SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 06/20/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV2103297

PRESIDING: HON. ANDREW SWEET

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: HADAR WEITZMAN LAW CORP., ET AL vs. DEFENDANT: LOCKSMITH EMERGENCY SOLUTIONS INC., ET AL	

NATURE OF PROCEEDINGS: MOTION – DISMISS

RULING

Presently before the court is DEFENDANT LOCKSMITH EMERGENCY SOLUTIONS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR PERJURY AND FAILURE TO EFFECTUATE SERVICE. The motion is denied.

First, "...under a long-standing common law rule of procedure, a corporation, unlike a natural person, cannot represent itself before courts of record in propria persona, nor can it represent itself through a corporate officer, director, or other employee who is not an attorney. It must be represented by licensed counsel in proceedings before courts of record. ..." (*CLD Construction, Inc.* v. *City of San Ramon* (2004) 120 Cal.App.4th 1141, 1145.)

To the extent the motion is brought by defendant Mordechay Amar on his own behalf, he cannot bring a motion pursuant to Code of Civil Procedure section 418.10, subdivision (a)(1) since he is in default. "... Entry of default deprives the court of jurisdiction to consider any motion other than a motion for relief from default." (Weil and Brown, Cal. Practice Guide: Civil Procedure Before Trial (TRG 2024) § 5:7.) Even if the court considers the motion to dismiss pursuant to section 583.210 as an implied motion to vacate the default and default judgment (see *Dill* v. *Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1443-1444), the evidence is insufficient to rebut the presumption that Amar was properly served. (Evid. Code, § 647.) Although the receipt offered by Amar shows a flight from San Jose to Houston on November 28, 2021 and a return flight on December 6, 2021, the receipt shows the date of purchase as December 5, 2021. He offers no additional evidence to establish that he was in fact in Texas on December 1, 2021. Additionally, where a party seeks relief based upon extrinsic fraud or mistake, such as a falsified proof of service, the party must act with diligence upon learning the relevant facts. (*Trackman* v. *Kenney* (2010) 187 Cal.App.4th 175, 181.) Amar offers no evidence showing that he did not

receive the request for entry of default served on him by mail on February 23, 2023 or the Judgment served on him by mail on July 31, 2023. He did not file this motion until March 2025. "Generally, diligence is measured from when the party discovers the default or default judgment against it. ..." (*Kramer* v. *Traditional Escrow, Inc.* (2020) 56 Cal.App.5th 13, 37.) In *Kramer*, the court found that defendants did not act with diligence and denied equitable relief where they waited nine months to seek relief. (*Id.* at 38.)

The court notes that both sides' papers violate California Rule of Court 2.108(1) in that they are single spaced rather than one and one-half spaced or double-spaced.

On April 30, 2025, *Amar v. Weitzman*, #CIV2200965 was sent to this court as a potentially related matter. Given the above ruling, the matter is properly heard in Department H by the originally assigned judge, the Hon. Sheila S. Lichtblau. The July 2, 2025, Case Management Conference shall be heard in Department H at 9:00 a.m.

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 June, 2025 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1615162449?pwd=e5SqeATq2HOsxxD7Fhrl3Q7qPFgFZa.1
Meeting ID: 161 516 2449
Passcode: 073961

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: 06/20/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV2201785

PRESIDING: HON. ANDREW SWEET

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: CHAUNCEY BRYANT vs. DEFENDANT: CVS PHARMACY, INC., ET AL	

NATURE OF PROCEEDINGS: MOTION – COMPEL

RULING

This matter is dropped from calendar.

On May 23, 2025, this Court ordered Chauncy Bryant's ("Plaintiff") Motion to Compel Compliance with Deposition Subpoena for Personal Appearance of Brandin Vale off calendar for failure to comply with Local rule 2.13B.

On May 29, 2025, Plaintiff's ex parte application to re-set the hearing date on this motion was granted and the matter was ordered back on calendar for a hearing on June 20, 2025. However, Plaintiff failed to provide notice of the ex parte application or June 20, 2025, hearing to Brandin Vale and/or his attorney.

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 June, 2025 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1615162449?pwd=e5SqeATq2HOsxxD7Fhrl3Q7qPFgFZa.1
Meeting ID: 161 516 2449
Passcode: 073961

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: 06/20/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV2301277

PRESIDING: HON. ANDREW SWEET

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: ADAM FISH vs. DEFENDANT: SHANNON NGUYEN, ET AL	

NATURE OF PROCEEDINGS: 1) MOTION – SUMMARY ADJUDICATION
2) MOTION – SUMMARY ADJUDICATION

RULING

Plaintiff/Cross-Defendant Adam Fish's motion for summary adjudication is denied. Defendant/Cross-Complainant Shannon Nguyen's motion for summary adjudication is also denied.

Allegations in Plaintiff's Complaint

Plaintiff Adam Fish ("Fish") alleges that he is the Trustee of the Adam R. Fish Living Trust ("Fish Trust") and that the Fish Trust owns a 35% interest as tenant in common in the property at 85 Tamalpais in Mill Valley (the "Property"). Defendant Shannon Nguyen ("Nguyen") is the Trustee of the Shannon Nguyen Trust ("Nguyen Trust") which owns a 65% interest in the Property as tenant in common. Wells Fargo Bank, NA ("Wells Fargo") holds a deed of trust against the Property, which the parties agree is valued in excess of $3,325,000. Prior to purchasing the Property, Fish and Nguyen executed a "Co-Ownership Agreement" (the "Agreement") addressing, among other things, their respective interests in the Property, payment of expenses relating to the Property, and the buyout of interests upon termination of the agreement. Fish provided Nguyen with a Notice of Termination of Co-Ownership ("Notice") pursuant to the Agreement on August 27, 2022. In December 2022, Fish and Nguyen executed Addendum 1 to the Agreement, setting forth the basis for valuing the Property for a buyout pursuant to the Agreement. In January 2023, they executed Addendum 2 which stated that Nguyen had elected to buy out Fish's interest in the Property pursuant to paragraph 11 of the Agreement, as modified by Addendum 1, by assuming Fish's interest in the Wells Fargo loan with Wells releasing Fish from any further obligation under that loan, subject to Wells Fargo's approval. Nguyen has not yet bought out Fish's interest in the Property and has not agreed to market the Property for sale. Fish's First Cause of Action is for partition of the Property and his Second Cause of Action alleges breach of the Agreement. In connection with his Second Cause of Action, Fish seeks, among other things, specific performance of the Agreement, distribution

of the sales proceeds according to the Agreement, and damages to the Property or his equity that occurred after February 28, 2023.

Standard

The purpose of a motion for summary judgment "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.)

"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 at 467; Code of Civ. Proc. §437c.) 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.)

Fish's Motion for Summary Adjudication

Evidentiary Objections

Fish's Objection No. 3 is sustained. Objection No. 1, 2 and 4 are overruled.

Discussion

Fish moves for summary adjudication of his Second Cause of Action for breach of contract. Paragraph 11 of the Agreement provides: "The non-vacating Party shall buyout the Ownership Interest of the vacating Party or sell the Property within six months of the date of termination at which time this Agreement shall terminate." (Fish's Undisputed Material Fact ("UMF") 2.) Fish argues that Nguyen failed to buy out his interest within six months (i.e., by February 27, 2023) and failed to sell the Property, thus breaching this provision of the Agreement.

Fish presents the following facts, which are undisputed or established by the evidence. On August 27, 2022, Fish provided the Notice to Nguyen. (UMF 4.) The parties executed Addendum 1 on December 14, 2022, which, among other things, revises paragraph 11(A) to set forth the procedure to determine the buyout price. (UMF 5.) On January 6, 2023, the parties executed Addendum 2 which, among other things, revises Paragraph 11(B) to provide: "Shannon [Nguyen] has elected to buy out Adam's [Fish] interest in the Property pursuant to the terms of Paragraph 11 of the COA (as modified by Addendum 1 to the COA), by way of assuming Adam's interest in the loan with Wells Fargo Bank ('Wells') which is secured by a first deed of

trust on the Property (the 'Wells Loan'), with Wells releasing Adam from any further obligations under the Wells Loan, all subject to Wells's approval of Shannon's application to assume Adam's interest in the Wells Loan." (UMF 6.) As of the filing of the Complaint, Nguyen did not consummate the assumption of the Wells Fargo loan, refinance the Wells Fargo loan, or pay off the Wells Fargo loan. (UMF 7.) Due to the approximately $1.8 million mortgage in his name, Fish has been unable to purchase a home of his own and has incurred legal fees and costs in seeking to enforce the Agreement. (UMF 9, 23.)

Fish's motion is denied for the reasons set forth below.

Amount of Damages

First, while Fish seeks both damages and specific performance in connection with his Second Cause of Action (Prayer for Relief, ¶¶3, 6), he does not establish the amount of damages suffered, which is a requirement for summary adjudication on a breach of contract cause of action seeking damages. (See *Paramount Petroleum Corp. v. Superior Court* (2014) 227 Cal.App.4th 226, 241.) Fish is not entitled to summary adjudication of the Second Cause of Action on this basis alone. (See *Orange County Water Dist. v. Sabic Innovative Plastics US, LLC* (2017) 14 Cal.App.5th 343, 379 ["A motion for summary adjudication may not be granted if it resolves only part of a cause of action (Code Civ. Proc., § 437c, subd. (f)(1)), absent stipulation by the parties and compliance with other procedural requirements (*id.*, § 437c, subd. (t))"].)

Performance or Excuse for Nonperformance

Summary adjudication is also not warranted as Nguyen has raised a triable issue of fact as to whether Fish performed his obligations under the Agreement or was excused from performing. To prevail on a cause of action for breach of contract, the plaintiff must show that he performed or has an excuse for nonperformance. (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 821.)

The Agreement provides that "[t]he Parties will each be responsible to pay on a pro-rata basis the monthly mortgage payment in accordance with the Ownership Interest of each Party." (Nguyen's Additional Undisputed Material Fact ("AUMF") 26.) Nguyen submits evidence that Fish never made any payments on the Wells Loan while he resided at the Subject Property. (AUMF 33.) Fish was also obligated to pay his pro-rata share of all ownership and operating expenses, including property taxes and insurance. (AUMF 31, 32.) Nguyen submits evidence that she made all of the property tax payments, insurance payments, and payments for substantial improvements and renovations, without contribution from Fish. (AUMF 33.)

Fish argues that his actions after February 27, 2023 (6 months from the termination notice), relating to his nonpayment of certain expenses, do not count for purposes of his performance because these actions occurred after the date Nguyen was obligated to buy him out under the Agreement. He contends that Nguyen's failure to complete the buyout within six months occurred first and was the first material breach, thus excusing any further performance by Fish.

"When a party's failure to perform a contractual obligation constitutes a material breach of the contract, the other party may be discharged from its duty to perform under the contract. Normally the question of whether a breach of an obligation is a material breach, so as to excuse performance by the other party, is a question of fact. Whether a partial breach of a contract is material depends on 'the importance or seriousness thereof and the probability of the injured party getting substantial performance.'" (*Brown v. Grimes* (2011) 192 Cal.App.4th 265, 277-278 [citations omitted].)

Nguyen presents evidence to support her position that it was Fish who breached the Agreement first, before the buyout date, by failing to pay expenses as they became due beginning in or around May 2021. (AUMF 26, 31-33.) She has therefore raised a triable issue of fact as to which party committed a material breach first for purposes of determining whether Fish performed or was excused from performing the Agreement.

Fish also argues that even if his nonpayment of expenses was not excused, this nonpayment merely resulted in a loan rather than a breach of the Agreement. Fish points to paragraph 9 of the Agreement, which provides: "Default. In the event a Party fails to comply with the terms of the Agreement, including failing to make any payment for which the Party is responsible, the nondefaulting Party may take the necessary action and/or make the required payment. Thereafter, the non-defaulting Party shall give written notice to the defaulting Party as to the amount owed and advanced by the non-defaulting Party, on behalf of defaulting Party, to cure the default. Except as otherwise specified herein, the defaulting Party shall have 30 days within which to reimburse the non-defaulting Party. If the defaulting Party does not reimburse the non-defaulting Party within said period, then the money so advanced shall constitute a loan." (AUMF 34.) Fish also argues that any breach would not be material in any event.

Whether Fish's failure to pay expenses required under the Agreement constituted a material breach is a disputed issue of fact inappropriate for determination on summary adjudication. As Nguyen points out, the failure to meet payment obligations is discussed under a paragraph titled "default" (AUMF 34), and there is no evidence Fish ever repaid the amounts or the loan (AUMF 33), which could potentially constitute a material breach regardless of terminology.

Specific Performance

Specific performance is an equitable remedy for breach of contract. "To obtain specific performance, a plaintiff must make several showings, in addition to proving the elements of a standard breach of contract." (*Darbun Enterprises, Inc. v. San Fernando Community Hospital* (2015) 239 Cal.App.4th 399, 409.) As Fish has failed to establish the elements of a breach of contract, he is not entitled to specific performance in connection with his summary adjudication motion.

Nguyen's Motion for Summary Adjudication

Evidentiary Objections

Fish's Objection No. 3 is sustained. Objection No. 1, 2 and 4 are overruled. Both parties submit declarations setting forth their understanding of the terms of the Agreement at the time it was executed.

Discussion

Nguyen moves for summary adjudication of Fish's First Cause of Action for partition, and of her First Affirmative Defense of waiver, arguing that the parties expressly waived any right to partition under the Agreement. Specifically, paragraph 15 of the Agreement provides: "Waiver of Partition. The Parties Acknowledge that that [sic] any party has the right to seek partition of the Property. The Parties expressly waive any such rights that they may have to seek a partition of the Property during the term of this Agreement. Nothing contained in this paragraph shall be construed to limit or modify a Party's right to sell their interest in the Property, as otherwise set forth in this Agreement." (Nguyen's Undisputed Material Facts ("UMF") 8.) The term of the Agreement is set forth in paragraph 3: "Term. Unless otherwise agreed in writing, this Agreement shall take effect on the Effective Date and shall continue unless or until terminated according to the terms of this Agreement." (UMF 10.) These facts are undisputed.

"[T]he right of partition may be waived by contract, either express or implied." (*American Medical International, Inc. v. Feller* (1976) 59 Cal.App.3d 1008, 1014.)

Nguyen argues that the Agreement never terminated because the parties were unable to reach an agreement on a buy out price and thus the contract was never completely performed. (UMF 16, 17, 23, 25.)[1] Nguyen argues that paragraph 11 of the Agreement provides that termination occurs only upon a buyout or sale: "The non-vacating Party shall buyout the Ownership Interest of the vacating Party or sell the Property within six months of the date of termination at which time this Agreement shall terminate." (UMF 13.) Fish offers a different interpretation of Paragraph 11, arguing that the Agreement terminated six months after he sent his Notice.

Fish relies on *LEG Investments v. Boxler* (2010) 183 Cal.App.4th 484. In *LEG*, LEG owned 50% of a property as tenants in common with the Boxlers. "Section 6 of the TIC agreement provided for a right of first refusal if an owner wanted to sell his or her interest. Paragraph 6.1 provided in part: 'If and when either Owner decides to sell their [i]nterest in the Property and that Owner receives a bona fide offer for its purchase from any other person or entity, the other Owner shall have the first right of refusal to purchase the selling Owner's Interest in the Property for the price and on the terms provided for in such bona fide offer." The remainder of paragraph 6.1 spelled out the procedure for accepting or refusing the right of first refusal. If the right was refused, "the selling Owner may enter into an agreement to sell the Interest to the offeror at the price and under terms no less favorable than those set forth in the notice of offer given to the other Owner.' The term of the TIC agreement was for 30 years from execution, with automatic five-year extensions until termination was agreed to by the owners." (*Id.* at p. 521.)

Pursuant to Paragraph 6.1, LEG transmitted third party Gibb's offer to the Boxlers and offered them a right of first refusal to purchase LEG's interest on the same terms. The Boxlers declined

[1] While Fish "disputes" portions of these facts, it is undisputed that the parties were unable to reach an agreement on a buy out.

the offer, and Gibb eventually withdrew his offer after deciding not to approve the Boxlers as co-tenants. LEG filed an action seeking partition by sale. LEG moved for summary adjudication of the partition cause of action and the Boxlers moved for summary adjudication of their affirmative defense of waiver. The trial court denied LEG's motion and granted the Boxler's motion, finding that the parties had waived the statutory right to partition based on the provision allowing for the right of first refusal. The appellate court reversed, finding there was no express waiver of the right of partition and that to the extent any waiver existed based on the right of first refusal, it would be implied. The court presented the issue before it as follows: "Whether paragraph 6.1 of the TIC bars partition in this case requires interpreting paragraph 6.1; specifically, we must determine whether the right of first refusal absolutely waives the right of partition for the term of the TIC or whether the right of first refusal merely modifies the right of partition to require the selling cotenant to first offer to sell to the nonselling cotenant on terms as favorable as those offered by a prospective buyer." (*Id.* at p. 527.) The *LEG* court adopted the latter interpretation, reasoning:

> Construing the right of first refusal as a perpetual—at least for the term of the TIC agreement—implied waiver of the right to partition is a disfavored interpretation.[FN] 'A restrictive covenant is to be construed strictly; where it is subject to more than one interpretation, that consistent with unencumbered use and alienation of the property is to be preferred [citation].' Construing the implied waiver as continuing throughout the term of the TIC agreement, despite compliance with the right of first refusal, would restrict alienation of the Property. In opposition to the Boxlers' motion for summary adjudication, LEG presented evidence to support its position that Mr. Boxler was a difficult owner, and no potential purchaser would approve the Boxlers as co-owners, thereby preventing LEG from selling its interest in the Property. The policy behind a partition action is to permanently end all disputes about property and to remove all obstructions to its free enjoyment. The interpretation of the implied waiver advanced by the Boxlers and accepted by the trial court would defeat this policy.
>
> Since the Boxlers' interpretation of the right of first refusal as a perpetual waiver is not necessary to fulfill the purposes of the right of first refusal, and since such interpretation is contrary to the policy of the law favoring partition, we decline to adopt it. Instead, we follow *Schwartz* and find the right of first refusal modified the statutory right to partition and required the selling cotenant to first comply with the terms of section 6.1 of the TIC agreement before seeking partition.

(*Id.* at p. 528 [citations omitted].)

Fish argues that under *LEG*, the Agreement in this case requires the selling co-tenant to first comply with the buyout terms of the Agreement before seeking partition. Thus, Fish argues,

since he complied with the buyout terms of the Agreement before seeing partition, he can now seek partition under the Agreement.

LEG is inapposite, as the Agreement here involves an express, rather than implied, waiver of the right to petition. The Court therefore decides the issue based solely on the specific language of the parties' Agreement here. The Court adopts its rationale in its Order denying Fish's earlier motion for summary adjudication of the First Cause of Action, finding that the language of the agreement is reasonably susceptible to both parties' interpretations. There are disputed issues of material fact regarding the parties' intent (UMF 9, 28, 31, 41, 60, 63; Fish's Additional Undisputed Material Facts 66, 76-78), precluding summary adjudication.

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 June, 2025 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1615162449?pwd=e5SqeATq2HOsxxD7Fhrl3Q7qPFgFZa.1
Meeting ID: 161 516 2449
Passcode: 073961

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: 06/20/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV2301658

PRESIDING: HON. ANDREW SWEET

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: JEAN COYSTON, ET AL vs. DEFENDANT: BARBARA BOUCKE	

NATURE OF PROCEEDINGS: MOTION – OTHER; ORDER SUBSTITUTING PERSONAL REPRESENTATIVE

RULING

Jean Coyston, Thomas Coyston, Charles Coyston, and Jack Coyston"s (collectively "Plaintiffs") unopposed Motion for Order Substituting Personal Representative Adam Anthony Violich into the Pending Action as the Defendant in Place of Barbara Boucke, Deceased 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.

The Zoom appearance information for June, 2025 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1615162449?pwd=e5SqeATq2HOsxxD7Fhrl3Q7qPFgFZa.1
Meeting ID: 161 516 2449
Passcode: 073961

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: 06/20/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV0001402

PRESIDING: HON. ANDREW SWEET

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: CHARLES L. NORMAN vs. DEFENDANT: NORMAN WAY HOMEOWNERS ASSOCIATION ET AL	

NATURE OF PROCEEDINGS: JUDGMENT ON THE PLEADINGS

RULING

Defendants Norman Way Homeowners Association, Ahmed Alkoraishi, John Kunzweiler and Michelle Farabaugh (collectively "Defendants") Motion for Judgment on the Pleadings as to Plaintiff Charles L. Norman individually is granted with leave to amend.

BACKGROUND

On November 2023, Plaintiff Charles Norman, individually ("Charles") and as Co-Trustee of the Olav N. Norman and Anne G. Norman Living Trust, dated June 26, 2013 and all Sub Trusts Established Thereunder ("Plaintiff") filed his complaint alleging the following causes of action: 1) Breach of the Davis-Stirling Common Interest Development Act; 2) Declaratory Relief; 3) Breach of Fiduciary Duty; and 4) Breach of Contract. Plaintiff alleges he is the co-trustee for the trust that owns the real property commonly known as 42 Norman Way, Tiburon, California ("the Property").

Plaintiff alleges Defendants Norman Way Homeowners Association ("HOA") and individual defendants Ahmed Alkoraishi (Chief Executive Officer of the HOA), John Kunzweiler (Secretary of the HOA) and Michelle Farabaugh (Chief Financial Officer of the HOA) (collectively "Defendants") failed to enforce the HOA Bylaws and CC&Rs against neighboring property owners, Cynthia and John McGuinn ("the McGuinns"), the owners of 48 Norman Way, who erected a fence and removed several trees. Plaintiff asserts Defendants' refusal to enforce these governing documents compelled him to file a lawsuit against the McGuinns and subsequently initiate the instant action against Defendants.

LEGAL STANDARD

A motion for judgment on the pleadings is analogous to a general demurrer. (*Tukes v. Richard* (2022) 81 Cal.App.5th 1, 18.) Like a demurrer, a motion for judgment on the pleadings is

properly granted when the complaint does not state facts sufficient to constitute a cause of action against that defendant. (*Ibid.* [internal citations omitted].) The grounds for the motion must appear on the face of the challenged pleading or from matters that may be judicially noticed. (*Ibid.*) The standard for granting a motion for judgment on the pleadings is essentially the same as that applicable to a general demurrer, that is, under the state of the pleadings, together with matters that may be judicially noticed, it appears that a party is entitled to judgment as a matter of law. (*Bezirdjian v. O'Reilly* (2010) 183 Cal.App.4th 316, 321-322, *quoting Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205, 1216.)

REQUEST FOR JUDICIAL NOTICE

Defendants requests for judicial notice of Order Removing Charles as Co-Trustee dated January 30, 2025 and Order denying Charles' Motion for Reconsideration dated February 10, 2025 in Case No. PR0000269 are granted. (Evid. Code, § 452, subds. (c), (d).)

DISCUSSION

"Every action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute." (Code of Civ. Proc., § 367.) Defendants entire motion is based on Charles' lack of standing in his individual capacity.[1] Indeed, while Charles has identified himself as a Plaintiff both individually and as co-trustee, he has only alleged that he is "the co-trustee for the trust that owns the real property commonly known as 42 Norman Way, Tiburon, California ("the Property")." (Complaint, ¶ 14.) As such the trust is the real party in interest with standing to assert any of the alleged claims. However, Charles was removed as co-trustee of the subject trust. Although Charles' complaint is also brought in his individual capacity, he has not alleged any standing to assert claims as an individual. The motion is granted. The real issue appears to be leave to amend. A motion for judgment on the pleadings may be granted with or without leave to amend. (Code of Civ. Pro., § 438(h)(1).) However, leave to amend is routinely granted. (*People v. $20,000 U.S. Currency* (1991) 235 Cal.App.3d 682, 692.) Pleaders should have the same opportunity to cure defects in their pleadings as they would have had after a normal ruling on demurrer. (*MacIsaac v. Pozzo* (1945) 26 Cal.2d 809, 815.) Further, denial of leave to amend constitutes an abuse of discretion if the pleading does not show on its face that it is incapable of amendment. (*Virginia G. v. ABC Unified School Dist.* (1993) 15 Cal.App.4th 1848, 1852.) If leave to amend is granted, the party against whom the motion is granted must be given 30 days to file an amended pleading. (Code of Civ. Pro., § 438(h)(2).) While the parties argue regarding Charles' "life estate" in the opposition and reply, the complaint does not contain any such allegations. At this juncture all that is alleged is the trust owns the property. It is unclear whether Charles has additional facts to allege regarding his standing to assert claims individually, but given that it is the first challenge to the pleadings and is not

[1] The motion was initially filed as to Plaintiff Charles Norman, individually and as Co-Trustee of the Olav N. Norman and Anne G. Norman Living Trust, dated June 26, 2013 and all Sub Trusts Established Thereunder, but Defendants withdrew the motion as to Charles Norman as Co-Trustee of the Olav N. Norman and Anne G. Norman Living Trust, dated June 26, 2013 and all Sub Trusts Established Thereunder given his removal. (Notice of Partial Withdrawal of Motion, filed on April 7, 2025.

established that the pleading is incapable of amendment, the Court provides Charles one opportunity to amend.
Accordingly, the motion is granted with leave to amend.

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

The Zoom appearance information for June, 2025 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1615162449?pwd=e5SqeATq2HOsxxD7Fhrl3Q7qPFgFZa.1
Meeting ID: 161 516 2449
Passcode: 073961

If you are unable to join by video, you may join by telephone by calling* 1-669-254-5252 *and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: marin.courts.ca.gov

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 06/20/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV0002210

PRESIDING: HON. ANDREW SWEET

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: LESTER PETRACCA vs. DEFENDANT: ELISABETH THIERIOT, ET AL	

NATURE OF PROCEEDINGS: MOTION – STRIKE

RULING

Defendant's motion to strike the First Amended Complaint is granted.

Procedural Background

On May 6, 2024, Plaintiff Lester Petracca ("Petracca") filed his Complaint against Elisabeth Thieriot, individually and as trustee of the Elisabeth L. Thieriot Revocable Trust ("Thieriot") and Lions Gate Corporation ("Lions Gate"), alleging that he made various business loans to Thieriot in the total principal amount of $2,925,000 and that Thieriot has failed to pay amounts due.

On July 24, 2024, Petracca filed a First Amended Complaint, adding allegations that Thieriot had signed security agreements in 2015 and 2016 which granted Petracca a security interest in certain property. The First Amended Complaint alleges that Thieriot has breached the promissory note evidencing the loans and seeks to foreclosure on the security agreements.

On August 8, 2024, the clerk entered Thieriot's and Lions Gate's defaults.

On November 12, 2024, Thieriot filed a motion to set aside the defaults, arguing that she had filed an Answer to the original Complaint on April 2, 2024 but her filing was rejected. Thieriot further argued that after being advised by the clerk that the rejection was the result of a technical glitch, she refiled her Answer that day and obtained proof of receipt by the clerk. On February 21, 2025, the Court entered an Order granting Thieriot's motion to set aside, finding that Thieriot's Answer was not filed due to clerical error on April 2, 2024. In its Order, the Court stated among other things that "[t]he August 28, 2024, default is set aside. Plaintiff's First Amended Complaint shall be the operative complaint. Defendant's response to the First Amended Complaint must be filed and served by March 21, 2025."

On February 28, 2025, Thieriot filed her Answer to Petracca's original Complaint.

On March 19, 2025, Thieriot filed a motion to strike Petracca's First Amended Complaint.

Standard

The court may, upon a motion made pursuant to Code of Civil Procedure § 435, strike out any "irrelevant, false, or improper matter inserted in any pleading." (Cal. Code Civ. Proc. § 436.)

Request for Judicial Notice

Thieriot's request for judicial notice of the Answer she filed on February 28, 2025 is granted. The Court does not grant judicial notice of the additional information set forth in Thieriot's request.

Petracca's request for judicial notice of Thieriot's memorandum filed on November 12, 2024 (Exhibit A) and declaration of Josh Haevernick filed on January 27, 2025 (Exhibit B) is granted.

Discussion

Thieriot moves to strike the First Amended Complaint, arguing that Petracca needed leave to file it because she had filed an Answer to the original Complaint on April 2, 2024. (See Code Civ. Proc. § 472(a).)

The Court grants the motion. The documents submitted by Thieriot show that the clerk notified her that the Answer had been received on April 2, 2024. Under Rule of Court 2.259(c), where a party demonstrates that she attempted to electronically file a document on a particular day and it was not filed due to the court's failure to do so, "the court must deem the document as filed on that day." (See *Garg v. Garg* (2022) 82 Cal.App.5th 1036, 1046 [discussing Rule 2.259].)

The Court is concerned with Thieriot's delay in seeking this relief, however. Thieriot waited over eight months to move to strike Petracca First Amended Complaint and fails to provide any explanation for this delay. At the time Petracca filed his First Amended Complaint, he believed no Answer had been filed based on the Court's docket and that his filing was proper. Understandably, no motion for leave to file a First Amended Complaint was filed. To the extent Thieriot attempts to argue that any motion for leave to amend Petracca may now file is untimely or results in some type of waiver or prejudice, the Court will consider Thieriot's delay as a relevant factor at that time.

The Court does not find Thieriot's motion to be an improper and untimely motion for reconsideration under Section 1008. The Court's statement in its February 21st Order that the First Amended Complaint was the operative complaint was tangential to its substantive ruling that Thieriot had satisfied her burden for discretionary relief to set aside her default under Section 473(b), which was the relief Thieriot was seeking. The Court can reconsider its February 21st Order sua sponte in any event. (See *LeFrancois v. Goel* (2005) 35 Cal.4th 1094, 1106; *Pinela v. Neiman Marcus Group, Inc.* (2015) 238 Cal.App.4th 227, 237.)

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 June, 2025 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1615162449?pwd=e5SqeATq2HOsxxD7Fhrl3Q7qPFgFZa.1
Meeting ID: 161 516 2449
Passcode: 073961

If you are unable to join by video, you may join by telephone by calling* 1-669-254-5252 *and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: marin.courts.ca.gov

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 06/20/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV0002362

PRESIDING: HON. ANDREW SWEET

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: BRANDON YE vs. DEFENDANT: JOSHUA MATTHEW RICHMAN ET AL	

NATURE OF PROCEEDINGS: MOTION – DISCOVERY – DISCOVERY FACILITATOR

RULING

Pursuant to Marin County Rule, Civil 2.13B, on May 12, 2025, attorney Nancy McCarthy was appointed to preside as Discovery Facilitator for the Motion to Compel Inspection of Real Property, filed by plaintiff Brandon Ye ("Plaintiff") on March 20, 2025. The Court has not received a Declaration of Non-Resolution from either party, in particular *the moving party*, five court days prior to the hearing on the motion set for June 20, 2025, as required by MCR Civ 2.13H. 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 and expects that this discovery matter 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 an expedited hearing.

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 June, 2025 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1615162449?pwd=e5SqeATq2HOsxxD7Fhrl3Q7qPFgFZa.1

Meeting ID: 161 516 2449
Passcode: 073961

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: 06/20/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV0003191

PRESIDING: HON. ANDREW SWEET

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: TEJESH C. MAKANAWALA ET AL vs. DEFENDANT: LAKEEJA MICHELLE ROBERTS	

NATURE OF PROCEEDINGS: MOTION – SET ASIDE/VACATE

RULING

The motion of defendant Lakeeja Michelle Roberts to set aside default is denied.

Plaintiffs' request for judicial notice is granted.

"The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted…" "… '… "Because the law favors disposing of cases on their merits, 'any doubts in applying section 473' must be resolved in favor of the party seeking relief from default." But that said, "a motion to vacate a default… 'is addressed to the sound discretion of the trial court, and in the absence of a clear showing of abuse…the exercise of that discretion will not be disturbed on appeal.' …"'" (*McClain* v. *Kissler* (2019) 39 Cal.App.5th 399, 413, citations and brackets omitted.)

Defendant has not submitted a copy of an answer or other proposed pleading. Additionally, she has not established that the default was taken against her due to her excusable neglect. "… '… To entitle a party to relief [on the ground of excusable neglect] the acts which brought about the default must have been the acts of a reasonably prudent person under the circumstances.'" (*Jackson* v. *Bank of America* (1983) 141 Cal.App.3d 55, 58, citations and brackets omitted.) While Plaintiffs were not able to successfully serve Defendant personally, their evidence shows that their attorney emailed copies of the summons and complaint on November 18, 2024. (Downs decl. ¶5 and ex. B.) Defendant thus had almost two and one-half months to respond before her default was entered. The reasons she gives for not doing so do not establish that she

acted as a reasonably prudent person. Exhibit A to Plaintiffs' request for judicial notice show that Defendant's mother died on August 1, 2023, well over a year before the relevant time period. With respect to her children, she has not shown that the situation was so serious that she had to devote substantial amounts of time to ensure they continued their college studies. Finally, she has not shown how the actions of Plaintiffs were so disruptive that she could not respond.

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 June, 2025 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1615162449?pwd=e5SqeATq2HOsxxD7Fhrl3Q7qPFgFZa.1
Meeting ID: 161 516 2449
Passcode: 073961

If you are unable to join by video, you may join by telephone by calling* 1-669-254-5252 *and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: marin.courts.ca.gov

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 06/20/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV0003322

PRESIDING: HON. ANDREW SWEET

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: ANNA DUBROVSKY vs. DEFENDANT: NATIONWIDE MUTUAL INSURANCE COMPANY, ET AL	

NATURE OF PROCEEDINGS: ORDER- SHOW CAUSE0 OTHER; WHY THE STAY SHOULD NOT BE LIFTED

RULING

On April 11, 2025, Defendants Nationwide Mutual Insurance Company ("Nationwide") and Joe Austin's ("Defendant Austin") (collectively "Moving Defendants") Motion to Compel Appraisal was granted in part. The court ordered that the appraisal shall be completed no later than June 18, 2025, and stayed this action temporarily until June 20, 2025. The court issued an OSC for June 20, 2025, at 1:30 p.m. in Department E, for the parties to show cause why the stay should not be lifted.

On June 12, 2025, Moving Defendants filed a declaration in response to the OSC. In summary, the declaration establishes that the appraisal process has been initiated but is not concluded. Accordingly, the stay is extended to December 19, 2025 . The current OSC is continued to December 19, 2025, at 1:30 p.m. in Department E, for the parties to show cause why the stay should not be lifted.

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 June, 2025 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1615162449?pwd=e5SqeATq2HOsxxD7Fhrl3Q7qPFgFZa.1
Meeting ID: 161 516 2449
Passcode: 073961

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: 06/20/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV0004536

PRESIDING: HON. ANDREW SWEET

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: KATHLEEN SOHNFOSTER vs. DEFENDANT: COMPASS REAL ESTATE, INC. ET AL	

NATURE OF PROCEEDINGS: MOTION – COMPEL

RULING

Defendant Compass Management Holdings, LLC, I/N/A Compass Real Estate, Inc. ("Compass") and defendant Ed Lynch's ("Lynch"; collectively "Defendants") Motion to Compel Arbitration is DENIED.

BACKGROUND

Plaintiff was an employee of the real estate brokerage Pacific Union International ("PUI") when PUI was acquired by Compass in 2018. (Brown Decl., ¶ 4.) On November 18, 2024, Plaintiff initiated the present action by filing a Complaint against Compass and Compass employee Lynch for claims arising out of her employment. The causes of action contained in the Complaint include breach of contract, breach of implied covenant of good faith and fair dealing, harassment in violation of FEHA, discrimination in violation of FEHA, violation of government code sections 12940(k) and section 12940(h), wrongful discharge resulting from harassment and discrimination, negligence, fraud and deceit, intentional or reckless or negligent infliction of severe emotional distress, conspiracy, unfair business practices and declaratory relief. (Compl., ¶¶ 18-114.)

Compass contends that Plaintiff's claims are covered by a binding and enforceable agreement to arbitrate between the parties, and seeks a court order compelling the action to arbitration.

LEGAL STANDARD

Under the Federal Arbitration Act (9 U.S.C. § 1 et seq. ("FAA") " '[a] written provision in ... a contract evidencing a transaction involving [interstate] commerce to settle by arbitration the controversy thereafter arising out of such contract or transaction, ... shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." (9 U.S.C. § 2.)" (*Broughton v. Cigna Healthplans of California* (1999) 21 Cal.4th 1066, 1073-1074, superseded by statute on another ground as stated in *Pac. Fertility Cases*

(2022) 85 Cal.App.5th 887, 900.) The FAA was intended to reverse centuries of judicial hostility to arbitration agreements by putting arbitration agreements upon the same footing as other contracts. (*Shearson/American Exp., Inc. v. McMahon* (1987) 482 U.S. 220, 225-226.)

However, arbitration – whether under the California Arbitration Act ("CAA") or FAA – "is a matter of consent, not coercion ... a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development* (US), LLC (2012) 55 Cal.4th 223, 236 [internal quotations and citations omitted].)

The party seeking to arbitrate must prove the existence of the agreement. (*Pinnacle, supra,* 55 Cal.4th at 236.)

DISCUSSION

A. FAA Controls

The FAA controls because the agreement at issue contains an express provision stating that the FAA governs, and Compass' business is interstate in character. (Brown Decl., ¶ 7; Ex. C at p. 5 § 6(c) ["Except as provided in this Agreement, the Federal Arbitration Act ("FAA") shall govern the interpretation, enforcement and all proceedings related to this Agreement."].)

B. Determination of Whether a Valid, Binding Agreement to Arbitrate Exists

California law provides a procedure for the summary determination of whether a valid agreement to arbitrate exists, and such summary procedure satisfies both state and federal law (i.e., the FAA). (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394.) A court is required to first rule on the "gateway" issue of whether the parties agreed to be bound by a valid arbitration agreement. (*Rosenthal,* at pp. 413–414; *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 972 as modified (July 30, 1997).) In performing this duty, the court applies the general California law of contracts. (*Banner Ent., Inc. v. Superior Ct. (Alchemy Filmworks, Inc.* (1998) 62 Cal.App.4th 348, 357, as modified (Mar. 30, 1998).)

Under this procedure, the petitioner bears the burden of establishing the existence of a valid agreement to arbitrate by a preponderance of the evidence, and a party opposing the petition bears the burden of proving by a preponderance of the evidence any fact necessary to its defense. (*Rosenthal, supra* 14 Cal.4th at 413–414; *Engalla, supra,* 15 Cal.4th at p. 972.) In these summary proceedings, the trial court sits as a trier of fact, weighing all the affidavits, declarations, and other documentary evidence, as well as oral testimony received at the court's discretion, to reach a final determination. (*Rosenthal, supra* 14 Cal.4th at 413–414; *See also Engalla, supra,* 15 Cal.4th at p. 972.)

Here, Defendants have met their initial burden by providing the agreement and giving the Court an overview of the facts and circumstances surrounding its creation. (Brown Decl., ¶¶ 1-14; Exs. A-E.)

1. Consent via Electronic Signature

a. Burden Shifts to Moving Party to Authenticate Signature

Courts apply general state contract law to determine consent. (*Marcus & Millichap Real Estate Investment Brokerage Co. v. Hock Investment Co.* (1998) 68 Cal.App.4th 83, 89.) Parties seeking to compel arbitration are not required to authenticate plaintiff's signature on the arbitration agreement and had met their initial burden by attaching a copy of the purported arbitration agreement bearing plaintiff's electronic signature to their petition. (*Espejo v. Southern California Permanente Medical Group* (2016) 246 Cal.App.4th 1047, 1060.) However, once plaintiff challenges the validity of that signature in the opposition, defendants were then required to establish by a preponderance of the evidence that the signature was authentic. (*Ibid.*)

Here, Plaintiff has challenged the validity of the signature in her opposition by stating she has no memory of signing the agreement. Under *Espejo*, this triggers the burden for Defendants to show by a preponderance of the evidence that the signature was authentic.

b. Legal Standard to Authenticate Signature

"Under Civil Code section 1633.7, an electronic signature has the same legal effect as a handwritten signature. [citation.]" (*Ruiz v. Moss Bros. Auto Grp.* (2014) 232 Cal.App.4th 836, 843.) "Still, any writing must be authenticated" before it may be received in evidence. (*Ibid.* citing Evid. Code, § 1401; *People v. Valdez* (2011) 201 Cal.App.4th 1429, 1435; *People v. Goldsmith* (2014) 59 Cal.4th 258, 271.)

"Civil Code section 1633.9 addresses how a proponent of an electronic signature may authenticate the signature—that is, show the signature is, in fact, the signature of the person the proponent claims it is. The statute states: '(a) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.' (Civil Code, § 1633.9(a).)" (*Ruiz, supra,* 232 Cal.App.4th at p. 843.)

In *Espejo,* plaintiff filed his opposition to the petition arguing that defendants failed to properly authenticate his electronic signature on the agreement. *(Espejo, supra,* 246 Cal.App.4th at p. 1047.) In his accompanying declaration, Espejo stated he did not "recall seeing or accessing the [agreement containing the arbitration provision]... at the time I signed the employment contract," and did not recall ever signing the [agreement containing the arbitration provision], "electronically or otherwise. (*Id.,* at p. 1054.) I specifically recall that I typed out my name and submitted my electronic signature only once–when I signed the employment contract." Espejo further stated that his "custom and practice" was to "review documents before I sign them," and he therefore did not believe he would have signed the [agreement containing the arbitration provision], an eight page document, one minute after signing the employment contract. (*Ibid.*) Espejo also contended he had never seen the R&R prior to the lawsuit and recalled accessing only the employment contract through the online Applicant Homepage. (*Ibid.*)

Defendants replied with additional details regarding the electronic review and signature process for their employee agreements. Specifically, they provided evidence showing an email is generated to the applicant with a link to the applicant homepage. Access to the applicant homepage "requires the use of a private and unique username and password," both of which are

provided by phone "directly and orally to the applicant." (*Id.*, at p. 1053) After logging into homepage with this username and password, "the first thing plaintiff would be required to do is re-set his password to one of his own choosing. He cannot proceed to the next page unless he re-sets his password." (*Ibid.*) At that point, according to defendants, plaintiff would have to "opt to agree to complete the employment documents using an electronic signature." (*Ibid.*) Once he agreed, he would be directed to the portion of the homepage containing the four hyperlinks to his employment agreement, the [agreement containing the arbitration provision], the R&R, and a benefits handbook. (*Ibid.*) "Plaintiff only had access to these documents by logging in and using his unique user name and password." (*Ibid.*)

"On the signature page of the employment agreement plaintiff was prompted to either accept or decline the employment agreement." (*Id.*, at p. 1054) If he accepted, "he was prompted to complete his name as he would sign it. Whatever name he typed into this entry is what populated on the signature line of the contract." (*Ibid.*) "Once that information was input and accepted by plaintiff, then the employment agreement was finalized, including his name, date, time, and the IP address where he electronically signed the agreement." (*Ibid.*) The "name Jay Baniaga Espejo could have only been placed on the signature pages of the employment agreement and the DRP by someone using Dr. Espejo's unique user name and password.... Given this process for signing documents and protecting the privacy of the information with unique and private user names and passwords, the electronic signature was made by Dr. Espejo" to the employment agreement and the DRP at the date, time, and IP address listed on the documents. (*Id.*, at p. 1063) Defendants therefore concluded that the copies of the employee agreement and the [agreement containing the arbitration provision] attached to defendants' petition were true and correct copies of the documents "electronically signed by Dr. Espejo on May 22, 2011, and kept and maintained in SCPMG's records." (*Ibid.*)

The *Espejo* court found that given the process for signing documents and protecting the privacy of the information with unique and private user names and passwords, the IP address verification, etc., the details satisfactorily met the requirements articulated in *Ruiz* and established that the electronic signature on the agreement was "the act of" plaintiff" and therefore provided the necessary factual details to properly authenticate the document. (*Ibid.*)

c. Evidence of Authentication in the Underlying Case

Defendants offer the following facts to authenticate Plaintiff's signature:

Plaintiff electronically signed the Agreement on September 8, 2021, acknowledging that she agreed to arbitrate all employment-related disputes. (Brown Decl., ¶ 7 Ex. C at p. 4 §6.) Plaintiff used DocuSign to complete the signature process. (*Id.*, ¶ 7, Exs. C, D, and E.)

The DocuSign signature process is as follows: (1) documents are emailed from the Compass People Culture (HR) employee's DocuSign account to the signer's Compass email; (2) the signer receives an email requesting to sign online with DocuSign; (3) the signer logs in to their unique Compass email account and clicks the link in the email to open the document for review containing areas marked for the signer to execute; (4) the signer creates a signature through the guidance of DocuSign and clicks the document to place their signature in the document; (5) once

signers have signed in all the required places, DocuSign asks signers to confirm signing as the final step and signers must click a button which says "Finish". (*Id.*, ¶ 10.)

Here, Plaintiff used her Compass email address, which was password protected with a unique username and password of her choosing, to complete the DocuSign signature. (*Id.*) Both the Agreement and Compass Transfer Letter display the same DocuSign Envelope ID number, and the DocuSign Envelope History corroborates that Plaintiff reviewed the Agreement and Transfer Letter on September 7, 2021 twice in the span of an hour and then re-opened and digitally signed both the following day. (Brown Decl., Ex. B-D.) After the Agreement was signed, DocuSign generated an electronic "Certificate of Completion" which shows which documents were signed, along with the date, time, name, IP address, and email address of the person who signed the document. (Brown Decl., Ex. E.) Accordingly, the Certificate of Completion demonstrates Plaintiff executed the Agreement on September 8, 2021 at approximately 10:04 am through her work email account. (*Id.*)

Therefore Defendants conclude, the electronic signature was "the act of" Plaintiff and could only have been placed by Plaintiff. (Civ. Code, § 1633.9(a); *Espejo, supra*, 246 Cal.App.4th at p. 1062.)

The Court agrees. Defendants have met their burden to authenticate Plaintiff's electronic signature.

2. Unconscionability

Unconscionability is a generally applicable contract defense that may render an arbitration agreement unenforceable under the FAA. (*Doctor's Assocs., Inc. v. Casarotto* (1996) 517 U.S. 681, 687.) It is generally determined according to the laws of the applicable state.

The unconscionability defense has been recognized by the United States Supreme Court as a general contract defense in California, and therefore a defense to an agreement to arbitrate. (*Fisher v. MoneyGram Int'l, Inc.* (2021) 66 Cal.App.5th 1084, 1093. Internal citations omitted.) Applying the unconscionability defense to an arbitration agreement in California is not preempted by the FAA. (*Ibid.*)

Unconscionability is commonly defined as "an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party." (*Ibid.*) Unconscionability, as the definition suggests, has both a procedural and a substantive element, the former focusing on oppression or surprise due to unequal bargaining power, the latter on overly harsh or one-sided results. (*Ibid.*) Procedural and substantive unconscionability must both be present in order for a court to exercise its discretion to refuse to enforce a contract or clause under the doctrine of unconscionability, but they need not be present in equal parts. (*Ibid.*) Rather, California courts employ a sliding scale to determine unconscionability, the more substantively oppressive the contract terms, the less evidence of procedural unconscionability is required to conclude the terms are unenforceable, and vice versa. (*Ibid.*)

a. Substantive Unconscionability

"Substantive unconscionability" addresses the fairness of the term in dispute; substantive unconscionability traditionally involves contract terms that are so one-sided as to shock the conscience, or that impose harsh or oppressive terms. (*Brown v. Wells Fargo Bank, N.A.* (2008) 168 Cal.App.4th 938, 956.)

Here, Plaintiff argues that the Agreement is substantively unconscionable because it allows only "minimal discovery" and that the "arbitration agreement is further one-sided because it requires the parties to bring their claims 'in an individual capacity,' not 'in a private attorney general capacity,' and prohibits class, representative, or private attorney general proceedings." (Oppo., p. 9, ¶ 6.)

i. Waiver of Class and Representative Claims

The Agreement states: "To the maximum extent provided by law, you hereby waive any right to bring on behalf of persons other than yourself, or to otherwise participate with other persons in, any class or collective action." (Brown Decl., Ex. B, 6.a.iv.) It further provides: "The validity and effect of this waiver may be only determined by a court and not by an arbitrator. If this waiver is found unenforceable or void for any reason, you agree that the agreement to arbitrate shall be deemed null and void. You understand this waiver is material and essential to your employment and that it is not severable from any provision of this Agreement." (*Ibid.*)

While Plaintiff's waiver of her right to bring class action claims is enforceable, wholesale waiver of her right to bring private attorney general claims ("PAGA") is not. (*Securitas Sec. Servs. USA, Inc. v. Superior Ct.* (2015) 234 Cal.App.4th 1109, 1123.) Although the Agreement does not reference PAGA claims specifically, they would be covered by the language waiving the right "on behalf of persons other than yourself" to bring a "collective action."

In *Iskanian*, the California Supreme Court held that an "arbitration agreement requiring an employee as a condition of employment to give up the right to bring representative PAGA actions in any forum is contrary to public policy" because such an agreement seeks to exempt employers from responsibility for their legal violations and violates the statutory rule that " 'a law established for a public reason cannot be contravened by a private agreement.' " (*DeMarinis v. Heritage Bank of Com.* (2023) 98 Cal.App.5th 776, 782–83, citing *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 360, 383 ("*Iskanian*") overruled on other grounds by *Quach v. California Com. Club, Inc.* (2024) 16 Cal.5th 562, and abrogated by *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639 ("*Viking River*").) "[A]n employee's right to bring a PAGA action is unwaivable ... [if] an employment agreement compels the waiver of representative claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law." (*Iskanian, supra,* at pp. 383-384.) The court also held that the FAA did not preempt its rule.

The holding in *Iskanian* was later narrowed by *Viking River.* In *Viking River,* the Court considered an arbitration provision which also prohibited employees from bringing any dispute as a class, collective, or representative PAGA action. (*Viking River, supra*, at pp. 647-8.) The employer unsuccessfully moved to compel the employee to arbitrate her "individual" PAGA claim — "the claim that arose from the violation she suffered" — and to dismiss the "other PAGA claims." (*Ibid.*) The high court found a conflict between the FAA and PAGA's

"procedural structure," particularly PAGA's "built-in mechanism of claim joinder." (*Id.,* at p. 659.)

Viking River held that the FAA preempts *Iskanian* "insofar as it precludes division of PAGA actions into individual and non-individual claims through an agreement to arbitrate." (*Viking River, supra,* at pp. 660-661.) However, it clarified that the FAA does not preempt *Iskanian's* rule that an arbitration agreement's "wholesale waiver" of the right to bring a PAGA claims in arbitration agreement is unenforceable — including the waiver in the *Viking River* agreement. (*Ibid.*) Nonetheless, because the agreement had a severance clause, the employer was still "entitled to enforce the agreement insofar as it mandated arbitration of [the employee's] individual PAGA claim." (*Ibid.*)

In *DeMarinis v. Heritage Bank of Com., supra,* 98 Cal.App.5th at p. 787, defendant used an arbitration agreement containing a nonseverability clause and a "poison pill" which together specified that all conditions in the waiver provision are material and may not be modified or severed, either "in whole or in part," and that if the waiver provision is found unenforceable, then "the entirety" of the arbitration agreement is "null and void."

As that trial court noted, these provisions precluded "giv[ing] effect to the *Viking River* distinction between 'individual' and 'non-individual' claims" because they prohibit severance of the unenforceable nonindividual PAGA claims waiver. And because the waiver provision's terms cannot be severed in any way, application of *Iskanian*'s principal rule renders the entire waiver provision unenforceable, which in turn renders void the entire arbitration agreement. (*DeMarinis, supra,* at p. 787.)

The *Westmoreland* court reached a similar conclusion. (*Westmoreland v. Kindercare Educ. LLC* (2023) 90 Cal.App.5th 967, 972.) As *Westmoreland* observed, "[h]ad [defendant] simply included a waiver of representative claims in its arbitration agreement and not included the poison pill at the end of the agreement, the result here could have been substantially similar to that in *Viking River*" and other California decisions following *Viking River*. (*Id.,* internal citations omitted.) *Westmoreland* ruled that the "poison pill" unambiguously "invalidates the agreement." (*Ibid.*)

Here, there is no question that the waiver is broad enough to cover PAGA claims. A wholesale waiver of the right to bring PAGA claims is unenforceable and void. The Agreement between the parties clearly provides that if the waiver is found unenforceable or void for any reason, the agreement to arbitrate is null and void. (Brown Decl., Ex. B, 6.a.iv.) It also includes a non-severability clause so there is no possibility of severing the void provision.

On this basis, the Court determines that the entire agreement to arbitrate is null and void. The Motion to Compel Arbitration is therefore 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 June, 2025 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1615162449?pwd=e5SqeATq2HOsxxD7Fhrl3Q7qPFgFZa.1
Meeting ID: 161 516 2449
Passcode: 073961

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: 06/20/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV0004619

PRESIDING: HON. ANDREW SWEET

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: CITY OF SAN RAFAEL vs. DEFENDANT: KIMLEY-HORN AND ASSOCIATES, INC	

NATURE OF PROCEEDINGS: DEMURRER

RULING

This matter is dropped from calendar.

On February 27, 2025, this Court signed an order transferring this matter to Sonoma County. It appears thereafter that the Marin County Clerk's Office accepted for filing Kimley-Horn and Associates, Inc.'s ("Defendant") Demurrer on April 15, 2025, and failed to forward it to Sonoma County. The failure has been rectified, but the Demurrer must be heard in Sonoma County.

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 June, 2025 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1615162449?pwd=e5SqeATq2HOsxxD7Fhrl3Q7qPFgFZa.1
Meeting ID: 161 516 2449
Passcode: 073961

If you are unable to join by video, you may join by telephone by calling* 1-669-254-5252 *and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: marin.courts.ca.gov

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 06/20/25 TIME: 1:30 P.M. DEPT: E CASE NO: PRO2200974

PRESIDING: HON. ANDREW SWEET

REPORTER: CLERK:

IN RE TRUST OF: KIISK 1996 REVOCABLE TRUST DATED MAY 10, 1996	

NATURE OF PROCEEDINGS: MOTION – SUMMARY JUDGMENT

RULING

Defendant Edwin Davidian's Motion for Summary Judgment is continued to June 27, 2025, at 1:30 p.m. in Department E.

The Court finds good cause pursuant to Code Civ. Proc. § 437c(a)(3) to hear this motion and Defendant Payam Behradnia's Motion for Summary Adjudication currently scheduled for hearing on June 27, 2025, less than 30 days before the date of trial.

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 June, 2025 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1615162449?pwd=e5SqeATq2HOsxxD7Fhrl3Q7qPFgFZa.1
Meeting ID: 161 516 2449
Passcode: 073961

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