TENTATIVE RULINGS: CIVIL LAW & MOTION

Friday, September 11, 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) 521-6602**, 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.

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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. 25CV02916, Dirt Dudes Excavating, Inc. v. Black Oak Canyon

The instant case, *Dirt Dudes v. Black Oak* (25CV02916), is a breach of contract action by an excavation subcontractor, Dirt Dudes ("DDI"), against a general contractor, Black Oak Canyon ("BOCI"), for BOCI's failure to pay for work performed by DDI. This matter comes on calendar for hearing on BOCI's motion to consolidate the case for all purposes with three other cases arising from the same construction project: a similar one against BOCI by a different subcontractor, OneHome, and two dueling actions between BOCI and property owner Karim Latifi.

BOCI's request for judicial notice of the filings in *Pacific Coast Tile v. Latifi* (26CV04095) is **GRANTED.** The motion is **GRANTED**. Cases no. 25CV02916, 25CV04281, 26CV01986, and 26CV02034 are ordered consolidated for all purposes. (This ruling does not extend to the *Pacific Coast Tile* case.) The Court will sign BOCI's proposed order.

I. Governing law

"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." (CCP § 1048(a).) "The purpose of consolidation is merely to promote trial convenience and economy by avoiding duplication of procedure, particularly in the proof of issues common to both actions." (*Woulridge v. Burns* (1968) 265 Cal.App.2d 82, 86.) "[C]onsolidation of actions decreases the backlog of cases pending before trial courts, and thus enables other litigants to bring their actions to trial with less delay. Consolidation also constitutes an important protection to defendants who might otherwise be subjected to a multiplicity of actions involving related issues." (*General Motors Corp. v. Superior Court* (1966) 65 Cal.2d 88, 91).

The decision is within the sound discretion of the trial court. (*Fellner v. Steinbaum* (1955) 132 Cal.App.2d 509, 511.) A trial court's decision regarding whether to consolidate actions involving common questions of law or fact will not be disturbed on appeal absent a clear showing of abuse of discretion. (*Todd-Stenberg v. Dalkon Shield Claimants Trust* (1996) 48 Cal.App.4th 976, 978-979.)

"[A]ll that the moving party need show is that the issues in each case are basically the same, and that 'economy and convenience' would be served by a joint trial." (Weil & Brown, Prac. Guide: Civil Procedure Before Trial (2026) § 12:359.) Factors to be considered by the court when ruling on a motion to consolidate are: (1) timeliness of the motions (whether granting the motion will delay the trial of any of the cases or whether discovery had proceeded in one or more cases without all parties present); (2) complexity (whether joining the actions would make the trial too confusing or complex for the jury); and (3) prejudice to the rights of any party. (*Id.* at § 12:362.)

"The fact that evidence in . . . one case might not [be] admissible in the other does not bar a consolidation. [Citation.] Nor does the fact that all the parties are not the same. [Citations.]" (*Jud Whitehead Heater Co. v. Obler* (1952) 111 Cal.App.2d 861, 867.)

II. Summary of the underlying litigation

Notice of the instant motion has been filed in the instant case and in cases no. 25CV04281, 26CV01986, and 26CV02034, in compliance with Cal. Rules of Court, rule 3.350(a)(1)(C).

A. Parties

Karim Latifi owns property at 1880 Riebli Rd., Santa Rosa (the "Property").

BOCI is a construction company. In October of 2024, Latifi contracted with BOCI to construct a home and an ADU on the Property (the "Project").

Dennis Reynolds is the CEO of BOCI.

DDI, OneHome, Inc., and Pacific Coast Tile, Inc. are construction companies that contracted with BOCI as subcontractors to perform work related to the Project.

B. *Dirt Dudes Excavating, Inc. v. Black Oak Canyon, Inc.* (25CV02916)

DDI alleges that BOCI breached its contract by failing to pay $172,460.00 owed to DDI after DDI completed all contracted work on the Property. The complaint also alleges a quantum meruit cause of action against both BOCI and Latifi.

C. *Onehome, Inc. v. Black Oak Canyon, Inc.* (25CV04281)

OneHome alleges that BOCI breached its contract by failing to make a progress payment of $55,002. The complaint also alleges that Dennis Reynolds, the CEO of BOCI, is the alter ego of BOCI, and is therefore personally liable for BOCI's debt to OneHome.

D. *Black Oak Canyon, Inc. v. Karim Latifi* (26CV01986)

The central allegation is that Latifi failed to pay BOCI $314,000 that BOCI was owed under their contract. The complaint alleges causes of action for foreclosure of mechanics' lien, breach of contract, and several other theories of recovery. BOCI recorded a mechanics lien on the Property on February 24, 2026.

E. *Karim Latifi v. Black Oak Canyon, Inc.* (26CV02034)

The complaint alleges that BOCI breached the construction contract in a long list of ways, including failure to complete construction on time, failing to pay subcontractors (including DDI and Pacific Coast Tile), construction defects, and unlawful diversion of construction funds.

F. *Pacific Coast Tile, Inc. v. Latifi* (26CV04095)

This is *not* one of the cases BOCI has moved to consolidate, as it was not filed until June 3, 2026, five days after the filing of the instant motion. It is, however, mentioned in both parties' briefing. It is another breach of contract action by a subcontractor on the Project; the amount allegedly due is $40,372.73. The complaint alleges causes of action for breach of contract and foreclosure of mechanics' lien. Pacific Coast Tile recorded a mechanics' lien on the Property on March 12, 2026.

III. Analysis

BOCI argues that consolidation is appropriate because it would avoid the risk of inconsistent verdicts and promote judicial economy. DDI opposes consolidation on the basis that it would prejudice them in several ways. Each party's arguments are discussed below.

A. BOCI's arguments

1. Judicial economy

BOCI argues that "[o]ne central action allows for a single, streamlined discovery process, a single expert designation track, and a single trial, saving weeks of court time and hundreds of thousands of dollars in redundant attorney fees." (MPA at p. 5.) DDI disagrees, noting that its own attorney fees would increase due to the need to "appear at hearings, review filings, and respond to motions generated by parties and claims unrelated to this case." (Oppo at p. 5.) At the outset, the Court agrees with BOCI that consolidation would save considerable court time. That is a significant consideration: one of the purposes of consolidation is to decrease the backlog of cases pending before trial courts. (*General Motors, supra,* 65 Cal.2d at p. 91.)

The Court acknowledges that granting consolidation would increase DDI's litigation expenses to some extent, but of course denying it would increase BOCI's expenses. Consolidation, by its very nature, will always increase the complexity of the litigation for one or more parties. If that were a reason to deny consolidation, it would virtually never be granted. As noted above, our Supreme Court has recognized that consolidation "constitutes an important protection to defendants who might otherwise be subjected to a multiplicity of actions involving related issues." (*Ibid.*) That is, one of its goals is to reduce complexity for defendants. That is precisely what BOCI is asking the Court to do.

DDI also disagrees about the "streamlined discovery process," arguing that a consolidated case would involve multiple expert witnesses in different areas: "DDI's witnesses will testify about excavation, foundation work, and invoicing. OneHome's witnesses will testify about framing and materials." (Oppo at p. 7.) While that is true, it is not clear how it amounts to prejudicing DDI. If DDI did not feel the need to depose expert witnesses on framing and materials if the cases were not consolidated (Oppo at pp. 7-8), there is no reason for it to do so in a consolidated case. Similarly, DDI will not need to respond to motions that are irrelevant to its claims, beyond reviewing the pleadings to ascertain that they are in fact not relevant. Certainly, consolidation will bring issues into the case that are irrelevant to DDI and increase its complexity somewhat from DDI's point of view, but it is not obvious that that will result in the "potentially massive increase in litigation costs" DDI predicts. (Oppo at p. 4.) In any event, again, that sort of increased complexity is part and parcel of consolidation.

2. Inconsistent verdicts

BOCI suggests that a failure to consolidate the cases could result in inconsistent jury verdicts. "For example, in the case by Dirt Dudes against BOCI, a jury could find that Dirt Dudes' excavation was completely non-defective, ordering BOCI to pay. However, in the case by Latifi (the owner) against BOCI, a separate jury could find that the exact same excavation work was defective, ordering BOCI to pay damages to Latifi . . . ." (MPA at p. 5.) DDI responds that this is "implausible [because] Latifi's construction defect claims do not focus on DDI's excavation work." (Oppo at p. 8.) While it is true that Latifi's complaint does not directly mention excavation, it does mention "[f]ailing to complete the Project within 12 months from start," and BOCI apparently intends to argue that "Dirt Dudes, in particular, inexcusably delayed the construction project and performed shoddy or defective work, all of which had to be corrected by BOCI." (Complaint 26CV02034 at ¶ 18(a); MPA at p. 3.)

In summary, the Court does not find the prospect of inconsistent verdicts as implausible as DDI does.

B. DDI's arguments

1. Matters not sufficiently related

DDI argues that its action against BOCI is a self-contained "straightforward breach of contract case," unrelated to any of the other actions sought to be consolidated: "the only legal question is whether BOCI breached [the] contract by failing to pay the invoiced amounts." (Oppo at p. 5.) To begin with, if that is true, it is difficult to understand why DDI's complaint names Latifi as a defendant, or why DDI is engaging in discovery of Latifi's financial records. (Griffith Dec, ¶ 6.) Those facts suggest that DDI intends to actively pursue its quantum meruit claim against Latifi.

Moreover, even if DDI sincerely believes that their quarrel is with BOCI and none of the parties to any of the other matters sought to be consolidated, there is no guarantee that all of those parties will agree. For example, again, BOCI apparently intends to argue that the delay in completion alleged in Latifi's complaint was caused in whole or in part by defects in DDI's performance. (MPA at p. 3; Complaint 26CV02034 at ¶ 18(a).) One additional subcontractor lawsuit, *Pacific Coast Tile v. Latifi* (26CV04095), has already been filed, and both parties concede that others are likely to follow. (Both mention Anzures Plastering and Fury Electric as likely plaintiffs in such actions.) It is impossible to know whether any such plaintiffs will be pointing the finger at DDI, but that sort of finger-pointing is far from uncommon in construction defect cases.

These potential arguments are speculation on the Court's part, of course, but the point is that DDI's argument that theirs is a simple two-party breach of contract case, fully firewalled from any of the other cases sought to be consolidated now or in the future, is also speculative. At this time, the Court does not even know what other cases may be filed, and DDI does not know what may come up in discovery that relates to its excavation work. The Court is unwilling to deny consolidation on the basis that nothing like that could possibly happen.

All of the lawsuits sought to be consolidated spring from the same construction project and involve questions of who failed to pay whom. The Court finds that the subject matter of all the lawsuits is sufficiently related to justify consolidation.

2. Trial delay

DDI's most fervent argument is that consolidation would prevent it from going to trial on January 8, 2027, the date currently set. The Court does not share DDI's confidence that it will actually be ready for trial on that date. For one thing, DDI is apparently still waiting on a response to "business records subpoenas [sent] to U.S. Bank National Association to request records from Latifi pertaining to this action." (Griffith Dec, ¶¶ 6-8.) For another, DDI suggests that even without consolidation, it would present "witnesses [who] will testify about excavation, foundation work, and invoicing," but according to BOCI's counsel, DDI has not yet deposed any such witnesses, or anyone else. (Oppo at p. 7; Valinoti Dec, ¶ 3 [no depositions taken in any of these cases].) Four months *might* be sufficient for DDI to complete its discovery and prepare for trial, but it also might very well not.

More importantly, DDI has provided no authority for the proposition that a delay in trial is sufficiently prejudicial to justify denying consolidation, and the Court is aware of none. As BOCI points out, if it *were* sufficient, no group of cases could ever be consolidated if one of them had a trial date set. (Reply at pp. 7-8.)

3. Jury confusion

DDI argues that consolidation would lead to jury confusion, noting that its case against BOCI is "a straightforward breach of contract case" to which "[t]he only parties . . . are Dirt Dudes and BOCI." (Oppo at p. 5.) (Again, the Court would note that DDI has explicitly made Latifi a party to its lawsuit by naming him as a defendant.) DDI points out that in a consolidated case, the jury would have to consider a number of other issues and substantially more evidence. (Oppo at pp. 5-6.) This, DDI posits, "would result in confusion to the jury." (Oppo at p. 5.) DDI cites to *State Farm v. Superior Court* (1956) 47 Cal.2d 428 in support of this argument.

DDI is conflating complexity with confusion. Certainly, in the unconsolidated scenario, the jury in DDI's case would only have to consider DDI's contract claims, and not OneHome's or BOCI's or any of the rest of it. In the consolidated scenario, the jury would have to consider DDI's contract claims in addition to a number of other claims. But DDI does not explain how this would confuse the jury. Juries commonly consider complex construction-defect cases without becoming confused.

The *State Farm* case on which DDI relies is somewhat instructive in that it illustrates what "jury confusion" actually means. The primary issue there was that one of the two cases that had been consolidated required the jury to learn that the defendant carried insurance, and in the other one the jury was not permitted to know that. (*State Farm, supra,* 47 Cal.2d at p. 432 ["the fact of Collins' liability insurance would thus be disclosed to the jury which would be determining the issues involved in the personal injury actions, a circumstance which is generally held a matter of prejudice"].) No analogous conflict exists here. The consolidated cases all spring from a consistent set of facts, all of which can be put before the jury. The Court sees no reason why a jury evaluating them should become confused.

IV. Conclusion

The motion is granted. The instant case will be consolidated with cases no. 25CV04281, 26CV02034, and 26CV04095. The Court anticipates that BOCI will move to consolidate *Pacific Coast Tile v. Latifi* (26CV04095) and any further subcontractor cases springing from the Project.

2. SCV-273657, County of Sonoma v. Beaver

The Receiver's unopposed Motion for Discharge, Exoneration of Surety, and for Order Directing Payment of Fees and Costs is **GRANTED**.

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

Analysis:

On September 25, 2025, the Court issued an order appointing California Receivership Group, through Mark Adams, as the Receiver in this matter over the subject property. The Receiver was delegated with the duty and power to correct all existing violations on the property and to see to it that the violations do not reoccur. The Court required the Receiver to execute a Receiver's oath and to file a bond in the sum of $10,000, conditioned upon the faithful performance of the Receiver's duties. The Receiver was authorized to take complete possession and control of the property, including the tangible and intangible property located in or about the property. The list of the approved powers and duties of the Receiver can be found in the Court's order, but they include managing the property, paying its expenses, preparing a plan for rehabilitation, entering contracts for goods and services for repairs as necessary for rehabilitation, borrowing funds to pay for the costs of rehabilitation, to sell the property, etc. The Court ordered that the Receiver shall be entitled to compensation for his services and the services of his team consistent with their fee schedule, as well as costs and expenses incurred as a result of the Receivership.

The Court authorized an initial $50,000 Certificate of Indebtedness and later increased it by an additional $50,000 upon motion of the Receiver. Once it became apparent to the Receiver that no lender would fund any portion of the approved Receiver's Certificate, meaning there was no way for the Receiver to complete the structural rehabilitation work, the Receiver listed the property for an as-is sale on February 24, 2026. Once the Receiver found an interested buyer, he filed an ex parte application requesting Court confirmation of the sale. The motion was granted on April 16, 2026 and escrow closed on April 30, 2026.

Now that the remaining issues are fully resolved, the Receiver files this motion seeking a formal discharge. The Receiver has submitted a Final Report and Accounting and Declaration of Mark Adams. The Declaration and its attachments lay out where every amount coming in or out of the receivership account went. No opposition has been filed and no objections have been made to the

Final Report and Accounting. The breakdown of costs and expenses demonstrates that there are $28,663.80 in Receiver's fees and costs that need to be paid. These fees and costs must be paid by Defendants jointly and severally. The Court approves the Receiver's Final Report and Accounting, discharges the Receiver from his duties, and terminates any bond submitted by the Receiver.

3. <u>26CV01579, Garcia v. Crosscheck, Inc</u>

Plaintiff David Garcia has filed this putative class action lawsuit against his former employer Crosscheck ("Defendant"), alleging a number of Labor Code violations, including minimum wage violation, unpaid overtime, and meal and rest break violations. This matter comes on calendar for hearing on Crosscheck's motion to compel arbitration.

Defendant's request for judicial notice of the JAMS Rules is **GRANTED.** Plaintiff's objections to the declaration of Julie LaRocque are **OVERRULED.** The motion to compel arbitration is **GRANTED.** The Court will sign the proposed order filed by Defendant.

I. Plaintiff's objections to the declaration of Julie LaRoque

Defendant's moving papers include the declaration of Julie LaRoque. Plaintiff objects to every paragraph of the declaration except paragraph 1, which identifies LaRoque as Defendant's director of Human Resources, and paragraph 12, which states that Plaintiff's employment with Defendant ended in December, 2025. Plaintiff also objects to each of the four attachments to the declaration: the Mutual Agreement to Arbitrate Employment-Related Disputes (Exh. A; the "Agreement"), a job description for the position of Account Executive (Exh. B), a screenshot of Defendant's personnel management system's ("Paycom") display of the onboarding checklists applicable to Plaintiff (Exh. C), and the Telesales Agreement between Defendant and Plaintiff (Exh. D).

All of the objections are overruled. As to paragraphs 2 through 11 of the declaration, the objections largely turn on the observation that LaRocque has not explained things that she does not purport to explain. For example, the objection to paragraph 2 says that the declaration "does not state that Ms. LaRocque personally onboarded Plaintiff, observed Plaintiff sign any document, observed Plaintiff access Paycom, or personally supervised Plaintiff's work. General familiarity with HR practices does not establish personal knowledge of what Plaintiff actually did." (Objection to ¶ 2.) While that is perfectly true, it is not a valid objection to what the paragraph *does* state. If Plaintiff's point is that the Court should not infer things from LaRocque's declaration that it does not say, the Court is well aware of that, but that is not a basis for sustaining an objection. Plaintiff also objects that LaRocque does not explain how she knows many of the things she declares; for example, "As HR Director, Ms. LaRocque does not explain how she personally knows Defendants revenue breakdown, client, percentages, or client operations. . . . These are . . . outside the ordinary scope of her stated role as an HR director." (Objection to ¶ 3.) The Court is comfortable with LaRoque's contention that her role as HR director renders her familiar with the aspects of Defendant's business she claims to be familiar with.

Plaintiff objects to each exhibit on the basis of lack of foundation (Evid. Code § 403). The Court agrees with Defendant that "[a]s the HR director, Ms. LaRocque can authenticate the records that CrossCheck keeps with regards to its employees, including Plaintiff's records." (Reply to Objections, Exh. B, at p. 22.) As to Exh. C, the screenshot of the checklists, Defendant states that

"Ms. LaRocque can authenticate a screenshot she took and describe what is in that screenshot" (*Id.* at Exh. C, p. 22), but the Court notes that the declaration does not actually say that LaRocque took the screenshot herself. Nevertheless, the Court finds that, even if she did not, she was in a position to ascertain that the exhibit is "a true and correct copy" of what it purports to be.

Plaintiff's objection to Exh. B, the job description, is that while it says that his job's "primary purpose is to contact merchants via phone throughout the nation," that does not prove that he, personally, ever contacted anyone outside California in connection with his work. This, obviously, relates to Plaintiff's argument, discussed below, that the Federal Arbitration Act ("FAA") does not apply here. The Court is satisfied the Defendant has adduced evidence, in the form of LaRocque's declaration, that Plaintiff did contact clients outside California. If Plaintiff's position is that he did not do so, he was at liberty to adduce his own evidence to that effect.

II. Formation

Plaintiff's primary argument in the instant motion is that he never signed the Agreement. In his declaration, he says:

> 4. I do not recognize [the signature on the Agreement]. It does not look like my signature and does not resemble the way I sign my signature. . . .
> 5. I have no recollection of ever seeing, reviewing, or signing the Arbitration Agreement attached to the declaration of Julie LaRocque as Exhibit A, electronically or otherwise . . . . I do not know how or why my name or a signature purporting to be mine came to appear on that document.
> 6.To the best of my recollection I signed documents by hand, with a pen, on paper during my onboarding at CrossCheck. I do not recall ever being asked to sign, and do not recall ever signing, any document electronically at CrossCheck . . . .

(Garcia Dec at pp. 1-2.)

As Defendant points out, "Plaintiff simply states that he cannot *remember* signing the Agreement . . . . ," which is not quite the same as declaring unequivocally that he did not sign it. (Reply at p. 1.) Nevertheless, Plaintiff's declaration under penalty of perjury is evidence that he did not do the things he does not remember doing. For its part, Defendant provides a detailed description, in the form of LaRocque's declaration and supplemental declaration, of the onboarding process for Defendant's new hires, the ultimate point being that Plaintiff *must* have electronically signed the Agreement because that is done on Defendant's Paycom personnel management system, and the system reports that Plaintiff did so.
For the reasons discussed next, the Court agrees with Defendant.

A. Governing law

"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.) A party moving to compel arbitration meets its initial burden by attaching a copy of a purported agreement to arbitrate bearing the nonmoving party's signature. (*Espejo v. So. Cal. Permanente Med. Group* (2016) 246 Cal.App.4th 1047, 1060.) If the nonmoving party challenges the authenticity of their signature, the moving party is then required to establish its authenticity by a preponderance of the evidence. (*Ibid.*) The moving party may submit such evidence in its moving papers, or in a reply brief when authenticity is challenged. (*Ibid.*; see also *Ruiz v. Moss Bros. Auto Group* (2014) 232 Cal.App.4th 836, 847-848.)

"If a law requires a signature, an electronic signature satisfies the law." (Civ. Code § 1633.7(d).) Thus, an electronic signature "has the same effect as a handwritten signature." (*Ruiz, supra,* 232 Cal.App.4th at p. 843.) "Still, any writing must be authenticated before the writing . . . may be received in evidence." (*Id.*, citing Evid. Code § 1401.) "An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable." (Civ. Code § 1633.9(a).) In the case of arbitration agreements, the moving party meets this burden by submitting a declaration detailing the company's "security precautions regarding transmission and use of an applicant's unique username and password, as well as the steps an applicant would have to take to place his or her name on the signature line of the employment agreement . . . ." (*Espejo, supra,* 246 Cal.App.4th at p. 1062.)

B. Defendant has provided sufficient evidence to support a finding that Plaintiff executed the Agreement.

In her supplemental declaration, LaRocque has provided a detailed description of Defendant's security precautions and the steps Plaintiff would have to take to sign the Agreement. She explains that Plaintiff's signature could appear on the Agreement only if he signed in to the Paycom system with a password he generated himself and nobody else knew, navigated to the "New Hire Checklist" page, selected the Agreement from the list of documents requiring action on his part, and either typing his signature or "hand-drawing" it with the computer's mouse. (LaRocque Supp. Dec, ¶¶ 4-5.) If he had not affixed a signature one of those ways, he could not have clicked on the confirmation button to finalize the signing. (*Id.,* ¶ 5(h).)

In opposition, Plaintiff implies that while all that may be true, it might not have been Plaintiff's fingers on the keyboard and mouse: "Exhibit C – a screenshot showing that Plaintiff's 'checklists' were marked 100% complete on January 9, 2025 – adds nothing. It shows that something was clicked 'complete' in the Paycom system; it says nothing about who clicked it." (Oppo at p. 6.) But the access to an employee's Paycom account is password-protected, and only Plaintiff knew his password. (LaRocque Supp. Dec ¶ 4.) Plaintiff posits that "[n]othing in the LaRocque Declaration rules out that someone else – a manager, an HR staffer 'helping' a rushed new hire finish an onboarding checklist, or another employee – clicked through and 'signed' the Agreement on Plaintiff's behalf." (Oppo at p. 6.) While that is true, nothing rules it in either. Plaintiff's moving papers and declaration are devoid of any hint that he shared his password with anyone, or that someone reached over his shoulder while he was sitting at a computer screen logged in to Paycom and started clicking things.

"Because the existence of the agreement is a statutory prerequisite to granting the petition, the petitioner bears the burden of proving its existence by a preponderance of the evidence." (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413.) Preponderance is not the same thing as certainty, and "the burden of authenticating an electronic signature is not great." (*Ruiz, supra,* 232 Cal.App.4th at p. 844.) Defendant has produced evidence sufficient, under the applicable preponderance standard, to overcome Plaintiff's speculation about someone else clicking the "sign" button, and to establish that the electronic signature was "the act of" Plaintiff. (Civ. Code § 1633.9(a); *Espejo, supra,* 246 Cal.App.4th at p. 1062.) Accordingly, Defendant has met its burden of authenticating Plaintiff's electronic signature.

III. Unconscionability

A. Governing law

Unconscionability is a judicially created doctrine and involves a highly context-dependent analysis. (*Sanchez v. Valencia Holding Co., LLC* (2015) 61 Cal.4th 899, 911.) Unconscionability has two elements: procedural and substantive. Well-established California law requires that both elements be present for an unconscionability defense to succeed. The two elements, however, need not be present to the same degree and are evaluated on a sliding scale. "[T]he more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa." (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 114.)

1. Procedural unconscionability

"Procedural unconscionability pertains to the making of the agreement; it focuses on the oppression that arises from unequal bargaining power and the surprise to the weaker party that results from hidden terms or the lack of informed choice." (*Ajamian v. CantorCO2e, L.P.* (2012) 203 Cal.App.4th 771, 795.) The first step in determining procedural unconscionability is an inquiry into whether the contract is one of adhesion. (*OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 126.) "An adhesive contract is standardized, generally on a preprinted form, and offered by the party with superior bargaining power 'on a take-it-or-leave-it basis.'" (*Ibid.*) "Arbitration contracts imposed as a condition of employment are typically adhesive." (*Id.* at p. 126.) Once the court determines the contract is one of adhesion, the question becomes whether the circumstances of the contract's formation created such oppression or surprise that the overall fairness must be subject to closer scrutiny. (*Ibid.*)

> The circumstances relevant to establishing oppression include, but are not limited to (1) the amount of time the party is given to consider the proposed contract; (2) the amount and type of pressure exerted on the party to sign the proposed contract; (3) the length of the proposed contract and the length and complexity of the challenged provision; (4) the education and experience of the party; and (5) whether the party's review of the proposed contract was aided by an attorney.

(*Grand Prospect Partners, L.P. v. Ross Dress for Less, Inc.* (2015) 232 Cal.App.4th 1332, 1348.)

2. Substantive unconscionability

"Substantive unconscionability pertains to the fairness of an agreement's actual terms and to assessments of whether they are overly harsh or one-sided." (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 246.) Mere unequal benefit is insufficient to show substantive unconscionability; rather, the terms must be "so one-sided as to shock the conscience." (*24 Hour Fitness, Inc. v. Superior Court* (1998) 66 Cal.App.4th 1199, 1213.) Though many factors go into determining substantive unconscionability, the primary consideration in assessing substantive conscionability is mutuality. *Abramson v. Juniper Networks, Inc.* (2004 115 Cal.App.4th 638, 657.) Lack of mutuality, unlimited duration, and broad scope of claims covered are all factors which may be considered substantively unconscionable within an arbitration provision. (*Cook v. University of Southern California* (2024) 102 Cal.App.5th 312, 321-328.)

B. The Agreement is not sufficiently procedurally unconscionable to render it unenforceable.

Plaintiff argues that the circumstances surrounding his execution of the Agreement were oppressive because it "was a mandatory, non-negotiable condition of employment presented on a take-it-or-leave-it basis." (Oppo at p. 8.) In other words, Plaintiff argues that the Agreement is a contract of adhesion. So are virtually all employment arbitration agreements, but it is well established that the adhesive nature of an employment agreement is not dispositive on the issue of unconscionability. (*Serpa v. California Surety Investigations* (2013) 215 Cal.App.4th 695, 704.) When there is no other indication of oppression or surprise, "the degree of procedural unconscionability of an adhesion agreement is low, and the agreement will be enforceable unless the degree of substantive unconscionability is high." (*Ibid*.)

Plaintiff also complains that he was rushed through the process of executing the Agreement, noting that a supervisor "repeatedly checked in and asked whether I was finished." (Garcia Dec, ¶ 9.) Plaintiff offers no reason why he could not have simply answered no – and indeed, he must have done so at least once if the supervisor checked in "repeatedly." He does not suggest, for example, that the supervisor said "finish this in the next 10 minutes or forget about the job." A simple "are you finished yet?," or even several of them, does not qualify as unconscionability.

Plaintiff also notes that nobody explained to him what the Agreement meant or gave him an opportunity to ask questions. Plaintiff offers no authority for the proposition that this is a requirement. In fact, it is not. People who execute contracts are expected to familiarize themselves with their content. "[F]ailing to read an agreement before signing it does not prevent the formation of a contract." (*Iyere v. Wise Auto Group* (2023) 87 Cal.App.5th 747, 759.)

Finally, Plaintiff argues that the circumstances of the signing were procedurally unconscionable due to surprise. Specifically, he argues that he was unable to determine the effect of the agreement because it was "visually impenetrable" and "filled with statutory references and legal jargon." (Oppo at p. 9.) The Court disagrees. Paragraph 2 of the agreement is headed "Mandatory Arbitration," underlined, and states that "The Employer and Employee agree that any claim, complaint, or dispute that relates in any way to the Parties' employment relationship, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, shall be submitted to binding arbitration administered by JAMS . . . ." (LaRocque Dec, Exh. 1.) The "whether based in" clause is admittedly a bit on the long-winded side, but the Court does not regard this as the sort of "dense legal drafting" that makes agreements unconscionable. Plaintiff may very well have discounted this provision because he did not anticipate having any such claim or dispute, but that does not mean that he was incapable of understanding what the Agreement said.

C. The Agreement is not substantively unconscionable.

Plaintiff first argues that the Agreement is substantively unconscionable because it requires him to arbitrate not only claims against Defendant, but also claims against Defendants officers, directors, supervisors, and others "in their capacity as such or otherwise." (Oppo at p. 10.) Plaintiff avers that "California courts have repeatedly held that provisions extending arbitration obligations to nonsignatories without a reciprocal commitment are substantively unconscionable." (*Ibid.*) In support of this argument, Plaintiff cites to *Cook, supra,* 102 Cal.App.5th at pp. 324-327. But *Cook* does not support Plaintiff's argument. There, the reviewing court held that the arbitration agreement at issue was substantively unconscionable because it explicitly required arbitration of *all* claims against non-parties, not just claims related to Cook's employment:

> By its express terms, the agreement requires the arbitration of "all claims, *whether or not arising out of Employee's University employment*, remuneration or termination, that Employee may have against the University or any of its related entities, including but not limited to faculty practice plans, or its or their officers, trustees, administrators, employees or agents, in their capacity as such or otherwise; and all claims that the University may have against Employee." The plain language of the agreement requires Cook to arbitrate claims that are unrelated to her employment with USC.

(*Id.* at p. 321, emphasis supplied.) Thus, for example, if Cook's car was rear-ended by a University employee 20 years later, the agreement would have required her to submit the dispute to arbitration. That was what the *Cook* court found unconscionable. The Agreement at issue here suffers from no such deficiency, as it is clearly limited to "disputes, claims, and any other matters in question *arising out of or relating to the Parties' employment relationship*." (LaRocque Dec, Exh. A, ¶ 1, emphasis supplied.) The title of the Agreement makes the same point: "MUTUAL AGREEMENT TO ARBITRATE EMPLOYMENT-RELATED DISPUTES." The Court finds no unconscionability here.

Next, Plaintiff notes that the Agreement "can only be revoked or modified in writing signed by both Parties that specifically states an intent to revoke or modify this agreement and is signed by the President & CEO" of Defendant, and argues that this is unconscionably one-sided: "no individual hourly employee could ever obtain the signature of CrossCheck's President and CEO on a modification or revocation of the agreement, while CrossCheck, which controls access to its own President and CEO, faces no comparable obstacle." (Oppo at p. 10.) Thus, Plaintiff argues, "CrossCheck alone [has] the practical ability to revisit [the Agreement's] terms." But just as Plaintiff cannot modify the Agreement without the CEO's sign-off, so Defendant cannot modify it without Plaintiff's. The provision Plaintiff objects to is mutual, in that respect. The Court finds no unconscionability here either.

IV. Applicability of the FAA

Pursuant to 9 U.S.C. § 2, an arbitration agreement only needs to evidence a transaction involving interstate commerce for the FAA to apply. Courts broadly construe this provision to encompass the full reach of Congress's commerce power. (*Citizens Bank v. Alfabaco, Inc.* (2003) 539 U.S. 52, 56.) Indeed, the dispute itself need not implicate interstate commerce for the FAA to apply. (*Id.*; *Shepard v. Edward Mackay Enterprises* (2007) 148 Cal.App.4th 1092, 1101. Rather, the FAA governs any arbitration agreement affecting commerce in any way, including where a company offering the agreement merely receives goods or resources from out of state. (*Allied-Bruce Terminix Cos. v. Dobson* (1995) 513 U.S. 265, 269; *Katzenbach v. McClung* (1964) 379 U.S. 294, 304 [restaurant serving food from out of state was involved in interstate commerce].)

Plaintiff's primary argument against the applicability of the FAA is that there is no proof that he, personally, engaged in interstate commerce in the course of his work for Defendant. As the authorities cited above demonstrate, that is not the question; the question is whether Defendant, in general, engages in interstate commerce. LaRocque declares that it does: "Defendant guarantees checks paid by customers to merchants from all over the country"; "[m]ore than 80% of Defendant's revenue comes from clients located outside of California, and less than 20% of Defendant's revenue comes from clients within California. Nearly 90% of Defendant's clients are located outside of California." (LaRocque Dec, ¶ 3.) The Court is satisfied that this information "is based on [LaRocque's] personal and firsthand knowledge" (LaRocque Dec, ¶ 1), and therefore provides adequate support for a finding that Defendant engages in interstate commerce. Accordingly, the FAA governs the Agreement at issue here.

V. The fact that Plaintiff has filed a PAGA action is not a basis for denying the instant motion.

Finally, Plaintiff notes that in addition to the instant putative class action, he has also filed a PAGA action based on the same operative set of facts. (No. 26CV03330.) He argues that, therefore, the Court should deny the instant motion due to the "substantial risk of conflicting rulings of law or fact should the instant action be compelled to arbitration while the PAGA action, based on the same facts and circumstances, is litigated." (Oppo at p. 13.) Plaintiff argues, not to put too fine a point on it, that the way to defeat an otherwise valid and non-unconscionable employment arbitration agreement in the context of a lawsuit over Labor Code violations is to simply file a PAGA action based on the same facts, thus rendering arbitration unacceptable. The Court does not agree with this argument.

Plaintiff is not wrong in noting that when a plaintiff's employment class action is ordered into arbitration and the plaintiff has also filed a concurrent PAGA action based on the same underlying Labor Code violations, there is a genuine and well-documented risk of conflicting results. However, no authority holds that this is a basis for avoiding arbitration. The U.S. Supreme Court's decision in *Viking River Cruises, Inc. v. Moriana* (2022) 562 U.S. 639 and our Supreme Court's decision in *Adolph v. Uber Technologies* (2023) 14 Cal.5th 1104 have addressed this exact issue, and far from holding that the solution is to simply not arbitrate, they have created a bifurcated procedural landscape in which individual PAGA claims can proceed in arbitration while representative PAGA claim remain in court, potentially simultaneously. The legal landscape is unquestionably complex, but Plaintiff has chosen to navigate it by filing both the instant case and the PAGA case.

4. <u>25CV08149, Edwards v. General Motors, LLC</u>

Plaintiff's motion for attorney's fees and costs is **GRANTED** in the amount of $27,346.17. This consists of $26,715.00 in attorney's fees and $631.17 in costs.

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

<u>Analysis:</u>

On November 24, 2025, Plaintiff filed a complaint alleging causes of action against Defendant under the Song-Beverly Consumer Warranty Act. The matter settled on April 23, 2026, wherein Defendant agreed to pay Plaintiff $98,000.00. The matter required no motion practice.

Defendant does not herein contest that Plaintiff is the prevailing party and is entitled to attorney's fees and costs. Defendant argues that Plaintiff's request is inflated and should be reduced. Plaintiff seeks a total of $40,072.50, which is based on a lodestar of $26,715.00, a multiplier of 1.5 in the amount of $13,357.50, and costs of $671.17. As outlined below, the Court finds the lodestar and costs to be reasonable but that no multiplier shall be applied.

I. Loadstar

The standard for calculating attorney fee awards under California law, "[O]rdinarily begins with the 'lodestar,' i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate…" (*PLCM Group, Inc. u. Drexler* (2000) 22 Cal.4th 1084, 1095.)

> The lodestar figure may then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided. [Citation.] Such an approach anchors the trial court's analysis to an objective determination of the value of the attorney's services, ensuring that the amount awarded is not arbitrary.

(*Ibid.*) In calculating the lodestar, "The reasonable hourly rate is that prevailing in the community for similar work." (*Ibid.*) "[T]he trial court has broad authority to determine the amount of a reasonable fee." (*Ibid.*) "The determination of what constitutes reasonable attorney fees is committed to the discretion of the trial court. [Citation.] The experienced trial judge is the best judge of the value of professional services rendered in his or her court. [Citation.]" (*Rey v. Madera Unified School Dist.* (2012) 203 Cal.App.4th 1223, 1240.)

Here, Plaintiff seeks hourly rates of $650 per hour for two attorneys with 17 and 18 years of experience. The Court finds these rates to be reasonable considering the locality and experience of the attorneys. They shall be granted.

Plaintiff seeks a total of 41.1 total hours on this case. The Court finds this request to be reasonable. Defendant argues in opposition that certain reductions should be made for supposed "padding" of the time entries. The Court does not agree with Defendant that the time entries demonstrate padded time. Moreover, the overall number of hours requested is reasonable. Plaintiff shall be granted 41.1 hours of time for this matter. The lodestar of $26,715.00 is reasonable and granted.

II. Multiplier

"The 'experienced trial judge is the best judge of the value of professional services rendered in his court…'" (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.) The relevant factors in determining the proper multiplier include,

> (1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them,
> (3) the extent to which the nature of the litigation precluded other employment by the attorneys, (4) the contingent nature of the fee award.

(*Ibid.*)

Plaintiff seeks a fee multiplier of 1.5 considering this matter was taken on a contingency. The Court does not find a multiplier to be appropriate in this case. Though it was taken on a contingency, the matter did not require much attorney time to be expended and settled after only 5 months with no motion practice involved. The Court finds the lodestar to be sufficient to compensate Plaintiff's counsel for the risks of taking this matter on contingency. The Court declines to apply a multiplier.

III. Costs

Plaintiff seeks $631.17 in costs. Defendant argues that Plaintiff has not shown that all costs are compensable. To the contrary, Plaintiff has included receipts for most all costs in Exhibit J of the declaration in support of this motion. The remainder for which receipts are not provided consists of the filing fee for this motion, which is attested to in the declaration itself. Plaintiff has sufficiently shown the compensability of all costs, and the Court finds them to be reasonable. They are granted.

5. 25CV08395, Cole v. Moody

The unopposed motion by the partition referee for approval of the referee's final report of sale, for payment of loan, and for approval of referee fees and costs is **GRANTED** so long as there is no overbid at the hearing.

The Court will sign the proposed order lodged with the moving papers.

Analysis:

On February 19, 2026, this Court issued an order appointing Amy Harrington as the partition referee to sell the subject property pursuant to stipulation of the parties. The referee published a Notice of Intention to Sell Real Property in the Press Democrat. The property was listed for sale on June 4, 2026 for $1,300,000. The referee accepted an offer for $1,305,000. The sale is as-is.

Pursuant to California Code of Civil Procedure section 873.730, the sale is subject to Court confirmation and overbid. The minimum overbid must be at least ten-percent (10%) on the first ten thousand dollars ($10,000) and five-percent (5%) on the amount in excess thereof. (CCP 873.740.) The first minimum overbid must be at least $1,370,750.00.

Ms. Harrington seeks approval of the sale and her proposed disbursements of the sale proceeds to pay the remaining mortgage amount, her fees, realtor commissions, and the distribution to the parties. The Court finds each of the referee's requests to be reasonable and they are each granted.

6. 25CV00611, American Agcredit, PCA v. KCOE ISOM, LLP

Motion for Discovery Sanctions GRANTED in part. The court DENIES the request for terminating sanctions. The court GRANTS the request for the full issue sanctions, as set forth below. The court provisionally GRANTS the request for monetary sanctions as detailed below, subject to proof of the actual and reasonable expenses incurred for the more limited range of expenses which this court sets forth in this order.

Facts

On January 23, 2025, Plaintiffs American AgCredit, PCA and American AgCredit, FLCA filed a complaint against Defendants KCOE ISOM, LLP, a Kansas limited liability partnership ("KCoe"), and Christy Norton ("Norton"), an individual, alleging one cause of action for negligent misrepresentation. Plaintiffs allege that they are an agricultural lender that made substantial commercial loans to an unidentified "Borrower." As alleged, in evaluating Borrower's credit worthiness for the loans, American AgCredit relied on audited financial statements prepared by defendant KCoe Isom, LLP, now known as Pinion, a certified public accounting firm. Christy Norton is alleged to be a certified public accountant and the lead engagement partner responsible for KCoe Isom's audit engagement. The defendants are collectively referred to as "KCoe Isom" in the complaint. Plaintiffs served the summons and complaint in February 2025 and Defendants answered on April 14, 2025.

Plaintiffs allege that on August 28, 2020 and April 30, 2021, respectively, KCoe Isom issued two "clean" audit opinions on Borrower's May 31, 2020 and December 31, 2020 financial statements on which American AgCredit relied in deciding to extend and substantially increase Borrower's line of credit. However, Plaintiffs allege that KCoe Isom did not have aGenerated: 6/30/2026 10:55:11 AM 3 | P a g e reasonable basis for those clean audit opinions, as the inventory values stated therein were grossly exaggerated.

Allegedly, American AgCredit suffered tens of millions of dollars in damages when, in 2024, following Borrower's default on its loan obligations to American AgCredit, it sold the Borrower loans for a fraction of their outstanding amount. Plaintiffs assert that if American AgCredit had known the truth about Borrower's financial condition at the time of the 2020 audits, American AgCredit would have begun the foreclosure process and eventually foreclosed on the loans at a time when Borrower was in better financial condition than it would later be.

Defendants filed a motion for judgment on the pleadings and a motion for summary judgment or, in the alternative summary adjudication. After the hearing for the motion on June 17, 2026, the court granted the motion for judgment on the pleadings but denied the motion for summary judgment or summary adjudication as to KCoe and stayed the motion as to Norton.

<u>Discovery</u>

Plaintiffs allege that they served written discovery requests including a Request for Production of Documents, Set One ("RFPs"), seeking, among others, "All internal KCoe… communications related to the [Borrower] Audits during The Relevant Time Period," and "All communications with [Borrower] pertaining to the [Borrower] Audits during The Relevant Time Period." Declaration of Thomas F. Falkenberg in Support of Plaintiffs' Motion for Sanctions ("Falkenberg Dec.")., ¶3, Ex.2. Defendants served responses on June 13, 2025, agreeing to produce the above items, along with a production of responsive documents. Id., ¶¶3-4. Plaintiffs' attorney asked Defendants on July 17, 2025 to meet and confer regarding several aspects of the production, specifically including "Documents that Defendants agreed to produce, but did not," which specifically mentioned "emails among its auditors" or with borrower. Id.,¶5. Plaintiff asked why Defendants had produced few emails among the auditors and Borrower, with even fewer form prior to 2022. Id., ¶5. Defendants responded that KCoe retained e-mails for only 15 months, after which they are discarded, and offered to provide the document-retention policy in effect as of 2020 along with subsequent changes. Id.,¶¶6-8. Defendants' attorney later stated that KCoe did not impose a litigation hold regarding this matter until May 2025, even though Plaintiffs had informed Defendants of the intention to file the litigation on June 11, 2024. Id.,¶¶1, 9. At that time, Plaintiffs therefore understood that documents prior to 15 months before the litigation hold, i.e., prior to early 2024, did not exist and would not be produced. Ibid.

However, in December 2025, Plaintiffs served new discovery, including interrogatories, a Notice of Deposition for a Person Most Qualified ("PMQ"), and RFPs related to Defendants' documents collection and preservation practices. Id., ¶¶12-17. Defendants served objections and refused to comply. Ibid. However, in January 2026 Defendants informed Plaintiffs that they would produce over 3,000 additional documents previously requested, subsequently producing 3,624 documents, including e-mails and attachments, on February 5, 2026, along with a statement that they "have now produced everything in their possession, custody and control" response to the requests. Id.,¶18.

Defendants also eventually, after some delays, produced a PMQ for deposition, held on April 29, 2026. Id., ¶¶13-31. Plaintiffs provide portions of the deposition transcript as Ex.19. At the deposition, the PMQ testified, that the PMQ was not aware of a hold order being communicated to the entire audit team, in response to a question about whether a notification of the claim and duty to preserve was sent to the members of the audit team (page 42); although there was a notification for a litigation hold in June or July 2024, it did not include e-mails which were not "put on Engagement or iChannel" (pages 105); there was information that only "Christy" and no-one else preserved any e-mails in June or July 2024 (108-109); KCoe never took steps to preserve the mailboxes of the custodians working on the transaction except for "Christie," apparently Christie Bettencourt, who was only added for preservation in December 2025 (page 129); emails in email mailboxes were not being preserved prior to August 2025 (pages 131-132); no emails from any members of the engagement team except for Christy Norton have been preserved (pages 132-133); there was nothing which have prevented a litigation hold to preserve documents (page 183); some e-mails were excluded from the litigation hold in June 2024 and are thus not available, specifically, "on June 11th, because the litigation hold was not put on there… those emails would not be available today" (page 186); a litigation hold was not applied in 2024 to the e-mails of those people involved in the audits in the underlying transactions (page 185); a litigation hold was not put on applicable e-mails regarding the underlying transactions until August 2025 (pages 126, 186-189); Christy Norton's e-mails were not put on a litigation hold until December 2025 (pages 129, 132, 203-205).

Plaintiffs have reviewed the documents produced and made several determinations, set forth at Falkenberg Dec., ¶20. Plaintiffs have found that Defendants did not identify the document custodian the metadata simply mentioning "Pinion LLC," the new name for KCoe; KCoe auditor Christie Bettencourt ("Bettencourt" is on every "principal" e-mail as a sender, recipient, or cc, i.e., every e-mail except for attachments to produce e-mails; produced documents go back to the start of Bettencourt's involvement with Borrower in 2021; some calendar invites from 2024-2025 do not appear to include Bettencourt; documents produce regarding Bettencourt go back as far as 2018; and Defendants produced no documents from the files of Norton, Trent Cooper, Lane Buchanan, or any other member of the May 2020 audit team.

Motion

In their Motion for Discovery Sanctions, Plaintiffs move the court to issue terminating or issue sanctions against Defendants due to their willful destruction of relevant e-mails in order to conceal their misconduct. As an alternative to terminating sanctions, they ask the court to issue the CACI 204 instruction that the trier of fact "may consider whether one party intentionally concealed or destroyed evidence" and that, if so, "may decide that the evidence would have been unfavorable to that party." As a corollary, they seek an order precluding Defendants from arguing that the deletion was not intentional. They also seek monetary sanctions.

Defendants oppose the motion arguing that they did not intentionally destroy any documents but instead the documents were deleted as a result of standard document-retention protocols in place before the litigation. They assert that, as a result of the document protocols, by the time that Plaintiff sent their initial letter mentioning litigation on June 11, 2024, any documents from the relevant time period predating March 2023 had already been routinely deleted. They also contend that they issued a litigation hold on June 26, 2024, only days after Plaintiffs' notice and long before Plaintiffs filed this lawsuit. They also contend that the motion is based on speculation about what may have existed or been deleted. They rely on evidence presented in several declarations. Additionally, they assert that the requested sanctions are too severe. Finally, Defendants also contend that the motion is "untimely and procedurally barred" as a result of the discovery cut-off based on the original trial date of June 26, 2026.

Plaintiffs reply, arguing that the discovery cut-off does not apply, Defendants informed Plaintiffs that they did not impose a litigation hold until 2025, and the circumstances of what was produced, combined with Defendants' responses and meet-and-confer statement indicate that Defendants in fact deleted the key e-mails despite having a duty to retain them.

Applicable Authority

Plaintiffs base this motion on Code of Civil Procedure ("CCP") section 2023.030, which states that the court "may impose the following sanctions against anyone engaging in conduct that is a misuse of the discovery process," while CCP section 2023.010 sets forth the full range of conduct amounting to misuses of the discovery process subject to sanctions, stating, in pertinent part,

> Misuses of the discovery process include, but are not limited to, the following:
> …
> (b) Using a discovery method in a manner that does not comply with its specified procedures.
> …
> (d) Failing to respond or to submit to an authorized method of discovery.
> (e) Making, without substantial justification, an unmeritorious objection to discovery.
> (f) Making an evasive response to discovery.
> (g) Disobeying a court order to provide discovery.
> (h) Making or opposing, unsuccessfully and without substantial justification, a motion to compel or to limit discovery.
> (i) Failing to confer in person, by telephone, or by letter with an opposing party or attorney in a reasonable and good faith attempt to resolve informally any dispute concerning discovery, if the section governing a particular discovery motion requires the filing of a declaration stating facts showing that an attempt at informal resolution has been made.

CCP section 2023.030(f) provides a "safe harbor" exception to sanctions regarding electronically stored information ("ESI"). It states, in full,

> (1) Notwithstanding subdivision (a), or any other section of this title, absent exceptional circumstances, the court shall not impose sanctions on a party or any attorney of a party for failure to provide electronically stored information that has been lost, damaged, altered, or overwritten as the result of the routine, good faith operation of an electronic information system.
> (2) This subdivision shall not be construed to alter any obligation to preserve discoverable information.

In the sections governing request for production, CCP section 2031.310(j)(1) includes a similar, but slightly different, safe-harbor provision regarding routine destruction of electronically stored information. This states, in full, "Notwithstanding subdivisions (h) and (i), absent exceptional circumstances, the court shall not impose sanctions on a party or any attorney of a party for failure to provide electronically stored information that has been lost, damaged, altered, or overwritten as the result of the routine, good faith operation of an electronic information system."

Under appropriate circumstances, the court may impose sanctions beyond the standard monetary sanctions, including issue sanctions establishing certain facts, evidentiary sanctions regarding parties' evidence, terminating (or "doomsday") sanctions striking pleadings, staying or dismissing actions, or entering defaults. CCP §§2025.450(h), 2030.290, 2031.300, 2033.290, 2023.010, 2023.030.

Ordinarily, terminating, issue, or evidentiary sanctions are only available where a party "fails to obey" a court order regarding discovery. CCP §§2025.450(h), 2030.290, 2030.300, 2031.300, 2031.310, 2023.010, 2023.030.

The court may, however, impose harsher sanctions, including terminating sanctions, for egregious cases of discovery abuse, including intentional spoliation, even absent violation of a prior court order. *Victor Valley Union High School Dist., v. Sup.Ct*. (2023) 91 Cal.App.5th 1121 (destruction of video); *Williams v. Russ* (2008) 167 Cal.App.4th 1215, 1227 (allowing loss of client files); *Department of Forestry & Fire Protection v. Howell* (2017) 18 Cal.App.5th 154, 191-193 (disapproved on other grounds in *Presbyterian Camp & Conference Centers, Inc. v. Superior Court* (2021) 12 Cal.5th 493, 516 n. 17).

The fundamental decision on imposing litigation or discovery sanctions for spoliation is the Supreme Court decision in *Cedars-Sinai Medical Center v. Sup.Ct.* (1998) 18 Cal.4th 1, but its guidance is limited. The court there rejected an argument that a party must bring a separate tort cause of action for spoliation of evidence, noting that litigants in California have a number of remedies available where a party has lost or destroyed evidence, all within the action in which the evidence has been lost. These include the "evidentiary inference that evidence which one party has destroyed or rendered unavailable was unfavorable to that party" enshrined in Evid. Code section 413 and jury instructions; and the "discovery laws [which] provide a broad range of sanctions for conduct that amounts to a 'misuse of the discovery process'" under former CCP section 2023, now sections 2023.010, et seq., including monetary, issue, evidentiary, and terminating sanctions. *Cedars-Sinai*, 11-12. The *Cedars-Sinai* court explained that "[d]estroying evidence in response to a discovery request after litigation has commenced would surely be a misuse of discovery within the meaning of [CCP] section 2023, as would such destruction in anticipation of a discovery request." *Id*, 12. The court added that other statutes and rules of conduct governing, and imposing punishment for, the conduct of attorneys as well as the criminal penalty for spoliation in Pen.Code section 135 act as deterrents but it did not discuss them as themselves providing any penalty or relief in the context of a lawsuit.

At the same time, the *Cedars-Sinai* decision notably addressed only the nature of available *remedies* for spoliation. Although briefly discussing the issue in dicta, its holding did not actually encompass the specific circumstances or findings which would warrant evidentiary or terminating sanctions. See *New Albertsons, Inc. v. Sup.Ct.* (2009) 168 Cal.App.4th 1403, 1429-1430.

It is certain and well-established that a court may impose such sanctions for spoliation or loss or destruction of evidence where the record shows that there were court orders to respond to discovery requests, but the circumstances which could support such sanctions absent such orders are less clear. That said, a number of decisions have expressly found such sanctions to be appropriate in certain circumstances absent court orders.

In *Department of Forestry & Fire Protection v. Howell* (2017) 18 Cal.App.5th 154, at 193, the appellate court affirmed an order imposing terminating sanctions for CalFire's discovery abuse, which included knowingly providing false discovery responses, providing evasive testimony regarding the destruction of field notes, and repeatedly failing to provide documents which it was ordered to provide in two court orders. However, this decision provides little guidance because in that situation the discovery abuse was clearly egregious, repeated, and involved existing court orders to provide the documents.

In *New Albertsons, Inc. v. Sup.Ct.* (2009) 168 Cal.App.4th 1403, at 1429-1430, the court concluded that such sanctions could be appropriate absent a court order but only in extreme, egregious circumstances. It overturned a trial court order imposing sanctions for destruction of security-camera footage where the testimony was that the footage was old footage that was automatically recorded over after a standard delay during the ordinary course of business. The court noted that the sanctions at issue *generally* apply *only* where there is a court order to compel, *absent extreme, egregious circumstances*. It ruled that this was not an egregious act and thus could not support sanctions for spoliation absent a court order, stating that in that case "[n]either the failure to produce video recordings in response to the first set of inspection demands nor the destruction of the recordings in these circumstances justifies an evidence or issue sanction absent a failure to obey an order compelling discovery" and that the authority authorizing "the imposition of nonmonetary sanctions for misuse of the discovery process in exceptional circumstances where the sanctioned party did not fail to obey an order compelling discovery are distinguishable…."

On the other hand, the court in *Puritan Ins. Co. v. Sup.Ct.* (1985) 171 Cal.App.3d 877, at 883-884, held that a court could impose *limited and narrowly tailored* issue or evidentiary sanctions for loss of evidence absent intentional spoliation. The court there determined that where a responding party has inadvertently lost or destroyed material evidence, the court may impose sanctions to even the scales but only as long as it does not put the demanding party in a position better than it would have been in had the evidence been saved and provided. The court in *Puritan Ins. Co.* ruled that where plaintiff's expert tested the shaft which allegedly caused the injury, but then lost it, it was proper to bar the expert from testifying as to the examination, but improper to bar plaintiff from introducing photographs of the shaft and expert interpretation of the photos.

In *Williams v. Russ* (2008) 167 Cal.App.4th 1215, at 1227, the court found it appropriate to issue terminating sanctions for conduct which was *tantamount* to intentional destruction. In that case, a former client sued a law firm for malpractice. The firm handed over boxes with the client's files in response to the client's demand, but in the lawsuit the firm needed some for its defense so served client with an inspection demand. The client responded that he could not comply because he had left them in a storage unit and, despite repeated warning from the storage company, he had failed to pay the storage fees so the items were destroyed. The court ruled that terminating sanctions were appropriate because the client's conduct was so obviously bad as to be tantamount to intentional destruction. The court stated, at 1223, that "[a] terminating sanction is appropriate in the first instance without a violation of prior court orders in egregious cases of intentional spoliation of evidence."

The court in *Reales Investment, LLC v. Johnson* (2020) 55 Cal.App.5th 463, at 472-473, affirmed an order imposing limited evidentiary sanctions without a finding of willfulness. In *Reales*, the party had repeatedly failed to provide substantive discovery responses or information, instead merely promising to supplement the responses. In expert discovery, it stated that it had only percipient witness and no expert witnesses, and failed to produce witnesses for depositions. However, on the eve of trial, the party designated the percipient witnesses as experts. The appellate court affirmed the trial court's order excluding the testimony of the witnesses and the documents which had been requested but never produced.

With respect to loss of ESI specifically, the court in *Victor Valley Union High School Dist., v. Sup.Ct.* (2023) 91 Cal.App.5th 1121 held that a party could be subject to terminating, evidentiary, or issue sanctions for even unintentional loss of ESI where it was aware of pending or reasonably anticipated litigation and therefore had an obligation to preserve it. It added, however, that the court must consider the specific circumstances and ensure that it has imposed appropriately narrowly tailored sanctions where possible and should not issue sanctions equivalent to terminating sanctions if it can more limited sanctions are effectively available.

The court expressly held that a party has a duty to preserve ESI once it is "objectively aware" of "reasonably foreseeable future litigation" and that in such instances, the safe harbor provision does not shield a party from sanctions even if the conduct was not intentional. Addressing the safe harbor provision of CCP section 2023.030(f), set forth above, the court stated, at 1138,

> we hold the safe-harbor provision of section 2023.030(f)(1) does not insulate a party from discovery sanctions for the material alteration or destruction of electronically stored information if the evidence was lost when the party was under a duty to preserve it. The duty to preserve evidence arises when the party in possession and/or control of the electronically stored information was objectively aware the evidence was relevant to reasonably foreseeable future litigation, meaning the future litigation was probable or likely to arise from an event, and not merely when litigation was a remote possibility.

It explained, at 1140,

> alteration or destruction of ESI during the "routine, good faith" operation of an electronic storage system is clearly tethered to whether the party in

> possession of and/or control of the information was under an "obligation to preserve discoverable information" at the time the information was altered or destroyed. (§ 2023.030(f)(1), (2).) However, the statute does not define when a party is under such an obligation to preserve information and, instead, expresses an intent not to "alter" such an obligation that may independently exist. (Ibid.)

Considering the legislative history of section 2023.030(f), the court determined, at 1142,

> The legislative history of the Electronic Discovery Act demonstrates the safe-harbor provisions were not intended to "relieve parties of their obligations to preserve discoverable information. When a party is under a duty to preserve information because of pending or reasonably anticipated litigation, a party would still be required to modify or suspend features of the routine operation of a computer system to prevent loss of information." [Citation.]
>
> …
>
> …the Legislature expressly intended that the safe-harbor provision of section 2023.030(f) "would not otherwise relieve parties of their obligations to preserve discoverable information," and that, "[w]hen a party is under a duty to preserve information because of pending or reasonably anticipated litigation, a party would still be required to modify or suspend features of the routine operation of a computer system to prevent loss of information." [Citation.]

It therefore concluded, at 1157, that in the case before it, the record supported "the trial court's ruling that the district had a duty to preserve the video because litigation was reasonably foreseeable at the time the video was erased, and the district was not shielded from sanctions by the safe-harbor provision of section 2023.030(f)."

However, the court remanded the matter to the trial court to determine if less draconian sanctions were appropriate in light of the fact that the trial court had found the erasure of the video had not been intentional. The trial court had denied terminating sanctions but had imposed evidentiary sanctions barring the district from preventing evidence on the cause of action for negligence to prove that it did not breach the standard of care, which the appellate court noted "were tantamount to terminating sanctions." It did not determine that the sanctions imposed were inappropriate, however.

Timeliness

Defendants contend that the motion is "untimely and procedurally barred" as a result of the discovery cut-off based on the original trial date of June 26, 2026. Plaintiffs contend that the discovery cut-off does not apply to this motion because they are not seeking discovery but instead are seeking sanctions for having discovered information indicating that evidence had been destroyed.

Parties may conduct discovery up through 30 days, and bring "motions concerning discovery" up through 15 days, "before the date *initially* set for the trial of the action." CCP section 2024.020(a), emphasis added. This is part of Chapter 8 of the Discovery Act, which governs the "Time for Completion of Discovery" at CCP sections 2024.010, et seq. It expressly states, at section 2024.010, that this chapter governs the "completion" of discovery. It also allows parties, when faced with the discovery cut-off, to bring motions for leave to "complete" discovery after the cut-off. CCP section 2024.050. The provisions state nothing about motions for sanctions.

Plaintiffs are persuasive that the discovery cut-off does not bar this motion. Section 2024.020 is itself unclear in its reference to the cut-off applying to "motions concerning discovery," language which itself is vague and arguably broad. However, as noted above, the chapter otherwise repeatedly and specifically discusses the time for "completing" or "completion" of discovery. The specific statute allowing a party to seek to file motions after the cut-off also is specific that it is for motions to complete discovery. It also states at subdivision (b) that the factors to consider in determining whether to grant such a motion are, with emphasis added,

> (1) The necessity and the reasons *for the discovery*.
> (2) The diligence or lack of diligence of the party *seeking the discovery* or the hearing of a discovery motion, and the reasons that *the discovery was not completed* or that the discovery motion was not heard earlier.
> (3) Any likelihood that *permitting the discovery* or hearing the discovery motion will prevent the case from going to trial on the date set, or otherwise interfere with the trial calendar, or result in prejudice to any other party.
> (4) The length of time that has elapsed between any date previously set, and the date presently set, for the trial of the action.
> Again, this indicates that the motions are motions regarding the conduct of discovery, not motions for sanctions.

The policies and purposes of the cut-off also, on their face, do not apply to motions seeking sanctions, particularly for motions seeking sanctions based on destruction of evidence. The language of the cut-off provisions clearly indicates that the cut-off is intended to avoid unnecessary delay of trial resulting from a lack of diligence in conducting discovery. This is not a concern on a motion simply seeking sanctions. It also is not applicable where the motion for sanctions is based upon the realization that another party may have improperly destroyed evidence.

Finally, the court notes that should this cut-off apply, the court may continue this motion to allow Plaintiffs to bring a motion for leave to present this motion following the cut-off. The court notes that Plaintiffs filed this motion prior to the cut-off and have explained in the motion that they filed it as late as they did because it was based on when they had discovered the possibility that Defendants had improperly destroyed the evidence when they had a duty to preserve it.

<u>Substantive Discussion</u>

Plaintiffs are persuasive that, in accordance with the authority set forth above, some level of sanctions beyond monetary sanctions is appropriate in this situation. Plaintiffs' evidence unequivocally demonstrates that Defendants have not produced relevant, requested records for the relevant time period, prior to early 2024; Defendants expressly informed Plaintiffs that the requested records had been destroyed due to Defendants' routine ESI elimination practice; Defendants informed Plaintiffs that the ESI elimination practice resulted in routine destruction of material older than 15 months; Defendants expressly informed Plaintiffs that they did not impose a litigation hold on their records until May 2025, with the result that any records predating early 2024 had been routinely destroyed. Plaintiffs also demonstrate that they had informed Defendants of the intention to file the litigation on June 11, 2024. Moreover, the record shows that Plaintiffs served the actual summons and complaint on Defendants in February 2025, and Defendants answered on April 14, 2025. The record therefore unequivocally shows that Defendants had been expressly aware of anticipated, specific litigation as far back as June 2024, and unequivocally knew that the litigation had in fact commenced by February 2025, yet failed to take any measure to preserve record until May 2025. Moreover, the evidence unequivocally demonstrates that, after having told Plaintiffs that the specific, requested records predating early 2024 had been routinely destroyed, Defendants later produced over 3,000 *other* ESI records going back to 2018, showing that those had *not* been destroyed despite the claimed routine dump which only destroyed the relevant records at issue.

Defendants contend that they in fact issued a litigation hold in June 2024, citing evidence in their declarations, but this is not persuasive. The evidence which Plaintiffs present, including repeated statements by Defendants' own PMQ in deposition, demonstrates that while Defendants did establish a litigation hold in June 2024, it did so only for limited range of e-mail records and not those key records of key employees involved in the underlying transactions. This testimony in fact shows that litigation holds were not placed on key collections of e-mails until August or December of 2025, which was months after Plaintiffs had filed this lawsuit and after Defendants had already answered. By then, litigation was not only known or even only guaranteed; it was well underway. This evidence, from Defendants' own PMQ, persuasively demonstrates that that Defendants failed to establish an appropriate litigation hold on the very documents needed, and at issue, in this litigation, until many months after the duty to preserve the documents was well established and clear. They even failed to institute the hold until litigation had actually been occurring actively for months.

Defendants argue that Plaintiffs rely on speculation about what e-mails may have been lost, but again this argument is unpersuasive. First, any case of missing evidence or claim of spoliation of evidence inherently involves some degree of speculation due to the very nature of the problem: the evidence is missing and therefore nobody can determine what exactly it may have been. Second, Plaintiffs' evidence of the litigation hold, the history of the discovery, the statements made to Plaintiffs in discovery discussions, and the identity and age of those documents which were produced goes far beyond speculation. Plaintiffs show, among other things as set forth above, that no e-mails from the various key employees for the relevant time were produced; Defendants claimed that these had been destroyed due to routine procedures; Defendants nonetheless managed to produce a huge number of e-mails from an entirely different employee for the relevant time period; those e-mails should also have been destroyed pursuant to the routine policies yet were not; only the relevant e-mails were lost; and Defendants' own PMQ admitted that the litigation hold which actually applied to the missing e-mails was not established until August 2025.

Under these circumstances, the court is persuaded that Defendants destroyed evidence long after they were well aware of the duty to preserve the evidence. Sanctions of some manner are therefore warranted and the court GRANTS the motion as to the fundamental issue that it will issue sanctions.

Terminating or Issue Sanctions

Plaintiffs ask the court to issue terminating sanctions or the CACI 204 instruction that the trier of fact "may consider whether one party intentionally concealed or destroyed evidence" and that, if so, "may decide that the evidence would have been unfavorable to that party." As a corollary, they seek an order precluding Defendants from arguing that the deletion was not intentional.

The court is not convinced that terminating sanctions are appropriate. Despite the evidence set forth above, there is enough uncertainty over the evidence and circumstances to indicate that terminating sanctions may be too drastic. It is also not clear what the missing evidence may have demonstrated and this creates a risk of a windfall from such sanctions.

However, the evidence is more than sufficient to support the requested CACI 204 instruction and an order precluding Defendants from arguing that the deletion was not intentional. The circumstances based on the evidence set forth above is sufficient to persuade the court that Defendants' failure to impose a litigation hold on precisely the e-mails sought until months after litigation had commenced was intentional.

CACI 204 is a standard jury instruction and states, in full, "You may consider whether one party intentionally concealed or destroyed evidence. If you decide that a party did so, you may decide that the evidence would have been unfavorable to that party."

It is directly related to Evid. Code section 413 which the Supreme Court in *Cedars-Sinai, supra*, specifically discussed as an appropriate sanction for spoliation of evidence. Section 413 states, in full,

> In determining what inferences to draw from the evidence or facts in the case against a party, the trier of fact may consider, among other things, the party's failure to explain or to deny by his testimony such evidence or facts in the case against him, or his willful suppression of evidence relating thereto, if such be the case.

The curt GRANTS the request for issue sanctions set forth above but DENIES the request for terminating sanctions.

<u>Monetary Sanctions</u>

Plaintiffs also seek monetary sanctions of $30,306 for numerous hours by two attorneys at $300 an hour, as detailed in the Falkenberg Dec., at ¶¶36-38 and the attached invoices.

In discovery, the court may impose the monetary sanctions against the party, person, or attorney. CCP section 2023.030(a). In order to obtain sanctions, the moving party must state in the notice of motion that the party is seeking sanctions, identify against whom the party seeks the sanctions, and specify the kind of sanctions. CCP section 2023.040. Sanctions are limited to the "reasonable expenses" related to the motion. *Ghanooni v. Super Shuttle of Los Angeles* (1993) 20 Cal.App.4th 256, 262.

In discovery, the court may impose the monetary sanctions against the party, person, or attorney. CCP section 2023.030(a). It is appropriate to award sanctions against a party's attorney if the court finds that the attorney decided to engage in, or recommend, the behavior at issue. CCP section

2023.030(a); *Ghanooni v. Super Shuttle* (1993) 20 Cal.App.4th 256, 261. If sanctions are sought against an attorney, the burden shifts to the attorney to demonstrate that he or she did not recommend that conduct. *Corns v. Miller* (1986) 181 Cal.App.3rd 195, 200-201.

Plaintiffs are entitled to monetary sanctions but the time claimed appears unreasonable and outside the scope of the expenses which are truly recoverable on a discovery motion. The time claimed is to a large degree time spent analyzing the discovery documents which Defendants provided. It also includes the time spent on the PMQ deposition. While this may have been necessary in order to determine what was missing and whether the circumstances indicated spoliation, the court finds this time to be simply a necessary aspect of analyzing information and documents provided in discovery. The conduct of the deposition, similarly, is simply discovery itself, even if it was necessary to obtain the evidence regarding possible spoliation.

The court will award monetary sanctions in favor of Plaintiffs for the following: the actual, reasonable expenses for this motion itself, including the time spent preparing and filing the motion, meeting and conferring about the motion, the hearing, and the reply. It is not clear from the information provided exactly what fees are limited to these expenses so Plaintiffs must provide a clear tally and summary of the amount sought for the time above which this court has identified as subject to compensation in the sanctions.

Subject to such proof, the court provisionally GRANTS the request for monetary sanctions.

Conclusion

The court GRANTS the motion in part, as set forth above. The prevailing party shall prepare and serve a proposed order consistent with this tentative ruling within five days of the date set for argument of this matter. Opposing party shall inform the preparing party of objections as to form, if any, or whether the form of order is approved, within five days of receipt of the proposed order. The preparing party shall submit the proposed order and any objections to the court in accordance with California Rules of Court, Rule 3.1312.

7. 25CV04096, Trofort, v. Price

Defendant's unopposed motion for leave to file a cross-complaint is **GRANTED**. Defendants shall file the proposed cross-complaint attached as Exhibit A to the Declaration of Robert G. McKeon within the time allowable by the rules of court.

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

Analysis:

On June 11, 2025, Plaintiff filed a Complaint asserting a claim against Christopher Price and Patrick Canine Training and Boarding. Her claims arise out of a dog bite that she suffered while performing her duties as a kennel technical at Patrick Canine by a dog owned and brought onto the facility by Defendant Price. On September 18, 2025, Defendant Price filed an Answer to the Complaint. Patrick Canine, which was served with the Complaint on July 19, 2025, has not yet appeared in this action. Counsel for Defendant Price has determined that a cross-complaint needs to be filed against

Patrick Canine for Complete Indemnity, Equitable Indemnity, Contribution, and Declaratory Relief arising out of the same incident alleged in Plaintiff's Complaint.

Defendant has shown that his action against the proposed cross-complainants arises out of the same transaction, occurrence, or series of transactions or occurrences as Plaintiffs' claims. (CCP § 428.10(b).) Defendant has also shown that allowing the cross-complaint to be filed would be in the interest of justice. (CCP § 428.50(c).) Accordingly, the motion is granted.

8. <u>25CV03618, Hall v. Skyfarm Construction, LLC</u>

Defendants' demurrer to the First Amended Complaint ("FAC") is **SUSTAINED**. Leave to amend is **GRANTED**.

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

<u>Analysis:</u>

Plaintiffs Michael and Nancy Hall allege in the FAC that they contracted with Skyfarm Construction LLC, the principal, manager, and owner of which is alleged to be Ean Coyle, as the general contractor for the rebuild of their property after the Tubbs wildfire. Plaintiffs assert causes of action for Breach of Contract, Negligence, Breach of Implied Warranty, Breach of Express Warranty, Unfair Business Practices, and Financial Elder Abuse. Defendants Skyfarm and Ean Coyle herein demurrer only to the Sixth Cause of Action for Financial Elder Abuse.

To prevail on a cause of action for financial elder abuse, a plaintiff must prove all of the following:

> 1. That Defendant either took/hid/appropriated/obtained/retained Plaintiff's property, or assisted in taking/hiding/appropriating/obtaining/retaining Plaintiff's property;
> 2. That Plaintiff was 65 years of age or older/a dependent adult at the time of the conduct;
> 3. That Defendant took/hid/appropriated/obtained/retained/assisted in taking/hiding/appropriating/obtaining/retaining the property for a wrongful use or with the intent to defraud or by undue influence;
> 4. That Plaintiff was harmed; and
> 5. That Defendant's conduct was a substantial factor in causing Plaintiff's harm.

(CACI 3100.) Statutory causes of action, such as financial elder abuse, must be pleaded with particularity. (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790.) "[L]ess specificity is required in pleading matters of which the defendant has superior knowledge." (*Foster v. Sexton* (2021) 61 Cal.App.5th 998, 1028.)

Here, Plaintiffs allege that Plaintiff Michael Hall was 70 years old at the time Plaintiffs entered the construction contract. They allege that Defendants took and retained Plaintiffs' personal property for a wrongful use. Particularly, Plaintiffs allege that Defendants accepted Plaintiffs' payment for the work performed under the construction contract despite knowing that they did not intend to adequately supervise performance of the work as required by the construction contract, which they did in an effort to mislead Plaintiffs with an intent to defraud them. They allege that Plaintiffs have and continue to incur attorney's fees and costs in this litigation and that if successful, they are entitled to recover such fees and costs under the Welfare and Institutions Code.

Plaintiffs do not, however, allege that Defendants' conduct was a substantial factor in causing Plaintiffs' harm. While the Court agrees with Plaintiffs that each of the remaining elements are sufficiently pleaded, Plaintiff does not plead the last element whatsoever. Though less particularity is required when Defendant has superior knowledge, a plaintiff must at least plead some specific facts as to each element. Plaintiffs did not do so.

While the demurrer is sustained on that ground, Defendants' arguments regarding Plaintiffs' allegations relating to Defendant Coyle's mental state are not persuasive. Less specificity is required in pleading matters of which the defendant has superior knowledge. Defendant undoubtedly has superior knowledge of his own mental state.

Moreover, Defendants' argument regarding the lack of particularity in Plaintiff's plea for enhanced damages is not persuasive. [A] prayer for relief is not subject to demurrer and the fact that a plaintiff has requested exemplary damages to which he may not be entitled does not affect the sufficiency of his complaint." (*Ramsden v. Western Union* (1977) 71 Cal.App.3d 873, 883.)

9. <u>24CV03594, Gonzalez v. Zavala</u>

Defendants' Motion to Compel Plaintiff to Comply with Demand for Physical Examination is **GRANTED**.

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

<u>Analysis</u>:

This is an automobile accident case. Plaintiff Byron Gonzalez has placed his physical condition at issue by alleging ongoing injuries resulting from a car accident, including both orthopedic injuries and neurologic issues including traumatic brain injury ("TBI"). Defendants dispute plaintiff's claims.

Pursuant to Cal. Civ. Proc. Code § 2032.010, et seq., defendants initially sought an order compelling plaintiff Byron Gonzalez to submit to medical examinations by licensed medical experts for defendants Agustin Moreno Zavala and Pinnacle Power Systems, Inc.

To defend plaintiff's allegations of orthopedic injury, defendant Zavala requested that plaintiff submit to a standard, physical orthopedic examination by Dr. Clement K. Jones, M.D.

To defend plaintiff's neurologic allegations, including plaintiff's claim of TBI, defendant Pinnacle Power requested that plaintiff submit to a standard, physical neurological examination by Dr. Richard A. Rubenstein.

Since Plaintiff has since submitted to the examination by Dr. Jones, Defendants now only seek an order compelling the examination by Dr. Rubenstein. Plaintiff argues in opposition to this motion that since he has already submitted to the physical examination by Dr. Jones, he need not submit to the second physical examination by Dr. Rubenstein without Defendant first seeking leave of court after a showing of good cause. Plaintiff is incorrect.

Pursuant to CCP § 2032.220(a), "(a) In any case in which a plaintiff is seeking recovery for personal injuries, *any defendant* may demand one physical examination of the plaintiff…" (Emphasis added.)

> Under the wording of CCP § 2032.220(a) ("any defendant"), each defendant apparently has the right to demand a separate physical examination of plaintiff; i.e., plaintiff arguably may be compelled to submit to as many examinations as there are codefendants.

(*Weil & Brown*, Cal. Prac. Guide Civ. Pro. Before Trial § 8:1516 (2026).) The physical exam conducted by Dr. Jones was requested by Defendant Zavala. The physical exam by Dr. Rubenstein was requested by Defendant Pinnacle Power. Each of these defendants is entitled to request its own physical examination. Plaintiff's arguments regarding the shared interests of these co-defendants are not persuasive.

Moreover, Plaintiff's argument that the exam intended to be conducted by Dr. Rubenstein is a mental examination, rather than a physical one, and thus requiring leave of court after a showing of good cause, is not persuasive. (See CCP § 2032.310.) The simple fact that Dr. Rubenstein is a neurologist does not transform the intended examination from a physical one to a mental one. As described by Dr. Rubenstein, the exam is intended to examine the potential physical manifestations of the alleged neurological injury. It is not seeking information regarding Plaintiff's mental or emotional condition.

Finally, Plaintiff argues that some of the tests intended to be conducted by Dr. Rubenstein are duplicative of tests conducted by Dr. Jones. Therefore, as argued by Plaintiff, Defendant must demonstrate good cause, necessity, and appropriate limitations to prevent oppression, burden, and repetition. Plaintiff has not cited any compelling authority supporting this position. In fact, there is no rule against the physical examinations conducted by co-defendants being duplicative. Of course, CCP § 2019.030 requires the Court to restrict the use of a discovery method if it is unreasonably duplicative or cumulative. However, as explained in the Civil Procedure Practice Guide, "a *protective order* would clearly be appropriate to prevent repeated examinations where the injury issues are the same as to each defendant." (*Weil & Brown*, Cal. Prac. Guide Civ. Pro. Before Trial § 8:1516 (2026).) Plaintiff has not sought any such protective order. Furthermore, Plaintiff has not shown that the examination by Dr. Rubenstein would be *unreasonably* duplicative or cumulative of the examination by Dr. Jones.

Plaintiff relies on *Vinson v. Superior Court* (1987) 43 Cal.3d 833 and *Shapira v. Superior Court* (1990) 224 Cal.App.3d 1249 to support his argument. However, both of those cases discuss repealed former versions of the statute that do not contain the language "any defendant."

> Under former law (requiring a court order for physical exams even in personal injury cases), codefendants were generally limited to a single examination of plaintiff. I.e., they had to agree upon the medical examiner and split the costs. Under the present statute, each defendant apparently can demand a separate examination by its own doctor.

(*Weil & Brown*, Cal. Prac. Guide Civ. Pro. Before Trial § 8:1516 (2026).) Accordingly, the cases relied upon by Plaintiff are not compelling.

Finally, Plaintiff's argument regarding Defendants' motion being procedurally defective is unavailing. Plaintiff argues that the motion is procedurally defective because Defendants did not include the issue of a shorthand reporter for the hearing in the meet and confer efforts. Even if true, the Court most certainly does not find this to be sufficient grounds for denial of the motion outright. The Court finds no prejudice to Plaintiff from any potential procedural defect.

Plaintiff shall submit to the neurological examination by Dr. Rubenstein. Plaintiff may not set any limits, requirements, or conditions for the examination that are not expressly preserved under CCP § 2032, et seq. This shall not prevent Plaintiff from seeking an appropriate protective order if so desired.

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