes her implied in fact agreement to arbitrate irrespective of any conditional language  
3 in the Stipulation to Settlement. Valaree arguably also waived any such condition, and is estopped  
4 to assert any such condition, based on her conduct. The court rejects Valaree’s argument that  
5 plaintiffs waived their right to compel arbitration by a delay in bringing this petition. This court  
6 denied two prior motions by plaintiffs because they were not procedurally proper, and required a  
7 petition to compel arbitration, which plaintiffs have now filed. Underlying these rulings is the  
8 public policy of finding an agreement when the parties appear to have intended to reach one, and  
9 indeed the very first paragraph of the Stipulation to Settlement says: ‘This settlement document is  
10 intended by the parties to be binding and enforceable in court by motion.’

11 “Arguably it is for Judge Waldrip to decide if obtaining Elizabeth’s signature was an issue  
12 for the Stipulation to Settlement or for the final agreement, since the arbitration clause calls for  
13 Judge Waldrip to resolve ‘a dispute about this document’. Nonetheless, this court has given its  
14 view on that topic so that if this matter eventually goes up on appeal, and the parties disagree on  
15 who should have made that decision, the appellate court can have the view of both judges so that  
16 any alleged error can potentially be deemed harmless. (I.e., if the two judges agree, then it won’t  
17 matter who should have made that decision.)”

18 **2. Plaintiffs’ Motion for an Order Staying Litigation Pending Resolution of an**  
19 **Ongoing Arbitration.**

20 Plaintiffs’ Motion for an Order Staying Litigation Pending Resolution of an Ongoing  
21 Arbitration is **GRANTED**. Case No. 30-2015-00794832-CU-EN-CXC and related to Case Nos.  
22 30-2015-00798136-CU-EN-CXC; 30-2015-00769258-CU-BT-CXC; 30-2015-00798191-CU-  
23 BT-CXC; 30-2015-00806637-CU-OR-CXC; 30-2015-00766893-PR-NC-CXC; 30-2015-  
24 00766869-PR-NC-CXC; 30-2015-00782701-PR-PW-CXC; and 30-2015-00809532-PR-TR-  
25 CXC are hereby **STAYED**.

26 The Court’s Tentative Ruling, which is adopted as its final ruling, states as follows:  
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1 "Judicial efficiency lies in favor of determining the terms of any final settlement  
2 agreement, and determining if the agreement is binding against any or all of the relevant parties,  
3 before continuing to heavily litigate all of these consolidated and related cases."

4 **3. Defendant Valaree Wahler's Motion for Summary Judgment.**

5 Defendant Valaree Wahler's Motion for Summary Judgment is **ORDERED OFF**  
6 **CALENDAR** by virtue of the stay which the Court has now imposed.

7 The Status Conferences set for January 17, 2019 in this and all the related cases will remain  
8 on calendar.

9 Counsel for Plaintiffs are ordered to give notice.

10 A true and correct copy of the Court's tentative ruling, which it adopted as its final ruling,  
11 is attached hereto and incorporated herein by reference, marked as Exhibit "A".

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13 Dated: November 16, 2018

**ANGELO & WHITE**

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By:   
ALYSSA MILMAN WHITE, ESQ.  
Co-Counsel for Plaintiffs  
Richard G. Wahler, Cathy R. Holmes and  
Linda J. Vollaire

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# EXHIBIT A

**TENTATIVE RULINGS**

**JUDGE RANDALL J. SHERMAN**

**DEPARTMENT CX105**

**NOVEMBER 16, 2018**

**COURT REPORTERS WILL NOT BE PROVIDED FOR TRIALS OR ANY OTHER HEARINGS. IF A PARTY DESIRES A COURT REPORTER FOR A MOTION, IT WILL BE THE RESPONSIBILITY OF THAT PARTY TO PROVIDE ITS OWN COURT REPORTER. PARTIES MUST COMPLY WITH THE COURT'S POLICY ON THE USE OF PRO TEMPORE COURT REPORTERS, WHICH CAN BE FOUND ON THE COURT'S WEBSITE AT:**

[www.occourts.org/media/pdf/Privatey\\_Retained\\_Court\\_Reporter\\_Policy.pdf](http://www.occourts.org/media/pdf/Privatey_Retained_Court_Reporter_Policy.pdf)

**IF YOU INTEND TO SUBMIT ON THE TENTATIVE RULING, PLEASE ADVISE THE OPPOSING PARTIES AND THE COURT BY CALLING (657) 622-5305 BY 9:00 A.M. ON THE HEARING DATE. MAKE SURE THE OPPOSING PARTIES SUBMIT AS WELL BEFORE YOU FORGO APPEARING, BECAUSE THE COURT MAY CHANGE THE RULING BASED ON ORAL ARGUMENT.**

**DO NOT CALL THE CLERK ABOUT A TENTATIVE RULING WITH QUESTIONS YOU WANT RELAYED TO THE COURT. THIS MAY BE AN IMPROPER EX PARTE COMMUNICATION. YOU MAY TELL THE CLERK YOU SUBMIT ON THE TENTATIVE, YOU WILL BE ON COURT CALL, OR YOU ARE TAKING A MOTION OFF CALENDAR AND HAVE NOTIFIED THE OTHER PARTIES. OTHER QUESTIONS ABOUT THE TENTATIVE RULING ARE IMPROPER.**

**THE PARTIES MUST COMPLY WITH THE CCP §1005(b) FILING DEADLINES. THE COURT MAY NOT CONSIDER LATE PAPERS. COUNSEL MAY NOT AGREE TO EXTEND A FILING DEADLINE WITHOUT THE COURT'S APPROVAL. THE PARTIES ALSO MUST COMPLY WITH CRC RULE 3.1113, INCLUDING PAGE LIMITATIONS AND TABLES OF AUTHORITIES AND CONTENTS FOR ALL BRIEFS OVER 10 PAGES.**

#	Case Name & No.	Tentative Ruling
1	[REDACTED]	[REDACTED]
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	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]

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[REDACTED]

**11 Holmes, Administrator vs. Wahler, Trustee 2015-00794832**

Plaintiffs' Petition for Order Compelling Valaree A. Wahler and Elizabeth K. Wahler to Arbitrate is granted. In the Stipulation to Settlement signed by plaintiffs and Valaree on July 19, 2017 (at 2 a.m.), they agreed to work toward a final and complete settlement agreement, and agreed (on p. 12) that if they could not agree on the final language or interpretation of any additional settlement documentation, or had a dispute about the Stipulation to Settlement, they would submit that dispute to Judge Waldrip for determination, without the right of appeal. This language constitutes an arbitration agreement which plaintiffs may enforce.

Valaree contends the agreement is unenforceable because (per p. 1) it was "subject to" Valaree obtaining Elizabeth's signature. This court accepts plaintiffs' argument that this clause refers to the envisioned final agreement, not the Stipulation to Settlement. (But this court is not concluding at this time that if Elizabeth fails to sign any final agreement, Valaree is not bound by it. It might have been Valaree's obligation to obtain Elizabeth's signature, precluding Valaree from backing out based on her own failure to comply with this clause.)



Valaree’s argument that Elizabeth was required to sign the Stipulation to Settlement for it to be enforceable against Valaree is unconvincing, since Elizabeth was not at the mediation that led to the signing, and there were many other people not at the mediation who were intended to sign documents as part of a final settlement. Elizabeth is bound by the arbitration clause, without regard to whether she is bound by any final settlement agreement, because she participated through counsel in the arbitration for a meaningful period time (see Judge Waldrip’s Order Confirming Continued Stay of Proceedings at 3:20-22), based on the authority of Douglass v. Serenivision, Inc. (2018) 20 Cal. App. 5th 376, 387, in which the court held that an agreement to arbitrate can be implied in fact through a person’s conduct. Valaree’s continued participation in the arbitration proceedings before Judge Waldrip also constitutes her implied in fact agreement to arbitrate irrespective of any conditional language in the Stipulation to Settlement. Valaree arguably also waived any such condition, and is estopped to assert any such condition, based on her conduct. The court rejects Valaree’s argument that plaintiffs waived their right to compel arbitration by a delay in bringing this petition. This court denied two prior motions by plaintiffs because they were not procedurally proper, and required a petition to compel arbitration, which plaintiffs have now filed. Underlying these rulings is the public policy of finding an agreement when the parties appear to have intended to reach one, and indeed the very first paragraph of the Stipulation to Settlement says: “This settlement document is intended by the parties to be binding and enforceable in court by motion.”

Arguably it is for Judge Waldrip to decide if obtaining Elizabeth’s signature was an issue for the Stipulation to Settlement or for the final agreement, since the arbitration clause calls for Judge Waldrip to resolve “a dispute about this document”. Nonetheless, this court has given its view on that topic so that if this matter eventually goes up on appeal, and the parties disagree on who should have made that decision, the appellate court can have the view of both judges so that any alleged error can potentially be deemed harmless. (I.e., if the two judges agree, then it won’t matter who should have made that decision.)

Plaintiffs’ Motion for an Order Staying Litigation Pending Resolution of an Ongoing Arbitration is granted. Judicial efficiency lies in favor of determining the terms of any final settlement agreement, and determining if the agreement is binding against any or all of the relevant parties, before continuing to heavily litigate all of these consolidated and related cases.

Defendant Valaree Wahler’s Motion for Summary Judgment is ordered off calendar by virtue of the stay which the court has now imposed. The Status Conferences set for January 17, 2019 in this and all the related cases will remain on calendar.

Plaintiffs are ordered to give notice of the ruling.



## SERVICE LIST

COUNSEL	PARTIES	ORANGE COUNTY CASE NUMBER
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<p>Robert G. Loewy, Esq. (SBN 179868)  LAW OFFICES OF ROBERT G. LOEWY, P.C.  101 Enterprise, Suite 350  Aliso Viejo, California 92656  Telephone: (949) 442-7103  Facsimile: (949) 242-5105  E-mail: rloewy@rloewy.com</p>	<p><i>Attorneys for</i> SUE ELLEN BUNCH, individually</p>	<p>30-2015-00769258-CU-BT-CXC  30-2015-00798191-CU-BT-CXC</p>
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