

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, October 7, 2026 3:00 pm
Courtroom 19 –Hon. Oscar A. Pardo
3055 Cleveland Avenue, Santa Rosa**

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.

TO JOIN ZOOM ONLINE:

Department 19 Hearings

MeetingID: 160-421-7577

Password: 410765

<https://sonomacourt-org.zoomgov.com/j/1604217577>

TO JOIN ZOOM BY PHONE:

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

+1 669 254 5252 US (San Jose)

PLEASE NOTE: The Court’s Official Court Reporters are “not available” within the meaning of California Rules of Court, Rule 2.956, for court reporting of civil cases.

1. 23CV00060, Marcus v. Beatie

Plaintiffs Jordan Marcus and Rachel Marcus (“Plaintiffs”, or “Buyers”), filed the currently operative first amended complaint against defendants Leonard Beatie, Andrea Beatie (together with Leonard Beatie, “Sellers”), Daniel Casabonne (“Casabonne”) Sotheby’s International Realty, Inc. (together with Casabonne, “Sellers’ Agent”) (Sellers’ Agent and Sellers, “Seller Parties”), Robert Ross (“Ross”), VOMR, Inc. (together with Ross, “Buyers’ Agent”) (Sellers, Sellers’ Agent, and Buyers’ Agent together, “Defendants”) and Does 1-50 arising out of alleged misconduct in representing Plaintiffs in a real estate transaction (the “Complaint”). The Complaint contains causes of action for: 1) breach of contract; 2) negligence; 3) negligent misrepresentation; 4) fraud; 5) failure to disclose; 6) violations of Business and Professions Code § 17200 (“UCL Claim”); 7) rescission; and 8) breach of fiduciary duty. In turn, Buyers’ Agent has filed their currently operative first amended cross-complaint against (“BAFXC”) Sellers, Sellers’ Agent, Level One Home Inspection (“Level One”), Evan Marcus (“Marcus”¹), together with Sellers, Sellers’ Agent, and Level One, “BAXC Cross-Defendants”). Sellers Agent has also filed a cross-complaint (“SAXC”) against Sellers and Buyers’ Agent. Sellers have filed their own

¹ Marcus notably has the same name as Plaintiffs due to a familial affiliation.

currently operative first amended cross complaint (“SFXC”) against Sellers’ Agent, Buyers’ Agent, Level One, and Marcus.

Sellers, Sellers’ Agent, and Level One and Marcus (“Settling Defendants”) move for a determination that the settlement between Settling Defendants and Plaintiffs was entered into in good faith within the meaning of Code of Civil Procedure (“CCP”) sections 877 and 877.6, and moves for an order dismissing with prejudice and/or barring any and all present or future complaints against the Settling Defendants relating to this matter. Non-parties given notice of the motion have filed an opposition. Settling Defendants’ motion is **GRANTED**.

I. Facts and Procedure

This action derives from Plaintiffs purchase of the property at 15085 Burbank Drive, Glen Ellen California (the “Property”) from Sellers. The Property abuts a creek. Sellers listed the property in January 2022 for \$998,000. Plaintiff submitted an offer mere days later for \$1,100,000 with a three-day inspection contingency. Sellers provided a Seller Property Questionnaire and Real Estate Transfer Disclosure Statement (“TDS”) on January 16, 2022. The Seller Property Questionnaire represented that the Property was “adjacent to creek,” and “natural erosion along creek”. Grove Declaration, Ex. A, pg. 2 ¶ 9. Plaintiffs purchased the Property for \$1,100,000. In August 2022, Plaintiffs obtained a quote regarding reinforcing the hill along the creek for \$125,998, on which they did not act. In January 2023, substantial rains resulted in the portion of the back yard closest to the creek collapsing and sliding into the creek bed. Plaintiffs performed further investigation and discovered that there had been a previous slide in 2021, when Sellers still owned the Property. Repair costs for the slide have received various estimates to restore the Property since, ranging from high \$400,000s to \$1,100,000. Plaintiffs filed this case thereafter.

The instant settlement agreement requires Settling Defendants to pay Plaintiffs \$1,005,000 for release of liability and requests good faith settlement determination thereon. The settlement agreement itself is not provided but its terms are provided in broad strokes in the Grove Declaration in Support. Among the provisions is an allowance for Plaintiff to bring subsequent claims due to possible further repairs against (1) County of Sonoma, (2) the State of California, (3) the California Department of General Services, (4) Sonoma Water, (5) the North Coast Regional Water Quality Control Board, (6) the California Department of Fish and Wildlife, (7) the United States Army Corps of Engineers, (8) the United States Fish and Wildlife Service, and (9) the Federal Emergency Management Agency (FEMA) (all together “Governmental Non-Parties”). The State of California, by and through the Department of General Services and the Department of Fish and Wildlife (“State Non-Parties”), has filed an opposition.

II. Governing Law

According to CCP section 877.6, a “plaintiff or other claimant” can settle with one or more joint tortfeasors or co-obligors without releasing others, provided the settlement is in “good faith.” A good-faith settlement discharges the settling defendant from liability to other parties for equitable contribution or comparative indemnity. *City of Grand Terrace v. Sup.Ct. (Boyter)* (1987) 192 Cal.App.3d 1251, at 1262; See also, *River Garden Farms, Inc. v. Sup.Ct.* (1972) 26 Cal.App.3d 986, at 996. The determination of good-faith settlement is in the discretion of the trial court. *Tech-Bilt Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 502.

There is no precise standard to determine “good faith,” but the court must harmonize public policy favoring settlements with public policy favoring equitable sharing of costs among tortfeasors. To this end, *Tech-Bilt Inc.*, supra, 38 Cal.3d 488, requires that the settlement be within the “reasonable range” of settling tortfeasor's share of liability, taking into consideration the facts and circumstances of the particular case and evaluating the settlement on the basis of information available at the time of settlement. The factors include:

1. A rough approximation of the total recovery and settlor’s proportionate liability;
2. The amount paid in settlement;
3. A recognition that a settlor should pay less in settlement than if found liable after trial;
4. The allocation of the settlement proceeds among plaintiffs;
5. Settlor's financial condition and insurance policy limits, if any; and
6. Evidence of any collusion, fraud or tortious conduct between the settlor and the plaintiffs aimed at making non-settling parties pay more than their fair share.

If one contests “good faith,” the party seeking a good-faith determination must sufficiently demonstrate all the Tech-Bilt factors. *City of Grand Terrace v. Sup.Ct.* (Boyter) (1987) 192 Cal.App.3d 1251, 1262. However, the party contesting good faith has the burden of demonstrating that the settlement is so far “out of the ballpark” in relation to the *Tech-Bilt* factors as to be inconsistent with the equitable objectives of the statute. *Tech-Bilt*, supra, at 499-500; *Widson v. International Harvester Co., Inc.* (1984) 153 Cal.App.3d 45.

A settlement does not lack “good faith” solely because the settling tortfeasor pays “less than his or her theoretical proportionate or fair share.” *Tech-Bilt*, supra, 38 Cal.3d at 499. The court must discount a settling tortfeasor’s proportional share of liability because a plaintiff’s “damages are often speculative, and the probability of legal liability therefor is often uncertain or remote...” *Ibid.* “[P]ractical considerations obviously require that the evaluation be made on the basis of information available at the time of settlement.” *Ibid.* Thus, “[t]he ultimate determinant of good faith is whether the settlement is grossly disproportionate to what a reasonable person at the time of settlement would estimate the settlor’s liability to be.” *PacifiCare of CA v. Bright Medical Associates, Inc.* (2011) 198 Cal.App.4th 1451, 1465, citing, *City of Grand Terrace v. Superior Court*, supra 192 Cal.App.3d at 1262. “[A] ‘good faith’ settlement does not call for perfect or even nearly perfect apportionment of liability. In order to encourage settlement, it is quite proper for a settling defendant to pay less than his proportionate share of the anticipated damages. What is required is simply that the settlement not be grossly disproportionate to the settlor’s fair share.” *Ibid.*, citing, *Abbott Ford, Inc. v. Superior Court* (1987) 43 Cal.3d 858, 874–875. However, “(i)t is the burden of the settling parties to explain to the court and to all other parties the evidentiary basis for any allocations and valuations made sufficient to demonstrate that a reasonable allocation was made.” *L. C. Rudd & Son, Inc. v. Superior Court* (1997) 52 Cal.App.4th 742, 750.

III. Analysis

A. Determining Good Faith Settlement

Based on the facts described above, Settling Defendants argue that it has sufficiently demonstrated that the *Tech-Bilt* have been met. Settling Defendants claim the following:

1. Plaintiffs purchased the property for \$1,100,000. Their claims against Settling Defendants include breach of contract, negligence, negligent misrepresentation, fraud, violations of Civil Codes § 2079 and 1102, UCL violations, and rescission. Plaintiffs have made various statements regarding the range of their damages depending on the point in time, predicated on quotes for repair. They have ranged between \$959,978.28 and \$1,058,328.28.
2. The amount to be paid in settlement is \$1,005,000. Sellers are to pay \$200,000. Sellers' Agents are to pay \$800,000. Level One and Marcus are to pay \$5,000. A lumpsum payment of \$1,050,000 will be paid to the Plaintiffs upon court approval of the good faith settlement.
3. Settling Defendants assert that liability against them not certain, and Plaintiffs' damages are subject to a significant defense of failure to mitigate, as Plaintiffs had a quote for repair of \$125,998 in August 2022, on which they failed to act resulting in additional damages.
4. Settling Parties contend that financial capacity and insurance is irrelevant because no insurance is applicable to the claims or, in the case of Level One, does not affect the relevant settlement amount. Settling Parties do not address that the consideration includes financial capacity, and not just insurance applicability. However, given that there is no apparent disproportionately low settlement (*L. C. Rudd & Son, Inc. v. Superior Court* (1997) 52 Cal.App.4th 742, 749), this issue does not appear implicated.
5. The matter was settled as a result of mediation, and there are no indicia of collusion.

Settling Defendants have therefore made adequate display in their moving papers that the factors required for good faith settlement under CCP § 877.6 are present. In the absence of an objection, the requirement in finding good faith is minimal. *See City of Grand Terrace v. Sup. Ct.* (1987) 192 Cal.App.3d 1251, 1261 (finding that if a motion for determination of a good faith settlement is not contested, the court does not have to analyze the factors set forth in *Tech-Bilt* and can summarily grant the motion; "That is to say, when no one objects, the barebones motion which sets forth the ground of good faith, accompanied by a declaration which sets forth a brief background of the case is sufficient.").

B. Governmental Non-Parties' Opposition

Settling Defendants have filed proofs of service reflecting that they have served the notice of this motion to the Governmental Non-Parties and aver that the non-parties have a burden to prove a lack of good faith here. State Non-Parties oppose the good faith settlement. State Non-Parties argue that Settling Defendants cannot preclude any subsequent indemnity action by them, because they are not parties to the case, and have not been able to perform any reasonable assessment of the case.

The Court does not, and indeed cannot, reach the merits of State Non-Parties' opposition. Settling Defendants substantially misapprehend the reach of the statute in attempting to bind

non-parties to the good faith determination. The merits of State Non-Parties opposition cannot even be considered. “[O]nly parties to the underlying litigation may challenge a trial court's determination of the good faith of a settlement.” *Pacific Estates, Inc. v. Superior Court* (1993) 13 Cal.App.4th 1561, 1573. The Court cannot consider the Opposition, because that opposition is filed by a non-party without standing to object to the good faith settlement. For those same reasons, that good faith determination is not binding on Governmental Non-Parties. *Id.* at 1573-1574.

Settling Defendants’ motion amounts to precluding Governmental Non-Parties from appearing until such time as it is too late to provide substantive allocation to Settling Defendants. That is not the nature of motions under CCP § 877.6. A non-settling defendant is entitled to *discovery* before being bound by a good faith settlement as a matter of due process. *Singer Co. v. Superior Court* (1986) 179 Cal.App.3d 875, 896. Here, Governmental Non-Parties are not entitled to discovery, because they are not parties to the case. Settling Defendants cannot shift any portion of their appropriate liability to Governmental Non-Parties absent their joinder.

Settling Defendants’ citation to *Britz, Inc. v. Dow Chemical Co.* (1999) 73 Cal.App.4th 177 is inapposite. While that court addressed the subsequent indemnity action brought by a tortfeasor who was already dismissed at the time of the good faith settlement at issue, that bears insufficient analogy to the matter at bar. Here Governmental Non-Parties have *never* been part of the action. They have not had any opportunity to participate in discovery as to the damages, merits, or financial abilities of the defendant (which may yet be shown to be relevant based on the unexpressed damages). Governmental Non-Parties are entitled to such information should they wish it (*City of Grand Terrace v. Superior Court* (1987) 192 Cal.App.3d 1251, 1265), but they are in no position to promulgate such discovery as non-parties. At the time of this hearing, they are *not* joined to the case, nor is there any pleading even alleging a cause of action against them. Their ostensible proportional share is unexpressed in pleading or evidence, instead predicated on facts and theories not before the non-parties or the Court. As such, a continuance does not appear to remedy the underlying problem of Governmental Non-Parties lack of standing to challenge the good faith settlement.

In short, the Opposition cannot be considered, and the result of the motion cannot be held to bind Governmental Non-Parties. They are not and have never been parties to the case, they have had no opportunity or ability to assess the merits of the case. Not only are they strangers to the action, the *possibility* of litigation against them is posed in speculative terms, relating to “further damages due to possible further repairs need to fully repair the Property.” Grove Declaration, ¶ 9. Were this issue relevant to the scope of the good faith determination, it would upend any damages analysis, providing significant doubt as to the viability of the good faith settlement.

Sellers’ Agents have filed a reply. Separately, Plaintiffs and Sellers filed a similar reply document. Both replies aver that the Court should ignore the opposition, grant good faith settlement, and hold that it is enforceable even against Governmental Non-Parties. Sellers’ Agents position is the more reasonable one, averring that because Governmental Non-Parties openly opine that they are not joint tortfeasors, the resulting immunity is irrelevant to them. However, this argument is circular, requiring that the Court conclude that the Governmental Non-Parties are both not joint tortfeasors, but be precluded from indemnity as joint tortfeasors.

Plaintiffs and Sellers' reply simply attempts to hammer the matter through, opining that the Governmental Non-Parties have no rights in this matter except to object, based only on the information that Settling Parties deign to give them. Both replies opine that the Governmental Non-Parties have no right to discovery, but that is patently false under the caselaw. The cases are clear that *just* notice is *not* sufficient. "[F]undamental constitutional principles of due process require that a likely defendant, who was a stranger to the litigation at the time a determination of good faith was rendered, be afforded a new hearing on this issue, it requires little discussion to **find a concurrent right in such a later-named defendant to engage in discovery against the settling defendant to elicit evidence relevant to the *Tech-Bilt* factors.**" *Singer Co. v. Superior Court* (1986) 179 Cal.App.3d 875, 895 (emphasis added). Settling Defendants may not have it both ways. Governmental Non-Parties must either be afforded an opportunity to promulgate discovery to determine if there is any ascertainable liability, as the Settlement hypothesizes, or they are not bound. *City of Grand Terrace v. Superior Court* (1987) 192 Cal.App.3d 1251, 1265. Mere notice is insufficient.

Sellers' Agent's reply appears most correct in reasoning while arriving at the wrong conclusion. There is no articulated basis for stating that the Governmental Non-Parties are joint tortfeasors, and as such they have neither liability nor standing to object. Given that there is no substantive opposition capable of consideration, the motion meets the good faith settlement factors.

The motion is therefore **GRANTED**.

IV. Conclusion

Settling Parties' motion for determination of good faith settlement is **GRANTED**, per CCP sections 877 and 877.6.

All present and future claims against Leonard Beatie, Andrea Beatie, Daniel Casabonne, Sotheby's International Realty, Inc., Level One Home Inspection, and Evan Marcus for equitable comparative contribution, or partial or comparative indemnity, based upon comparative negligence or comparative fault, are dismissed and shall be forever barred, pursuant to Code of Civil Procedure § 877.6. All claims against Robert Ross and VOMR, Inc. by any party to this action are dismissed with prejudice. The scope of this good faith settlement does not apply to nonparties to the case.

Settling Defendants are to submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312.

2-3. 24CV05471, Pahlavan v. Pedroza

I. Introduction

Plaintiff, Reza Arman Pahlavan ("Plaintiff"), has filed the currently operative first amended complaint (the "FAC") against defendants Rina Padroza ("Defendant", or "Cross-Complainant"), for declaratory relief. Defendant has in turn filed the currently operative third amended Cross-Complaint ("TAXC") with eleven causes of action against Plaintiff and Starlite Vineyards, LLC ("Starlite", together with Plaintiff, "Cross-Defendants"). This matter is on calendar for Cross-

Complainant's demurrer and motion to strike to Cross-Defendants' answers to the TAXC.

II. Governing Law & Analysis

The instant Demurrer and motion to strike were filed on June 24, 2026. On September 23, 2026, Cross-Defendants filed an Amended Answer to Third Amended Cross-Complaint ("Amended Answer") as allowed by CCP § 472. While Cross-Complainant opines that this is a delay tactic, the Amended Answer to the TAXC was filed on or before the date opposition was due, as is required by CCP § 472. Once an amended pleading is filed under CCP § 472, the original pleading ceases to be an operative pleading, and any demurrer thereon is moot. *People ex rel. Strathmann v. Acacia Research Corp.* (2012) 210 Cal.App.4th 487, 505.

Parties are also allowed to amend in response to a motion to strike. CCP § 472. A court will not exercise its power for no useful purpose. *Burr v. Board of Sup'rs of Sacramento County* (1892) 96 Cal. 210, 212-213; see also Civ. Code § 3532. Accordingly, courts should generally not act on motions which are moot, or where there is no actual controversy. *Pittenger v. Home Sav. and Loan Ass'n of Los Angeles* (1958) 166 Cal.App.2d 32, 36. An issue is moot, and a court should not address it, if there is no longer an actual controversy, the exception being where the issue is "capable of repetition, yet evading review." *Dibona v. Matthews* (1990) 220 Cal.App.3d 1329, 1339. "If an amended pleading is filed, the responding party shall meet and confer again with the party who filed the amended pleading before filing a motion to strike the amended pleading." CCP, § 435.5 (a).

Cross-Complainant contends that the Court should otherwise still address the merits of the demurrer and motion to strike because the Amended Answer to the TAXC does not substantively change the basis for the demurrer or motion to strike. Cross-Complainant has raised this argument on September 28, 2026, meaning that any ruling thereon would deprive Cross-Defendants of an opportunity to file any opposition, something they are entitled to do given the moot nature of the demurrer and motion to strike.

The same procedural principles applicable to demurrer typically apply to motions to strike, and this motion appears moot as a result. Cross-Complainant has left this motion on calendar despite its moot status. The Court will not rule on the motion, as any striking as to the prior answer goes to an inoperative pleading, and would essentially be an advisory opinion. The parties are required by the Code of Civil Procedure to meet and confer before any ruling on the Amended Answer would be appropriate. Any argument that the amended complaint is somehow improper is better raised by its own noticed motion.

III. Conclusion

The Demurrer and motion to strike are therefore **MOOT**. It is accordingly removed from calendar.

4. 26CV00892, Thompson v. Stellantis, N.V.

This matter comes on the calendar for Defendant DKD of Napa, Inc. dba, Hanlees CDJR of Napa's ("Defendant DKD") Motion to Set Aside Default and Request for Leave to File Answer

or Other Responsive Pleading as to Plaintiffs Jon William Thompson and Michelle Raye Jordan's ("Plaintiffs") Complaint.

There is no Proof of Service attached to the filed motion indicating that Plaintiffs were served with the moving papers after the hearing date was assigned by the Court Clerk. Notice of the motion must be served at least 16 court days prior to the hearing. CCP § 1005. "Notices must be in writing, and the notice of a motion, other than for a new trial, **must state when**, and the grounds upon which it will be made, and the papers, if any, upon which it is to be based." CCP § 1010 (emphasis added). Proof of service must be filed no later than five court days before the hearing. Cal Rule of Court Rule 3.1300. There is no proof of service reflecting the service of the hearing date. Defendant DKD's new counsel did file a notice of remote appearance denoting the hearing date, but that was not served until September 30, 2026, significantly after the 16 court day requirement. There being no evidence of the service to one of the parties, the motion is **DENIED**.

5. 26CV01396, DB Baker Construction Inc. v. Ponce

I. Introduction

Plaintiff DB Baker Construction ("Plaintiff") filed the presently operative complaint ("Complaint") against defendant Jenny R. Ponce ("Defendant"), as well as Does 1-5, for causes of action for breach of contract and common counts related to home construction services.

This matter is on calendar for Defendants' motion to set aside the default under CCP § 473(d) on the grounds that the summons and complaint were never properly served. The motion is **GRANTED**.

II. Underlying Facts

Plaintiff filed the instant case on February 23, 2026. On May 26, 2026, Plaintiff filed a proof of service, with attached declaration of due diligence, averring that the Defendant was served on May 8, 2026 at 11:27 pm through substitute service on "Linda Poince" at 850 Green Way, Santa Rosa. Mail service followed the same day. Plaintiff filed for Defendants' default on June 22, 2026.

The instant motion was filed on July 21, 2026, seeking to set aside default judgment for failure to serve under CCP § 473(d), and for excusable neglect under CCP § 473(b). Defendant avers that the service occurred on Linda Ponce, her mother, without identifying the documents as required by CCP § 415.20(b). Defendant argues that as a result, she did not open the envelope until between May 18 and May 20, delaying her notice of the lawsuit. Defendant also states that she misinterpreted the papers to state that her time to answer was June 24, 2026, on which date she attempted to file an answer but her default had already been taken. Defendant argues that her misinterpretation of legal documents as a layman is excusable neglect as contemplated by CCP § 473(b).

III. Governing Law

A. Set Aside for Improper Notice

“A judgment is void for lack of jurisdiction of the person where there is no proper service of process on or appearance by a party to the proceedings.” *David B. v. Superior Court* (1994) 21 Cal.App.4th 1010, 1016. “In the absence of a voluntary submission to the authority of the court, compliance with the statutes governing service of process is essential to establish th[e] court’s personal jurisdiction over a defendant.” *Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1439; see also, Code Civ. Proc. §410.50 [“the court in which an action is pending has jurisdiction over a party from the time summons is [properly] served on him...”]; *Am. Express Centurion Bank v. Zara* (2011) 199 Cal.App.4th 383, 387 [“[C]ompliance with the statutory procedures for service of process is essential to establish personal jurisdiction.”]. Thus, without valid service, the court lacks personal jurisdiction over a defendant. Code Civ. Proc. §418.10(a)(1); see also, *Ruttenberg v. Ruttenberg* (1997) 53 Cal.App.4th 801, 808; Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2010) § 4:413, p. 4–63.

A judgment derived from an action which was never properly served on a defendant is not merely voidable, but void. *City of Los Angeles v. Morgan* (1951) 105 Cal.App.2d 726, 730. “(A) judgment shown by evidence to be invalid for want of jurisdiction is a void judgment or at all events has all the attributes of a void judgment.” *Id.* at 732–733. Where a defendant establishes that they have not been served as mandated by the statutory scheme, the court never obtained jurisdiction over the defendant and the resulting judgment is void as violating fundamental due process. *County of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215, 1227. “Where a person has been deprived of property in a manner contrary to the most basic tenets of due process, ‘it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits.’” *Peralta v. Heights Medical Center, Inc.* (1988) 485 U.S. 80, 86–87, quoting *Coe v. Armour Fertilizer Works* (1915) 237 U.S. 413, 424. A judgment obtained through extrinsic fraud may be set aside either by filing a separate suit or by a motion made within the action in which a default resulting from the fraud is taken. *Munoz v. Lopez* (1969) 275 Cal.App.2d 178, 181.

“If a copy of the summons and complaint cannot with reasonable diligence be personally delivered to the person to be served, ..., a summons may be served by leaving a copy of the summons and complaint at the person's dwelling house, usual place of abode, usual place of business, or usual mailing address other than a United States Postal Service post office box, in the presence of a competent member of the household or a person apparently in charge of his or her office, place of business, or usual mailing address other than a United States Postal Service post office box, at least 18 years of age, who shall be informed of the contents thereof, and by thereafter mailing a copy of the summons and of the complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left. Service of a summons in this manner is deemed complete on the 10th day after the mailing.”

Code Civ. Proc., § 415.20 (b)(version effective January 1, 2018 through December 31, 2025).

“Ordinarily, two or three attempts at personal service at a proper place and with correct pleadings should fully satisfy the requirement of reasonable diligence and allow substituted service to be made.” *Kremerman v. White* (2021) 71 Cal.App.5th 358, 373. Failure to show reasonable diligence renders the substitute service void. *Ibid*.

B. Set Aside for Mistake, Inadvertence and Excusable Neglect

“The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken.”

CCP § 473 (b).

“Moreover, because the law strongly favors trial and disposition on the merits, any doubts in applying section 473 must be resolved in favor of the party seeking relief from default.” *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233. “Stated another way, the policy of the law is to have every litigated case tried upon its merits, and it looks with disfavor upon a party, who, regardless of the merits of the case, attempts to take advantage of the mistake, surprise, inadvertence, or neglect of his adversary.” *Weitz v. Yankosky* (1966) 63 Cal.2d 849, 854-55.

Courts will generally indulge all presumptions and resolve all doubts in favor of orders setting aside defaults and an order setting aside a default under section 473 will not be reversed unless the record clearly shows an abuse of discretion. *Pearson v. Continental Airlines* (1970) 11 Cal.App.3d 613, 619. “(A)s for inadvertence or neglect, ‘[t]o warrant relief under section 473 a litigant's neglect must have been such as might have been the act of a reasonably prudent person under the same circumstances. The inadvertence contemplated by the statute does not mean mere inadvertence in the abstract. If it is wholly inexcusable it does not justify relief.’” *Hearn v. Howard* (2009) 177 Cal.App.4th 1193, 1206. “[A]lthough the party moving for relief under section 473 has the burden to show that the mistake, inadvertence, surprise, or neglect was excusable (*Citations*), any doubts as to that showing must be resolved in favor of the moving party.” *New Albertsons, Inc. v. Superior Court* (2008) 168 Cal.App.4th 1403, 1420 (internal citations omitted)

IV. Defendant Raises Adequate Basis to Set Aside

A. Service Defect

Defendant argues that they did not receive appropriate service, because the substitute service

occurred in a manner not compliant with CCP § 415.20. Defendant particularly argues, and supports with evidence, that the service was effected to another member of the household without identifying the contents of the envelope in which the summons and complaint were served.

Plaintiff argues that the proof of service by their registered process server creates a presumption that service occurred in accordance with the declaration, and that Defendant fails to show that service was improper.

First, the Court finds Defendant's evidence is credible and specific, describing the nature in which the summons was served. Defendant's mother was the person who received the substitute service. See Declaration of Linda Ponce. In her declaration she describes the facts and circumstances of the service, and particularly avers that the process server *did* serve her an envelope later found to contain the summons and complaint, but gave it to her with no explanation of who he was, the contents of the envelope, or their significance. Declaration of Linda Ponce, ¶ 3. As a result, Defendant's mother does not even recall mentioning the envelope to her. Declaration of Linda Ponce, ¶ 5.

Plaintiff argues that the execution of a proof of service by a registered process server is sufficient to create a presumption that Defendant fails to rebut. The Court notes that the process server has provided no subsequent declaration with Plaintiff's opposition contradicting Defendant's evidence. Plaintiff asks that the Court accord the proof of service more deference than appears proper based on the evidence. Defendant provides specific, credible identification of the alleged deficiency in the service. While Plaintiff opines that the Court is not "required" to accept Defendant's evidence, nor is the Court required to reject it. Defendant's evidence substantially outweighs Plaintiff's and is more than sufficient to rebut Plaintiff's version of the events.

Plaintiff also argues that Defendant had actual notice in time to respond. Plaintiff cites to *Ellard v. Conway* (2001) 94 Cal.App.4th 540, 547, where the trial court and court of appeal found that the service did comply with the statute, and accomplished actual notice. Plaintiff asks that the Court interpret the argued non-compliance with the statute as immaterial, relying on the *Ellard* court's statement that "(s)tatutes governing substitute service shall be liberally construed to effectuate service and uphold jurisdiction if actual notice has been received by the defendant..." *Id.* at 544 (internal quotations omitted). However, at issue in *Ellard* was service that *did* comply with the statute. Here, actual notice was delayed by at least 10 days due to the process server's failure to identify the documents. If the service does not comply with CCP § 415.20, Defendant has *no* burden to respond. *Ruttenberg v. Ruttenberg* (1997) 53 Cal.App.4th 801, 808. Plaintiff does not ask that the Court "liberally construe[]" the statute, they ask that the Court ignore one of the statutory requirements all together. This is not persuasive.

The requirement in performing substitute service is that the service is provided to another adult member of the household "who shall be informed of the contents thereof". No apparent authority addresses whether a deficiency in this regard is a defect of service justifying finding service void. However, cases analyzing other requirements of CCP § 415.20 are rigidly construed. For example, substitute service requires that the plaintiff display diligence in attempting personal service, which is typically displayed through at least two or three attempts at personal service.

Kremerman v. White (2021) 71 Cal.App.5th 358, 373. Failure to exercise reasonable diligence renders the substitute service void. *Evartt v. Superior Court* (1979) 89 Cal.App.3d 795, 802.

That Defendant provides evidence that she did not receive the mailed copy of the summons and complaint is relevant, if only because it magnifies the importance of each element of substitute service. Defendant's apparent prejudice in not having the contents of the envelope identified may have been abrogated had the mail service actually been received. Instead, the unidentified envelope sat unopened, and no further communication reiterated its importance. It is important to note that this does not mean the Plaintiff failed to mail the envelope as required, only that redundancy is built into the substitute service statute for the express purpose of ensuring actual, *timely* notice. Plaintiff entered Defendant's default a mere two days before Defendant attempted to file her answer. Given that Plaintiff failed to serve the summons in a manner compliant with the substitute service statute, the service is defective. Accordingly, the Court finds that the service did not comply with CCP § 415.20, and it is accordingly void.

The motion to set aside default is GRANTED as the service and default are VOID. The Default is SET ASIDE.

B. Excusable Neglect

In the alternative, even if the failure to identify does not render the service void, Defendant raises adequate basis to find excusable neglect. As the Court addresses above, Defendant presents persuasive evidence that the document was not identified at the time of delivery, and that her notice of the papers was therefore delayed as a result.

Both parties cite to *Bettencourt v. Los Rios Community College Dist.* (1986) 42 Cal.3d 270, 276, and Defendant thereafter cites to *Iott v. Franklin* (1988) 206 Cal.App.3d 521, 528 and *Cole v. City of L.A.* (1986) 187 Cal.App.3d 1369, 1376. Of these, only *Iott* actually addresses CCP § 473 (b), the others relate to Gov. Code § 946.6 relief, which also operates on a nearly identical mistake, inadvertence and excusable neglect standard. Even in 1988, "the annotations to section 473 exceed[ed] 300 pages. *Iott v. Franklin* (1988) 206 Cal.App.3d 521, 529. It is not clear why reliance on an analogous statute is proper when direct authority is legion.

To the degree that the matter falls within the Court's discretion, exercise of that discretion is appropriate. Plaintiff describes a mistake in interpreting the papers after opening them around May 18-20, believing that she had to file the answer on or before 15 days prior to the Case Management Conference set for July 9, 2026. Plaintiff attempted to file her answer on June 24, 2026, only to find her default had already been taken. The instant motion followed around a month later. Defendant's error is one of misunderstanding as much as neglect. "Excusable neglect exists when a reasonably prudent person in similar circumstances might have made the same error." *County of San Bernardino v. Mancini* (2022) 83 Cal.App.5th 1095, 1103. In reviewing the litany of dates and deadlines on the service packet, Defendant concluded what she believed the time to respond was, and acted accordingly. Her error in interpreting the papers is precisely the type attributable to a layman. After discovering her error, she acted diligently in moving to set aside the default. Plaintiff shows no apparent prejudice as a result. Where there is no prejudice, "very slight evidence is required to justify a trial court's order setting aside a default." *Purdum v. Holmes* (2010) 187 Cal.App.4th 916, 922. Plaintiff being forced to litigate

the case on its merits is not prejudice. Defendant has made adequate showing of excusable neglect that discretionary relief is proper.

On this alternative basis, the default is also set aside.

C. Plaintiff's Attorney Fees

Plaintiff also requests that if the Court were to grant the motion, that Plaintiff be accorded attorney's fees, citing *Hearst v. Ferrante* (1987) 189 Cal.App.3d 201, 204.

First, the Court's primary basis for set aside is that the service was void under CCP § 473(d), an error stemming from Plaintiff's conduct. No fees are proper as a result.

Second, it is worth mentioning that Plaintiff fails to address that attorney's fees are expressly incorporated into the current version of CCP § 473, and **materially misrepresents the statute**. CCP § 473 (c) provides that the Court may impose penalties "of no greater than \$1,000". In contrast, where "relief is granted based on an attorney's affidavit of fault", the Court shall "direct the attorney to pay reasonable compensatory legal fees and costs to opposing counsel or parties." CCP § 473(b). Plaintiff, in a relatively flagrant impropriety, attempts to shoehorn in propria persona parties into the express statutory language. To quote the opposition:

Code Civ. Proc. § 473(b) provides: "The court shall, whenever relief is granted based on an attorney's affidavit of fault, direct he [sic] attorney [**or In Pro Per party**] to pay reasonable compensatory legal fees and costs to opposing counsel"

Opposition pg. 9:25-28 (emphasis added).

This is important because the Court does maintain *discretion* to award fees to Plaintiff on provision of relief to Defendant. *Vanderkous v. Conley* (2010) 188 Cal.App.4th 111, 118. The language that Plaintiff elects to modify is **mandatory**. This is a substantive misrepresentation of the statute. The Court also notes that Plaintiff's own provided case supports providing *Defendant* fees and costs in appropriate circumstances for Plaintiff's resistance to an otherwise reasonable motion. *Hearst v. Ferrante* (1987) 189 Cal.App.3d 201, 204. Neither party appears entitled to fees here.

IV. Conclusion

Based on the foregoing, the motion to set aside default is **GRANTED under both CCP § 473(d) and CCP § 473 (b). The Default is SET ASIDE.**

Defendant 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). Thereafter, Defendant will file her Answer and Cross-Complaint within 15 days of notice of the order.

6. 26CV03211, King v. Blake

I. Introduction

Plaintiff Virginia King (“Plaintiff”) by and through her Trustee and holder of her power of attorney, Jon B. Eisenberg, filed the currently operative First Amended Complaint (the “FAC”) in this action against defendants Gallaher Senior Living LLC (“GSL”), Varena at Fountaingrove LLC (“Varena”), Gallaher Companies, LLC (“Gallaher”), Douglas Blake (“Blake”)(all together “Defendants”), and Does 1-20, for causes of action arising from alleged: 1) Elder Abuse- involuntary transfer; 2) Elder Abuse- denial of right to employ caregivers; and 3) Declaratory Relief.

This matter is on calendar for the petition (styled as a “motion”) by Defendants to compel arbitration pursuant to Cal. Code Civ. Proc. (“CCP”) § 1281.2. Defendants’ petition to compel arbitration and stay proceedings is **DENIED**.

II. The Basis for the Motion

Plaintiff and her husband, as a precondition of becoming a resident at Varena, signed a “Residence Agreement” on December 11, 2008. Blake Declaration in Support, Ex. A (the “Agreement”). Within Sections 9.21-9.23, was a section related to Arbitration of Disputes. Therein, Plaintiff agreed to the following:

The undersigned parties agree that after conducting a meet and confer and/or mediation, any legal claim or civil action arising out of or relating to care or services provided to you at any time by the Community (for example, claims for refund, breach of contract, personal injury, intentional tort, wrongful death, medical negligence or malpractice, elder abuse, unfair business practices, or relating to the validity or enforceability of this Agreement, will be determined by submission to binding arbitration as provided in accordance with California Code of Civil Procedure 1282 et seq., before a single arbitrator. This includes claims or actions regarding whether the care or services you received, or lack of care or services, was unnecessary or unauthorized, or was improperly, negligently, or incompetently rendered.

Agreement § 9.21.1.

Under § 9.21.7, mid-paragraph but provided in bold and capital letters, the Agreement states, **“YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY. IF ANY PART OF THIS ARBITRATION PROVISION IS DETERMINED TO BE UNENFORCEABLE, THEN THE REMAINDER OF THE PROVISION SHALL REMAIN IN FULL FORCE AND EFFECT.”**

Section 9.22 provides as follows:

Any unlawful detainer action or eviction from your Apartment/Casita, small claims matter, attachment, or injunctive relief proceeding arising out of or related to this Agreement is excluded from Arbitration under Section 9.21 above and shall not constitute a violation of the above arbitration provision.

On May 5, 2026, Plaintiff filed the instant action, alleging that Defendants were violating her statutorily protected rights under the Health and Safety Code. Plaintiff requests relief in the form

of injunctive relief, declaratory relief, and resulting attorney's fees under the elder abuse statutes.

III. Governing Law

A. Arbitration Generally

A party seeking to compel arbitration pursuant to CCP § 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 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.” *Dennison v. Rosland Cap. LLC* (2020) 47 Cal.App.5th 204, 209; see also, *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 972; *Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 236. “Once that burden is satisfied, the party opposing arbitration must prove any defense to the agreement’s enforcement, such as unconscionability [or waiver].” *Id.*; see also, *Avery v. Integrated Healthcare Holdings, Inc.* (2013) 218 Cal.App.4th 50, 59.

“Doubts are resolved in favor of arbitration” and “[t]he court should order [the parties] to arbitrate unless it is clear that the arbitration clause cannot be interpreted to cover the dispute.” *San Francisco Police Officers’ Assn. v. San Francisco Police Com.* (2018) 27 Cal.App.5th 676, 683, quoting *California Correctional Peace Officers Assn. v. State of California* (2006) 142 Cal.App.4th 198, 204–205. “California has a strong public policy in favor of arbitration and any doubts regarding the arbitrability of a dispute are resolved in favor of arbitration.” *Howard v. Goldbloom* (2018) 30 Cal.App.5th 659, 663, citing *Aanderud v. Superior Court* (2017) 13 Cal.App.5th 880, 890. “(T)he state policy ‘favoring’ arbitration, like the federal policy, ‘is about treating arbitration contracts like all others, not about fostering arbitration.’” *Quach v. California Commerce Club, Inc.* (2024) 16 Cal.5th 562, 580. Therefore, “a court should treat the arbitration agreement as it would any other contract, without applying any special rules based on a policy favoring arbitration. That is, courts should apply the same procedural rules that they would apply to any other contract.” *Id.* at 583. The filing of a lawsuit by a plaintiff is sufficient to show that plaintiff has refused to arbitrate claims, allowing a defendant to move for arbitration. *Hyundai Amco America, Inc. v. S3H, Inc.* (2014) 232 Cal.App.4th 572, 577.

B. Delegation of Arbitrability

“Parties to an arbitration agreement may agree to delegate to the arbitrator, instead of a court, questions regarding the enforceability of the agreement.” *Tiri v. Lucky Chances, Inc.* (2014) 226 Cal.App.4th 231, 241. “Challenges to the validity of the delegation provision itself are for a court, not the arbitrator, to decide.” *Pinela v. Neiman Marcus Group, Inc.* (2015) 238 Cal.App.4th 227, 241, fn. 8. “For a delegation clause to be effective, two prerequisites must be satisfied. First, the language of the clause must be clear and unmistakable.” *Pinela v. Neiman Marcus Group, Inc.* (2015) 238 Cal.App.4th 227, 239.

[N]otwithstanding the public policy favoring arbitration, arbitration can be imposed only as to issues the parties agreed to arbitrate; given the slim likelihood that the parties actually contemplated who would determine threshold enforceability issues, as well as

the default presumption that such issues would be determined by the court, those threshold issues must be decided by the court absent *clear and unmistakable* proof to the contrary. This is a “heightened standard,” higher than the evidentiary standard applicable to other matters of interpreting an arbitration agreement.

Ajamian v. CantorCO2e, L.P. (2012) 203 Cal.App.4th 771, 790.

“Second, the delegation must not be revocable under state contract defenses to enforcement” *Pinela v. Neiman Marcus Group, Inc.* (2015) 238 Cal.App.4th 227, 240. Those defenses must apply to the delegation provision itself, and not the contract as a whole. *Rent-A-Center, West, Inc. v. Jackson* (2010) 561 U.S. 63, 72.

C. Civ. Code § 1953

“Any provision of a lease or rental agreement of a dwelling by which the lessee agrees to modify or waive any of the following rights shall be void as contrary to public policy: ... (4) His procedural rights in litigation in any action involving his rights and obligations as a tenant.” Civ. Code, § 1953 (a). “[T]he right to have a jury trial as a procedural right that may not be waived or modified pursuant to section 1953, subdivision (a)(4).” *Williams v. 3620 W. 102nd Street, Inc.* (2020) 53 Cal.App.5th 1087, 1092. “The plain language of Civil Code sections 1940 and 1953 applies to the continuing care contracts here because the fees paid by appellants include payment for the right to live in a residence.” *Harris v. University Village Thousand Oaks, CCRC, LLC* (2020) 49 Cal.App.5th 847, 853. “Civil Code section 1953 prohibits enforcement of a predispute arbitration provision for disputes arising from or related to the tenancy provisions of a continuing care contract.” *Id.* at 856.

D. Health and Safety Code § 1569.269

No provision of a contract of admission, including all documents that a resident or the resident's representative is required to sign as part of the contract for, or as a condition of, admission to a residential care facility for the elderly, shall require that a resident waive benefits or rights to which they are entitled under this chapter or provided by federal or other state law or regulation.” Health & Saf. Code, § 1569.269 (c).

E. Unconscionability Standards

Unconscionability is a defense under California contract law. See Civ. Code, § 1670.5. As applied to arbitration, two elements must be shown, procedural unconscionability and substantive unconscionability. *Baltazar v. Forever 21, Inc.* (2016) 62 Cal.4th 1237, 1243 (“*Baltazar*”). Whether an agreement is unconscionable depends on circumstances at the time it was made. *Abramson v. Juniper Networks, Inc.* (2004) 115 Cal.App.4th 638, 655 (“*Abramson*”). Both procedural and substantive unconscionability must be present before a court can refuse to enforce an arbitration provision based on unconscionability. *Baltazar, supra*, 62 Cal.4th at 1243. However, the two elements need not be present in the same degree; courts use a “sliding scale” approach in assessing the two elements. *Id.* at 1243-1244. The more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable. *Id.* at 1244; *Armendariz v. Foundation Health*

Psychcare Services, Inc. (2000) 24 Cal. 4th 83, 114 (“*Armendariz*”); *Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478, 492 (“*Ramirez*”).

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 (“*OTO*”). “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.’” *Id.*; quoting *Baltazar, supra*, 62 Cal.4th at 1245. 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. *Id.* “Oppression occurs where a contract involves lack of negotiation and meaningful choice, surprise where the allegedly unconscionable provision is hidden within a prolix printed form.” *Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 247.

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 unconscionability is mutuality. *Abramson, supra*, 115 Cal.App.4th at 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. Even if the arbitration provision exempts particular claims both parties from arbitration, if those claims unduly benefit the contract drafter such that the claims brought by the drafter are more likely to be exempt, the agreement is substantively unconscionable. *Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478, 498.

3. Severance

“Courts are to look to the various purposes of the contract. If the central purpose of the contract is tainted with illegality, then the contract as a whole cannot be enforced. If the illegality is collateral to the main purpose of the contract, and the illegal provision can be extirpated from the contract by means of severance or restriction, then such severance and restriction are appropriate.” *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 124. “Accordingly, courts may liberally sever any unconscionable portion of a contract and enforce the rest when: the illegality is collateral to the contract's main purpose; it is possible to cure the illegality by means of severance; and enforcing the balance of the contract would be in the interests of justice.” *Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478, 517. “(I)n the case of the agreement's lack of mutuality, such permeation is indicated by the fact that there is no single provision a court can strike or restrict in order to remove the unconscionable taint from the agreement. Rather, the court would have to, in effect, reform the contract, not through severance or restriction, but by augmenting it with additional terms.” *Armendariz, supra*, 24 Cal.4th at 124–125.

IV. Evidentiary Issues

Plaintiff has tendered two objections to Moving Defendant’s showing. First, Plaintiff objects to the Sanchez Decl., ¶ 5, arguing that there was no evidence laying the foundation of the statement. The objection is SUSTAINED IN PART. To the degree that Sanchez testifies that the Arbitration Agreement was executed by Plaintiff, her deposition testimony shows there is no foundation to that conclusion beyond that the Arbitration Agreement was included in Plaintiff’s file. Furthermore, even Sanchez’s own declaration fails to make any statements which would arguably lead the Court to that conclusion. She remains capable of testifying to its maintenance as a business record, and its location in Plaintiff’s file. Objection 2 is addressed in further detail below.

A. Existence of the Agreement

It is undisputed by the parties that the Agreement presented was signed by Plaintiff and her husband in 2008. This shows the Agreement has some underlying factual underpinning. The issue remains whether the Agreement applies to the instant case. *Dennison v. Rosland Cap. LLC* (2020) 47 Cal.App.5th 204, 209 (moving party must plead and prove the existence of an arbitration agreement that *applies to the case*).

B. Delegation Provision

Defendants argue that issues of enforceability of the “Agreement” are tendered to the arbitrator, and accordingly this Court cannot address the substantive issues raised by Plaintiff. Plaintiff in turn argues that the Agreement is not enforceable because it is void under multiple provisions of law, and that the delegation of arbitrability is insufficiently clear to be binding.

In turn, Defendant contends that even issues of arbitrability have been delegated to the arbitrator, and accordingly this Court cannot even assess the arbitrability of Plaintiff’s claims. In so doing, they rely on the following language:

“The undersigned parties agree that after conducting a meet and confer and/or mediation, any legal claim or civil action arising out of or relating to care or services provided to you at any time by the Community (for example, claims for refund, breach of contract, personal injury, intentional tort, wrongful death, medical negligence or malpractice, elder abuse, unfair business practices, or **relating to the validity or enforceability of this Agreement**, will be determined by submission to binding arbitration...

Plaintiff contends that the existence of the clause which Defendants purport designates the arbitrator will decide issues of arbitrability is impermissibly vague, and accordingly cannot be enforced. Plaintiff particularly points to Agreement, pg. 1, which defines the entire “Residence Agreement” as the “Agreement”. Plaintiff also argues that the delegation provision does not specifically address arbitrability, as opposed to generalized “validity” of the Agreement.

Plaintiff’s argument also raises significant issues with the *totality* of the agreement. “Even broad arbitration clauses that *expressly* delegate the enforceability decision to arbitrators may not meet the clear and unmistakable test, where other language in the agreement creates an uncertainty in that regard.” *Ajamian v. CantorCO2e, L.P.* (2012) 203 Cal.App.4th 771, 792. Here, the purported delegation clause introduces significant doubt as to the particularized delegation of arbitrability by using the term Agreement, applying to the entirety of the contract and not the voluntary arbitrability terms.

1. Health and Safety Code §1569.269 (c) Argument

Plaintiff contends that the Arbitration Provision is void as illegal under Health and Safety Code § 1569.269 (c), contending that mandatory arbitration provisions are prohibited in long term care contracts such as the Agreement. Plaintiff is unpersuasive in contending that Health and Safety Code § 1569.269 (c) applies here. While she opines that the Arbitration Provision is “vague” as to its voluntary nature, the language found under § 9.21.7, mid-paragraph, is clear, unequivocal, and wholly refutes Plaintiff’s argument.

2. Civ. Code § 1953 Argument

Plaintiff is persuasive that the Arbitration Provision of the Agreement is subject to Civ. Code § 1953, and therefore may be void as a matter of law. If the Arbitration Provision is void, Plaintiff cannot be bound to it, *including* the delegation thereon. “(T)he delegation must not be revocable under state contract defenses to enforcement.” *Pinela v. Neiman Marcus Group, Inc.* (2015) 238 Cal.App.4th 227, 240. Given that the allegations here relate to a tenancy as further outlined below, delegation (as much as any other aspect of arbitration) violates Civil Code § 1953. Accordingly, the delegation clause is void for all the reasons expressed below addressing the substance of the claims.

3. Wholly Groundless

Even if the Court were to find that the delegation clause was neither vague nor attempted to arbitrate void controversies, the Court may still review the merits of the Arbitration Provision to

determine whether it is “wholly groundless”. *Smythe v. Uber Technologies, Inc.* (2018) 24 Cal.App.5th 327, 332. Defendants’ contention that the entire matter is arbitrable is *wholly groundless*. As the Court addresses further below, there are various reasons why at minimum significant portions of the FAC are obviously exempt from the Arbitration Agreement. Defendants’ contention that Plaintiff’s “applies to all claims, causes of action and damages **arising out of her residency at Varena** at Fountaingrove and/or her care and services provided, or lack thereof” (Defendants’ Notice of Motion, pg. 2:6-8.) concedes the very point made above. The claims otherwise apply to Plaintiff’s *residency*, and as such are substantively protected from arbitration by Civ. Code § 1953. Furthermore, as addressed below, Plaintiff’s claims fall under an express exception to the Arbitration Provision by its own terms.

C. The Claims at Issue Are not Arbitrable

1. Civ. Code §1953

As is raised above, Civil Code § 1953 renders void any agreement to arbitrate issues of tenancy. This right overlaps with those rights associated with continuing care facilities, and Plaintiff’s rights to tenancy are subject to Civil Code § 1953’s protections. *Harris v. University Village Thousand Oaks, CCRC, LLC* (2020) 49 Cal.App.5th 847, 856.

While Defendants address *Harris v. University Village Thousand Oaks, CCRC, LLC* (2020) 49 Cal.App.5th 847, they misstate its holding, and accordingly fail to show that the arbitration provision is not void *as a whole*. Defendants argue that *Harris* only holds that specifically tenancy involved claims are protected by Civ. Code § 1953, but examination of the case shows the holding is substantially broader.

In *Harris* plaintiffs filed suit against their continuing care community (as defined in Health and Safety Code § 1770), alleging causes of action for conversion, negligence per se, negligence, intentional and negligent infliction of emotional distress, fraudulent and negligent misrepresentation, false advertising, unfair competition, elder abuse and declaratory relief, based on false representations regarding facility security, the amount of future increases in monthly fees, and whether monthly fees included the cost to charge electric vehicles. *Id.* at 851-852. The defendant moved to compel arbitration and the trial court granted the motion. *Id.* at 852. Court of appeal reversed, finding that Civil Code § 1953 expressly applied to continuing care contracts as contracts of residential tenancy. *Id.* at 852, 857. “Because the allegations in the complaint here include claimed violations of ‘rights and obligations as a tenant’ (Civ. Code, § 1953, subd. (a)(4)), the arbitration agreements are void.” *Id.* at 853.

It is apparent from the decision that the *Harris* court does not rely on “magic words” to determine whether the claims at issue were related to tenancy or continuing care. Instead, it applies to the nature of the claims brought, and whether they rely upon “rights and obligations as a tenant”. If they “include” those claims, the arbitration Provision is void. *Id.* at 853. Here, Plaintiff alleges that Defendants seek to oust her from her home by virtue of an involuntary transfer, amounting to an eviction in fact if not in name. FAC ¶ 31. Defendants’ alleged motivation in doing so is to usher in a new resident, going so far as to give a tour to a potential buyer while Plaintiff was still in residence. FAC ¶ 20, 40. The allegations regarding care cut to

the method by which Defendants allegedly are attempting to pressure Plaintiff, primarily centered around Plaintiff's right to have her own privately retained staff, which Defendants refuse to allow to perform their duties. FAC ¶ 4, 6, and 38.

Plaintiff seeks relief in the form of injunctions protecting her right to reside at her home, and her right to associated and employ her own caregivers therein. These are rights which go to Plaintiff's residency rights *far* more than they go to the sufficiency of Defendants' provided care. The FAC revolves around Plaintiff's rights as a tenant. Accordingly, restrictions on her "procedural rights in litigation in any action" cannot be constrained and are void. Civ. Code, § 1953 (a)(4). The arbitration provision restricting Plaintiff's rights thereon, it is void as violative of public policy. *Harris v. University Village Thousand Oaks, CCRC, LLC* (2020) 49 Cal.App.5th 847, 853.

2. Forms of Relief

Defendants argue that the FAC alleges arbitrable claims, but Plaintiff is more than persuasive in showing that the claims alleged in the FAC fall under an express exception to the Arbitration Provision. The Arbitration Provision expressly states that "[a]ny ... injunctive relief proceeding arising out of or related to this Agreement is excluded from Arbitration under Section 9.21 above and shall not constitute a violation of the above Arbitration Provision. Agreement § 9.22. Injunctive relief is not a cause of action, but rather a form of relief to be granted based on applicable legal theories. *City of South Pasadena v. Department of Transportation* (1994) 29 Cal.App.4th 1280, 1293.

In this manner, Defendants' argument that the express exemption of the Arbitration Provision do not apply to Plaintiff's claims is "wholly groundless". This is Defendants' form contract signed by Plaintiff. Defendants had control over the language and posed it that "[a]ny" "proceeding" for injunctive relief was exempt. Defendants did not specify that the action had to *only* be for injunctive relief. Nor does it place restrictions on the causes of action under which that injunctive relief is sought. Examining Plaintiff's FAC, she alleges three causes of action, but her relief is entirely injunctive in nature except for declaratory relief, and attorney's fees. Plaintiff specifically requests temporary and permanent injunctions, "prohibiting Defendants from transferring Plaintiff from her casita at Varenna to Villa Capri or elsewhere, [and] ... prohibiting Defendants from denying Plaintiff the right to employ caregivers of her own choice." FAC, pg. 13.

Plaintiff's claims are not just partly injunctive, they are entirely so in substance. Therefore, they fall under the express exception provided in Agreement § 9.22.

On this basis as well, Defendant fails to show that there is an enforceable agreement to arbitrate Plaintiff's claims.

3. CCP §1281.2 (d)

Even if Plaintiff's exempt claims were not primarily related to tenancy in nature, and inexorably interwound with tenancy rights as opposed to the care provided by Defendants, it is inarguable

that *some* of Plaintiff's claims are expressly not subject to arbitration under the Arbitration provision. They are injunctive in nature. Accordingly, other issues not subject to arbitration would properly precede any arbitration of Plaintiff's claims. CCP § 1281.2(d).

D. Unconscionability

Plaintiff expends limited effort arguing unconscionability. The Court notes that a party averring unconscionability bears a heavy burden, one which Plaintiff does not meet. Plaintiff's arguments (already addressed above) regarding the involuntary nature of the Arbitration Provision remains unprevailing, and as such she makes no substantive argument regarding procedural unconscionability. Her arguments regarding substantive unconscionability show mild substantive unconscionability, but in the absence of both factors, arguments of unconscionability fail.

E. Stay

First, stays are mandatory on a grant of motion to compel arbitration. Plaintiff's arguments to the contrary are misplaced, relying on the principles outlined in *OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 140. The filing of a petition for arbitration does not automatically stay proceedings. An order on that petition clearly does under CCP § 1281.4. Plaintiff's arguments against a stay are incorrect.

However, as addressed above, a stay under CCP § 1281.4 would not be applicable in this case due to the injunctive nature of the claims. Any order compelling arbitration (which the Court does not make here) would otherwise be overrode by the necessity of delaying the order until such time that Plaintiff's injunctive claims were first adjudicated under CCP § 1281.2 (d).

V. Conclusion

Based on the foregoing, the motion to compel arbitration is **DENIED**.

Plaintiff's counsel 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. 26CV03665, Wells Fargo Bank v. Gilardi

Plaintiff Wells Fargo Bank, N.A. ("Plaintiff"), filed the complaint (the "Complaint") against defendants Angela L. Gilardi ("Defendant"), along with Does 1-10, arising out of an alleged breach of contract. This matter is on calendar for Defendant's motion to quash service of summons under Code of Civil Procedure ("CCP") § 418.10(a)(1) on the grounds that the Court lacked personal jurisdiction over Defendant because the summons and complaint were never properly served. The motion is **GRANTED**.

I. Governing Law

The Code of Civil Procedure states that "[a] defendant, on or before the last day of his or her time to plead or within any further time that the court may for good cause allow, may serve and

file a notice of motion... [t]o quash service of summons on the ground of lack of jurisdiction of the court over him or her.” CCP §418.10(a)(1).) Proper in state methods of service of summons for general civil actions are delineated under CCP §§ 415.10, 415.20, 415.30, and 415.50. In the case of a defendant being sued in his or her individual capacity, service may only be made on a person other than the individual defendant if that person has been authorized by the defendant to receive service of process on his or her behalf. CCP § 416.90.

Furthermore, “[i]n the absence of a voluntary submission to the authority of the court, compliance with the statutes governing service of process is essential to establish th[e] court’s personal jurisdiction over a defendant.” *Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1439; see also, Code Civ. Proc. §410.50 [“the court in which an action is pending has jurisdiction over a party from the time summons is [properly] served on him...”]; *Am. Express Centurion Bank v. Zara* (2011) 199 Cal.App.4th 383, 387 [“[C]ompliance with the statutory procedures for service of process is essential to establish personal jurisdiction.”]. Thus, without valid service, the court lacks personal jurisdiction over a defendant. Code Civ. Proc. §418.10(a)(1); see also, *Ruttenberg v. Ruttenberg* (1997) 53 Cal.App.4th 801, 808; Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2010) § 4:413, p. 4–63.

“When a defendant argues that service of summons did not bring him or her within the trial court’s jurisdiction, the plaintiff has ‘the burden of proving the facts that did give the court jurisdiction, that is the facts requisite to an effective service.’” *Am. Express Centurion Bank, supra*, 199 Cal.App.4th at 387, quoting *Coulston v. Cooper* (1966) 245 Cal.App.2d 866, 868; see also, *School Dist. of Okaloosa County v. Superior Court* (1997) 58 Cal.App.4th 1126, 1131 [When a defendant challenges jurisdiction by bringing a motion to quash, the burden is on the plaintiff to prove the existence of jurisdiction by proving, by a preponderance of evidence, the facts requisite to an effective service.]; *Dill, supra*, 24 Cal.App.4th at 1439-1440.

A defendant is under no duty to respond in any way to a defectively served summons. It makes no difference that defendant had actual knowledge of the action. Such knowledge does not dispense with statutory requirements for service of summons. *Kappel v. Bartlett* (1988) 200 Cal.App.3d 1457, 1466; *Ruttenberg v. Ruttenberg* (1997) 53 Cal.App.4th 801, 808.

II. Defendant Raises Adequate Basis to Quash

Defendant brings the instant motion to quash service of summons averring that the Complaint was not properly served, and that she had no notice of the suit. Plaintiff has filed no opposition. Defendant served notice of the motion by mail with the hearing date included on July 31, 2026.

Defendant raises sufficient basis to quash service of summons. Summons was served, according to the proof of service, by substitute service at Defendant’s residence. While the proof of service provides a description of the member of the household that was provided service of summons, that description does not match any member of the household according to Defendant. Defendant is the sole adult and sole female member of the household. This is sufficient to show that Defendant was not served.

The motion to set aside default and quash service of summons is **GRANTED**.

III. Conclusion

Based on the foregoing, the motion to set aside default and quash service of summons is **GRANTED**.

Defendant 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).

8. **26CV03842, Marnette Lawson v. Murray**

Defendant Sonomaaidence Opco LLC, doing business as Sonoma Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., and PACS Group, Inc.'s (collectively, "Defendants") Motion to Compel Arbitration and Stay Proceedings is **DENIED**.

I. **Introduction**

Plaintiffs Marnette Lawson and Mary Leahy, individually and as successors-in-interest to the Estate of James Lawson, (individually "Lawson" and "Leahy," collectively "Plaintiffs"), bring this action arising from the care James Lawson ("Decedent") received at Sonoma Post Acute, a skilled nursing facility (the "Facility").

Decedent was admitted to the Facility on or about January 9, 2026, for rehabilitation following a hospitalization. According to the Complaint, he had diagnoses including dementia, dysphagia, and a history of stroke. Decedent required individualized assistance during meals. Plaintiffs allege that on March 11, 2026, Decedent died after he was found in bed having apparently choked on food. Plaintiffs filed this action on May 27, 2026, asserting causes of action for (1) elder abuse; (2) negligence; (3) violation of Patient's Rights, (4) wrongful death, and (5) survivorship.

Defendants move to compel arbitration based on an electronic arbitration agreement dated January 12, 2026 (the "Agreement"). Decedent did not sign the Agreement. The Agreement instead bears electronic signatures attributed to his wife, Plaintiff Marnette Lawson. The Agreement states that disputes arising from the Facility's services, including claims for negligence, wrongful death, statutory violations, and injury or death, are subject to arbitration under the Federal Arbitration Act ("FAA"). It also contains a delegation provision assigning disputes concerning the Agreement's making, execution, enforceability, and unconscionability to the arbitrator.

Immediately above Lawson's signature, the Agreement contains a certification stating that, by virtue of the resident's consent, instruction, or durable power of attorney, the signer is authorized to act as the resident's agent. The certification further states that the Facility is relying on that representation and that claims asserted by the signed in an individual or successor-in-interest capacity are governed by the Agreement. The Agreement states that it is optional, is not a condition of release, and may be rescinded within thirty (30) days. In relevant part:

12.1 The Resident and/or the person executing this Agreement certifies that he/she has read this Agreement, understands this Agreement, has been given a copy of this Agreement, and affirmatively represents that he/she is duly authorized, by virtue of the Resident’s consent, instruction and/or durable power of attorney or other legally binding document, to execute this Agreement and accept its terms on behalf of the Resident and acknowledges that the Facility is relying on the aforementioned certification.

12.2 The Resident and/or the person executing this Agreement certifies that he/she understands that its execution is not a precondition to receiving medical treatment, care, services and/or for admission to the Facility and is not a requirement to continue to receive medical treatment, care and services at the Facility.

NOTICE: BY SIGNING THIS CONTRACT YOU ARE AGREEING TO HAVE ANY ISSUE OF MEDICAL MALPRACTICE DECIDED BY NEUTRAL ARBITRATION AND YOU ARE GIVING UP YOUR RIGHT TO A JURY OR COURT TRIAL. SEE ARTICLE 1 OF THIS CONTRACT

(Declaration of Blanca Murillo in Support of Defendant’s Motion to Compel Arbitration [“Murillo Declaration”], Exhibit A.)

Blanca Murillo (“Murillo”), a Facility receptionist, states that her regular duties included assisting with resident admissions and discussing admission packets including optional arbitration agreements with residents or their authorized representatives. (Murillo, Decl., ¶ 3.) Defendants represent that Murillo personally met with Lawson on January 12, 2026, presented the admission documents and Agreement, and recalled Lawson reviewing and signing the Agreement on a tablet. (Murillo, Decl., ¶ 11.)

However, Lawson presents a different account. She states that Decedent never executed a general power of attorney or advance health care directive appointing her or anyone else as his agent. (Lawson, Decl., ¶ 3.) Lawson further states that she never represented to the Facility that she possessed authority to sign legal documents for Decedent and that Facility personnel did not ask whether she had such authority. (Lawson, Decl., ¶ 3.) Facility records submitted by Plaintiffs identify Lawson as Decedent’s “Emergency Contact #1” and “Next of Kin,” and expressly decline to identify her as Decedent’s agent. (Guadagni Decl., ¶¶ 3, 4, Exhs. B, C.)

Furthermore, Lawson attests that Murillo held and controlled the tablet, obtained an electronic signature once, then scrolled to locations where Lawson was directed to click to apply the signature. (Lawson, Decl., ¶ 4.) Lawson states that Murillo did not identify or explain a separate arbitration agreement or tell her that she was waiving a right to trial by jury. (Lawson, Decl., ¶¶ 4, 5.) Lawson also states that she believed she needed to sign the documents because Decedent had already been admitted, she could not care for him at home, and she feared he might not be permitted to remain at the Facility if she refused. (Lawson, Decl., ¶ 7.)

Plaintiffs contend that Decedent was in his room during the document-signing process and was not present when Lawson interacted with Murillo. (Lawson, Decl., ¶ 7.) Lawson states that

neither Murillo nor other Facility personnel sought Decedent's consent to arbitration. (Lawson, Decl., ¶ 7.) Facility documentation rated Decedent's dementia as "[s]evere" and described him as having no recognition or awareness of others and as being unable to understand what was happening most of the time. (Guadagni Decl., Exh. D.)

Defendants argue that Lawson's written certification of authority, her management of Decedent's medical affairs, her participation in his admission and care planning, and the Facility's reliance on her conduct establish actual or ostensible authority to compel arbitration. Defendants alternatively contend that Lawson agreed in her individual capacity to arbitrate her own claims, regardless of whether she could bind Decedent.

Plaintiffs oppose the Motion on the grounds that Lawson lacked actual or ostensible authority, Defendants have not authenticated her electronic assent to the Agreement, and the Agreement is substantively and procedurally unconscionable. Plaintiffs also contend that Leahy did not sign the Agreement and cannot be required to arbitrate her individual wrongful-death claim.

II. Governing Law

A. Motions to Compel Arbitration Generally

Code of Civil Procedure section 1281.2 authorizes an order compelling arbitration only when the court determines that an agreement to arbitrate exists. The existence of an enforceable agreement is therefore a statutory prerequisite to compelling arbitration. "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." (*Dennison v. Rosland Cap. LLC* (2020) 47 Cal.App.5th 204, 209; see also, *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 972; *Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 236.) "Once that burden is satisfied, the party opposing arbitration must prove any defense to the agreement's enforcement, such as unconscionability [or waiver]." (*Id.*; see also, *Avery v. Integrated Healthcare Holdings, Inc.* (2013) 218 Cal.App.4th 50, 59.)

"[A] court should treat the arbitration agreement as it would any other contract, without applying any special rules based on a policy favoring arbitration. That is, courts should apply the same procedural rules that they would apply to any other contract." (*Quach v. California Commerce Club, Inc.* (2024) 16 Cal.5th 562, 583.) A contract requires parties capable of contracting, consent, a lawful object, and sufficient consideration. A court may not order a party to arbitrate a dispute the party did not agree to arbitrate. Accordingly, when a resident did not personally sign an arbitration agreement, the court must determine whether the person who signed for the resident had authority to do so.

A family relationship, participation in admission, or assistance with medical matters does not, without more, authorize a person to waive a resident's rights to a judicial forum. (*Young v. Horizon West, Inc.* (2013) 220 Cal.App.4th 1122, 1134; *Flores v. Evergreen at San Diego, LLC* (2007) 148 Cal.App.4th 581, 587—88 [holding the spousal relationship alone insufficient to compel authority to agree to an arbitration provision in a nursing home admission contract]; *Theresa D. v. MBK Senior Living LLC* (2021) 73 Cal.App.5th 18, 22; *Valentine v. Plum*

Healthcare Group, LLC (2019) 37 Cal.App.5th 1076, 1088.) An optional arbitration provision constitutes a separate waiver of legal rights. (*Harrod v. Country Oaks Partners, LLC* (2024) 15 Cal.5th 939, 965.) Therefore, a spouse or family member who lacks a power of attorney or similar authorization does not acquire authority to execute it merely by assisting with admission.

B. Delegation of Arbitrability

“Parties to an arbitration agreement may agree to delegate to the arbitrator, instead of a court, questions regarding the enforceability of the agreement.” (*Tiri v. Lucky Chances, Inc.* (2014) 226 Cal.App.4th 231, 241.) “Challenges to the validity of the delegation provision itself are for a court, not the arbitrator, to decide.” *Pinela v. Neiman Marcus Group, Inc.* (2015) 238 Cal.App.4th 227, 241, fn. 8. “For a delegation clause to be effective, two prerequisites must be satisfied. First, the language of the clause must be clear and unmistakable.” (*Pinela v. Neiman Marcus Group, Inc.* (2015) 238 Cal.App.4th 227, 239.)

[N]otwithstanding the public policy favoring arbitration, arbitration can be imposed only as to issues the parties agreed to arbitrate; given the slim likelihood that the parties actually contemplated who would determine threshold enforceability issues, as well as the default presumption that such issues would be determined by the court, those threshold issues must be decided by the court absent *clear and unmistakable* proof to the contrary. This is a “heightened standard,” higher than the evidentiary standard applicable to other matters of interpreting an arbitration agreement.

(*Ajamian v. CantorCO2e, L.P.* (2012) 203 Cal.App.4th 771, 790.)

“Second, the delegation must not be revocable under state contract defenses to enforcement” (*Pinela, supra*, 238 Cal.App.4th at 240.) Those defenses must apply to the delegation provision itself, and not the contract as a whole. (*Rent-A-Center, West, Inc. v. Jackson* (2010) 561 U.S. 63, 72.)

C. Agency

An agency relationship must be actual or ostensible. Actual authority depends on conduct by the principal causing the purported agent reasonably to believe that the principal consented to the agent’s act. (Civil Code §§ 2295, 2298) Ostensible authority likewise requires conduct by the principal causing the third party to believe that the agent possessed authority. (Civil Code §§ 2300, 2317; *Goliger v. AMS Properties, Inc.* (2004) 123 Cal.App.4th 374, 376; *Valentine v. Plum Healthcare Group, LLC* (2019) 27 Cal.App.5th 1076, 1088.)

An agency relationship cannot be created solely by the purported agent’s conduct or representation; conduct by the principal is essential. (*Kinder v. Capistrano Beach Care Center, LLC* (2023) 91 Cal.App.5th 804, 812; *Rogers v. Roseville SH, LLC* (2022) 75 Cal.App.5th 1065, 1074; *Lee v. Helmco, Inc.* (1962) 199 Cal.App.2d 820, 834.) Thus, a family member’s signature on a document identifying that person as a representative or agent does not, standing alone, establish authority to bind a nursing-facility resident. (*Valentine, supra*, 27 Cal.App.5th at 1088)

[signing under line for “representative” was not sufficient to create agency unless the principal’s conduct engendered his belief and actions.].) Critically, a defendant “cannot meet its burden to prove the signatory acted as the agent of a plaintiff by relying on representations of the purported agent alone.” (*Kinder, supra*, 91 Cal.App.5th at 812.)

III. Discussion

A. Defendants Have Not Established Plaintiff Lawson’s Actual Authority to Bind Decedent

Here, Defendants have not presented any evidence that Decedent executed a power of authority, advance health care directive, or other instrument authorizing Lawson to enter an arbitration agreement on his behalf. Lawson attests that no such instrument existed and that she never represented to Facility personnel that she possessed authority to sign legal documents for Decedent. (Lawson, Decl., ¶ 3.) Further complicating Defendants position that their own documentation which identifies Lawson as an emergency contact and next of kin, despite the clear and available option to designate her as Decedent’s “agent.” (Guadagni Decl., ¶¶ 3, 4, Exhs. B, C.) Certainly, Defendants had sufficient information upon admission that Lawson was not Decedent’s agent. Nothing precluded them from following up further with Lawson as whether, when, and how she acquired authority to conduct Decedent’s affairs. Reliance on a disclaimer within the Arbitration Agreement imbedded within pages of admissions documents, without conducting further investigation, appears distracting and evasive.

At most, Defendants’ argument here relies exclusively on Lawson’s independent conduct of providing Murillo with her purported electronic signature while reviewing Decedent’s admission documents, including the arbitration agreement. Once Lawson’s electronic signature was created, Murillo then apparently directed the former to affix it on various areas of an electronic form. Lawson’s certification that she was authorized and her participation in Decedent’s admission to the Facility are evidence of her own conduct, not Decedent’s. Defendants likewise identify no statement or conduct by Decedent causing the Facility reasonably to believe that Lawson could waive his right to a judicial forum. Decedent, himself, was not present for the signing, and the Facility principally relied on Lawson’s certification and caregiving role. (Lawson, Decl., ¶ 7.). Decedents’ dementia diagnosis only serves to provide Defendants with additional notice that more investigation was needed to determine who, if anyone, was legally responsible for handling his affairs.

Because Lawson lacked actual and ostensible authority, the Agreement does not bind Decedent or his estate, the Agreement’s delegation clause, Federal Arbitration Act provision, and purposed exclusion of Code of Civil Procedure section 1281.2(c) cannot supply the consent necessary to form an enforceable contract with Decedent. Arbitration is a “matter of consent,” (*Stolt-Nielsen S.A. v. AnimalFeeds International Corp.* (2010) 559 U.S. 662, 681.) The Court must resolve a dispute over whether an agreement was ever concluded before compelling arbitration. (Code of Civ. Proc. § 1281.2; *Theresa D., supra*, 73 Cal.App.5th at 27; *Long v. Provide Commerce, Inc.* (2016) 245 Cal.App.4th 855, 861.)

B. Defendants Have Not Established Plaintiff Lawson's Ostensible Authority to Bind Decedent

Defendants also have not established ostensible authority to bind Decedent. The record contains no statement, representation, prior course of dealing, or other conduct by Decedent causing the Facility to reasonably believe that Lawson had authority to execute an arbitration agreement for him.

Decedent was not present when Lawson signed the electronic admission documents, including the optional arbitration agreement. (Lawson, Decl., ¶ 7.) According to Lawson, he remained in his room, and no Facility employee asked Decedent whether Lawson could execute an arbitration agreement on his behalf. (Lawson, Decl., ¶ 7.) The evidence upon which Defendants rely consists primarily of Lawson's conduct, including her appearance at the Facility, assistance with admission and care planning, and certification of authority. (Murillo, Decl., ¶¶ 6—8, 11.) Defendants' argument is principally founded in Murillos' custom and practice in guiding residents and patients through admissions paperwork, including the optional arbitration agreement. (Murillo, Decl., ¶¶ 6—8, 11.) Murillo's conclusory statement that she "checked to make sure she [Lawson] was the resident's authorized representative, as is my practice" has no foundational support. (Murillo Decl., ¶11.) Murillo provides no information on how she was trained to ensure an individual is an 'authorized representative', what information she reviewed to make that determination, or what information she acquired to come to this conclusion. Declarations claiming that verification of the non-resident signer's authority was obtained through custom or practice is insufficient evidence. (*Garcia v. KND Development 52, LLC* (2020) 58 Cal.App.5th 736, 745.) These circumstances do not establish that Decedent caused or permitted the Facility to believe Lawson possessed authority to waive his right to a judicial forum.

The evidence concerning Decedent's cognitive condition further weighs against a finding of ostensible authority. Facility documentation rated his dementia as severe and stated that he had no recognition or awareness of others, specifically that he was unable to understand what was occurring most of the time. (Guadagni Decl., Exh. D.) His incapacity may explain why the Facility communicated with Lawson, but incapacity does itself appoint a spouse or relative as an agent or authorize that person to execute an arbitration agreement.

Defendants assumed the risk of dealing with a purported agent without obtaining documentation or confirmation of the agent's authority. On this record, they have not shown that Decedent intentionally or negligently caused the Facility to believe that Lawson possessed any authority to bind him. (See *Kinder, supra*, 91 Cal.App.5th at 812 [trial court properly denied a motion to compel arbitration where defendants failed to present any evidence that the purported agent's conduct caused the agent or the [defendant] to believe that the agent had the authority to bind the principal].)

C. Plaintiff Mary Leahy Is Not Bound by the Agreement

Leahy did not sign the Agreement. Her wrongful death claim is asserted in her individual capacity as Decedent's daughter and heir. Defendants argue that the Agreement's language

concerning heirs binding Leahy because her wrongful death claim arises from alleged professional negligence. First, the same analysis which the Court applied in determining that Lawson did not have actual or ostensible authority for Decedent applies to Leahy. Defendants presented no evidence that Leahy provided authority of any kind or provided a proxy to Lawson that would allow for the relinquishment of her legal rights in this matter. Second, this argument similarly depends on the existence of a valid arbitration agreement entered into by Decedent or by an agent authorized to act on his behalf. Defendants have not established that predicate. Because Decedent did not sign the Agreement, nor did Leahy, Lawson lacked authority to bind them, the Agreement's heir-binding language cannot impose an arbitration agreement on Leahy.

D. Code of Civil Procedure section 1281.2 Provides an Additional Basis to Deny Piecemeal Arbitration

Code of Civil Procedure section 1281.2.(c) permits the Court, when applicable, to refuse enforcement where a party to an arbitration agreement is also involved in a pending action with a third party arising from the same transaction and conflicting rulings on a common issue are possible.

Here, Defendants contend that Lawson separately agreed to arbitrate her individual claims because the Agreement states that signing family members and heirs execute the Agreement in their individual capacities. The Court need not determine whether that language independently binds Lawson because, even assuming her individual claim was arbitrable, the remaining claims are not.

Here, the estate and survivorship claims cannot be compelled because Lawson lacked authority to bind Decedent. Leahy's individual wrongful death claim cannot be compelled because she neither signed the Agreement nor is bound through a valid agreement executed on Decedent's behalf. Those nonarbitrable claims arise from the same alleged failures in Decedent's care as Lawson's individual wrongful death claim, including the alleged failure to address his dysphagia and provide required feeding assistance.

Separating Lawson's individual claim from Leahy's wrongful death claim and the estate claims would require different forums to determine the same central issues concerning Decedent's condition, the applicable care plan, Defendant's conduct, causation, and responsibility for his death. That creates a substantial possibility of conflicting rulings on common factual and legal issues.

While the Agreement purports to exclude Code of Civil Procedure section 1281.2(c) and adopt the FAA's procedural rules, those provisions do not alter the threshold result as to Decedent or Leahy because neither agreed to them, nor can they require enforcement of a nonexistent agreement against either person. To the extent Section 1281.2(c) governs Defendants' request to compel Lawson's individual claim, the Court alternatively exercises its discretion under that statute to avoid conflicting determinations concerning the same care, injury, and death.

IV. Conclusion

Defendants' Motion to Compel Arbitration and Stay Proceedings is **DENIED**.

Defendants have not shown that Lawson possessed actual or ostensible authority to bind Decedent to the Agreement. The Agreement therefore does not govern Decedent's estate or survivorship claims. Leahy did not sign the Agreement, cannot be bound as Decedent's daughter or heir when no valid agreement was entered into by Decedent or an authorized agent.

Alternatively, even if Lawson's individual claim were subject to arbitration, the Court declines to order piecemeal arbitration under Code of Civil Procedure section 1281.2 because the arbitrable and nonarbitrable claims depend on common issues and their separation creates a substantial probability of conflicting rulings. Because arbitration is not compelled, the requested stay is also **DENIED**.

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