**SUPERIOR COURT OF CALIFORNIA**
**COUNTY OF MARIN**

DATE: 05/15/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0008616

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

PLAINTIFF: CHAPMAN LAW GROUP, A.P.C.

vs.

DEFENDANT: LEE GREENBERG

NATURE OF PROCEEDINGS: MOTION –SET ASIDE/VACATE

RULING

Plaintiff Chapman Law Group filed its complaint on December 22, 202. Proof of service of summons was entered on January 14, 2026. Request for default was entered on February 13, 2026. Plaintiff filed its Opposition on May 4.

Defendant Lee Greenberg filed a motion to set aside the default on February 20, 2026. In his papers, he states that he is a gentleman in his 90s, in declining health. Defendant also made an in court an appearances at a Case Management Conference on Wednesday, May 13, 2026, with Defendant appearing remotely, advising the court of the same thing.

Defendant seeks to set aside a judgment entered in favor of the defense pursuant to CCP §473(b), which permits a party to seek relief from an order entered because of mistake, inadvertence, surprise or excusable neglect. The trial court has broad discretion to grant or deny the requested relief. CCP §473. Defendant seeks relief pursuant to CCP § 473(b), arguing he is *pro per* has multiple lawsuits underway which involve elder financial abuse.

The request is Granted. Defendant is to file his answer to the Complaint not later than June 12, 2026.

***Parties must comply with Marin County Superior Court Local Rules, Rule 2.10(A), (B), which provides that if a party wants to present oral argument, the party must contact the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. the court day preceding the scheduled hearing. Notice may be by telephone or in person to all other parties that argument is being requested (i.e., it is not necessary to speak with counsel or parties directly.) Unless the Court and all parties have been notified of a request to present oral argument, no oral argument will be permitted except by order of the Court. In the event no party requests oral argument in accordance with Rule 2.10(B), the tentative ruling shall become the order of the court.***

***IT IS ORDERED that evidentiary hearings shall be in-person in Department L. For routine appearances, the parties may access Department L for video conference via a link on the court website. Kindly turn your camera on when your case is called and make sure the party or lawyer making the appearance is properly identified on the screen.***

***FURTHER ORDERED that the parties are responsible for ensuring that they have a good connection and that they are available for the hearing while using the virtual remote courtroom. If the connection is inadequate, the Court may proceed with the hearing in the party's absence. If it is determined that you are driving your car during the hearing, you will be removed from the virtual courtroom. (Yes, this happens).***

# SUPERIOR COURT OF CALIFORNIA
# COUNTY OF MARIN

DATE: 05/15/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0006956

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

PLAINTIFF: HILLARY FREDRICKSON, ET AL

vs.

DEFENDANT: 155 MELVILE LLC, A LIMITED LIABILITY COMPANY ET AL

NATURE OF PROCEEDINGS: MOTION – COMPEL ARBITRATION

RULING

Defendants William Oswald ("Oswald"), 155 Melville LLC ("Seller LLC"), and Contractor Manager, Inc.'s petition to compel arbitration is GRANTED as to all three moving defendants and all five of Plaintiffs Hillary and David Fredrickson's ("Plaintiffs") causes of action. (Code Civ. Proc., § 1281.2.)

Litigation of Plaintiffs' claims against Summit Professional Builders, Inc. ("Summit") and Gregg Foster ("Foster") is STAYED until the arbitration of the claims against the moving defendants is complete. (Code Civ. Proc., § 1281.4.)

**BACKGROUND**

Plaintiffs allege that they bought real property in San Anselmo from Seller LLC in 2017. (Complaint, ¶¶ 1-3, 13, 17.) Summit was allegedly a member or manager of Seller LLC, giving Foster, Summit's manager and director, control over Seller LLC. (*Id.* at ¶¶ 5-6.) Plaintiffs claim that in approximately 2016, Summit and Foster performed shoddy renovations to the San Anselmo property with intent to "flip" it. (*Id.* at ¶¶ 4-5, 13-14.) They allegedly neglected to properly address issues with the home's foundation and instead installed a floated floor designed to conceal them. (*Id.* at ¶ 15.) Plaintiffs further allege unpermitted work and work otherwise not up to code. (*Ibid.*)

Plaintiffs claim that when they bought the property, Seller LLC did not disclose any significant defects with the property, and even provided Plaintiffs with a letter from an engineer advising that a bulge in the foundation at the back of the house was merely cosmetic. (Complaint, ¶ 17.) After their purchase, Plaintiffs claim they discovered numerous defects with the property, particularly foundation-related issues with spillover effects on the interior of the house. (*Id.* at ¶¶ 19-21.)

In addition to the aforementioned defendants, the complaint names as defendants Contractor Manager, Inc. and its principal, Oswald. Plaintiff claims Contractor Manager, Inc. was a second

member and manager of Seller LLC and that it and Oswald participated in the construction work and the alleged scheme. (Complaint, ¶ 7.)

Plaintiffs pursue claims for negligence, breach of contract, breach of the implied covenant of good faith and fair dealing, fraud, and negligent misrepresentation.

The Court now considers Oswald, Seller LLC, and Contractor Manager, Inc.'s motion to compel arbitration.

## 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 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

Seller LLC conveyed the property to Plaintiffs through a Residential Purchase Agreement and Joint Escrow Instructions ("Agreement") executed on March 31, 2017. (Oswald Dec., ¶ 4 & Ex. A.) The Agreement provides that its parties agreed "to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action." (*Id.* at Ex. A., ¶ 22(A).) The parties further agreed "that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration." (*Id.* at Ex. A., ¶ 22(B).)

A. <u>Scope of Arbitration Provision</u>

Plaintiffs argue that certain of their claims are outside the scope of the Agreement's arbitration provision.

- The First Cause of Action for negligence alleges that Defendants negligently performed the remodel and renovation work that took place prior to Plaintiffs' purchasing the San Anselmo property. (Complaint, ¶¶ 27-28.)
- The Second Cause of Action for breach of contract alleges that Defendants breached the Agreement by failing to disclose material defects affecting the property. (*Id.* at ¶¶ 35-37.)
- The Third Case of Action for breach of the implied covenant of good faith and fair dealing alleges that Defendants violated the implied covenant by performing defective

construction work, concealing defects, and misrepresenting the condition of the property. (*Id.* at ¶¶ 46-47.)

- The Fourth Cause of Action for fraud and Fifth Cause of Action for negligent misrepresentation allege that Defendants misrepresented the property's condition and the construction work's legal compliance, which induced Plaintiffs to buy the property. (*Id.* at ¶¶ 50-51, 58-59.)

Plaintiffs do not dispute that their claims for breach of contract and breach of the implied covenant fall within the scope of the Agreement's arbitration provision. They argue, however, that their tort claims (First Cause of Action for negligence, Fourth Cause of Action for fraud, and Fifth Cause of Action for negligent misrepresentation) are not claims "arising . . . out of [the] Agreement or any resulting transaction" and thus are beyond the scope of the arbitration clause. (See Oswald Dec., Ex. A., ¶ 22(B).)

The Agreement is a standard form contract. As a result, appellate courts have addressed the scope of the very arbitration provision at issue in this case, and whether claims like Plaintiffs' fall within it.

In *Johnson v. Siegel* (2000) 84 Cal.App.4th 1087, a homeowner sued the sellers of a property for fraud and negligent misrepresentation, alleging that the sellers had neglected to disclose flooding and drainage issues. (84 Cal.App.4th 1087, 1089.) The court held that the arbitration provision – the same one at issue here – was broad enough to encompass these claims, reasoning that the alleged misrepresentations were an "integral" part of the overall real estate transaction, and the clause was "clearly broad enough to encompass disputes arising from" critical components of the transaction, if not from the real estate purchase agreement itself. (*Id.* at pp. 1094.)

The Second District considered the same arbitration provision in *Victrola 89, LLC v. Jaman Properties 8 LLC* (2020) 46 Cal.App.5th 337, another dispute involving allegations that a seller had "deceived [the plaintiff buyer] about both the initial condition of the Property and the repairs of the Property's defects." (46 Cal.App.5th 337, 344.) *Victrola 89* involved claims for (among other things) fraud and negligence, with the negligence claim alleging that certain defendants "breached their duty of care to [the plaintiff] by failing to construct/repair the Property in a good and workmanlike manner." (*Id.* at p. 354.) The appellate court held that, due to the "resulting transaction" language in the arbitration provision, the clause covered any disputes or claims arising out of "[the plaintiff's] purchase of the Property." (*Id.* at p. 356.) Because the plaintiff's claims "concern[ed] . . . defects in the construction of the Property, along with defendants' alleged deceit regarding those defects in order to induce [the plaintiff] to purchase the Property[,]" the claims "ar[o]se out of the Agreement and the resulting transaction" and were within the scope of the arbitration provision. (*Ibid.*)

"Given that [the plaintiff's] claims all center around the defects in the Property – purchased because of the Agreement – and the alleged misrepresentations and concealments surrounding the purchase transaction, we conclude the claims arise out of the 'Agreement or any resulting transaction,' and are thus within the scope of the arbitration provision." (*Id.* at p. 357.)

Under the weight of this authority, the court finds Plaintiffs' claims fall within the scope of the Agreement's arbitration provision.

B. <u>Seller LLC's Standing to Compel Arbitration</u>

Seller LLC filed a Certificate of Cancellation with the California Secretary of State in July 2018. (Opp. Request for Judicial Notice,[1] Ex. A.) Plaintiffs contend that as a result, defendant lacks standing to move to compel arbitration.

"Upon filing a certificate of cancellation . . . , a limited liability company shall be canceled and its powers, rights, and privileges shall cease." (Corp. Code, § 17702.02, subd. (c).) A canceled LLC "continues to exist for the purpose of winding up its affairs, prosecuting and defending actions by or against it in order to collect and discharge obligations, disposing of and conveying its property, and collecting and dividing its assets. A limited liability company shall not continue business except so far as necessary for its winding up." (Corp. Code, § 17707.06, subd. (a).)

Plaintiffs argue that a motion to compel arbitration seeks affirmative relief, and based on the foregoing statutes, a canceled LLC is not permitted to do that. But a canceled LLC "continues to exist for the purpose of . . . defending actions . . . against it in order to . . . discharge obligations[.]" (Corp. Code, § 17707.06, subd. (a).) Plaintiffs have filed a lawsuit against a canceled LLC, alleging that the company has financial obligations to Plaintiffs based on its alleged misconduct involving the property in San Anselmo. As part of an effort to discharge those obligations, Seller LLC has filed a motion seeking an order kicking this case out of court based on the Agreement's arbitration provision. This strikes the Court as permitted under the plain language of Section 17707.06(a).

In *Vera v. REL-BC, LLC* (2021) 66 Cal.App.5th 57, a plaintiff filed a lawsuit against an LLC and others, alleging that they had withheld material facts from her when they sold her a property. (66 Cal.App.5th 57, 62-63.) The trial court entered judgment in favor of the defendants based on the statute of limitations, and the defendants requested attorney's fees based on a fee provision in the property purchase agreement. (*Id.* at p. 64.) The trial court denied the LLC's request for fees on the basis that it "had dissolved and therefore lacked capacity to request fees." (*Ibid.*) The First District, interpreting the same statutes Plaintiffs are invoking in this case, held that the LLC "cannot be denied its fees merely because it is a dissolved or canceled entity." (*Id.* at p. 74.) Thus a canceled LLC that has been sued is not prohibited from requesting affirmative relief from the court in that litigation.

Plaintiff's argue that an LLC's rights under a valid and binding contract to arbitrate would terminate upon cancelation. *Vera*'s holding that a canceled LLC is permitted to enforce a contractual attorney's fees provision notwithstanding its cancelation suggests that this Court cannot deprive Seller LLC of its rights under a contractual arbitration provision "merely because it is a . . . canceled entity." (66 Cal.App.5th 57, 74.) The Court concludes that Seller LLC has standing to bring this motion.

C. Oswald and Contractor Manager, Inc.'s Ability to Enforce the Agreement

"Generally speaking, one must be a party to an arbitration agreement to be bound by it or invoke it." (*Westra v. Marcus & Millichap Real Estate Investment Brokerage Co., Inc.* (2005) 129 Cal.App.4th 759, 763.) The parties to the Agreement are Plaintiffs and Seller LLC. (See Oswald Dec., Ex. A, ¶¶ 1(E) ["Buyer and Seller are referred to herein as the 'Parties.'"], 32 [Oswald and Foster signing the Agreement on behalf of "Seller," which is described as "155 Melville LLC"].)

1. Contract enforcement.

[1] Plaintiffs' request for judicial notice is granted. (Evid. Code, §§ 452, subds. (c), (h).)

There are exceptions to the rule that a nonparty to an arbitration agreement cannot enforce it, one of them based on the doctrine of equitable estoppel. (*Molecular Analytical Systems v. Ciphergen Biosystems, Inc.* (2010) 186 Cal.App.4th 696, 706.) "Under that doctrine, as applied in 'both federal and California decisional authority, a nonsignatory defendant may invoke an arbitration clause to compel a signatory plaintiff to arbitrate its claims when the causes of action against the nonsignatory are "intimately founded in and intertwined" with the underlying contract obligations.' " (*Ibid.* [quoting *Boucher v. Alliance Title Company, Inc.* (2005) 127 Cal.App.4th 262, 268].) Stated differently, " 'if a plaintiff relies on the terms of an agreement to assert his or her claims against a nonsignatory defendant, the plaintiff may be equitably estopped from repudiating the arbitration clause of that very agreement.' " (*Id.* at p. 714 [quoting *Goldman v. KPMG, LLP* (2009) 173 Cal.App.4th 209, 220.)

Arguably the equitable estoppel doctrine "prevents a 'plaintiff who seeks to hold nonsignatories liable for damages under a contract' from taking 'the inconsistent position that the arbitration provision in the contract is unenforceable by or against those individuals' or entities." (*Id.* at pp. 714-715 [quoting *Rowe v. Exline* (2007) 153 Cal.App.4th 1276, 1288; see also *Turtle Ridge Media Group, Inc. v. Pacific Bell Directory* (2006) 140 Cal.App.4th 828, 833 ["The rule applies to prevent parties from trifling with their contractual obligations."].)

"For the doctrine to apply, 'the claims the plaintiff asserts against the nonsignatory must be dependent upon, or founded in and inextricably intertwined with, the underlying contractual obligations of the agreement containing the arbitration clause.'" (*Molecular Analytical Systems*, *supra*, 186 Cal.App.4th 696, 715 [quoting *Goldman*, *supra*, 173 Cal.App.4th 209, 217-218].) " 'Claims that rely upon, make reference to, or are intertwined with claims under the subject contract are arbitrable.' " (*Ibid.* [quoting *Rowe*, *supra*, 153 Cal.App.4th 1276, 1287].)

Although Plaintiffs argue Oswald and Contractor Manager, Inc. cannot enforce the Agreement based on their nonparty status, they are suing Oswald and Contractor Manager, Inc. for breach of the Agreement on the theory that they violated contractual obligations to disclose material defects in the property. (Complaint, ¶¶ 35-37.)

Plaintiffs are also suing these defendants for breach of the implied covenant of good faith and fair dealing for depriving them of the benefits of the Agreement by "performing defective construction work on the Property, failing to disclose material defects, concealing the true condition of the Property, and misrepresenting that the construction work complied with applicable building codes and permits[.]" (*Id.* at ¶ 46.) Plaintiffs allege that this "unfairly interfered with Plaintiffs' rights to receive the benefits of the purchase contract, namely, a Property that met the represented and bargained-for condition and quality." (*Ibid.*) That Oswald and Contractor Manager, Inc. are parties to the Agreement is a prerequisite to their liability on this cause of action. (See *Smith v. City and County of San Francisco* (1990) 225 Cal.App.3d 38, 49 ["The prerequisite for any action for breach of the implied covenant of good faith and fair dealing is the existence of a contractual relationship between the parties, since the covenant is an implied term in the contract."].)

Oswald and Contractor Manager, Inc. are thus plainly entitled to compel arbitration of Plaintiffs' Second and Third Causes of Action notwithstanding that they are not parties to the Agreement.

2. Negligence, fraud, and negligent misrepresentation

The remaining three claims against these defendants are negligence, fraud, and negligent misrepresentation. Here, the Court turns to a different rule enabling parties to litigation to invoke arbitration agreements to which they are not parties: the alter ego exception. In *Rowe*, *supra*, 153

Cal.App.4th 1276, 1284-1285, the First District held that a nonsignatory to an arbitration agreement who is sued as the alter ego of a signatory can enforce the arbitration provision. This rule applies only to the specific causes of action for which the plaintiff is proceeding against the nonsignatory defendant on an alter ego theory. (*Id.* at p. 1286.)

In this case, Plaintiffs allege that Oswald and Contractor Manager, Inc. (in addition to Summit and Foster) are all alter egos of Seller LLC. (Complaint, ¶¶ 8-10.) That characterization pervades the entire complaint, and Plaintiffs appear to be proceeding against the non-Seller LLC defendants on this theory (among others) for purposes of all five causes of action. This appears through global, unqualified statements like the following, which are not made in connection with any particular cause(s) of action:

- "*At all relevant times*, Seller LLC was not operated as a separate and distinct legal entity from its members, Summit, Contractor Manager, LLC [sic], Foster, and Oswald, but instead functioned as the alter ego of these individuals and entities." (Complaint, ¶ 8 [emphasis added].)
- "There existed, and continues to exist, a unity of interest and ownership among Seller LLC, Summit, Contractor Manager, LLC [sic], Foster, and Oswald such that the separate personalities of Seller LLC, Summit, and Contractor Manager and its members and managers no longer existed." (*Id.* at ¶ 9.)
- "Recognition of Seller LLC, Summit and Contractor Manager as a separate entity from its members and managers and [sic] would sanction a fraud and promote injustice because Seller LLC, Summit and Contractor Manager were formed and used to construct and sell defective property, conceal those defects from Plaintiff, and then shield the individuals and entities responsible for those defects by distributing all assets and dissolving Seller LLC. Plaintiff is therefore entitled to hold Summit, Contractor Manager, LLC [sic], Foster, and Oswald personally liable for the obligations and liabilities of Seller LLC." (*Id.* at ¶ 10.)

In light of these allegations, one cannot reasonably interpret the complaint as not advancing its claims against Oswald and Contractor Manager, Inc. for negligence, fraud, and negligent misrepresentation on an alter ego theory.

The Court concludes that Oswald and Contractor Manager, Inc. are entitled to enforce the arbitration agreement as to all five of Plaintiffs' causes of action notwithstanding the fact that they are not signatories to the agreement.

### D. <u>Section 1281.2(c)</u>

Code of Civil Procedure, section 1281.2, subdivision (c) gives a court discretion to refuse to arbitrate a controversy, even where it determines that the parties have in fact agreed to arbitrate, where "[a] party to the agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact."

Here, the court concludes that Plaintiffs and Seller LLC agreed to arbitrate all of the claims Plaintiffs assert in this litigation, and that Oswald and Contractor Manager, Inc. may invoke the arbitration clause as well.

As to whether the court should deny the motion to compel arbitration under Section 1281.2(c) considering Summit's and Foster's involvement in the litigation. "'Section 1281.2(c) addresses the peculiar situation that arises when a controversy also affects claims by or against *other parties not bound by the arbitration agreement*.' " (*Rowe*, *supra*, 153 Cal.App.4th 1276, 1290 [quoting *Cronus Investments, Inc. v. Concierge Services* (2005) 35 Cal.4th 376, 393 [emphasis added by *Rowe* court].) Everything the Court has held about Oswald and Contractor Manager, Inc.'s ability to enforce the arbitration provision as to all five causes of action applies equally to Summit and Foster. They are not "third parties" within the meaning of Section 1281.2(c). (*Id.* at p. 1290.) Accordingly, Section 1281.2(c) does not apply.

**CONCLUSION**

The motion is GRANTED as to all three moving defendants and all five of Plaintiffs' causes of action.

Plaintiffs are alleging a fraudulent scheme perpetrated by all five defendants and are proceeding on alter ego and agency theories. (Complaint, ¶¶ 7, 8-10, 12, 14-15.) Also, Plaintiffs' claims against Seller LLC are based in part on Summit's conduct, and therefore necessarily based in part on Foster's conduct, as entities can only act through the people who control them. (*Id.* at ¶¶ 5, 8-10, 13.) The Court finds that Plaintiffs' claims against the moving defendants are not severable from their claims against Summit and Foster. (See Code Civ. Proc., § 1281.4.) Accordingly, litigation of Plaintiffs' claims against Summit and Foster is stayed until the arbitration of Plaintiffs' claims against the moving defendants is complete. (*Ibid.*)

***Parties must comply with Marin County Superior Court Local Rules, Rule 2.10(A), (B), which provides that if a party wants to present oral argument, the party must contact the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. the court day preceding the scheduled hearing. Notice may be by telephone or in person to all other parties that argument is being requested (i.e., it is not necessary to speak with counsel or parties directly.) Unless the Court and all parties have been notified of a request to present oral argument, no oral argument will be permitted except by order of the Court. In the event no party requests oral argument in accordance with Rule 2.10(B), the tentative ruling shall become the order of the court.***

***IT IS ORDERED that evidentiary hearings shall be in-person in Department L. For routine appearances, the parties may access Department L for video conference via a link on the court website. Kindly turn your camera on when your case is called and make sure the party or lawyer making the appearance is properly identified on the screen.***

***FURTHER ORDERED that the parties are responsible for ensuring that they have a good connection and that they are available for the hearing while using the virtual remote courtroom. If the connection is inadequate, the Court may proceed with the hearing in the party's absence. If it is determined that you are driving your car during the hearing, you will be removed from the virtual courtroom. (Yes, this happens).***

# SUPERIOR COURT OF CALIFORNIA
# COUNTY OF MARIN

DATE: 05/15/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0006835

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

PLAINTIFF: FERNANDO JACKSON

vs.

DEFENDANT: JEFF MACOMBER, ET AL

NATURE OF PROCEEDINGS: MOTION – OTHER: AUTHORIZING ALTERNATIVE SERVICE OF SUMMONS AND COMPLAINT

RULING

On calendar is Plaintiff's motion authorizing alternative service of the summons and complaint, which was filed on February 18, 2026. There are two defendants: Jeff Macomber and Chance Ander, who are personnel with the California Department of Corrections and Rehabilitation. Proof of service of summons entered on March 2, 2026, indicates that Chance Andes was served. Plaintiff is to provide an update regarding service.

As to any remaining defendants, Plaintiff's request is GRANTED.

***Parties must comply with Marin County Superior Court Local Rules, Rule 2.10(A), (B), which provides that if a party wants to present oral argument, the party must contact the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. the court day preceding the scheduled hearing. Notice may be by telephone or in person to all other parties that argument is being requested (i.e., it is not necessary to speak with counsel or parties directly.) Unless the Court and all parties have been notified of a request to present oral argument, no oral argument will be permitted except by order of the Court. In the event no party requests oral argument in accordance with Rule 2.10(B), the tentative ruling shall become the order of the court.***

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# SUPERIOR COURT OF CALIFORNIA
# COUNTY OF MARIN

DATE: 05/15/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0004596

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

PLAINTIFF: PATRICIA JEFFRIES, ET AL

vs.

DEFENDANT: OLIVER HOSPITALITY, LLC, ET AL

NATURE OF PROCEEDINGS: MOTION – STRIKE PORTIONS OF PLAINTIFF'S 2ND AMENDED COMPLAINT

RULING

Defendants Oliver Hospitality, LLC, Marconi Conference Center Operating Corporation ("Business defendants") and Levon Carell Trout's (collectively "Defendants") Motion to Strike portions of plaintiffs Patricia Jeffries and Jocelyn Swan's ("Plaintiffs" or "Jeffries and Swan") Second Amended Complaint ("SAC") is GRANTED without leave to amend.

LEGAL STANDARD

The court may, upon a motion, or at any time in its discretion, and upon terms it deems proper, strike (1) strike out any irrelevant, false, or improper matter inserted in any pleading; or (2) strike out all or any part of any pleading not drawn or filed in conformity with the laws of California, a court rule, or an order of the court. (Code Civ. Proc., § 436, subds. (a)-(b).)

The grounds for a motion to strike are that the pleading has irrelevant, false or improper matter, or has not been drawn or filed in conformity with laws. (Code Civ. Proc., § 436.) The grounds for moving to strike must appear on the face of the pleading or by way of judicial notice. (Code Civ. Proc., § 437.) "When the defect which justifies striking a complaint is capable of cure, the court should allow leave to amend." (*Vaccaro v. Kaiman* (1998) 63 Cal.App.4th 761, 768.)

**DISCUSSION**

Plaintiffs Jeffries and Swan filed their SAC on December 12, 2025, after Defendants successfully moved to strike portions of the First Amended Complaint on similar grounds. On January 13, 2026, the present Motion to Strike was filed. The Motion seeks to strike the following portions of the SAC: "Pages 4-5, paragraph 13, in its entirety; Page 6, paragraph 21, in its entirety; Page 6, paragraph 22, in its entirety; Pages 7 – 8, paragraph 30, in its entirety; Page 8, prayer, paragraph 3; and Page 8, prayer, ¶ 4."

> Paragraph 13 alleges: "The CORPORATE DEFENDANT's allowing their employee, an unlicensed and unqualified driver, to carry passengers on their property with knowledge of Defendant TROUT and DOES 1 through 10's unlicensed and unqualified status, and

> the SUBJECT VEHICLE's unlicensed status, is a conscious disregard of the law designed to protect foreseeable passengers, including Plaintiffs, from injury."
>
> Paragraph 21 alleges: "As a direct and proximate result of the aforementioned conduct of Defendants, Plaintiffs claim prejudgment interest. Plaintiffs do not know the reasonable value thereof but pray that the same may be inserted herein when ascertained."
>
> Paragraph 22 alleges: "Defendants acted with malice with an intent to cause injury and/or Defendants conduct was despicable and was done with a willful and knowing disregard of the rights and safety of Plaintiffs. Defendants conduct was despicable in that it would be looked down on and despised by reasonable people. Accordingly, Plaintiffs are entitled to punitive damages."
>
> Paragraph 30 alleges: "Defendants acted with malice with an intent to cause injury and/or Defendants conduct was despicable and was done with a willful and knowing disregard of the rights and safety of Plaintiffs. Defendants' conduct was either 1) committed by one or more officers, directors or managing agents of Defendants acting on their behalf; 2) authorized by one or more officers, directors or managing agents of Defendants; and/or 3) one or more of Defendants officers, directors, or managing agents of Defendants knew of the conduct and adopted or approved the conduct after it occurred. Accordingly, Plaintiffs are entitled to punitive damages."
>
> Prayer Paragraph 3 prays for "prejudgment interest, according to law" and paragraph 4 prays for "punitive damages."

These allegations address two distinct subjects: prejudgment interest and punitive damages. The Court will address each in turn.

*A. <u>Prejudgment Interest</u>*

To the extent Plaintiffs seek prejudgment interest pursuant to Civil Code section 3287, subdivision (a), such interest is not available for personal injury claims. To the extent Plaintiffs seek prejudgment interest pursuant to section 3288, Plaintiffs have not adequately alleged a claim for punitive damages. (See discussion below.) To the extent Plaintiffs seek prejudgment interest pursuant to section 3291, such interest must be claimed by memorandum of costs. (*Jones* v. *John Crane, Inc.* (2005) 132 Cal.App.4th 990, 1012.)

*B. <u>Punitive Damages</u>*

Punitive damages may be imposed where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice. (Civ. Code, § 3294, subd. (a).) "Malice" is conduct intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on with a willful and conscious disregard of the rights or safety of others. (Civ. Code, § 3294, subd. (c)(1).) An award of punitive damages requires "despicable conduct," meaning behavior that is "vile," "base," or contemptible" and that would be "looked down upon and despised by ordinary decent people," in addition to willful and conscious disregard for the rights and safety of others. (*College Hospital, Inc. v. Superior Court* (1994) 8 Cal.4th 704, 725.) "'Punitive damages are proper only when the tortious conduct rises to levels of extreme indifference to the plaintiff's rights, a level which decent citizens should not have to tolerate.' [Citation.]" (*Lackner v. North* (2006) 135 Cal.App.4th 1188, 1210.)

A person acts with willful and conscious disregard of the other's rights when he is aware of the probable harmful consequences of his conduct, and willfully and deliberately fails to avoid those consequences." (*Taylor v. Superior Court* (1979) 24 Cal.3d 890, 895-896; *Spinks v. Equity*

*Residential Briarwood Apartments* (2009) 171 Cal.App.4th 1004, 1055.) The complaint "must include specific factual allegations showing that defendant's conduct was oppressive, fraudulent, or malicious to support a claim for punitive damages. Punitive damages may not be pleaded generally." (*Today's IV, Inc.* v. *Los Angeles County Metropolitan Transportation Authority* (2022) 83 Cal.App.5th 1137, 1193, citations omitted.)

A motion to strike punitive damages is properly granted where a plaintiff does not state a prima facie claim for punitive damages. (*Turman v. Turning Point of Cent. California, Inc.* (2010) 191 Cal.App.4th 53, 63.)

*C. Facts in the SAC.*

The SAC alleges that Defendant Trout sped down a steep grade, ignored calls to slow down, attempted a drift maneuver. (SAC, ¶ 7.) The SAC goes on to conclude that this "drift" movement was an extreme and dangerous driving maneuver, for which no competent driver would undertake with passengers onboard. (SAC, ¶ 8.)

This is not "conduct that is 'so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by most ordinary decent people,'" and it is not conduct which has "the character of outrage frequently associated with crime." *(Butte Fire Cases* (2018) 24 Cal.App.5th 1150, 1159.) With respect to the "conscious disregard" requirement, Plaintiffs allege no facts showing that Trout """was aware of the probable dangerous consequences of his conduct, and…willfully and deliberately failed to avoid those consequences."""  (*Ibid.*) Plaintiffs' allegations that Trout did not have a driver's license, was unfit and incompetent," and was "not trained or qualified to operate" the vehicle (SAC, ¶ 4) are not facts which show that Trout acted with conscious disregard. Additionally, Plaintiffs allege no facts showing that one must have a driver's license or be trained to operate an Evolution Forester or that Trout's lack of a driver's license and training contributed to the accident. Further, Plaintiffs allege no facts showing the nature of Trout's unfitness and incompetence and how it contributed to the accident.

Finally, although they allege the legal conclusion that he violated certain Vehicle Code sections, they do not allege that he was cited for violating those sections. Even if he was, this would not rise to the level of the circumstances which courts have found to be sufficient to support punitive damage claims. (See *Taylor, supra*, at p. 900, *Peterson v. Superior Court* (1982) 31 Cal.3d 147, 162, and *Sumpter v. Matteson* (2008) 158 Cal.App.4th 928, 936.)

As to the Business defendants and *respondeat superior* liability, Plaintiffs still offer no facts showing that a license and training were required to operate the vehicle. Even if they were, Trout's unlicensed status, like the vehicle's lack of registration and licensing, has no apparent connection to the accident, and there are no facts showing that the Business defendants knew that Trout's lack of training would probably have dangerous consequences. There are no facts alleged showing that the Business defendants were personally guilty of malice when they allowed Trout to operate the vehicle. Alleging that Trout was permitted to operate the vehicle was "despicable" and with a "willful and conscious disregard of the rights or safety of others." Further, Plaintiffs have not offered any facts as to the nature of Trout's "incompetence and unfitness" such that it could be said that allowing him to drive the vehicle was malicious. As for the requirement for seeking punitive damages against a corporate employer, Plaintiffs use of "and/or" allegations which the court already ruled were insufficient. And Plaintiffs also continue to allege no *facts* as to how the Business defendants authorized or ratified Trout's conduct.

CONCLUSION

The Motion to strike the following portions of the SAC:

- Pages 4-5, paragraph 13, in its entirety;
- Page 6, paragraph 21, in its entirety;
- Page 6, paragraph 22, in its entirety;
- Pages 7 – 8, paragraph 30, in its entirety;
- Page 8, prayer, paragraph 3;
- and Page 8, prayer, paragraph 4;

is GRANTED without leave to amend.

***Parties must comply with Marin County Superior Court Local Rules, Rule 2.10(A), (B), which provides that if a party wants to present oral argument, the party must contact the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. the court day preceding the scheduled hearing. Notice may be by telephone or in person to all other parties that argument is being requested (i.e., it is not necessary to speak with counsel or parties directly.) Unless the Court and all parties have been notified of a request to present oral argument, no oral argument will be permitted except by order of the Court. In the event no party requests oral argument in accordance with Rule 2.10(B), the tentative ruling shall become the order of the court.***

***IT IS ORDERED that evidentiary hearings shall be in-person in Department L. For routine appearances, the parties may access Department L for video conference via a link on the court website. Kindly turn your camera on when your case is called and make sure the party or lawyer making the appearance is properly identified on the screen.***

***FURTHER ORDERED that the parties are responsible for ensuring that they have a good connection and that they are available for the hearing while using the virtual remote courtroom. If the connection is inadequate, the Court may proceed with the hearing in the party's absence. If it is determined that you are driving your car during the hearing, you will be removed from the virtual courtroom. (Yes, this happens).***

**SUPERIOR COURT OF CALIFORNIA**
**COUNTY OF MARIN**

DATE: 05/15/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0007859

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

PLAINTIFF: CHAD LEAF

vs.

DEFENDANT: MATTHEW CAPLAN, ET AL

NATURE OF PROCEEDINGS: MOTION – QUASH – DISCVOERY FACILITATOR PROGRAM

RULING

Pursuant to Marin County Rule, Civil 2.13B, on April 15, 2026, Joel Gumbiner, Esq. was appointed to preside as Discovery Facilitator for Plaintiff's Motion to Quash Deposition Subpoenas. The Court has not received a Declaration of Non-Resolution from either party, in particular *the moving party*, within five court days prior to the hearing on the motion, as required by MCR Civ 2.13H. The declaration was due on May 8, 2026.

The Court reminds the parties that compliance with MCR Civ 2.13H not only includes the timely filing of the Declaration of Non-Resolution by each party five court days prior to the hearing, but also requires that "[t]he Declaration shall not exceed three pages and ***shall briefly summarize the remaining disputed issues and each party's contentions***." (MCR Civ 2.13H(1), emphasis added.)

The Court concludes that this discovery matter has been or is being resolved by the facilitator. The motion is therefore ordered **OFF CALENDAR**. (MCR Civ 2.13H(2).) Should the parties fail to reach resolution through the facilitator, either party may request (by ex parte application) that the Court re-set the motion for hearing.

***Parties must comply with Marin County Superior Court Local Rules, Rule 2.10(A), (B), which provides that if a party wants to present oral argument, the party must contact the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. the court day preceding the scheduled hearing. Notice may be by telephone or in person to all other parties that argument is being requested (i.e., it is not necessary to speak with counsel or parties directly.) Unless the Court and all parties have been notified of a request to present oral argument, no oral argument will be permitted except by order of the Court. In the event no party requests oral argument in accordance with Rule 2.10(B), the tentative ruling shall become the order of the court.***

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# SUPERIOR COURT OF CALIFORNIA
# COUNTY OF MARIN

DATE: 05/15/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0006424

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

PLAINTIFF: JAMES MCGEOUGH

vs.

DEFENDANT: JOHN MCGEOUGH, ET AL

NATURE OF PROCEEDINGS: DEMURRER

RULING

Defendant John McGeough, et al, filed a demurrer on March 18, 2026, to Plaintiff James McGeough's First Amended Complaint.

Plaintiff has not filed a response, nor has he filed an opposition to the demurrer. The failure to oppose is considered consent to the granting of the request. (Cal. Rules of Court, rule 8.54(c); Local Rule Marin, Civil 2.8G.1.).

Defendant's demurrer is sustained as to causes of action 1-11.

***Parties must comply with Marin County Superior Court Local Rules, Rule 2.10(A), (B), which provides that if a party wants to present oral argument, the party must contact the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. the court day preceding the scheduled hearing. Notice may be by telephone or in person to all other parties that argument is being requested (i.e., it is not necessary to speak with counsel or parties directly.) Unless the Court and all parties have been notified of a request to present oral argument, no oral argument will be permitted except by order of the Court. In the event no party requests oral argument in accordance with Rule 2.10(B), the tentative ruling shall become the order of the court.***

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**SUPERIOR COURT OF CALIFORNIA**
**COUNTY OF MARIN**

DATE: 05/15/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0005785

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

PLAINTIFF: JOSE AVIGAIL GRAMAJO ORDONEZ

vs.

DEFENDANT: GENERAL MOTORS LLC

NATURE OF PROCEEDINGS: MOTION – COMPEL

RULING

Plaintiff Jose Gramajo Ordonez filed his motion to compel responses to documents, set one, and Feb 18, 2026. Plaintiff alleges that he served three separate meet and confer letters outlining why defendant's responses were not code compliant. The defendant refused to supplement responses. Plaintiff alleges that defendant has not produced documents in connection with RFPs: 1-58. Plaintiff also alleges that Defendant has refused to meet and confer with Plaintiff's counsel via Zoom or phone calls to complete a good faith attempt to meet and confer.

Defendant filed its opposition on May 5, 2026, explaining that under modifications to the . Song-Beverly Consumer Warranty Act, new cases filed after January 1, 2025, new cases under the Act are subject to AB 1755. Defendant argues that discovery is limited, under the act in that defendant must now produce early disclosures of a specific set of documents related to the subject vehicle. The documents produced by the defendant thus far have been identified by the Legislature as "those most associated with lemon law claims". These include a vehicle summary reports, service documents, product brochures, etc.

California discovery rules are to be liberally construed in favor of disclosure. Discovery statutes must be interpreted broadly to facilitate the exchange of information between parties. "[A]bsent a showing that substantial interests will be impaired by allowing discovery, liberal policies of discovery rules will generally counsel against overturning a trial court's decision granting discovery and militate in favor of overturning a decision to deny discovery" (*Flagship Theatres of Palm Desert, LLC v. Century Theatres, Inc.*, 198 Cal.App.4th 1366 (2011), *Forthmann v. Boyer*, 97 Cal.App.4th 977 (2002)). As the Supreme Court explains, "a strict, rigid interpretation of the relevancy requirement" would likely "lead recalcitrant parties to attempt to construct an 'irrelevancy' barrier to discovery more frequently," while "a more fluent, liberal interpretation may discourage resorting to this kind of delaying tactic" (*Pacific Tel. & Tel. Co. v. Superior Court*, 2 Cal.3d 161 (1970)). The statutory provisions governing discovery methods "must be liberally construed in favor of discovery and reviewing courts must not extend statutory limitations upon discovery beyond limits expressed by legislature". (*Irvington-Moore, Inc. v. Superior Court*, 14 Cal.App.4th 733 (1993)).

The court is concerned with Defendant's apparent lack of meet and confer efforts. In addition, the voluntary production requirement most likely does not replace responses to discovery requests asked by either party.

Marin Local Rule, Civil, 2.13 provides in pertinent part:

> For any discovery dispute in a civil case that the parties cannot resolve informally in the meet and confer process, it shall be the policy of the Marin County Superior Court to Civil Rules – to require use of the Discovery Facilitator Program ("the Program"). Reasonable and good faith participation in the Program before the filing of a discovery motion satisfies a party's meet and confer obligation for purposes of this rule

It is the court's policy that all discovery disputes be forwarded to the facilitator program for possible resolution. Unfortunately, it appears this matter was never forwarded to the facilitator program as required by the local rules. The court regrets the error.

The court will be available for *an in court* session on May 29, 2026, at 3 p.m. to assist the parties to resolve the dispute. The parties may appear via remove technology. Or, the parties could stipulate to participate in the facilitator program.

Appearances are required, with defendant to explain the extend of the meet and confer communications that do not involve email messages.

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