TENTATIVE RULINGS: CIVIL LAW & MOTION

Wednesday, August 5, 2026 at 3:00 p.m.
Courtroom 18 – Hon. Dana Simonds
Civil and Family Law Courthouse
3055 Cleveland Avenue
Santa Rosa, California 95403

The 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, **YOU MUST NOTIFY** the Judge's Judicial Assistant by telephone at **(707) 521-6724**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

If the tentative ruling is accepted, no appearance is necessary unless otherwise indicated.

TO JOIN ZOOM ONLINE:

Department 18:
Meeting ID: **160—739—4368**
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Unless notification of an appearance has been given as provided above, the tentative ruling shall become the ruling of the Court the day of the hearing at the beginning of the calendar.

1. SCV-273623, Alexander Valley Gourmet v. Industry West

Plaintiff's motion for summary judgment is **DENIED**. Plaintiff's alternative motion for summary adjudication is **DENIED**.

Defendant's application to file under seal is **GRANTED**. Defendant's request for judicial notice is **GRANTED**.

Defendant's counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

Evidentiary Objections:

The Court declines to rule on Defendant's objections numbers 1-23 pursuant to CCP § 437c(q). Defendant's objections numbers 24-38 are OVERRULED.

Plaintiff's objections to the declaration of Vincent Rizzo are OVERRULED as to numbers 1 and 4-7, SUSTAINED as to numbers 2, 3, 8, 9, and the Court declines to rule on numbers 10-12 pursuant to CCP § 437c(q).

Plaintiff's objections to the declaration of Larry Russell are OVERRULED as to 1-3 and 5-11 and SUSTAINED as to number 4.

Plaintiff's objections to the declarations of Daniel Prescod, Farbod Dinyari, and Daniel Wilson are OVERRULED.

The Court notes that Plaintiff submitted the declaration of Benjamin W. Turner in support of Plaintiff's reply. CCP § 437c(b)(4) states "The reply shall not include any new evidentiary matter, additional material facts, or separate statement submitted with the reply and not presented in the moving papers or opposing papers." This declaration submits new evidentiary matters that were not presented in the moving or opposing papers. Any new material in the declaration that was not previously submitted by the parties has not been considered.

<u>Procedural Deficiencies of Plaintiff's Motion:</u>

Defendant argues that Plaintiff's motion should be denied outright without reaching the merits because Plaintiff's separate statement of undisputed material facts is procedurally deficient. The Court agrees that Plaintiff's separate statement contains numerous immaterial facts and some misstatements of the evidence. However, it is not so egregious as to warrant denial without reaching the merits of the motion.

<u>Summary of Allegations:</u>

Plaintiff Alexander Valley Gourmet ("AVG") filed suit against Defendant Industry West Commerce Center ("IWCC") in July of 2023. Pursuant to the operative complaint, the Second Amended Complaint, AVG alleges causes of action against IWCC for (1) Rescission; (2) Termination; (3) Breach of Contract; and (4) Fraud. AVG alleges that IWCC knowingly and intentionally failed to honor the purpose of a lease contract for the premises located at 256 Sutton Place, Suite 103, Santa Rosa, CA (the "premises") that was specifically intended to serve as a food manufacturing and warehouse facility for AVG's fermented food business. AVG alleges that the premises was unsuitable for the purpose expressly stated in the lease. AVG further alleges that a key term of the lease grants AVG the right of first offer with respect to adjacent spaces at the premises that become available for rent. However, when an adjacent space became available for rent, AVG alleges that IWCC failed to provide proper notice and failed to lease the space to AVG because IWCC never intended and was in fact unable to lease the additional space to AVG without permission from a lender.

AVG now seeks summary judgment in its favor, or, in the alternative, summary adjudication of each of its causes of action. For the reasons stated below, the motion is denied.

<u>Summary of Facts:</u>

Plaintiffs have submitted 231 facts. This summary is not intended to indicate the only facts considered by the Court. The Court has considered all material facts.

Plaintiff is a premier producer of fresh, "West Coast style" pickles that operated out of a facility in Healdsburg, California. (Pl. Material Facts "PMF," 6.) In 2021, Plaintiff sought to relocate its facility due to its rapid growth and expansion needs. (PMF, 7.) Plaintiff required an industrial facility that was both capable of sustaining high-volume production of its products and offered a means for contiguous expansion. (PMF, 9.) Plaintiff targeted the premises at 256 Sutton Place specifically because the industrial complex had older leases in adjacent units that made it more likely that space in the complex would become available for rent so Plaintiff could expand its operations. (PMF, 10.)

On or about June 7, 2021, Plaintiff signed a five-year lease for the premises in Santa Rosa with IWCC. (PMF, 21.) During lease negotiations for the premises, Plaintiff specifically requested and obtained a right of first offer ("ROFO") for other space at the defendant's industrial complex. (PMF, 22.) The ROFO provides, in part,

> Provided Tenant has not been in default under the Lease more than twice, Tenant shall have the right, subject to the priority rights of other tenants expressly listed below (if any), to make the first offer to lease the adjacent space within the Building if it becomes available during the initial Lease Term. Landlord shall notify Tenant of such availability, which notice shall set forth the monthly rental as established by Landlord as the Fair Market Rent…

(PMF, 23.) The ROFO was critical to Plaintiff's business strategy and to risk mitigation. (PMF, 25.)

The lease also includes a "Permitted Uses" clause which states, "Food production, warehousing and distribution, administrative offices, and uses incidental thereto (the "Permitted Uses"). No outside storage is allowed except for the tanks depicted in the Space Plan and as permitted under Section 4.05(c)." (PMF, 29.) Plaintiff submits that this term was negotiated because it was essential to Plaintiff that the premises be suitable for its business purposes. (PMF, 29.) The lease provides that Plaintiff "may use the Property only for the Permitted Uses set forth in Section 1.06 above." (PMF, 30.)

The lease also provides, "On the Commencement Date, Landlord shall deliver the Property to Tenant (a) in broom-clean condition and good working order (including the structure, roof, floors, and exterior walls)…and (d) free from structural, materials, and construction defects." (PMF, 32.) The lease provides that the defendant "shall keep the following in good order, condition and repair: the foundations, exterior walls and roof of the Property." (PMF, 33.)

Plaintiff would not have executed the lease for the premises or invested millions of dollars in tenant improvements without the ROFO. (PMF, 42.) At no time prior to executing the lease did the defendant disclose to Plaintiff that it believed that the ROFO would not apply to subleases. (PMF, 49.)

Defendant's property was subject to loan covenants with John Hancock Life Insurance Company. Such loan covenants provide that the lender's approval is needed for any lease that is for 38,680 square feet of space or more. (PMF, 51.) These lender restrictions were included in a draft letter of intent, but not in the final lease. (PMF, 52.)

Plaintiff submits that Defendant was aware of the noise and smell associated with Plaintiff's business operations due to tours taken by Vincent Rizzo at their Healdsburg location prior to signing the lease. (PMF, 66-76.) Plaintiff submits that its operations in Santa Rosa were substantially similar, if not improved, from their operations in Healdsburg that were witnessed by Mr. Rizzo. (PMF, 78-81.) Defendant refutes this by submitting that there were significant differences between the Healdsburg operations and the Santa Rosa operations, such as elevated temperatures, elevated moisture, rust, corrosion, and odors escaping the building. (Response to PMF, 78-81.) The Santa Rosa facility used upgraded equipment and was fully mechanized while the Healdsburg facility was not fully mechanized. (PMF and Response to PMF, 78-81.)

During the early buildout phase, before Plaintiff had installed fermentation or other food processing equipment or begun any food production, there was surface rust on several of the structural steel columns and beams at the premises. (PMF, 90.) Defendant made efforts such as wire brushing and painting, to address the rusted areas when Plaintiff moved into the premises. (PMF, 91.)

Plaintiff submits that prior to Plaintiff's occupancy, Suite 103 "experienced roof leaks." Defendant submits that only one roof leak occurred in Suite 103 prior to Plaintiff's occupancy and it occurred in 2014, seven years before Plaintiff signed its lease. (PMF and Response to PMF, 93.) There is evidence of prior roof repairs being done at the building. (Turner Decl., Ex. DD.) Defendant did not disclose any history of roof leaks to Plaintiff. (PMF, 94.)

On November 1, 2022, Plaintiff complained of a "roof leak" in the space leased by Plaintiff. (PMF, 99.) According to the repair history attached as Exhibit DD to the Turner Declaration, Plaintiff complained of several roof leaks. The parties dispute whether the leaks were caused by rain or by condensation from Plaintiff's operations. The evidence submitted by the parties on this is contradictory.

Once Plaintiff's operations began, the defendant and its property manager repeatedly appeared at the premises to complain about Plaintiff's operations. (PMF, 142.) Plaintiff took measures to mitigate noise and odors. (PMF, 153.) The parties dispute whether the building was unsuitable for Plaintiff's needs as a food production facility or whether Plaintiff failed to take appropriate measures to mitigate odor and noise. The evidence submitted on this is contradictory. Defendant placed Plaintiff in default numerous times. (PMF, 159.)

Suite 102, the space adjacent to Plaintiff's premises in the defendant's complex, is leased by Bright Cellars. (PMF, 164.) Bright Cellars' lease expired on April 30, 2026. (PMF, 165.) In late 2022, Bright Cellars expressed to the defendant that it wanted to terminate its lease or assign that lease. (PMF, 166.) Defendant did not approve a termination or assignment, but did approve a sublease option, so long as Defendant approved of the new tenant. (PMF, 168.) Mr. Rizzo referred Bright Cellars to a real estate agent he had worked with in the past. (Megibow Decl. at ¶ 5.) In marketing materials, Bright Cellars' agent listed the space as "Warehouse/Distribution Space Available for Sublease" and described the space as "AVAILABLE: Now." (PMF, 174.) At the time the space was listed as "available," the defendant did not notify Plaintiff that the space was available and, instead, had already offered the space to another tenant. (PMF, 180.)

On April 26, 2023, after learning that Bright Cellars' space was available, Plaintiff submitted a written letter of intent through its agent to Bright Cellars' agent to sublease the space. (PMF, 181.) In response to Plaintiff submitting a written letter of intent, Bright Cellars' agent told Bright Cellars that the defendant's "loan may prohibit [Plaintiff] from occupying this much space." (PMF, 182.)

In correspondence dated December 18, 2023, Mr. Megibow (CEO of Bright Cellars) informed Plaintiff that, on January 2, 2023, the defendant had sent Mr. Megibow correspondence, which was labeled "confidential," stating "We do not wish to offer the space to [Plaintiff]. (PMF, 183.) On May 9, 2023, Bright Cellars' broker wrote that the defendant had told him "moving forward on an expansion with [Plaintiff] is a 'no go' due to ongoing issues between the parties." (PMF, 186.)

On May 12, 2023, Plaintiff sent a letter to the defendant by certified mail notifying the defendant of its interest in suite 102 and demanding that the defendant provide the Notice of Availability required under Section 3 of the First Addendum to the lease." (PMF, 189.) On May 20, 2023, the defendant's attorney sent Plaintiff a letter enclosing two "Notices to Cure or Quit," each threatening lease forfeiture and damages if Plaintiff did not comply with a series of demands, including addressing noise caused by the "general operation" of Plaintiff's business, brine odors and "moisture damage." (PMF, 194.) On May 31, 2023, Defendant sent Plaintiff correspondence stating that IWCC would not be responding to Plaintiff's May 12th letter "unless AVG timely cures the breaches of the lease." (PMF, 196.) In September of 2023, Plaintiff decided to shut down its operations at the leased premises and relocate to a facility in Cleveland, Ohio.

<u>Analysis:</u>

I. <u>Plaintiff Has Failed to Show a Lack of Triable Issue of Material Fact as to Fraud</u>

In Plaintiff's Second Amended Complaint, Plaintiff alleges that Defendant committed fraud by knowingly making representations to Plaintiff to convince Plaintiff to lease the premises while never intending to honor those representations, such as promising a right of first offer to lease adjoining premises and representing to Plaintiff that Plaintiff would be able to use the premises for fermented food production and distribution. Plaintiff's SAC alleges fraud in general and does not specify any specific type of fraud. Therefore, the Court will analyze this cause of action under the general elements of fraud, which are "misrepresentation, knowledge of falsity, intent to induce reliance on the misrepresentation, justifiable reliance on the misrepresentation, and resulting damages." (*Reeder v. Specialized Loan Servicing LLC* (2020) 52 Cal.App.5th 795, 803, citing *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.)

a. ROFO

Regarding the alleged misrepresentations relating to the ROFO, Plaintiff argues that by granting the expansion right in the lease, the defendant represented it had authority to allow Plaintiff to expand operations through whatever space became available at the complex and that the ROFO would be exclusive to Plaintiff. Plaintiff has not shown a lack of triable issue of material fact in either regard.

There is nothing in the record that unequivocally shows that Defendant did not have the authority to allow Plaintiff to expand operations nor that it was knowledgeable of such lack of authority when the lease was entered into. Plaintiff argues that Defendant knew the combined footprint of Plaintiff's space with virtually any other space at the complex would be subject to the lender's veto power but concealed this restriction from Plaintiff. However, the lender covenants impose a restriction on the square footage of a particular *lease*, not upon the square footage occupied by a single tenant if such occupancy is under different leases. Plaintiff has not shown that any of the other spaces in the building had a square footage that exceeded 38,680 square feet. Plaintiff argues that Defendant had secretly issued ROFOs to other tenants at the premises, obviating Plaintiff's bargained for right. The evidence does not support this argument. At the very least, the evidence does not establish a lack of triable fact as to this. The factors that Plaintiff points to in order to argue a lack of triable issue of material fact as to Defendant's knowledge do not do so. Rather, they indicate the existence of triable issues of material fact.

Finally, Plaintiff has also failed to establish a lack of triable issue of material fact regarding the remaining elements of fraud such as intent to induce reliance, justifiable reliance, and resulting damages. The record is replete with contradictory evidence and Plaintiff has failed to prove that this cause of action can be summarily adjudicated in Plaintiff's favor.

b. Suitability of Premises

Plaintiff argues that Defendant promised the property would be used for "Food production, warehousing and distribution" and that was the only "Permitted Use." However, the "Permitted Uses" provision of the lease does not constitute a promise regarding suitability. It is simply an explanation of the uses that are permitted on the premises. Plaintiff has not shown a lack of triable issue of material fact regarding whether Defendant made any representation relating to the suitability of the premises for Plaintiff's intended uses. Even if the "Permitted Uses" provision of the lease could be regarded as a representation regarding suitability, Plaintiff has failed to show a lack of triable issue of material fact as to any of the remaining elements of fraud.

II. Plaintiff Has Failed to Show a Lack of Triable Issue of Fact as to Breach of Contract

"[T]he elements of a cause of action for breach of contract are (1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the plaintiff." (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 821.

Plaintiff has shown the existence of a contract between the parties, but has failed to show the lack of triable issue of material fact as to any other element of this cause of action. Plaintiff represents that Plaintiff's performance or excuse for nonperformance is undisputed, but this is contrary to the record. The record reflects that Plaintiff was placed in default numerous times. Whether such defaults were genuine or simply a pretext or warning, as Plaintiff argues, is a triable issue of material fact. But it is not true that the issues regarding Plaintiff's performance is undisputed.

Moreover, Plaintiff has failed to show a lack of triable issue of material fact regarding Defendant's breach. Plaintiff alleges that Defendant breached the lease by failing to offer Suite 102 once it became available. While the Court does not agree with Defendant's argument that the suite had not become available because it was only available for sublease and not direct lease, the Court also does not agree with Plaintiff that the record establishes unequivocally that Defendant was required to notify Plaintiff of its availability.

The ROFO was conditioned upon Plaintiff not being in default under the Lease more than twice. "Provided Tenant has not been in default under the Lease more than twice…" (PMF, 48.) However, as represented by Plaintiff, "Defendant placed Plaintiff in default numerous times." (PMF, 159.) As submitted in the declaration of Darren Buck, "Once our operations began, the defendant repeatedly claimed Plaintiff was in default of the lease because of pickle smells, operational noises and alleged moisture issues that the defendant claimed were attributable to Plaintiff's operations." (Buck Decl., 23.) Triable issues of material fact exist as to whether Plaintiff was in fact in default more than twice prior to Suite 102 becoming available.

Finally, Plaintiff argues that Defendant breached the Permitted Uses provision of the lease as well as Sections 6.01 and 6.03 because the roof was failing long before Plaintiff took occupancy. Regarding the Permitted Uses provision, the Court has already explained that the Court does not interpret this provision as containing any promises or representations regarding the suitability of the premises for Plaintiff's business. It simply provides that Plaintiff is permitted to engage in the enumerated activities on the premises.

Regarding Sections 6.01 and 6.03, they provide that the Landlord shall deliver the property "(a) in broom-clean condition and good working order (including the structure, roof, floors, and exterior walls)…and (d) free from structural, materials, and construction defects" and that the Landlord "shall keep the following in good order, condition and repair: the foundations, exterior walls and roof of the Property." (PMF, 33.) Plaintiff has not shown the lack of triable issue of material fact as to Defendant's alleged failure to do so. The evidence in the record is contradictory. Plaintiff's evidence suggests a history of roof repairs and issues while Defendant's evidence suggests that the issues specific to Suite 103 may have been caused by condensation resulting from Plaintiff's operations. These are issues that must be resolved by a trier of fact.

III. Since Plaintiff Has Failed to Show a Lack of Triable Issue of Material Fact as to Fraud and Breach of Contract, it Has Likewise Failed as to the Rescission and Termination Causes of Action

Plaintiff's rescission cause of action is based on alleged fraud. As explained above, Plaintiff has failed to show a lack of triable issue as to Plaintiff's fraud allegations. Therefore, Plaintiff has failed to show that the rescission cause of action should be summarily adjudicated in Plaintiff's favor.

Plaintiff's termination cause of action is likewise derivative of Plaintiff's breach of contract and fraud causes of action. Since Plaintiff has failed to show a lack of triable issue of material fact as to those causes of action, Plaintiff has failed to show that the termination cause of action should be summarily adjudicated in Plaintiff's favor.

2. 25CV08496, Mendelsohn v. APTB, LLC

Defendant APTB, LLC (Erroneously Sued as PETALUMA POSTACUTE REHAB)'s motion to compel arbitration is **GRANTED in part and DENIED in part, as explained below**. Defendant's request for stay is **GRANTED**. The two currently pending motions to compel arbitration that are scheduled for hearing on September 16, 2026 will still be heard.

Defendant's counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

Analysis:

Plaintiffs are the heirs of the decedent, Francoise Mendelsohn. They bring this action both individually and as successors in interest to the decedent. In their First Amended Complaint they raise two causes of action against Defendants, one for wrongful death and one for elder abuse. Defendants Petaluma Post-Acute Rehab; Aspen Skilled Healthcare, Inc.; Jeffrey Bradshaw; Ryan Case; Vern Jay Brady; Shirley Kraft; Haley Mclaughlin, And Does 1-20 are alleged to have been doing business as Petaluma Post-Acute, a 24-hour health facility as defined in Health & S C §1250(c). Defendant Saw Aye, M.D. is alleged to have been the attending physician at Petaluma Post-Acute Rehab. Plaintiffs allege that all of the defendants were responsible for the care of the decedent while she was admitted to their facility. They allege that the decedent's death was the result of elder abuse she suffered while in their care. Defendant, APTB, LLC (erroneously sued as Petaluma Post-Acute Rehab) herein moves for an order compelling all claims by all plaintiffs to arbitration based on the arbitration agreement entered into by Defendant and the decedent.

I. Defendant Has Shown the Existence of a Valid Arbitration Agreement

"The party seeking to compel arbitration has the initial burden to plead and prove the existence of a valid arbitration agreement that applies to the dispute. Once that burden is satisfied, the party opposing arbitration must prove any defense to the agreement's enforcement, such as unconscionability." (*Dennison v. Rosland Cap. LLC* (2020) 47 Cal.App.5th 204, 209.) "Because arbitration is a matter of contract, the general rule is that one must be a party to an arbitration agreement to invoke or be bound by its terms." (*Enmark v. KF Community Care, LLC* (2024) 105 Cal.App.5th 463, 471.)

Defendant has met its burden of establishing that an arbitration agreement exists that applies to this dispute. Upon admission, Decedent signed an arbitration agreement that provided as follows, in pertinent part,

> It is understood that any dispute as to medical malpractice, that is as to whether any medical services rendered under this contract were unnecessary or unauthorized or were improperly, negligently or incompetently rendered, will be determined by submission to arbitration as provided by California law, and not by a lawsuit or resort to court process except as California law provides for judicial review of arbitration proceedings.

(Foster Decl., Ex. A, Article I.)

> It is further understood that any dispute between Resident, including Resident's heirs and/or agents, and APTB, LLC ("Facility"), and their owners, investors, operators, officers, directors, administrators, staff, employees, agents, and any management and administrative services company and all related entities and individuals, their staff, personnel, employees, owners, officers, directors, members, and agents that provide services to the Facility that relates to the provision of care, treatment and services the Facility provides to the Resident, (collectively referred to herein as "Facility), including any action for injury or death arising from negligence, torts, intentional tort and/or statutory causes of action (including all California Welfare and Institutions Code sections, all California Business and Professions Code sections, Health and Safety Code section 1430), and all other statutory claims under

> any applicable California code, will be determined by submission to binding arbitration and not by lawsuit or resort to court process except as California law provides for judicial review of arbitration proceedings.

(Foster Decl., Ex. A, Article II.)

> This Agreement is binding on all parties, including the Resident's representatives, executors, family members, and heirs who bring any claims individually or in a representative capacity.

(Foster Decl., Ex. A, Article III.)

II. Plaintiffs' Individual Wrongful Death Claim is Not Subject to Arbitration

Plaintiffs Michael Mendelsohn and Lucille Herman are not signatories to the arbitration agreement. As such, they have not consented to arbitration. The general rule is that one who has not consented to arbitrate a claim cannot be compelled to do so. (*Goldman v. Sunbridge Healthcare, LLC* (2013) 220 Cal.App.4th 1160, 1176.)

Defendant argues that CCP § 1295 and *Ruiz v. Podolsky* (2010) 50 Cal.4th 838, apply here and require Plaintiffs' wrongful death claim to be arbitrated even though they are not signatories to the arbitration agreement. In *Ruiz*, the California Supreme Court created an exception to the general rule against compelling non-consenting parties to arbitration. The *Ruiz* Court held that CCP § 1295 permitted patients who consented to arbitration "of any dispute regarding professional negligence of a health care provider" to bind their heirs in actions for wrongful death.

Subsequent to *Ruiz*, the courts have clarified that *Ruiz* applies in the narrow circumstance where the heirs' wrongful death claim is rooted in allegations of professional negligence, as opposed to allegations of elder abuse. As explained in *Avila v. Southern California Specialty Care, Inc.* (2018) 20 Cal.App.5th 835, 842,

> If the primary basis for the wrongful death claim sounds in professional negligence as defined by MICRA, then section 1295 applies. If, as plaintiffs claim here, the primary basis is under the Elder Abuse and Dependent Adult Civil Protection Act (Welf. & Inst. Code, § 15600 et seq.) (the Act), then section 1295 does not apply and neither does *Ruiz*'s exception to the general rule that one who has not consented cannot be compelled to arbitrate.

As further explained in *Valentine v. Plum Healthcare Group, LLC* (2019) 37 Cal.App.5th 1076, 1084,

> Under the rule of *Ruiz v. Podolsky* (2010) 50 Cal.4th 838, 841, 114 Cal.Rptr.3d 263, 237 P.3d 584, as applied by this court in *Bush v. Horizon West* (2012) 205 Cal.App.4th 924, 929, 140 Cal.Rptr.3d 258, a patient of a skilled nursing facility can bind her heirs to arbitrate wrongful death claims arising only from medical malpractice, but not from elder abuse. The children did not allege medical malpractice or professional negligence.

"Ruiz [has] no bearing on third party wrongful death claims outside the context of section 1295." (*Daniels v. Sunrise Senior Living, Inc.* (2013) 212 Cal.App.4th 674, 677.)

Most recently, the California Supreme Court in *Holland v. Silverscreen Healthcare, Inc.* (2025) 18 Cal.5th 364, 379, has explained,

> "Professional negligence," we held, refers to "negligence in the *undertaking* of medical services," or in other words, "to the performance of medical services in a manner inferior to ' "the knowledge, skill and care ordinarily possessed and employed by members of the profession in good standing." ' "…By contrast, custodial neglect refers to the "*failure* of those responsible for *attending* to the basic needs and comforts of elderly or dependent adults" and applies "regardless of their professional standing."…Thus, as a general rule, a plaintiff who alleges wrongful death based on custodial neglect under the Elder Abuse Act is not alleging wrongful death based on medical malpractice.

The Court recognized, "…however, there is potential for confusion 'in the fact that some health care institutions, such as nursing homes, perform custodial functions and provide professional medical care…This can complicate efforts to draw lines between claims concerning the provision of professional medical services and other services the facilities may provide.'" (*Id*. at 379-380.) The Court explained, "Our cases offer guidance. We have explained that only acts or omissions by a skilled nursing facility in its capacity as a health care provider fall under the banner of professional negligence." (*Id*. at 380.) "By contrast…The failure to provide basic necessities, such as assistance in personal hygiene, food, hydration, or clothing, are paradigmatic examples of a failure to fulfill custodial duties." (*Ibid*.) "The same is true of a failure to provide an adequate and habitable living space or protect from routine safety hazards." (*Ibid*.) "Similarly, a failure of staff to attend to, monitor, or assist a resident in obtaining appropriate medical care generally falls on the custodial side of the line because such omissions involve 'not ... the undertaking of medical services, but…the failure to provide medical care.'" (*Ibid*.) "Claims premised on the manner in which skilled nursing or other long-term care facilities protect the basic welfare and safety of residents fall outside the scope of section 1295(a), and thus outside the scope of *Ruiz*." (*Id*. at 381.) Moreover,

> Certainly, in some cases, a claim of injury from falls and infection might be based on negligence in prescribing or executing a plan to address a resident's medical needs. But in other cases, the claim of injury might be based on a failure to adequately supervise and render assistance to residents as they undertake daily activities, or the failure to ascertain whether residents need medical treatment despite easily observable physical manifestations of possible illness. While the first sort of claim may sound in professional negligence, the second sort of claim generally does not.

(*Id*. at 381–382.) "The critical question remains whether the complaint alleges negligent acts or omissions by 'health care providers in their capacity as providers' rather than 'against custodians and caregivers…that may or may not, incidentally, also be health care providers.'" (*Id*. at 382.)

Here, the Court agrees with Plaintiffs that Plaintiff's allegations are based on custodial neglect under the Elder Abuse Act rather than wrongful death based on medical malpractice. Their allegations are characteristic of neglect by custodians and caregivers who are incidentally health care providers, rather than by healthcare providers in their capacity as providers. (*Holland*, *supra*, at 382.)

For example, Plaintiffs allege "DEFENDANTS, and each of them, were responsible for Ms. Mendelsohn's basic needs, and she had a robust custodial relationship with all defendants to provide for her own basic needs." (FAC ⁋ 13.) "On April 9, 2025, Ms. Mendelsohn was classified as a high fall risk. All Defendants knew Ms. Mendelsohn was a high fall risk and repeatedly failed to provide basic fall protections." (FAC ⁋ 14.) "Due to SKILLED NURSING DFEFENDANTS' chronic understaffing, Decedent was then left unattended for a long period of time. As a result, decedent sustained many falls while a patient at Petaluma Post Acute." (FAC ⁋ 15.) "SKILLED NURSING DEFENDANTS had a long history of neglecting patients, including Ms. Mendelsohn, by not responding to call lights timely or not at all, forcing patients to get out of bed on their own despite being known high fall risks." (FAC ⁋ 22.) "SKILLED NURSING DEFENDANTS had a long history of neglecting patients, including Ms. Mendelsohn, by also not implementing fall prevention measures, despite having patients who are known high fall risks." (FAC ⁋ 23.) "Managing agents of SKILLED NURSING DEFENDANTS disregarded the blatant signs that Ms. Mendelsohn needed additional care." (FAC ⁋ 25.)

Since Plaintiffs' wrongful death claim is rooted in elder abuse allegations, it does not fall under CCP § 1295 or *Ruiz, supra,* and it cannot be compelled to arbitration.

III. <u>Plaintiffs' Elder Abuse Claim is Subject to Arbitration</u>

Unlike their wrongful death cause of action, which is individual to the Plaintiffs, their elder abuse cause of action is a representative cause of action brought on behalf of the decedent. This cause of action is arbitrable under the terms of the arbitration agreement. Plaintiffs have raised no defenses to arbitration of this cause of action. They simply argue that it should not be compelled to arbitration pursuant to CCP § 1281.2(c). However, CCP § 1281.2 does not apply here.

The parties expressly agreed that both the substantive and procedural rules of the Federal Arbitration Act ("FAA") would apply to any dispute described in the arbitration agreement.

> …the parties agree that this Agreement is to be governed by the Federal Arbitration Act (9 U.S.C. §§1-16) and the procedural rules set forth in the Federal Arbitration Act shall govern any and all arbitration proceedings, including any petition to compel arbitration.

(Foster Decl., Ex. A, Article VII.) Moreover, the parties expressly agreed that CCP § 1281.2 is excluded from their agreement.

> The parties agree that California Code of Civil Procedure §1281.2(c) is excluded from this Agreement as the parties mutually desire to have any and all disputes submitted to binding arbitration. The parties do not want any claims or related lawsuits not subject to arbitration to impede any and all other claims from being ordered to binding arbitration.

(Foster Decl., Ex. A, Article VII.)

Since the FAA applies here and since the FAA does not contain a provision analogous to CCP § 1281.2(c), "that subdivision cannot be applied to deny the enforcement of arbitration clauses governed by the FAA." (*Gloster v. Sonic Automotive, Inc.* (2014) 226 Cal.App.4th 438, 446.) As in *Gloster*, "The parties could not have stated their intent that section 1281.2, subdivision (c) would not be applied to defeat enforcement of the arbitration clause in the [] agreement any more clearly." (*Gloster*, *supra*, at 447.) CCP § 1281.2 is not applicable here. Plaintiffs' elder abuse claim shall be arbitrated.

Plaintiffs argue in the alternative that the arbitration should be stayed pending the resolution of the wrongful death claims in court pursuant to CCP § 1281.2. Again, CCP § 1281.2 does not apply to this matter.

IV. Stay of Proceedings

As discussed above, the parties expressly agreed that the procedural rules of the FAA were to apply. Accordingly, the Court is mandated to stay these proceedings pending the arbitration pursuant to 9 U.S.C. § 3. Even under California law, the Court is mandated to do so. (CCP § 1281.4.) These proceedings shall be stayed until the arbitration is completed. The two currently pending motions to compel arbitration that are scheduled for hearing on September 16, 2026 will still be heard.

3. 25CV02617, Vinas Ramirez v. Driver

Plaintiff's request to set aside the dismissal of this action is **GRANTED**.

If no hearing is requested, the Court will sign the proposed order lodged with the moving papers.

Analysis:

CCP § 473(b) provides for mandatory relief from dismissal where application for relief is made no more than six months after entry of dismissal, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect. '

This matter was dismissed on March 3, 2026, and this motion was filed on April 21, 2026. Therefore, the motion is timely. The motion is accompanied by the declaration of attorney Raymond Ghermazian attesting to his mistake in calendaring the case management conference and subsequent technical difficulties when attending the OSC hearing as being the cause of the dismissal. Accordingly, the requested relief is mandatory.

4. 25CV06416, Lopez Meresias v. Hsu

Plaintiffs' motion to serve Defendant JD Management Group, Inc. through the California Secretary of State is **GRANTED**.

If no hearing is requested, the Court will sign the proposed order lodged with the moving papers.

Analysis:

The Court may order that service may be made upon a corporation by delivering a copy of the process and the Court's order authorizing the process, by hand, to the Secretary of State, if any of the following are true:

(1) The designated agent for service of process has resigned and has not been replaced;
(2) The designated agent cannot with reasonable diligence be found at the address designated for personal delivering of process; or
(3) No agent has been designated.

(Corp. Code, § 1702(a).) The moving party must submit an affidavit that service of process against a corporation cannot be served upon the designated agent with reasonable diligence, in a manner provided by the Code of Civil Procedure. (*Ibid.*)

Counsel for Plaintiffs has submitted a declaration demonstrating that their legal process server has attempted to serve process personally upon the designated agent for service JD Management Group, Inc. on six occasions and been unsuccessful. Plaintiffs have met their burden of showing that the designated agent cannot with reasonable diligence be found at the address designated for delivery of process. Accordingly, the motion is granted.

5. 25CV01117, Hernandez v. LoanDepot.com, LLC

Defendant Loandepot.com's motion to expunge lis pendens is **CONTINUED** to August 19, 2026 at 3:00 p.m. in Department 18 in order to allow Defendant an opportunity to file a reply brief to Plaintiff's late filed opposition. Plaintiff filed his opposition on July 30, 2026, an entire week after its due date and even after the time for Defendant's reply brief to be timely. Plaintiff is cautioned against filing late papers again. If Plaintiff files papers late in the future, the Court will exercise its discretion to disregard those papers. Even if Defendant filed a reply brief prior to this hearing, the Court has not had the opportunity to review it and a continuance would still be necessary.

6-7. 26CV00850, Graton Church of Christ v. Pacific Christian Academy

1. Defendant's Motion to Expunge Lis Pendens

Defendant Pacific Christian Academy's motion to expunge lis pendens is **GRANTED**. Defendant's request for attorney's fees and costs is **GRANTED** in the amount of $6,875.00. Plaintiff's evidentiary objections are **SUSTAINED**.

Defendant's counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

Analysis:

Plaintiff, Graton Church of Christ, Incorporated, alleges that it is a religious corporation that is the intended beneficiary of the assets of the Defendant, Pacific Christian Academy ("PCA") upon its dissolution and is also the holder of rights to the water well located on property owned by the Defendant. As alleged, PCA holds title to two parcels of real property which have historically been used in the operation of a Christian School.

Plaintiff alleges that PCA was formed in 1919 as a nonprofit public benefit corporation under the laws of California. In 1954, PCA amended its Articles of Incorporation ("AOI") to irrevocably dedicate all property, now possessed, or hereafter acquired, to religious, charitable, and scientific purposes. The 1954 amendment included a reversionary provision stating that upon cessation of corporate existence, liquidation, dissolution, or abandonment of any or all of the property dedicated, such property shall not go to or inure to the benefit of any private person but shall vest to the benefit of the Church of Christ of Graton, California.

In August 1963, PCA again amended its AOI, reaffirming the irrevocable dedication of all property to religious, charitable, and scientific purposes. As alleged, the 1963 amendment included "Article Ninth," which affirmed the dedication to the Plaintiff, Graton Church, that upon the cessation of corporate existence, or upon liquidation, dissolution, or abandonment of any or all of the property dedicated, such property, real and personal, shall not go to or inure to the benefit of any private person, but shall vest to the benefit of the Plaintiff herein, the Church of Christ, Graton, California, if at such a time the Church is operated for religious, hospital, scientific, or charitable purposes.

Plaintiff alleges a historic and ongoing interconnection between Plaintiff and Defendant over a period of over a century that demonstrates that the two entities operated with a singular charitable purpose. This includes a shared charitable mission, volunteer labor and financial support provided by Plaintiff, as well as shared use of facilities and resources.

Plaintiff alleges that in November of 2025, Defendant Cindy Lanier notified the board of Plaintiff that PCA had been operating in the red and requested funding from Plaintiff. On or about November 10, 2025, the members of the PCA board voted to wind up the affairs and to dissolve PCA and to close the preschool that was being operated on the alleged Charitable Trust Property.

Plaintiff alleges that the election to dissolve under the then current governing documents triggered the obligation to distribute according to these documents, i.e. specifically designating the Plaintiff, Graton Church as the recipient to be distributed the assets of the Defendant, PCA on dissolution.

Since December of 2025, Plaintiff alleges that it has been trying to assist with the winding up and transfer of the Charitable Trust Property to Plaintiff, and has also offered financial assistance, but Defendant has refused. Plaintiff alleges that Defendant simply provided unlawfully modified articles and bylaws to claim that it no longer is obligated to distribute any assets to Plaintiff. The 2026 amended AOI purportedly allows Defendant to sell the Charitable Trust Property. Plaintiff alleges that the amendment is unlawful and an improper attempt to alter the terms of the charitable trust which irrevocably exists for the benefit of the Plaintiff at the time of PCA's dissolution. Defendant has listed the Charitable Trust Property for sale for a total of $1,000,000. Plaintiff alleges that Defendant also threatened to terminate Plaintiff's access to the water well on the property that Plaintiff developed, maintained, and used for over 70 years.

Plaintiff alleges causes of action for Breach of Charitable Trust, Prescriptive Easement for the Water Well, Declaratory Relief, Accounting, Appointment of Receiver, and Quiet Title. On February 20, 2026, the day after filing the complaint in this matter, Plaintiff recorded a Notice of Pendency of Action (lis pendens) relating to PCA's real properties at 8877 and 9001 Donald Street, Graton, CA.

Defendant herein seeks to expunge the lis pendens arguing that Plaintiff has failed to state a real property claim against Defendant. Plaintiff's Complaint seeks: (1) to quiet title to the two parcels located at 8877 and 9001 Donald Street, Graton, California (the "Charitable Trust Property"), based on PCA's 1954 and 1963 Articles of Incorporation irrevocably dedicating those assets to GCC upon dissolution; and (2) to establish a prescriptive easement for ongoing access, maintenance, and use rights in the well and related water distribution facilities on the 9001 Donald Street parcel (the "Well Property").

I. <u>Plaintiff Has Failed to Meet its Burden on this Motion</u>

Only a "real property claim" can support a lis pendens. (CCP § 405.1.) A lis pendens "claimant" is "a party to an action who asserts a real property claim and records a notice of the pendency of the action." (CCP § 405.1.) A "real property claim" is "a cause or causes of action in a pleading which would, if meritorious, affect (a) title to, or the right to possession of, specific real property or (b) the use of an easement identified in the pleading...." (CCP §405.4.)

The allegations of the complaint determine if a "real property claim" is involved. (*Urez Corp. v. Sup.Ct.* (1987) 190 Cal.App.3d 1141, 1149.) According to CCP §§405.31-405.32, the lis pendens must be expunged without a bond if the claim does not affect title to real property or if the recording party cannot establish the probable validity of the real property claim by the preponderance of the evidence.

The burden of proof is on the lis pendens claimant, the party opposing the motion. (CCP § 405.32.) The claimant must show with evidence that it is more likely than not that the claimant will prevail and obtain a judgment. (CCP § 405.3.) If the court determines that the lis pendens is improper, expungement is mandatory. (CCP §§405.30-405.32.)

Here, the Court does not agree with Defendant that Plaintiff has failed to state a real property claim in the Complaint. The Court finds the allegations of Plaintiff's complaint relating to the real property claims to be sufficient. However, Plaintiff has the burden on this motion to establish, with evidence, that it is more likely than not that Plaintiff will obtain a judgment against the defendant on the real property claims. Plaintiff has not submitted any evidence whatsoever that would support its real property claims. The declarations in support of Plaintiff's opposition speak only to issues of attorney's fees relating to this motion. Accordingly, Plaintiff has failed to meet its burden of proof on this motion. Expungement without bond is mandatory.

II. <u>Defendant is Entitled to Attorney's Fees and Costs</u>

CCP § 405.68 provides that the Court shall direct that the prevailing party on a motion to expunge lis pendens be awarded the reasonable attorney's fees and costs of making or opposing the motion, unless the Court finds that the other party acted with substantial justification or that other circumstances make the imposition of attorney's fees and costs unjust.

Plaintiff has not shown circumstances that would warrant denial of attorney's fees and costs to Defendant. However, the Court agrees with Plaintiff that Defendant's fees and costs request is inflated and must be reduced.

Defendant seeks $55,000 in fees and costs based on time spent on both the demurrer and this motion to expunge lis pendens. Defendant has not cited any authority allowing it to recover fees and costs for filing the demurrer. Defendant's argument that the demurrer and the work performed researching it were essential to this motion is not persuasive. CCP § 405.38 allows only the reasonable fees and costs of making the motion to expunge lis pendens. Moreover, Defendant undoubtedly spent more time on the demurrer than this motion because Defendant submitted an oversized memorandum of 26 pages in support of the demurrer while submitting a brief of only 10 pages for this motion. Since Defendant has submitted time records that reflect only blended time spent on both motions, the Court has determined the reasonable amount of time that it would have taken an attorney to draft this motion.

Defendant shall be awarded 15 total attorney hours for this motion. 10 of them shall be attributed to Counsel Daryl J. Reese at $525 per hour and 5 of them shall be attributed to Counsel Sheng Min Aw at $325 per hour. Defendant has not provided any evidentiary foundation for any costs incurred on this motion. The total attorney's fee award to Defendant is $6,875.00.

2. <u>Defendant's Motion for Protective Order</u>

Defendant Pacific Christian Academy ("PCA")'s motion for protective order is **DENIED**.

Defendant's evidentiary objections are **SUSTAINED**.

Plaintiff's counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

<u>Analysis</u>:

Defendant PCA moves the Court for a protective order staying discovery pending resolution of its demurrer that is scheduled to be heard on August 19, 2026. Defendant argues that a stay is necessary because "forcing PCA to respond to discovery regarding claims that are likely to be disposed of on demurrer would constitute unwarranted annoyance, oppression, and undue burden and expense." The Court finds this argument to be highly speculative and unsupported in the papers supporting the motion. Defendant has not shown that Plaintiff's claims are likely to be disposed of. Plaintiff is entitled to discovery so long as its claims are still viable.

Defendant also submits that PCA's primary witness and most knowledgeable representative is currently serving as the primary caregiver to her ailing mother. In so far as Defendant argues that these circumstances have made the witness unavailable for a deposition, Defendant has not shown that Plaintiff has not or will not be accommodating to the witness's schedule considering her circumstances. In so far as Defendant is arguing that the witness is unavailable to help respond to Plaintiff's discovery demands, Defendant has not established that there is no one else who could assist with the task. Moreover, such a representation would be contrary to the record, as explained below.

Finally, Defendant argues that it is a charitable organization, so having to spend financial resources on discovery until the demurrer is resolved would impose a "severe and disproportionate financial burden" on it. First, Defendant has not cited any authority that would support weighing Defendant's financial circumstances over Plaintiff's right to discovery. Second, the record before this Court, as submitted by Plaintiff in opposition, is that since the filing of this motion Defendant has still been engaging in meet and confer efforts and has been supplementing its discovery responses such that Defendant has now substantially complied with most of the outstanding discovery, with only a few requests for production of documents outstanding. Furthermore, the remaining discovery is now the subject of a motion to compel further responses that has been submitted for filing, but has not yet been assigned a hearing date. There is no chance that the hearing date on that motion will be set prior to the hearing date on the demurrer. Also, presumably, Defendant will not be expending resources to provide further answers to those discovery requests until the Court has ordered it to do so since the parties have already extensively met and conferred on these issues. (Reply Decl. of Daryl J. Reese.) Defendant has failed to show that a protective order is warranted.

8. 25CV01423, Cowan-Bent v. West Coast Convenience, LLC

Defendant West Cost Convenience, LLC's motion to compel arbitration is **GRANTED.** Defendant's request to dismiss Plaintiff's class claims is **DENIED without prejudice**. Defendant's request for stay is **GRANTED.**

Plaintiff's objections to Defendant's evidence are **OVERRULED**.

Defendant's counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

Analysis:

Plaintiff is a former employee of Defendant West Coast Convenience, LLC. Plaintiff brings this class action suit against Defendant alleging several Labor Code violations on behalf of himself and others similarly situated. Defendant herein seeks to compel arbitration of Plaintiff's claims pursuant to a Mutual Arbitration Agreement ("MAA") entered into by the parties upon Plaintiff's onboarding. The MAA provides, in relevant part,

> 1.a. **Arbitrable Claims.** Except as this Agreement otherwise provides, the parties mutually agree to arbitrate all disputes, claims or controversies, past, present or future, including without limitation, claims arising out of or related to your application and selection for employment, employment, and/or the termination of your employment that the Company may have against you or that you may have against the Company and/or any of the following: officers, members, directors, employees, or agents; insurers, benefit plans or the

> plans' sponsors, fiduciaries, administrators, affiliates or agents; and successors or assigns. Each and all of the entities/individuals listed above may enforce this Agreement.
>
> The covered claims and disputes subject to arbitration under this Agreement are those that, absent this Agreement, could have been brought in court or before a forum other than arbitration under applicable state, federal or other law…
>
> The arbitrator, and not any federal state or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or waiver of this Agreement, including but not limited to, any claim that all or any part of this Agreement is void or voidable. However, the preceding sentence does not apply to…the Class Action Waiver…below.
>
> 1.e. **CLASS ACTION WAIVER.** The parties agree to bring any claim on an individual basis only. Accordingly, THE PARTIES WAIVE ANY RIGHT FOR ANY DISPUTE TO BE BROUGHT, HEARD, DECIDED OR ARBITRATED AS A CLASS, MASS, AND/OR COLLECTIVE ACTION AND THE ARBITRATOR WILL HAVE NO AUTHORITY TO HEAR OR PRESIDE OVER ANY SUCH CLAIM ("Class Action Waiver"). Also, the arbitrator has no authority to consolidate or join claims by different persons into one proceeding. If a final judicial determination is made that the Class Action Waiver is unenforceable and that a class, mass, or collective action may proceed notwithstanding the existence of this Agreement, the arbitrator is nevertheless without authority to preside over a class, collective, or mass action and any such action must be brought in a court of competent jurisdiction—not in arbitration—but the portion of the Class Action Waiver that is enforceable shall be enforced in arbitration.

(Alejado Decl., Ex. C.) Plaintiff has not opposed Defendant's argument that the Federal Arbitration Act ("FAA") applies here. The Court agrees that it does.

V. Defendant Has Shown the Existence of a Valid Arbitration Agreement

"The party seeking to compel arbitration has the initial burden to plead and prove the existence of a valid arbitration agreement that applies to the dispute. Once that burden is satisfied, the party opposing arbitration must prove any defense to the agreement's enforcement, such as unconscionability." (*Dennison v. Rosland Cap. LLC* (2020) 47 Cal.App.5th 204, 209.) "The party seeking arbitration can meet its initial [prima facie] burden by attaching to the petition a copy of the arbitration agreement purporting to bear the respondent's signature." (*Bannister v. Marinidence Opco, LLC* (2021) 64 Cal.App.5th 541, 543–544.) If a plaintiff challenges the authenticity of his signature on the document, it is his burden to submit sufficient evidence to create a factual dispute. "A party opposing arbitration by challenging the authenticity of his or her signature 'need not prove that his or her purported signature is not authentic, but must submit sufficient evidence to create a factual dispute and shift the burden back to the arbitration proponent.'" (*Garcia v. Stoneledge*

Furniture LLC, supra, 102 Cal.App.5th at 52.) "[A] denial of signing an arbitration agreement is sufficient to shift the burden." (*Ibid*.)

Plaintiff challenges the authenticity of his signature on the MAA by arguing that the declaration of Patsy Alejado in support of this motion is insufficient to authenticate his electronic signature under the authority of *Ruiz v. Moss Bros. Auto Group, Inc.* (2014) 232 Cal.App.4th 836. In *Ruiz*, the Court found that the defendant had failed to authenticate the signature because it's business manager's declaration "never explained how Ruiz's printed electronic signature, or the date and time printed next to the signature, came to be placed on the 2011 agreement. More specifically, Main did not explain how she ascertained that the electronic signature on the 2011 agreement was "the act of" Ruiz." (*Id*. at 843-844.) The declaration merely "summarily asserted…that Ruiz was the person who electronically signed the 2011 agreement "on or about September 21, 2011," but she did not explain how she arrived at that conclusion or inferred Ruiz was the person who electronically signed the 2011 agreement." (*Id*. at 843.)

Plaintiff also points to *Garcia v. Stoneledge Furniture LLC* (2024) 102 Cal.App.5th 41, to support his argument. There, the Court found a failure to authenticate the electronic signature where the supporting declaration did not detail the security precautions regarding the use of the Taleo username and password; the arbitration agreement lacked a date, time, or IP address; and the agreement contained no indication it was created within the Taleo system. (*Id*. at 54.)

This Court finds both *Ruiz* and *Garcia* to be distinguished and finds the facts of *Espejo v. Southern California Permanente Medical Group* (2016) 246 Cal.App.4th 1047, to more closely resemble the facts of this case. In *Espejo*, the Court found sufficient authentication where the supporting declaration detailed the defendant's security precautions regarding transmission and use of an applicant's unique username and password, the steps an applicant would have to take to place his or her name on the signature line of the agreement, and, based on that procedure, concluded that the plaintiff's name could have only been placed on the signature page by the plaintiff using his unique username and password. (*Id*. at 1062.) The *Espejo* Court concluded, "These details satisfactorily meet the requirements articulated in *Ruiz* and establish that the electronic signature on the DRP was 'the act of' Espejo (Civ. Code, § 1633.9, subd. (a)), and therefore provide the necessary factual details to properly authenticate the document.'" (*Ibid*.)

Here, the initial declaration of Patsy Alejado, Defendant's Vice President of Human Resources, establishes the following:

- During Mr. Cowan-Bent’s employment, every applicant was required to complete the onboarding process on the Paylocity system to commence employment.
- To complete the onboarding process, an applicant must first fill out an application online, which requires the applicant to enter his or her name and email address.
- If the manager decides to offer the applicant a job, an email with an offer of employment is sent to the email address provided by the applicant.
- If the job offer is accepted, a message with onboarding documents and instructions to create an account on Paylocity is sent by Paylocity to the same address provided by the applicant.
- Consistent with the program’s design, this email is sent only to the applicant and includes instructions on how to log in to the system, using a temporary password.
- Then, the employee is prompted to change the password that was used initially to set up the account. This can be done only after the employee verifies his or her phone number or email as part of a Multifactor Authorization System and inputs a passcode sent to the phone number or email address provided by the employee.
- An applicant/employee cannot proceed with the onboarding process until the temporary password is changed by the applicant/employee so he or she alone knows the password. The password remains confidential so that the applicant/employee, but no WCC personnel, has access to the password.
- An applicant cannot access the signatory page of most documents, including the arbitration agreement, until each prior page is reviewed.
- The electronic signature - (the name input by the applicant at the time he or she created the personal account) - is generated based on the information provided by the employee at the login.
- When an employee clicks on the MAA, the employee receives a message with an eSign agreement. If the employee consents to use of his or her electronic signature, by selecting “I Agree”, there is a signature box for electronic signature after the arbitration agreement is reviewed. There, again, a Paylocity message pops-up instructing that by signing

electronically, the employee agrees that the electronic signature represents his or her signature, the same as "pen-and paper signature."

- The email offering Mr. Cowan-Bent a position was sent to the personal email address provided by him when he applied for the position.
- Mr. Cowan-Bent's activity within the onboarding system is reflected in an Audit Log containing access and submission information regularly created and recorded on currently with activity within the system. (Attached as Exhibit B.)
- As demonstrated in the Audit Log, Mr. Cowen-Bent affixed his electronic signature to the MAA on September 25, 2024 at 16:07:08.
- The electronic signature could only have been affixed to the document via Mr. Cowen-Bent's confidential username and password, and verification via the multifactor authentication system.
- The date printed under Mr. Cowen-Bent's signature on the MAA is the date his electric signature was affixed.

As in *Espejo*, *supra*, Ms. Alejado's declaration detailed the defendant's security precautions regarding transmission and use of an applicant's unique username and password, the steps an applicant would have to take to place his or her name on the signature line of the agreement, and, based on that procedure, a conclusion that "The electronic signature on the [MAA] could only have been affixed to the document via Mr. Cowen-Bent's confidential username and password, and verification via the multifactor authentication system, and that as demonstrated on the Audit Log, Mr. Cowen-Bent affixed his electronic signature to the MAA. Unlike in *Ruiz*, *supra*, Ms. Alejado does not simply summarily assert that Plaintiff is the one who electronically signed the document. Furthermore, unlike in *Garcia*, *supra*, Ms. Alejado does not fail to detail the security precautions or fail to establish that the document was created within the Paylocity system.

Moreover, while Plaintiff asserts that he does not recall electronically signing the MAA, he also confirms that "Defendant sent electronic onboarding materials to my personal email address" and that he "completed the onboarding through a sequence of screens containing many different forms." (Cowen-Bent Decl., ⁋ 2.) Ms. Alejado has explained that an applicant cannot access the signatory page of most documents, including the arbitration agreement, until each prior page is reviewed. Accordingly, Mr. Cowen-Bent could not have completed the onboarding process without reviewing the MAA.

Defendant has sufficiently authenticated Plaintiff's electronic signature on the MAA. Plaintiff's request for more time to respond to the supplemental declaration of Patsy Alejado submitted with Defendant's reply is denied because Ms. Alejado's initial declaration was sufficient to authenticate the signature and Plaintiff had sufficient opportunity to respond to that declaration. Defendant has met its burden of proving the existence of a valid arbitration agreement between the parties that applies to the claims in this lawsuit.

VI. <u>All Matters of Enforceability are Delegated to the Arbitrator</u>

The MAA contains a delegation clause as follows, in relevant part, "The arbitrator, and not any federal state or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or waiver of this Agreement, including but not limited to, any claim that all or any part of this Agreement is void or voidable." (MAA § 1.a.)

The delegation clause is clear in its language. The Supreme Court has clearly established that arbitration delegation clauses are to be reviewed for unconscionability separately from the remainder of the arbitration agreement. (*Rent-A-Center, West, Inc. v. Jackson* (2010) 561 U.S. 63, 75.)

For a delegation clause to be effective, two prerequisites must be satisfied. First, the language of the clause must be clear and unmistakable. (*Pinela v. Neiman Marcus Group, Inc.* (2015) 238 Cal.App.4th 227, 239.) "Second, the delegation must not be revocable under state contract defenses to enforcement…Among these defenses is unconscionability." (*Id*. at 240.) The question becomes "If the agreement was never conscionable in the first place, how can Plaintiff have assented within the agreement to delegation?" This is narrowly interpreted however, and the question is whether the *delegation clause itself* is unconscionable. (*Pinela*, at 242-243.)

> "[The Supreme Court] explained [in *Rent–A–Center*] that any claim of unconscionability must be specific to the delegation clause…The plaintiff in *Rent–A–Center* failed to direct his claim of unconscionability specifically to the delegation clause, and thus delegation of the issue to the arbitrator was upheld in that case.

(*Id*. at 242.)

Here, like in *Rent-A-Center, West, Inc., supra*, Plaintiff has not directed his claim of unconscionability to the delegation clause, but rather argues unconscionability of the agreement as a whole. Even applying the arguments that Plaintiff made regarding unconscionability of the agreement as a whole to the delegation clause, the Court does not find the delegation clause to be unconscionable.

Both procedural and substantive unconscionability must be present, in a sliding scale, in order for the Court to exercise its discretion to refuse to enforce a delegation clause. (*Pinela*, *supra*, at 242.) The Court finds a low degree of procedural unconscionability based on the fact that Plaintiff's employment was contingent upon the completion of the MAA. However, the Court finds no substantive unconscionability in the terms of the delegation clause. "[C]lear delegation clauses in employment arbitration agreements are substantively unconscionable only if they impose unfair or one-sided burdens that are different from the clauses' inherent features and consequences." (*Tiri v. Lucky Chances, Inc.* (2014) 226 Cal.App.4th 231, 249.) That is not the case here. The delegation clause is clear and it does not impose unfair or one-sided burdens. Since there is no substantive unconscionability, the delegations clause is enforceable. Issues of enforceability of the MAA as a whole must be decided by the arbitrator.

Plaintiff argues that the language of the Class Action Waiver creates uncertainty as to the question of whether the Court or the Arbitrator decides issues of enforceability. The Court does not agree. The MAA is clear that issues of enforceability are delegated to the Arbitrator while explaining that only the Court can determine the Class Action Waiver unenforceable since the parties do not agree to submit any class issues to the arbitrator. Plaintiff's citation to *Mondragon v. Sunrun Inc.* (2024) 101 Cal.App.5th 592, is unpersuasive. Here, there is an express delegation provision, whereas the agreement in *Mondragon* relied on the AAA rules that were not included with the agreement for the principle that the arbitrator had the power to decide arbitrability. (*Id*. at 608 ["Had the agreement stated the arbitrator would decide all disputes regarding the scope of the arbitration agreement, the analysis might be different."].) Plaintiff also cites *Ramirez v. Charter Communications Co.* (2024) 16 Cal.5th 478 to argue that deciding a waiver's enforceability requires the Court to decide issues of unconscionability. This is likewise unpersuasive because (1) no party argued that issues of enforceability were delegated to an arbitrator in that case and (2) this Court cannot determine the waiver's enforceability until the arbitrator has found that the MAA is enforceable, as explained further below.

VII. Defendant's Request for Dismissal of Plaintiff's Class Claims

Defendant asks this Court to dismiss Plaintiff's class claims because such claims are waived pursuant to the Class Action Waiver of the MAA. Both the Class Action Waiver and the delegation clause specify that the issue of enforceability of the Class Action Waiver are not delegated to the Arbitrator. However, pursuant to the delegation clause, the issue of enforceability of the MAA must be decided by the Arbitrator. Deciding whether the Class Action Waiver is enforceable without first receiving a determination from the Arbitrator that the agreement as a whole is enforceable is nonsensical and futile. As such, the Court denies the request for dismissal at this time, but without prejudice to Defendant's ability to seek such relief in the future once the Arbitrator has made a determination regarding enforceability of the MAA.

VIII. Stay of Proceedings

A stay of these proceedings is mandatory pursuant to both 9 U.S.C. 3 and CCP § 1281.4. Plaintiff argues that any non-arbitrable claims need not be stayed. According to the Class Action Waiver, Plaintiff's class claims are not arbitrable. However, since there has not yet been a determination made regarding the enforceability of the MAA, this Court cannot make a determination whether the parties' agreement not to arbitrate class claims is valid and enforceable. Accordingly, it is not clear at this time that any of Plaintiff's claims are not subject to arbitration. As such, a stay is mandatory and proper.

*****This is the end of the Tentative Rulings*****