SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 08/05/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV2002528

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:	CLERK:
PLAINTIFF: MARIN GREEN LLC vs. DEFENDANT: LYNETTE SHAW	

NATURE OF PROCEEDINGS: MOTION – SET ASIDE/VACATE

RULING

Cross-Defendant Gold Bar Ventures Inc.'s ("Gold Bar") motion to set aside the default is **GRANTED**. Gold Bar shall file its Answer within five days of the hearing on this matter. Cross-Complainant Lynette Shaw ("Shaw") is entitled to recover her reasonable attorney's fees and costs.

Procedural Background

Plaintiff Marin Green LLC filed its Complaint against Shaw on September 2, 2020, asserting causes of action for fraudulent inducement, conversion, breach of contract and unjust enrichment. On April 23, 2021, Shaw filed a Cross-Complaint against Donald Walker, Clinton Walker, Andrew Heaton, Matthew Greenberg, and Gold Bar Ventures Inc. ("Gold Bar"). As to Gold Bar, Shaw asserted causes of action for rescission of contract, breach of the implied covenant of good faith and fair dealing, and fraud.

Gold Bar moved to compel arbitration of Shaw's claims against Gold Bar. The Court granted Gold Bar's motion on June 29, 2023 and Shaw's claims against Gold Bar in this case were stayed pending the completion of arbitration.

On April 11, 2025, the clerk entered Gold Bar's default.

According to Gold Bar's attorney Donald Walker, Gold Bar abandoned the arbitration when Shaw was faced with having to forfeit the lease of the business. (Declaration of Donald Walker, ¶4.) When the cross-action was set for trial on March 3, 2025, Mr. Walker assumed that all parties had appeared and had filed responsive pleadings. He believed Gold Bar had also filed an Answer to Shaw's Cross-Complaint as the other cross-defendants had done. (*Id.*, ¶7.) He forgot that Gold Bar had not filed an Answer in the two-year lapse of time between when Gold Bar

moved to compel arbitration and the setting of the trial date. (*Id.*, ¶8.) Mr. Walker attaches a proposed Answer and Cross-Complaint as exhibits to his declaration.

Gold Bar has moved to set aside its default. Shaw opposes Gold Bar's motion.

Standard

"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, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken . . . Notwithstanding any other requirements of this section, the court shall, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect, vacate any . . . resulting default entered by the clerk against his or her client, and which will result in entry of a default judgment . . . unless the court finds that the default or dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise, or neglect . . . ." (Code Civ. Proc. § 473(b).) The moving party bears the burden of showing that relief under Section 473 is warranted. (*Hopkins & Carley v. Gens* (2011) 200 Cal.App.4th 1401, 1410; *Kendall v. Barker* (1988) 197 Cal.App.3d 619, 623-624.)

"[T]he policy of the law is to have every litigated case tried upon its merits, and it looks with disfavor upon a party, who, regardless of the merits of the case, attempts to take advantage of the mistake, surprise, inadvertence, or neglect of his adversary. 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 . . . if a defendant promptly seeks relief . . . and there is no showing of prejudice to [the other party], very slight evidence will be required to justify a court in setting aside the default . . . [u]nless inexcusable neglect is clear, the policy favoring trial on the merits prevails." (*Fasuyi v. Permatex, Inc.* (2008) 167 Cal.App.4th 681, 696 [citations and internal quotations omitted].)

Discussion

Gold Bar moves for both discretionary and mandatory relief under Section 473, arguing that both are appropriate in light of its attorney's error in forgetting that no Answer had been filed. Shaw argues that Gold Bar is not entitled to either type of relief because Gold Bar's failure to file an Answer was a tactical decision by Gold Bar to delay the case, and further that Gold Bar's proposed Cross-Complaint is improper because it requires leave of court.

Gold Bar's motion is granted. Mr. Walker's affidavit of fault warrants mandatory relief under Section 473(b). Shaw does not present any support for her theory that Gold Bar itself is responsible for, and sought to create, the delay. Mr. Walker's explanation as to why the Answer was not filed is reasonable under the circumstances. However, Shaw is entitled to recover reasonable attorney's fees and costs incurred in taking Gold Bar's default and opposing this motion. Shaw may file a separate motion seeking to recover these fees and costs.

The Court will not accept Gold Bar's proposed Cross-Complaint for filing with the Answer. To the extent Gold Bar seeks to file cross-claims against Shaw, it must follow the proper statutory procedures. Shaw must also follow the proper procedures to file her proposed First Amended Cross-Complaint.

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 August is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1605267272?pwd=908CbP6TV2mhCAyai1nzo6lyz2dKaw.1
Meeting ID: 160 526 7272
Passcode: 026935

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

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 08/05/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV2300720

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:	CLERK:
PLAINTIFF: ASHWIN CHERIYAN vs. DEFENDANT: SIDE, INC., ET AL	

NATURE OF PROCEEDINGS: 1) MOTION – COMPEL; DISCOVERY FACILITATOR PROGRAM
2) DEMURRER

RULING

The Court notes that Attorney Graves, who has represented Plaintiff throughout this litigation, is now purporting to be representing not only Plaintiff, but also Defendants DKV and First Seed. No substitution of attorney was filed with the Court. The Court understood that there had been assignment of claims as part of a settlement. However, the Court has concerns about the conflict of interest created by the dual representation. Accordingly, counsel should appear at the hearing and be prepared to address this issue.

Cross-Defendants Chelsea Lindman, Pacific Union International, Inc. dba Compass, Inc., Compass California II, Inc., Glen Williams and Lynn Reid (collectively "Compass Parties") demurrer to Brendan Quinlan and Angela Quinlan as Trustees of the Brendan Quinlan Trust dated 9/15/2017, Brendan Quinlan, and Angela Quinlan's (collectively "Quinlan") First Amended Cross-Complaint ("FAXC") is **OVERRULED**.

First Seed Properties LLC's ("First Seed") Motion to Compel Further Responses to Requests for Admission to Angela Quinlan, Set One, and for Sanctions is **GRANTED, in part, and DENIED, in part.** The Motion is granted as to RFAs 10, 13, and 23 only. In all other respects, it is denied.

Request for Judicial Notice

Compass's Requests for Judicial Notice Nos. 1-4 are GRANTED. (Evid. Code, § 452, subd. (d).)

Background

This dispute arises from the purchase of real property. On May 3, 2023, Plaintiff Ashwin Cheriyan ("Plaintiff") filed his First Amended Complaint against Quinlan, Side, Inc. ("Side"), Own PM Corporation ("Own PM"), and Wilson Leung ("Leung"). Plaintiff alleges that he purchased the property at 40 De Burgh Avenue ("the Property") in 2021 from DKV Home Solutions LLC ("DKV") and First Seed. First Seed's members are Joaquin Angbengco Marquez, Ryan M. Marquez and Corazon M. Marquez, and DKV's members are Rene Anies, Royce Anies, and Catalina Hughes. Defendants Side, Own PM and Leung were the listing agents for the 2021 transaction. First Seed purchased the property from Quinlan in 2019.

Plaintiff's First and Second Causes of Action for fraud against Quinlan alleged that Quinlan knew about significant landslide risks and the need for remediation and protective measures through reports by David Olnes but concealed these facts in the 2019 sale to First Seed. Plaintiff's Third Cause of Action against Side, Own PM and Leung alleged negligence for failing to disclose material facts.

On June 16, 2023, Side and Leung filed a Cross-Complaint against First Seed, DKV, Chelsea Lindman ("Lindman"), and Pacific Union International, Inc. dba Compass, Inc. (individually "Compass"), asserting causes of action for equitable indemnity, comparative indemnity and comparative contribution, equitable contribution, declaratory relief, and comparative negligence. Lindman and Compass represented Plaintiff in his purchase of the property in 2021 from First Seed and DKV. On December 11, 2023, First Seed filed a Cross-Complaint against Side and Leung for indemnity and contribution. Plaintiff filed a Second Amended Complaint on March 14, 2024, adding DKV, First Seed, Joaquin Angbengco Marquez, Ryan M. Marquez, Corazon M. Marquez, Rene Anies, Royce Anies, and Catalina Hughes as defendants. The Second Amended Complaint adds alter ego allegations regarding First Seed and DKV and their members, as well as causes of action for fraud, negligent misrepresentation, and breach of contract against DKV, First Seed and their members. The Second Amended Complaint also includes causes of action for fraud against Quinlan and negligence against Side, Own PM and Leung. On April 16, 2024, Quinlan filed a Cross-Complaint against Lindman, Compass, DKV and First Seed for equitable/comparative indemnity and equitable/comparative contribution. On May 24, 2024, DKV, First Seed, Joaquin Angbengco Marquez, Ryan M. Marquez, Corazon M. Marquez, Rene Anies, Royce Anies, and Catalina Hughes filed a Cross-Complaint against Side, Leung, Brendan Quinlan and Angela Quinlan for equitable indemnity, comparative indemnity and comparative contribution, equitable contribution, declaratory relief and comparative negligence.

On February 18, 2025, this Court granted Lindman/Compass' Motion for Good Faith Settlement with Plaintiff pursuant to Code of Civil Procedure section 877.6 and dismissed the cross-claims against them for indemnity and contribution. (RFJN No. 3, Order.)

On April 1, 2025, the Court issued an Order allowing Quinlan leave to amend to add new parties and assert new causes of action. The FAXC adds Compass' successor company Compass California II, Inc. ("Compass II") and Quinlan's prior Compass listing agents (Williams and Reid) as defendants and includes three new causes of action against some or all of the Compass Parties: (1) Breach of Fiduciary Duties; (2) Negligence; and (3) Unfair Business Practices (Business & Professions Code §§ 17200 et seq.) ("UCL"). (RFJN, No. 4.)

Presently before the Court are two motions, the Compass Parties' Demurrer to the Quinlan FAXC and First Seed's Motion to Compel Further Responses to Requests for Admission to Angela Quinlan, Set One, and for Sanctions. The Court will address each in turn.

DEMURRER

Legal Standard

The function of a demurrer is to test the legal sufficiency of the challenged pleading. (*Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497.) As a general rule, in testing a pleading against a demurrer, the facts alleged in the pleading are deemed to be true, however improbable they may be. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The court gives the pleading a reasonable interpretation by reading it as a whole and all of its parts in their context. *(Moore v. Regents of Univ. of Calif.* (1990) 51 Cal.3d 120, 125.)

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

If the complaint fails to state a cause of action, the court must grant the plaintiff leave to amend if there is a reasonable possibility that the defect can be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 317.) The onus is on the plaintiff to articulate the "specifi[c] ways" to cure the identified defect, and absent such an articulation, a trial or appellate court may grant leave to amend "only if a potentially effective amendment [is] both apparent and consistent with the plaintiff's theory of the case." (*Shaeffer v. Califia Farms, LLC* (2020) 44 Cal.App.5th 1125, 1145.)

Discussion

First (Breach of Fiduciary Duties) and Second (Negligence) Causes of Action

The Compass Parties demur to the first and second causes of actions against them (other than Lindman) on the grounds that they do not state facts sufficient to constitute causes of action against these defendants. (Code Civ. Proc., § 430.10, subd. (e).)

Specifically, they argue that they had no duty to Quinlan to ensure a complaint broker file was maintained, they did not breach any fiduciary duty, and did not proximately cause Quinlan's harm.

While this may (or may not) be true, the demurrer appears to attempt to test the merits of the lawsuit, rather than the pleadings themselves. The FAXC clearly alleges duty, breach of fiduciary duty, and proximately caused damages. (See FAXC, ¶¶ 7, 10, 11, 13, 16, 17, 19, 20-22, 26-32.) A demurrer tests the sufficiency of the pleadings, not the merits of the action.

For these reasons the demurrer to the first and second causes of action is OVERRULED.

Third Cause of Action – Unfair Business Practices

The Compass Parties demur to the third cause of action for unfair business practices (Business & Professions Code §§ 17200 et seq. "UCL") against them (including Lindman) on the grounds that it does not state facts sufficient to constitute a cause of action against these defendants. (Code Civ. Proc., § 430.10, subd. (e).)

Specifically, the Compass Parties argue that Quinlan's fees and costs do not constitute direct harm resulting from the allegedly noncompliant broker file. Further, Compass Parties assert that Quinlan's claim is based on a failure to maintain a compliant broker file pursuant to Business and Professions Code section 10148 and 10 Cal. Code Regs. section 2729. However, these regulations are solely enforced by the Department of Real Estate against a broker only and, the Compass Parties contend, cannot form the basis for a UCL claim.

To state a cause of action for Violation of Business and Professions Code section 17200, the complaint must allege:
1. A business practice;
2. that is unfair, unlawful or fraudulent; and
3. authorized remedy.
(Bus. & Prof. Code, § 17200; *Paulus v. Bob Lynch Ford, Inc.* (2006) 139 Cal.App.4th 659, 676. *See also People ex rel. Dept. of Motor Vehicles v. Cars 4 Causes* (2006) 139 Cal.App.4th 1006, 1016 ("An 'unlawful' practice requires violation of another statute, and a business practice may be 'unfair' even if not otherwise proscribed by statute as long as the practice is not expressly authorized by law.").)
"Whether a practice is deceptive, fraudulent, or unfair is generally a question of fact which requires 'consideration and weighing of evidence from both sides' and which usually cannot be made on demurrer." (*Linear Technology Corp. v. Applied Materials, Inc.* (2007) 152 Cal.App.4th 115, 134-35.)
Here, the FAXC alleges facts showing a violation of Business and Professions Code section 10148 and 10 Cal. Code Regs. section 2729. (FAXC ¶¶ 11, 36.) Section 17200 allows a remedy even if the underlying statute confers no private right of action. (Stern, Civ. Lit. Series: Business & Professions Code Section 17200 Practice (The Rutter Group, 2023) ¶¶ 7:6-7:8; See e.g. *Washington Mut. Bank, FA v. Sup.Ct.* (1999) 75 Cal.App.4th 773, 783 [The absence of a private cause of action conferred in a federal law being "borrowed" to state a UCL violation is not a barrier to the UCL claim]; *California Med. Ass'n v. Aetna U.S. Healthcare of Calif., Inc.* (2001) 94 Cal.App.4th 151, 169 [Section 17200 allows a remedy even if the underlying statute confers no private right of action]; *Matoff v. Brinker Restaurant Corp.* (2006) 439 F.Supp.2d 1035, 1038 [UCL claim may "borrow" a violation of Labor Code section 351 even though that section does not create a private right of action].) The exception to this rule is that the UCL cannot be used to state a cause of action the gist of which is absolutely barred under some other principle of law. (*Zhang v. Superior Court* (2013) 57 Cal.4th 364, 377.) *Zhang* is distinguishable on this basis. Private UIPA actions are absolutely barred. Therefore ,there was no basis for a UCL claim. Where, however, a private right of action is simply not created under a statute, as opposed to barred by the language of the statute itself or other principle of law, then it appears it may form the basis for a UCL claim.

Still, a private person now has standing to bring a UCL action only if he or she "has suffered injury in fact and has lost money or property as a result of the unfair competition." (*Durell v. Sharp Healthcare* (2010) 183 Cal.App.4th 1350, 1359. Internal citations omitted.) "A private plaintiff must make a twofold showing: he or she must demonstrate injury in fact *and* a loss of money or property caused by unfair competition." (*Id.* Emphasis in original.)

Whether actual reliance is required depends on the type of UCL claim. (*In re Tobacco II Cases* (2009) 46 Cal.4th 298, 326, fn. 17 ["There are doubtless many types of unfair business practices in which the concept of reliance, as discussed here, has no application"].) Unlawful conduct sounding in fraud or misrepresentation both require reliance. (*Hale v. Sharp Healthcare* (2010) 183 Cal.App.4th 1373, 1385.)

The FAXC adequately alleges a UCL cause of action. (FAXC ¶¶ 3, 4, 7-13, 36-38.) The Demurrer to this cause of action is also OVERRULED.

DISCOVERY

Legal Standard

A party may request that another litigant "admit the genuineness of specified documents, or the truth of specified matters of fact, opinion relating to fact, or application of law to fact. A request for admission may relate to a matter that is in controversy between the parties." (Code Civ. Proc., § 2033.010.) Unless the responding party moves promptly for a protective order under section 2033.080, he or she, within 30 days of service of the RFAs (Code Civ. Proc., § 2033.250), shall respond in writing under oath and separately to each RFA (Code Civ. Proc., § 2033.210, subd. (a)) and "shall answer the substance of the requested admission, or set forth an objection to the particular request" (*id.* subd. (b)). Each response to the RFAs must be "complete and straightforward." (Code Civ. Proc., § 2033.220, subd. (a).) The responding party shall admit as much of the request that is true, "either as expressed in the request itself or as reasonably and clearly qualified by the responding party" (*id.* subd. (b)(1)); "[d]eny so much of the matter involved in the request as is untrue" (*id.* subd. (b)(2)); or "[s]pecify so much of the matter involved in the request as to the truth of which the responding party lacks sufficient information or knowledge" (*id.* subd. (b)(3)). (*St. Mary v. Superior Ct.* (2014) 223 Cal.App.4th 762, 774.)

On receipt of a response to requests for admission, the party requesting admissions may move for an order compelling a further response if that party deems that either or both of the following apply: (1) an answer to a particular request is evasive or incomplete or (2) an objection to a particular request is without merit or too general. (Code Civ. Proc., § 2033.290, subd. (a).)

The court is required to impose sanctions upon the unsuccessful party or attorney for the party in connection with a motion to compel further responses, unless it finds that the "one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (*St. Mary, supra,* at pp. 776-77.)

Discussion

Upon review, the Court finds the meet and confer efforts sufficient. (Graves Decl. ¶ 3.) The Court waives facilitation.

Per Plaintiff's Declaration of Non-Resolution filed 7/29/25, Plaintiff withdraws RFAs 20, 21, 26, 30 and 31 from this discovery dispute. There remain five groups of unresolved issues.

First Issue

Is it proper, in response to a Request for Admission, for a responding party to qualify the response "based on affirmative defenses"? (RFAs 4, 5, 6, 7, 8, 10, 11, 12.)

Although a denial of all or any portion of a request must be unequivocal, reasonable qualifications are not improper. (*St. Mary, supra,* at pp. 780-81. Internal citations omitted.) However, the Court notes that the procedural posture of *St. Mary* was different than the present case. In *St. Mary*, timely responses had not been received and the court considered whether the tardy responses were "substantially code-compliant" after a motion was made to deem the responses admitted. *St. Mary* acknowledged the difference in the scope of their inquiry, stating that although the responses were substantially compliant, they did not comply in full with the requirements of subdivision (d) of section 2033.220, and therefore their "disposition of this proceeding does not preclude Schellenberg, on remand, from making a motion under section 2033.290, after appropriate meet and confer efforts are exhausted, to compel St. Mary to provide further responses to any of the RFAs he contends are not compliant with the Code of Civil Procedure." (*Id.* at p. 782, fn. 22.)

After reviewing the Responses to RFAs 4, 5, 6, 7, 8, 10, 11, and 12, however, each of the responses contains a clear admission or denial and is not evasive.

Second Issue

Are responses that "the Propounding Party knows better whether this is material" evasive in response to a Request for Admission as to "whether the omission of a $336,000 engineering estimate was material and would reduce the value of marketability of a property"? (RFAs 4, 7, 8.)

The responses to RFAs 4, 7, and 8 each contain a clear admission or denial and are not evasive.

Third Issue

Is Quinlan's response to a request asking her to admit or deny that she had knowledge of a fact and did not disclose it in writing evasive? (RFA 10.)

This response is evasive and unclear. The question asks whether responding party had knowledge of the cracked foundation and whether responding party disclosed the issue to First Seed in writing. Given that the response itself clarifies she is responding about her individual actions only, it makes no sense for her to "admit[] that at least one person" had noted cracks in the foundation. Her "admission" is not a response to the actual question and must be clarified.

Fourth Issue

Are Quinlan's responses to questions asking her to admit or deny she had knowledge of a fact evasive? (RFA 13, 14, 15, 16, 17, 18, 19.)

The response to RFA 13 is evasive for the same reason described above regarding RFA 10. The question asks about her individual knowledge and actions but she "admits' something about another person. This is not a clear response.

Responses to RFAs 14-18 do not suffer from the same issue and instead clearly admit or deny the question asked. They are not evasive. Although RFA 19 was included as an issue in the declaration of non-resolution, it is not presently before the Court, not having been included in the separate statement.

Fifth Issue

Is the response to RFA 23 evasive? The Court finds that it is. The response admits the contract contains "the term" but the question asks whether responding party "agreed" to provide the Transfer Disclosure Statement. The reframing of the question, along with the qualifications that imply the agreement contained the term, but the parties were not required to provide the Statement, renders the "admission" unclear.

Accordingly, the Motion to Compel Further Responses is GRANTED as to RFAs 10, 13, and 23. As to all other RFAs, it is DENIED.

Sanctions

Here, the motion is granted in part and denied in part. As such, the opposition was substantially justified. Likewise, the Court finds motion itself was not without merit. The Court accordingly declines to award sanctions.

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

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 08/05/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV0004855

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK:

PLAINTIFF: NATHAN CAVENEY vs. DEFENDANT: ALLBIRDS, INC.	

NATURE OF PROCEEDINGS: MOTION – COMPEL

RULING

Defendant's motion to compel arbitration of Plaintiff's individual claims, including his individual PAGA claim, and to stay the representative PAGA claim pending completion of arbitration, is **GRANTED**. Defendant's request to dismiss the class claims is also **GRANTED**.

Allegations in Plaintiff's First Amended Class and Representative Action Complaint

Plaintiff Nathan James Caveney alleges that while he was employed with Defendant Allbirds, Inc. ("Allbirds"), Allbirds violated a number of Labor Code provisions and engaged in unfair competition. Plaintiff brings the claims on behalf of certain classes and also asserts a claim under PAGA.

Evidentiary Record

Allbirds

Allbirds presents the following evidence in support of its motion. Plaintiff was employed by Allbirds at the Corte Madera store from September 1, 2023 to January 22, 2024. (Declaration of Allison Fung ("Fung Decl."), ¶5.) Allbirds requires all store employees to resolve disputes through arbitration as a condition of employment. (*Id.*, ¶6.) Plaintiff completed the online employee onboarding process through ADP Workforce Now. To complete the process, Plaintiff needed to sign into ADP Workplace Now by creating a unique username and password known only to him. (*Id.*, ¶¶7-9.) Upon logging in, Plaintiff was presented with several documents he was required to review and acknowledge, including the California Manual Dispute Resolution Agreement (the "Agreement"). The Agreement provides in part:

II. Covered Claims

Other than as provided in this Agreement, to the maximum extent permissible under federal law, Employee and the Company agree that any controversy, dispute, or claim relating to Employee's employment or association with the Company that could otherwise be raised in court that the Company has against Employee or that Employee has against the Company, its current or former officers, directors, members, employees, vendors, clients, customers, agents, parents, subsidiaries, affiliated companies, successors, or assigns, shall be settled exclusively by binding arbitration rather than in court. It is the parties' intent that unless specifically excluded by the Agreement, all claims between them covered by this Agreement are to be resolved through binding arbitration not court, to the fullest extent permitted by federal law . . .

Covered claims include, but are not limited to, claims for wages and other compensation, breach of contract, misappropriation of trade secrets or unfair competition, violation of public policy, wrongful termination; tort claims; claims for unlawful retaliation, discrimination and/or harassment; and claims for violation of any federal, state, or other government law, statute, regulation, or ordinance, such as, for example, claims under the Fair Employment and Housing Act, the California Labor Code (except otherwise indicated herein); the Age Discrimination in Employment Act; the Americans with Disabilities Act; Title VII of the Civil Rights Act of 1964; the Equal Pay Act; the Fair Credit Reporting Act; the Fair Labor Standards Act; the Family and Medical Leave Act; the California Family Rights Act; the Pregnancy Discrimination Act; the Rehabilitation Act; Section 1981 through 1988 of Title 42 of the United States Code; and/or the Worker Adjustment and Retraining Notification Act . . .

To the extent federal law prohibits enforcement of the representative action waiver (discussed in section III below) with respect to representative claims under California's Private Attorneys General Act of 2004, California Labor Code §§ 2698, et seq. and representative claims for public injunctive relief under California Business and Professions Code § 17203, such claims . . . are not covered by this Agreement . . . .

***

III. Waiver of Multi-Plaintiff, Class, Collective and Representative Actions ("Waiver")

Covered claims must be brought on an individual basis only, and arbitration on an individual basis is the exclusive remedy. No arbitrator has authority to consolidate claims or [FN1] proceed

with arbitration on multi-plaintiff, class, collective, or representative basis. Should such a claim be initiated in arbitration, the arbitrator shall summarily reject it as beyond the scope of this Agreement. Any disputes concerning the applicability or validity of this Waiver shall be decided by a court of competent jurisdiction, not by the arbitrator. In the event a court determines that this Waiver is unenforceable with respect to any claim, this Waiver shall not apply to that claim, and that claim may only be initiated in court (subject to applicable claims and defenses) as the exclusive forum.

FN1: This is not a waiver of the right to arbitrate a PAGA claim suffered individually by Employee, but is a waiver of the right to bring a PAGA claim involving violations allegedly suffered by other employees.

IV. Authority to Determine Arbitrability

Except as provided in Section III, and except if a party requests provisional relief from a court of competent jurisdiction to preserve the status quo pending arbitration, the arbitrator shall have the exclusive authority to resolve any dispute relating to the arbitrability of any individual claim or the enforceability or formation of this Agreement (including all defenses to contract enforcement such as, for example, waiver of the right to compel arbitration). Enforcement of this Agreement may not be precluded or delayed on the grounds that (1) a party to this Agreement also is 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, or (2) a party to this Agreement asserts arbitrable and non-arbitrable claims.

***

VI. Governing Law, Consideration, Severability, Final Agreement

The Federal Arbitration Act (9 U.S.C. Sections 1, et seq.) shall govern this Agreement. The Parties agree that this Agreement shall be governed by the FAA even in the event that Employee and/or Company are otherwise found to be exempted from the FAA . . .

If any part of this Agreement is held to be invalid, void, or unenforceable, it shall be interpreted in a manner or modified to make it enforceable. If that is not possible, it shall be severed and the remaining provisions of this Agreement shall remain in full force and effect . . .

> This Agreement shall survive any termination of Employee's employment with the Company.

(*Id.*, ¶11 and Exh. A.)

To review and sign the Agreement, Plaintiff logged onto ADP Workforce Now with his personal credentials. The Agreement was presented as a "To Do, Task List" item link titled, "Policy Acknowledgment." Plaintiff selected the specific policy titled, "CA Mutual Dispute Resolution Agreement." Before acknowledging the Agreement, Plaintiff had to scroll through the entire document. Once he reached the end of the document, he needed to select an "Acknowledge" button. When he clicked this button, a pop-up window titled "CA Mutual Dispute Resolution Agreement" appeared. Plaintiff then checked a box stating, "I certify I have received and reviewed the California Mutual Dispute Resolution Agreement." (*Id.*, ¶12.) Allbirds' records show that Plaintiff electronically acknowledged the Arbitration Agreement on September 6, 2023. (*Id.*, ¶ 13 and Exh. B.)

Plaintiff

Plaintiff submits his own declaration to support his Opposition. Notably, Plaintiff does not dispute that he went through an onboarding process as described in Ms. Fung's declaration or that he signed the documents presented to him. He states, however, that none of the documents provided was pointed out to him, and no Allbirds representative advised him to read specific language. (Declaration of Nathan James Caveney ("Caveney Decl."), ¶2.) He further states: "I understood that clicking through these onboarding documents was only a formality and that I was required to complete this process as a condition of employment. I was not given an opportunity to negotiate any terms related to my employment. I was not provided with sufficient time to review the Agreement, nor was I provided the opportunity to have my review of the Agreement aided by an attorney." (*Id.*, ¶3.)

Plaintiff's Evidentiary Objections

Plaintiff's Objection Nos. 1-5 are overruled. Objection Nos. 6-9 are sustained to the extent Ms. Fung makes these statements without reference to what Allbirds' records reflect. The objections are overruled to the extent Ms. Fung makes these statements based on what Allbirds' records reflect as to Plaintiff's review and acceptance of the documents. The Court also notes that Plaintiff does not dispute he was provided with documents in the onboarding process and that he acknowledged receipt of these documents.

Request for Judicial Notice

Plaintiff's request for judicial notice of decisions from other trial courts is granted. (Evid. Code §§ 452, 453.)

Discussion

Arbitrability

As noted above, Plaintiff does not dispute that he received the Agreement or that he reviewed, acknowledged, or electronically signed the Agreement. Rather, he argues that the Agreement is unenforceable because it is unconscionable.

Plaintiff's challenge on the ground of unconscionability is to be decided by the arbitrator, not the Court. Section IV of the Agreement, titled "Authority to Determine Arbitrability", provides that "Except as provided in Section III, and except if a party requests provisional relief from a court of competent jurisdiction to preserve the status quo pending arbitration, the arbitrator shall have the exclusive authority to resolve any dispute relating to the arbitrability of any individual claim or the enforceability or formation of this Agreement (including all defenses to contract enforcement such as, for example, waiver of the right to compel arbitration)."

Neither of the exceptions in Section IV applies here. Plaintiff does not challenge the applicability or validity of the Multi-Plaintiff, Class, Collective and Representative Actions Waiver in Section III and does not request injunctive relief to preserve the status quo of the work environment or conditions pending arbitration. The Court therefore turns to whether the delegation clause is effective under relevant case law. (See *Tiri v. Lucky Chances, Inc.* (2014) 226 Cal.App.4th 231, n. 4 ["the court must consider the validity of the delegation clause before considering the validity of the rest of the arbitration agreement"].)

"Parties to an arbitration agreement may agree to delegate to the arbitrator, instead of a court, questions regarding the enforceability of the agreement. They 'can agree to arbitrate almost any dispute—even a dispute over whether the underlying dispute is subject to arbitration.'" (*Id.* at p. 241 [citations omitted].) A delegation clause is effective if it is "clear and unmistakable". (*Id.* at p. 242.)

Here, the language in Section IV of the Agreement delegating the issue of arbitrability to the arbitrator is clear and unmistakable. Section IV provides that the arbitrator "shall have the exclusive authority to resolve any dispute relating to the arbitrability of any individual claim or the enforceability . . . of this Agreement." Courts have found similar language to be clear and unmistakable. (See e.g., *Aanderud v. Superior Court* (2017) 13 Cal.App.5th 880, 892; *Malone v. Superior Court* (2014) 226 Cal.App.4th 1551, 1560; *Momot v. Mastro* (9th Cir. 2011) 652 F.3d 982, 988.)

A second requirement for a delegation clause to be effective is that it is not revocable on state law grounds such as unconscionability. (*Tiri*, 226 Cal.App.4th at p. 243.) "[A]ny claim of unconscionability must be *specific to the delegation clause*." (*Id.* at p. 244 [emphasis in original] [citing *Rent-A-Center, West, Inc. v. Jackson* (2010) 561 U.S. 63].) "'If the party's challenge is directed to the agreement as a whole—even if it applies equally to the delegation clause—the delegation clause is . . . enforced . . . [and] the arbitrator, not the court, will determine whether the agreement is enforceable.'" (*Nickson v. Shemran, Inc.* (2023) 90 Cal.App.5th 121, 132 [citation omitted].)

Here, Plaintiff does not challenge the delegation clause. He argues only that the Agreement as a whole is unconscionable. Accordingly, the Court grants the motion to compel arbitration. The arbitrator, not the Court, will determine if the Agreement is unconscionable and thus unenforceable.

Stay

Plaintiff argues that even if Allbirds' motion is granted, the Court should decline to stay his representative PAGA claim. The California Supreme Court in *Adolph v. Uber Techs., Inc.* (2023) 14 Cal. 5th 1104, 1124-1125 noted that where a court compels individual claims to arbitration, it ordinarily stays the remaining claims pending completion of the arbitration. The Court follows that guidance here. Plaintiff cites to a number of decisions from other trial courts to support his argument against a stay and argues that these cases reflect the "default" position on this issue (Opp., p. 14:13).[1] This is not an accurate statement as there a number of other cases that have found that a stay is appropriate under *Adolph*. (See e.g., *Raymond*, 2024 WL 11994474 at *2; *Bonilla v. Young's Market Company, LLC*, Case No. 24-cv-03489-EMC, 2025 WL 916020, *6 (N.D. Cal. March 26, 2025); *Shugars v. Walmart Inc.*, Case No. 24-cv-02765-EKL, 2025 WL 786348, *8 (N.D. Cal. March 12, 2025); *Ortega v. UnitedHealth Group, Inc.*, Case No. 23-cv-05596-JST, 2014 WL 4495817 (N.D. Cal. Oct. 15, 2024); *Bracamontes v. United Rentals, Inc.*, No. 223CV02697DADCSK, 2024 WL 1884052, *6 (E.D. Cal. Apr. 30, 2024).)

Dismissal of Class Claims

Allbirds requests in its Memorandum that the Court dismiss Plaintiff's class claims. (MPA, pp. 1:9, 9:26, 11:15.) However, Allbirds does not make this request in its Notice of Motion and Motion. California Rule of Court 3.1112(d)(3) requires a motion to "[b]riefly state the basis for the motion and the relief sought" and Code of Civil Procedure Section 1010 requires a notice of motion to "state the grounds upon which [the motion] will be made." "As a general rule, the trial court may consider only the grounds stated in the notice of motion. An omission in the notice may be overlooked if the supporting papers make clear the grounds for the relief sought. The purpose of these requirements is to cause the moving party to 'sufficiently define the issues for the information and attention of the adverse party and the court.'" (*Luri v. Greenwald* (2003) 107 Cal.App.4th 1119, 1125 [citations omitted].) "[A] trial court may overlook the failure of a notice of motion to state a ground for relief when the supporting materials discuss and support that ground for relief so that it is clear that relief is sought on that ground. In that situation, the trial court may treat the supporting papers as curing the defective notice." (*Id.* at 1126-1127.)

Here, Allbirds requested dismissal of the class claims three times in its Memorandum. This is sufficient notice to Plaintiff that Allbirds sought dismissal of these claims, notwithstanding the fact that the request was not included in the Notice of Motion and Motion. As noted above, Plaintiff does not challenge the applicability or validity of the Multi-Plaintiff, Class, Collective and Representative Actions Waiver in Section III. The class claims are therefore dismissed. (See *Securitas Security Services USA, Inc. v. Superior Court* (2015) 234 Cal.App.4th 1109, 1123

[1] One of the cases cited by Plaintiff is a decision from the Eastern District of California, *William Dean Raymond v. CompuCom* Systems, Inc., No. 2:21-cv-02327-KJM-KJN (E.D. Cal. August 23, 2023.) In the decision provided by Plaintiff, the court did not actually decide whether to stay the claim and instead requested additional briefing by the parties. Plaintiff fails to include the court's later decision in which the court granted the defendant's request for a continued stay, concluding that "a continued stay will promote the interest of judicial economy and help avoid relitigation, as contemplated in *Adolph*." (*Raymond v. CompuCom Systems, Inc.*, No. 2:21-cv-02327-KJM-KJN, 2024 WL 11994474, *2 (E.D. Cal. Mar. 20, 2024).)

[recognizing enforceability of class action claim waiver]; *Franco v. Arakelian Enterprises, Inc.* (2015) 234 Cal.App.4th 947, 956.)

The representative PAGA claims do not fall under the waiver pursuant to the language in Section II, i.e., "To the extent federal law prohibits enforcement of the representative action waiver (discussed in section III below) with respect to representative claims under California's Private Attorneys General Act . . . such claims . . . are not covered by this Agreement . . . ." Plaintiff's representative PAGA claim is not dismissed but is rather stayed for the reasons discussed above.

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

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