SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/28/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV2104264

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: RON BAKER

PLAINTIFF: MARK SLATTERY, ET AL vs. DEFENDANT: KENNETH L. WEBB, JR., ET AL	

NATURE OF PROCEEDINGS: MOTION – LEAVE

RULING

Defendant/Cross-Complainant Quail Hollow Ridge Homeowners Assn.'s motion for leave to file its First Amended Cross-Complaint is **GRANTED**.

Procedural Background

Plaintiffs filed their original Complaint against Defendants Kenneth Webb Jr. ("Webb"), Hollow Ridge Homeowners Association (the "HOA") and Wakefield Sharp Inc. ("Wakefield") on December 22, 2021. Plaintiffs alleged that they live in the condominium unit below Webb's and that in 2018, Webb began remodeling his unit and his change in flooring materials resulted in excessive noise heard in Plaintiffs' unit. Plaintiffs asserted causes of action for breach of the CC&Rs, violation of Civil Code Section 4765, private nuisance, breach of fiduciary duty, negligence, declaratory relief, negligent hiring, supervision and retention of employee, and hirer's vicarious liability for negligent performance of nondelegable duty by independent contractor.

Webb filed a Cross-Complaint against Plaintiffs on February 23, 2022, asserting causes of action for breach of governing documents/enforcement of equitable servitudes, nuisance, and declaratory relief.

On February 8, 2024, the Court granted Webb's motion for judgment on the pleadings as to Plaintiffs' Second Cause of Action for violation of Civil Code Section 4765 without leave to amend, and as to Plaintiffs' Third Cause of Action for private nuisance, Fourth Cause of Action for injunctive relief, and Seventh Cause of Action for declaratory relief with leave to amend.

Plaintiffs filed a First Amended Complaint on February 20, 2024 which dropped the cause of action for declaratory relief against all defendants and the Second Cause of Action as to Webb.

On March 11, 2024, the HOA and Wakefield filed a Cross-Complaint against Plaintiffs and Webb, asserting causes of action for equitable indemnity, contribution and declaratory relief.

On April 26, 2024, the HOA and Wakefield filed a First Amended Cross-Complaint against Webb and Plaintiffs which attempted to clean up some mistakes (e.g., incorrect name, irrelevant references to an elevator). Webb demurred and moved to strike the First Amended Cross-Complaint. On November 19, 2024, the Court granted the motion to strike the First Amended Cross-Complaint on the ground that the HOA failed to obtain leave to file it, and specifically paragraph 2 of the prayer seeking damages. The Court overruled the demurrer.

On November 26, 2024, the HOA filed a motion seeking leave to file its First Amended Cross-Complaint.

Standard

A compulsory cross-complaint arises out of the same transaction, occurrence, or series of transactions or occurrences as the cause of action in the complaint. (Cal. Code Civ. Proc. § 426.10(c).) A motion for leave to file a compulsory cross-complaint must be granted, upon such terms as may be just to the parties, where the moving party acted in good faith. (Cal. Code Civ. Proc. § 426.50.) As the court stated in *Silver Organizations Ltd. v. Frank* (1990) 217 Cal.App.3d 94:

> Prior to the 1972 enactment of section 426.50 the standard for reviewing a trial court's denial of a motion to file a compulsory cross-complaint was whether the court had abused its discretion . . . We reject the view that the trial court may "exercise discretion" in the denial of a motion to file a compulsory cross-complaint under section 426.50.
>
> The legislative mandate is clear. A policy of liberal construction of section 426.50 to avoid forfeiture of causes of action is imposed on the trial court. A motion to file a cross-complaint at any time during the course of the action must be granted unless bad faith of the moving party is demonstrated where forfeiture would otherwise result. Factors such as oversight, inadvertence, neglect, mistake or other cause, are insufficient grounds to deny the motion unless accompanied by bad faith.
>
> Notwithstanding the holding in *Gherman v. Colburn* (1977) 72 Cal.App.3d 544, 559, 140 Cal.Rptr. 330, that "the statutory terminology [of section 426.50] allows the court some *modicum of discretion* in determining whether or not a defendant has acted in good faith" (emphasis added), it is our view that *substantial evidence* must support the trial court's decision.

(*Id.* at pp. 98-99 [citations omitted] [emphasis in original].)

If a proposed cross-complaint is permissive, leave of court may be granted "in the interest of justice" at any time during the course of the action. (Cal. Code Civ. Proc. § 428.50(c).) "Unless it would interfere with the trial date or otherwise prejudice the action, courts are inclined to grant leave to file any other cross-complaint against the plaintiff. This . . . reflects the judicial policy of settling all disputes between plaintiff and defendant in the same lawsuit if possible . . . A greater showing of 'interest of justice' is required to obtain leave to file a cross-complaint against a codefendant or some third person not yet a party to the action. Here, the court will be concerned that the cross-complaint not unreasonably burden and complicate plaintiff's lawsuit with cross-actions and third parties." (Edmon & Karnow, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2024) ¶¶6:564-6:565 [emphasis omitted].) Permission to file a permissive cross-complaint is solely within the trial court's discretion. (*Crocker Nat'l Bank v. Emerald* (1990) 221 Cal.App.3d 852, 865.)

Request for Judicial Notice

The HOA's request for judicial notice of documents filed in this case (Exhibit A) and the Court's tentative rulings (Exhibit B and C) is granted. (Evid. Code §§ 452, 453.)

Discussion

As a preliminary matter, the HOA's motion does not comply with Rule of Court 3.1324 as it does not include a copy of the proposed amended pleading or identify allegations proposed to be deleted or added. The motion also does not include a declaration stating the effect of the amendment, why the amendment is necessary and proper, when the facts giving rise to the amended allegations were discovered, and the reason why the request for amendment was not made earlier. However, as the HOA states in its memorandum that it seeks leave to file the First Amended Complaint previously stricken by the Court, the Court will excuse compliance with this rule as the parties are familiar with that pleading given the earlier filings in this case.

The HOA's motion to file a First Amended Cross-Complaint is granted, except that paragraph 2 of the prayer for relief is stricken as set forth in the Court's November 19th Order. The HOA and Wakefield's cross-complaint is compulsory because it involves the same transaction or occurrence as the First Amended Complaint, i.e., Webb's installation of flooring in his unit, and there is no showing of bad faith by the HOA or Wakefield. Further, there is no prejudice to Plaintiffs or Webb as the HOA already has an operative Cross-Complaint against them, filed on March 11, 2024, which asserts causes of action for equitable indemnity, contribution and declaratory relief.[1] The First Amended Cross-Complaint does not add any new causes of action, but rather only corrects mistakes in the original Cross-Complaint (referred to by Webb as "cut-and-paste errors") such as an incorrect party name and irrelevant references to an elevator.

[1] The original Cross-Complaint specifically identifies both Webb and the Plaintiffs as cross-defendants and the claims are asserted against all cross-defendants. (Cross-Complaint, ¶¶3, 4.) The filing of the original Cross-Complaint as to Plaintiffs was timely under Code of Civil Procedure Section 428.50(a). Webb never moved to strike the original Cross-Complaint as to him; rather, he only moved to strike the First Amended Cross-Complaint. (Notice of Motion and Motion to Strike.) The First Amended Cross-Complaint also names both Plaintiffs and Webb as cross-defendants. (First Amended Cross-Complaint, ¶3.)

Therefore, the filing of the First Amended Cross-Complaint would not prejudice Webb or Plaintiffs as the causes of action are essentially the same as the ones asserted in the original Cross-Complaint filed in March of last year.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for January, 2025 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1605267272?pwd=908CbP6TV2mhCAyai1nzo6lyz2dKaw.1
Meeting ID: 160 526 7272
Passcode: 026935

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: https://www.marin.courts.ca.gov

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/28/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV2300675

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: RON BAKER

PLAINTIFF: THE NOVATO BUSINESS CENTER CONDOMINIUM OWNERS ASSOCIATION, INC. vs. DEFENDANT: BARBARA HUSAK	

NATURE OF PROCEEDINGS: MOTION – COMPEL; DISCOVERY FACILITATOR PROGRAM #1

RULING

Based on the Joint Statement filed by the parties, the discovery issues have been resolved through meet and confer efforts and the able assistance of attorney Derek Howard, acting as the Discovery Facilitator.

However, Defendant contends that the issue of discovery sanctions remains outstanding and argues that sanctions are warranted under Code of Civil Procedure section 2025.480(j). Plaintiff opposes the request for sanctions, arguing that it complied with its discovery obligations in good faith in this matter.

The Court has considered all the circumstances determined that sanctions are not warranted. The dispute was resolved through negotiation and the Court did not issue a discovery order. To the extent that Defendant is nonetheless deemed a prevailing party, the Court finds that Plaintiff was substantially justified at least in part and that imposing sanctions in these circumstances would not be just. (See Code Civ. Proc., § 2025.480(j) [prevailing party on motion entitled to fees unless opposing party acted with substantial justification or circumstances make the imposition of sanctions unjust].)

Accordingly, the request for sanctions is **DENIED.**

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/28/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV0000763

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: ROB BAKER

PLAINTIFF: RANDY G. SHERMAN vs. DEFENDANT: C.D.C.R., ET AL	

NATURE OF PROCEEDINGS: DEMURRER

RULING

The unopposed motion to strike brought by Defendants K. Masbad and M. Ashe M.D. ("Defendants") is **GRANTED**. Their unopposed demurrer is **SUSTAINED** without leave to amend.

Discussion

Plaintiff is a self-represented inmate serving a sentence in the California state prison system. He filed his complaint on March 17, 2023. The original complaint is difficult to follow, but Plaintiff appears to seek damages from the "C.D.C.R./C.C.H.C.S. et al" for an "intentional tort" and from four individual prison officials, including Defendants, for negligence. Plaintiff describes his claims as based on improper disclosure of confidential medical information by a government agency because of a data breach.

Defendant Masbad previously demurred to Plaintiff's complaint on multiple grounds. On May 24, 2024 the Court issued an order sustaining the demurrer because Plaintiff had failed to allege compliance with government claims presentation requirements. The order granted Plaintiff ten days leave to file an amended complaint.

Plaintiff failed to timely file an amended complaint. Instead, on August 2, 2024, nearly 60 days after the expiration of the deadline, Plaintiff filed two handwritten documents entitled: "Notice of Amendment Motion for Reinstatement of Complaint" and "Plaintiffs Notice of Amendment and Objection to Defendants Demurrer." Through these documents, Plaintiff purports to add two new defendants, plead new factual allegations of wrongdoing, and assert new statutory causes of action.

Defendants move to strike these purported amendments as unauthorized. Plaintiff has filed no opposition or response to the motion. A failure to oppose a motion may be deemed a consent to the granting of the motion. (Cal. Rules of Court, rule 8.54, subd. (c).) Failure to oppose a motion may also lead to the presumption that [plaintiff] has no meritorious arguments. (See *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal. App. 3d 481, 489, disapproved of by *Garcia v. McCutchen* (1997) 16 Cal.4th 469, on other grounds.) The motion is granted on this basis.

Additionally, when a trial court sustains a demurrer with leave to amend, the scope of the grant of leave is ordinarily a limited one. It gives the pleader an opportunity to cure the defects in the causes of action to which demurrer was sustained, but that is all. (*People ex rel. Dept. Pub. Wks. v. Clausen* (1967) 248 Cal.App.2d 770, 785–786.) "The plaintiff may not amend the complaint to add a new cause of action without having obtained permission to do so, unless the new cause of action is within the scope of the order granting leave to amend." (*Harris v. Wachovia Mortgage, FSB* (2010) 185 Cal.App.4th 1018, 1023.) Here, the amendments were not only untimely, but they exceeded the scope of the order granting leave to amend. The motion to strike is therefore granted on this basis also.

Even if the Court were to consider the untimely filings as an amended complaint, Plaintiff has not cured the defect identified in the Court's May 24, 2024 order. Government Code sections 945.4 and 950.2 require claims to be presented to a public entity before a civil action can be filed against the entity, and the failure to allege compliance subjects a complaint to a general demurrer for failure to state facts sufficient to constitute a cause of action. (*State of California v. Superior Court* (2004) 32 Cal.4th 1234, 1243.) Defendants demur to the amendments on this ground and Plaintiff has filed no opposition. Thus, the Court's sustains the demurrer on this basis. Moreover, since Plaintiff has not affirmatively alleged compliance with claims requirements the Court lacks jurisdiction to consider his claims. Defendants' demurrer is sustained without leave to amend.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/28/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV0000805

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: ROB BAKER

PLAINTIFF: MAYGREE LINDORA vs. DEFENDANT: PRAC HOLDINGS, INC., A DELAWARE CORPORATION	

NATURE OF PROCEEDINGS: MOTION – OTHER: FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

RULING

Plaintiff's unopposed motion for preliminary approval of class-action and PAGA settlement is **GRANTED**.

The court preliminarily finds that the requirements for conditional class certification for settlement purposes are met in that (a) the parties are sufficiently numerous that it is impracticable to bring them all before the court; (b) there are questions of law or fact common to the class that are substantially similar and predominate over questions affecting individual members; (c) the claims of the named representative are typical of those of the class; and (c) the named representative can fairly and adequately protect the interests of the class. (Code Civ. Proc., § 382; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App. 4th 224, 240.)

Accordingly, the Court orders that:

1. The proposed class is conditionally certified, and Plaintiff is conditionally appointed class representative.

2. The court conditionally appoints Haulk & Herrera LLP as class counsel and appoints ILYM Group, Inc. as the Settlement Administrator as set forth in the settlement agreement.

3. After considering the factors set forth in *Clark v. American Residential Services LLC* (2009) 175 Cal.App. 4th 785, 799, the court preliminarily rules that the proposed class settlement is fair and reasonable.

4. The Court conditionally finds, subject to final approval, that the proposed attorney's fee amount is fair and appropriate.

5. The Court sets a Final Approval Hearing for **May 20, 2025 at 1:30 pm in Courtroom A.**

6. Absent objection, the Court will sign the Proposed Order submitted by Plaintiff.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/28/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV0001531

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: ROB BAKER

PLAINTIFF: EDWARD STEINMAN, ET AL vs. DEFENDANT: GARY STARR	

NATURE OF PROCEEDINGS: DEMURRER – TO SECOND AMENDED COMPLAINT

RULING

Defendant Gary Starr's demurrer to the Second Amended Complaint ("SAC") **OVERRULED**.

First Cause of Action – Breach of Written Contract

Timeliness

The Court concludes that this cause of action is not barred by the 30-day contractual limitations period and that Plaintiffs are correct that the discovery rule applies here. With the exception of sophisticated contracting parties (see *Brisbane Lodging, L.P.* v. *Webcor Builders, Inc.* (2013) 216 Cal.App.4th 1249, 1263, and *Wind Dancer Production Group, supra*, 10 Cal.App.5th at 76-77), "...a contractually shortened limitations period has never been recognized outside the context of straightforward transactions in which the triggering event for either a breach of a contract or for the accrual of a right is immediate and obvious. Moreover, no decision upholding the validity of a contractually shortened limitation period has done so in the context of an action against a professional or skilled expert where breach of a duty is more difficult to detect. Instead, most reported decisions upholding shortened periods involve straightforward commercial contracts plus unambiguous breaches or accrual of rights under those contracts. (*Moreno* v. *Sanchez* (2003) 106 Cal.App.4th 1415, 1430.) "...[A]n effective judicial remedy against professionals or skilled crafts people requires accrual only upon discovery of the breach and thus the law will not tolerate contractual nullification of that policy." (*Id.* at 1433.)

The holding in *Moreno* was not based on the fact that the Legislature has adopted legislation to govern the standard of care and practices for the home inspection industry. The court noted that "justification for the discovery rule has not been restricted to regulated and licensed professionals. Courts have also employed the rule of delayed discovery in cases involving tradespeople who have held themselves out as having special skill, or are required by statute to

possess a certain level of skill." (*Id.* at 1424.) (See Cal. Practice Guide: Civil Procedure Before Trial Statute of Limitations (2024) § 1:120.18, citing *Moreno* for the proposition that, "[i]n the consumer context[ ], there can be no contractual abrogation of the delayed discovery rule.")

Standing

In the SAC, Plaintiffs now allege that Kanter was acting as agent of the Trustees when he entered into the contract. Plaintiffs have not violated the rules that ""...[a] plaintiff may not avoid a demurrer by pleading facts or positions in an amended complaint that contradict the facts pleaded in the original complaint or by suppressing facts which prove the pleaded facts false"'...[and] '...plaintiffs are precluded from amending complaints to omit harmful allegations, without explanation, from previous complaints to avoid attacks raised in demurrers or motions for summary judgment. ..." (See *State of California ex rel. Metz* v. *CCC Information Services, Inc.* (2007) 149 Cal.App.4th 402, 412.) Plaintiffs previously alleged that "Plaintiffs" entered the contract. As explained in *American Builder's Assn.* v. *Au-Yang* (1990) 226 Cal.App.3d 170, 176:

> "An agent represents his principal for all purposes within the scope of his actual or ostensible authority, and *all the rights* and liabilities *which would accrue to the agent* from transactions within such limit, if they had been entered into on his own account, *accrue to the principal.*
>
> "A contract made by an agent for an *undisclosed principal* is for most purposes the contract of the principal, ..." Unless excluded by the terms of the agreement made by the agent, an undisclosed principal may claim the benefits of the contract and may sue or be sued in his or her own name.

(Citations omitted.) Thus, the Trustees are simply clarifying how they are parties to the contract with a right to sue.

Even if Defendant is correct that the Trustees improperly delegated their duty to Kanter, this does not mean the contract is unenforceable against him. The only potential consequence of an improper delegation is personal liability on the part of the Trustees. (Prob. Code, § 16401, subds. (a) and (b)(2).) (See California Trust Administration (CEB 2024) § 2.20.)

Furthermore, even if Defendant is correct that any agency agreement between the Trustees and Kanter must be in writing, this would only be relevant in an action between the Trustees and Kanter. It does not make the contract between Plaintiffs and Defendant invalid.

Kanter was acting as an agent for the Trustees as undisclosed principals. "A contract made by an agent for an undisclosed principal is for most purposes the contract of the principal, yet it may also be considered as the contract of the agent. Thus, the agent may be sued thereon individually and he himself may sue and recover on the contract as an individual. ..." (*Bank of America Nat. Trust & Sav. Ass's* v. *State Bd. of Equalization* (1962) 209 Cal.App.2d 780, 796.)

Sufficiency of Allegations

In the SAC, Plaintiffs now allege that the standard practice of marine surveyors conducting a pre-purchase survey includes inspection of "'structural integrity, electrical systems, the propulsion system, the fuel system, other machinery, navigation equipment, miscellaneous onboard systems, cosmetic appearance, electronics, and overall maintenance..." (¶10.) They further allege that "[t]he Starr Report did not identify any of the multiple material conditions negatively impacting the value of the Property that should have been identified pursuant to marine survey pre-purchase standards, including but not limited to: material structural, electrical, drainage, dry rot, improper or inadequate repairs, and water-intrusion issues. ..." And they allege that these conditions "were openly visible" and "did not require the openings of walls, paneling, or removal of equipment" or "the removal of decking or any destructive testing." (¶11.) These allegations show that the conditions they are claiming were conditions which fell within the work Defendant agreed to perform.

Defendant points to the CSMI Report and argues that "it discusses items that cannot be breaches since they are specifically mentioned in the contract that they are not covered by the Marine Survey." To the extent that the issues found by CSMI were not matters that Defendant was supposed to look at or the conditions could have arisen after he conducted his survey, these are matters which go to the merits of Plaintiffs' case. This cannot be resolved simply by looking at the contract and the CSMI Report.

Second Cause of Action – Breach of Implied Warranties

To the extent Defendant raises the same arguments as he did to the first cause of action, the cause of action is sufficient for the same reasons set forth above.

Plaintiffs have alleged that Defendant breached the standard of care for marine surveyors, which is all they are required to do at this point. The CSMI Report is provided only to establish the issues that were found.

With respect to Defendant's argument that there is no warranty, the court previously ruled that "[i]t is not clear that the provision applies here since it states that the inspection and report are not a warranty 'regarding the future use, operability, habitability, or suitability of the floating home or its components.'"

Third Cause of Action – Negligence

To the extent Defendant raises the same arguments as he did to the first cause of action, the cause of action is sufficient for the same reasons set forth above.

Defendant's argument that Plaintiffs have not established he owed them a duty fails. The contract created the duty. In *North American Chemical Co.* v. *Superior Court* (1997) 59 Cal.App.4th 764, 774, the court explained:

> ...[F]or over fifty years California has...recognized the fundamental principle that "'accompanying every contract is a common-law duty to perform with care, skill, reasonable experience, and faithfulness the thing agreed to be done, and a negligent failure to observe any of these conditions is a tort, as well as a breach of the contract.' The rule which imposes this duty is of universal application as to all persons who by contract undertake professional or other business engagements requiring the exercise of care, skill and knowledge; the obligation is implied by law and need not be stated in the agreement." ... A contract to perform services gives rise to a duty of care which requires that such services be performed in a competent and reasonable manner. A negligent failure to do so may be both a breach of contract and a tort. In such a hybrid circumstance, the plaintiff is entitled to pursue both legal theories until an occasion for an election arises.

(Citations and brackets omitted.)

Contrary to Defendant's argument, Plaintiffs have adequately linked his alleged negligence to their claimed damages. They allege that, because of Defendant's negligence, they did not have the opportunity to demand that the conditions be repaired or negotiate an adjustment of the purchase price and that this resulted in damage to them.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/28/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV0001843

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: ROB BAKER

PLAINTIFF: KYLE MAGER vs. DEFENDANT: THE MONEY SOURCE, INC., ET AL	

NATURE OF PROCEEDINGS: DEMURRER

RULING

Defendants The Money Source, Inc. ("Money Source") and Servbank, SB's ("Servbank"; together with Money Source, "Defendants") demurrer to Plaintiff Kyle Mager's ("Plaintiff") First Amended Complaint ("FAC") is SUSTAINED with leave to amend as to the Fourth (negligent misrepresentation) and Fifth ("intentional/reckless misrepresentations") Causes of Action. (Code Civ. Proc., § 430.10, subd. (e).) It is OVERRULED in all other respects.

Background

This case concerns the alleged mishandling of Plaintiff's mortgage. Plaintiff first filed a complaint on January 18, 2024 (the "Original Complaint"). After Defendants demurred, Plaintiff filed the FAC.

The FAC alleges that Plaintiff is a Staff Sergeant with the California Army National Guard presently "stationed for deployment purposes" in San Rafael. (FAC, ¶ 35, 43.) In October 2017, Plaintiff took out a home mortgage on his primary residence. (FAC, ¶ 40.) Defendants allegedly served as the mortgage servicing agents for Plaintiff's lender. (*Id.* at ¶ 12.)

In October 2021, Plaintiff received deployment orders. (FAC, ¶¶ 45-46.) Plaintiff alleges that he sent Defendants a written request for a deferment of his home mortgage loan obligations pursuant to Military & Veterans Code, section 800 et seq. (*Id.* at ¶ 47.) According to the FAC, Defendants informed Plaintiff that he was eligible for protections under certain federal and state laws as of October 1, 2021. (*Id.* at ¶¶ 50, 51.) Plaintiff alleges that he was entitled to up to 180 days of deferment of the principal and interest on his mortgage loans, and that Defendants were obligated to extend the loan maturity date accordingly and not to furnish any negative information about Plaintiff to credit reporting agencies in connection with the deferment. (*Id.* at ¶ 52.)

Plaintiff claims that instead of placing his loan under a mandatory military deferment, Defendants placed it under a COVID-19 forbearance. (FAC, ¶ 54.) This allegedly resulted in Plaintiff being treated as if he was unable to pay his monthly loan obligations and so was at risk of foreclosure. (*Id.* at ¶ 55.) The FAC asserts that in November 2021, Plaintiff began to receive phone calls from Defendants telling him that he was behind on his payments. (*Id.* at ¶ 56.) Defendants also allegedly began falsely informing credit reporting agencies that Plaintiff was delinquent on his mortgage. (*Id.* at ¶ 57.) Plaintiff claims that Defendants persistently demanded that he pay amounts that were not owed due to his military deferment and have claimed that he is subject to foreclosure proceedings. (*Id.* at ¶¶ 59-63.)

The FAC asserts causes of action under the California Military Families Financial Relief Act (Mil. & Vet. Code, §§ 800-813), the Rosenthal Fair Debt Collection Practices Act (Civ. Code, § 1788 et seq.), and the Consumer Credit Reporting Agencies Act (Civ. Code, § 1785.1 et seq.), plus common law causes of action for negligent misrepresentation and "intentional/reckless misrepresentations."

Legal Standard

The function of a demurrer is to test the legal sufficiency of the challenged pleading. (*Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497.) As a general rule, in testing a pleading against a demurrer, the facts alleged in the pleading (including those in any exhibit attached to the pleading) are deemed to be true, however improbable they may be. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604; *Mead v. Sanwa Bank California* (1998) 61 Cal.App.4th 561, 567-568.) A complaint must be liberally construed, and all reasonable inferences must be drawn in favor of its allegations. (*Teva Pharmaceuticals USA, Inc. v. Superior Court* (2013) 217 Cal.App.4th 96, 102; see also Code. Civ. Proc., § 452.) The court gives the pleading a reasonable interpretation by reading it as a whole and all of its parts in their context. (*Moore v. Regents of Univ. of Calif.* (1990) 51 Cal.3d 120, 125.)

In a demurrer proceeding, the defects must be apparent on the face of the pleading or via proper judicial notice. (*Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994.) The face of the complaint includes matters shown in exhibits attached to the complaint and incorporated by reference. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.) "The only issue involved in a demurrer hearing is whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action." (*Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 747.)

If the complaint fails to state a cause of action, the court must grant the plaintiff leave to amend if there is a reasonable possibility that the defect can be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 317.)

Discussion

First Cause of Action: California Military Families Financial Relief Act (Mil. & Vet. Code, §§ 800-813) ("Military Families Act")

The Military Families Act permits a reservist who is called to active duty to defer payments on certain financial obligations, including an obligation secured by a mortgage, while serving on active duty. (Mil. & Vet. Code, § 800, subd. (a)(1).) The statute defines "mortgage" to mean "an obligation secured by a mortgage or deed of trust for residential property owned by the reservist and used as that reservist's primary place of residence on the date the reservist was ordered into

active duty." (Mil. & Vet. Code, § 801.) To trigger the statute's protections, the reservist must deliver to the obligor a written request for a deferment of financial obligations and a copy of his or her military orders. (Mil. & Vet. Code, § 800, subd. (b)(1).) No interest accumulates and no penalties are charged during the deferment period, and the lender must extend the term of the loan by the length of the deferment. (Mil. & Vet. Code, §§ 800, subd. (e); 804.) The lender cannot foreclose upon or repossess the property during the deferment period, and the deferment cannot affect the borrower's credit rating. (Mil. & Vet. Code, §§ 804-805.) Violations of the Military Families Act may support liability for actual damages, attorney's fees, and costs. (Mil. & Vet. Code, § 812.)

Defendants argue that Plaintiff has not alleged facts sufficient to establish that the Military Families Act applies because he has not identified the loan at issue and the property securing it. Defendants have not cited any authority saying that a plaintiff is required to plead these facts to state a claim under the Military Families Act. The Court is not persuaded that these omissions subject the claim to a demurrer based on uncertainty. These kinds of ambiguities can be cleared up with one or two interrogatories. (See *Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616 ["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."].) The same goes for Defendants' argument that Plaintiff did not offer enough details about the written request he allegedly submitted to Defendants.

Defendants claim that their research identified a single loan owned by Money Source, serviced by Servbank, and listing someone with Plaintiff's name as the borrower, and that loan encumbers a real property in Fernley, Nevada. (Opposition, pp. 1-2; Defendants' RJN Exs. 1 [deed of trust]-2 [assignment to Servbank].) This financial obligation was incurred not in October 2017 (as the FAC alleges the loan at issue was), but in October 2020. (Defendants' RJN, Ex. 1.) Defendants argue that the "primary residence" discussed in the FAC necessarily must be this Nevada property, so the loan at issue encumbers a property outside California. The Court reads Defendants to contend that the Military Families Act does not apply under these circumstances.

The Court can and does take judicial notice[1] of the real property records. (Defendants' RJN, Exs. 1-3; see Evid. Code, § 452, subd. (c); *Ragland v. U.S. Bank National Assn.* (2012) 209 Cal.App.4th 182, 194; *Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 264 [disapproved on other grounds by *Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 939, fn. 13].) But nothing in those documents rules out the possibility that Plaintiff owns a separate property in California that is subject to a loan owned and serviced by Money Source and Servbank, that Plaintiff uses that property as his primary residence, and that the FAC concerns that property. Without an inconsistency between the complaint and material subject to judicial notice, a court must accept as true the allegations of the complaint. (*Del E. Webb Corp.*, *supra*,

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[1] Defendants' other requests for judicial notice are denied because these materials are not relevant in ruling on Defendants' demurrer. (See *Mozzetti v. City of Brisbane* (1977) 67 Cal.App.3d 565, 578 [material must be relevant to be judicially noticeable, even if it is a type of material generally subject to mandatory judicial notice].) Defendants offer RJN Exhibits 4-8 to argue that the COVID-19 deferment Plaintiff was allegedly offered is "as good or better" than the Military Families Act deferment he sought, so Plaintiff was not actually harmed by Defendants' alleged conduct and "cannot even show damages[.]" (Reply, p. 2.) The Court is not concerned with what Plaintiff can "show," but with what Plaintiff has pleaded. The demurrer stage is not an appropriate place to litigate the relative benefits of a deferment under the Military Families Act versus a COVID-19 forbearance.

123 Cal.App.3d 593, 604; see *Cansino v. Bank of America* (2014) 224 Cal.App.4th 1462, 1474 [in ruling on a demurrer, a court does not accept as true those allegations that are *inconsistent with* materials subject to judicial notice].) While Defendants insist that their research has not uncovered any other mortgages linked to the parties in this case (Memorandum, p. 6; Reply, p. 3), they have not asked the Court to take judicial notice of this fact. In any event, it does not appear to be a proper subject for judicial notice and is of no persuasive value unless the Court also assumes (without a basis for doing so) that Defendants did not miss anything in their research efforts.

Also, the text of the Military Families Act does not require a property encumbered by debt to be located in California in order for the debt to be deferrable. (See Mil. & Vet. Code, §§ 800, subd. (a)(1); 801.) It likewise does not require the person seeking relief under the act to be a resident of California. (Mil. & Vet. Code, § 803, subd. (a).) Even assuming for purposes of argument that the property Plaintiff discusses in the FAC is the Nevada property Defendants have identified, Defendants have not cited any authority supporting the idea that this moots Plaintiff's cause of action, and the Court has found none. Defendants likewise have presented no argument for why, in the absence of such authority, the Court should nevertheless find that the mortgaged property must be located in California to support a claim under the statute.

In their reply, Defendants clarify that they are arguing "that the only property subject to a loan associated with Plaintiff is located in Nevada . . . and Plaintiff offers no facts to show that his primary residence is in Nevada." (Reply, p. 2.) As best the Court can tell, Defendants are implying that Plaintiff necessarily does not have any loan encumbering his primary residence and so has no mortgage entitled to protection under the Military Families Act. (Mil. & Vet. Code, § 801.) For reasons already discussed, the Court cannot simply accept as true that the only mortgaged property linked to Plaintiff is the Nevada property Defendants have identified. Plaintiff has alleged that the loan at issue in the FAC encumbers the property that served as his primary residence at the time he received his deployment orders (FAC, ¶ 42), and the statute does not require anything more.

Defendants next argue that in the Original Complaint, Plaintiff alleged that his permanent residence is located in Glenn County. (Original Complaint, ¶ 22.) Defendants admit that Glenn County is in California, and no Glenn County, Nevada exists. (Memorandum, p. 2.) Pointing out that the FAC does not identify the location of the mortgaged property at issue and asking the Court to consider the Glenn County allegation under the sham pleading doctrine,[2] Defendants argue that this allegation is problematic because "Defendants are not alleged to be servicing a loan for Plaintiff in that county, and no loan is identified to exist in that county." (Memorandum, p. 6.) It is difficult to discern Defendants' point here. The Court understands them to be arguing that because Plaintiff previously alleged that his primary residence is located in Glenn County and because he is suing over a loan encumbering his primary residence, the FAC is defective unless it identifies the loan at issue as encumbering a Glenn County property. This does not follow. Plaintiff has identified the loan by reference to its borrower (Plaintiff), its type (mortgage on a real property), its servicer (Defendants), and the rough date it was taken out. (FAC, ¶¶ 12, 40, 42.) Defendants have not cited any authority for the idea that Plaintiff was required to identify it through any additional means. To the extent "no loan is identified to exist in that county" means "Defendants' research did not uncover a loan matching Plaintiff's allegations and encumbering a property in Glenn County[,]" again, the Court cannot consider that fact in ruling on this demurrer.

Finally, Defendants argue that Plaintiff has not alleged harm or damage. The FAC alleges that Plaintiff sustained "financial injuries" as a result of Defendants' alleged violations of the Military Families Act. (FAC, ¶ 77.) This is sufficient to satisfy any requirement that Plaintiff allege economic injury.

The demurrer to this cause of action is overruled.

Second Cause of Action: Rosenthal Fair Debt Collection Practices Act (Civ. Code, § 1788 et seq.) ("Rosenthal Act") and Third Cause of Action: Consumer Credit Reporting Agencies Act (Civ. Code, § 1785.1 et seq.) ("CCRAA")

Defendants argue that Plaintiff's Rosenthal Act and CCRAA claims are derivative of his Military Families Act claim and so fail for the same reasons the First Cause of Action does. Having held that Plaintiff has sufficiently pleaded his claim under the Military Families Act, the Court overrules the demurrer to these causes of action as well.

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[2] The sham pleading doctrine applies where a plaintiff attempts to circumvent a pleading defect in his complaint by amending the complaint and "'omitting relevant facts which made his previous complaint defective.'" (*Vallejo Development Co. v. Beck Development Co.* (1994) 24 Cal.App.4th 929, 946 [quoting *Hills Trans. Co. v. Southwest Forest Industries, Inc.* (1968) 266 Cal.App.2d 702, 713].) In that situation, the doctrine requires the plaintiff to explain any "inconsistencies" between their amended pleading and their prior pleading. (*Id.* at p. 947.) If they do not, the court can disregard the "inconsistent allegations" in the amended pleading. (*Ibid.*) For the doctrine to apply, the allegation at issue must contradict one in the prior iteration of the pleading, and the version of the allegation that appeared in the prior pleading must have rendered that pleading (or a part of it) vulnerable to a demurrer. (See *Hills Transp. Co., supra*, 266 Cal.App.2d 702, 713; *American Advertising & Sales Co. v. Mid-Western Transport* (1984) 152 Cal.App.3d 875, 879.) Neither condition is present here. Nothing in the FAC or subject to judicial notice contradicts the Original Complaint's allegation that Plaintiff's primary residence, and the property subject to the mortgage at issue, is located in Glenn County. (The FAC does not, as Defendants claim, place Plaintiff's primary residence in San Rafael.) There is no indication that the location of the property has any bearing on a Military Families Act claim, making the allegation immaterial at the demurrer stage.

Fourth (Negligent Misrepresentation) and Fifth ("Intentional/Reckless Misrepresentation") Causes of Action

The Court addresses these causes of action together because the allegations of each are essentially identical and Defendants have made the same argument as to both.

"The elements of negligent misrepresentation are '(1) the misrepresentation of a past or existing material fact, (2) without reasonable ground for believing it to be true, (3) with intent to induce another's reliance on the fact misrepresented, (4) justifiable reliance on the misrepresentation, and (5) resulting damage.'" (*National Union Fire Ins. Co. of Pittsburgh, PA v. Cambridge Integrated Services Group, Inc.* (2009) 171 Cal.App.4th 35, 50 [quoting *Apollo Capital Fund LLC v. Roth Capital Partners, LLC* (2007) 158 Cal.App.4th 226, 243].) "The elements of intentional misrepresentation 'are (1) a misrepresentation, (2) knowledge of falsity, (3) intent to induce reliance, (4) actual and justifiable reliance, and (5) resulting damage.'" (*Aton Center, Inc. v. United Healthcare Ins. Co.* (2023) 93 Cal.App.5th 1214, 1245 [quoting *Chapman v. Skype, Inc.* (2013) 220 Cal.App.4th 217, 230-231].)

Fraud must be pleaded with particularity (sometimes referred to as "specificity"). This requires pleading facts which show how, when, where, to whom, and by what means the representations were tendered. (*Lazar v. Superior Ct.* (1996) 12 Cal.4th 631, 645.) A plaintiff's burden in asserting a fraud claim against a corporate employer is even greater. (*Ibid.*) In such a case, the plaintiff must "allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written." (*Ibid.*) While there is some disagreement in the case law regarding the extent to which negligent, as opposed to intentional, misrepresentation must be pleaded with particularity (see *National Union Fire*, *supra*, 171 Cal.App.4th 35, 50), the weight of authority applies the same particularity standard to both causes of action. (See, e.g., *Foster v. Sexton* (2021) 61 Cal.App.5th 998, 1028; *Charnay v. Cobert* (2006) 145 Cal.App.4th 170, 185, fn. 14; *SI 59 LLC v. Variel Warner Ventures, LLC* (2018) 29 Cal.App.5th 146, 155.)

Here, both causes of action are predicated on Defendants' "misrepresent[ing] to PLAINTIFF that he was entitled to the statutory deferment benefits under applicable state laws." (FAC, ¶¶ 104, 118.) While he alleges that the misrepresentations came in the form of "letters, notes, and phone calls" (*Id.* at ¶¶ 107, 121.), Plaintiff does not identify who, if anyone, was identified as the sender/caller or when these communications were allegedly sent.

Plaintiff concedes that he has not pleaded these claims with particularity. He relies on authorities establishing an exception to the particularity requirement "where the defendant may be assumed to possess knowledge of the facts as [sic] least equal, if not superior, to that possessed by the plaintiff." (*Burks v. Poppy Const. Co.* (1962) 57 Cal.2d 463, 474.) Plaintiff alleges that Defendants already know all of the facts that would need to be pleaded under the particularity standard because they are "in possession of the letters, notes, and phone call recordings of the misrepresentations made to PLAINTIFF[.]" (FAC, ¶¶ 107, 121.)

Of the authorities Plaintiff cites, only one of them (*Alfaro v. Community Housing Improvement System & Planning Assn., Inc.* (2009) 171 Cal.App.4th 1356) discusses the particularity pleading standard applicable to fraud claims. *Alfaro* concerned a fraud claim arising out of "simple nondisclosure," as opposed to "affirmative misrepresentations," and indicated that particularity

should be required in cases of "affirmative misrepresentation[,]" like this one. (See 171 Cal.App.4th 1356, 1384.)

Plaintiff's argument is essentially that Defendants can be assumed to have knowledge of their own business operations, so they necessarily know all the facts and no particularity should be required. But these conditions will be present in every case in which fraud is alleged against a corporate defendant, and dispensing with the particularity requirement in all such cases would contradict binding authorities holding that a plaintiff generally must allege fraud claims against a corporate employer with particularity. (See, e.g., *Lazar*, *supra*, 12 Cal.4th 631, 645.)

The Court also agrees that Plaintiff has not pleaded justifiable reliance. He claims that he justifiably relied on Defendants' statements by "taking advantage of the deferment protections and not seeking any remedial measures." (FAC, ¶¶ 108, 122.) But throughout the FAC, he says that he repeatedly received communications indicating that he was not receiving the deferment he knew he was entitled to, that he understood that Defendants were mishandling his claim, that he told Defendants as much, and that Defendants' persistent failure to give him the deferment he was entitled to was causing him distress. (FAC, ¶¶ 54, 56, 58-66.) It is unclear how Defendant could have *justifiably* relied on the idea that he was receiving deferment protections under these circumstances.

Generally speaking, these causes of action do not make any sense. Their gist is that Defendants told Plaintiff "that he was entitled to the statutory deferment benefits under applicable state laws" (FAC, ¶¶ 104, 118), and that this was "false" (*id.* at ¶¶ 105, 119), but Plaintiff maintains throughout the FAC that he *was* in fact entitled to the benefits, meaning what Defendants allegedly said would be true. (See, e.g., FAC, ¶¶ 52, 55, 60, 67.) Also, the explanation for *why* the statement was false – "DEFENDANTS did not have either the ability or the intent to provide PLAINTIFFS [sic] with the statutory benefits" (*id.* at ¶¶ 105, 119) – does not make sense. Whether Defendants had the ability or intent to provide the benefits has nothing to do with whether Plaintiff was entitled to them. For these reasons, Plaintiff has failed to plead the "misrepresentation" element of both causes of action.

The demurrer is sustained with leave to amend as to these causes of action.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/28/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV0003775

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: ROB BAKER

PLAINTIFF: RADU MIHAILA vs. DEFENDANT: ULTRAGENYX PHARMACEUTICAL, INC.	

NATURE OF PROCEEDINGS: MOTION – COMPEL

RULING

Defendant Ultragenyx Pharmaceutical, Inc.'s motion to compel arbitration is **GRANTED** and the matter stayed pending the completion of arbitration.

BACKGROUND

Plaintiff Radu Mihaila ("Plaintiff") was employed by Defendant Ultragenyx Pharmaceutical, Inc. ("Defendant") as a Director, CMC-QC Biologics & Oligonucleotides. He alleges that during his employment, he realized Defendant had ignored numerous product specifications and regulatory requests preceding his employment and he had concerns regarding the manufacturing specifications for a new drug Defendant was developing. Plaintiff raised his concerns and was terminated.

On August 26, 2024, Plaintiff filed his complaint alleging two causes of action: 1) Retaliation in violation of Labor Code section 1102.5; and 2) Wrongful Termination in Violation of Public Policy. Defendant now seeks to compel Plaintiff to arbitrate his claims.

LEGAL STANDARD

A party to an arbitration agreement may seek a court order compelling the parties to arbitrate a dispute covered by the agreement. (Code Civ. Proc., § 1281.) A written agreement to submit future controversies to arbitration is valid, enforceable, and irrevocable, save upon such grounds as exist for the revocation of any contract. (*Ibid.*) "On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party to the agreement refuses to arbitrate that controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists, unless it determines" that one of certain specified exceptions applies. (Code Civ. Proc., § 1281.2.) If the Federal Arbitration Act ("FAA"), as opposed to state law, governs an arbitration agreement, the court is required to compel arbitration "upon being satisfied that the

making of the agreement for arbitration or the failure to comply therewith is not in issue" and to order a stay pending the outcome of the arbitration. (9 U.S.C. §§ 3, 4.)

DISCUSSION

I. Existence of Agreement to Arbitrate

On a motion to compel arbitration, the moving party must prove by a preponderance of evidence the existence of the arbitration agreement and that the dispute is covered by the agreement. The burden then shifts to the resisting party to prove by a preponderance of evidence a ground for denial (e.g., fraud, unconscionability, etc.). (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413-414); *Hotels Nevada v. L.A. Pacific Center, Inc.* (2006) 144 Cal.App.4th 754, 758.)

Defendant now seeks to compel arbitration under a "Mutual Agreement to Arbitrate Claims" ("Agreement"), it contends Plaintiff electronically signed during the onboarding process. Defendant contends that Plaintiff's electronic signature bound him to the Agreement. (See *Ruiz v. Moss Bros. Auto Group* (2014) 232 Cal.App.4th 836, 843 ["an electronic signature has the same legal effect as a handwritten signature"]; *Espejo v. S. Cal. Permanente Med. Group* (2016) 246 Cal.App.4th 1047, 1061-1063; Civ. Code § 1633.9(a).)

To support its motion, Defendant submits the testimony of Veronica Becerra, ASCDIR HR Operations for Defendant, who states she is familiar with the onboarding process utilized by Defendant, a secure web platform known as UKG Pro, and employees, including Plaintiff, used UKG Pro for onboarding in October 2023. (Declaration of Veronica Becerra ("Becerra Decl."), ¶¶ 1-6.) Becerra states she regularly used UKG Pro in the course of her daily work and explains the system by which employees review and sign the onboarding documents, including the Agreement. (*Id.*, ¶¶ 6-14, Exh. 1.) She declares "in order to access the UKG Pro platform, a new hire is required to create a unique login ID and password, which he or she would need to enter each time he or she wanted to access the site. Only the employee has knowledge of his or her unique login ID and password." (*Id.*, ¶ 10.) Becerra also states she reviewed the UKG Pro records for Plaintiff and "on October 25, 2023, the date of Plaintiff's onboarding in anticipation of his November 6, 2023, start date, Plaintiff accessed the UKG Pro platform using the unique login ID and password that he created, completed the process outlined above, and electronically signed the Agreement." (*Id.*, ¶ 15, Exh. 2.) Defendant met its burden to establish the existence of an agreement to arbitrate.

In opposition, Plaintiff does not dispute that the courts have found electronic signatures to be an acceptable means by which to agree to an arbitration provision. Instead, Plaintiff declares he did not sign the Agreement, never received an email prompting him to sign a "Mutual Agreement to Arbitrate Claims," no one with Defendant discussed the Agreement with him and the first time he saw the Agreement was after Defendant provided it to his counsel. (Plaintiff Decl., ¶¶ 9-12.) However, Plaintiff recalls completing various other documents during his onboarding process is not an exhaustive list of every onboarding document Plaintiff was required to sign. (See, Plaintiff Decl., Exh. C.) Plaintiff offers no evidence to dispute Defendant's onboarding process as described in Becerra's declaration.

Moreover, the failure to read or understand an arbitration clause is generally not a defense to its enforcement. (*Madden v. Kaiser Found. Hosps.* (1976) 17 Cal.3d 699, 710 [immaterial that party claimed inability to read English and did not remember signing the document]; *Bolanos v. Khalatian* (1991) 231 Cal.App.3d 1586, 1590 [the failure to read a contract before signing it is not grounds to invalidate the contract].) Defendant has satisfied its burden to demonstrate that the electronic signature was Plaintiff's act and in opposition Plaintiff has failed to adequately challenge same.

II. Unconscionability

Plaintiff contends even if an agreement to arbitrate is found, it is unconscionable, and therefore, unenforceable. "An agreement to arbitrate, like any other contract, is subject to revocation if the agreement is unconscionable." *(Carmona v. Lincoln Millennium Car Wash, Inc.* (2014) 226 Cal.App.4th 74, 83.) However, the FAA limits state unconscionability rules that facially discriminate against arbitration. (*Sonic-Calabasas A, Inc. v. Moreno* (2013) 57 Cal.4th 1109, 1143.) The doctrine has "both a procedural and a substantive element, the former focusing on oppression or surprise due to unequal bargaining power, the latter on overly harsh or one-sided results." (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 114 [citations and internal quotation marks omitted].) "The procedural element of an unconscionable contract generally takes the form of a contract of adhesion, which, imposed and drafted by the party of superior bargaining strength, relegates to the subscribing party only the opportunity to adhere to the contract or reject it." (*Little v. Auto Stiegler, Inc.* (2001) 29 Cal.4th 1064, 1071 [citations and internal quotation marks omitted].) Substantive unconscionability focuses on the actual terms of the agreement, which "may take various forms, but may generally be described as unfairly one-sided." (*Id.* at 1071-72.) A court may refuse to enforce a contract when it is both substantively and procedurally unconscionable. (*Armendariz, supra*, 24 Cal.4th at 114.)

Procedural Unconscionability

Plaintiff argues the Agreement is procedurally unconscionable because it was presented as a condition of employment as part of the onboarding process. "When arbitration is a condition of employment, there is inherently economic pressure on the employee to accept arbitration. This alone is a fairly low level of procedural unconscionability." (*Cisneros Alvarez v. Altamed Health Services Corp.* (2021) 60 Cal.App.5th 572, 591.) Notably, Plaintiff does not state he attempted to ask any questions or sought additional time to seek the advice of an attorney. Nor does Plaintiff state he was unable to read or understand the Agreement. "When a person with the capacity of reading and understanding an instrument signs it, [s]he may not, in the absence of fraud, coercion or excusable neglect, avoid its terms on the ground he failed to read it before signing it." (*Bolanos v. Khalatian* (1991) 231 Cal.App.3d 1586, 1590.) Plaintiff failed to present any evidence of fraud, coercion or excusable neglect by Defendant. The fact that the Agreement may be an adhesion contract does not render it automatically unenforceable. (*Carlson v. Home Team Pest Defense, Inc.* (2015) 239 Cal.App.4th 619, 631.)

Substantive Unconscionability

A finding of procedural unconscionability based on adhesion does not mean that the contract will not be enforced; courts must look for substantive unconscionability as well. (*Sanchez v. Valencia Holding Co., LLC*, supra, 61 Cal.4th at 915.) Substantive unconscionability refers to terms that may be described as unfairly harsh or one-sided. (*Little v. Auto Stiegler, Inc.* (2003) 29 Cal.4th 1064, 1071.) "A contract term is not substantively unconscionable when it merely gives one side

a greater benefit; rather, the term must be so one-sided as to shock the conscience." (*Pinnacle Museum Tower v. Pinnacle Market Development* (2012) 55 Cal.4th 223, 246.) "The paramount consideration in assessing substantive conscionability is mutuality." (*Carmona v. Lincoln Millennium Car Wash*, supra, 226 Cal. App.4th at 86.)

Plaintiff contends that the Agreement is substantively unconscionable because it limited as to scope and duration does not require Defendant to arbitrate any claims it may have against Plaintiff. (*Cook v. University of Southern California* (2024) 102 Cal.App.5th 312.) However, the Agreement is mutual and requires both parties to arbitrate claims stemming from the employee's employment or termination. (Becerra Decl., Exh. 2, ¶¶ 1, 12.) Plaintiff also argues the Agreement is limited as to scope and duration, however it states it is based on mutual promises. *(Id.)* Plaintiff also argues the Agreement does not provide for adequate discovery. While discovery is limited, it does provide that the arbitrator may entertain requests for additional discovery and grant or deny the requests based upon the circumstances of the case. (*Armendariz, supra,* 24 Cal.4th at 102.) This is sufficient to comply with the adequate discovery requirement. There is no substantive unconscionability.

Accordingly, the motion to compel arbitration is granted. The case is stayed pending arbitration of Plaintiff's claims. (9 U.S.C.§ 3; Civ. Proc. Code § 1281.4.)

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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