SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 02/19/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV1900720

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PETITIONER: JAMES CALVIN PERA and RESPONDENT: FREEDOM MORTGAGE CORPORATION	

NATURE OF PROCEEDINGS: MOTION – COMPEL; COMPLIANCE WITH ORDER ON PETITION FOR RELIEF DURING MILITARY SERVICE

RULING

This matter is continued to March 26, 2025 at 1:30 pm.

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 February, 2025 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1615487764?pwd=Ob4B5J7LLKcpnkxzJjjEOSHNzEGafG.1
Meeting ID: 161 548 7764
Passcode: 502070

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: 02/19/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV2200232

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: GEOFFREY BAYLOR, ET AL vs. DEFENDANT: RICHARD WATERMAN, ET AL	

NATURE OF PROCEEDINGS: MOTION – OTHER: REOPEN EVIDENCE

RULING

Off calendar.

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: 02/19/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV2203781

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: MILENA FIORE and DEFENDANT: LG ELECTRONICS USA, INC., ET AL	

NATURE OF PROCEEDINGS: MOTION – COMPEL ; DISCOVERY FACILITATOR PROGRAM

RULING

Defendant and Cross-Defendant LG Electronics filed a discovery motion which was initially set for January 15, 2025. The parties requested a continuance and the matter was therefore continued to February 19, 2025. No opposition was filed. On February 13, 2025, LG Electronics requested that the discovery motion scheduled for February 26, 2025, be withdrawn. No opposition has been filed. The court will assume that LG Electronics intended to withdraw the motion for set for February 19, 2025 and therefore, this matter is off calendar.

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: 02/19/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV2301148

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: BERENICE YESENIA MONROY RAMIREZ and DEFENDANT: DAISY CARLSON	

NATURE OF PROCEEDINGS: MOTION – SUMMARY JUDGMENT

RULING

Defendant's motion for summary judgment is granted.

Allegations in Plaintiff's Complaint

Plaintiff Berenice Yesenia Monroy Ramirez filed her Complaint against Defendant Daisy Carlson on April 20, 2023. Plaintiff alleges that she was a tenant at 15 G Street, Unit 2, in San Rafael from May 28, 2022 to March 31, 2023, at which time she was constructively evicted from her unit due to unsafe and uninhabitable conditions. Defendant was the landlord and property manager of the property. Plaintiff asserts causes of action for negligence, breach of the implied warranty of habitability, breach of the implied warranty of quiet enjoyment, intentional infliction of emotional distress, breach of contract, breach of the covenant of good faith and fair dealing, and private nuisance.

Standard

The purpose of a motion for summary judgment or summary adjudication "is to provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.) "Code of Civil Procedure section 437c, subdivision (c), requires the trial judge to grant summary judgment if all the evidence submitted, and 'all inferences reasonably deducible from the evidence' and uncontradicted by other inferences or evidence, show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law." (*Adler v. Manor Healthcare Corp.* (1992) 7 Cal. App. 4th 1110, 1119.)

"On a motion for summary judgment, the initial burden is always on the moving party to make a prima facie showing that there are no triable issues of material fact." (*Scalf v. D. B. Log Homes, Inc.* (2005) 128 Cal.App.4th 1510, 1519.) A defendant moving for summary judgment or

summary adjudication "has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action . . . cannot be established, or that there is a complete defense to the cause of action." (Code Civ. Proc. § 437c(p)(2).) "Once the defendant . . . . has met that burden, the burden shifts to the plaintiff . . . to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto." (Code Civ. Proc. § 437c(p)(2).)

"When deciding whether to grant summary judgment, the court must consider all of the evidence set forth in the papers (except evidence to which the court has sustained an objection), as well as all reasonable inferences that may be drawn from that evidence, in the light most favorable to the party opposing summary judgment." (*Avivi v. Centro Medico Urgente Medical Center* (2008) 159 Cal.App.4th 463, 467; Code Civ. Proc. §437c(c).) The moving party's evidence must be strictly construed, while the opposing party's evidence must be liberally construed. (*Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 838.) Any evidentiary doubts are resolved in favor of the opposing party. (*City of Santa Cruz v. Pacific Gas & Elec. Co.* (2000) 82 Cal.App.4th 1167, 1176.)

Request for Judicial Notice

Defendant's request for judicial notice of the Complaint is granted. (Evid. Code §§ 452, 453.)

Defendant's Evidentiary Objections to Kevin Kearney's Declaration

Defendant's Objection Nos. 1-8 are sustained.

"Trial courts have a duty to act as gatekeepers. They must exclude speculative expert testimony." (*Howard v. Accor Management US, Inc.* (2024) 101 Cal.App.5th 130, 137.) "[E]xpert speculation is not evidence that can defeat summary judgment." (Ibid. [court did not err in disregarding expert's statements where among other things he did not question witnesses, he did not inspect the premises until a year after the incident, and he did not inspect the alleged defective item and instead relied on pictures and witness statements regarding its composition]; see also *Bozzi v. Nordstrom, Inc.* (2010) 186 Cal.App.4th 755, 762–764 [court did not abuse discretion in excluding expert's opinions as conclusory, speculative, and lacking foundation where, among other things, the expert failed to inspect the escalator at issue]; *Lynn v. Tatitlek Support Services, Inc.* (2017) 8 Cal.App.5th 1096, 1115 ["The trial court may strike or dismiss an expert declaration filed in connection with a summary judgment motion when the declaration states expert opinions that are speculative [or] lack foundation"].) An expert cannot "relate as true case-specific facts asserted in hearsay statements, unless they are independently proven by competent evidence or are covered by a hearsay exception." (*People v. Sanchez* (2016) 63 Cal.4th 665, 686.)

Mr. Kearney states that his opinions are based on "tenant correspondence, permit history, and photographic evidence provided by the tenants." (Declaration of Kevin Kearney, p. 3.) There is nothing in the "tenant correspondence, permit history, and photographic evidence" attached to Mr. Kearney's declaration that support his conclusions. He does not cite to any specific evidence for each conclusion he makes and does not state that he spoke with Plaintiff or anyone else who has personal knowledge of the facilities and conditions inside the unit. Mr. Kearney states that "the heating sources are inadequate to maintain the required habitable temperature as mandated

by California law" and that the heating units failed to meet the standard of maintaining "a minimum room temperature of 68°F (20°C) at a point 3 feet above the floor and 2 feet from exterior walls" during the heating season. However, Mr. Kearney provides no factual basis for this conclusion. Mr. Kearney did not inspect the property, and specifically did not inspect the heater(s). The photograph attached to his report appears to be a close-up photograph of a heating unit with tape on it, but Mr. Kearney fails to explain how he can reach his conclusion based on this photograph alone. He also does not state where he obtained the photograph, what the photograph actually shows, when the photograph was taken, where the photograph was taken, the source and reason for the tape, or how long the tape was on the unit. There is no evidence that the photograph shows the wall unit Plaintiff complains about in her Opposition, or that the unit was actually not functional. Mr. Kearney also does not discuss any other heating source in the unit.

Mr. Kearney also provides no foundational facts for his statement that "squatters occupied the downstairs unit, leading to conflicts and disturbances" and that "[t]enants were reportedly asked to assist in their eviction, resulting in violations of Civil Code Section 1941.1(a)(6) and Health and Safety Code Section 17920.3(c). There is no evidence of these facts in the record. Additionally, Mr. Kearney provides no foundational facts for his statement that there were unlawful landlord entries that violate Civil Code Section 1954 and Health and Safety Code Section 17920.3(d). The evidentiary record reflects that neither Defendant nor her contractors entered Plaintiff's unit.

Based on the above, Mr. Kearney's conclusions as to the condition, habitability and legality of the unit, included in both his declaration and his report, are inadmissible.

Evidentiary Record

Defendant establishes the following facts:

- On October 9, 2022, Plaintiff informed Defendant about a plumbing issue in the toilet. Defendant sent a plumber to address the issue the following day. Defendant did not receive any further complaints about the plumbing. (UMF 3.) Plaintiff's response in her Separate Statement, while lengthy, does not actually dispute this fact.

- Defendant never received any written complaints regarding electrical or light issues from Plaintiff. (UMF 4.) Plaintiff's response in her Separate Statement does not dispute this fact. While Plaintiff stated in her deposition that another tenant was designated by the tenants to address electrical issues, she presents no admissible evidence that the designated tenant made any complaint either.

- Plaintiff's unit had operational heaters during Plaintiff's tenancy. Defendant's declaration states: "During her tenancy, the property had a working gas-fed wall heater, a faux fireplace electric heater, and two space heaters, all of which I provided to the plaintiff. These heaters were operational both when she moved in and when she moved out." Plaintiff testified in her deposition that she did not complain to Defendant about the heat before she moved out. (UMF 5.)

- After Plaintiff mentioned an oven tray issue on June 4, 2022, Defendant ordered one the next day. Defendant offered to install it but Plaintiff stated that she would do it, and Defendant never heard from Plaintiff again about any issues with the stove or oven. (UMF 6.) Plaintiff's response in her Separate Statement does not dispute this fact. While Plaintiff states that the stove was rusted and there was no form of ventilation, she does not state that she ever told this to Defendant. (UMF 7.)

- Defendant never complained about residue falling from the ceiling, behind the stove, or about cracks on the wall. (UMF 8.) Plaintiff does not dispute this fact.

- Defendant never complained about general dilapidation or a defective curtain holder. (UMF 9.) Plaintiff does not dispute this fact.

- Defendant and her contractors never entered Plaintiff's unit. On January 31, 2022, Defendant received a service request for a plumbing issue in another unit and sent a plumber, who never entered Plaintiff's unit. On February 12, 2023, a solar panel technician inspected the electrical meter and took photographs of the property from the outside but did not enter Plaintiff's unit. (UMF 11.) While Plaintiff states in her response to the Separate Statement that she disputes this fact, she does not present any evidence of Defendant or her contractors entering her unit.

Plaintiff's evidence includes Mr. Kearney's declaration, Plaintiff's deposition transcript, and correspondence between Plaintiff and Defendant. The excerpts from the deposition transcript submitted by Plaintiff show that Plaintiff testified (i) that when she moved in, she noticed there was no heat, appliances that were not code compliant, and there were issues with the plumbing, (2) there was a heater that had the dial taped over, and Defendant stated it did not work, (3) she did not ask Defendant to fix that heater, (4) Defendant provided her with a space heater but it tripped the breaker when Defendant tried to use it, (5) she did not tell Defendant about the space heater because her neighbor was talking to Defendant about electrical problems, (6) Defendant would show up unannounced, with a plumber or electrician, (7) the stove did not have a vent, and (8) she did not say anything about the lack of a vent to Defendant. The correspondence between Plaintiff and Defendant that Plaintiff submits is not authenticated by Plaintiff and is thus not admissible.

Discussion

I. First Cause of Action/Negligence

Plaintiff alleges that Defendant was negligent by failing to comply with applicable laws relating to plumbing, unlawful landlord entry, leaks and electrical components, and by failing to provide a habitable unit. "Actionable negligence involves a legal duty to use due care, a breach of such legal duty, and the breach as the . . . legal cause of the resulting injury." (*Raven H. v. Gamette* (2007) 157 Cal.App.4th 1017, 1025 [citation and internal quotation omitted].) "[A] due regard for human safety and health compels the imposition on a landlord of a duty of due care in the maintenance of the premises." (*Stoiber v. Honeychuck* (1980) 101 Cal.App.3d 903, 924.)

While "a rebuttable presumption of negligence on the part of the landlord would arise provided the tenant proves that the landlord violated [a] statute and the violation proximately

caused his injuries" (Id.), Plaintiff fails to show any statutes were violated. The Court disregards Mr. Kearney's declaration for the reasons discussed above, and no other evidence has been presented that Defendant violated any statute.

Defendant has satisfied her initial burden in showing she was not negligent. Defendant submits evidence that Plaintiff's unit had functioning heat and that Plaintiff did not complain to Defendant about any issues with the heat. Defendant also submits evidence that she addressed Plaintiff's complaint about the plumbing and her complaint about an oven tray, after which Defendant made no further complaint regarding either. Defendant also submits evidence that Plaintiff did not complain about electrical, light or vent issues, residue falling or cracks on the wall, or the general condition of the property, and that neither Defendant nor her contractors ever entered Plaintiff's unit.

Plaintiff fails to raise a triable issue of fact that Defendant was negligent. The correspondence submitted by Plaintiff is not properly authenticated and therefore not admissible, but even if the Court considered it, it shows only that Plaintiff complained about two contractors who were at the property generally, and not in Plaintiff's unit. This leaves only Plaintiff's deposition testimony, but that too is insufficient to raise a triable issue of fact. Plaintiff's testimony does not establish that the heat at the unit was inadequate. She did not state that there were no working heating units during her tenancy and she does not contend she made complaints about the heat that were ignored. Rather, she is silent as to the adequacy of the heating over the course of her tenancy and she concedes that she did not complain to Defendant about the heat. Plaintiff also fails to show she made complaints about any other issues that were ignored, or that Defendant or her contractors entered her unit as opposed to the property generally. Civil Code Section 1954, cited by Plaintiff, imposes restrictions only a landlord's ability to enter into a "dwelling unit" only; the section does not address a landlord's access to the exterior or common areas.

For the reasons stated above, Defendant is entitled to judgment as a matter of law on the First Cause of Action.

II. Second Cause of Action/Breach of the Implied Warranty of Habitability

Plaintiff alleges that Defendant breached the implied warranty of habitability based on the same factual allegations as her negligence cause of action.

"[A] warranty of habitability is implied by law in residential leases. The elements of a cause of action for breach of the implied warranty of habitability are the existence of a material defective condition affecting the premises' habitability, notice to the landlord of the condition within a reasonable time after the tenant's discovery of the condition, the landlord was given a reasonable time to correct the deficiency, and resulting damages." (*Peviani v. Arbors at California Oaks Property Owner, LLC* (2021) 62 Cal.App.5th 874, 891 [citations and internal quotations omitted].) Here, Defendant's evidence shows that she addressed the few issues that Plaintiff complained about, and Plaintiff does not present any evidence that she made Defendant aware of any defective condition that Defendant did not address. Defendant is entitled to judgment as a matter of law on this cause of action.

III. Third Cause of Action/Breach of the Implied Covenant of Quiet Enjoyment

Plaintiff alleges that Defendant breached the implied covenant of quiet enjoyment based on the same factual allegations as her negligence cause of action.

"In the absence of language to the contrary, every lease contains an implied covenant of quiet enjoyment, whereby the landlord impliedly covenants that the tenant shall have quiet enjoyment and possession of the premises. The covenant of quiet enjoyment insulates the tenant against any act or omission on the part of the landlord, or anyone claiming under him, which interferes with a tenants right to use and enjoy the premises for the purposes contemplated by the tenancy." (*Andrews v. Mobile Aire Estates* (2005) 125 Cal.App.4th 578, 588 [citations and internal quotations omitted] [emphasis in original].) "Minor inconveniences and annoyances are not actionable breaches of the implied covenant of quiet enjoyment. To be actionable, the landlords act or omission must substantially interfere with a tenant's right to use and enjoy the premises for the purposes contemplated by the tenancy." (*Id.* at p. 589.)

Based on the evidentiary record discussed above, Defendant is entitled to judgment as a matter of law on this cause of action. At most, Plaintiff shows she experienced minor inconveniences and annoyances, which Defendant addressed.

IV. Fourth Cause of Action/Intentional Infliction of Emotional Distress

Plaintiff alleges that Defendant is liable for intentional infliction of emotional distress based on the same factual allegations as her negligence cause of action. Plaintiff further alleges that Defendant's acts were outrageous and done with reckless disregard of the probability that Plaintiff would suffer emotional distress as a result.

The elements of a cause of action for intentional infliction of emotional distress are: "(1) defendant engaged in extreme and outrageous conduct (conduct so extreme as to exceed all bounds of decency in a civilized community) with the intent to cause, or with reckless disregard to the probability of causing, emotional distress; and (2) as a result, plaintiff suffered extreme or severe emotional distress." *(Berry v. Frazier* (2023) 90 Cal.App.5th 1258, 1273.) The evidentiary record is devoid of any evidence of extreme or outrageous conduct. Defendant is entitled to judgment as a matter of law on this cause of action.

V. Fifth Cause of Action/Breach of Contract

Plaintiff alleges that Defendant breached the lease by failing to provide a safe and habitable unit and to perform necessary repairs and maintenance. This cause of action is based on the same factual allegations as Plaintiff's negligence cause of action. Defendant has presented evidence that she did not breach the lease, and Plaintiff fails to submit any evidence of a breach. Defendant is entitled to judgment as a matter of law on this cause of action as well.

VI. Sixth Cause of Action/Breach of the Covenant of Good Faith and Fair Dealing

Plaintiff alleges that Defendant breached the covenant of good faith and fair dealing, again relying on the same factual allegations as her other causes of action including her breach of contract cause of action. "Just as the covenant of habitability is implied in a lease, the covenant of good faith and fair dealing is implied in all contracts, including a lease." (*Fairchild v. Park* (2001) 90 Cal.App.4th 919, 927.) The evidentiary record provides no support for Plaintiff's allegations. Defendant is entitled to judgment as a matter of law on this cause of action.

VII. Seventh Cause of Action/Private Nuisance

Plaintiff alleges that Defendants' conduct constitutes a private nuisance because it obstructed with her use of the property and interfered with her enjoyment of life. To prevail on a cause of action for private nuisance, the "plaintiff must prove an interference with its use and enjoyment of its property. Second, the invasion of the plaintiff's interest in the use and enjoyment of the land must be substantial, i.e., it caused the plaintiff to suffer substantial actual damage. Third, the interference with the protected interest must not only be

substantial, it must also be unreasonable, i.e., it must be of such a nature, duration, or amount as to constitute unreasonable interference with the use and enjoyment of the land." (*Today's IV, Inc. v. Los Angeles County Metropolitan Transportation Authority* (2022) 83 Cal.App.5th 1137, 1176 [emphasis in original].)

For the reasons discussed above, the evidentiary record does not show any substantial or unreasonable interference by Defendant of Plaintiff's use and enjoyment of the unit. Defendant's evidence shows that Defendant fixed the few issues that were brought to her attention by Plaintiff, and Plaintiff fails to present any evidence otherwise. Defendant is entitled to judgment as a matter of law on this cause of action.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 02/19/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0000291

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: MARCIA MCGOVERN vs. DEFENDANT: KILLINGSWORTH KENDRICK, ET AL	

NATURE OF PROCEEDINGS: 1) MOTION – RELIEVE COUNSEL
2) CASE MANAGEMENT CONFERENCE

RULING

Plaintiff's counsel has requested that he be relieved as counsel. The court indicated that it would grant counsel's motion upon a declaration indicating the files had been transferred to Plaintiff. Counsel provided a declaration indicating that he had transferred these files electronically, although he acknowledges he needed to re-send them because the link was not working. Plaintiff contends that some of the files transmitted state they have been corrupted. Additionally, there is concern about missing discovery.

Appearances required.

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: 02/19/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0003218

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: RAMIN MALEKIAN, ET AL and DEFENDANT: JEFF APPENRODT, INDIVIDUALLY AND DBA LAUREL REALTY, ET AL	

NATURE OF PROCEEDINGS: MOTION – GOOD FAITH SETTLEMENT

RULING

On November 19, 2024, Defendants Marin Residential Restoration Coleman, LLC, Thomas Henthorne, Nicolas Svenson, and Anywhere Real Estate Operations, LLC, dba Golden Gate Sotheby's International Realty filed a motion for good faith settlement pursuant to Code of Civil Procedure section 877.6 (a)(2). The notice of settlement and motion was served on all parties and no objection was filed by the non-settling parties. 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).) Additionally, subdivision (a)(2) of section 877.6 provides that where a settling party gives notice of settlement to all parties and no party contests the settlement, the court may approve the settlement. In light of the non-opposition, the motion for good faith settlement is GRANTED.

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: 02/19/25 TIME: 1:30 P.M. DEPT: H CASE NO: CV0003520

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: JOE WILBUR HERNANDEZ and DEFENDANT: BUCKEYE ROADHOUSE, INC., A CALIFORNIA CORPORATION, ET AL	

NATURE OF PROCEEDINGS: 1) MOTION – COMPEL
2) MOTION – COMPEL
3) CASE MANAGEMENT CONFERENCE

RULING

Defendant Buckeye Roadhouse, Inc.'s ("Buckeye"; together with Peter Schumacher, "Defendants") two motions to compel arbitration of Plaintiffs' individual claims and dismiss their class action claims are GRANTED in part as to both Plaintiff Jose Wilbur Hernandez ("Hernandez") and Plaintiff Eufemio Mukul ("Mukul"; together with Hernandez, "Plaintiffs"). (9 U.S.C. § 4.) Both motions are DENIED only to the extent they seek an order a dismissing the class action component of Plaintiffs' case. Both motions are GRANTED in all other respects. To be clear, this means that Plaintiffs are compelled to arbitrate their claims to the extent those claims are brought in Plaintiffs' individual capacities. To the extent Plaintiffs' claims are brought on behalf of a class, those claims are to remain before this Court, and that litigation is stayed pending the outcome of the arbitration of Plaintiffs' individual claims. (9 U.S.C. § 3.)

BACKGROUND

This is a class action for alleged violations of the Labor Code. Hernandez and Mukul allege that they worked for Buckeye as a line cook and a food runner, respectively. (Complaint, ¶¶ 20-21.) They bring this class action for unpaid regular and overtime wages, failure to provide meal periods, failure to provide rest periods, failure to provide accurate wage statements, waiting time violations (all under the Labor Code), and unfair competition (see Bus. & Prof. Code, § 17200 et seq.). Buckeye moves to compel arbitration of Plaintiffs' individual claims and dismiss their class action 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.)
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); *Hotels Nevada v. L.A. Pacific Center, Inc.* (2006) 144 Cal.App.4th 754, 758.)

DISCUSSION

Buckeye and Schumacher each submitted separate motions to compel arbitration on November 20, 2024. Even though they were submitted under the names of two separate defendants, both notices of motion are entitled "Notice of Buckeye Roadhouse, Inc.'s Motion to Compel Arbitration and Dismiss Class Action" and state that the motion is brought exclusively by "Buckeye Roadhouse, Inc. ('Buckeye' or 'Defendant')." The motions differ in the plaintiff at whom they are directed. The notice of motion submitted under Buckeye's name requests an order compelling Mukul, and only Mukul, to arbitrate his claims against Buckeye, and to do so on an individual basis (i.e., to dispense with the class action element of this lawsuit). The notice of motion submitted under Schumacher's name requests a similar order as to Hernandez's claims against Buckeye. The Court does not rule on any motion seeking an order as to defendant Schumacher, because no such motion is before it.

The Court will address whether Buckeye has met its threshold burden as to each Plaintiff before reaching any of the arguments discussed in the opposition.

Buckeye's Motion as to Hernandez

After Hernandez accepted a line cook position at Buckeye, he completed onboarding paperwork through Harri, a program Buckeye uses for personnel management. (Price Dec., ¶ 5.) His onboarding tasks included completing Buckeye's arbitration agreement, and he was provided with a Spanish version of the contract. (*Ibid.*) Buckeye submits a copy of the Spanish arbitration agreement Hernandez received through Harri and signed, which contains the inscription "E-SIGNED by Jose Wilber Hernandez on 17 Aug 2023" at the bottom. (*Id.* at Ex. A.) For the Court's convenience, Buckeye has also submitted an English version of Hernandez's arbitration

agreement. (Gonzalez Dec. [Hernandez], ¶ 16 & Ex. F.) The Court will refer to that exhibit when discussing the substance of the agreement.[1] The agreement provides in relevant part:

> "As a condition of my employment with the Company I agree that any claim or dispute (whether a claim or dispute between me and the Company only or a claim or dispute initiated by me that includes others not parties to this agreement if those non-parties demand arbitration) (1) arising from or relating to this agreement or the breach thereof; or (2) arising from, relating to or regarding my employment, including but not limited to wrongful termination, discrimination, compensation, or the conditions of my employment; or (3) any claim or dispute I or the Company may have against one another, shall be resolved by binding arbitration in San Francisco, California administered by JAMS under its National Rules for the Resolution of Employment Disputes."

All of Hernandez's claims against Buckeye arise from or relate to his employment with Buckeye. Hernandez does not dispute that he signed the agreement. The Court concludes that Buckeye has met its threshold burden to show by a preponderance of the evidence that an arbitration agreement exists and covers this dispute. (See *Rosenthal, supra*, 14 Cal.4th 394, 413.)

Buckeye's Motion as to Mukul

Buckeye offers evidence that Mukul signed the arbitration agreement attached as Exhibit A to the Declaration of Samantha Dresser. (Dresser Dec. (Mukul), ¶ 3.) The agreement reads in relevant part:

> "As a condition of my employment with Buckeye Roadhouse, Inc., d/b/a Buckeye Roadhouse (the "Company") I agree that any claim or dispute (whether a claim or dispute between me and the Company only or a claim or dispute initiated by me that includes others not parties to this agreement if those non-parties demand arbitration) (1) arising from or relating to this agreement or the breach thereof; or (2) arising from, relating to or regarding my employment, including but not limited to wrongful termination, discrimination, compensation, or the conditions of my employment; or (3) any claim or dispute I or the Company may have against one another, shall be resolved by binding arbitration in San Francisco, California administered by the American Arbitration Association under its National Rules for the Resolution of Employment Disputes."

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[1] Plaintiffs argue that "[t]here is no foundation laid with respect to the accuracy of the Spanish-English Translation of the Hernandez Arbitration Agreement[.]" (Opposition, p. 3.) The Court reads this as a challenge based on lack of authentication. Authenticating a writing requires introducing "evidence sufficient to sustain a finding that it is the writing that the proponent of the evidence claims it is." (Evid. Code, § 1400.) A party can satisfy this requirement with a declaration, based on personal knowledge, stating that a document is what the party offering it claims it to be. (*The Luckman Partnership, Inc. v. Superior Court* (2010) 184 Cal.App.4th 30, 34-35.) Buckeye's counsel has submitted a declaration attesting to personal knowledge of all facts contained therein and that the document submitted as Exhibit F to his declaration is "a true and correct copy of the English version of the arbitration agreement signed by Hernandez." (Gonzalez Dec. (Hernandez), ¶¶ 1, 16.) This satisfies the authentication requirement.

The agreement bears Mukul's handwritten signature and a signing date of May 13, 2004. Mukul does not dispute that he signed the agreement. All of Mukul's claims against Buckeye arise from or relate to his employment with Buckeye. The Court concludes that Buckeye has met its threshold burden to show by a preponderance of the evidence that an arbitration agreement exists and covers this dispute. (See *Rosenthal, supra*, 14 Cal.4th 394, 413.)

Opposition Arguments

Labor Code, Section 229

Labor Code, section 229 provides that "[a]ctions to enforce the provisions of this article for the collection of due and unpaid wages claimed by an individual may be maintained without regard to the existence of any private agreement to arbitrate." Where the FAA applies, "it preempts [Section 229], requiring arbitration of claims that otherwise could be resolved in court." (*Performance Team Freight Systems, Inc. v. Aleman* (2015) 241 Cal.App.4th 1233, 1240 [citing *Perry v. Thomas* (1987) 482 U.S. 483, 491-492].) This means that to the extent the FAA does *not* apply to the arbitration agreements at issue here, Buckeye's motion fails as to any of Plaintiffs' claims that are brought "to enforce the provisions of [Labor Code, Division 2, Part 1, Chapter 1, Article 1 (Lab. Code, §§ 200-244)] for the collection of due and unpaid wages[.]" (See *Muller v. Roy Miller Freight Lines, LLC* (2019) 34 Cal.App.5th 1056, 1070 [where the FAA is inapplicable, applying Section 229 does not present any preemption issue].)

The burden of establishing the applicability of the FAA lies with the party asserting preemption, which must show that the arbitration agreement at issue "evidenc[es] a transaction involving [interstate] commerce[.]"[2] (See *Woolls v. Superior Court* (2005) 127 Cal.App.4th 197, 214; *Shepard v. Edward MacKay Enterprises, Inc.* (2007) 148 Cal.App.4th 1092, 1101; 9 U.S.C. §§ 1-2.) As used in the statute, "the word 'involving' is broad and is indeed the functional equivalent of 'affecting'[,]" which "normally signals Congress' intent to exercise its Commerce Clause powers to the full." (*Allied-Bruce Terminix Companies, Inc. v. Dobson* (1995) 513 U.S. 265, 274-75.) This means the party asserting preemption must show that the contract affects (1) the channels of interstate commerce, (2) the instrumentalities of interstate commerce, or (3) some activity having a substantial relation to interstate commerce. (*Carbajal v. CWPSC, Inc.* (2016) 245 Cal.App.4th 227, 238.)

Buckeye argues that the requisite nexus to interstate commerce is present here because the restaurant relies on supplies sourced from outside California, and its employees, including kitchen staff like Plaintiffs, use those supplies to perform their job duties. (Schumacher Dec., ¶¶ 3-6, 9.) For example, Buckeye's woodfire grill, cutlery, and dishware are sourced from out of state, as are its stoves, microwaves, and dishwashers. (*Id.* at ¶ 6.) These are supplies of the type that Plaintiffs used while working. (See Mukul Dec., ¶ 2; Hernandez Dec., ¶ 2.) Buckeye also argues that it is frequented by customers who live outside of California and traces approximately 30% of its revenue to out-of-state and foreign visitors. (*Id.* at ¶¶ 7-8.)

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[2] Buckeye's moving papers raised an argument predicated on the applicability of the FAA, but did not present any evidence that the FAA applies to either arbitration agreement at issue here. The restaurant submitted such evidence for the first time with its reply. Under the circumstances, it was acceptable for Buckeye to present this evidence with its reply. This is because Plaintiffs raised certain statutory arguments implicating federal preemption – neither of which Buckeye preemptively addressed in its moving brief – in their opposition. Because these arguments came up for the first time in Plaintiffs' opposition, it was proper for Buckeye to present the evidence necessary to rebut those arguments with its reply.

In *Shepard v. Edward Mackay Enterprises, Inc.* (2007) 148 Cal.App.4th 1092, the plaintiffs brought a construction defect action against their home's developer and seller after pipes burst and caused property damage. (148 Cal.App.4th 1092, 1095.) The defendant presented evidence that a substantial number of the supplies used to build the home – not including the pipes – were manufactured outside California and delivered across state lines. (*Id.* at pp. 1100-1101.) The Third District held that this was sufficient to satisfy the interstate commerce requirement and render the FAA applicable. (*Id.* at p. 1101.) It was of no matter that the out-of-state supplies were, generally speaking, not at issue in the case: "We are aware of no cases indicating the FAA preempts contrary state law only if the particular dispute is over interstate goods[.] . . . [T]he pertinent question is whether the contract evidences a transaction involving interstate commerce, not whether the dispute arises from the particular part of the transaction involving interstate commerce." (*Ibid.*)

The parallels to this case are clear. *Shepard* involved a contract for the sale of a product (a home), and the creation of that product involved substantial use of supplies from out of state. (See also *Allied-Bruce Terminix Companies, Inc. v. Dobson* (1995) 513 U.S. 265, 282 [FAA applied to contract for termite prevention services in part because the materials the company used to provide the service came from outside the state].) This case involves contracts for the provision of certain services (food running, bussing, and line cooking) and such provision involved the use of supplies from out of state. Schumacher's declaration broadly supports the idea that Buckeye employees working in Plaintiffs' positions use products sourced from out-of-state frequently (that is, substantially) while on the job. (Schumacher Dec., ¶¶ 9-10.) This distinguishes this case from *Hoover v. American Life Ins. Co.* (2012) 206 Cal.App.4th 1193, cited by Plaintiffs. There, the court concluded that there was no evidence in the record that the employment relationship between the parties had anything to do with interstate commerce. (206 Cal.App.4th 1193, 1207.)

The Court concludes that the requisite nexus to interstate commerce is present here, and the FAA applies. As a result, it preempts Labor Code, section 229, and that state law cannot be given effect. (*Performance Team*, *supra*, 241 Cal.App.4th 1233, 1240.)

Unconscionability

"Because unconscionability is a reason for refusing to enforce contracts generally, it is also a valid reason for refusing to enforce an arbitration agreement[.]" (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 114; see also Code Civ. Proc., § 1281.) The prevailing view is that for a court to refuse to enforce a contract due to unconscionability, each of two types of unconscionability must be present, but not necessarily to the same degree. (*Armendariz*, *supra*, 24 Cal.4th 83, 114.) "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, 793.) .) "Substantive unconscionability arises when a contract imposes unduly harsh, oppressive, or one-sided terms." (*Id.* at p. 795.) "[T]he more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa." (*Armendariz, supra,* 24 Cal.4th 83, 114.)

Plaintiffs argue that the arbitration agreements they signed are unconscionable for three reasons. First, they are adhesive. An adhesion contract is "a standardized contract 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." (*Neal v. State Farm Ins. Companies* (1961) 188 Cal.App.2d 690, 694.) This is "sufficient to establish some degree of procedural unconscionability." (*Sanchez v. Valencia Holding Co., LLC* (2015) 61 Cal.4th 899, 915.)

Second, Plaintiffs argue that the agreements impermissibly limit discovery by limiting each party to one deposition. Hernandez's agreement does provide that "each party shall have the right to take one deposition[,]" but in the same sentence, it provides that "[t]he parties shall have all rights to discovery afforded by the procedures of JAMS[.]" (Gonzalez Dec. (Hernandez), Ex. F.) JAMS Rule 17 gives each party the right "to take one deposition of an opposing Party or of one individual under the control of the opposing Party." (*Id.* at Ex. B, § (b).) This renders the agreement's provision that "each party shall have the right to take one deposition" surplusage. JAMS Rule 17 further provides, "[t]he necessity of additional depositions [beyond one per party] shall be determined by the Arbitrator based upon the reasonable need for the requested information, the availability of other discovery options and the burdensomeness of the request on the opposing Parties and the witness." (*Ibid.*) In light of this, Hernandez's arbitration agreement cannot be read to *limit* each party to a single deposition, because that reading would deny effect to the language adopting JAMS' discovery rules, which entitle the parties to additional depositions at the arbitrator's determination. The Court concludes that Hernandez's arbitration agreement does not limit each party to a single deposition.

While Hernandez' agreement incorporates the JAMS rules, Mukul's incorporates the AAA's. (Dresser Dec. (Mukul), Ex. A.) Mukul has not presented any evidence of what the AAA procedures provide regarding depositions. (See *Rosenthal*, *supra*, 14 Cal.4th 394, 413.) Buckeye presents evidence that under the AAA rules, "[t]he arbitrator shall have the authority to order such discovery, by way of deposition . . . as the arbitrator considers necessary to a full and fair exploration of the issues in dispute, consistent with the expedited nature of arbitration." (Gonzalez Reply Dec., Ex. B, § 9.) On the evidence before it, there is no basis for the Court to conclude that AAA rules confine the parties to one deposition each.

Finally, Plaintiffs argue that the arbitration agreements lack mutuality, i.e., they operate in a one-sided fashion. Plaintiffs do not mean that the arbitration agreements require them to arbitrate their claims against Buckeye while permitting Buckeye to litigate any claims it may have against them in court. Instead, Plaintiffs take issue with the fact that their agreements apply to "any claim or dispute (whether a claim or dispute between me and the Company only or a claim or dispute initiated by me that includes others not parties to this agreement if those non-parties demand arbitration)[.]" This language empowers Buckeye to extend the protection from litigation it is entitled to under the agreement to anyone else Plaintiffs might sue in the same dispute at that third party's request. But because this only applies to claims and disputes "initiated by me," were Buckeye to sue Plaintiffs and other defendants at the same time, Plaintiffs would not have a similar right to insulate their co-defendants from litigation.

The sole authority Plaintiffs cite in support of their one-paragraph mutuality argument is *Pinela v. Neiman Marcus Group, Inc.* (2015) 238 Cal.App.4th 227, offered for the proposition that mutuality is an important consideration in an unconscionability analysis. (Opposition, pp. 6-7.) The argument reads as though *any* lack of mutuality renders an arbitration agreement unconscionable. It is not that simple. Arbitration agreements can be enforceable notwithstanding some measure of one-sidedness. (See, e.g., *Stirlen v. Supercuts, Inc.* (1997) 51 Cal.App.4th 1519, 1536 ["[A] contract can provide a 'margin of safety' that provides the party with superior bargaining strength a type of extra protection for which it has a legitimate commercial need without being unconscionable."]; accord *Armendariz, supra*, 24 Cal.4th 83, 117 [some "'modicum of bilaterality'" is required].)

Plaintiffs have made no attempt to cite authority on the circumstances in which a lack of mutuality has in fact been held to render an arbitration agreement unconscionable and draw factual parallels to this case. Such analysis was necessary here. The Court has not been able to locate a case with a provision roughly comparable to the one at hand. Mutuality most frequently comes up in arbitration cases where the agreement provides that only claims brought by an employee against an employer, but not vice versa, must be arbitrated (see, e.g., *Armendariz, supra*, 24 Cal.4th 83, 115-116), or exempts from arbitration only those claims that the employer is likely to bring against the employee while requiring arbitration of claims likely to run in the other direction (see, e.g., *Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478, 495). These cases are not readily applicable where the disparity in the contract lies in the parties' respective abilities to insulate third parties from litigation. The lack of any argument or authority in Plaintiffs' opposition would require the Court to construct Plaintiffs' argument for them, which is improper. "Issues do not have a life of their own: if they are not raised or supported by argument or citation to authority, [the court] consider[s] the issues waived." (*Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 99.) The Court concludes that Plaintiffs have not carried their burden of showing that the arbitration agreements are unconscionable due to a lack of mutuality. (*Rosenthal, supra*, 14 Cal.4th 394, 413.)

Of the three unconscionable elements Plaintiffs identified, only one – the adhesive nature of the contracts – survives the Court's analysis. The bare fact that a contract is one of adhesion, by itself, is not enough to render it unenforceable on unconscionability grounds. (See *Sanchez, supra*, 61 Cal.4th 899, 915.)

Labor Code, section 432.6 (as to Mukul only)

"A person shall not, as a condition of employment, continued employment, or the receipt of any employment related-benefit, require any applicant for employment or any employee to waive any right, forum, or procedure for a violation of any provision of . . . this code[.]" (Lab. Code, § 432.6, subd. (a).) This "effectively bars an employer from requiring an employee or applicant for employment to enter into an agreement to arbitrate certain claims as a condition for being hired or for keeping a job[.]" (*Chamber of Commerce of the United States of America v. Bonta* (2023) 62 F.4th 473, 480.) Mukul argues that the arbitration agreement he signed is unenforceable under Section 432.6.

The Court has already concluded that the FAA applies to Mukul's arbitration agreement, meaning Section 432.6 is preempted. (*Chamber of Commerce of the United States of America v. Bonta* (2023) 62 F.4th 473, 490.) Even if it were not, though, this argument would still fail. The

statute applies only to contracts "entered into, modified, or extended on or after January 1, 2020." (Lab. Code, § 432.6, subd. (h).) Buckeye has carried its burden to show that Mukul entered into an arbitration agreement on May 13, 2004, and Mukul references that agreement throughout his briefing. (See Opposition, p. 7 [citing to Dresser Dec. (Mukul), Ex. A for the Mukul arbitration agreement].) Mukul does not present any evidence that he ever signed an arbitration agreement after January 1, 2020.

Class Action Aspect

As to each plaintiff, Buckeye seeks an order "compelling [each plaintiff] to individually arbitrate his claims against Buckeye and to dismiss the class action." (Notice of Motion [Hernandez], p. 1; Notice of Motion [Mukul], p. 1 [same].) As the Court understands this, Buckeye is *not* asking that Plaintiffs be compelled to arbitrate their claims to the extent they are brought on behalf of a class, just as they be compelled to arbitrate to the extent each Plaintiff brings his claims in his individual capacity. Buckeye expressly takes the position that neither arbitration agreement covers class action claims, so no one can be compelled to weather class arbitration. (Memorandum [Hernandez], p. 12; Memorandum [Mukul], p. 11.) Instead, Buckeye is asking for a *dismissal of Plaintiffs' case* to the extent they seek relief on behalf of a class, i.e., that they not be permitted to bring those claims in any forum, judicial or arbitral. (See, e.g., Reply, p. 10 ["Buckeye respectfully requests the Court issue an Order (1) compelling Plaintiffs to arbitrate their causes of action in the Complaint individually, and (2) dismiss Plaintiffs [sic] class action complaint with prejudice."].)

Buckeye has not offered any authority in support of this request. Dismissal of the class action claims was not at issue in *Lamps Plus, Inc. v. Varela* (2019) 587 U.S. 176, the sole authority Buckeye cites. That case concerned whether it was proper to *compel arbitration* of class action claims based on an arbitration agreement that was ambiguous as to whether it covered class action claims. (587 U.S. 176, 178, 183.) Buckeye offers no authority establishing that a plaintiff may be prohibited from maintaining class action claims in any forum because he signed an arbitration agreement that does not include class action claims within the universe of claims for which arbitration is compelled. (To be clear, the Court does not rule on whether either plaintiff's arbitration agreement covers class action claims.)

Accordingly, Buckeye's request for a dismissal 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.

The Zoom appearance information for February, 2025 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1615487764?pwd=Ob4B5J7LLKcpnkxzJjjEOSHNzEGafG.1
Meeting ID: 161 548 7764
Passcode: 502070

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