**TENTATIVE RULINGS**
**LAW & MOTION CALENDAR**
**Wednesday, August 5, 2026, 3:00 p.m.**
**Courtroom 16 – Various for 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. 24CV00302, Craker v. Santander Consumer USA Inc.**

***(TENTATIVE ISSUED BY HON. DANA B. SIMONDS)***

IF ORAL ARGUMENT IS REQUESTED, MATTER WILL BE HEARD IN DEPT. 18. PLEASE USE DEPT. 18'S ZOOM LOGIN INFORMATION (SEE BOTTOM OF PAGE).

Plaintiff Kevin Lee Craker ("Plaintiff") moves for an order lifting the stay imposed in this matter and restoring the case to the active trial calendar. The motion is made on the grounds that arbitration has not been initiated, cannot proceed in its current posture, and that continuation of the stay deprives Plaintiff of any forum for resolution.

In opposition, Defendant Chrysler Capital ("Defendant") states that on March 24, 2026, it commenced arbitration with the American Arbitration Association ("AAA"). The case is *Santander Consumer USA, Inc. v. Kevin Craker,* AAA Case Number 01-26-0001-4230. As such, Defendant argues this motion is moot.

In reply, Plaintiff argues that the motion is not moot on various grounds. However, each argument fails to recognize that Plaintiff has already been ordered by this court to arbitrate this matter. The matter was ordered to arbitration on May 30, 2025. Plaintiff did not file a timely motion for reconsideration of that order. None of the issues raised in reply—such as that Plaintiff objected to Defendant paying arbitration fees on his behalf and that no arbitrator has yet been appointed—change the fact that this court currently only has limited jurisdiction over this matter. Once a case is ordered to arbitration, the trial court only has vestigial jurisdiction over the case to appoint an arbitrator; grant limited provisional remedies; and confirm, correct, or vacate an arbitration award. (*SWAB Financial, LLC v. E*Trade Securities, LLC* (2007) 150 Cal.App.4th 1181, 1200.) Absent an agreement to withdraw the controversy from arbitration, no judicial act is authorized. (*Ibid*.) It is currently the job of the arbitrator, not the court, to resolve all questions needed to determine the controversy, including procedural issues. (*Ibid*.)

Defendant requests sanctions pursuant to CCP section 128.7 arguing this motion is frivolous. The motion was filed before Defendant initiated arbitration, at a time when Plaintiff indicated he could not afford the arbitration fee, suggesting Plaintiff believed this action could proceed in this court. Therefore, the court will deny Defendant's request for sanctions.

**The motion is DENIED for the reasons stated.**

This court's minute order shall constitute the order of the court.

**2. 24CV06966, Herrera v. Espinosa**

***(TENTATIVE ISSUED BY HON. OSCAR A. PARDO)***

IF ORAL ARGUMENT IS REQUESTED, MATTER WILL BE HEARD IN DEPT. 19. PLEASE USE DEPT. 19'S ZOOM LOGIN INFORMATION (SEE BOTTOM OF PAGE).

Plaintiffs/Cross-Defendants Roger O. Herrera and Faye Chang Herrera, as Trustees of the Chang Herrera Family Revocable Trust ("XDs"), demur to the cross-complaint ("XC") filed by Defendants/Cross-Complainants George J. Espinosa, Martha E. Fritz, and Cross-Complainants Mary Ann Espinosa and Alex Espinosa ("XCs") on the grounds that the XC is uncertain and fails to state facts sufficient to constitute a cause of action.

On July 23, 2026, XCs filed a First Amended Cross-Complaint. Accordingly, the demurrer to the initial cross-complaint is **DENIED** as **MOOT.**

**3. 24CV07722, Dunkelis v. B&D Insulation**

***(TENTATIVE ISSUED BY HON. OSCAR A. PARDO)***

IF ORAL ARGUMENT IS REQUESTED, MATTER WILL BE HEARD IN DEPT. 19. PLEASE USE DEPT. 19'S ZOOM LOGIN INFORMATION (SEE BOTTOM OF PAGE).

**I. Introduction - Motion to Compel Responses – Defendant Cox (Motion #1)**

Plaintiff Diana Dunkelis ("Plaintiff") moves for an order compelling Defendant David Bryan Cox ("Defendant Cox") to serve verified responses, without objections, to Plaintiff's Form Interrogatories and Special Interrogatories, Set One. Plaintiff seeks sanctions in the amount of $246.57.

**II. Service and Failure to Respond**

If a party to whom interrogatories are directed fails to respond, the propounding party's remedy is to seek a court order compelling answers to the interrogatories. (CCP section 2030.290.)

This motion is based upon Plaintiff's declaration to establish that Plaintiff served Defendant Cox with the subject discovery and that no responses have been provided. Plaintiff's declaration is deficient as it does not make the statements under penalty of perjury. However, Plaintiff's declaration attached to her motion to compel defendant D&B Insulation to provide responses to

Plaintiff's Special Interrogatories, Set One, and Requests for Production of Documents, Set One, ("Motion #2") is sufficient to establish Defendant Cox was served with Plaintiff's General Interrogatories and Special Interrogatories, Set One.

On December 6, 2025, Plaintiff served Defendant Cox with Plaintiff's Special Interrogatories, Set One, and General Interrogatories. (Motion #2, Dunkelis decl., ¶2, Exhibit A.) Plaintiff states she mailed a follow-up letter on January 20, 2026. (Dunkelis decl*.,* ¶4.) Despite meet and confer efforts, which are not required on a motion to compel responses, no responses have been provided. (*Id.,* ¶4.)

All that need be shown in the moving papers is that a set of interrogatories was properly served on the opposing party, that the time to respond has expired, and that no response of any kind has been served. (See *Leach v. Sup.Ct. (Markum)* (1980) 111 Cal. App. 3d 902, 905-906; CRC 3.1345(b).)

Here, Plaintiff has established she served Defendant Cox with her General Interrogatories, aka Form Interrogatories, and Special Interrogatories, Set One. While Plaintiff's declaration stating that no responses have been made is deficient as it is not made under penalty of perjury, based upon Plaintiff's declarations attached to her other motions, this court may find that Defendant Cox has failed to respond to any of Plaintiff's discovery requests.

## III. <u>Sanctions</u>

Sanctions are mandatory unless this court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. (CCP section 2030.290(c).) Defendant Cox has not filed opposition. Therefore, he has not shown substantial justification for failing to respond to Plaintiff's discovery requests.

A pro se litigant may recover any reasonable expenses incurred, including photocopying, computer-assisted legal research, and other identifiable and allocable costs. (*Kravitz v. Superior Court* (2001) 91 Cal. App. 4th 1015, 1017.)

In her declaration, Plaintiff identifies $20 for serving the motion, $6.57 in photocopy expenses; and $60 for the motion fee. The time Plaintiff spent to prepare the motion is not recoverable. Sanctions are ordered in the amount of $86.57.

## IV. <u>Conclusion</u>

**The motion is GRANTED.** Defendant David Bryan Cox is ordered to provide responses, without objections, to Plaintiff's General Interrogatories and Special Interrogatories, Set One, served upon Defendant Cox on December 6, 2025, within 20 days of the service of the order granting this motion.

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

## I. <u>Introduction - Motion to Compel Responses - Defendant D&B (Motion #2)</u>

Plaintiff Diana Dunkelis ("Plaintiff") moves for an order compelling Defendant D&B Insulation ("Defendant D&B") to serve verified responses, without objections, to Plaintiff's Special Interrogatories, Set One, and Requests for Production of Documents, Set One. Pursuant to Code of Civil Procedure, sections 2023.010 and 2023.030, Plaintiff seeks sanctions in the amount of $630.24. In addition, pursuant to Code of Civil Procedure sections 2023.040 and 2023.050, Plaintiff seeks additional sanctions in the amount of $1,000.

## II. <u>Service and Failure to Respond</u>

If a party to whom interrogatories or requests for production of documents are directed fails to respond, the propounding party's remedy is to seek a court order compelling a response. (CCP sections 2030.290, 2031.300.)

On December 6, 2025, Plaintiff served Defendant D&B with Plaintiff's Special Interrogatories, Set One, and Request for Production of Documents, Set One. (Dunkelis decl., ¶2, Exhibit A.) Defendant D&B has not provided responses. (*Id.,* ¶4.)

## III. <u>Sanctions</u>

Plaintiff requests sanctions pursuant to CCP sections 2023.010 and 2023.030 in the amount of $630.24. This amount is based upon time spent preparing the motion and for the possibility that Plaintiff will have to attend the hearing, for the cost of filing and serving this motion, and for photocopying expenses. As a pro se plaintiff, Plaintiff is not entitled to recover monetary sanctions for the time spent preparing this motion. Sanctions are granted in the amount of $89.02.

Plaintiff also requests sanctions pursuant to CCP section 2023.040 and 2023.050 in the amount of $1,000.

CCP section 2023.040 requires a Notice of Motion to identify the amount of sanctions sought and the party against whom the sanctions are sought.

CCP section 2023.050 provides, in relevant part: "Notwithstanding any other law, and in addition to any other sanctions imposed pursuant to this chapter, a court shall impose a one-thousand-dollar ($1,000) sanction, payable to the requesting party, upon a party, person, or attorney if, upon reviewing a request for a sanction made pursuant to Section 2023.040, the court finds any of the following:

> "(1) The party, person, or attorney did not respond in good faith to a request for the production of documents made pursuant to Section 2020.010, 2020.410, 2020.510, or 2025.210, or to an inspection demand made pursuant to Section 2031.010."
> ...
> "(3) The party, person, or attorney failed to confer in person, by telephone, letter, or other means of communication in writing, as defined in Section 250 of the Evidence Code, with the party or attorney requesting the documents in a reasonable and good faith attempt to resolve informally any dispute concerning the request."
> ...
> "(c) The court may excuse the imposition of the sanction required by subdivision (a) if the court makes written findings that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust."
> ...
> "(e) For purposes of this section, there is a rebuttable presumption that a natural person acted in good faith if that person was not represented by an attorney in the action at the time the conduct that is sanctionable under subdivision (a) occurred. This presumption may only be overcome by clear and convincing evidence."

Here, it is not clear if Defendant D&B is a limited liability company or if defendant David Bryan Cox is doing business as D&B Insulation. While Plaintiff's papers identify Defendant D&B as "D&B Insulation, LLC," the company's name on the work proposal included with Plaintiff's motion to deem admissions admitted only identifies the company as "D&B Insulation." In addition, Plaintiff asserts that Defendant Cox is the sole proprietor of Defendant D&B, and Defendant Cox's answer does not use the term "LLC" to identify Defendant D&B. Therefore, this court is inclined to believe that Defendant Cox is dba Defendant B&D. Defendant Cox dba Defendant D&B is not represented by an attorney. As such, the presumption exists that Defendant Cox dba Defendant D&B acted in good faith in failing to respond to Plaintiff's discovery requests. While Plaintiff has established that Defendant Cox dba Defendant D&B failed to respond and has made no effort to call, text, or communicate in writing regarding the discovery, she has not provided evidence regarding *why* Defendant Cox failed to respond. Therefore, she has failed to provide clear and convincing evidence to overcome the presumption that Defendant Cox acted in good faith.

**IV. Conclusion**

**The motion is GRANTED.** Defendant D&B Insulation is directed to provide responses, without objections, to Plaintiff's Special Interrogatories, Set One, and Request for Production of Documents, Set One, served on December 6, 2025, within 20 days of the service of the order granting this motion. Sanctions are granted in the amount of $89.02.

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

**I. Introduction - Motion to Deem Admissions Admitted (Motion #3)**

Plaintiff Diana Dunkelis ("Plaintiff") moves for an order deeming the truth of all requests for admissions and the genuineness of all specified documents in Plaintiff's Request for Admissions, Set One, served upon Defendant D&B Insulation ("Defendant D&B") on December 6, 2025, be admitted. Plaintiff requests sanctions in the amount of $399.50.

**II. Service and Failure to Respond**

If a party fails to respond to Requests for Admissions, the propounder may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted. (CCP section 2033.280(b).)

On December 6, 2025, Plaintiff served Defendant B&D with Plaintiff's Request for Admissions, Set One. (Dunkelis decl., ¶2, Exhibit A.) Plaintiff has not received a response. (*Id.,* ¶4.)

**III. Sanctions**

Plaintiff requests sanctions in the amount of $399.50. This is based upon time spent preparing the motion, for the cost of filing and serving this motion, and for photocopying expenses. As a pro se plaintiff, Plaintiff is not entitled to recover monetary sanctions for the time spent on this motion. Sanctions are granted in the amount of $99.50.

**IV. Conclusion**

**Unless Defendant B&D Insulation serves responses to Plaintiff's Request for Admissions, Set One, before the hearing on this motion, the motion will be granted and Plaintiff's Request for Admissions, Set One, will be deemed admitted.** Sanctions are granted in the amount of $99.50.

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

**4. 25CV05871, Coleman v. Mercedes-Benz USA, LLC.**

***(TENTATIVE ISSUED BY HON. JANE GASKELL)***

IF ORAL ARGUMENT IS REQUESTED, MATTER WILL BE HEARD IN DEPT. 17. PLEASE USE DEPT. 17'S ZOOM LOGIN INFORMATION (SEE BOTTOM OF PAGE).

Defendant Mercedes-Benz of Santa Rosa ("Defendant") moves for judgment on the pleadings on Plaintiff Dominic Monte Coleman's ("Plaintiff's") third cause of action for negligent repair on the grounds that it fails to allege facts sufficient to constitute a cause of action.

I. Complaint

On August 27, 2025, Plaintiff filed his complaint against Defendant and others based upon his purchase of a 2025 Mercedes-Benz E-Class ("Subject Vehicle"). The causes of action arise out of the alleged warranty and repair obligations of the Subject Vehicle. Only one cause of action is alleged against Defendant: the third cause of action for Negligent Repair. That cause of action alleges Plaintiff delivered the Subject Vehicle to Defendant for repairs on numerous occasions. Plaintiff alleges Defendant breached its duty to Plaintiff to use ordinary care and skill in storage, preparation, and repair of the Subject Vehicle in accordance with industry standards.

II. Injury and Economic Loss Rule

Defendant first argues that Plaintiff's claim fails because Plaintiff must assert damage to a person or property other than the product itself. Defendant cites the portion of federal cases that discuss the economic loss rule.

In *Sabicer v. Ford Motor Company* (C.D. Cal. 2019) 362 F.Supp.3d 837, the defendants failed to meet their burden to establish that the plaintiffs failed to state a cause of action against Santa Margarita Ford for negligent repair. (*Id.,* at p. 840.) The court stated: "One who undertakes repairs has a duty arising in tort to do them without negligence." (*Id.,* at p. 840-841.) "In support of their negligent repair claim, Plaintiffs allege that they took their Vehicle to Santa Margarita Ford on at least one occasion. [Citation.] They further allege that Santa Margarita Ford owed them a duty to use ordinary care and skill in the storage, preparation, and repair of their Vehicle and that Santa Margarita Ford breached this duty by failing to properly store, prepare, and repair the Vehicle. [Citation.] They allege this breach was a proximate cause of their damages. [Citation.]" (*Id.,* at p. 841.) These are essentially the same allegations as in the instant complaint.

The *Sabicer* defendants also failed to show that the economic loss rule barred that plaintiff's negligent repair claim. (*Id.,* at p. 841.) The *Sabicer* plaintiffs alleged problems with various subcomponents of the engine, including the rear driveshaft, engine compartment, and turbocharger. (*Ibid.*) "The economic loss rule would not bar recovery in tort for damage that these subcomponents cause to the engine as a whole or for damage that the engine caused to the Vehicle in which it has been incorporated." As stated in *Jimenez v. Superior Court* (2002) 29 Cal.4th 473, "the economic loss rule allows a plaintiff to recover in strict products liability in tort when a product defect causes damage to 'other property,' that is, property *other than the product itself.* The law of contractual warranty governs damage to the product itself." (*Id.,* at p. 483.) However, California law is not so settled that a plaintiff could not possibly recover against a dealership for negligent repair of a vehicle. (*Sabicer, supra,* at p. 841 [citing case.]) Here, Plaintiff alleges negligence, not strict products liability.

Contract and tort are different branches of the law. Contract law exists to enforce the intentions of the parties to an agreement while tort law is designed to vindicate social policy. (*North American Chemical Co. v. Superior Court* (1997) 59 Cal.App.4th 764, 774.) However, the same wrongful act may constitute both a breach of contract and an invasion of an interest protected by the law of torts. (*Ibid.*)

The general rule is that where the "negligent" performance of a contract amounts to nothing more than a *failure* to perform the express terms of the contract, the claim is one for contract breach, not negligence. (*Id.* at p. 774.) "[A]ccompanying every contract is a common-law duty to perform with care, skill, reasonable expedience, and faithfulness the thing agreed to be done, and a negligent failure to observe any of these conditions is a tort, as well as a breach of the contract.' The rule which imposes this duty is of universal application as to all persons who by contract undertake professional or other business engagements requiring the exercise of care, skill and knowledge; the obligation is implied by law and need not be stated in the agreement." (*Ibid*. [citing case].) This is precisely the allegation here—that Defendant failed to use the degree of care and skill required.

In addition, a general demurrer, here the equivalent motion for judgment on the pleadings, must be overruled/denied if the complaint alleges any cause of action. Therefore, even if negligence were inapplicable to the facts, the complaint would still allege a cause of action for breach of contract for failure to repair the Subject Vehicle as warranted.

III. Damage

Defendant argues Plaintiff's complaint fails to allege personal injury or damage to property.

Plaintiff is not alleging a personal injury cause of action. He alleges negligent repair; i.e., that Defendant owed Plaintiff a duty to repair the Subject Vehicle, which was covered by an express warranty from Mercedes-Benz USA, LLC. (Complaint, ¶10.) Plaintiff alleges the Subject Vehicle was brought to Defendant for repair of defects and nonconformities to warranty, including engine, transmission, suspension, structural, and electrical system defects. (*Id.,* ¶11.) Plaintiff first presented the Subject Vehicle for repairs in May 2025, with approximately 3,023 miles on the odometer and reported the Auto Stop/Start feature malfunctioning, harsh gear shifts, and structural nonconformities with the cup holder. (*Id.,*¶12.) In June 2025, with approximately 3,844 miles on the odometer, Plaintiff presented the Subject Vehicle again and reported cosmetic abnormalities with the window trims, continuous harsh gear shifts, an abnormal noise while driving, and the malfunction of exterior door handles. (*Id.,* ¶13.) Plaintiff presented the Subject Vehicle again on or around, July 10, 2025, with approximately 4,820 miles on the odometer and reported the transmission jolting upon completing a stop, the "blue P light" illuminated, and cosmetic abnormalities on the window trims. (*Id.* ¶14.) On or around, July 22, 2025, with approximately 4,656 miles on the odometer Plaintiff presented the Subject Vehicle for repair of harsh gear shifts. (*Id.,* ¶15.) Plaintiff alleges that Defendant breached its duty to use ordinary care and skill by failing to properly store, prepare, and repair the Subject Vehicle in accordance with industry standards. (*Id.,* ¶52.) The damages alleged are Defendant's failure to repair the Subject Vehicle.

IV. Conclusion

Defendant has failed to establish that Plaintiff's cause of action fails to state facts sufficient to constitute a cause of action against it. **The motion is DENIED.**

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.

## 5. <u>25CV08705, Morales v. Hansel Dealerships, Inc.</u>

***(TENTATIVE ISSUED BY HON. JANE GASKELL)***

IF ORAL ARGUMENT IS REQUESTED, MATTER WILL BE HEARD IN DEPT. 17. PLEASE USE DEPT. 17'S ZOOM LOGIN INFORMATION (SEE BOTTOM OF PAGE).

Defendants Hansel Dealerships Inc. ("Dealer") and Redwood Credit Union ("RCU")(together "Defendants") move to compel Plaintiff Laura Morales ("Plaintiff") to arbitration and to stay this action pending resolution of arbitration. The motion is made on the grounds that the Retail Installment Sale Contract entered into between Defendants and Plaintiff on or about October 6, 2025, requires that the parties arbitrate their dispute.

I. First Amended Complaint

Plaintiff brought this action based upon her purchase of a 2024 Kia Forte ("the Kia") which she purchased from Dealer. Plaintiff states that she went to Dealer to find a reliable used vehicle. Dealer showed Plaintiff the Kia. Dealer bought the Kia at an auction, but informed Plaintiff the Kia had been traded in. The Dealer represented it had not been involved in any accidents, had not been previously damaged, and did not have any mechanical issues. Plaintiff purchased the Kia for: $17,888.00 cash price; $3,000.00 down payment; $22,727.54 financed; 6.74% annual percentage rate; $5,924.02 finance charge; 84 monthly payments of $341.09 starting on November 20, 2025; and a total sale price of $31,661.56. Plaintiff alleges the day after she purchased the Kia, she noticed damage to its left side. She contacted Dealer who indicated it could repair the Kia for $600 to $800, of which it would contribute $400. Plaintiff did not accept this repair offer. She alleges she would not have purchased the Kia if she knew it had damage to its left side rocker panel, which is a structural component of the Kia. In addition, she states she obtained two different repair estimates that indicate it will actually cost over $5,000 to repair. The complaint alleges causes of action for Violations of the Consumer Legal Remedies Act, Intentional Misrepresentation, Concealment, Negligent Misrepresentation, Violations of the Unfair Competition Law, and a Cause of Action under Vehicle Code section 11711.

II. Arbitration Clause

The Retail Installment Sales Contract ("the Contract") is attached to the complaint as Exhibit 1. Page 5 contains an Arbitration Provision. That provision states that either party to the Contract may choose to have any dispute decided by arbitration. (FAC, Exhibit 1, p. 5.)

Plaintiff does not oppose arbitration. She states that when Dealer's counsel asked Plaintiff's counsel if she would stipulate to arbitration with AAA or NAMADR, Plaintiff's counsel responded she would agree if Dealer stipulated to certain discovery requests. Specifically, Plaintiff sought to have Dealer agree to the following: Three-hour depositions of Liam Asadi (sales representative), Louis Passot (sales manager), the person who inspected the Kia before it was sold to Plaintiff, and the Dealer's PMQ; 10 Request for Admissions; 10 Requests for Production; 10 Special Interrogatories; Form Interrogatories 15.1 and 17.1; and a Subpoena for appearance to PV Holding Corporation (prior owner of Vehicle).

Dealer refused this request stating it would only agree to one PMQ deposition and 10 requests for production. Plaintiff states she did not agree to this proposal because its scope was too limited and it would not ensure that the PMQ was someone involved in the sale or the inspection of the Kia. Plaintiff argues forcing her to arbitrate her claims against Defendant is unconscionable because arbitration does not guarantee Plaintiff sufficient discovery to vindicate her rights.

III. Unconscionability

Unconscionability has both procedural and substantive elements. (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 114.) Procedural unconscionability focuses on "oppression" or "surprise" due to unequal bargaining power and substantive unconscionability focuses on "overly-harsh" or "one-sided" results. (*Ibid*.)

The unconscionability analysis begins with an inquiry into whether the contract is one of adhesion. (*Id*. at p. 113.) " 'The term [contract of adhesion] signifies a standardized contract, which, imposed and drafted by the party of superior bargaining strength, relegates to the subscribing party only the opportunity to adhere to the contract or reject it.' [Citation.] If the contract is adhesive, the court must then determine whether 'other factors are present which, under established legal rules—legislative or judicial—operate to render it [unenforceable].' [Citation.] 'Generally speaking, there are two judicially imposed limitations on the enforcement of adhesion contracts or provisions thereof. The first is that such a contract or provision which does not fall within the reasonable expectations of the weaker or 'adhering' party will not be enforced against him. [Citations.] The second—a principle of equity applicable to all contracts generally—is that a contract or provision, even if consistent with the reasonable expectations of the parties, will be denied enforcement if, considered in its context, it is unduly oppressive or ' "unconscionable."' (*Ibid*.) Subsequent cases have referred to both the 'reasonable expectations' and the 'oppressive' limitations as being aspects of unconscionability." (*Ibid*.)

The subject Contract is adhesive as it was imposed upon Plaintiff in a pre-printed form and there was no opportunity for her to negotiate its terms. Whether the arbitration provision is enforceable depends upon whether it is also substantively unconscionable.

Plaintiff argues the AAA rules are insufficient to allow Plaintiff to obtain the discovery needed to fairly prosecute her case. She points to Rule 20(a), which she states appears to provide the parties with the right to discovery but that it is mere "window treatment" because the AAA's model Scheduling Order takes the right to discovery away. She argues the model Scheduling Order does not permit the arbitrator to order any discovery or depositions.

AAA Rule 20(a) provides: "The arbitrator shall manage any necessary exchange of information among the parties, including depositions, interrogatories, document production, or by other means, with a view to achieving an efficient and economical resolution of the dispute while, at the same time, promoting equality of treatment and safeguarding each party's opportunity to fairly present its claims and defenses."

Subsection (b) of Rule 20 provides: "The parties shall: [¶] i) exchange documents in their possession or custody on which they intend to rely; [¶] ii) update their exchanges of documents on which they intend to rely as such documents become known to them; [¶] iii) identify the witnesses, if any, they plan to have testify at the hearing."

Subsection (c) of Rule 20 provides: "The arbitrator may, on application of a party or on the arbitrator's own initiative: [¶] i) require the parties, in response to reasonable document requests, to make available to the other party documents in the responding party's possession or custody not otherwise readily available to the party seeking the documents and reasonably believed by the party seeking the documents to exist and to be relevant and material to the outcome of disputed issues; [¶] ii) require the parties, when documents to be exchanged or produced are maintained in electronic form, to make such documents available in the form most convenient and economical for the party in possession of such documents, unless the arbitrator determines that there is good cause for requiring the documents to be produced in a different form. The parties should attempt to agree in advance upon, and the arbitrator may determine, reasonable search parameters to balance the need for production of electronically stored documents relevant and material to the outcome of disputed issues against the cost of locating and producing them; [¶] iii) require such other forms of information exchange as the arbitrator deems necessary."

Plaintiff attaches the "model Scheduling Order" as Exhibit 1 to her compendium of exhibits. That multi-page order leaves a blank to be filled in for the date by which the parties agree to complete their exchange of information. Thereafter, the order states: "No other exchange of information beyond what is contemplated under the Consumer Arbitration Rules, unless an arbitrator determines further information exchange is needed to provide a fundamentally fair process. The arbitrator has the authority to resolve any disputes between the parties about exchanging information." (Exhibit 1, p. 2.)

It is not clear why Plaintiff concludes that this paragraph takes away AAA Rule 20 when it specifically allows for the consumer arbitration rules, including Rule 20. Plaintiff also argues that it does not permit the arbitrator to order any written discovery or depositions. However, Rule 20(a) specifically provides the arbitrator with the power to manage discovery, including depositions and written discovery. Moreover, the language in the model order appears to broaden the arbitration rules. It adds that the arbitrator can allow discovery beyond what is allowed for in the arbitration rules if the arbitrator determines such discovery is "needed to provide a fundamentally fair process."

Plaintiff cites *Armendariz, supra,* arguing her claims involve unwaivable statutory claims for which the AAA does not guarantee sufficient discovery. The issue in *Armendariz* was with the arbitration clause itself. It required the employees to arbitrate their wrongful termination claims but did not require the employer to arbitrate claims it may have had against the employees. In addition, it did not permit employees the full recovery of ordinary contract damages but did not limit any recovery by the employer.

The *Armendariz* court stated that the *arbitration agreement* could not encompass unwaivable statutory rights. (*Id.,* at p. 100.) As such, an arbitration agreement that sought to limit statutorily available remedies is not enforceable. (*Id.,* at pp. 100-103.)

As for the issue of whether arbitration allowed for adequate discovery, the *Armendariz* plaintiffs argued that the denial of adequate discovery in arbitration proceedings leads to the de facto frustration of the employee's statutory rights. The arbitration clause in that case did provide for adequate discovery by incorporating by reference all the rules set forth in the California Arbitration Act. Adequate provisions for discovery are set forth in the CAA at Code of Civil Procedure section 1283.05, subdivision (a), which determines the manner of taking depositions in arbitration proceedings. (*Armendariz, supra,* at pp. 104-105.)

Here, Plaintiff does not suggest that it is the arbitration agreement which limits her right to discovery. Rather, she argues that, based upon her reading of a "model Scheduling Order" from another case, that the AAA rules are insufficient. Plaintiff cites no case that has found the AAA rules to be insufficient to allow for necessary discovery.

Plaintiff argues that because CCP section 1283.05(e) requires leave from the arbitrator to take depositions, discovery will somehow be inadequate. She argues that despite the arbitration agreement stating the Federal Arbitration Act ("FAA") is applicable to the case, section 1283.05 remains applicable because the FAA does not have this same provision. Plaintiff cites *Hohenshelt v. Superior Court* (2025) 18 Cal.5th 310, which addresses the issue of preemption for CCP section 1281.98.

The FAA does not preempt California Code of Civil Procedure section 1281.98, a provision of the CAA that governs the payment of fees in employment and consumer arbitrations. This is because the operation of section 1281.98 does not deviate from "generally applicable state law contract principles" and furthers rather than frustrates the objectives of the FAA (*Id.,* at p. 323., 326.) The Supreme Court of California presumed the CAA was applicable and that CCP section 1281.98 was not preempted. (*Ibid.*)

Plaintiff concludes that the FAA does not address or include any procedures for pre-arbitration discovery. As the authority cited by Plaintiff provides that California governs procedural arbitration rules, the logical implication is that CCP section 1283.05 governs depositions in arbitration proceedings. CCP section 1283.05 allows depositions in arbitration proceedings.

IV. Request for Discovery

Plaintiff requests that, as a condition of granting this motion, this court order that Plaintiff has the right to certain discovery. Such order would be inconsistent with the CCP as it is the arbitrator who manages discovery in the case.

V. Conclusion

Defendant has established the existence of a valid arbitration agreement. Plaintiff has not shown that the agreement is both procedurally and substantively unconscionable. Accordingly, **Defendant's motion to compel arbitration is GRANTED**. This action is stayed pending resolution of arbitration.

Defendant'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.

**6. <u>SCV-271497, Villara Corporation v. Morgan Properties Inc.</u>**

***(TENTATIVE ISSUED BY HON. DANA B. SIMONDS)***

IF ORAL ARGUMENT IS REQUESTED, MATTER WILL BE HEARD IN DEPT. 18. PLEASE USE DEPT. 18'S ZOOM LOGIN INFORMATION (SEE BOTTOM OF PAGE).

Pursuant to Civil Code of Procedure sections 128 and 1048, Defendant Morgan Properties ("Defendant") moves for an order staying all proceedings in this action, including the previously ordered contractual arbitration, until resolution of the related case, *Jason Dibari, et al. v. Daniel Morgan et al.,* 24CV04060.

1. Objections in Reply

In reply, Defendant objects to statements made in the opposition filed by Plaintiff Villara Corporation ("Plaintiff") and in the declaration of Stacy Moak. The objection to the first two paragraphs of Plaintiff's opposition is overruled. This is merely Plaintiff's argument. It is not evidence.

Defendant's objections to portions of the Moak declaration are also overruled. Paragraph 7 refers to an allegation in the complaint. Paragraphs 19 through 22, despite appearing in counsel's declaration, are argument. This court has not considered the statements referenced in these paragraphs as evidence.

2. Instant Action

On August 25, 2022, Plaintiff filed this action against Defendant to recover $36,115.60 in alleged unpaid contract amounts for plumbing work performed at the Marlow Commons development ("Marlow Commons"). On November 23, 2022, Plaintiff filed a First Amended Complaint. Plaintiff alleges it entered into a Master Contract Agreement with Defendant on February 15, 2021, and a Work Agreement Addendum on February 19, 2021, to furnish labor, materials, services, and equipment for plumbing work at Marlow Commons. Plaintiff alleges the total contract price for the plumbing work on all phases was $375,440.00, that Defendant paid $339,324.40, but failed to pay the remaining $36,115.60.

On April 19, 2024, this Court granted Defendant's motion to compel contractual arbitration. Since that ruling, both parties state that there has been no litigation activity and no arbitration has commenced.

3. 24CV04060, *Dibari, et al. v. Morgan, et al.*

On July 11, 2024, a group of homeowners at Marlow Commons filed a construction defect lawsuit, Case No. 24CV04060, assigned to Judge Pardo. The operative pleading is the Fourth Amended Complaint filed on February 17, 2026, stipulated to being the Fifth Amended Complaint.

The *Dibari* plaintiffs are twenty homeowners who purchased homes in Marlow Commons between April 2022 and early 2023. They allege that Enclave Santa Rosa, LP ("Enclave") was the owner and developer, and Defendant was the general contractor and general partner of Enclave. As to Defendant, the *Dibari* plaintiffs allege it breached purchase agreements by defectively installing a cheap knock-off single-coat stucco system, the "Cheap One-Coat Stucco System," instead of the specified "Ultrakote WM EIFS" stucco system required by the plans and specifications. The *Dibari* plaintiffs allege the defective installation included: (a) failure to install drainage plans, (b) use of staples and/or nails to secure the wire lathe to the insulation board, (c) staples which were stapled through window fins resulting in damage to the windows and creating holes for water intrusion, and (d) inconsistent base and finish coat thickness. The *Dibari* plaintiffs allege that, as a result of the defects, the Cheap One-Coat Stucco System is pulling away from window frames and has numerous cracks in excess of 1/8 inch. These defects, coupled with alleged inadequate exterior siding, roofing, and window flashing have resulted in water intrusion and resulting damage to property within the homes, including mold and dry rot. The *Dibari* complaint alleges five causes of action: (1) Breach of Written Contract; (2) Fraud (Concealment); (3) Violation of Building Standards (California Civil Code section 896); (4) Breach of Fiduciary Duty; and (5) Constructive Fraud.

On September 12, 2025, Defendant then filed a cross-complaint in the *Dibari* action against multiple subcontractors, including Plaintiff, asserting causes of action for express contractual indemnity, implied indemnity, breach of express warranty, breach of implied warranty, breach of written contract, negligence, contribution, strict liability, and declaratory relief.

4. CCP sections 128 and 1048

CCP section 128 gives the court various powers but does not specifically mention staying an action pending completion of a related case or consolidation of cases.

The relevant portion of CCP section 1048 is subsection (a), which provides: "When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay."

Here, there are no common questions of law or fact overlapping in this case and the *Dibari* action. This action involves a simple breach of contract/common counts claim whereby Plaintiff seeks to collect the remaining amounts it alleges is due on its contract with Defendant. The *Dibari* action is a complex construction defect case brought by numerous homeowners primarily alleging a failed stucco system. These cases will draw upon different facts, legal theories, and remedies.

In addition, this case has already been ordered to arbitration. The arbitration order is incompatible with an order consolidating this matter into the *Dibari* action.

In reply, Defendant argues that Plaintiff was not only responsible for plumbing but was also responsible for HVAC and sheet metal work. It argues that one of the deficiencies that has arisen is that the sheet metal caps were installed improperly, causing water intrusion. Regardless, it is far simpler to separately adjudicate the amount Defendant may owe Plaintiff on the underlying contract first rather than delay resolution of that issue in the event that Plaintiff may be responsible for some of the construction defects in the *Dibari* case. If Plaintiff is responsible for any construction defects, that can be determined and apportioned in the *Dibari* case.

5. Conclusion

Based upon the foregoing, **the motion is DENIED.**

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.

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