TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, April 8, 2026, 3:00 p.m.
Courtroom 16 – Hon. Patrick M. Broderick
3035 Cleveland Avenue, Suite 200, Santa Rosa

TO JOIN "ZOOM" ONLINE,
Courtroom 16
Meeting ID: 161-460-6380
Passcode: 840359
https://sonomacourt-org.zoomgov.com/j/1614606380?pwd=NUdpOEZ0RGxnVjBzNnN6dHZ6c0ZQZz09

TO JOIN "ZOOM" BY PHONE,
By Phone (same meeting ID and password as listed above):
(669) 254-5252 US (San Jose)

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, YOU MUST notify the Court by telephone at **(707) 521-6725**, and all other opposing parties of your intent to appear by 4:00 p.m. the court day immediately before the day of the hearing.
Parties in motions for claims of exemption are exempt from this requirement.

PLEASE NOTE: The Court WILL NOT provide a court reporter for this calendar. If there are any concerns, please contact the Court at the number provided above.

1. 24CV02971, Maverick Excavating, Inc. v. Dalk

This matter is on calendar for the motion of Plaintiffs and Cross-Defendants Maverick Excavating, Inc. ("Maverick") and Herring and Son Construction, Inc. ("Herring")(together "Cross-Defendants") pursuant to Code of Civil Procedure section 128.7 to dismiss the cross-complaint filed by Jason Dalk ("Dalk") with prejudice, and to impose sanctions against Dalk and his counsel Matthew J. Witteman. In addition, Cross-Defendants request attorney fees and costs. **The motion is DENIED.**

1. Objections

Cross-Complainants' objections are overruled.

2. Cross-Complaint

On September 29, 2025, Dalk filed a cross-complaint against Maverick, Herring, Vince Herring, and Tiffany Herring. In the cross-complaint Dalk alleges causes of action for Wage and Hour Claims, Fraud and Constructive Fraud, Promissory Estoppel, Wage Fraud and Constructive Fraud, Statutory Retaliation, Wrongful Termination in Violation of Public Policy, and Breach of Written and/or Oral Contract. The cross-complaint alleges oral promises of a partnership involving a 50-50 split of profits, or a bonus in that amount, and a written employment contract which originally alluded to a bonus without specifying terms, and then a subsequent written contract which specified the 50% bonus and additional terms. Dalk alleges that he relied on the promise of a 50-50 partnership cut, managerial status, and benefits in working hours far in excess of a normal 40 hours week, but he did not bill for these overtime hours as an equity partner attempting to get the company, cross-defendant Herring and Sons Construction, Inc. ("HSCI") off the ground.

3. CCP section 128.7

An attorney or unrepresented party who presents a pleading, motion or similar paper to the court makes an implied "certification" as to its legal and factual merit; and is subject to sanctions for violation of this certification. (CCP § 128.7.)

Cross-Defendants' memorandum is full of accusations but fails to establish the Cross-Complaint is without legal or factual merit.

Many of Cross-Defendants' arguments are more appropriate for a demurrer; e.g., that Cross-Complainants' fraud cause of action fails to meet pleading standards and fails under the economic loss rule; that promissory estoppel fails as a matter of law; that retaliation fails to identify any nexus; that the statutory claims are not alleged with specificity; that wrongful termination fails to identify a public policy; that the contracts are not signed; and, that the cross-complaint fails to allege wage loss, emotional distress, or reputational harm with specificity.

Other arguments are more appropriate on a motion for summary judgment; e.g. that there was no misrepresentation, no scienter, and no detrimental reliance; that Dalk's employment was "at will"; regarding Dalk's denial of falsifying timesheets, vandalism, underperformance, and misrepresentation of work performed; that the Labor Commissioner's response supports Cross-Defendants' contentions of overpayments; and, that yellow highlights on Dalk's timesheets identify irregularities.

Cross-Defendants' arguments and evidence in favor of this motion fail to establish that the Cross-Complaint is frivolous. Cross-Defendants conclude: "the Employment agreements - CC Exhibits A and B - do not evidence a meeting of the minds and are unlikely to have evidentiary support after reasonable investigation." (Memo., 6:5-6.) Cross-Defendants conclude Dalk is unwilling to provide detailed contemporaneous evidence regarding the additional amounts he claims are owed; that "inquiry would have revealed that Dalk's current wage claims to treble pay, unreasonably contradict his own certified timesheets." (Memo, 8:22-24.) Cross-Defendants argue that Cross-Complainants' second, third, fourth, and seventh causes of action are frivolous because they allege a profit-sharing agreement but financial records show HSCI suffered a loss during Dalk's three-month employment making such allegation frivolous, arguing "[a] reasonable attorney would assume that a small company fighting to be paid $33,987, see SAC, was not yet profitable." (Memo. 9:3-4.)

In addition, the evidentiary burden to escape sanctions under CCP § 128.7 is "light." Counsel only needs to have "made a reasonable inquiry into the facts and entertained a good faith belief in the merits of the claim" and "need not amass even enough evidence to create a triable issue of fact" as in summary judgment proceedings or show counsel could overcome a demurrer. (*Kumar v. Ramsey* (2021) 71 Cal. App. 5th 1110, 1126.)

Cross-Complainants' opposition provides legal authority in support of their allegations and attaches evidentiary support for the claims. This evidence supports finding that, to the best of Cross-Complainants' attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, it was filed for a proper purpose, has legal merit, and has evidentiary support.

Conclusion and Order

The motion is DENIED. Cross-Complainants' request for attorney fees and costs in having to oppose this motion is DENIED.

Cross-Complainants' counsel is directed to submit a written order to the court consistent with this ruling and in compliance with Cal. Rules of Court, Rule 3.1312.

2. 24CV07017, Koch v. American Honda Motor Co., Inc.

This matter is on calendar for the motion of Plaintiff Lacey Koch ("Plaintiff") for an award of attorney fees, costs, and expenses pursuant to Civil Code section 1794(d) of the Song-Beverly Consumer Warranty Act. Plaintiff requests a total of $17,351.79 consisting of $15,870.75 in attorney fees, including a multiplier, and $1,481.04 in expenses. **The motion is GRANTED.**

1. Litigation and Settlement

Plaintiff filed this action on November 21, 2024, against Defendant American Honda Motor Co., Inc. ("Defendant") alleging the violation of the Song-Beverly Consumer Warranty Act based upon Plaintiff's purchase of a 2023 Honda Accord for $45,824.68. On July 15, 2025, the parties settled the matter with Defendant agreeing to pay Plaintiff $48,000 in exchange for the return of the vehicle. (Kirnos decl., ¶13.) As part of the settlement agreement Defendant agreed to pay $7,500 in attorney fees; or, if Plaintiff disagreed with the amount, the parties agreed she could file a motion for attorney fees, expenses, and costs under Civil Code section 1794(d). (Kirnos decl., Exhibit C., ¶4.) For the purposes of the attorney fee motion, the parties agreed Plaintiff is the prevailing party. (*Ibid*.)

2. Attorney Fees - Civil Code section 1794(d)

"If the buyer prevails in an action under this section, the buyer shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action." (Civ. Code, § 1794(d).)

A court exercises its discretion to determine the amount of attorney fees reasonably incurred. (*Serrano v. Priest* (1977) 20 Cal.3d 25, 50.)

Plaintiff's counsel utilized seven attorneys and two paralegals on this case. (Kirnos decl., Exhibit A.) The attorneys billed hourly rates from $350 to $550. (*Ibid*.) Paralegals were billed at $145 per hour. (*Ibid*.) Plaintiff's counsel explains that the use of multiple attorneys in lemon law cases is beneficial as each attorney specializes in certain stages of litigation. (*Id.,* at p. 18.) Each attorney's experience in particular niches relating to the Song-Beverly Act allows attorneys to spend less time on each case. (*Ibid*.) The invoices provided support this explanation. The time spent on each task is well within reason and the tasks performed appear reasonably necessary to the litigation. In addition, Plaintiff's counsel did not bill for some meetings between counsel and/or staff.

3. Opposition to Hours Incurred

Defendant opposes the reasonableness of the hours spent on this litigation. In particular, it argues that the fees incurred for motions to compel should be stricken because Plaintiff failed to comply with Sonoma County Local Rule 10.6(A). Defendant argues that courts routinely deny or reduce fees for work that violates procedural rules or could have been avoided through required meet-and-confer or informal procedures.

Plaintiff notes her motions were set for hearing dates after the date this matter ultimately resolved. Plaintiff argues she had no choice but to file discovery motions to preserve her discovery rights. Plaintiff argues these motions would not have been necessary if Defendant had met its burden in meeting and conferring or producing responsive discoverable information.

In reviewing the discovery motions, they addressed discovery requests to which Defendant only provided objections—even to a simple interrogatory. Under the circumstances, these motions were reasonably tailored to Defendant's insufficient discovery responses and were reasonably necessary to this litigation.

4. CCP section 998 offer

Based upon this court's finding that attorney fees in the amount of $10,580.50 is reasonable, Defendant's argument regarding its $7,500 attorney fee offer is moot.

5. Fee Enhancement

A fee enhancement or multiplier is applicable to an attorney fee award under Civil Code section 1794(d). (*Robertson v. Fleetwood Travel Trailers of California, Inc.* (2006) 144 Cal.App.4th 785, 819-821.) A touchstone or lodestar figure based on a careful compilation of the actual time spent and reasonable hourly compensation for each attorney may then be augmented or diminished by taking various relevant factors into account, including (1) the novelty and difficulty of the questions involved and the skill displayed in presenting them; (2) the extent to which the nature of the litigation precluded other employment by the attorneys; and (3) the contingent nature of the fee award, based on the uncertainty of prevailing on the merits and of establishing eligibility for the award. (*Id*. at p. 819.) The initial lodestar amount is based on the reasonable rate for *noncontingent* litigation of the same type, which amount may then be enhanced to account for factors such as the contingent nature of the case: "The purpose of such adjustment is to fix a fee at the fair market value for the particular action. In effect, the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services." (*Id.,* citing *Ketchum v. Moses* (2001) 24 Cal.4th 1122, at 1132.)

The case cited by Defendant is notably distinguishable. In addition to factors not present here, the defendant in that case never contested the legal claims against it and communicated a desire to settle the case. (See *Thayer v. Wells Fargo Bank, N.A.* (2001) 92 Cal. App. 4th 819.)

Plaintiff requests a fee enhancement of 1.5 which amounts to $5,290.25. This request is based upon the contingency nature of the case and the inherent risk that Plaintiff may not prevail, and her attorneys would not get paid. In addition, Plaintiff's counsel advanced all litigation costs. Plaintiff's counsel's hourly rates are within the range of reasonable compensation; they are not augmented to compensate for the delay in payment. The requested 1.5 multiplier is reasonable in this case.

6. Costs and Expenses

Civil Code section 1794(d) allows for recovery of costs and expenses reasonably incurred in the litigation. Plaintiff reasonably incurred $1,481.04 litigating this case. (Kirnos decl., Exhibit B.)

7. Conclusion and Order

Plaintiff's motion is GRANTED. Plaintiff is awarded $17,351.79 in attorney fees, costs and expenses.

Plaintiff's counsel is directed to submit a written order to the court consistent with this ruling and in compliance with Cal. Rules of Court, Rule 3.1312.

3. <u>25CV01480, Broward v. Binnewies</u>

This matter is on calendar for the motion of Plaintiff Victoria Broward for leave to file a Firat Amended Complaint

Judicial policy dictates the court's discretion be applied liberally to allow amendments. (*Nestle v. Santa Monica* (1972) 6 Cal. 3d 920, 939.) It is only when there is prejudice to the other side that cannot be alleviated by imposing conditions on the moving party that leave should not be allowed. (*Hirsa v. Sup.Ct. (Vickers)* (1981) 118 Cal. App. 3d 486, 490.)

This action was initially filed on February 27, 2025. It asserts causes of action for negligence and premises liability based upon injuries sustained by Plaintiff as a result of tripping on a broken sidewalk in front of the residence of Defendants Robert Binnewies and Esther Binnewies.

Plaintiff's counsel has been informed that defendant Esther Binnewies passed away on April 4, 2025. (Henderson decl., Exhibit C.) No prejudice will come from granting this motion. **The motion is GRANTED.** Plaintiff may file a First Amended Complaint within 10 days of this order.

Plaintiff's counsel is directed to submit a written order to the court consistent with this ruling.

4. 25CV06283, Julius v. Toyota Motor Sales, U.S.A., Inc.

This matter is on calendar for the demurrer and motion to strike of Defendant Toyota Motor Sales, U.S.A., Inc. ("Toyota"). **The demurrer is OVERRULED. The motion to strike is DENIED.**

I. Demurrer

Toyota demurs to the sixth cause of action for fraudulent inducement – concealment alleged in the complaint filed by Plaintiffs Kayla K. Julius and Jody Fraser ("Plaintiffs") on the grounds of lack of particularity of pleading and as being barred by the economic loss rule.

a. Complaint

Plaintiffs' complaint alleges on or about December 31, 2021, Plaintiffs entered into a warranty contract with Toyota regarding a 2021 Toyota RAV4 (the "Vehicle"), which was manufactured and/or distributed by Toyota. (Complaint ["C,"] ¶7.) The warranty contract contained various warranties, including but not limited to the bumper-bumper warranty, powertrain warranty, and an emission warranty. (C. ¶8.)

Plaintiffs allege various defects and nonconformities manifested themselves within the warranty period, the Vehicle is worthless, and Toyota has not repurchased or replaced the Vehicle after a reasonable number of repair attempts. (C. ¶¶11-15.)

b. Sixth Cause of Action - Fraudulent Inducement - Concealment

To establish fraudulent concealment, a plaintiff must prove: "(1) concealment or suppression of a material fact; (2) by a defendant with a duty to disclose the fact; (3) the defendant intended to defraud the plaintiff by intentionally concealing or suppressing the fact; (4) the plaintiff was unaware of the fact and would have acted differently if the concealed or suppressed fact was known; and (5) plaintiff sustained damage as a result of the concealment or suppression of the material fact." (*Rattagan v. Uber Technologies, Inc*. (2024) 17 Cal.5th 1, 40.)

Here, Plaintiffs' six cause of action alleges that Toyota knew that the Vehicle suffered from defects including loss of power, the engine running rough, engine misfires, and premature engine wear ("Engine Defect"). (C. ¶¶53-56.) Toyota's alleged exclusive knowledge of the Engine Defect was based upon pre-releasing testing data; early consumer complaints about the Engine Defect to Toyota's dealers who are Toyota's agents for vehicle repairs; dealership repair orders; testing conducted in response to those complaints; and other internal sources of information possessed exclusively by Toyota and its agents. (C. ¶¶57, 62-65, 76.) Plaintiffs allege Toyota and its agents actively concealed the Engine Defect and failed to disclose this defect to Plaintiffs at the time of purchase of the Vehicle or thereafter. (C. ¶¶57, 59.) Plaintiffs allege that despite Toyota's knowledge of the Engine Defect, it continued to represent that its vehicles equipped with the 2.5L engine were of high quality and trained its dealers throughout the country to specifically tout the supposedly superior attributes of the 2.5L engine, without ever mentioning its troubling Engine Defect. (C. ¶72.) They further allege that Toyota had authorized dealers implement a strategy that allowed the dealers to take only limited repair measures which did not properly remedy or resolve the underlying defect. (C. ¶¶75-77.)

i. Particularity

With respect to a cause of action for concealment, there are "four circumstances in which nondisclosure or concealment may constitute actionable fraud: (1) when the defendant is in a fiduciary relationship with the plaintiff; (2) when the defendant had exclusive knowledge of material facts not known to the plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff; and (4) when the defendant makes partial representations but also suppresses some material facts. [Citation.]" (*LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 336 [citing case].)

Here, the complaint alleges facts supporting the second and third circumstances. Plaintiffs did not have the same data available to them as did Toyota. Plaintiffs allege Toyota was provided with complaints, repair histories, and testing data not available to Plaintiffs. (C., ¶ ¶ 57, 63.) They allege it is reasonable to expect a vehicle's engine to be safe, to function in a manner that will not pose a safety hazard, and to be free from defects. (C. ¶ ¶ 66-67.) Thus, the complaint alleges Toyota concealed material facts unknown and not reasonably discoverable by Plaintiffs at the time of the purchase of the Vehicle.

Toyota argues Plaintiffs do not refer to any specific testing data that actually demonstrated the alleged symptoms (i.e. "loss of power, stalling, engine running rough, engine misfires, failure or replacement of the engine") manifested in any 2021 Toyota RAV4. Toyota argues Plaintiffs do not identify any specific consumer complaints about the alleged engine defect, even though consumer complaints are publicly available on the internet, including
through National Highway Traffic Safety Administration's ("NHTSA") website and other online forums. Toyota argues Plaintiffs do not allege that any specific Toyota dealership received or processed repair orders that would have revealed the existence of the alleged engine defect. Toyota argues the complaint is therefore devoid of any facts that plausibly plead that Toyota had pre-sale knowledge of the alleged engine defect.

Toyota appears to argue that Plaintiffs must allege the evidence supporting their allegations. At the pleading state, only the ultimate facts need be alleged. "To survive a demurrer, the complaint need only allege facts sufficient to state a cause of action; each evidentiary fact that might eventually form part of the plaintiff's proof need not be alleged." (*C.A. v. William S. Hart Union High School Dist*. (2012) 53 Cal. 4th 861, 872.) Plaintiffs have sufficiently alleged facts supporting each element of a cause of action for fraud.

Toyota also argues the complaint fails to allege any facts related to the purported misrepresentations or omissions concerning the alleged defect.

A plaintiff's burden in asserting a fraud claim against a corporate entity requires him or her to "allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written." (*Tarmann v. State Farm Mutual Auto. Ins. Co.* (1991) 2 Cal.App.4th 153, 157.) However, this rule is intended to apply to affirmative misrepresentations. (*Alfaro v. Community Housing Improvement System & Planning Assn., Inc.* (2009) 171 Cal.App.4th 1356, 1384.) In addition, there are certain exceptions which mitigate the rigor of the rule requiring specific pleading of fraud. "Less specificity is required when 'it appears from the nature of the allegations that the defendant must necessarily possess full information concerning the facts of the controversy,' [Citation.] '[e]ven under the strict rules of common law pleading, one of the canons was that less particularity is required when the facts lie more in the knowledge of the opposite party ....'" (*Committee On Children's Television, Inc. v. General Foods Corp*. (1983) 35 Cal.3d 197, 217.)

Here, Plaintiffs allege that Toyota had significant information pertaining to the Engine Defect which it concealed. Plaintiffs allege that Toyota acquired its knowledge of the Engine Defect prior to Plaintiffs acquiring the Vehicle through sources not available to consumers such as

Plaintiffs. While Plaintiffs do not state the name of the corporate officers who allegedly concealed this information, Plaintiffs are not in a position to know that information at this stage of the action. The complaint is clear about what is being alleged and provides details about the alleged defect.

Based upon the foregoing, the demurrer on the grounds of lack of particularity is OVERRULED.

c. Economic Loss Rule

Toyota argues that Plaintiffs' cause of action for fraud is barred by the economic loss rule.

"Economic loss consists of ' " ' "damages for inadequate value, costs of repair and replacement of the defective product or consequent loss of profits—without any claim of personal injury or damages to other property.... " ' [Citation.]" ' [Citation.] Simply stated, the economic loss rule provides: ' " '[W]here a purchaser's expectations in a sale are frustrated because the product he bought is not working properly, his remedy is said to be in contract alone, for he has suffered only 'economic' losses.' " This doctrine hinges on a distinction drawn between transactions involving the sale of goods for commercial purposes where economic expectations are protected by commercial and contract law, and those involving the sale of defective products to individual consumers who are injured in a manner which has traditionally been remedied by resort to the law of torts.' [Citation.] The economic loss rule requires a purchaser to recover in contract for purely economic loss due to disappointed expectations, unless he can demonstrate harm above and beyond a broken contractual promise. [Citation.] Quite simply, the economic loss rule ' "prevent[s] the law of contract and the law of tort from dissolving one into the other." ' [Citations.]" (*Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, 988.)

The economic loss rule does not bar a claim here for fraudulent inducement by concealment. (*Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828, 843.)

The demurrer on this ground is OVERRULED.

d. Conclusion and Order

Based upon the foregoing, the demurrer is OVERRULED.

Plaintiff's counsel is directed to submit a written order to the court consistent with this ruling and in compliance with Cal. Rules of Court, Rule 3.1312.

II. Motion to Strike

This matter is also on calendar for Toyota's motion for an order striking Plaintiffs' claim for punitive damages.

Based upon the ruling on Toyota's demurrer, Plaintiffs' complaint continues to allege a cause of action based upon fraud. Fraud supports a request for punitive damages. (Civil Code section 3294(c)(3).) Accordingly, the motion is DENIED.

Plaintiffs' counsel is directed to submit a written order to the court consistent with this ruling and in compliance with Cal. Rules of Court, Rule 3.1312.

5. <u>25CV07282, Oliver v. Saris</u>

I. Motion to Compel Arbitration

This matter is on calendar for the motion of Defendants Anthony Saris and Saris Fund Two, LLC ("Saris Defendants") for an order compelling arbitration of the complaint filed by Plaintiff Lillian M. Oliver, individually and as Trustee of the Lillian M. Oliver Trust ("Plaintiff" or "Oliver"); and the cross-complaint filed by Hugh Futrell, Hugh Futrell Corporation, and Meda/Brookwood, LLC ("Futrell Defendants"). **The motion is GRANTED.**

1. Litigation History

Plaintiff filed this action on October 17, 2025. The complaint alleges twelve causes of action: 1) Financial Elder Abuse; 2) Fraud; 3) Breach of Fiduciary Duty; 4) Negligence; 5) Breach of Contract (Operating Agreement); 6) Breach of Contract (Construction Contract); 7) Rescission (Sale Agreement and Operating Agreement); 8) Unjust Enrichment; 9) Declaratory Relief; 10) Unfair Competition; 11) Constructive Trust and Equitable Lien; and 12) Accounting.

Defendants are Anthony "Tony" Saris ("Saris"); Saris Fund Two, LLC ("Saris LLC"); Hugh Futrell ("Futrell"); Hugh Futrell Corporation ("Futrell Corp."); and Meda-Brookwood, LLC ("Meda")(altogether "Defendants").

This case arises from an alleged scheme targeting an elderly investor to induce her to turn over $1.47 million to purchase land located at 1650 Meda Ave. ("Property") worth only $450,000, and then to strip her of the land by forcing her to convey it into Holly Hock LLC, in which she had a mere passive interest. Plaintiff alleges Defendants induced Oliver into the exchange with promises of safety, a handsome guaranteed return on investment, and a 6–12 month build during which she would "land-bank" her capital with essentially no risk. Plaintiffs allege Defendants stripped Oliver of direct land ownership, made themselves the sole Managers of Holly Hock LLC, and buried in an Exhibit to the LLC Operating Agreement a key term that wrestled even more control away from her by allowing the Managers to sell the Property at their sole discretion.

The complaint alleges there are two managing members of Holly Hock LLC: Saris LLC, owned and operated by Saris, and Futrell Corp., owned and operated by Futrell. It alleges that defendants Saris and Futrell occupied multiple undisclosed conflicted roles: Futrell as seller of the land (through his entity Meda), Saris as a broker who received a finder's fee for the sale, Saris and Futrell as managers of the project's entity, Holly Hock, LLC, and Futrell as the general contractor for the project through his company Futrell Corp. Plaintiff alleges Defendants made absolutely no disclosures of any of these conflicts to Oliver, either orally or in writing regarding these conflicting positions.

The complaint was filed five years after the parties entered into their arrangement with no development on the Property. Plaintiff alleges Defendants have provided excuse upon excuse for why construction has not begun, abusing the inherent conflicts of interest to avoid responsibility for failing to complete the Holly Hock Project as they promised they would: on time and for the agreed cost. Plaintiff alleges Defendants are now attempting to employ a sale strategy that would protect themselves while locking in significant losses for Oliver and forcing her to release her claims.

On December 12, 2025, Futrell, Futrell Corp., and Meda ("Cross-Complainants") filed a cross-complaint against Saris and Saris LLC. Cross-Complainants allege causes of action for Fraud, Negligent Misrepresentation, Rescission, Breach of Fiduciary Duty, and for Indemnity and Contribution. Cross-Complainants allege that prior to Plaintiff's purchase of the Property, neither Futrell nor anyone on his behalf had met Plaintiff. Cross-Complainants allege Saris was the sole person to communicate with Plaintiff on behalf of Holly Hock LLC and the sole person to induce her to purchase the Property.

2. Arbitration

The basis of Defendants' request is the arbitration agreement in the Holly Hock Operating Agreement and the parties' construction agreement. Signed copies are attached to Plaintiff's complaint as Exhibits B and C.

Arbitration is a matter of contract which courts must "rigorously enforce" according to their terms. (*American Exp. Co. v. Italian Colors Restaurant* (2013) 570 U.S. 228, 233.) Such terms include with whom the parties choose to arbitrate and by what arbitration rules. (*Ibid*.)

The operating agreement's arbitration provision is viewed in the context of the whole agreement or agreements, in light of the usual and ordinary meaning of the contractual language and the circumstances under which the agreement or agreements were made, and attempting to give

effect to every part, if reasonably practicable, with each clause helping to interpret others. (*Rice v. Downs* (2016) 248 Cal.App.4th 175, 188.)

i. Holly Hock Operating Agreement – Arbitration Clause

Section 11.8 of Holly Hock Operating Agreement provides: "*Dispute Resolution.* Any dispute among the Members, or between the Managers, arising out of this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by thee arbitrator(s) may be entered in any court having jurisdiction thereof."

The arbitration agreement refers to "any dispute" "arising out of this Agreement, or the breach thereof." An arbitration provision that includes both the "arising from" or "arising out of" type of language *and* a phrase such as "in connection with" or "relating to" extends the scope of an arbitration provision to also encompass tort claims having " 'their roots in the relationship between the parties which was created by the contract'." (*Rice v. Downs* (2016) 248 Cal.App.4th 175, 189.) Provisions using only phrases such as "arising out of" or "arising from" were narrower in application and extended only to disputes relating to the interpretation and performance of the agreement. (*Ibid*.) This narrow interpretation encompasses contractual claims "and perhaps even tort claims arising from the agreement, a tort claim based upon violation of an independent duty or right originating outside of the agreement does not *arise* from the agreement and falls outside the scope of the arbitration provision." (*Id.,* at pp. 190–191.)

While the *Rice* case supports finding a narrow interpretation of the arbitration clause in the Operating Agreement, that case did not examine the application of Civil Code section 1642 or the theory of equitable estoppel, which are discussed below.

In addition, the arbitration clause in the Operating Agreement requires the dispute to be between members or managers of Holly Hock LLC. The Operating Agreement states Saris LLC and Futrell Corp. are managing members, and Plaintiff, as Trustee of her trust, is a non-managing member. Futrell signed the Operating Agreement on behalf of manager Futrell Corp. as its president and as a "Key Individual." David Walter signed as Futrell Corp.'s vice president and as a "Key Individual." Saris signed on behalf of manager Saris LLC and as a "Key Individual." Oliver signed on behalf of herself and her Trust. (Complaint, Exhibit B.)

Considering the alter ego allegations, discussed below, the three members of Holly Hock LLC as well as Saris and Futrell are subject to the arbitration clause.

ii. Construction Agreement – Arbitration Clause

Section 20 of the Construction Agreement provides: "Arbitration. [¶] In the event of any dispute between Owner and Contractor over any of the obligations set forth in this agreement, the matter shall be adjudicated under the Construction Industry Arbitration Rules of the American Arbitration Association. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof."

The construction agreement for Project Holly Hock lists Holly Hock LLC as the owner and Futrell Corp. as the contractor. It was signed by Futrell on behalf of manager Futrell Corp. and by Saris on behalf of manager Saris LLC. (Complaint, Exhibits B, D.) As discussed below, the construction agreement is one part of an alleged overall scheme intended to defraud the Plaintiff.

iii. Plaintiff / Trustee

In their motion, the Saris Defendants argue that despite that Oliver signed the Operating Agreement on behalf of her trust does not relieve her of being compelled to arbitrate the disputes in this case because she is pursuing the same claims asserted by her trust. Oliver has brought this action individually and as trustee of her trust acknowledging that her interest and the trust's interest are one in the same. (See also *JSM Tuscany, LLC v. Superior Court* (2011) 193 Cal.App.4th 1222,

1236-1237 [a plaintiff suing on a contract is equitably estopped from repudiating the contract's arbitration clause.])

iv. Alter Ego

A nonsignatory sued as an agent or alter ego of a signatory may enforce an arbitration agreement. (*Rowe v. Exline* (2007) 153 Cal.App.4th 1276, 1284-1287.)

Plaintiff's complaint alleges that Saris LLC is solely owned and operated by Saris. (Complaint, ¶6.) It alleges Futrell is the sole owner and operator of Meda and Futrell Corp. (Complaint., ¶¶7, 8.) It alleges that Saris LLC is the alter ego of Saris, who is its sole owner, officer, and operator who completely dominates, controls, and directs its business, finances, and decision-making. (Complaint, ¶11.) Similarly, Futrell Corp. and Meda are alleged to be the alter egos of Futrell, who is their sole owner, officer, and operator who completely dominates, controls, and directs its business, finances, and decision-making. (Complaint, ¶¶14, 17.)

Thus, based upon an agent or alter ego theory, the arbitration clause in the Operating Agreement covers Plaintiff, Saris, Saris LLC, Futrell, and Futrell Corp. The allegations against Saris LLC and Futrell Corp. reach Saris and Futrell as the alter egos of the corporate entities. They also reach Meda as Plaintiff alleges Futrell used Meda to sell the Property to Plaintiff at an inflated fraudulent price, to extract a windfall, to conceal his conflicted role as seller and contractor, and to avoid personal liability. (*Id*., ¶¶ 17-19.)

v. Civil Code section 1642

Citing Civil Code section 1642, the Saris Defendants argue that Meda must also be compelled to arbitration because it signed the purchase agreement by which Plaintiff purchased the Property and that all the agreements between the parties should be read together.

Civil Code section 1642 provides: "Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together."

Plaintiff's claims of conspiracy present the purchase of the Property and Defendants' ultimate goal of regaining control of the Property after extracting its $1.47 million purchase price from Plaintiff as one course of action. The complaint alleges that all Defendants entered into a conspiracy to defraud and financially harm Plaintiff, who was 87 years old at that time. (Complaint, ¶¶21-23.) The conspiracy included concealing Futrell's prior ownership of the Property and his $450,000 purchase price; orchestrating the sale of the same property to Plaintiff for $1.47 million through Meda; falsely representing the investment as "risk-free" and suitable for a 1031 Exchange; requiring Plaintiff to transfer the property into Holly Hock LLC while concealing the consequences of doing so; and Saris and Futrell installing themselves, through Saris LLC and Futrell Corp., as the sole Managers of Holly Hock LLC with complete control over Plaintiff's investment. These conspiracy allegations are intertwined with the Holly Hock Operating Agreement.

The complaint describes an overall fraudulent scheme which is dependent upon the three written agreements. Therefore, section 1642 is applicable and purchase agreement, Operating Agreement, and construction agreement should all be taken together.

vi. Equitable Estoppel / Inextricably Intertwined

The Saris Defendants argue that the three agreements—the real estate purchase agreement, the Operating Agreement, and the construction agreement—are inextricably intertwined such that they all arise out of the Operating Agreement so that the arbitration clause therein is applicable to all allegations in Plaintiff's complaint. They argue the entire transaction was contemplated from its inception as a mechanism for the 1031 exchange for the Oliver Trust.

The Saris Defendants cite *JSM Tuscany, LLC v. Superior Court* (2011) 193 Cal.App.4th 1222 in support of their argument that the doctrine of equitable estoppel broadly requires arbitration of claims that do not fall within the ambit of the arbitration provision, if those claims are

inextricably intertwined with the obligations imposed by the contract containing the arbitration clause.

JSM provides that both federal and California decisional authority hold a nonsignatory defendant may invoke an arbitration clause to compel a signatory plaintiff to arbitrate its claims when the causes of action against the nonsignatory are "intimately founded in and intertwined" with the underlying contractual obligations. (*JSM Tuscany, LLC v. Superior Court* (2011) 193 Cal.App.4th 1222, 1237.) A signatory of an arbitration clause may be compelled to arbitrate against a nonsignatory when the relevant causes of action rely on and presume the existence of the contract containing the arbitration provision. (*Ibid*.)

Other California courts, applying federal law, have embraced the estoppel theory, holding that a signatory plaintiff who sues on a written contract containing an arbitration clause may be estopped from denying arbitration if he sues nonsignatories as related or affiliated persons with the signatory entity. (*Id.* at p. 1238.) "'[T]he equitable estoppel doctrine applies when a party has signed an agreement to arbitrate but attempts to avoid arbitration by suing nonsignatory defendants for claims that are '"based on the same facts and are inherently inseparable"' from arbitrable claims against signatory defendants.'" (*Ibid*.) Claims that rely upon, make reference to, or are intertwined with claims under the subject contract are arbitrable. (*Ibid*.) For the doctrine to apply to a nonsignatory to the contract, the claims plaintiff asserts must be dependent upon, or founded in and inextricably intertwined with, the underlying contractual obligations of the agreement containing the arbitration clause. (*Ibid*.)

Courts applying equitable estoppel against a signatory have 'looked to the relationships of persons, wrongs and issues, in particular whether the claims that the nonsignatory sought to arbitrate were " ' "intimately founded in and intertwined with the underlying contract obligations." (*Ibid*.) Application of the estoppel doctrine in this context turns upon the nexus between the contract and the causes of action asserted. (*Ibid*.) Claims that rely upon, make reference to, or are intertwined with claims under the subject contract are arbitrable. (*Id.,* at p. 1239.)

In short, a signatory plaintiff can be compelled to arbitrate all of their claims against signatory and nonsignatory defendants alike, to the extent that those claims are dependent upon, or inextricably intertwined with, the obligations imposed in the contract containing the arbitration clause. (*Ibid*.) This argument is supported by Oliver's testimony at her deposition. She testified that she thought the documents she was signing all pertained to and were required for the 1031 exchange. (See Sheik decl., Exhibit A.) The argument is also supported by Plaintiff's allegations.

Plaintiff's general allegations present the three contracts at issue in this case as part of a complete plan. Plaintiff alleges Saris's proposal for a 1031 exchange would use her $1.47 million to buy two undeveloped acres (the Property) and call it the Holly Hock Project. (Complaint, ¶31.) Saris proposed the construction of sixteen residential duplexes (32 units) on the land and projected construction would take 6–12 months to complete and would provide robust returns. (*Ibid*.) Saris is alleged to have represented that Oliver's return on investment would be 57% after two years, and that if she chose to hold for 11 years her investment would average out at 16% gain per year. (Complaint, ¶33.)

Plaintiff alleges Saris's proposal constituted fraud and elder abuse. (Complaint, ¶36.) Plaintiff alleges Saris omitted key conflicts of interest, and rather than disclose known risks, he repeatedly mollified Oliver with assurances that the transaction carried no risk and could result only in gain. Moreover, Saris knew that he did not intend to go through with the transaction as proposed and completely changed foundational terms of the deal at the very last minute, after Oliver was in too deep and could not back out without severe adverse tax consequences. (Complaint, ¶36.) Plaintiff alleges Saris "worked in tandem with Futrell to execute the scheme, deprive Oliver of her

property, and leave her with a highly diminished, non-fungible, non-1031 Exchange-eligible, non-controlling, non-Manager interest in an LLC." (Complaint, ¶34.)

Plaintiff alleges a central and repeated misrepresentation by Saris throughout this process was that the investment was safe because Oliver would own the land outright. (Complaint, ¶38.) But this misrepresentation was part of an alleged scheme. "Shortly after Saris learned that Oliver would collect $1.47 million in proceeds from the Greenbrae sale and that she was looking to invest that $1.47 million in another property, Saris came to Oliver with an elaborate residential real estate construction proposal whose first step was to have Oliver purchase the Property for $1.47 million—the *exact* amount Oliver happened to generate in proceeds from the Greenbrae sale." (Complaint, ¶45.) "From the start, Defendants' plan was for the general contractor for the construction project to be Futrell's company, Hugh Futrell Corporation." (Complaint, ¶51.) "After months of planning, and as Oliver's deadlines to identify and purchase a replacement property in compliance with Section 1031 requirements were fast approaching, Defendants took the next step in their fraudulent scheme by imposing a last-minute change in terms of the Holly Hock deal—terms that fundamentally altered the structure of the transaction and the benefits Oliver would obtain." (Complaint, ¶55.) Part of the scheme is contained within the Operating Agreement. It provides that "Saris and Futrell have the unilateral right to force a sale of the Property even against Oliver's wishes, and that in such a scenario Oliver would be forced to receive a cash payout based on 'fair market value' as assessed according to Saris and Futrell's sole determination." (Complaint, ¶64.)

The construction of Project Holly Hock, and thus the construction agreement, is also intertwined with the Holly Hock Operating Agreement. Plaintiff alleges "[c]onstruction of Holly Hock LLC was governed by the Holly Hock Construction Contract. Defendants provided Oliver with a copy of the Holly Hock Construction Contract as an exhibit to an unsigned copy of the Holly Hock Operating Agreement; thus the Construction Contract was an inducement to Oliver's signature on the Operating Agreement." (Complaint, ¶73.) "Defendants saw the Holly Hock Construction Contract as germane to the Holly Hock operation and to full participation under the Holly Hock Operating Agreement." (Complaint, ¶74.) Plaintiff alleges she and the Oliver Trust are third-party beneficiaries under the Holly Hock Construction Contract. (Complaint, ¶77.) Oliver holds a 44% interest in Holly Hock LLC whose sole principal asset is the Property. (Complaint, ¶77.) Defendants' breach of the construction contract is alleged to be part of the plan to defraud the Plaintiff. (Complaint, ¶¶78-79.) Plaintiff alleges: "Hugh Futrell Corporation failed to construct the Holly Hock project at the contractual guaranteed maximum price. Thus, Holly Hock LLC should have pursued a claim against Hugh Futrell Corporation for breach of contract. However, Holly Hock LLC is controlled by Saris and Futrell, who were conspiring with one another. Thus, rather than pursue Hugh Futrell Corporation, Saris and Futrell, in an act of blatant conflict of interest, chose to let Holly Hock LLC stagnate, leaving the LLC, and accordingly Oliver, carrying the losses and bearing the consequences of the risk." (Complaint, ¶82.)

i. Causes of Action

Plaintiff's first cause of action for financial elder abuse and second cause of action for fraud are based upon Defendants' alleged conspiracy and scheme to defraud Plaintiff out of $1.47 million.

Plaintiff's third cause of action for breach of fiduciary duty and fourth cause of action for negligence are based upon the parties' relationships established by and through Holly Hock LLC, and due to Saris's long-time relationship with Plaintiff and her family as a friend and financial advisor.

Plaintiff's fifth cause of action is for breach of the Holly Hock Operating Agreement. Some of the allegations in this cause of action raise the issue of Plaintiff's purchase of the Property; e.g. Defendants' failure to obtain an independent appraisal for the Property, using Plaintiff's $1.47

million dollars to enrich themselves, and failing to preserve Plaintiff's eligibility for a 1031 exchange.

Plaintiff's sixth cause of action for Breach of the Contract (Construction Contract) arises out of that agreement but is directly related to Holly Hock LLC and its Operating Agreement. "Under the Construction Contract, Contractor agreed to diligently manage and complete the project within agreed-upon timelines and budgets, using commercially reasonable skill and care, and to deliver a completed, income-producing development for the benefit of Holly Hock LLC and its Members." (Complaint, ¶129.) Plaintiff notes she is not a signatory to the construction contract but asserts she is a third-party beneficiary of its promises. (Complaint, ¶¶130, 132.) Holly Hock LLC is identified in that contract as the owner of the Property. (Complaint, ¶131.a.) The complaint notes one breach of the construction contract as the loss of 1031 exchange eligibility. (Complaint ¶134.c.) This 1031 exchange was the purpose of Plaintiff's initial purchase of the Property. (Complaint, ¶¶22, 26-37.)

Plaintiff's seventh cause of action for rescission of the sales agreement and the Operating Agreement, eighth cause of action for unjust enrichment, ninth cause of action for declaratory relief, tenth cause of action for unfair competition, and eleventh cause of action for constructive trust/ equitable lien are based upon the alleged overarching fraudulent scheme. "Defendants lied and concealed throughout the process, diverting Plaintiff's funds and property for their own benefit, including by engineering a sale of the Property from Futrell to plaintiff at an undisclosed 226% markup and forcing the Property into Holly Hock LLC and stripping Plaintiff of control." (Complaint, ¶144.) "Plaintiff desires a judicial determination of the respective rights and duties of Plaintiff and Defendants with respect to the property, the Sale Agreement, and the Operating Agreement and whether she was fraudulently induced and whether these documents, or any of them, are enforceable." (Complaint, ¶ 148.) "Plaintiff seeks the imposition of a constructive trust and equitable lien over all property, profits, and funds obtained by Defendants through their wrongful acts, including but not limited to the Property, any proceeds derived from it, and any distributions from Holly Hock LLC, in an amount to be proven at trial." (Complaint, ¶ 156.)

Plaintiff's twelfth cause of action for an accounting seeks an accounting of Holly Hock LLC. "An accounting is necessary because the financial dealings among the parties are complex, involving multiple transfers of funds, property interests, undisclosed fees, and profits related to the Holly Hock project." (Complaint, ¶158.) "Plaintiff seeks a full and accurate accounting of all funds and assets contributed, invested, or distributed in connection with the Property, Holly Hock LLC, and the related development project, and an order requiring Defendants to disgorge any funds or benefits improperly retained." (Complaint, ¶159.)

ii. All contracts are intertwined

The Holly Hock Operating Agreement is dependent upon the purchase of the Property. The purchase agreement refers to the Property as Holly Hock. (Complaint, Exhibit A.). The Grant Deed is dated March 22, 2021, and was recorded on June 30, 2021. (Complaint, Exhibit C.) Plaintiff signed the Operating Agreement on June 28, 2021. (Complaint, Exhibit B.) Close of escrow was conditioned upon Plaintiff's affiliate obtaining an Expression of Interest Letter from a qualified construction lender. (*Id.,* Addendum.) In addition, the Addendum to the purchase agreement allows Plaintiff to rescind the contract if "Buyer or Buyer's affiliate does not obtain a grading permit to commence construction on the property by October 15, 2021." (*Ibid*.) "Seller shall provide Buyer, as part of the purchase price, building plans including but not limited to architectural, structural, electrical, mechanical, plumbing and civil engineering plans, evidence of building permit submittal and fees paid, and related documents and fees." (*Ibid*.)

The construction agreement is dependent upon the Operating Agreement as it was the Operating Agreement that governed Holly Hock LLC, which owns the Property. The Saris

Defendants and the Futrell Defendants are the managing members of Holly Hock LLC. Thus, their conduct with respect to the operation of Holly Hock LLC and construction, or failure to construct the planned improvements, is inextricably intertwined with Holly Hock LLC and its Operating Agreement. As noted above, the entire series of transactions is presented as one scheme to defraud Plaintiff. The purchase of the Property cannot be disentangled from operating Holly Hock LLC via its Operating Agreement, which cannot be disentangled from the purpose of forming Holly Hock LLC, which was to construct Project Holly Hock. Said construction is based upon the construction contract.

The Saris Defendants argue that the Futrell Defendants are estopped from repudiating the arbitration agreement because the Futrell Defendants' cross-complaint is tied up with Meda's sale of the Property and alleges that it was the Saris Defendants only who dealt with Plaintiff. The Futrell Defendants allege they had no part in the alleged fraudulent scheme to steal Plaintiff's money. They also allege the Saris Defendant's breach of fiduciary duty is based in the Operating Agreement. The Saris Defendants note that the Futrell Defendants are seeking attorney fees arising out of the Operating Agreement. The complaint also seeks attorney fees based in contract; presumably the Operating Agreement's attorney fee provision in the arbitration clause. (Complaint, Exhibit B, ¶11.11.8.3.)

Based upon the allegations in the complaint and the cross-complaint, all three agreements—the purchase agreement, the Operating Agreement, and the construction contract—are inextricably intertwined. Any relief obtained will require a reference to Holly Hock LLC and its Operating Agreement. As such the Operating Agreement's arbitration clause applies to all of Plaintiff and Cross-Complainant's claims.

6. Mediation

In opposition, Plaintiff notes that the purchase agreement for the Property requires the parties to engage in non-binding mediation prior to filing any action. (Complaint, Exhibit A, §10.7.) Plaintiff does not explain how this clause in the purchase agreement would defeat the Saris Defendants' right to compel arbitration.

7. Statutory Elder Abuse Claim

Plaintiff asserts that courts do not compel arbitration of causes of action arising from statutory claims. The cited authority does not support her argument. In *Theresa D. v. MBK Senior Living LLC* (2021) 73 Cal.App.5th 18, the motion to compel arbitration was denied because the plaintiff's mother had signed the agreement containing the arbitration clause and the defendant provided no authority or evidence she had the authority to bind her mother to arbitration. After discussing the subject contract and related principles, the appellate court noted: "Defendants make no showing that plaintiff's claims for elder abuse and negligence rely on the terms of the admission agreement rather than on defendants' alleged violation of duties imposed by law." (*Id.,* at p. 31.) The appellate court was referencing the theory of equitable estoppel which allows a nonsignatory can be bound by contract terms under certain circumstances. (See *id.,* p. 31.)

Plaintiff also argues that her elder abuse claim should be exempt from arbitration due to California's strong public policy in protecting elders from abuse. Plaintiff cites *Dougherty v. Roseville Heritage Partners* (2020) 47 Cal.App.5th 93. That case dealt with unconscionability. The appellate court discussed the discovery restrictions in the arbitration agreement which was the subject of that case. These limiting provisions were found to be substantively unconscionable as they limited that plaintiff's ability to vindicate her elder abuse claim. (*Id.,* at p.101.)

Statutory claims are arbitrable if the arbitrator permits the party to vindicate her statutory rights. (See *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 90.) In *Armendariz,* the California Supreme Court explained that rights established by statute for a public purpose are unwaivable and that a waiver of such rights in a predispute arbitration agreement

is contrary to public policy. (*Armendariz, supra,* 24 Cal.4th at pp. 100–104.) In order for such vindication to occur, the arbitration must meet certain minimum requirements, including neutrality of the arbitrator, the provision of adequate discovery, a written decision that will permit a limited form of judicial review, and limitations on the costs of arbitration. (*Id.,* at pp. 90-91.) "[A]n arbitration agreement cannot be made to serve as a vehicle for the waiver of statutory rights." (*Id.,* at p. 101.) The arbitration agreement in *Armendariz* was found to be unconscionable due in part to its limitation on damages. (*Id.,* at p. 92.)

While Plaintiff notes that the elder abuse statutes allow attorney fees and treble damages Plaintiff has not pointed to any portion of the subject arbitration clause that restricts any statutory right. Therefore, she has not met her burden on this issue.

8. Waiver

Cross-Complainants argue that the Saris Defendants forfeited their right to compel arbitration because after they filed this motion they immediately served 62 document demands on Plaintiff and issued third-party records subpoenas with 49 categories to Plaintiff's daughter.

A contractual right may be lost by waiver. (*Quach v. California Commerce Club, Inc.* (2024) 16 Cal.5th 562, 569.) A court will find waiver when the party seeking to enforce a known contractual right has intentionally relinquished or abandoned that right. (*Ibid*.) In *Quach,* the defendant answered the complaint and initiated discovery. (*Ibid*.) It did not raise the issue of arbitration beyond stating it as an affirmative defense in its answer. (*Ibid*.) Moreover, that defendant requested a jury trial and did not list a motion to compel arbitration on its first case management conference statement. (*Ibid*.) A trial date was set and the parties continued to engage in discovery. (*Ibid*.) It was only 13 months after plaintiff filed the lawsuit that defendant filed a motion to compel arbitration. (*Ibid*.) Therefore, it had waived its right to compel arbitration. (*Id.,* p. 586.)

Here, this action was filed on February 28, 2025. On November 13, 2025, the Saris Defendants' counsel asked Plaintiff's counsel whether Plaintiff would voluntarily submit her claims to arbitration. (Donohue decl., ¶6.) She did not receive a response. (Donohue decl., ¶6.) Counsel on behalf of the Futrell Defendants did not agree to voluntarily submit to arbitration. (Donohue decl., ¶7.)

The Saris Defendants filed this motion to compel arbitration on December 24, 2025. They asked all parties to stipulate to a stay pending an outcome on the motion, which was refused. (Donohue Reply decl., ¶5.)

The Saris Defendants did not file an answer. Their first filing was this motion. Thereafter, on December 30, 2025, they attempted to stay this action through ex parte relief. That request was denied. They then filed an ex parte application to postpone the deposition of Oliver pending the hearing on this motion, but that application was also denied.

The Saris Defendants continued with discovery in preparation for Oliver's deposition. (Donohue Reply decl., ¶¶9, 15.)

As a whole, the Saris Defendants' conduct is not inconsistent with a desire to arbitrate. (*McConnell v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1980) 105 Cal. App.3d 946, 951.) They have not waived their right to arbitration.

9. CCP section 1281.2(c)

CCP section 1281.2(c) allows the court the discretion to deny a request to compel arbitration if a "party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact."

Here, two new members have been added to Holly Hock LLC. Bluestone Main LLC and Gumas Advertising LLC PSP. (Podshadley decl., ¶ 3.) However, neither is a party to this action. All the parties in this action are tied to the arbitration agreement in the Holly Hock Operating

Agreement which is intertwined with the purchase of the Holly Hock Property and the intended construction of housing units thereon.

The Futrell Defendants note that additional civil actions are pending against some parties. Jennifer Oliver ("Jennifer") filed a civil action against Saris, Saris LLC, Futrell, Futrell Corp, and Futrell Walter Pacific, LLC, Sonoma County Superior Court Case No. 25CV08248, alleging, among other things, claims for fraud, breach of fiduciary duty, and breach of contract, based on claims of wrongdoing by Saris, Futrell, and their related entities in connection with both the Holly Hock and 888 Project. (Podshadley Dec., ¶ 5.) Walter Properties, Inc., David Walter, Futrell Walter Pacific, LLC, and Hugh Futrell filed a complaint against Saris, Saris Fund One, and 8 Cubed, Sonoma County Superior Court Case No. 25CV01004, for, among other things, fraud and breach of fiduciary duty, which claims are related to the 888 Project. (*Ibid*.)

These actions are irrelevant to this motion. While the Futrell Defendants indicate they will seek to have these actions consolidated with the instant action, there is no guarantee that these other actions should or will be consolidated. Moreover, these other third parties would also be bound to the arbitration agreement to the extent that their claims are inextricably intertwined with Holly Hock LLC and the Property.

10. CCP section 1281.2(c)(4)

Plaintiff also requests this court deny the motion based upon CCP section 1281.2(c)(4). Plaintiff argues staying the court action in favor of arbitration would prejudice her statutory right to expedited resolution.

This court's review of section 1281.2 shows there are no subsections under section 1281.2(c). In addition, Plaintiff has not presented evidence that arbitrating her claims will cause a delay she would not experience in court.

11. Unconscionability

Plaintiff alleges that the arbitration agreement fails because it is unconscionable.

Unconscionability has both a "procedural" and a "substantive" element, the former focusing on "oppression" or "surprise" due to unequal bargaining power, the latter on "overly harsh" or "one-sided" results. (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 114.)

Here, while the arbitration agreement may be procedurally unconscionable as Plaintiff alleges she was not invited to decide any terms of the Operating Agreement and was not made aware of the arbitration provision, Plaintiff has not provided authority that the relatively simple agreement is overly harsh or one-sided. It appears unremarkable and equitable that the parties split arbitration costs equally, are required to litigate in Sonoma County, and are required to have an arbitrator experienced in the issues at hand. The arbitration clause allows the arbitrator to award attorney fees.

12. "Fraud in the Execution"

Plaintiff argues that the arbitration provision should not be enforced due to fraud in the execution. Fraud in the execution occurs when "the promisor is deceived as to the nature of his act, and actually does not know what he is signing, or does not intend to enter into a contract at all." (*Rosencrans v. Dover Images, Ltd.* (2011) 192 Cal.App.4th 1072, 1080.)

Plaintiff, age 87 at the time of the purchase of the Property, testified at her deposition that when she signed the Operating Agreement she thought it was something necessary for the 1031 exchange and that it was already past the allotted time for such an exchange. (Oliver Depo., 30:16-20; 39:20-40:1.) Plaintiff testified she was told nothing about Holly Hock Inc. or becoming a member of it. (Oliver Depo. 34:15-35:20.) Plaintiff testified that she had one year of college; did not have any special training in financial transactions, real estate development, construction, or corporate entities. (Oliver Depo., 11-12.) She had not previously invested in a real estate

development project. (*Id.,* 12:12-14.) In her opposition memorandum, Plaintiff concludes that her failure to read the agreement was reasonable because she fully trusted Saris.

Saris states that the Oliver Trust was being advised by Oliver's daughter Jennifer, who had over 18 years of real estate experience, Oliver's CPA, and her 1031 exchange accommodator. (Saris Decl. ¶ 21, 23) Saris states he advised Plaintiff through her agent and adviser Jennifer not to get involved in risky real estate investment and rather to invest her funds in equities. (Saris Decl., ¶ 9). He states when Oliver decided to proceed against Saris's advice, she was provided with the Operating Agreement, purchase agreement and addendum, and the construction agreement (Saris Decl., ¶ 13, 16) and Saris spent at least an hour on the telephone with Plaintiff Oliver and Jennifer going over the agreements, including the arbitration provision specifically. (Saris Decl., ¶ 18).

Plaintiff has not provided evidence that Jennifer and/or others were not informed of the nature of the subject transactions and assisting Plaintiff. The Saris Defendants' emails show that Jennifer and Oliver were communicating with Saris about a 1031 exchange. (Saris decl., Exhibits A, B; Saris Reply decl., Exhibit B.) The Operating Agreement is attached to an email dated January 19, 2021. (*Ibid*.) A response was provided the same day. It states: "I was able to open all three documents. Am looking at them now. Thanks for your patience. Lil [Oliver]." An email dated January 19, 2021, attaches the construction agreement. (Saris decl., Exhibit B.)

In reply, Saris attaches additional emails between him and Jennifer. (Saris Reply decl., Exhibit B.) In an email dated November 24, 2020, after reviewing 1031 exchange options Jennifer had shared with him, Saris attempts to persuade Jennifer to steer Oliver's funds into stocks. (Saris Reply Decl., Exhibits A, B.)

On January 15, 2021, Saris emailed Jennifer the purchase agreement, budget, timeline and addendum to the purchase agreement. (Saris Reply decl., Exhibit C.)

On January 18, 2021, Saris emailed Jennifer discussing the plan. (Saris Reply Decl., Exhibit D.) Saris provides new splits: "9% pref, 45% to equity after pref and 55% to Developer." (*Ibid*.) Saris wrote: "So Lil [Oliver] ROI after two years is 57.55%/2yrs-28.77% per yr. [¶] If she holds for 11 years = 178.47%/11=16.22% per yr. 2.78 x her money. [¶] We are planning on selling after Yr 2. One yr to build, 1 yr to stabilize then sell. [¶] Will be sending you HH llc agreement and Construction Agreement tonite (*sic*) or AM. Waiting on getting final from Hugh [Futrell] reflecting all this." (*Ibid*.)

On January 18, 2021, an email from "Lil" [Oliver] was sent to Saris. It indicates she was attempting to review the budget but was unable to open the PDF. (Saris Reply Dec., Exhibit E.) Saris responded with another copy of the budget. (*Ibid*.)

The Grant Deed for the Property is dated March 22, 2021, and was recorded on June 30, 2021. (Complaint, Exhibit C.) Plaintiff signed the Operating Agreement on June 28, 2021. (Complaint, Exhibit B.) Plaintiff had all documents within her possession by the time she entered into the agreement and there is evidence she and her daughter reviewed them. Plaintiff has not established fraud in the execution.

13. Order and Conclusion

Based upon the foregoing, the motion to compel arbitration is GRANTED. This action is stayed pending completion of arbitration.

Counsel for the Saris Defendants is directed to submit a written order to the court consistent with this ruling and in compliance with Cal. Rules of Court, Rule 3.1312.

II. Motion to Stay Action

This matter is also on calendar for the Saris Defendants' motion to stay this action pending the outcome of the motion to compel arbitration. **This motion is DENIED as MOOT.**