

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, October 22, 2025 3:00 p.m.
Courtroom 17 – Hon. Jane Gaskell
3035 Cleveland Avenue, Santa Rosa**

PLEASE NOTE: In accordance with the Order of the Presiding Judge, a party or representative of a party may appear in Department 17 in person or remotely by Zoom, a web conferencing platform.

CourtCall is not permitted for this calendar.

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

TO JOIN D17 ZOOM ONLINE:

Meeting ID: 161 126 4123

Passcode: 062178

<https://sonomacourt-org.zoomgov.com/j/1611264123>

TO JOIN ZOOM BY PHONE:

By Phone (same meeting ID and password as listed for each calendar):

+1 669 254 5252

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, **YOU MUST NOTIFY** Judge Gaskell's Judicial Assistant by telephone at **(707) 521-6723 6725**, and all other opposing parties of your intent to appear, and **whether that appearance is in person or via Zoom**, by **4:00 p.m. the court day immediately preceding the day of the hearing.**

1. 24CV02196, Disbrow Family Farms LLC v. Emerald Triangle Management Group, Inc.

On July 8, 2024, the Court entered a Judgment in favor of Plaintiff Disbrow Family Farms LLC against Defendant Emerald Triangle Management Group, Inc. Plaintiff filed an Acknowledgment of Assignment of Judgment on April 7, 2025, stating that William Disbrow was assigned Plaintiff's rights to the Judgment worth \$146,841.73. Plaintiff now moves pursuant to Code of Civil Procedure section 368.5 for an order substituting William Disbrow as the Plaintiff and Judgment Creditor in this action instead of Plaintiff. Under section 368.5, the Court may allow the person to whom the transfer of interest is made to be substituted in the action or proceeding.

Per section 368.5, the Court **GRANTS** the motion. Unless oral argument is requested, the Court will sign the proposed order lodged with the Court on June 25, 2025.

2. 24CV05603, Sugarman v. Raynaud

Defendant C.J. Fischer, LLC's discovery motions are **GRANTED in part** as follows:

1. Per Code of Civil Procedure (“C.C.P.”) 2031.310, Plaintiff Randy Sugarman shall provide further responses to Defendant’s First Set of Requests for Production of Documents (“RFPDs”), Nos. 5-10, 16-17, 22-25, 27-28, 31-33, 39-43, 44-45, 48-49, 50, and 53.
2. Per C.C.P. section 2033.290, Plaintiff shall provide further responses to Defendant’s First Set of Requests for Admissions (“RFAs”), Nos. 2, 5-6, 11-16, 21-22, 24-25, 28-31, and 32-34.
3. Per C.C.P. section 2030.300, Plaintiff shall provide further responses to Defendant’s First Set of General Form Interrogatories (“FROGs”), Nos. 2.6, 7.1-7.2, 9.1-9.2, 12.1, 12.4, 12.7, and 17.1.

The Court **DENIES** Defendant’s motions as to the requests for the Court to order Plaintiff to remove or withdraw his objections. The parties’ requests for judicial notice are **GRANTED**. Reduced sanctions are awarded against Plaintiff for the reduced amount of **\$7,294.03** in total for the three motions.

Plaintiff’s further responses ordered above shall be provided, along with any responsive documents, within 30 days of service of notice of this Court’s order. Any documents withheld on account of a claimed privilege shall be identified in a privilege log.

PROCEDURAL HISTORY

Plaintiff’s Amended Complaint asserts the Third, Fourth, and Fifth Causes of Action against Defendant for the alleged voidable and fraudulent transfer of options, trade fixtures, deposits, and a motorhome to Defendant. (Amended Complaint, ¶¶ 51-79.)

On March 25, 2025, Defendant propounded their first set of discovery on Plaintiff. (Christensen Decl., ¶ 5, Exhibits A, C, and E.) On May 1, 2025, Plaintiff served responses to the first set of discovery. (*Id.* at ¶ 5, Exhibits B, D, and F.)

Finding some of the responses deficient and objections without merit, Defendant’s counsel met and conferred by e-mail, correspondence, and phone with Plaintiff’s counsel on all of the discovery responses at issue and to request responsive documents that were not produced. (*Id.* at ¶¶ 6-8.) On May 19, 2025, Plaintiff produced documents responsive to the RFPDs. (*Id.* at ¶ 9, Exhibit G.) Defendant’s counsel further met and conferred on deficient responses and documents not received, but the parties did not come to a resolution. (*Id.* at ¶¶ 11-12.)

Defendant filed three separate motions to compel further responses to certain discovery requests. Though the moving papers were served on June 18, 2024, by e-mail to Plaintiff’s counsel, Plaintiff did not file any oppositions, so Defendant did file one Reply to Non-Opposition. At the hearing, Plaintiff’s counsel requested additional time to file an opposition because the case-handling attorney left the firm and the hearing did not get calendared. On agreement of the parties, the Court continued the hearing on the motions to October 22, 2025, and now considers the motions and also Plaintiff’s opposition.

REQUEST FOR JUDICIAL NOTICE

The Court **GRANTS** the parties requests for judicial notice of several filings in the Court’s record pursuant to Evidence Code sections 452(d) and 453.

ANALYSIS

Defendant’s Motion to Compel Further Responses to Set One of RFPDs

A party to whom a document demand is directed must respond to each item in the demand with an agreement to comply, a representation of inability to comply, or an objection. (C.C.P. §2031.210(a).) If a responding party is not able to comply with a particular request, or part thereof, that party “shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand.” (C.C.P. § 2031.230.) The response shall also specify “whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party” and also must set forth the “name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item.” (*Ibid.*) Otherwise, if a responding party is objecting to a demand only, then the responding party must identify the demanded document, tangible thing, land, or electronically stored information to which an objection is being made, set forth the grounds for objection, and if privileged, provide a privilege log for the demanded items that are privileged. (CCP § 2031.240.)

Defendant requests that the Court compel Plaintiff to:

1. Provide complete and non-evasive responses to Nos. 44-45, 48-49, and 53;
2. Substantively respond to Nos. 5-10, 16-17, 22-25, 27-28, 31-33, 39-43, and 50;
3. Withdraw objections to and produce all documents responsive to Nos. 5-13, 16-18, 22-28, 30, 32, 35-36, 38-41, 43-47, 50, and 52-53, as applicable; and
4. Produce a privilege log, if applicable.

(Motion to Compel Further Responses to RFPDs [“RFPD Motion”], 1:3-8.) Defendant argues that the responses were evasive, incomplete, and stated boilerplate and inapplicable objections. (*Id.* at 5:1-16.) Furthermore, not all responsive documents were produced, and though privileges and confidentiality were claimed, no privilege log was produced to Defendant. (*Ibid.*)

Defendant’s Motion to Compel Further Responses to RFAs

A party requesting admissions may move for an order compelling a further response if that party deems that either or both of the following apply: (1) an answer is evasive or incomplete; or (2) an objection is without merit or too general. (C.C.P. § 2033.290(a).) Parties must submit a meet and confer declaration under C.C.P. section 2016.040 when bringing a motion to compel further responses to a request for admissions. (C.C.P. § 2033.290(b)(1).) Monetary sanctions shall be imposed against a party who unsuccessfully makes or opposes a motion to compel further responses, unless the court finds that the party acted with substantial justification or that other circumstances would make the imposition of the sanction unjust. (C.C.P. § 2033.290(d).)

Defendant requests that the Court compel Plaintiff to:

1. Provide complete and non-evasive responses to Nos. 2, 5-6, 11-15, 21-22, 24-25, and 30-31;
2. Substantively respond to Nos. 16, 28-29, and 32-34; and
3. Remove general objections to all requests and withdraw objections to Nos. 10, 16-17, 20-21, 25, 28-29, and 32-24.

(Motion to Compel Further Responses to RFAs [“RFA Motion”], 3:3-8.) Defendant argues that the responses to the requests identified above were incomplete or evasive because they did not answer (admit or deny) what was stated in the requests. (*Id.* at pp. 2-9.)

Defendant’s Motion to Compel Further Responses to Sets One of FROGs

A propounding party may move to compel a further response to an interrogatory if: “(1) An answer to a particular interrogatory is evasive or incomplete. (2) An exercise of the option to produce documents under Section 2030.230 is unwarranted or the required specification of those documents is inadequate. (3) An objection to an interrogatory is without merit or too general.” (C.C.P. § 2030.300(a).) The motion to compel must be accompanied by a meet and confer declaration per section 2016.040, which requires that, “a meet and confer declaration in support of a motion shall state facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.” (C.C.P. §§ 2016.040, 2030.300(b)(1).) While the propounding party has the burden of filing a motion to compel further responses to when responses provided were deemed deficient, the responding party has the burden of justifying any objections stated and failure to respond. The court shall impose a monetary sanction against any party who unsuccessfully makes or opposes a motion to compel a further response to interrogatories, unless the court finds that the sanctionable party acted with substantial justification or that other circumstances make it unjust to impose sanctions. (C.C.P. § 2030.300(d).)

Defendant requests that the Court compel Plaintiff to:

1. Provide complete and non-evasive responses to Nos. 2.6, 7.1-7.2, 9.1-9.2, 12.1, 12.4, 12.7, and 17.1;
2. Remove general objections to all interrogatories and withdraw objections to Nos. 2.2-2.5 and 2.11.

(Motion to Compel Further Responses to FROGs [“FROGs Motion”], 3:3-8.) Defendant argues that the responses to the interrogatories identified above were evasive and non-compliant and the objections were boilerplate and meritless. (*Id.* at pp. 3-8.)

Opposition to All Motions

In Opposition, Plaintiff requests that the three motions be denied because, as a receiver, his authority is strictly limited by the express terms of the appointing court’s orders that do not authorize him to obtain or compel production of documents from third parties. (Opposition, 2:1-8.) Plaintiff has not produced a privilege log yet for documents that were withheld, but agrees to produce one should the Court order that. (*Id.* at 2:11-14.)

Application

On review of the moving papers, the Court will grant the motion compelling Plaintiff’s further responses to the following discovery requests:

1. RFPDs Nos. 5-10, 16-17, 22-25, 27-28, 31-33, 39-43, 44-45, 48-49, 50, and 53.
2. RFAs Nos. 2, 5-6, 11-16, 21-22, 24-25, 28-31, and 32-34.
3. FROGs Nos. 2.6, 7.1-7.2, 9.1-9.2, 12.1, 12.4, 12.7, and 17.1.

The Court finds that Plaintiff's objection-only responses to the above discovery requests were evasive and did not address what was requested.

Sanctions

For the three unopposed motions, Defendant requests sanctions of \$15,762.37, which includes:

1. \$1,512.50 for 5.5 hours of counsel's work at a rate of \$275.00 per hour meeting and conferring with Plaintiff's counsel to avoid filing the discovery motions;
2. \$2,942.50 for 10.7 hours of counsel's work at a rate of \$275.00 per hour drafting the RFPD moving papers;
3. \$1,000.00 requested in sanctions for Plaintiff's failure to produce all responsive documents pursuant to C.C.P. section 2023.050;
4. \$1,595.00 for 5.8 hours of counsel's work at a rate of \$275.00 per hour drafting the RFA moving papers;
5. \$1,815.00 for 6.6 hours of counsel's work at a rate of \$275.00 per hour drafting the FROG moving papers;
6. \$660.00 for 2.4 hours of counsel's work at a rate of \$275.00 per hour to draft his declaration in support of the three motions;
7. \$2,475.00 of anticipated 9.0 hours of counsel's work at a rate of \$275.00 per hour reviewing and preparing three oppositions;
8. \$3,300.00 of anticipated 12.0 hours of counsel's work at a rate of \$275.00 per hour preparing three reply briefs;
9. \$259.86 for filing fees for the three motions;
10. \$65.01 for anticipated costs of filing three replies; and
11. \$137.50 of anticipated 0.5 hours of counsel's work at a rate of \$275.00 per hour appearing at the hearing on the three motions.

The Court finds the sanctions requested by Defendants to be excessive in both amount and preparation time. The Court will not award the additional \$1,000.00 sanctions under C.C.P. section 2023.050. In its discretion, the Court will award reduced sanctions that reflect the denial of Defendants' request re to order Plaintiff to remove or withdraw his objections. Though Plaintiff argues that there was substantial justification in providing objection-only responses to the discovery requests because of the limitations placed upon him as a receiver, Plaintiff failed to explain the lack of response to the requests as simply "irrelevant" without any other claimed privilege despite the subject matter of those requests do pertain to relevant matters. The Court will therefore award the fees for preparing the three separate motions and supporting declaration, the filing costs for the three motions, and the filing cost for one reply. The Court will award total sanctions for the reduced amount of **\$7,294.03**.

CONCLUSION

Based on the foregoing, Defendant's unopposed discovery motions are **GRANTED in part** as follows:

1. Plaintiff shall provide further responses to RFPDs Nos. 5-10, 16-17, 22-25, 27-28, 31-33, 39-43, 44-45, 48-49, 50, and 53.
2. Plaintiff shall provide further responses to RFAs Nos. 2, 5-6, 11-16, 21-22, 24-25, 28-31, and 32-34.
3. Plaintiff shall provide further responses to FROGs Nos. 2.6, 7.1-7.2, 9.1-9.2, 12.1, 12.4, 12.7, and 17.1.

The Court **DENIES** Defendant's motions as to the requests for the Court to order Plaintiff to remove or withdraw his objections. Plaintiff's further responses shall be served, along with any responsive documents, within 30 days of service of notice of this Court's order. Sanctions are awarded against Plaintiff for the reduced amount of **\$7,294.03** for the three motions. Defendant shall submit a written order to the Court consistent with this tentative ruling regarding the three discovery motions and in compliance with Rule of Court 3.1312(a) and (b).

3. 24CV06750, Kagan v. Welltower Cogir Tenant, LLC

Defendants Welltower Cogir Tenant, LLC and Cogir Management USA Inc. ("Defendants") petition to compel arbitration on all of the claims alleged in the Complaint by Plaintiff Hazel Kagan ("Hazel"), by and through her guardian ad litem, Naomi Kagan ("Naomi") ("Plaintiff"). The petition is based on an executed Arbitration Agreement ("Agreement"), the Federal Arbitration Act ("FAA"), and California Code of Civil Procedure ("C.C.P.") section 1281.2.

The petition is **DENIED**, for the reasons stated below.

I. PROCEDURAL HISTORY

Plaintiff Hazel, an elder, was admitted to Defendant Cogir of Rohnert Park residential care facility for the elderly in Sonoma County on March 25, 2023. (Complaint, ¶ 22.) On July 12, 2023, Hazel executed a residential service agreement, which contained an optional arbitration agreement in one of its terms on pages 24-26 and which Plaintiff voluntarily signed. (Memorandum of Points and Authorities ["MPA"], 6:6-8.) The arbitration agreement states that Hazel must arbitrate any and all claims or disputes arising from or relating to her care and treatment and residency at Cogir of Rohnert Park. (MPA, 6:8-10.)

On November 7, 2024, Hazel filed the Complaint, by and through her guardian ad litem Naomi, alleging causes of action for elder abuse/neglect, negligence/willful misconduct, and violation of resident's rights in connection with Plaintiff's stay at Cogir of Rohnert Park. (MPA, 6:13-19.) Hazel alleges that she was subjected to substandard care and services and that staff failed to protect her from falling. (*Ibid.*)

Defendants argue that all of Hazel's claims are binding to contractual arbitration pursuant to the terms of the Agreement that she voluntarily signed, pursuant to Federal law under the FAA, and pursuant to California law under C.C.P. sections 1281.2 and 1281.4. (MPA, 7:27-28, 8:1-2.) Defendants claim that Hazel had 30 days to rescind the Agreement per section T of the agreement at pages 24-25, but chose not to do so. (Acumabig Declaration, Exhibit A, pp. 24-25.)

Hazel filed an Opposition to the petition arguing that the Agreement is invalid, unenforceable due to inauthentic electronic signature, and unconscionable. (Opposition, 4:12-27, 5:1-17.) Defendants filed a Reply in response.

The Court heard oral arguments on August 6, 2025, and Defendants asked the Court to consider the case of *Malone v. Superior Court* (2014) 226 Cal.App.4th 1551 (“*Malone*”), arguing that the case supported the proposition that the delegation clause in the arbitration agreement requires the arbitrator to determine all issues of arbitrability, including whether the agreement itself was unconscionable. (See Order dated August 8, 2025.) The Court ordered the parties to provide supplemental briefing on *Malone* and determine its applicability to the facts of this matter. The parties did submit supplemental briefing, which the Court now considers.

II. OBJECTIONS

Defendants objection to three paragraphs in the Declaration of Andrea Kagan submitted in support of the opposition. The Court rules as follow on the objections:

1. The objection to Paragraph 3 on that basis that it lacks foundation, is hearsay, and is irrelevant is **OVERRULED**.
2. The objection to Paragraph 8 on that basis that it lacks foundation, requires a medical opinion, is an improper lay opinion, and is irrelevant is **OVERRULED**.
3. The objection to Paragraph 9 on that basis that it lacks foundation, requires a medical opinion, is an improper lay opinion, and is irrelevant is **OVERRULED**.

III. ANALYSIS

The FAA

The FAA applies to any “contract evidencing a transaction involving commerce” which contains an arbitration clause. (9 U.S.C. § 2.) The FAA favors the enforcement of arbitration agreements affecting interstate commerce. (*Cronus Investments, Inc. v. Concierge Services* (2005) 35 Cal.4th 376, 380.) When it applies, the FAA preempts state laws that purport to create alternative grounds for confirming or vacating arbitration awards. (*C.T. Shipping, Ltd. v. DMI (USA) Ltd.* (S.D.N.Y. 1991) 774 F.Supp. 146, 148-149.)

The Agreement expressly mentions the FAA under section “T. Arbitration” on pages 24-26, which is a prerequisite of enforcing an arbitration agreement under the FAA. (MPA, 10:20-25.) The Agreement is subject to the FAA.

Arbitration in California

Generally, California has a strong public policy in favor of arbitration; any doubts regarding the arbitrability of a dispute are resolved in favor of arbitration. (*Howard v. Goldbloom* (2018) 30 Cal.App.5th 659, 663.) C.C.P. section 1280 et seq. governs arbitration in California. Sections 1281.2 and 1281.4 allow a party to move to compel arbitration per an arbitration agreement, and to stay legal proceedings pending the arbitration’s conclusion.

A party seeking to compel arbitration pursuant to C.C.P. section 1281.2 must “plead and prove a prior demand for arbitration under the parties’ arbitration agreement and a refusal to arbitrate under the

agreement.” (*Mansouri v. Sup. Ct.* (2010) 181 Cal.App.4th 633, 640-641.) The petitioner must also prove by a preponderance of evidence that the arbitration agreement exists and that the dispute is covered by the agreement. (*Cruise v. Kroger Co.* (2015) 233 Cal.App.4th 390, 396-397, 399-400.) The petitioner can satisfy this burden by alleging the existence of an arbitration agreement and setting it forth verbatim or attaching a signed copy of it even if the signing party does not recall the agreement. (*Condee v. Longwood Management Corp.* (2001) 88 Cal.App.4th 215, 218–19.) If the petitioner satisfies this burden, the opposing party must prove a defense to its enforceability, such as unconscionability or waiver. (*Ibid.*)

Defendants argue that the Agreement here is only two pages in length, that the language is clear, and that the paragraphs are delineated for easy review, so the Agreement is valid and enforceable under California law because it is clear and unambiguous. (MPA, 11:12-14.) As Defendants have presented a written and signed Agreement, it is subject to California law regarding arbitration.

Authenticity of Signature

As a rule, the validity of the signature in an arbitration agreement is a foundational fact when compelling arbitration and the petitioner bears the burden of proving the authenticity. (*Ruiz v. Moss Bros. Auto Group, Inc.* (2014) 232 Cal.App.4th 836, 842-843, 836.) Per Civil Code section 1633.9(a), “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.” The Court of Appeal has held that it was not sufficient evidence to show that a plaintiff was the same individual who completed the on-boarding forms based on witnesses that said they saw plaintiff complete the forms, but did not have a unique username and password assigned the plaintiff to complete the forms. (*Bannister v. Marinidence Opco, LLC* (2021) 64 Cal.App.5th 541, 546.)

Defendants argue in the motion that Hazel cannot avoid the terms of the Agreement because she voluntarily signed it herself after she read and understood the terms of the Agreement and agreed to abide by them. (MPA, 11:16-23.) The administrator/executive director of the facility, Jose Acumabig, declares that he prepared and provided the Agreement to Hazel after meeting personally with her to discuss admission and that he sent it to her to be completed through DocuSign, which she completed on July 12, 2023. (Acumabig Decl., ¶¶ 4-6.)

Hazel argues that the Agreement is unenforceable because Defendants have not authenticated that it was her authentic electronic signature. (Opposition, 10:9-28, 11:1-22.)

On review of the signed Agreement submitted as evidence by Defendants, it is clear that it was executed on DocuSign on July 12, 2023, at 11:38 P.M. and Mr. Acumabig confirmed that he sent the Agreement to Hazel to complete through DocuSign. As such, the Court finds that Defendants have met their burden of proving the authenticity and validity of the signatures on the Agreement as the Agreement was sent directly to Hazel to complete through DocuSign and it was in fact executed with her name and signature on July 12, 2023.

Assent to Arbitration

Generally, “one who signs an instrument which on its face is a contract is deemed to assent to all its terms...a party cannot avoid the terms of a contract on the ground that he or she failed to read it before signing.” (*Marin Storage & Trucking, Inc. v. Benco Contracting & Eng'g, Inc.* (2001) 89 Cal.App.4th 1042, 1049.) The California Supreme Court ruled that an agent of a party must have express authority to enter into an arbitration agreement to effectively bind a patient to the agreement. (*Harrod v. Country Oaks Partners, LLC* (2024) 15 Cal.5th 939, 949). Even a designated health care agent, who is a family member

of the patient, did not encompass the power to sign an optional arbitration agreement on behalf of an incapacitated patient. (*Harrod, supra*, 15 Cal.5th 939, 949.)

As stated above regarding the authenticity of signature, Hazel voluntarily executed the Agreement herself via DocuSign after meeting with Mr. Acumabig who explained the Agreement to her. As such, the Court finds that Hazel assented to arbitration through her electronic signature.

Unconscionability

Whether an arbitration agreement is unconscionable depends on circumstances. (*Abramson v. Juniper Networks, Inc.* (2004) 115 Cal.App.4th 638, 655. [*“Abramson”*]) Both procedural and substantive unconscionability must be present for a court to refuse to enforce an arbitration provision based on unconscionability, but the more substantively oppressive the agreement is, the less evidence is required of procedural unconscionability. (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal. 4th 83, 114.)

Defendants argue that the Agreement is neither procedurally nor substantively unconscionable. (Motion, 12:27.) As the Agreement was clear, unambiguous, voluntary, and not a necessary pre-condition to Hazel becoming a resident at Defendants’ facility, Defendant claims the Agreement is not procedurally unconscionable. (*Id.* at 13:2-28, 14:1-6.) Defendants also claim that the Agreement reflects the requisite mutuality because it applies regardless of whether a claim is brought by Defendants, Hazel, or any other individual or entity, and because each party is to bear their own costs and fees in connection with arbitration. (*Id.* at pp. 14-17.)

On the other hand, Hazel argues that the Agreement is unenforceable because it is unconscionable. (Opposition, 12:10-14.) Plaintiff cites *Haydon v. Elegance at Dublin* (2023) 97 Cal.App.5th 1280 (*“Haydon”*), in which case it was held as procedurally unconscionable that a skilled nursing facility buried the arbitration provision on one page of 20 unrelated miscellaneous provisions spanning several pages and did not explain the opt-out provision or procedure to the resident when the agreement was being signed. (*Id.* at 12:25-28, 13:1-5.) Hazel compares the facts in *Haydon* with this case, where the arbitration provision is the twentieth “miscellaneous” provision buried within a 90-page Agreement for residency. (Kang Gordon Declaration, Exhibit B, p. 18, 25-25.) Furthermore, the confidentiality and fee provisions as well as limitations on discovery imposed by the JAMs procedures, as specified in the agreement, were substantively unconscionable. (Opposition, 14:2-27, 15:1-22.) Finally, Hazel argues that the arbitration provision should not be severed because it is permeated by unconscionability. (*Id.* at 16:11-13.)

The Court is not persuaded that the arbitration provision was clear, unambiguous, or voluntary to Hazel when she signed because it was included in as a miscellaneous provision of a lengthy residential agreement. The inclusion of the arbitration provision as a part of the Agreement gives the appearance that it is a condition to becoming a resident at the facility. Furthermore, there is no evidence that the opt-out provision or procedure was explained to Hazel when the Agreement was being signed. For these reasons, the Court finds that the arbitration provision is unconscionable.

Delegation Clause

The parties submitted additional briefing regarding the *Malone* matter so that the Court could determine whether its holding was applicable in this matter. (See Order dated August 8, 2025, 1:17-24.) Per *Malone*, when a court is interpreting a contract to determine if an arbitration provision is enforceable, and that contract contains a delegation clause that requires issues of interpretation and enforceability of an arbitration agreement to be resolved by an arbitrator, the court must determine first whether the party is making a specific challenge to the enforceability of the delegation clause or is simply arguing that the

agreement as a whole is unenforceable. (*Malone*, supra, at p. 1559.) If the challenge is directed to the arbitration agreement as a whole, even if it applies equally to the delegation clause, the delegation clause is severed out and enforced and the court will delegate only that issue to the arbitrator to determine whether the agreement is enforceable rather than the court. (*Id.* at p. 1560.) If the delegation clause is challenged, the court must determine whether the clause can be enforced or is otherwise unconscionable. (*Ibid.*)

The delegation clause at issue here states: “You agree that an arbitrator will decide any question about whether a claim or dispute must be arbitrated under this arbitration clause.” (Supplemental Brief, 2:14-15.) Defendants argue that the burden of proving unconscionability of a delegation clause is on the party resisting arbitration. (*Id.* at 2:16-19.) Defendants argue that there is no evidence that the delegation clause is unconscionable, so they request that the Court enforce the clause so that the arbitrator can determine the arbitrability of Plaintiff’s claims. (*Id.* at 4:1-3.)

Plaintiff argues that under the contract’s delegation clause, only the issue of arbitrability is delegated to an arbitrator. (Supplemental Opposition, 3:6-11.) Plaintiff distinguishes determining “arbitrability” which includes determining whether the parties have agreed to arbitrate or whether their agreement covers a particular controversy, from “enforceability” which includes determining whether an agreement is enforceable because it is conscionable. (*Id.* at 3:11-15.) Plaintiff says the Court must distinguish the delegation clause here which delegates arbitrability from a clause that delegates enforceability based on clear and unmistakable evidence as stated in *Malone*. (*Id.* at 3:16-24.)

In reply, Defendants claim that Plaintiff is misstating the purpose of the delegation clause, which requires “any question” about whether a claim or dispute must be arbitrated to be decided by an arbitrator. (Supplemental Reply, 1:25-28.)

The Court is not persuaded by Defendants’ argument that the delegation clause requires the issue of enforceability of the arbitration agreement to be delegated to an arbitrator. The Court finds the language in the parties’ delegation clause explicitly requires that an arbitrator shall determine the issue of whether the arbitration agreement covers a particular claim or dispute. This does not clearly and unmistakably include determining the enforceability of the arbitration agreement but rather requires the issue of arbitrability to be delegated to an arbitrator. For these reasons, the Court maintains the authority to determine enforceability as to the arbitration agreement itself.

IV. CONCLUSION

Based on the foregoing, the Court **DENIES** Defendants’ petition to compel arbitration of Plaintiff’s claims and to stay proceedings pending the arbitration. Plaintiff shall submit a proposed order on this motion consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

4. 24CV07595, Cruz v. Greenwald

APPEARANCES REQUIRED. Defendants Christopher and Ciara Greenwald shall present oral argument regarding their opposition to Plaintiff’s motion to compel their depositions.

5. 25CV02273, Midland Credit Management Inc. v. Franklin

APPEARANCES REQUIRED.

6. **25CV02545, County of Sonoma v. Shapiro**

Plaintiff County of Sonoma's (the "County") unopposed motion to strike portions of self-represented Defendants Stephen Shapiro and Kerry Barnes (together "Defendants") Second Amended Answer to the Complaint is **GRANTED in part** only as to Affirmative Defenses Nos. 3, 8, 9, 10, 12, 17, 22, 26, 31, 34, 35, and 36.

I. **PROCEDURAL HISTORY**

The County commenced this action against Defendants to abate public nuisances and permanently enjoin Defendants' building and zoning code violations related to an unpermitted occupied travel trailer, land/sea cargo container, and storage of vehicles and boats on a vacant lot, as well as an unpermitted accessory structure greater than 120 square feet. (Complaint, 1:22-25.) In the Defendants' Second Amended Answer, they pleaded various affirmative defenses and they denied or admitted each allegation in the complaint or otherwise stated they did not have enough information to admit or deny it, so denied it. (See Second Amended Answer, pp. 3-66.) They also raised issues regarding the adequacy of the Sonoma County Codes cited and the adequacy of the County's enforcement of those codes. (*Ibid.*) Finding issue with the Second Amended Answer, the County met and conferred with Defendants by email and telephone to resolve the issues, but the parties have not resolved these issues. (Gomez Decl, ¶¶ 2-17.)

II. **ANALYSIS**

Legal Standard

Motion to Strike Pleading

The court may, "upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: (a) Strike out any irrelevant, false, or improper matter inserted in any pleading. (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (C.C.P. §§ 435, 436.) Any party may serve and file a notice of motion to strike the whole or any part of a pleading within the time allowed to respond to the pleading, within the notice specifying the hearing date on a motion to strike the complaint. (*Id.* at § 435(a)-(b).) Where the defect subject to the motion to strike is capable of cure, the court should allow leave to amend. (*Vaccaro v. Kaiman* (1998) 63 Cal.App.4th 761.)

Affirmative Defenses

A defendant has a right to an opportunity to establish his defense before a jury by evidence admissible for that purpose, and he has a right to put the plaintiffs to the proof of their demand, and to require that they establish it by competent evidence. (*Greenbaum v. Turrill* (1881) 57 Cal. 285, 285.) Furthermore, where an affirmative defense was stated in good faith, the affidavit of the defendant to that effect is a sufficient answer to any attempt to strike it out as sham. (*Id.* at p. 285.) A "sham" answer is one that is good in form, but false in fact and on a motion to strike, the moving party must show that the answer is unquestionably false and not pleaded in good faith. (*Cont'l Bldg. & Loan Ass'n v. Boggess* (1904) 145 Cal. 30, 34.) The court must determine whether a material issue was presented by the answer before it can properly strike an answer, or part of an answer, out as irrelevant. (*Prichard v. Kimball* (1923) 190 Cal. 757, 763.)

Additionally, discovery is the appropriate method to pursue the details of defendants' allegations regarding its affirmative defenses, so it is not necessary to require specificity in the pleadings. (*Doheny*

Park Terrace Homeowners Ass'n, Inc. v. Truck Ins. Exch. (2005) 132 Cal.App.4th 1076, 1099.) Generally, the principles governing whether an answer states a defense are the same as the principles which are applicable to determining if a complaint states a cause of action. (*South Shore Land Co. v. Petersen* (1964) 226 Cal. App. 2d 725, 732.) Thus, it is not required to plead evidentiary facts to state affirmative defenses; it is sufficient to plead ultimate facts in ordinary and concise language. (C.C.P. § 425.10(a); *Perkins v. Superior Court* (1981) 117 Cal. App. 3d 1, 6-7.) The same pleading of “ultimate facts” rather than “evidentiary” matter or “legal conclusions” is required as in pleading the complaint. (Weil & Brown, Civil Procedure Before Trial (The Rutter Group) Pleading Requirements, §6:459.) The answer must aver facts “as carefully and with as much detail as the facts which constitute the cause of action and which are alleged in the complaint.” (*FPI Development, Inc. v. Nakashima* (1991) 231 CA 3d 367, 384.)

The County’s Motion to Strike Second Amended Answer

Defendants stated 41 affirmative defenses in the Second Amended Answer in an effort to preserve all possible defenses that may be raised at trial. (Second Amended Answer, pp. 53-67.) The County moves to strike all but the first affirmative defense. (Notice of Motion, 1:23-25.)

The County argues that the affirmative defenses are irrelevant, sham, inapplicable, incomprehensible, argumentative, and improper under *Richard v. Grobstein, Goldman, Stevenson, et al.* (1992) 6 Cal.App.4th 157. (*Id.* at 1:26, 2:1-2.) The County argues the affirmative defenses do not apply, are false, or unintelligible because Defendants violated the County Code.

Defendants failed to oppose the motion. The County submitted a Reply to Non-Opposition requesting the Court to strike affirmative defenses numbers 2 through 41. (Reply, pp. 2-3.)

Application

As noted above, Defendants have a right to establish and reserve their defenses in their Answer and those defenses are not properly subject to a motion to strike if they were made in good faith, are not unquestionably false, and if Defendants submitted an affidavit attesting to the truth of their Second Amended Answer. Similarly, if Defendants presented a material issue in the Second Amended Answer, it cannot be stricken as irrelevant.

Here, both Defendants submitted verifications with their Second Amended Answer stating that statements made within it were true as to their own knowledge, except as to those matters which are stated on information and belief, which Defendants believe to be true. The Court finds Defendants’ verifications sufficient to establish that the affirmative defenses were made in good faith.

In the Second Amended Answer, Defendants admit what is stated in all of the Sonoma County Code sections referenced in the Complaint and all of the County’s violation notices. To the extent that Defendants’ affirmative defenses challenge the adequacy of the county code sections and how they were enforced by the County, the Court neither finds those of Defendants’ affirmative defenses as irrelevant nor “unquestionably false.” Rather, the appropriate method to pursue the details of these defenses and allegations is through discovery.

However, as to Affirmative Defenses Nos. 3, 8, 9, 10, 12, 17, 22, 26, 31, 34, 35, and 36, the Court finds that these defense do not apply to the County’s claims. Some of these relate to contract claims, which do not apply here because no contract exists between the parties. Additionally, Defendants did not sufficiently support these defenses with even conclusory statements such that they would apply.

The Court does not find that these defenses are capable of being cured. As a result, the Court will grant the motion to strike specifically as to the above affirmative defenses without any leave to amend.

III. CONCLUSION

Based on the foregoing, the County's motion to strike is **GRANTED in part** only as to Affirmative Defenses Nos. 3, 8, 9, 10, 12, 17, 22, 26, 31, 34, 35, and 36.

Defendants shall file a Third Amended Answer having stricken Affirmative Defenses Nos. 3, 8, 9, 10, 12, 17, 22, 26, 31, 34, 35, and 36, within 10 days of receiving notice of entry of the order on this motion. The County shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

7. 25CV04934, Goodwin v. Word & Brown Insurance Administrators, Inc.

The Court **GRANTS** Plaintiff Daniel Goodwin's ("Plaintiff") motion for preliminary approval of class action settlement pursuant to California Rules of Court ("C.R.C."), Rules 3.769(c) for an order:

1. Preliminarily approving the parties' proposed class action settlement agreement of this matter (the "Settlement Agreement") pursuant to C.R.C. rule 3.769(c);
2. Certifying the class per C.R.C. Rule 3.768(d) as all individuals in the United States sent a notice of the Data Incident. ("the "Settlement Class");
3. Certifying plaintiff Daniel Goodwin as the representative of the Settlement Class;
4. Approving John Nelson of Milberg Coleman Phillips Grossman, PLLC, as class counsel;
5. Approving the form, method, and timing of giving notice to the Settlement Class of this action and the proposed Settlement Agreement pursuant to C.R.C. Rule 3.769(f); and
6. Setting a hearing date for the Final Fairness Hearing pursuant to C.R.C. Rule 3.769(e) for Wednesday, **January 7, 2026**, at 3:00 p.m. in Department 17.

As noted below, the Motion for Final Approval shall definitively state the following items omitted from the moving papers and the Settlement Agreement: (1) the net settlement amount to be paid out by Defendant in addition to the approximated aggregate amount; (2) the Class Representative Service Award amount; and (3) the total Costs of Claims Administration.

I. PROCEDURAL HISTORY

Plaintiff Goodwin brought this class action against Defendants Word & Brown Insurance Administrators, Inc. regarding a data breach that occurred on or about October 23, 2024, which compromised the personal identifying information of approximately 3,200 individuals. (Memorandum of Points & Authorities ["MPA"], 2:9-16.) Plaintiff's causes of action included: (1) Negligence; (2) Unjust Enrichment; (3) Violation of the Unfair Competition Law; and (4) Violation of the California Consumer Privacy Act ("CCPA"). (*Id.* at 1:9-13.) Shortly after commencing this action, the parties discussed early resolution on the claims brought. (*Id.* at 2:16-20.) After the parties engaged in informal discovery and several arm's-length negotiations, the parties reached a class settlement reflected under the parties' proposed Settlement

Agreement. (*Id.* at 2:16-28; Nelson Decl., Exhibit 2.) Plaintiff now moves for preliminary approval of the class action settlement. (*Id.* at 2:3-8.)

II. ANALYSIS

Legal Standard for Preliminary Approval

A settlement or compromise of an entire class action, or of a cause of action in a class action, or as to a party, requires the approval of the court after hearing. (C.R.C., Rule 3.769(a).) Any party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. (C.R.C., Rule 3.769(c).) The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion. (*Ibid.*) The court may make an order approving or denying certification of a provisional settlement class after the preliminary settlement hearing. (C.R.C., Rule 3.769(d).) If the court grants preliminary approval, its order must include the time, date, and place of the final approval hearing; the notice to be given to the class; and any other matters deemed necessary for the proper conduct of a settlement hearing. (C.R.C., Rule 3.769(e).) The court must determine the settlement is fair, adequate, and reasonable. (C.R.C., Rule 3.769(g); *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)

Plaintiff's Motion for Preliminary Approval

Class Members

“Settlement Class” means “all individuals in the United States sent a notice of the Data Incident. The Settlement Class specifically excludes: (i) WBIA and WBIA’s parents, subsidiaries, affiliates, officers and directors, and any entity in which WBIA has a controlling interest; (ii) all individuals who make a timely election to be excluded from this proceeding using the correct protocol for opting out; (iii) the attorneys representing the Parties in the Litigation; (iv) all judges assigned to hear any aspect of the Litigation, as well as their immediate family members; and (v) any person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting the Data Incident, or who pleads *nolo contendere* to any such charge.” (Settlement Agreement, p. 7, ¶ 1.25.)

Aggregate Settlement

Neither the Motion nor the Settlement Agreement states the Gross Settlement Amount to be paid out by the parties, but the Settlement Agreement places an “Aggregate Cap” of the total financial responsibility of Defendant to be \$330,000.00. (Settlement Agreement, pp. 12-13, ¶ 2.7.) The Motion for Final Approval shall state more definitively the net settlement amount to be paid out by Defendant.

Class Members will be paid out up to \$1,500.00 per claim. (*Id.* at p. 9, ¶ 1.33.) Alternatively, the Class Members may choose a cash payment of \$45.00. Settlement Class Members are also eligible to receive two years of identity-theft protection and credit monitoring services, which include credit monitoring through IDX Identity Theft Protection, dark web monitoring, identity restoration and recovery services, and \$1,000,000.00 identity theft insurance with no deductible. (*Ibid.*)

Claims Administrator

The parties have agreed to CPT Group as Claims Administrator. (Settlement Agreement, p. 3, ¶ 1.3.) The Settlement Agreement failed to state what the estimated Costs of Claims Administration would be, but CPT Group estimates that providing notice and administrative services would be approximately

\$20,500.00. (MPA, 5:25-27.) Paragraph 2.6 of the Settlement Agreement states that “all costs for notice to the Settlement Class as required under ¶¶ 3.1 and 3.2, and Costs of Claims Administration under ¶¶ 8.1 and 8.2, shall be paid by WBIA,” but fails to actually include Paragraphs 8.1 and 8.2 in the Settlement Agreement which continues from Paragraph 7.4 straight to 10.1 and deletes any provisions in between. (Settlement Agreement, pp. 12-13, 22, ¶ 2.6.)

Attorney Fees and Costs

Class Counsel fees and costs will be up to \$110,000.00. (Settlement Agreement, p. 19, ¶ 6.2.)

Class Representative Service Payment

Plaintiff is Class Representative. (Settlement Agreement, p. 7, 1.23.) The Settlement Agreement fails to describe Plaintiff’s service payment as Class Representative.

Fair, Adequate, and Reasonable

A presumption of fairness exists where: 1) the settlement is reached through arm's length bargaining; 2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; 3) counsel is experienced in similar litigation; and 4) the percentage of objectors is small. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) The test is not the maximum amount plaintiff might have obtained at trial on the complaint but, rather, whether the settlement is reasonable under all of the circumstances. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 250, disapproved of by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

In making this determination, the court considers all relevant factors including “the strength of [the] plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.)

Prior to settlement, parties engaged in informal discovery and several negotiations. They determined that the proposed settlement was fair and reasonable because it would allow for early resolution of Plaintiff’s claims. Plaintiff’s counsel argues that the settlement is presumptively fair because it was reached after arm’s-length negotiations between the parties, because Plaintiff is represented by experienced Class Counsel, because settlement allows Plaintiff to avoid the inherent risks of litigation, because the amount offered in settlement is fair compared to the potential recovery at trial, and because the type of personal identifying information that was compromised was provided to Plaintiff and the Court to allow the Court to make an informed decision as to the approval. (MPA, pp. 9-13.) No party has filed any objection or opposition to the preliminary approval motion.

Notice

Per California Rules of Court, rule 3.769(e), “if the court grants preliminary approval, its order must include the time, date, and place of the final approval hearing; the notice to be given to the class; and any other matters deemed necessary for the proper conduct of a settlement hearing.” Additionally, rule 3.769(f) states that, “if the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written

objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement.”

The proposed notice attached to the Settlement Agreement as Exhibits A-C appears thorough and sufficient to adequately notify Class Members pursuant to Rule 3.769.

III. CONCLUSION

Subject to the conditions stated above, preliminary approval and certification of the class, the Settlement Agreement, and class notice is **GRANTED**. The Final Fairness Hearing is hereby set for **Wednesday, January 7, 2026, at 3:00 p.m.** in Department 17. The Court will sign the proposed order lodged with the motion.

8. SCV-267181, Anabi Oil Corporation a California corporation v. Petersen

Plaintiff Anabi Oil Corporation (“Anabi”) moves to enforce the Court’s Judgment entered on April 11, 2025 (the “Judgment”), incorporating the Order entered May 15, 2024 (the “Order”). Anabi also moves for an Order against self-represented counsel Cross-Defendant Patrick Galligan (“Galligan”) in contempt for willful disobedience of the Court’s order that he return \$39,775.00 held in his client trust account to Anabi.

Pursuant to Code of Civil Procedure (“C.C.P.”) sections 664.6, 1209, and 1218, Anabi’s motion is **GRANTED**. Anabi’s request for judicial notice and request for the Court to issue an order to show cause hearing are **GRANTED**. Pursuant to the Judgment, Anabi anticipates filing a separate motion for fees and costs incurred in preparing this motion, which the Court will consider after it is filed.

I. PROCEDURAL HISTORY

Galligan was the executor for the Estate of Harriet Knot and the manager for the property as issue in this action. (Opposition, 3:6-7.) He filed an unlawful detainer action against Anabi in 2019 and later the landlords (Plaintiffs in this action) filed their own separate unlawful detainer action against Anabi. (Opposition, 3:6-11.) The landlords also filed a Cross-Complaint against Galligan for legal malpractice and breach of fiduciary duty. (*Id.* at 3:15-16.) All of these cases were consolidated into this single action. (*Id.* at 3:16-17.)

On September 19, 2023, the parties entered into a Settlement Agreement in Court, regarding which the parties filed two separate, competing Motions to Enforce that were partially granted and partially denied by the Court on May 15, 2024. (Request for Judicial Notice (“RJN”), Exhibit 1 [the Judgment], Exhibit A [the Order], 2:2-5.) In the Order, the Court required Galligan to return the \$39,775.00 to Anabi, which Anabi had paid for “back rent” and which Galligan kept in his client trust account. (*Id.* at Exhibit 1 [the Judgment], Exhibit A [the Order], 2:24.) On April 11, 2025, the Court entered the Judgment per the Order (incorporating it as Exhibit A) and C.C.P. section 664.6. (*Id.* at Exhibit 1, 1:25-28, 2:1-4.)

After the Order was entered, Anabi’s counsel made multiple requests for Galligan to return the funds held in the client trust account to Anabi, but Galligan refused to do so. (Memorandum of Points and Authorities [“MPA”], 2:22-23.) Anabi continued to make attempts to confer with Galligan regarding these funds held in the client trust account, but Galligan stated he did not appreciate that a judgment was entered against him for \$280,000.00 and raised concerns regarding indemnity. (Daneshi Decl., ¶¶ 8-11.) Ultimately, Galligan did not return the funds, so Anabi’s counsel stated the intention to seek a court order to enforce the Judgment and a potential referral to the State Bar. (*Id.* at ¶ 12.)

Anabi now seeks an order to enforce the Judgment requiring Galligan to return the funds held in the client trust account to Anabi and to hold Galligan in contempt for willful disobedience of the Judgment and Order. (Notice of Motion, 2:9-14.) Galligan filed an Opposition, to which Anabi responded.

II. REQUEST FOR JUDICIAL NOTICE

The Court **GRANTS** Anabi's request for judicial notice of the Judgment entered April 11, 2025, pursuant to Evidence Code sections 452 and 453.

III. ANALYSIS

Legal Standard

Under C.C.P. section 1209(a)(5), "disobedience of any lawful judgment, order, or process of the court" is considered a contempt of the authority of the court. As argued in the Motion, the elements of contempt are: "(1) a valid order, (2) knowledge of the order, (3) ability to comply with the order, and (4) willful failure to comply with the order." (MPA, 6:21-27; *Wanke, Indus., Com., Residential, Inc. v. Keck* (2012) 209 Cal. App. 4th 1151, 1168.)

Anabi's Motion

Anabi argues that all four elements of civil contempt are met here because: (1) the Court issued a valid and enforceable Order on May 15, 2024, which was incorporated into the Judgment; (2) Galligan had notice of the Order and Judgment as he expressed his dissatisfaction with what was ordered in the emails attached to the Daneshi Declaration; (3) Galligan has ability to comply with the Order because the funds either remain or were held in his client trust account; and (4) he has refused to return the funds despite multiple written demands for him to comply with the Judgment, which Anabi argues can only be construed as a willful act of defiance. (MPA, 7:7-12.) Anabi requests that the Court order Galligan to immediately return funds placed in the client trust account and to issue an order to show cause as to why Galligan should not be held in contempt and sanctioned accordingly. (*Id.* at 8:5-26.) Anabi also requested the Court to award fees and costs in bringing this Motion per a separately noticed motion to be filed. (*Id.* at 9:9-10.)

Galligan's Opposition

Galligan argues that the Court has no jurisdiction over him and that he is specially appearing to contest this motion because it is meritless. (Opposition, 1:20-24.) Galligan fails to explain why the Court has no jurisdiction over him when he is a named Cross-Defendant in this matter. Galligan conceded that he agreed to pay his former clients \$280,000.00 for back rent owed by Anabi, but claims that he never agreed to waive any right he had against Anabi, including his right to sue Anabi for indemnity for paying \$280,000.00 in back rent that Anabi owed or for rent that might be paid. (*Id.* at 3:23-28, 4:1-4.) Galligan also argues that imprisonment for debt is unconstitutional and because the \$39,775.00 held as a debt that Anabi owed, it cannot be enforced by a contempt order. (*Id.* at 6:26-28, 7:1-12.) Galligan does not support this contention with any legal authority.

Anabi's Reply

In response, Anabi argues that Galligan has not cited any legally cognizable defense to enforcement of the Court's valid and enforceable Order and Judgment or contempt. (Reply, 1:9-12.) Anabi states that the Order and Judgment were final and enforceable and explicitly state that Galligan is to return the

\$39,775.00 in the client trust account to Anabi. (*Id.* at 3:2-25.) During the in-court settlement hearing, the Court requested clarification on whether the funds held in the client trust account would be going back to Anabi Oil, which Galligan’s previous counsel (Arnie Holaday) confirmed it would be and stated the amount as \$39,775.00. (RJN, Exhibit C, 7:3-23.) Anabi also argues that this amount held is not “debt owed” but property that belongs to Anabi, and Anabi also emphasizes that Galligan’s imprisonment is not being sought by this motion. (Reply, 8:18-28, 9:1-18.)

Application

Anabi provided facts that meet each element of civil contempt in their Motion. Galligan has not satisfactorily argued any basis for the Court not to grant the motion and to allow Galligan to continue withholding the funds placed in his client trust account in direct contravention of this Court’s Order and Judgment. As such, the Court orders that Galligan comply with the Order and Judgment entered, and the Court will also issue an order to show cause and set a hearing as requested in the Motion.

IV. CONCLUSION

Based on the foregoing, Anabi’s motion is **GRANTED**. Anabi’s request for judicial notice and request for the Court to issue an order to show cause hearing are **GRANTED**. Anabi shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

9. SCV-269797, Johnson v. Israni

The Court rules as follows on Defendants’ motions:

1. Defendant Deepak Israni (“Israni”) moves to set aside default judgment entered against him per Code of Civil Procedure (“C.C.P.”) sections 473(b), 473(d), 473.5, 583.310, and 585(b). The motion is **DENIED**.
2. Defendants Pacifica SL Grove Street LP doing business as Healdsburg Senior Living Community, Pacifica Senior Living Management, LLC, and Deepak Israni (“Moving Defendants”) move to enforce a settlement agreement entered in March of 2024 in the case *Johnson v. The Ensign Group, Inc.* (Case No. SCV-269797). The motion is **DENIED**.

I. PROCEDURAL HISTORY

On December 7, 2021, Plaintiffs Phyllis Johnson (by and through her successor in interest Melanie Taylor), Melanie Taylor, Cheryl Taylor, Robert Johnson, Keith Johnson, and Darrell Johnson brought this action against Defendants The Ensign Group, Inc., Flagstone Healthcare Center, Cason Bush, Enedina De La Cruz, Ashok Israni, Deepak Israni, Sushil Israni, Avalon Healthcare Management of California, LLC, Pacifica SL Grove Street doing business as Healdsburg Senior Living Community, Tracey Mease, Lacey Earnst, and Does 1-100. (See Complaint.) Decedent Phyllis Johnson was admitted as a resident at Summerfield Healthcare Center for temporary rehabilitation after a leg surgery. Plaintiffs allege that she developed a Stage III pressure ulcer there before being transferred to Healdsburg Senior Living Community, where, they allege, the providers allowed the injury to worsen and become infected, causing septic shock, and, ultimately, Ms. Johnson’s premature death. (*Id.* at 2:1-9.)

Per the Proof Service of Summons filed with the Court, Israni was served at 1775 Hancock St. Suite #200, San Diego, California 92110 by substituted service and the Summons and the Complaint were left with

“Rose ‘Doe’, Office Manager – Employee in Charge” on March 16, 2023. (Proof of Service of Summons dated June 14, 2023.)

On July 21, 2023, the Court entered a hefty partial judgment for more than \$4 million by default against Deepak Israni (“Israni”) pursuant to Plaintiffs’ request for court judgment and entry of default against him. (See Judgment dated July 21, 2023.) A month later, Israni filed his answer while in default and Israni argues that he was not served personally with the summons and complaint until he was deposed on July 19, 2023. (See Request for Judicial Notice for Set Aside, Exhibit D; Notice of Motion to Set Aside, 2:11-14.) Plaintiff moved to strike this answer arguing that Israni’s answer filed while in default was improper without a motion to set aside the default. (See Motion to Strike dated November 7, 2023.) So, Israni filed a motion to set aside the default and partial judgment as void due to improper personal service on him. (See Motion to Set Aside Default dated January 16, 2024.) These motions were taken off calendar by the Court because Plaintiffs filed a Notice of Settlement of Entire Action on March 5, 2024.

Israni now moves once again to set aside the default judgment entered against him and Defendants move to enforce the settlement agreement entered by the parties. Moving Defendants filed two notices of non-oppositions as at the time no opposition had yet been filed by Plaintiffs. Per ex parte application, the Court continued the hearing date on ex parte application to allow Plaintiffs to file an opposition.

Plaintiffs’ oppose both motions because proper service was made. Plaintiffs’ counsel had contacted Israni’s counsel to serve him with the complaint and summons over email, but counsel never responded. (Pick Declaration re Set Aside, ¶¶ 2-8.) Furthermore, Plaintiffs attempted to service him at his personal residence, but the process servers were unable to gain access to his privately gated mansion in San Diego. (*Id.* at ¶ 2.) Plaintiffs finally had a registered process server serve Israni at his principal place of business on March 16, 2023. (*Id.* at ¶ 3.) Although Plaintiffs served Israni and his counsel with paperwork indicating an intent to request entry of default, counsel never objected or filed any responsive pleading on behalf of Israni opposing to the entry of default or seeking relief from it. (*Id.* at ¶ 4.)

II. REQUESTS FOR JUDICIAL NOTICE

Defendants request judicial notice in support of their two motions of several documents in the Court’s record for this action. The requests are **GRANTED** per Evidence Code section 452(d).

III. MOTION TO SET ASIDE

Israni moves to set aside the default judgment entered against him per C.C.P. sections 473(b), 473(d), 473.5, 583.310, and 585(b). Israni claims he was never served with the complaint and summons personally until the date of his deposition on July 19, 2023, which was two days before the Court entered the default judgment. He argues that the default judgment was improperly entered because neither he nor his counsel ever received proper service prior to this point under C.C.P. section 473.5.

Under section 473(b), Israni’s motion is not timely brought within 6 months of the Judgment, and Israni does not allege any clerical error entered as required under section 473(d), so neither of these sections is applicable to Israni’s motion. Though Israni’s motion contends that Israni or his counsel never received any emails regarding the service of the complaint or summons, Plaintiffs’ counsel declaration has attached exhibits demonstrating emails sent to counsel as early as October 2022 requesting receipt of service of the complaint and summons. (Pick Declaration re Set Aside, ¶¶ 2-8.) Regardless, counsel never responded to these emails. Thus, Israni and his counsel have not demonstrated any excusable neglect on either of their parts, or any other justifiable reason to set aside the default judgment entered into by this Court when they both have appeared to have notice of this matter since at least October of 2022 and actual service of the complaint and summons since March of 2023.

For these reasons, Israni's motion to set aside the default judgment entered against him is **DENIED**.

IV. MOTION TO ENFORCE SETTLEMENT

When a party seeks to enforce a stipulated settlement entered in writing or orally before the court, the court "may enter judgment pursuant to the terms of the settlement." (C.C.P. § 664.6.) The court's discretionary ruling will be upheld if based on "substantial evidence." (*Fiore v. Alvord* (1985) 182 Cal.App.3d 561, 566.) Furthermore, a court may retain jurisdiction even after dismissal to enforce a settlement if requested by the parties either in a signed writing or orally before the court. (See generally, *Hines v. Lukes* (2008) 167 Cal.App.4th 1174.)

Moving Defendants seek to enforce settlement under section 664.6 of the Full & Final Mutual Release and Settlement that was circulated and executed by Plaintiffs, their counsel, and Defendants' and Cross-Defendants' counsel between March 2-5, 2024. (Memorandum of Points and Authorities in support of Motion to Enforce Settlement, 2:21-26, 3:1-15.) Moving Defendants claim that Plaintiffs refuse to release all claims of damage against all Defendants under the agreement, so the Court ought to order that they abide by the terms of the settlement agreement and release them. (*Id.* at pp. 6-10.)

Plaintiffs note in the Opposition that they have complied with all aspects of the settlement of this case, but that Moving Defendants have failed to comply with the Release agreement's terms by refusing to sign a dismissal regarding their cross-complaint filed on April 18, 2023. (Opposition to Enforce Settlement, 2:3-11.) Plaintiffs also point out that Moving Defendants insist on adding a new condition to the Settlement Release that the default judgment against Israni must be set aside. (*Id.* at 3:13-24, 4:1-13.) Moving Defendants cannot unilaterally change the terms of the signed settlement agreement, so Plaintiffs request the Court to deny their motion to enforce settlement terms that do not exist in the signed settlement agreement. (*Ibid.*)

The Court may only enforce a settlement according to terms that have already been agreed to by all parties, in writing or orally before the Court. Section 664.6 allows the Court no authority to enforce settlement terms that only one or some parties wish to unilaterally enforce against the other parties without their agreement. As such, the Court will not grant Moving Defendants motion to enforce settlement terms against Plaintiffs to which they have not agreed. Granting the motion would not be reasonable when Moving Defendants have also refused to release their claims and dismiss their cross-complaint against Plaintiffs. Accordingly, the motion is **DENIED**.

V. CONCLUSION

Based on the foregoing, both motions are **DENIED**. Plaintiffs shall prepare and submit a written order to the Court consistent with the tentative rulings on these two motions and in compliance with Rule of Court 3.1312(a) and (b).