TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, August 19, 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.

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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. 24CV02962, Looney v. MST Hospitality West Valley, Inc.

Plaintiff Gary Looney, DBA Collectronics ("Plaintiff" or "Judgment Creditor"), a debt collector, filed the complaint in this action against borrower MST Hospitality West Valley, Inc. ("Defendant" or "Judgment Debtor"). Plaintiff requested Receiver Landon McPherson ("Receiver") be appointed to take control of Defendant's liquor license and transfer it. This matter is on calendar for the Receiver's motion to approve his final account and report and for discharge.

The Motion is accompanied by a proof of service showing that service was made on Defendant and no oppositions were filed. The unopposed Motion is **DENIED WITHOUT PREJUDICE**.

I. Governing Law

Cal. R. Ct. ("CRC") 3.1184(a) provides that a receiver must present by noticed motion or stipulation of all parties: 1) a final account and report; 2) a request for discharge; and 3) a request for exoneration of the receiver's surety. No memorandum of points and authorities is required unless ordered by the court, notice must be given to "every person or entity known to the receiver to have a substantial, unsatisfied claim that will be affected by the order or stipulation, whether or not the person or entity is a party to the action or has appeared in it," and if any allowance of compensation for the receiver is claimed, "it must state in detail what services have been performed by the receiver or the attorney and whether previous allowances have been made to the receiver or attorney and the amounts." CRC 3.1184(b)-(d). "A receivership terminates upon completion of the duties for which the receiver was appointed; or at any other time upon court order." Ahart, Cal. Practice Guide: Enforcing Judgments and Debts (The Rutter Group 2020) ¶ 4:940. The Receiver is entitled to seek compensation for services rendered. CRC 3.1183, 3.1184. The amount of compensation awarded to a receiver is within the sound discretion of the trial court and will not be reversed on appeal in the absence of an abuse of discretion. *Melikian v. Aquila, Ltd*. (1998) 63 Cal.App.4th 1364, 1368.

II. Factual Application

The Court has reviewed the Receiver's motion and cannot locate an accounting of the Receiver's time or expenses. Accordingly, the Court lacks the necessary information to approve the Receiver's Final Report. The Court notes that Receiver's Ex Parte for Priority Payment (which is both within the record and attached to the motion) avers time expended of 26.95 hours but provides no billing statements thereon. This falls short of what the Court would expect in final discharge of the Receiver.

The Motion for Final Approval is therefore DENIED without prejudice for failure to present an accounting.

The Receiver 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).

2-3. 25CV01401, Michael Lennox v. Kuzma, M.D.

Plaintiff Michael Lennox ("Plaintiff"), both individually and as successor-in-interest to decedent Gerry Lennox ("Decedent"), filed the currently operative first amended complaint ("FAC") in this action against defendants Sutter Health ("Sutter Health"); Sutter Bay Hospitals ("Sutter Bay"); San Francisco Emergency Medical Associates ("SFEMA"); Kristin Kuzma, M.D. ("Kuzma"); Kristin Kuzma, Inc. ("KKI"); J. Richard Mendius, M.D ("Mendius", together with PFL, NFL and SRFL, "Defendants"), and Does 1-10 for alleged medical malpractice and elder abuse. The FAC contains causes of action for: 1) general negligence; and 2) Elder abuse under the Elder Abuse and Dependent Adult Protection Act (the "Act"). This matter is on calendar for Mendius's demurrer to the FAC pursuant to Cal. Code Civ. Proc. ("CCP") § 430.10(e) for failure to state facts sufficient to constitute a cause of action, as well as Mendius's motion to strike pursuant to CCP § 435 et seq. The motion to strike is **GRANTED with leave to amend**. The Demurrer is **SUSTAINED with leave to amend.**

I. Governing Law

A. Motions to Strike

A motion to strike lies where a pleading contains "irrelevant, false, or improper matter[s]" or is "not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." CCP § 436(b). However, "falsity," must be demonstrated by reference to the pleading itself of judicially noticeable matters, not extraneous facts. *See* CCP § 437. A motion to strike is also properly directed to unauthorized claims for damages, meaning damages which are not allowable as a matter of law. *See, e.g. Commodore Home Systems, Inc. v. Sup. Ct.* (1982) 32 Cal.3d 211, 214 (motion to strike lies against request for punitive damages when the claim sued upon would not support an award of punitive damages as a matter of law). And punitive damages may be stricken where the facts alleged do not rise to the level of "malice, fraud or oppression" required to support a punitive damages award. *See, e.g. Turman v. Turning Point of Central Calif., Inc.* (2010) 191 Cal.App.4th 53, 63.

B. <u>Pleading Punitive Damages and Other Damages</u>

Civil Code § 3294 authorizes the recovery of punitive damages in noncontract cases "where the defendant has been guilty of oppression, fraud, or malice…" "Malice" means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others. "Oppression" means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights. "Fraud" means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury. Civ. Code § 3294. A conscious disregard for the safety of others may constitute malice. *G. D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 28 ("*Searle*"). "When nondeliberate injury is charged, allegations that the defendant's conduct was wrongful, willful, wanton, reckless or unlawful do not support a claim for exemplary damages; such allegations do not charge malice." *Id.* at 29. "The central spirit of the exemplary damage statute, the demand for evil motive, is violated by an award founded upon recklessness alone." *Id.* at 32. "Conscious disregard of safety as an appropriate description of the Animus malus which may justify an exemplary damage award when nondeliberate injury is alleged." *Ibid.* "In order to justify an award of punitive damages on this basis, the plaintiff must establish that the defendant was aware of the probable dangerous consequences of his conduct, and that he wilfully and deliberately failed to avoid those consequences." *Taylor v. Superior Court* (1979) 24 Cal.3d 890, 895-896. In general, as with showing fraud, oppression, or malice sufficient to support punitive damages, while plaintiffs must plead facts, with respect to intent and the like, a "general allegation of intent is sufficient." *Unruh v. Truck Insurance Exchange* (1972) 7 Cal.3d 616, 632 (superseded by statute on other grounds).

C. <u>Demurrers</u>

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. CCP § 430.30(a). In the event a demurrer is sustained, leave to amend should be granted where the complaint's defect can be cured by amendment. *The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852. A demurrer for uncertainty pursuant to CCP § 430.10(f) will be sustained only where a defendant cannot reasonably respond, i.e. cannot reasonably determine what issues must be admitted or denied, or what counts or claims are directed against him or her. *Khoury v. Maly's of Calif., Inc.* (1993) 14 Cal.App.4th 612, 616; *see also A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 695 ("A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures.") (internal citation omitted). Furthermore, a demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. CCP § 430.30(a).

> "On a demurrer a court's function is limited to testing the legal sufficiency of the complaint. [Citation.] 'A demurrer is simply not the appropriate procedure for determining the truth of disputed facts.' [Citation.] The hearing on demurrer may not be turned into a contested evidentiary hearing through the guise of having the court take judicial notice of documents whose truthfulness or proper interpretation are disputable. [Citation.]"). *Bounds v. Sup. Ct.* (2014) 229 Cal.App.4th 468, 477-478. "(A) court cannot by means of judicial notice convert a demurrer into an incomplete evidentiary hearing in which the demurring party can present documentary evidence and the opposing party is bound by what that evidence appears to show."

Fremont Indem. Co. v. Fremont Gen. Corp. (2007) 148 Cal.App.4th 97, 115.

At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. *Serrano v. Priest* (1971) 5 Cal.3d 584, 591. Similarly, opinions, speculation, or allegations contrary to law or facts which are judicially noticed are also disregarded. *Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 702. Generally, the pleadings "must allege the ultimate facts necessary to the statement of an actionable claim. It is both improper and insufficient for a plaintiff to simply plead the evidence by which he hopes to prove such ultimate facts." *Careau & Co. v. Security Pac. Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1390; *FPI Develop., Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384. Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. *C.A. v. William S. Hart Union High School Dist*. (2012) 53 Cal. 4th 861, 872. Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6. "The distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree." *Burks v. Poppy Const. Co.* (1962) 57 Cal.2d 463, 473. Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.

D. <u>Elder Abuse</u>

Elder abuse is defined under the Welfare and Institutions Code to include "(p)hysical abuse, neglect, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering" and "(t)he deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering." Welfare and Institutions Code ("WIC") § 15610.07 (a)(1-2). Neglect is "(t)he negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise." WIC § 15610.57 (a)(1). "Neglect includes, but is not limited to, all of the following: (1) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter. (2) Failure to provide medical care for physical and mental health needs. . . . (4) Failure to prevent malnutrition or dehydration. *Id*. at (b).

Courts have consistently held that neglect is more than simple or even gross negligence. *Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 405 ("*Carter*"). "'(N)eglect' . . . does not refer to the performance of medical services in a manner inferior to 'the knowledge, skill and care ordinarily possessed and employed by members of the profession in good standing' (*Citation*), but rather to the failure of those responsible for attending to the basic needs and comforts of elderly or dependent adults, regardless of their professional standing, to carry out their custodial obligations." *Delaney v. Baker* (1999) 20 Cal.4th 23, 34 ("*Delaney*").

> The difficulty in distinguishing between "neglect" and "professional negligence" lies in the fact that some health care institutions, such as nursing homes, perform custodial functions *and* provide professional medical care. When, for example, a nursing home allows a patient to suffer malnutrition, defendants appear to argue that this was "professional negligence," the inability of nursing staff to prescribe or execute a plan of furnishing sufficient nutrition to someone too infirm to attend to that need herself. But such omission is also unquestionably "neglect," as that term is defined in former section 15610.57.

Delaney, supra, 20 Cal.4th at 34–35.

"(I)f the neglect is 'reckless,' or done with 'oppression, fraud or malice,' then the action falls within the scope of section 15657 and as such cannot be considered simply 'based on ... professional negligence' within the meaning of section 15657.2." *Id.* at 35.

To adequately plead neglect under a cause of action for elder abuse plaintiff must plead that "defendant: (1) had responsibility for meeting the basic needs of the elder or dependent adult, such as nutrition, hydration, hygiene or medical care (Citation); (2) knew of conditions that made the elder or dependent adult unable to provide for his or her own basic needs (Citation); and (3) denied or withheld goods or services necessary to meet the elder or dependent adult's basic needs, either with knowledge that injury was substantially certain to befall the elder or dependent adult (if the plaintiff alleges oppression, fraud or malice) or with conscious disregard of the high probability of such injury (if the plaintiff alleges recklessness)." *Carter, supra,* 198 Cal.App.4th at 406. The plaintiff must also allege causation, the facts constituting neglect, and "the causal link between the neglect and the injury 'must be pleaded with particularity,' in accordance with the pleading rules governing statutory claims." *Id.* at 406–407. "In order to obtain the Act's heightened remedies, a plaintiff must allege conduct essentially equivalent to conduct that would support recovery of punitive damages." *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 789.

In elder abuse causes of action, attorney's fees and costs are recoverable where the plaintiff is able to prove "neglect as defined in Section 15610.57 . . . and that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of this abuse". WIC § 15657. To permit recovery against a corporation under WIC § 15657, the standards under Civ. Code § 3294 (b) must be satisfied. WIC § 15657(c). "Notwithstanding (the Elder Abuse and Dependent Adult Civil Protection Act [the "Elder Abuse Act"]), any cause of action for injury or damage against a health care provider, as defined in Section 340.5 of the Code of Civil Procedure, based on the health care provider's alleged professional negligence, shall be governed by those laws which specifically apply to those professional negligence causes of action." WIC § 15657.2.

II. <u>Analysis</u>

A. <u>Demurrer</u>

Mendius argues that the conduct alleged does not rise to the level of neglect as required to plead a cause of action for elder abuse, and that the Complaint fails to allege facts sufficient to plead custody or control as is required by W&I § 15610.57. Plaintiff has filed no opposition.

To adequately plead neglect, the requirement is not to plead the provision of poor or inferior care, but the failure to provide basic needs and comforts to elder or dependent adults. *Delaney, supra,* 20 Cal.4th at 34. This failure to provide care must ring in terms that are "essentially equivalent to conduct that would support recovery of punitive damages." *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 789. The allegations here allege the final result of alleged neglect without alleging a course of conduct that supports any finding of recklessness as required to meet dependent adult abuse claims. Plaintiff alleges that the Defendants "breached the medical standard of care". See FAC, pg. 5. Plaintiff alleges that Defendants prescribed and administered drugs, including one to which Decedent was allergic. Defendants "ignored documented signs and symptoms of sepsis and septic shock, despite well-known basic emergency medicine that sepsis is one of the first considerations to be ruled out…" Defendants "knew or should have known" that timely treatment was important. This is clearly an allegation of **improper or untimely care**, as opposed to **failure to provide care**. The facts alleged here do not rise to conduct which amounts to a failure to provide care.

The Fourth District Court of Appeal provided the following summation of cases showing allegations sufficient to constitute neglect, rather than substandard medical care.

> Examples of cases involving conduct sufficiently egregious to warrant the award of enhanced remedies under the Elder Abuse Act include the following:
> - A skilled nursing facility: (1) failed to provide an elderly man suffering from Parkinson's disease with sufficient food and water and necessary medication; (2) left him unattended and unassisted for long periods of time; (3) left him in his own excrement so that ulcers exposing muscle and bone became infected; and (4) misrepresented and failed to inform his children of his true condition. (*Covenant Care, supra,* 32 Cal.4th at p. 778 [11 Cal.Rptr.3d 222, 86 P.3d 290].)
> - An 88–year–old woman with a broken ankle "was frequently left lying in her own urine and feces for extended periods of time"; and she developed pressure ulcers on her ankles, feet and buttocks that exposed bone, "despite plaintiff's persistent complaints to nursing staff, administration, and finally, to a nursing

home ombudsman." (*Delaney, supra,* 20 Cal.4th at pp. 27, 41 [82 Cal.Rptr.2d 610, 971 P.2d 986].)

- A facility caring for a dependent adult with a known condition causing progressive dementia, requiring nutrition and hydration through a gastrostomy tube, and subjecting her to skin deterioration, ignored a medical care plan requiring the facility to check the dependent adult's skin on a daily basis and failed to notify a physician when pressure ulcers and other skin lesions developed. (*Sababin, supra,* 144 Cal.App.4th at pp. 83–87, 90 [50 Cal.Rptr.3d 266].)
- A 78–year–old man admitted to a skilled nursing facility "was abused, beaten, unlawfully restrained, and denied medical treatment." (*Smith, supra,* 133 Cal.App.4th at p. 1512 [35 Cal.Rptr.3d 612].)
- The staff of a nursing home: (1) failed to assist a 90–year–old, blind and demented woman with eating; (2) used physical and chemical restraints to punish the elder and prevent her from obtaining help; and (3) physically and emotionally abused the elder by bruising her, "withholding food and water, screaming at her, and threatening her." (*Benun v. Superior Court* (2004) 123 Cal.App.4th 113, 116–117 [20 Cal.Rptr.3d 26] (*Benun*).)
- A skilled nursing facility: (1) failed to provide adequate pressure relief to a 76–year–old woman with severe pain in her left leg and identified as at high risk for developing pressure ulcers; (2) dropped the patient; (3) left "her in filthy and unsanitary conditions"; and (4) failed to provide her the proper diet, monitor food intake and assist with eating. (*Country Villa Claremont Healthcare Center, Inc. v. Superior Court* (2004) 120 Cal.App.4th 426, 430, 434–435 [15 Cal.Rptr.3d 315].)
- A physician "conceal[ed] the existence of a serious bedsore on a nursing home patient under his care, oppose[d] her hospitalization where circumstances indicate[d] it [was] medically necessary, and then abandon[ed] the patient in her dying hour of need." (*Mack v. Soung* (2000) 80 Cal.App.4th 966, 973 [95 Cal.Rptr.2d 830] (*Mack*).)

Carter v. Prime Healthcare Paradise Valley LLC (2011) 198 Cal.App.4th 396, 405–406.

Plaintiff has filed no opposition, but the allegations here fall short of neglect because the issue goes to the sufficiency, timing and competence of medical care, and not the failure to provide basic necessities of life which would constitute custodial care. Plaintiff accuses Defendants of providing some care to Decedent but *failed* to notice Decedent's allergic reaction to an administered drug.

The Court cannot read this allegation as being the type which constitutes neglect. The allegation is more in line with professional negligence. Neglect typically applies to basic necessities, and where it is applied to medical care, the facts must meet a level of egregiousness that is not present in the instant case. It is clear based on the allegations that Defendants provided various types of care to Decedent, but that care was unnecessarily delayed or restricted in scope. This does not appear to be a failure to provide care. The facts not rising to neglect, Plaintiff has failed to allege a cause of action.

Mendius also argues that the FAC fails to allege facts supporting custody or care as defined by the statute. In so doing, Mendius repeatedly argues facts related to his involvement not included in the FAC. These are appropriately disregarded as outside the scope of the demurrer. Despite this, the FAC does appear to be deficient in presenting factual pleading of custody or care of Decedent. A complaint must allege facts sufficient to show care or custody of an elder. *Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148, 163. Plaintiff alleges in a conclusory manner that Defendants had care or custody of Decedent, but no facts to that effect are provided in the FAC. Plaintiff has not alleged facts sufficient to show that Mendius had care of custody of Decedent.

Therefore, Defendants' demurrer to the second cause of action is SUSTAINED with leave to amend.

B. Motion to Strike

Mendius seeks to strike punitive damages from the Complaint, as Plaintiff has failed to plead sufficient facts to support these contentions.

Mendius first argues that Plaintiff has failed to meet the requirements under CCP § 425.13 for punitive damage claims in cases of medical malpractice. Again, Mendius invites the Court to consider matters not within the pleading and therefore are not considered. The Court notes that the FAC has a cause of action for elder abuse. Therefore, Defendants; argument is not alone prevailing, as the requirements of CCP § 425.13 have no application to claims under the Act, even when asserted against healthcare providers. *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 783; *cf.* W&I § 15657.2. Mendius must address the sufficiency of the elder abuse cause of action to prevail on the motion to strike. As the Court has already addressed above, Plaintiff fails to allege the elements of elder abuse with sufficient ultimate facts.

Defendants then argue that the FAC does not meet any of the requirements under Civ. Code § 3294. This is persuasive. Plaintiff does not meet the pleading requirements delineated by CCP § 3294 to plead punitive damages, and as a result, they fail to adequately plead the requirements under WIC § 15657.

Civ. Code § 3294 (a), drawn into application by *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, requires Plaintiff to plead facts "essentially equivalent to conduct that would support recovery of punitive damages." *Id*. at 789. Plaintiff must plead facts that support a finding of "recklessness, oppression, fraud, or malice". WIC § 15657. Additionally, Plaintiff must adequately allege facts which constitute abuse under WIC § 15610.07. "'Recklessness' refers to a subjective state of culpability greater than simple negligence, which has been described as a 'deliberate disregard' of the 'high degree of probability' that an injury will occur." *Delaney, supra,* 20 Cal.4th at 31. Not only this, but the conduct also alleged must not be medical in nature, instead relating to "attending to the basic needs and comforts of elderly or dependent adults". *Delaney, supra,* 20 Cal.4th at 34. Plaintiff must plead sufficient facts to indicate that the actions alleged are both neglect and that the neglect is reckless, or done with oppression, fraud or malice, otherwise it is just garden variety malpractice. *Delaney, supra,* 20 Cal.4th at 34–35. Even allegations which rise to gross negligence are insufficient. *Carter, supra,* 198 Cal.App.4th at 405. The Court explores this issue further in section III (B) (3) below. Plaintiff has failed to plead the elements of dependent adult abuse. As a result, the punitive damages are inadequately supported, because the underlying causes of action are infirm.

As a result, the Court finds that the requests for recovery of punitive damages under WIC § 15657 are inadequately supported by the facts. They are properly struck. The Motion to Strike is GRANTED with leave to amend.

III. Leave to Amend

This is the first demurrer ruled upon by the Court. Based on the deficiencies identified, the Court cannot presume at this juncture that Plaintiff cannot amend sufficiently to cure the defects. Leave to amend is properly granted. Plaintiff has 40 days from notice of entry of this order to file their amended complaint.

IV. Conclusion

Based on the foregoing, the Motion to Strike is **GRANTED WITH LEAVE TO AMEND**.

The demurrer is **SUSTAINED WITH LEAVE TO AMEND**. Plaintiff shall file his amended complaint within forty (40) days of notice of entry of the order.

Mendius 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).

4. 25CV02625, Guerrero v. Apple American Group LLC

Plaintiff Azucena Guerrero ("Plaintiff"), Plaintiff Shantell Reed and Chad Schisler ("Plaintiff"), individually and on behalf of all others similarly situated, including employees pursuant to the California Private Attorney General Act, filed the complaint against dendants Apple American Group, LLC, Flynn Group (together "Defendants"), and Does 1-100 for causes of action arising out of Defendants' alleged Labor Code violations (the "Complaint").

This matter was originally set for hearing on July 1, 2026, for the petition (styled as a "motion") by the Defendants to compel arbitration pursuant to Federal Arbitration Act ("FAA"), 9 USC §§ 1-16. The Court issued a tentative ruling a day prior to this hearing date continuing the matter to allow for an evidentiary hearing to take place as to the factual circumstances involved in the execution of the arbitration agreement and for additional briefing by the application of Labor Code §232.5 on the issue of substantive unconscionability. Upon full consideration of the motion, opposition, supporting declarations, exhibits, testimonial and documentary evidence provided at the evidentiary hearing, the Court now **DENIES** Defendants motion to compel arbitration.

I. Facts and Procedure

This matter arises out of an employment relationship between the parties. Plaintiff worked for Defendants starting in 2017. Plaintiff digitally signed acknowledgements of receipts affirming that she received and reviewed the "Flynn Group Part Time Handbook, January 2024" on March 20, 2024. Petkovic Decl., Ex. B (the "Handbook"). The Handbook contains a section entitled "Dispute Resolution Program Booklet" (the "DRP"). Handbook, pgs. 26-32. That section is also restated in Spanish. Handbook, pgs. 33-39. The DRP contains a four-step process for addressing issues and claims by employees. It also states, in bold, capital letters: "**THIS PROGRAM IS A CONDITION OF YOUR EMPLOYMENT AND IS THE MANDATORY AND EXCLUSIVE MEANS BY WHICH DISPUTES BETWEEN YOU AND THE COMPANY MAY BE RESOLVED**…" The fourth step of the DRP is a mandatory arbitration provision. Handbook, pgs. 28-32 (the "Arbitration Agreement"). It delineates the various rights and responsibilities of the parties in the context of any dispute to arbitrate matters, addresses what claims are subject to arbitration, and waives Plaintiff's ability to bring "collective representative, or class-wide" claims. Handbook, pg. 29.

The Handbook also contains a "Non-Solicitation/Disclosure Agreement/Administrative Employees". Handbook, pg. 44-46 (the "NDA"). Therein, Defendants are granted various rights and claims if Plaintiff violates the requirement to not disclose any "confidential or proprietary information". Handbook, pg. 44. The Handbook is also accompanied by an Acknowledgement and a "Receipt" of the DRP, each of which Plaintiff signed within a period of 50 seconds. The "Receipt" restates and summarizes, but does not fully restate, many of the provisions of the Arbitration Agreement.

In her Declaration in Opposition, Plaintiff contends that there was insignificant time provided and supervisory pressures while reviewing the Handbook, and a lack of understanding of the contents. Plaintiff avers that she is primarily a Spanish speaker, and that she was not even aware that there was a section of the Handbook in Spanish. Defendants in turn present evidence regarding Plaintiff's prior communications in English and contesting Plaintiff's representations of the signing circumstances.

Defendants contend, both in the Arbitration Agreement and the Petition, that they are engaged in interstate commerce, and that therefore the Arbitration Agreement is governed by the Federal Arbitration Act ("FAA").

II. Governing Law

A. Compelling Arbitration

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. Federal Arbitration Act ("FAA")

Under the Federal Arbitration Act ("FAA"), "(a) written provision in … a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, … shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract…" 9 U.S.C § 2. "This saving clause permits agreements to arbitrate to be invalidated by 'generally applicable contract defenses, such as fraud, duress, or unconscionability,' but not by defenses that apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue." *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 339 ("*Concepcion")*, quoting *Doctor's Associates, Inc. v. Casarotto* (1996) 517 U.S. 681, 687.

The FAA supports a general policy favoring arbitration. *Granite Rock Co. v. International Broth. of Teamsters* (2010) 561 U.S. 287, 302. However, this policy only reflects the general deference given to the terms of contracts within courts and does not establish special "arbitration-preferring procedural rules". *Morgan v. Sundance, Inc.* (2022) 596 U.S. 411, 418; citing *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.* (1983) 460 U.S. 1, 24.

Under the Supremacy Clause of the U.S. Constitution, "the FAA preempts contrary state law." *Ferguson v. Corinthian Colleges, Inc.* (9th Cir. 2013) 733 F.3d 928, 932. In cases involving the FAA, state statutes that invalidate arbitration clauses specifically cannot be applied. *Allied-Bruce Terminix Companies, Inc. v. Dobson* (1995) 513 U.S. 265, 281. Nor may state courts do what the legislature cannot, and create jurisprudence which discriminates against arbitration specifically. *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 341. "What States may not do is decide that a contract is fair enough to enforce all its basic terms (price, service, credit), but not fair enough to enforce its arbitration clause." *Allied-Bruce Terminix Companies, Inc. v. Dobson* (1995) 513 U.S. 265, 281.

C. Contract Construction

Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together. Civ. Code § 1642. "According to that rule, documents executed as part of a single transaction are construed together, even if they do not expressly refer to one another." *Alberto v. Cambrian Homecare* (2023) 91 Cal.App.5th 482, 490.

"An interpretation which gives effect is preferred to one which makes void." Civ. Code, § 3541; see also *City of San Diego v. Rider* (1996) 47 Cal.App.4th 1473, 1490 ("Under basic rules of statutory and contract construction, provisions subject to both lawful and unlawful interpretations are to be interpreted in a manner which makes them lawful."). "Words in a contract which are wholly inconsistent with its nature, or with the main intention of the parties, are to be rejected." Civ. Code, § 1653. "In cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist." Civ. Code, § 1654. " ' "[A]ll applicable laws in existence when an agreement is made, which laws the parties are presumed to know and to have had in mind, necessarily enter into the contract and form a part of it, without any stipulation to that effect, as if they were expressly referred to and incorporated." [Citation.]' " *Edwards v. Arthur Andersen LLP* (2008) 44 Cal.4th 937, 954, quoting *Torrance v. Workers' Comp. Appeals Bd.* (1982) 32 Cal.3d 371, 378. "The purpose of construction is to explain and not add or subtract terms." *Katz v. Haskell* (1961) 196 Cal.App.2d 144, 158.

D. 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. "Arbitration contracts imposed as a condition of employment are typically adhesive." *OTO, supra,* 8 Cal.5th at 126. Once the court determines the contract is one of adhesion, the question becomes whether the circumstances of the contract's formation created such oppression or surprise that the overall fairness must be subject to closer scrutiny. *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.

Both pre-employment and continued employment arbitration contracts often represent disproportionate bargaining power for all but the most sought-after employees, as the employer has substantial advantages as a result of economic pressures. *OTO supra,* 8 Cal.5th at 127.

2. *Substantive Unconscionability*

"Substantive unconscionability pertains to the fairness of an agreement's actual terms and to assessments of whether they are overly harsh or one-sided." *Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 246. Mere unequal benefit is insufficient to show substantive unconscionability, rather, the terms must be "so one-sided as to shock the conscience." *24 Hour Fitness, Inc. v. Superior Court* (1998) 66 Cal.App.4th 1199, 1213. Though many factors go into determining substantive unconscionability, the primary consideration in assessing substantive conscionability is mutuality. *Abramson, 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 both parties from arbitration, if those exempt claims unduly benefit the employer such that employee is now without a forum to seek recourse or the claims are deemed waived, then there is substantive unconscionability.

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.

III. Analysis

Defendants have moved to compel arbitration under the Arbitration Agreement. Defendants argue that the Court must compel arbitration without examining whether the arbitration agreement is enforceable, because the Arbitration Agreement delegates decisions regarding arbitrability to the arbitrator. Defendants contend that regardless of the nature of Plaintiff's claims, Plaintiff waived her ability to bring a class action as part of the Arbitration Agreement, and that Plaintiff's individual PAGA claims must be arbitrated.

Plaintiff opposes Defendant's motion averring that the Arbitration Agreement is both procedurally and substantively unconscionable, and therefore it should not be enforced.

As a preliminary matter, Defendants have shown that an arbitration agreement exists, and that it was Plaintiff that signed it. No additional evidence was presented at the evidentiary hearing on August 11, 2026, (the "Hearing") to refute the existence of a dully executed agreement. With this issue resolved the Plaintiff bears the burden of showing that the contract should not be enforced, and Plaintiff thereon relies on arguments that the contract is procedurally and substantively unconscionable.

A. The FAA Applies

Defendants, in moving to compel arbitration, argue that the arbitration agreement is governed by the Federal Arbitration Act, as the contract sufficiently relates to interstate commerce. For this proposition, Plaintiff offers no substantive argument to the contrary. The analysis is therefore controlled by the FAA.

Defendants also argue that the Supreme Court's decision in *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 340 ("*Concepcion*"), states that due to the supremacy clause, the FAA requires this Court to dismiss Plaintiff's class action claims. This is only true if the Court finds that the agreement is not unconscionable. *Concepcion* is absolutely clear that traditional defenses to contract such as the unconscionability analyzed in *Armendariz*, are allowed under 9 USC § 2. *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 339. California jurisprudence has continued to apply *Armendariz* without incident since. See *Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478, 493.

Similar issues apply to the PAGA claims, with distinguishable results. An aggrieved employee's "individual" PAGA claims *are* required to be arbitrated under the FAA (assuming the agreement is not unconscionable). *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639, 660. However, an aggrieved employee's representative claims stand in the shoes of the CLRB and accordingly cannot be contracted away through arbitration agreement between the aggrieved employee and the employer. *Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104, 1120. Accordingly, if arbitration is compelled, the Court *must* order individual PAGA claims to arbitration and stay the representative claims to be litigated after the conclusion of arbitration. *Leeper v. Shipt, Inc.* (2024) 107 Cal.App.5th 1001, 1012.

If Plaintiff can show procedural and substantive unconscionability each in sufficient amounts to justify the defense to enforcement of the contract, she should not be bound to its terms.

B. The Handbook is Properly Taken Together

Plaintiff argues the entire Handbook must be taken together under Civil Code § 1642, and accordingly the terms contained in the NDA are relevant for analyzing the unconscionability of the Arbitration Agreement. Defendant argues that Plaintiff's authorities are inapposite, but this is not persuasive. Plaintiff's citation to *Alberto v. Cambrian Homecare* (2023) 91 Cal.App.5th 482, particularly is on point. In that case, the trial court, and the court of appeal in affirming, found that a confidentiality agreement and arbitration agreement had to be read together when determining whether the arbitration agreement was unconscionable. *Id*. at 490. "[U]nconscionability in the Confidentiality Agreement can, and does, affect whether the Arbitration Agreement is also unconscionable. To hold otherwise would let [defendant] impose unconscionable arbitration terms, and then avoid a finding of unconscionability because it put the objectionable terms in a (formally) separate document." *Alberto v. Cambrian Homecare* (2023) 91 Cal.App.5th 482, 491. Defendants, having presented Plaintiff with a 52-page handbook, covering a variety of subjects, with agreement to all those therein as a requirement of her employment, cannot now selectively disclaim a few pages here and there as a "separate agreement" through language purporting to separate the parts. They all relate to Plaintiff's employment. They were all required. Defendants argue that claims under the NDA are subject to the Arbitration Agreement, but this is further reason why the provisions *must* be read together. The Arbitration Agreement purports to dictate the forum in which the parties are to have disputes adjudicated, and the NDA creates claims which Defendants might bring within that forum. They *are* related and must be read as such.

C. The Delegation Clause is Unambiguous

While Plaintiff avers that the delegation clause is made ambiguous by references to court actions contained elsewhere in the Handbook, they are not persuasive. First, the delegation clause is, while buried mid-paragraph within page three of the arbitration terms, clear in its language. "The arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, arbitrability, applicability, enforceability or formation of the agreement to arbitrate including, but not limited to, any claim that all or any part of the agreement to arbitrate is void and voidable."

Plaintiff attempts to cloud the issue by making reference to other provisions within the Handbook, but the Supreme Court was clear in stating that arbitration delegation clauses are to be reviewed narrowly. *Rent-A-Center, West, Inc. v. Jackson* (2010) 561 U.S. 63, 75. Moreover, Plaintiff is generally unpersuasive in arguing that the NDA contains contrary terms that confuse the possible forum. The NDA does not contain language indicating that it allows Defendants to proceed to Court as a forum in preference over arbitration, as required by the Arbitration Agreement. Plaintiff's citation to *Mondragon v. Sunrun Inc.* (2024) 101 Cal.App.5th 592, is unpersuasive. Here, there is an express delegation provision not present in *Mondragon*, which relied on the AAA rules that were not included with the agreement for the principle that the arbitrator had the power to decide arbitrability. *Id*. at 608 ("Had the agreement stated the arbitrator would decide all disputes regarding the scope of the arbitration agreement, the analysis might be different."). The limited analysis here indicates that the delegation was clear and unambiguous based on the express language of the delegation provision.

D. Unconscionability of the Delegation Clause

Defendants oversimplify the enforceability of delegation clauses. While Defendants are correct that delegation clauses *may* place the issue of unconscionability as delegated to the arbitrator, "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. The principle underlying this goes to the contractual core of arbitration agreements. If the agreement was never conscionable in the first place, how can Plaintiff have assented within the agreement to delegation? This is narrowly interpreted however, and the question is whether *the delegation clause itself* is unconscionable. *Pinela v. Neiman Marcus Group, Inc.* (2015) 238 Cal.App.4th 227, 256.

Turning to the substance, Plaintiff first avers that there is high procedural unconscionability. Plaintiff provides significant testimony regarding the circumstances under which she signed the Arbitration Agreement. In relevant part: Guerrero's primary language is Spanish. Plaintiff's Decl. ¶ 3. At the Hearing Guerrero was provided with a Spanish Interpreter and any English used during her testimony was rudimentary or conversational at best. Plaintiff also explained how work-related documents were processed by "[M]anagers [who] would direct me to open the link on my phone and sign where indicated. They would point to or move through the screen to show me where to sign. I was not given a meaningful opportunity to stop and carefully read the documents before signing." Plaintiff's Declaration ¶ 10. At the Hearing Guerrero further explained that all work-related documents, including those at issue here, were signed during scheduled shift times.

On March 20, 2024, Defendant, by and through its manager, requested that Guerrero read the "Flynn Group Part Time Handbook, January 2024". Petkovic Decl., Ex. B (the "Handbook"). The Handbook is 52-pages long, only 6-pages of which are in Spanish. Those 6 pages describe the arbitration program rules. Petkovic Decl., Ex. B at pg. 33-39. It is unclear at what time Guerrero began reading the Handbook, but her digital 'acknowledgment' signature appears on pg. 52 and is date/time stamped at "03/20/2024 02:58:53".

Defendant also requested Guerrero to read and sign "Receipt of Dispute Resolution Program

Booklet and Agreement To Abide By Dispute Resolution Program". Petkovic Decl., Ex. C (the "Arbitration Agreement"). The 3-page Arbitration Agreement was provided in English and Spanish. Guerrero's digital 'acknowledgment' signature is date/time stamped at "03/20/2024 02:59:43". Petkovic Decl., Ex. C, pg. 3. This document was digitally signed 50 seconds after Guerrero's signed acknowledgement of the Handbook. It appears highly unlikely that even a proficient English or Spanish reader would be able to read, let alone grasp, the content of the 3-page Arbitration Agreement in 50 seconds. This is a higher marker for procedural unconscionability.

At the Hearing Guerrero identified two managers (Ambrienta [*sp*] Gonzalez and Cecilia Santos) who would ask her to sign work-related documents. Though Guerrero does not recall which of these 2 managers she interacted with on March 20, 2024, she did indicate that both had the practice of approaching her during her shift, she is a cook at Defendant restaurant and asked her to read and sign these documents. Guerrero Decl. ¶ 8. Such documents were always presented on a phone. Guerrero Decl. ¶ 8. This made reading the documents even more difficult. Plaintiff was not given the opportunity to have the Arbitration Agreement reviewed by an attorney. Prior to signing, Defendant never explained to her what the Arbitration Agreement meant, whether she was waiving any rights, what a class-action representative action were, whether any of these terms could be negotiated, or whether she could simply refuse to sign. Guerrero Decl. ¶ 21, ¶ 22, ¶ 23, ¶ 24, ¶ 25. This obviously presents enormous procedural unconscionability. *Cabatit v. Sunnova Energy Corp.* (2020) 60 Cal.App.5th 317, 324. The scope of the procedural unconscionability present here is extraordinarily high.

However, on Reply Defendants aver that Plaintiff misrepresents the circumstances of her signing of the agreement. Plaintiff's manager, Cecelia Santos, submitted a declaration stating her practice when informing "employees—including Ms. Guerrero" to review and sign documents, averring that "While I understand that Ms. Guerrero now contends that she was not given a meaningful opportunity to carefully read the documents before signing, I never did or said anything to give her that impression." Declaration of Cecilia Santos in Reply, ¶ 4. However, at the Hearing it became clear to the Court that Ms. Santos declaration statements simply outlined her general practice. She had no specific recollection of interacting with Guerrero on March 20, 2024. Defendants also point out that there is a Spanish version of the Arbitration Agreement included in the Handbook immediately after the English version. Again, even acknowledging this fact, Defendant presented no evidence that a review time of 50 seconds is sufficient to grasp the terms of the Arbitration Agreement, or alternatively, to refute Guerrero's claim that she was rushed by Defendant's managers to sign the documents.

Defendants also aver that the current version of the Arbitration Agreement is largely redundant of the prior version, but Defendants fail to be forthcoming about any changes, and there is no evidence that the earlier version was not subject to the same alleged pressures in signing as the current version. Moreover, at that juncture, it is a collateral matter. Finally, Defendant reiterated the declaratory statements made by Tina Meyer, Defendant's Human Resources Business Partner. Meyer Decl. ¶ 1. Meyer had email communications with Guerrero on HR issues, some of which were attached as exhibits. In these email Guerrero appears as a highly competent English writer. Guerrero's emails have proper format, syntax, and display a high level of proficiency in the English language. Meyer Decl., Ex. A. When pressed on this issue Guerrero explained that all email communications she generated were done with the assistance of her daughters who are English speakers. Guerrero would simply explain to them her thoughts and the daughters wrote the emails. Defendant had no evidence to rebut Guerrero's claim on this issue.

In terms of further procedural unconscionability, the contract is plainly and obviously one of adhesion. Defendants' argument to the contrary on reply is nothing short of a misrepresentation of the terms of their own contract. The first page of the Dispute Resolution Booklet states, in bold, all capital writing: "**THIS PROGRAM IS A CONDITION OF YOUR EMPLOYMENT AND IS THE MANDATORY AND EXCLUSIVE MEANS BY WHICH DUISPUTES BETWEEN YOU AND THE COMPANY MAY BE RESOLVED**…" It is not, as Defendants aver, "voluntary" for the purposes of analyzing contracts of adhesion. Second, employment contracts are very often adhesive in nature purely due to the financial pressure to which the employee is subject. *OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 127. Plaintiff's choices were to agree to the form, take it or leave it contract, or lose her employment. Defendants' false and unsupported contention to the contrary draws significant concern.

Other less weighty factors also remain relevant and uncontested. The rules of the arbitration were not provided but instead hidden behind hyperlinks. The delegation provision is buried mid-paragraph under a heading which gives little indication that delegation may be at issue. The Arbitration Agreement is a few pages ensconced within 44 substantive pages of the Handbook. The text of the agreement is small, this is fact is likely more significant here where the review of the documents took place over a phone screen. There is moderate procedural unconscionability absent any evidence of the conditions under which Plaintiff signed the agreement.

In turn, Plaintiff is also persuasive that there is some substantive unconscionability in the delegation agreement. Specifically, Plaintiff avers that the provision regarding the recovery of fees is one sided, and they are correct for more reasons than they express. Plaintiff cites to *Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478, 507, averring that adding fee provisions for successfully compelling arbitration was a substantively unconscionable provision. The *Ramirez* court (while obviously correct), does not address an additional reason why this provision is substantively unconscionable. In moving to compel arbitration, fees are normally only capable of being awarded against a drafting party for breaching an arbitration agreement. CCP § 1281.99. To allow the drafter to shift the fees to the signer under the auspices of a "bilateral" provision, while Defendants were *always* obligated to pay fees in such circumstances, is not truly bilateral. Shifting these fees is a substantively unconscionable provision.

Moreover, severance of such a provision would accomplish nothing, Defendants having already received a substantial portion of the benefit in disincentivizing Plaintiff from bringing the matter before the Court. Severance at this point would not eliminate the prejudice of the unconscionable provision. The Court cannot eliminate the need for an evidentiary hearing through severing the unconscionable provision.

E. The Arbitration Agreement is Unconscionable

The same analyses applicable to the procedural unconscionability of the delegation clause largely apply to the balance of the Arbitration Agreement. While the location of the delegation clause is no longer significantly relevant, the arbitration provision is listed as the fourth step of a four-step process under the dispute resolution heading, still presented in small text. This is less unconscionable than the delegation provision individually, but still difficult to read, especially when expected to review on a phone with a supervisor observing.

Plaintiff's prior argument regarding shifting of fees remains persuasive as to substantive unconscionability under *Ramirez.* The additional factors to which Plaintiff points are less persuasive. Plaintiff also argues that the preceding three steps of the dispute resolution process give Defendants an unfair "peek" at claims. Defendants point out that the Dispute Resolution Process contains language stating that those provisions are optional, and the arbitration provision remains the only mandatory portion of the dispute resolution process. Plaintiff is persuasive that the Dispute Resolution Process contains at minimum misleading language regarding whether Plaintiff must perform the preceding steps. While the Open Door Policy, the Executive Review, and the Mediation steps all use language such as "may" or "elect", the Arbitration Agreement implies that these are mandatory steps before arbitration. Under the "Criteria for Mass Arbitration", it states:

> "Each of the individual claimants must have exhausted the applicable mandatory program steps described in the Dispute Resolution Program Booklet above prior to filing a demand for arbitration. If any claimant files a demand for arbitration without fully complying with the applicable mandatory program steps, that claimant shall be considered in breach of the DRP. In the event of such breach, the non-breaching party may seek enforcement of the DRP in a court of competent jurisdiction, and, except where otherwise prohibited by applicable law, entitled to recovery of reasonable attorneys' fees and costs incurred by such enforcement action"

Handbook, pg. 31.

This creates doubt and substantive unconscionability in the form of threatening employees with fees if they don't perform the preceding steps, which Plaintiff points out does not toll any claims. Procedural adherence may result in an unfair advantage, and limits or prejudices the claims brought by employees. Accordingly, it is mildly substantively unconscionable in effect.

Plaintiff also argues that the NDA must be read with the Arbitration Agreement and that the substantively unconscionable terms of the NDA must be considered. Plaintiff's contention that the choice of law provision applicable to the NDA is substantively unconscionable is dependent and interwound with their argument that the subjects covered by the NDA. Choice of law provisions are, generally, enforceable absent a "substantial injustice". *Pinela v. Neiman Marcus Group, Inc.* (2015) 238 Cal.App.4th 227, 247. However, if Plaintiff can show that the provision violates Labor Code § 232.5, the application of Delaware law to any such section becomes anathematic to fair adjudication of claims. Therefore, this adds additional prejudice *if* the NDA prevents Plaintiff from "disclosing" "working conditions."

The question then becomes whether the NDA violates Plaintiff's rights under Labor Code §

232.5. Labor Code § 232.5 protects Plaintiff's right to discuss "working conditions", a term which has been construed broadly. In turn, the NDA gives Defendants a cause of action if Plaintiff shares *any* of the following:

> any and all non-public information that any of the Flynn Applebee's Companies and/or their employees, agents, and/or representatives have disclosed or may disclose to me, including but not limited to information related to: guests, prospective guests, vendors, personnel, recruiting, retention, internal communications, events, or meetings, or any other research, development, operations, marketing, transactions, regulatory affairs, discoveries, inventions, methods, processes, data, strategies, plans, pricing, prospects, know-how and ideas, whether tangible or intangible, and including all copies, analyses and other derivatives thereof…

Handbook, pg. 44.

Neither party is particularly persuasive on this point. Plaintiff argues that the definitions under the NDA of protected information are so broad, they clearly encompass protected working conditions. Defendants in turn argue that the provision must be read on a manner which does not render it illegal under Civil Code § 1643. Defendants attempt to draw attention to the term "non-public", but nothing within Labor Code § 232.5 can be construed as making working conditions "public" so much as capable of being publicized. Given that the NDA specifically threatens Plaintiff with reprisals should such publication occur, Plaintiff's position of the implied threat of action is understandable. Plaintiff is not truly offered an opportunity to address this, as Defendants offer it for the first time on Reply after Plaintiff argues in Opposition. In contrast, Defendants fail to be persuasive that their use of vague and broad language which *would* encompass matters protected by the statute are not "rewriting" the language of the NDA in an impermissible manner. *Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478, 503. The additional briefing provided by the parties did not change the Court's initial observations. Based on the foregoing, the Court still finds there is modest substantive unconscionability within the Arbitration Agreement to support its ultimate finding in this matter.

F. Stay

Defendant's motion for a stay of the present proceedings while Plaintiff's individual claims are arbitrated is DENIED as MOOT.

IV. Conclusion

The Court now **DENIES** Defendants' motion to compel arbitration.

Plaintiff 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).

5. 25CV06795, Rainford v. Perez

Plaintiff Maranda Rainford ("Plaintiff") filed the complaint (the "Complaint") against defendants Empowering Excellent Communities & Establishing Leader, Inc. ("EEC"), Redwood Developmental Services, Inc. ("RDS"), Roy Perez ("Perez", together with EEC and RDS, "Defendants"), and Does 1-50. EEC has filed a cross-complaint against Plaintiff, Supportive Steps Services, Inc. (together "Cross-Defendants"), and Roes 1-50.

This matter is on calendar for Cross-Defendants' demurrer to the first and second causes of action within the FAC pursuant to Cal. Code Civ. Proc. ("CCP") § 430.10(e) for failure to state facts sufficient to constitute a cause of action, and for uncertainty under CCP § 430.10(f).

I. Legal Standards

A. Motions to Strike

A motion to strike lies where a pleading contains "irrelevant, false, or improper matter[s]" or is "not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." CCP § 436(b). However, "falsity," must be demonstrated by reference to the pleading itself of judicially noticeable matters, not extraneous facts. *See* CCP § 437. A motion to strike is also properly directed to unauthorized claims for damages, meaning damages which are not allowed as a matter of law. *See, e.g. Commodore Home Systems, Inc. v. Sup. Ct.* (1982) 32 Cal.3d 211, 214 (motion to strike lies against request for punitive damages when the claim sued upon would not support an award of punitive damages as a matter of law). And punitive damages may be stricken where the facts alleged do not rise to the level of "malice, fraud or oppression" required to support a punitive damages award. *See, e.g. Turman v. Turning Point of Central Calif., Inc.* (2010) 191 Cal.App.4th 53, 63.

B. Punitive Damages

Civil Code § 3294 authorizes the recovery of punitive damages in noncontract cases "where the defendant has been guilty of oppression, fraud, or malice…" "Malice" means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others. "Oppression" means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights. "Fraud" means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury. Civ. Code § 3294. "In addition to the requirement that the operative complaint set forth the elements as stated in section 3294, it must include specific factual allegations showing that defendant's conduct was oppressive, fraudulent, or malicious to support a claim for punitive damages." *Today's IV, Inc. v. Los Angeles County Metropolitan Transportation Authority* (2022) 83 Cal.App.5th 1137, 1193.

A conscious disregard for the safety of others may constitute malice. *G. D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 28 ("*Searle*"). "When nondeliberate injury is charged, allegations that the defendant's conduct was wrongful, willful, wanton, reckless or unlawful do not support a claim for exemplary damages; such allegations do not charge malice." *Id.* at 29. "The central spirit of the exemplary damage statute, the demand for evil motive, is violated by an award founded upon recklessness alone." *Id.* at 32. "Conscious disregard of safety as an appropriate description of the Animus malus which may justify an exemplary damage award when nondeliberate injury is alleged." *Ibid.* "In order to justify an award of punitive damages on this basis, the plaintiff must establish that the defendant was aware of the probable dangerous consequences of his conduct, and that he wilfully and deliberately failed to avoid those consequences." *Taylor v. Superior Court* (1979) 24 Cal.3d 890, 895-896. In general, as with showing fraud, oppression, or malice sufficient to support punitive damages, while plaintiffs must plead facts, with respect to intent and the like, a "general allegation of intent is sufficient." *Unruh v. Truck Insurance Exchange* (1972) 7 Cal.3d 616, 632 (superseded by statute on other grounds).

"There are, however, few situations in which claims for punitive damages are predicated on ... conscious disregard of the rights or safety of others and in which no intentional torts are alleged." *Central Pathology Service Medical Clinic, Inc. v. Superior Court* (1992) 3 Cal.4th 181, 191. "'(M)alice' requires more than a 'willful and conscious' disregard of the plaintiffs' interests. The additional component of 'despicable conduct' must be found." *College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 725. Despicable conduct is conduct "so vile, base, miserable, wretched or loathsome that it would be looked down on by ordinary decent people." *Scott v. Phoenix Schools, Inc.* (2009) 175 Cal.App.4th 702, 715 (internal quotations omitted). Despicable conduct has been described as eliciting the same type of outrage frequently associated with the commission of crimes. *Ibid*.

> The definition of malice has not always included the requirement of willful and despicable conduct. Prior to 1980, section 3294 did not define malice. It was construed to mean malice in fact, which could be proven directly or by implication (*Taylor v. Superior Court* (1979) 24 Cal.3d 890, 894, 157 Cal.Rptr. 693, 598 P.2d 854 (*Taylor*); 6 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, § 1335, p. 793) and could be established by conduct that was done only with "a conscious disregard of the safety of others...." (*Taylor, supra,* at p. 895, 157 Cal.Rptr. 693, 598 P.2d 854.) Relying on the reasoning in *G.D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 122 Cal.Rptr. 218, the *Taylor* court recognized that recklessness alone is insufficient to sustain an award of punitive damages because " '[t]he central spirit of the exemplary damage statute, the demand for evil motive, is violated by an award founded upon recklessness alone.' " (24 Cal.3d at p. 895, 157 Cal.Rptr. 693, 598 P.2d 854.) The court concluded that "[i]n order to justify an award of punitive damages on this basis, the plaintiff must establish that the defendant was aware of the probable dangerous consequences of his conduct, and that he willfully and deliberately failed to avoid those consequences." (*Id.* at pp. 895–896, 157 Cal.Rptr. 693, 598 P.2d 854.) Applying that test, the Supreme Court directed the trial court to reinstate a claim for punitive damages where it was alleged the defendant was operating a motor vehicle while intoxicated, under circumstances which disclosed a conscious disregard of the probable dangerous consequences.[14]

> In 1980, the Legislature amended section 3294 by adding the definition of malice stated in *Taylor, supra,* 24 Cal.3d 890, 157 Cal.Rptr. 693, 598 P.2d 854. (Stats.1980, ch. 1242, § 1, pp. 4217–4218; *College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 713, 34 Cal.Rptr.2d 898, 882 P.2d 894.) That definition was amended in 1987. As amended, malice, based upon a conscious disregard of the plaintiff's rights, requires proof that the defendant's conduct is “despicable” and “willful.” (Stats.1987, ch. 1498, § 5.) The statute's reference to “despicable conduct” represents “a new substantive limitation on punitive damage awards.” (*College Hospital, Inc. v. Superior Court, supra,* 8 Cal.4th at p. 725, 34 Cal.Rptr.2d 898, 882 P.2d 894.)

Lackner v. North (2006) 135 Cal.App.4th 1188, 1210–1211.

Even before the amendment of Civil Code § 3294, courts have elucidated that “(t)he central spirit of the exemplary damage statute, the demand for evil motive, is violated by an award founded upon recklessness alone.” *G. D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 32. “In order to justify an award of punitive damages on this basis, the plaintiff must establish that the defendant was aware of the probable dangerous consequences of his conduct, and that he wilfully and deliberately failed to avoid those consequences.” *Taylor v. Superior Court* (1979) 24 Cal.3d 890, 895–896.

II. Motion to Strike

Cross-Complainant makes various allegations in the Cross-Complaint, averring that Cross-Defendants misappropriated various pieces of business information, including clients, employees, and processes. Cross-Defendants also allegedly used this information to obtain contracts that otherwise would have gone to Cross-Complainant. Cross-Complainant avers that all of this was performed with the intent to harm and destroy Cross-Complainant’s business.

Issues of intent are typically easily resolved at the pleadings in favor of the plaintiff, as conclusory allegations will typically suffice. *Unruh v. Truck Insurance Exchange* (1972) 7 Cal.3d 616, 632 (superseded by statute on other grounds). However, Cross-Complainant’s averments regarding the generalized ability to plead punitive damages in other respects is not a reflection of applicable jurisprudence. “Punitive damages may not be pleaded generally.” *Today's IV, Inc. v. Los Angeles County Metropolitan Transportation Authority* (2022) 83 Cal.App.5th 1137, 1193. They require “specific factual allegations showing that defendant's conduct was oppressive, fraudulent, or malicious to support a claim for punitive damages.” *Ibid*.

Cross-Defendants opine various fact-based defenses and restrictive readings of the Cross-Complaint. Cross-Defendants argue that the conduct of preparing to compete with her employer does not breach the duty of loyalty. See, e.g., *Mamou v. Trendwest Resorts, Inc.* (2008) 165 Cal.App.4th 686, 719. Cross-Defendants’ contention does not meet the standard for a motion to strike, as the pleading does not concede that Cross-Defendants were merely “preparing” to compete. It specifically alleges that Cross-Defendants used Cross-Complainant’s information “[b]oth during and after her alleged employment…” Cross-Complaint ¶ 14. This is clearly sufficient to allege something beyond mere preparation.

The question remains whether Cross-Complainant has alleged facts sufficient to meet the standard of malice, oppression, or fraud. Fraud is the most expeditious portion to address. Cross-Complainant avers "fraud" but falls significantly short of the specificity required for fraud. Fraud, even where it is alleged for the purposes of punitive damages, requires specificity. *Lehto v. Underground Constr. Co.* (1977) 69 Cal.App.3d 933, 944.

Cross-Defendants argue that the Cross-Complaint contains insufficient allegations of facts to support malice or oppression. Cross-Complainant's interpretation of oppression is ill-defined and unpersuasive. Oppression requires "despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." Civ. Code § 3294(c). Despicable conduct rings of criminality, and the allegations here fall far short of criminal conduct. Additionally, the Cross-Complainant has not alleged any significant infringement of rights as contemplated by Civ. Code § 3294. The claim of oppression is not sufficiently pled.

Malice requires that Cross-Defendants "intended [] to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." Civ. Code § 3294(c)(1). Given that despicable conduct is not described (as addressed above), unintentional conduct cannot form the basis for punitive damages here. However, Cross-Complainant also alleges intentional torts, particularly intentional interference with both prospective economic relations and with contractual relations. It is not clear whether this meets the burden of intent "to cause injury". Were this the case, plaintiffs would allege the mere conclusion of intent and punitive damages would be adequately pled. Cases show us that it is not the case. See *Turman v. Turning Point of Central California, Inc.* (2010) 191 Cal.App.4th 53, 63 (plaintiff alleged intentional gender discrimination, and motion to strike was properly granted, as the complaint failed to allege facts sufficient to meet the standard for malice). Therefore, something more than a conclusory expression of intent appears to be necessary.

Here, Cross-Defendants argue that the Cross-Complaint falls short of the requirements because it fails to allege malicious conduct with sufficient specificity. In response, Cross-Complainant repeatedly cites to *Monge v. Superior Court* (1986) 176 Cal.App.3d 503, 511, opining that the intent to injure may be "inferred". This appears to be an improvident statement quoted in incorrect context. The underlying *facts* were more than sufficiently alleged, based upon "personal knowledge". Id. at 512. The inference allowed was as to the intent thereon.

Cross-Defendants' report to another entity is inherently incapable of consideration for the purpose of considering punitive damages. As Cross-Defendants argue, such conduct is protected. The balance of the Cross-Complaint is not particularly specific as to the evidentiary facts of what occurred. No allegations of when or how Cross-Defendants misappropriated information is included. Scant specific information regarding the parties whose economic or contractual relationships are "interfered" with is pled. Cross-Complainant opines broad categories of conduct. Cross-Defendants "divert[ed]" clients and employees. Cross-Complaint ¶ 14. She did so with the intent to harm or destroy their business. Cross-Complaint ¶ 17. These are generalized pleadings that absent a requirement of specificity, would meet the requirement to plead "ultimate facts". However, that is not the requirement for punitive damages. Instead, due to the intent of the remedy being to punish rather than compensate, the notice required is more stringent.

"[S]pecific" factual allegations must be made. *Today's IV, Inc. v. Los Angeles County Metropolitan Transportation Authority* (2022) 83 Cal.App.5th 1137, 1193. Here, the lack of detail leaves to Cross-Defendants' speculation what clients or employees Cross-Complainant avers were taken, or what other information they aver was misappropriated. Given the drastic nature of the remedy, Cross-Complainant must plead with greater specificity to support the prayer.

The motion to strike is GRANTED with leave to amend.

III. Conclusion

Based on the foregoing, the motion to strike is **GRANTED with leave to amend as to the prayer for punitive damages**.

Cross-Defendants' 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).

6. 25CV07193, 4Leaf, Inc. v. Monarch Consulting Services, LLC

Plaintiff 4Leaf, Inc. ("Plaintiff") filed the complaint in this action against defendants Monarch Consulting Services, LLC ("Defendant") and Does 1-10 with causes of action for Trade Secret Misappropriation, Intentional Interference with Contractual Relations, Intentional Interference with Prospective Economic Advantage, Negligent Interference with Prospective Economic Advantage, and Unfair Competition (the "Complaint").

The matter is on the calendar for Plaintiff's motion for recovery of costs of service under CCP § 415.30(d). The motion is **GRANTED** in part.

I. Governing Law

"A summons may be served by mail as provided in this section. A copy of the summons and of the complaint shall be mailed (by first-class mail or airmail, postage prepaid) to the person to be served, together with two copies of the notice and acknowledgment provided for in subdivision (b) and a return envelope, postage prepaid, addressed to the sender." CCP, § 415.30.

> If the person to whom a copy of the summons and of the complaint are mailed pursuant to this section fails to complete and return the acknowledgment form set forth in subdivision (b) within 20 days from the date of such mailing, the party to whom the summons was mailed *shall be liable for reasonable expenses thereafter incurred in serving or attempting to serve the party* by another method permitted by this chapter, and, except for good cause shown, the court in which the action is pending, upon motion, with or without notice, shall award the party such expenses whether or not he is otherwise entitled to recover his costs in the action. [Emphasis added].

Code Civ. Proc., § 415.30(d).

II. Analysis

Plaintiff moves for $1,266.99 in service costs after having mailed a notice and acknowledgment of receipt to Defendant's agent for service of process on October 30, 2025, and receiving no response. Defendant was personally served on December 1, 2025. Defendant argues that the attached proof of service is the wrong form, that the costs are excessive, and that no efforts were made to effect service on counsel.

Defendant argues that the service of the summons and complaint *for the purposes of showing receipt of the notice and acknowledgement*, must be on the POS010 Mandatory Form. Defendant is correct that the judicial council form is *mandatory* in this instance. "Wherever applicable, [mandatory forms] must be used by all parties and must be accepted for filing by all courts." Cal Rule of Court Rule 1.31 (a). "Forms adopted by the Judicial Council for mandatory use bear the words 'Form Adopted for Mandatory Use' . . . in the lower left comer of the first page." Rule 1.31 (c). However, this is an unusual instance. POS010 is used to denote *actual* service of the Complaint, triggering Defendant's time to answer. Here, Plaintiff is using the proof of service merely to show that efforts to obtain service by notice and acknowledgement of receipt was appropriate. It seems problematic to mandate that Plaintiff must use a form which might mislead the clerks that *legally effective* service of the Complaint had occurred, as opposed to mere evidence that effort to obtain acknowledgement thereon had occurred. Furthermore, failure to use mandatory forms are not jurisdictional. *Backlund v. Stone* (2025) 115 Cal.App.5th 580, 591. The matter remains within the Court's discretion to consider.

Defendant also contends that the Court should *assume* that the summons served was deficient because the summons served in another case between the parties lacked the information required under CCP § 412.30. The only evidence before the Court in this case is that when Defendant *did* receive the summons, Defendant does not contend that it was deficient. There does not appear to be any cause to make assumptions based on a related case when the record here is sufficient to provide what is required.

Nonetheless, the Court finds the service rates charged here to exceed reasonable amounts. Personal service required three service attempts appearing to be charged at around $166 per hour. This greatly exceeds what appears to be reasonable. Between the time expended and the costs attributable, the Court finds $500 as the limit of reasonable expenses for service of process in these circumstances.

Plaintiff's motion is **GRANTED** in the amount of $500. Defendant is to pay this amount within 30 days of notice of this order.

Plaintiff 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. <u>SCV-267365, McCoy v. McCoy</u>

Plaintiffs Dwaine McCoy ("Plaintiff") and Ace Insulation Inc., ("Ace Insulation"), Ace Garage Doors and Fireplaces, Inc. ("Ace Fireplaces", together with Plaintiff and Ace Insulation, "Plaintiffs") filed the complaint (the "Complaint") against defendant Dean McCoy ("Defendant) originating from a controversy arising out of their business relationships. Defendant in turn filed the currently operative second amended cross-complaint ("SAXC") against Plaintiff, Don Donnell, and Does 1-20 as cross-defendants. This matter is on calendar for Plaintiffs' motion pursuant to Cal. Code Civ. Proc. ("CCP") § 664.6 to enforce settlement. The Motion is **GRANTED IN PART AS OUTLINED BELOW**.

I. Underlying Facts

Plaintiff and Defendant are siblings and were co-members of Ace Insulation and Ace Fireplaces. Plaintiff filed this action alleging corporate malfeasance, and Defendant filed a cross-complaint alleging much of the same. The matter was bifurcated and a jury tried the first phase on November 18, 2025. The Jury returned a verdict for Ace Insulation in the amount of $166,888.52, and for Plaintiff in the amount of $15,000.

Before the second phase could proceed, the parties participated in a settlement conference before this judicial officer on January 12, 2026. The parties reached a settlement agreement disposing of all claims, including those already reduced to judgment. The parties agreed that the businesses would be subject to valuation through a neutral expert, and that Defendant would receive payment for his ownership value, after deducting the existing judgment. During the negotiation process, Defendant objected to use of the term "fair market value" so as not to constrain the valuation method or the appraiser's discretion in applying a standard. The parties finalized the agreement on January 12, 2026, at the settlement conference. Plaintiffs' Ex. A in Support (the "Settlement Agreement").

The Settlement Agreement outlined a valuation process for the businesses that the parties would each propose 5 appraisers. Among the appraisers suggested by Defendant was Exit Strategies ("Appraiser"). Plaintiffs agreed to use of Appraiser and the Appraiser issued their valuation report on March 29, 2026. See Declaration of Plaintiff's Counsel, Ex. B (the "Appraisal"). On May 11, 2026, Defendant's Counsel sent a letter to the Appraiser and Plaintiffs' counsel outlining 11 purported deficiencies in the appraisal process. Defendant's Exhibit I in Opposition. Plaintiff thereafter filed this motion seeking to enforce the Settlement Agreement and the Appraisal.

II. Governing Law

CCP § 664.6(a) provides: "If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement." Like proving a contract, in order to have an enforceable agreement under CCP § 664.6, the moving party must show that there was mutual consent to common terms. *Bowers v. Raymond J. Lucia Companies, Inc.* (2012) 206 Cal.App.4th 724, 732-733. The statute empowers the Court to determine whether there actually was a settlement. *Fiore v. Alvord* (1985) 182 Cal.App.3d 561, 565. To be binding, the terms agreed to must be sufficiently definite for the court to give it exact meaning. *Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 811. The incorporation of documents by reference must show that there was a meeting of the minds regarding the terms of the incorporated documents. *Id*. at 814. Terms must be sufficiently definite, even those related to future agreements, that the court can enter an enforceable judgment thereon. *Ibid*.

Where the terms of a settlement are disputed in a CCP § 664.6 motion, the court has the authority to adjudicate those disputes based on declarations or other evidence. *Malouf Bros. v. Dixon* (1991) 230 Cal.App.3d 280, 284. However, the court does not have the authority to modify the terms of the agreement. *Machado v. Myers* (2019) 39 Cal.App.5th 779, 795. Extrinsic evidence is admissible in ruling on a motion under CCP § 664.6. *Corkland v. Boscoe* (1984) 156 Cal.App.3d 989, 992. A court may rely on its own recollection in determining the terms of a settlement agreement which occurred orally before the court. *Richardson v. Richardson* (1986) 180 Cal.App.3d 91, 97.

III. Analysis

The parties reached their agreement in a settlement conference before the Court. Plaintiffs now move to enforce the settlement agreement, as Defendant refuses to sign the share transfer agreement. Defendant in turn argues malfeasance on the part of Plaintiffs. Earlier iterations of the settlement agreement had the term "fair market value" removed, as Defendant opined that the method of valuation should be entirely tendered to the appraiser. Defendant argues that while the express term was removed, Plaintiff added the definition of fair market value to the Settlement Agreement, which improperly affected the Appraisal.

The determination here turns on two questions. First, was the agreement as executed the actual agreement of the parties? Second, if the Settlement Agreement was the understanding of the parties, did the Appraiser engage in "fraud" or "manifest error"?

Defendant avers that the signed and executed agreement does not constitute the agreement of the parties because Plaintiffs unilaterally added the definition of fair market value surreptitiously. Defendant argues that a new valuation should be performed without the inclusion of the "arms length transaction" language as a guideline. Defendant's argument that the Court should enforce a version of the agreement that was not executed by the parties is specious. The Court cannot modify the terms, only enforce those terms actually present. *Machado v. Myers* (2019) 39 Cal.App.5th 779, 795. While Defendant argues that he has no interest in engaging in a war of experts he cannot afford, undermining the validity of the Settlement Agreement would do precisely that. The parties are entitled to the terms of the Settlement Agreement as signed, or no agreement at all.

Defendant's averments of malfeasance appear to be somewhat misleading. Defendant's opposition poses the emails outside of the order apparent from the email time. Defendant's Ex. A was first in time, followed by Ex. E, then Ex. B, Ex. C, and ending with Ex. D. The Court does not find Defendant's evidence persuasive of the discussions that may have occurred between Ex. B, sent at 11:38 am, and the final version sent at 12:01 pm. The express language of the agreement appears to be the clearest expression of the understanding of the parties. The Settlement Agreement is found to be the understanding of the parties, and the question remains whether the Appraiser's evaluation was "manifest error", or fraud.

Black's Law Dictionary defines "fair market value" as : "The price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm's-length transaction; the point at which supply and demand intersect." Black's Law Dictionary (12th ed. 2024), VALUE, fair market value. Defendant opines that Plaintiffs have inserted the definition of fair market value between drafts. Defendant offers no evidence that fair market value includes the phrase "with the Companies' valued as going-concern operating business, and not on a liquidation, distressed-sale, or forced-sale basis". It is clear that while Defendant objects to the *term* fair market value, and its assumed effect on the valuation, he offered no objection to the language actually in the Settlement Agreement. This is evidenced by his signature thereon. Nor does Defendant articulate how his assumption that this term is detrimental to him interacts with the other new beneficial terms prohibiting liquidation value contained in the same sentence. Defendant does not express how this might have affected the valuation, only concluding that its use was unfair influence. However, these arguments are all immaterial. In the end, Defendant agreed to the language in the Settlement Agreement. He belatedly objects to its inclusion now as evidence of malfeasance, but this evidences the gap between the objection to vocabulary, and the objection to the substantive term. The Settlement Agreement, as signed and phrased, is the agreement of the parties.

To the content of the evaluation, Defendant primarily takes issue with the utilization of the single year of revenue in making the valuation determination. Plaintiffs argue that this does not meet the standard required by the agreement, as the appraisal was "final and binding absent evidence of fraud or manifest error."

Defendant fails to show manifest error or fraud. There is no evidence of fraud in the appraisal process. The Appraiser was Defendant's own proposed evaluator, and there is no evidence of improper influence. Defendant's remaining contention is that the Appraiser abused his discretion. Defendant's argument within the memorandum on this point is minimal. Defendant only raises in substance the utilization of a single year of revenue for valuation as opposed to a multiyear assessment.

This fails to meet manifest error. Defendant attaches as his sole evidence the letter counsel sent to the Appraiser. Counsel does not establish her own expertise in appraisals but cites to various external standards of practice for appraisers all of which lack the necessary foundation. The Appraisal appears to lack apparent "manifest" error. Nothing here rises to the level of "something which is apparent by an examination of the [document], needing no evidence to make it more clear. That which is open, palpable ... incontrovertible." *Severtson v. Williams Construction Co.* (1985) 173 Cal.App.3d 86, 93. In the context of the facts before the Court, the struggles of the businesses are apparent, and the determination of using only a single year of revenue is within the realm of reasonableness and certainly within the Appraiser's discretion to employ. The businesses have been subject to multiple hurdles over the last few years, and resulting dip in revenue for the foreseeable future is supported by the evidence. The Appraiser was within his discretion to determine that the most recent year was the best indicator of revenue going forward, and accordingly that only a single year would be emblematic of the appropriate valuation of the business. This is short of the "manifest error" required by the Settlement Agreement. The Appraisal is enforceable under the Settlement Agreement.

Therefore, the Motion is **GRANTED**. The Appraisal is the valuation of Defendant's business interests under the terms of the Settlement Agreement, as Defendant has not established manifest error or fraud by the Appraiser. Defendant Dean McCoy must comply with the terms of the Settlement Agreement. Plaintiff will submit a judgment in accordance with the settlement terms reflecting the Appraisal amount. If Defendant refuses to comply with the terms of the Judgement, the Plaintiffs may petition the Court utilize the necessary post-judgment remedies, which may include a receiver.

Plaintiff 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. SCV-271482, John Doe 7036 v. Thorpe

Plaintiff John Doe 7036 ("Plaintiff"), filed complaint in this action against The Church of Jesus Christ of Latter-Day Saints ("Church Defendants", also sued as Church of Jesus Christ of Latter-Day Saints San Rafael Stake, and Church of Jesus Christ of Latter-Day Saints Rohnert Park Ward), and Kevin Thorpe ("Thorpe", all together, "Defendants"), and Does 5-100, with causes arising out an alleged injury sustained during the course of employment (the "Complaint").

This matter is on calendar for the motion by Plaintiff to lift the stay entered November 22, 2022. The motion is **GRANTED**.

I. Governing Law

Bankruptcy court jurisdiction precludes jurisdiction of other courts, and particularly state courts. *Maritime Elec. Co., Inc. v. United Jersey Bank* (3d Cir. 1991) 959 F.2d 1194, 1204. "Confirmation of a bankruptcy plan grants the debtor a discharge that replaces the automatic stay with a permanent injunction pursuant to § 524 of the Bankruptcy Code.[9] But that injunction prohibits collection only with respect to dischargeable debts and does not apply to nondischargeable debts. Thus, once a plan has been confirmed, holders of nondischargeable debts can generally pursue collection unless the plan has provided otherwise or unless the court otherwise orders." *U.S. v. White* (11th Cir. 2006) 466 F.3d 1241, 1246.

II. Analysis

Plaintiff asks that the Court dissolve the stay in place because of Church Defendants' inclusion in bankruptcy court proceedings. Plaintiff avers that the stay issued by the Bankruptcy Court has been dissolved by its own terms, and that this matter should proceed accordingly. Church Defendants argue that the case should only have the stay lifted until such time that Plaintiff can show that his claims were not entirely discharged as part of the BSA Settlement Trust.

The Court notes the extensive definition of "Abuse Claim" included in the BSA Bankruptcy Plan. See Plaintiff's Counsel's Declaration, Vol. 2, Ex. 6 (the "Bankruptcy Plan"), pg. 4-5. The Court also notes the definitions of a "Mixed Claim" and "Petition Date". *Id*. at pg 32, 37. Neither party makes reference to authority beyond the Bankruptcy Consent Order.

Church Defendants argue that significant information is required so that they can determine whether total dissolution of the stay is appropriate. They opine that it is unclear whether Plaintiff has any remaining claims after the resolution of at least some of his claims through the Bankruptcy. However, they fail to present any persuasive reason why they are entitled to their requested relief, the unilateral power to wage discovery while Plaintiff must sit idle. Church Defendants contend that it is unclear whether Plaintiff elected for independent review, but the only evidence before the Court shows that Plaintiff's Abuse Claim with the BSA Settlement Trust were fully resolved on September 22, 2025. Even interpreting the stay as strictly as Church Defendants would ask, the stay dissolved no later than 45 days thereafter. Church Defendants provide no explanation for why the "stay" would extend beyond the duration the Bankruptcy Court explicitly set.

The Court makes no determination at this juncture regarding the effect of the claims covered by the BSA Settlement Trust. Plaintiff concedes that some of his claims were covered by the BSA Settlement Trust. That is an issue to be resolved through evidence and discovery, which with the dissolution of the stay, may proceed accordingly. The issue here is one of dischargeable and non-dischargeable debt. Upon expiration of the stay, by its own terms, any nondischargeable claims are properly returned to this Court's jurisdiction.

Plaintiff's motion is GRANTED.

IV. Conclusion

Based on the foregoing, the motion is **GRANTED**.

Plaintiff 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).

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