Case No: S276545

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

CHARLES LOGAN,
Plaintiff and Respondent,

v.

COUNTRY OAKS PARTNERS, LLC dba COUNTRY OAKS CARE CENTER, SUN MAR MANAGEMENT SERVICES, INC., and ALESSANDRA HOVEY,
Defendants and Appellants,

REVIEW SOUGHT OF A JUDGMENT BY THE COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION FOUR (B312967)
(LOS ANGELES COUNTY SUPERIOR COURT (20STCV26536

ANSWER TO PETITION FOR REVIEW

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INTRODUCTION

This case is not appropriate for review of the issues presented in Defendants' and Appellants' Petition for Review. The Court of Appeal, Second District, Division 4, decision does not conflict with *Kindred Nursing Centers Ltd. Partnership v. Clark* (2017) 137 S. Ct. 1421 ("*Kindred*"). Unlike in *Kindred*, the decision here does not single out arbitration agreements for disfavor because it merely interpreted a legal instrument—the Advance Directive granting health care power of attorney—by applying standard contract principles. There are many types of decisions that would not be within the scope of authority under a health care power of attorney, one of which happens to be entering into arbitration agreements.

There is no conflict with *Madden v. Kaiser Foundation Hospitals* (1976) 17 Cal.3d 699 ("*Madden*"). This decision uses the same framework of analysis set forth in *Madden* and distinguishes the two based upon the starkly different factual scenarios.

Lastly, the unusual factual timeline of this case makes it a poor candidate for review of the potential conflict between this case and *Garrison v. Superior Court* (2005) 132 Cal.App.4th 253 ("*Garrison*") and its progeny. For these reasons, discussed *infra*, Defendants' and Appellants' Petition for Review should be denied in its entirety.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff and Respondent, Charles Logan ("Mr. Logan") accepts the Factual and Procedural Background set forth in

Logan v. Country Oaks Partners, LLC, et al., No. B312967, slip op. at pp. 2-4 (Cal. Ct. App. 2nd Dist., Div. 4, Aug. 18, 2022). In 2017, Mr. Logan executed a form Advance Directive developed by the California Medical Association, designating his nephew, Mark Harrod, his agent for health care decisions. (*Id.* at p. 2.) On November 10, 2019, Mr. Logan became a resident of the skilled nursing facility owned and operated by Defendants and Appellants, Country Oaks Partners, LLC dba Country Oaks Care Center and Sun Mar Management Services, Inc ("Country Oaks" or "Appellants"). (*Ibid.*) On November 29, 2019, Mr. Harrod executed an admission agreement and separate arbitration agreement with Country Oaks Care Center, purportedly on Mr. Logan's behalf. (*Id.* at p. 3.)

The trial court in this matter denied Defendants petition to compel arbitration, finding Mr. Harrod lacked authority to bind Mr. Logan to arbitration. (*Logan v. Country Oaks Partners, LLC, et al.*, No. B312967, slip op. at pp. 3-4 (Cal. Ct. App. 2nd Dist., Div. 4, Aug. 18, 2022.) The Court of Appeal, Second District, Division 4 affirmed. (*Id.* at p. 13.)

REVIEW SHOULD BE DENIED

I. This Decision Does Not Conflict with Kindred Because it Does Not Create a Rule Disfavoring Arbitration Agreements and is Based on Generally Applicable Law.

The Federal Arbitration Act ("FAA") establishes the principle that "[a] court may invalidate an arbitration agreement based on generally applicable contract defenses…but not on legal

rules that apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue." (*Kindred*, *supra*, 137 S. Ct. at 1426, quoting *AT & T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 339 [quotations omitted], 9 U.S.C. § 2.) "The FAA thus preempts any state rule discriminating on its fact against arbitration" and "any rule that covertly accomplishes the same objective by disfavoring contracts that (oh so coincidentally) have the defining features of arbitration agreements." (*Kindred*, *supra*, 137 S. Ct. at 1426.) However, "the FAA does not preempt generally applicable state law conditioning the validity of an arbitration agreement executed by a purported agent—like any other contract executed by a purported agent—on adequate evidentiary showing that the agreement falls within the scope of authority." (*Garcia v. KND Development 52, LLC* (2020) 58 Cal.App.5th 736, 747, discussing *Kindred*, *supra*, 137 S. Ct. at 1429.)

In *Kindred*, the United States Supreme Court reviewed the Kentucky Supreme Court's decisions in two consolidated cases dealing with an attorney-in-fact's power to bind their principals—both nursing home patients—to arbitration. (*Kindred*, *supra*, 137 S. Ct. at 1425.) In both cases, the Kentucky Supreme Court interpreted the language of the powers of attorney and found that one of the documents (the Wellner document), on its face, did not confer authority to enter into arbitration agreements. (*Ibid.*) Although *Kindred* invalidated Kentucky's "clear-statement rule" as preempted by the FAA, it did not reverse the Wellner judgment. (*Id.* at 1429.) Rather, the Court directed: "[I]f that

interpretation of the [Wellner] document is wholly independent of the court's clear-statement rule, then nothing we have said disturbs it." (*Ibid*.)

On remand, the Kentucky Supreme Court adhered to its prior conclusion that the Wellner power of attorney did not confer authority to execute an arbitration agreement, explaining it had reached this conclusion wholly independently of the clear-statement rule. (*Kindred Nursing Centers Limited Partnership v. Wellner* (Ky. 2017) 533 S.W.3d 189, 194.) The United States Supreme Court denied review of the Wellner decision. (*Kindred Nursing Centers Ltd. Partnership v. Wellner* (2018) 139 S. Ct. 319.)

Here, the Court of Appeals relied on generally applicable law in determining the scope of authority Mr. Logan's Advance Directive conferred on his nephew and power of attorney, Mark Harrod. In fact, the court expressly based its analysis on review of the plain language of Mr. Logan's Advance Directive. (*Logan*, *supra*, No. B312967, slip op. at p. 10 (Cal. Ct. App. 2nd Dist., Div. 4, Aug. 18, 2022).) In determining executing an arbitration agreement did not constitute a "health care decision" within the scope of Mr. Harrod's authority, the court neither articulated nor implied any requirement applicable only to arbitration contracts, or to contracts sharing their defining traits. (*Ibid*., see also *Garcia*, *supra*, 58 Cal.App.5th at 747.) The *Logan* ruling could apply to invalidate any type of contract that was deemed to not constitute a "health care decision"—much unlike Kentucky's clear-statement rule in *Kindred*, which could not feasibly apply to

any type of contract other than one of arbitration. For example, Mr. Harrod's narrow authority to make health care decisions for Mr. Logan would surely not authorize Mr. Harrod to, say, agree to a sale of real property on Mr. Logan's behalf. Since this decision does not disfavor arbitration agreements in violation of *Kindred*, review of the issue should be denied.

II. This Decision Does Not Conflict with *Madden* Because it is Factually Distinguishable.

This Court's holding in *Madden* is narrow: "an agent empowered to negotiate a group medical contract has the implied authority to agree to the inclusion of an arbitration provision." (*Madden*, *supra*, 17 Cal.3d at 706.) The Court arrived at its conclusion in *Madden* by applying Civil Code, section 2319, "which authorizes a general agent to do everything necessary or proper and usual…for effecting the purpose of his agency." (*Ibid*., citing Civil Code § 2319, quotations omitted.) There, it was "proper and usual" for two parties possessing a parity of bargaining strength to negotiate provisions of a contract, including arbitration provisions. (*Id*. at 711.)

Appellants' contention that the Court of Appeal decision somehow conflicts with *Madden* is untenable. First, the *Logan* decision emphasizes that the facts in *Madden* are readily distinguishable, emphasizing that the arbitration agreement in *Madden* was negotiated by parties "possessing a parity of bargaining strength." (*Logan*, *supra*, No. B312967, slip op. at p. 9 (Cal. Ct. App. 2nd Dist., Div. 4, Aug. 18, 2022), quoting *Madden*, *supra*, 17 Cal.3d at 711.) Mr. Harrod was not negotiating an

arbitration provision, and there is no indication Mr. Harrod and Country Oaks had parity of bargaining strength. Additionally, the Court of Appeal applied the same analysis as this Court did in *Madden*—it evaluated whether signing an arbitration agreement was "necessary or proper and usual" for Mr. Harrod to affect the purpose of his agency, admitting Mr. Logan to a skilled nursing facility. The Court of Appeal faithfully applied *Madden*, and simply reached a different conclusion based upon factual distinctions. As such, review of this issue should be denied.

III. This Decision is a Poor Vehicle for Review of Conflict with *Garrison* and its Progeny.

Review of this decision for conflict with *Garrison* and *Hogan v. Country Villa Health Services* (2007) 148 Cal.App.4th 259 ("*Hogan*") is inappropriate because the facts of this case make it a poor vehicle for review. Typically, when a patient begins residing at a skilled nursing facility, the patient or their representative executes an admission agreement—and potentially and arbitration agreement—at or around the time the patient begins residing at the facility. In this case, Mr. Logan began residing at Country Oaks on November 10, 2019. However, no admission agreement or arbitration agreement was executed at that time. Rather, it was not until November 29, 2019, that Mr. Harrod signed an admission agreement and arbitration agreement for his uncle's residency at the facility. This unusual fact has the potential to create confusion as to whether the timeliness of executing an arbitration agreement is a

determinative factor in deciding whether such was a "health care decision."

Moreover, the potential split of authority amongst the Courts of Appeal has not yet fully developed. Rather, this decision and dicta in *Young v. Horizon West, Inc.* (2013) 220 Cal.App.4th 1122, 1129 are the first to challenge *Garrison* and *Hogan*. As such, it is unclear at this early stage whether a "circuit split" will continue to develop. If such a split of authority does become evident, surely a case with more typical and better suited facts will reach this Court. For these reasons, review of this decision's conflict with *Garrison* and *Hogan* is unnecessary at this time and should be denied.

CONCLUSION

In sum, Appellants' Petition for Review should be denied because this case does not present the conflicts suggested by Appellants' proposed issues, and it is a poor vehicle for review.

Respectfully submitted,

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Counsel for Plaintiff and Respondent hereby certifies that this answer to petition contains 1,610 words as measured by the word processing software program used to create this document.

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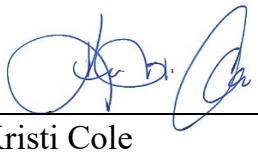

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Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

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