SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 08/14/26 TIME: 10:00 A.M. DEPT: A CASE NO: CV0008942

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK:

PLAINTIFF: MATTHEW NIEHAUS, ET AL vs. DEFENDANT: EAGLE FOOTBALL HOLDINGS LIMITED, ET AL	

NATURE OF PROCEEDINGS: 1) MOTION - QUASH
2) MOTION - QUASH
3) MOTION - QUASH
4) MOTION - QUASH

RULING

There are currently four separate motions to quash for lack of personal jurisdiction before the Court brought by (1) James Dinan and Alexander Knaster; (2) Mark Affolter and James Miller; (3) Yongmee Kang; and (4) John Textor and Frank Patterson.[1]

In the briefing on the motions, Plaintiffs request that if the Court is inclined to grant the motions to quash it should instead continue the hearing for a period of 90 days to permit limited discovery on the issue of personal jurisdiction. A "plaintiff attempting to assert jurisdiction over a nonresident defendant is entitled to an opportunity to conduct discovery of the jurisdictional facts necessary to sustain its burden of proof." (*In re Automobile Antitrust Cases I & II* (2005) 135 Cal.App.4th 100, 127.) This court has discretion to continue a hearing on a motion to quash to allow such discovery where the plaintiff demonstrates that "discovery is likely to lead to the production of evidence of facts establishing jurisdiction." (*Ibid*.)

Having reviewed the declarations and memoranda submitted by the parties, the Court determines that there is a reasonable basis to believe further discovery may lead to evidence sufficient to establish jurisdiction. Therefore the Court exercises its discretion and continues the hearing on all four motions to quash for 90 days to allow Plaintiffs to pursue jurisdictional discovery.

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[1] On July 7, 2026, the Court entered a stipulation and order scheduling the first three motions to be heard on July 28, 2026 and permitting Plaintiffs to file a single opposition to all three motions. This hearing date was later continued to August 14, 2026. A fourth motion, brought by Textor and Patterson, was also set for hearing on this date. Plaintiffs have filed a separate opposition to Textor and Patterson's motion.

The Court does not rule on the motion filed by Frank Patterson as Plaintiffs have agreed to dismiss him as a defendant.

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, 2026 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: 08/14/26 TIME: 1:30 P.M. DEPT: L CASE NO: CIV2202485

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

PLAINTIFF: LELAND SPELMAN, ET AL

vs.

DEFENDANT: STATE FARM GENERAL INSURANCE COMPANY, ET AL

NATURE OF PROCEEDINGS: 1) MOTION - STAY
2) MOTION - RECONSIDERATION
3) MOTION – RELIEF- DISCOVERY FACILITATOR PROGRAM

RULING

There are three motions pending. This matter was last called on June 26, 2026, with the parties appearing in court. They stipulated for the court to continue the hearing on all three motions, to allow more time for the parties to engage in settlement discussions.

The parties did not provide the court with an update regarding the motions on calendar.

Appearances are required.

The court repeats the tentative rulings issued regarding the motions pending below for the convenience of the parties:

Plaintiffs Leland Spelman and Linnea Carlson ("Plaintiffs") filed a Motion for Relief from Deemed Admissions; Motion to Stay Summary Judgment Proceedings; and Motion for Reconsideration. The motions were filed on March 27, 2026. Defendant State Farm, et al., filed opposition briefs on June 11, 2026. Plaintiff filed reply briefs on June 15, 2026.

This matter was last called in this department on March 20, 2026, after the court granted Defendant's Motion to Dismiss for Failure to Prosecute, and Motion to have the matters set forth in their Requests for Admission Deemed Admitted for Plaintiffs' Failure to Respond.

Despite prevailing substantively on all issues, counsel for the Defendant indicated that State Farm was nevertheless willing to engage in good faith negotiations with the Plaintiffs to resolve the case. Unfortunately, it appears the settlement discussions were not fruitful. The parties appeared in court *for* a Case Management Conference on June 24, 2026, with State Farm representing that its settlement offer remains on the table.

The Court reconsiders its March 23, 2026, order granting Defendants State Farm General Insurance Company and Renee Waina's ("Defendants") motion to deem matters admitted as to Plaintiff Oscar Carlson/Estate of Oscar Carlson only, using its inherent authority to reconsider its own interim rulings on its own motion (Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC (2015) 61 Cal.4th 830, 840).

BACKGROUND

This is an insurance coverage dispute. Spelman and Linnea Carlson, a married couple, brought this case in their individual capacities and in their capacities as guardians ad litem for three of their family members (their children, Ellie and Julian, and Ms. Carlson's father, Oscar), who are also plaintiffs in this case. (FAC, ¶¶ 1-5.) Oscar Carlson died on January 11, 2024, while this litigation was pending. (See Def. RJN in Opp. to Mtn. for Relief from Deemed Admissions,[1] Ex. 4.)

Plaintiffs allege that all five family members resided at a home insured by State Farm. (FAC, ¶ 10.) They identify Defendant Renee Waina as an agent of State Farm. (Id. at ¶¶ 13, 35.) Plaintiffs allege that in two separate incidents (June 15, 2019, and April 15, 2021), the property was "heavily damaged by water and other covered causes of loss." (Id. at ¶ 21.) Plaintiffs filed claims with State Farm. (Ibid.) They allege that State Farm "paid for some of Plaintiffs' losses, but not all[,]" and that they were entitled to additional funds to cover the losses under the applicable insurance policies. (Ibid.) The FAC asserts causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing, and negligent misrepresentation.

In September 2025, Defendants served Plaintiffs with their Requests for Admission, Set One ("the RFAs"). (Ellingson Dec. in Opp. to Mot. for Relief from Deemed Admissions, ¶ 4 & Ex. 1.) The RFAs sought responses on behalf of all five Plaintiffs and asked them to admit matters cutting to the heart of their claims. (Id. at Ex. 1.) For example, Plaintiffs were requested to admit that State Farm owes them no additional policy benefits arising out of either the June 2019 or the April 2021 incident and that Defendant Renee Waina made no misrepresentations to them. (Ibid.) Unfortunately for Plaintiffs, who were unrepresented at the time, they did not respond to the RFAs or request an extension of time to respond. (Id. at ¶ 6.) In December 2025, Defendants moved for an order deeming the matters in the RFAs admitted. (See Code Civ. Proc.,[2] § 2033.280.) Plaintiffs, who are in pro per, did not oppose the motion. The motion to deem the RFAs was GRANTED on March 23, 2026. The Court also DENIED Defendants' motion to dismiss the case for failure to prosecute (§ 583.410).

PROCEDURAL MATTERS

[1] Defendants' requests for judicial notice are granted. (Evid. Code, § 452, subd. (d).) Defendants mistakenly listed the filing date for the Petition for Letters of Administration for which they seek judicial notice as March 29, 2026. The Court judicially notices the Petition for Letters of Administration filed in Case No. PR0001787 on April 29, 2026, and set for hearing on June 25, 2026.

[2] All further undesignated statutory references are to the Code of Civil Procedure.

The moving papers are voluminous and confusing, with Plaintiff raising arguments in one motion that pertain to the other motion. For example, in the reply in support of the motion for reconsideration, Plaintiffs argue that certain evidence they presented in that motion should also be considered in support of their motion for relief from deemed admissions. (See Pltf.'s Reply in Supp. of Mot. for Reconsideration, p. 3.) In connection with the motion to dismiss, Plaintiffs filed an untimely document titled "Plaintiffs' Supplemental Opposition to Defendants' Motion to Dismiss for Failure to Prosecute." Plaintiffs argue that the court did not consider arguments presented in "Plaintiffs' Supplemental Opposition to Defendants' Motion to Dismiss for Failure to Prosecute" when it ruled on Defendants' separate motion to deem matters admitted.

While the court has attempted to review the filed documents and patch together relevant arguments made by the Plaintiff, it is up to the moving party to direct the court to the arguments to be considered in the moving papers. Based on its inherent power "[t]o provide for the orderly conduct of proceedings before it" (§ 128, subd. (a)(3)), when it rules on each of the instant motions, the Court considers arguments presented in the submissions directed at that motion.

Plaintiffs also filed a "supplemental exhibit," which was a supplemental brief, and an accompanying declaration. Submitting additional arguments and/or evidence in support of a motion weeks after the day the motion is filed, outside of a reply brief, is improper. Nevertheless, the Court will consider those supplemental materials.

I. SUA SPONTE RECONSIDERATION OF PRIOR RULING

A court has inherent authority to reconsider its own interim rulings on its own motion. (Even Zohar, supra, 61 Cal.4th 830, 840.) The exercise of this power is not subject to the confines of Code of Civil Procedure, section 1008 (governing statutory motions for reconsideration). (Ibid.; In re Marriage of Spector (2018) 24 Cal.App.5th 201, 216-217.) The Court is exercising this power to reconsider its March 23, 2026, order granting Defendants' motion to deem matters admitted as to Plaintiff Oscar Carlson/the Estate of Oscar Carlson only.

When Oscar Carlson died in January 2024, his claims against Defendants passed to the personal representative of his estate or, if none, his successor in interest. (§ 377.31.) No personal representative of Oscar Carlson's estate has yet been appointed even though he died two and a half years ago. (See Petition for Letters of Administration filed on April 29, 2026, in Marin County Superior Court Case No. PR0001787, currently pending.) No one has submitted the declaration required to succeed to Oscar Carlson's interest in this litigation as successor in interest. (See § 377.32.) Even if there were a personal representative or a successor in interest, for the Court to permit one of those to continue to prosecute Oscar Carlson's claim against Defendants, the Plaintiff would need to seek permission from the court. (§ 377.31.) Plaintiffs have yet to file that motion.

Defendants served the RFAs on Oscar Carlson's estate by serving them upon Spelman and Linnea Carlson as personal representatives of the estate. (Ellingson Dec. in Opp. to Mot. for Relief from Deemed Admissions, Ex. 1.) Spelman and Linnea Carlson were also served with the RFAs in their individual capacities. (Ibid.) Plaintiffs have not been appointed personal representative of the estate, although the court was informed by the Plaintiffs on June 24, 2026, during the Case Management

Conference that the probate court will rule on the matter on June 25. The parties were ordered to meet and confer on the issue at 11 a.m. following the hearing on June 25.

Defendants argue that Linnea Carlson, as Oscar Carlson's daughter, is presumptively a beneficiary of his estate, and that this means she is empowered to accept service on behalf of her deceased father. They rely on Ring v. Harmon (2021) 72 Cal.App.5th 844, which states that where a personal representative of an estate cannot or will not act to vindicate an injury to the estate, "it is appropriate to allow the beneficiary to pursue an action" on the estate's behalf. (72 Cal.App.5th 844, 850.) Ring does not consider whether a beneficiary is required to pursue an action. Ring does not aid Defendants' attempt to require Linnea Carlson to step in for her deceased father.

Defendants also argue that Spelman and Linnea Carlson are equitably estopped from asserting that they are not personal representatives of Oscar Carlson's estate or that they do not have power to act on the estate's behalf. This argument is based on a proof of service Plaintiffs' former counsel executed upon their withdrawal, which identified Spelman and Linnea Carlson as personal representatives of Oscar Carlson's estate, and on a Notice of Death filing Linnea Carlson submitted in March 2026 in which she purported to speak "on behalf of all plaintiffs." (Def. RJN in Opp. to Mtn. for Relief from Deemed Admissions, Exs. 3-4.) The Court is not persuaded that one can invoke estoppel to the detriment of one person (here, Oscar Carlson or his estate) based on statements or conduct by somebody else (here, Spelman and Linnea Carlson). (See Kleinecke v. Montecito Water Dist. (1983) 147 Cal.App.3d 240, 245 ["The doctrine of equitable estoppel is based on the theory that a party who by his declarations or conduct misleads another to his prejudice should be estopped to prevent him from obtaining the benefits of his misconduct."] [emphasis added].)

Accordingly, the Court reconsiders its ruling on the motion to deem matters admitted and denies that motion as to Plaintiff Oscar Carlson/Estate of Oscar Carlson only. The estate portion of the case shall proceed, with the estate – or its representative authorized to respond to the RFAs service on Oscar Carlson not later than July 31, 2026.

The court remains hopeful that Plaintiffs will again find counsel to represent them. The individual plaintiffs are entitled to proceed pro per if they wish, but Oscar Carlson's estate must proceed with legal representation. (Hansen v. Hansen (2003) 114 Cal.App.4th 618, 621 ["A person who is unlicensed to practice law and who represents a decedent's estate cannot appear in propria persona on behalf of the estate in matters outside the probate proceedings."].)

Plaintiffs are to file a successor in interest request pursuant to Code of Civil Procedure, section 377.31, with counsel for the estate entering an appearance on behalf of this plaintiff, by July 31, 2026. Otherwise, the Court may dismiss the estate's claim for failure to prosecute on its own motion. (See §§ 583.430; 583.420, subd. (a)(2)(A).) The court is hopeful the parties will continue to meet and confer in an effort to resolve the case.

Court references to "Plaintiffs" are limited to Plaintiffs Leland Spelman and Linnea Carlson and exclude Oscar Carlson and his estate.

II. MOTION FOR RELIEF FROM DEEMED ADMISSIONS

A. LEGAL STANDARD

"If a party to whom requests for admission are directed fails to serve a timely response, . . . [t]he party to whom the requests for admission are directed waives any objection to the requests, including one based on privilege or on the protection for work product[.]" (§ 2033.280, subd. (a).) "The requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requested be deemed admitted." (§ 2033.280, subd. (b).) "The court shall make this order, unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220." (§ 2033.280, subd. (c).) "Any matter admitted in response to a request for admission is conclusively established against the party making the admission in the pending action, unless the court has permitted withdrawal or amendment of that admission under Section 2033.300." (§ 2033.410, subd. (a).)

Code of Civil Procedure, section 2033.300 provides that a court may grant a party leave to "withdraw or amend an admission made in response to a request for admission[.]" (§ 2033.300, subd. (a).) This provision applies to deemed admissions resulting from an order granting a motion under Section 2033.280. (Wilcox v. Birdthistle (1999) 21 Cal.4th 973, 977 [interpreting the version of Section 2033.300 in force prior to the non-substantive reorganization of the Civil Discovery Act in the early 2000s].) A court has discretion to grant this relief provided "it determines that the admission was the result of mistake, inadvertence, or excusable neglect, and that the party who obtained the admission will not be substantially prejudiced in maintaining that party's action or defense on the merits." (§ 2033.300, subd. (b).)

B. DISCUSSION

The grounds for relief under Section 2033.300 are that the moving party's response to requests for admission was the product of a mistake, of inadvertence, or of excusable neglect. (§ 2033.300, subd. (b).) The question before the Court is whether circumstances amounting to Plaintiffs' mistake, inadvertence, or excusable neglect existed and brought about the March 23, 2026, order granting Defendants' motion to deem matters admitted. The Court issued that order based on Defendants' showing that Plaintiffs never responded to the RFAs. (March 23, 2026, Order, p. 6.) Plaintiffs did not oppose the motion[3] and there was no evidence before the Court establishing that Plaintiffs, prior to the hearing on the motion to deem matters admitted, served Defendants with proposed responses to the RFAs that were substantially compliant with the applicable statutes.

A court is required to grant a motion to deem matters admitted under these circumstances. (§ 2033.280, subd. (c).) Because of the basis for the Court's ruling on the motion to deem matters admitted, to prevail on the instant motion for relief, Plaintiffs need to show that some sort of mistake, inadvertence, or excusable neglect is the reason they never responded to the RFAs. Arguments that the RFAs or the motion to deem matters admitted were defective are irrelevant except to the extent

[3] Plaintiffs argue that they did oppose the motion because they raised arguments directed at that motion in their submission entitled "Plaintiffs' Supplemental Opposition to Defendants' Motion to Dismiss for Failure to Prosecute." That Opposition was not filed as an opposition to the motion to deem matters admitted under Section 2033.280. It was also untimely. The Court properly treated the motion to deem matters admitted as unopposed.

Plaintiffs offer those circumstances to somehow justify their failure to respond to the RFAs or to timely submit proposed responses.

Plaintiffs argue that their nonresponse to the RFAs was the product of excusable neglect because they were, or at least believed they were, "legally prohibited" from responding. (Memorandum, p. 3.) They explain that the RFAs were served on Spelman and Linnea Carlson as personal representatives of the estate of plaintiff Oscar Carlson, a status neither Spelman nor Linnea Carlson holds, so they were unable to respond on behalf of the estate. Plaintiffs maintain that this somehow justifies all five plaintiffs' failures to respond to the RFAs, including Spelman's and Linnea Carlson's failures to respond in their individual capacities, because "[t]he RFAs were contained in a single document bundling all parties – including the deceased Oscar Carlson – as one indivisible group" and "[t]here was no mechanism to respond individually without purporting to respond for the estate." (Memorandum, p. 4.)

The matter will proceed on behalf of the estate of Oscar Carlson if the estate is able to secure counsel, even if for the limited purpose of settlement negotiation purposes.

While the court will give considerable leeway to pro per litigants, they are not entitled to special treatment or leniency based on their self-represented status. (See Rappleyea v. Campbell (1994) 8 Cal.4th 975, 984-985; Harding v. Collazo (1986) 177 Cal.App.3d 1044, 1054, 1056.) Here, the Plaintiffs' failure to respond to the RFAs was not "excusable" neglect. (§ 2033.300, subd. (b).)

Plaintiffs insist they made an honest mistake of law, referring to State Farm Fire & Casualty Co. v. Pietak (2001) 90 Cal.App.4th 600, 611, which stated that such a mistake is a valid ground for relief under Code of Civil Procedure, section 473, subdivision (b) "when the legal problem posed ' "is complex and debatable." ' " (Id. at p. 611 [quoting McCormick v. Board of Supervisors (1988) 198 Cal.App.3d 352, 360 (superseded by statute on unrelated grounds as stated in County of Sacramento v. Superior Court (2009) 180 Cal.App.4th 943, 950-951)].) The Court will assume for purposes of argument that this case has some application to Section 2033.300. There was no complex or debatable legal question as to whether Plaintiffs were permitted to simply not respond to the RFAs. A party who is served with requests for admission is required to either respond to them, which it may do exclusively by objecting (i.e., without admitting or denying anything) (§ 2033.210, subd. (b)) or file a timely motion for a protective order (§ 2033.080). The Plaintiffs did not attempt to respond to the discovery after it was served.

Plaintiffs' contentions regarding whether the RFAs were properly served on Spelman and Linnea Carlson as personal representatives for Oscar Carlson's estate did not justify their failing to respond to the RFAs. This does not constitute "excusable neglect[.]" (§ 2033.300, subd. (b).) Nor can this be considered "mistake" or "inadvertence" (ibid.), because Spelman and Linnea Carlson chose not to respond to the RFAs. (Joint Dec. of Spelman & Carlson in Supp. of Motion for Relief from Deemed Admissions, ¶ 10.)

Next, Plaintiffs contend that they were not given proper notice of the hearing on the motion to deem matters admitted because the moving papers left the spot designated for the hearing date blank.[4] This

[4] This is standard practice. The clerk of court sets the hearing date after the motion is filed. Defendants filed amended moving papers stating the

does not explain why they did not respond to the RFAs or oppose the motion, as Plaintiffs clearly knew of the existence of the motion and the date and time of the hearing and do not contend otherwise. The Court is equally unpersuaded by Plaintiffs' argument that its order is invalid because Defendants' motion to deem matters admitted did not complete the discovery facilitator process. This circumstance does not amount to mistake, inadvertence, or excusable neglect that caused Plaintiffs to refrain from responding to the RFAs or from serving proposed responses prior to the hearing on the motion to deem matters admitted, which needed to happen for the Court to be legally permitted to deny the motion. (§ 2033.280, subd. (c).)

Finally, Plaintiffs argue they were dealing with: the death of a close relative eight months before the RFAs were served; caring for a child with special needs; personal health issues; and dealing with the financial stressor of losing their family home (a reference to the losses at the center of this case, which occurred in 2019 and 2021). While the court is sympathetic, these hardships do not excuse Plaintiffs from the duty to respond to discovery in a case they themselves brought.

Plaintiffs have not offered evidence of "mistake, inadvertence, or excusable neglect" that brought about the March 23, 2026, order deeming the RFAs admitted. The motion for relief the court's finding that the RFAs are admitted is DENIED.

III. MOTION FOR RECONSIDERATION

A. LEGAL STANDARD

"When an application for an order has been made to a judge, or to a court, and refused in whole or in part, or granted, or granted conditionally, or on terms, any party affected by the order may . . . make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order." (§ 1008, subd. (a).) The motion must be "based upon new or different facts, circumstances, or law" and must be filed "within 10 days after service upon the [movant] of written notice of entry of the order[.]" (Ibid.) It must be accompanied by an affidavit stating "what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown." (Ibid.) "The party seeking reconsideration must provide not just new evidence or different facts, but a satisfactory explanation for the failure to produce it at an earlier time." (Glade v. Glade (1995) 38 Cal.App.4th 1441, 1457.)

"[B]ecause the requirements of section 1008 are jurisdictional with respect to applications by civil parties litigant for reconsideration of previous orders or renewing previously denied motions, any action by the trial court on such an application not in compliance with the dictates of section 1008 would be in excess of its jurisdiction." (Kerns v. CSE Ins. Group (2003) 106 Cal.App.4th 368, 394, fn. 22.)

B. DISCUSSION

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hearing date after the clerk assigned it.

Plaintiffs ask the court to reconsider its ruling on a prior motion "based upon new or different facts, circumstances, or law[.]" (§ 1008.) This means the "new or different facts, circumstances, or law" must be relevant to the questions presented by the motion the movant wants the court to reconsider. Whether the matters sought to be deemed admitted are, in fact, true is irrelevant to a motion to deem matters admitted. (See § 2033.280.) Plaintiffs' content that they have "meritorious denials" to each of the RFAs. This contention is also not new evidence. Those new denials are irrelevant to a motion under Section 2033.280.

Plaintiffs also rely on "new" legal authority they claim establishes that Spelman and Linnea Carlson properly did not respond to the RFAs as personal representatives of Oscar Carlson's estate, and that service of the RFAs on Carlson's estate was void. These apply to Plaintiff's opposition to the motion to deem matters admitted and cannot be raised now when they ask for reconsideration. (See Glade, supra, 38 Cal.App.4th 1441, 1457.)

Plaintiffs also argue that certain statements made at the hearing on the motion to deem matters admitted are "new facts" justifying reconsideration. Events occurring at the hearing on the motion are necessarily not "new" relative to the time the court issued its final ruling on the motion and so cannot support a motion for reconsideration.

In its ruling on Defendants' motion to deem matters admitted and concurrent motion to dismiss the case for failure to prosecute, the Court referred to the circumstances of Plaintiffs' prior counsel's withdrawal from the representation in July 2024. (March 23, 2026, Order, p. 4.) Plaintiffs argue that the Court's comment on the withdrawal incorrectly "negative[ly] characteriz[ed]" Plaintiffs' conduct. (Memorandum, p. 9.) They claim they never had a chance to address their former attorneys' stated reasons for withdrawing from the representation and that this is a "new circumstance" warranting reconsideration of the motion to deem matters admitted. The circumstances of the Plaintiffs' former counsel's withdrawal are irrelevant to the motion to deem matters admitted.

The Court discussed the attorneys' departure from the case in its ruling on the concurrently-decided motion to dismiss the case for failure to prosecute. The Court declines Plaintiffs' invitation to invoke its inherent authority to reconsider the portion of its March 23, 2026 "resting on . . . unrebutted characterizations" relating to Plaintiffs' prior counsel's withdrawal (Reply, pp. 1-2), because there is nothing to reconsider.

The Court recognized Plaintiffs' difficulty in obtaining counsel, which was Plaintiffs' primary argument in opposition to the motion to dismiss, and then it decided that motion in Plaintiffs' favor.

The motion for reconsideration is DENIED.

C. MOTION TO STAY SUMMARY JUDGMENT PROCEEDINGS

During the Case Management Conference held on June 24, 2026, Defendant explained that the Motion for Summary Judgment was filed with the court on or about June 23.

Plaintiffs request an order staying all summary judgment proceedings pending resolution of the motion for relief from deemed admissions and motion for reconsideration. The request for a stay is moot.

Defendant to prepare the order.

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

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

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

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 08/14/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0003635

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

PLAINTIFF: ABSOLUTE RESOLUTIONS INVESTMENTS, LLC

vs.

DEFENDANT: POLA G. BENEDICTO

NATURE OF PROCEEDINGS: MOTION – ENTRY OF JUDGMENT

RULING

Plaintiffs filed a Motion for Entry of Judgment after settlement with the Defendants.

Plaintiff states that the parties have settled this action by entering into a written settlement agreement which provides that a judgment would not be entered so long as Defendant made certain periodic payments towards a settlement amount. The Settlement further provided that the parties agreed that the court would retain jurisdiction under C.C.P. §664.6 to order entry of judgment. Defendant has defaulted under the terms of the written settlement agreement.

The motion is unopposed. Defendant has not filed a response, nor was an opposition to the motion for approval filed. The failure to oppose is considered consent to the granting of the motion. (Cal. Rules of Court, rule 8.54(c); Local Rule Marin, Civil 2.8G.1.)

Plaintiff's motion is therefore GRANTED in its entirely.

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

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

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

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 08/14/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0003751

PRESIDING: HON. MARK A TALAMANTES

REPORTER: CLERK: M. GIL

PLAINTIFF: VICTOR TRUJILLO

vs.

DEFENDANT: AUSTIN GRAVES, ET AL

NATURE OF PROCEEDINGS: 1) MOTION – COMPEL - DISCOVERY FACILITATOR PROGRAM
2) MOTION – COMPEL ANSWERS TO INTERROGATORIES – DISCOVERY FACILITATOR PROGRAM

RULING

Pursuant to Marin County Rule, Civil 2.13B, on July 20, 2026, John Feeney, Esq. was appointed to preside as Discovery Facilitator for Defendant's Motion to Compel Document Production, responses to interrogatories and for sanctions. The Court has not received a Declaration of Non-Resolution from either party, in particular *the moving party*, within five court days prior to the hearing on the motion, as required by MCR Civ 2.13H.

The court received a status letter from the Discovery Facilitator, who recommends the motion be granted in its entirety.

The motion was not opposed by the Plaintiff. The failure to oppose is considered consent to the granting of the motion. (Cal. Rules of Court, rule 8.54(c); Local Rule Marin, Civil 2.8G.1.)

Defendant's motion to compel, including the sanction request, is GRANTED.

Defendant to prepare the order.

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

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

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

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 08/14/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0005877

PRESIDING: HON. MARK A TALAMANTES

REPORTER: CLERK: M. GIL

PLAINTIFF: MARGARET CLARK, ET AL

vs.

DEFENDANT: THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL

NATURE OF PROCEEDINGS: MOTION – SUMMARY JUDGMENT

RULING

Defendant Melissa Rosenstein, M.D.'s motion for summary judgment, or, alternatively, summary adjudication is DENIED.

Defendant the Regents of the University of California's ("Regents"; together with Dr. Rosenstein, "Defendants") motion is also DENIED.

BACKGROUND

This is a medical malpractice case. Plaintiffs Margaret and Robert Clark ("Plaintiffs") allege that in May 2024, Mrs. Clark, who was pregnant, underwent an amniocentesis procedure performed by Dr. Rosenstein at Marin Health Medical Center. (Complaint, ¶ 17.) An amniocentesis is a prenatal diagnostic test in which a physician uses a needle to remove a small amount of amniotic fluid from the amniotic sac. The amniotic fluid is then tested to detect genetic disorders and other abnormalities.

Plaintiffs allege that Dr. Rosenstein made two attempts to collect amniotic fluid from Mrs. Clark and performed both attempts with the same needle, removing the needle from Mrs. Clark's body and placing it on her abdomen between attempts. (*Id.* at ¶ 23.) They claim the procedure introduced foreign toxins into Mrs. Clark's body, which resulted in the death of Plaintiffs' otherwise healthy baby. (*Id.* at ¶¶ 18, 24.) Both Plaintiffs assert causes of action for medical malpractice.[1] Mr. Clark also asserts a claim for loss of consortium.

[1] Both Plaintiffs originally asserted a claim for negligent infliction of emotional distress. They have dismissed that cause of action. (Siebert Dec., Ex. D.)

Before the Court is Defendants' motion for summary judgment, or, alternatively, summary adjudication.

LEGAL STANDARD

Any party may move for summary judgment. (Code of Civ. Proc, § 437c, subd. (a); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.) The motion "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c); *Aguilar*, *supra*, 25 Cal.4th 826, 843.) Similarly, a party may move for summary adjudication as to a cause of action, an affirmative defense, a claim for damages, or an issue of duty. (Code Civ. Proc., § 437c, subd. (f)(1).) "A motion for summary adjudication . . . shall proceed in all procedural respects as a motion for summary judgment." (Code Civ. Proc., § 437c, subd. (f)(2).) The object of the summary judgment procedure is "to cut through the parties' pleadings" to determine whether trial is necessary to resolve the dispute. (*Aguilar*, *supra*, 25 Cal.4th 826, 843.)

The "party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact." (*Aguilar*, *supra*, 25 Cal.4th 826, 850; see Evid. Code, § 110.) "A prima facie showing is one that is sufficient to support the position of the party in question." (*Aguilar*, *supra*, 25 Cal.4th 826, 851.) When the moving party is the defendant, the initial burden entails showing "that one or more elements of the cause of action . . . cannot be established, or that there is a complete defense to the cause of action." (Code Civ. Proc., § 437c, subd. (p)(2).) Once the moving party has met its initial burden, the burden shifts to the opposing party to "show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto." (Code Civ. Proc., § 437c, subds. (p)(1)-(2).) "There is a genuine issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar*, *supra*, 25 Cal.4th 826, 845.)

DISCUSSION

Defendants' Objections to Plaintiffs' Evidence

1. Sustained. (Evid. Code, § 1200, subd. (b) [hearsay].)

2. Sustained. The declarant, one of Plaintiffs' expert witnesses, recounts a description of the way Dr. Rosenstein handled the needle during the amniocentesis procedure and opines that such handling was "inconsistent with the standard requirement of continuous ultrasound visualization and minimal, deliberate redirection." (DeVore Dec., p. 5, ¶ 13.) The declarant states that the account of Dr. Rosenstein's handling of the needle is derived from "[t]he patient's contemporaneous account" and, elsewhere in the declaration, states that this refers to a written document. (See p. 3, ¶ B, Line 18 [referring to "[t]he Clark's contemporaneous written account"].) He does not otherwise specify what source he is referring to here.

   Whatever document the phrase "contemporaneous account" refers to, Plaintiffs have not offered it into evidence, so the portion of testimony that is the subject of this objection is an expert opinion based on facts not in evidence. In *Bushling v. Fremont Medical Center*

(2004) 117 Cal.App.4th 493, also a medical malpractice case, the plaintiff offered declarations from two doctors in opposition to summary judgment, just as Plaintiffs have done here. Both offered expert opinions based on facts that were not in evidence. (*Ibid.*) On this basis, the appellate court deemed the declarations to be "of no evidentiary value on the question of negligence or causation[.]" (*Id.* at p. 511.) Because this left the plaintiff without expert opinion evidence in opposition to the motion for summary judgment, the defendant's motion for summary judgment was properly granted. (*Ibid.*) In a more egregious instance of the same mistake, a defendant in a medical malpractice case moved for summary judgment based on an evidentiary showing consisting *exclusively* of his expert's declaration. (*Garibay v. Hemmat* (2008) 161 Cal.App.4th 735, 741-742.) The expert rendered an opinion based on his review of the patient's medical records and a doctor's operative note, but the defendant did not submit these materials as evidence, instead relying on the expert witness' description of them in his expert declaration to get them before the court. (*Id.* at p. 742.) The Second District held that the expert's declaration itself was not capable of proving the facts described in the medical records or the operative note, the expert's declaration was therefore without an evidentiary basis in the record, and "[c]onsequently his expert medical opinion on whether defendant [] met the standard of care had no evidentiary value." (*Ibid.*) The defendant's motion for summary judgment was properly denied because he had not offered expert testimony to support his defense. (*Id.* at p. 743.)

This objection is SUSTAINED. (*Bushling*, *supra*, 117 Cal.App.4th 493, 511; *Garibay*, *supra*, 161 Cal.App.4th 735, 742-743.)

3. Overruled. Defendants' objection to this material relies on an alteration *Defendants* made to the material when reproducing it in their evidentiary objections submission. The actual statement from Dr. DeVore's declaration does not distinguish between the first needle and attempt and the second.

4. Sustained. (*Bushling*, *supra*, 117 Cal.App.4th 493, 511; *Garibay*, *supra*, 161 Cal.App.4th 735, 742-743.)

5. The Court does not rule on this objection because this content was not material to its disposition of the motion. (Code Civ. Proc., § 437c, subd. (q).)

6. Overruled. The declarant does not say he is quoting from the "contemporaneous account" or other material not before the Court here. The Court is required to interpret the showing of a party opposing summary judgment liberally (*Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 838) and so will not simply assume that the expert witness is relying on material not in evidence. Defendants object that there is nothing in evidence to support the degree of pain Mrs. Clark experienced or the fact that Dr. Rosenstein was "probing" around with the needle in the manner the expert witness describes, but they are incorrect. The expert witness describes the doctor as "probing . . . the needle around while the needle was inside Mrs. Clark's abdomen by as much as an inch from side to side, up and down and in and out causing severe pain[.]" (Fitzgibbons Dec., ¶ 15.) This is almost exactly how Plaintiff Robert Clark described the first insertion of the needle in his verified discovery responses. (See Defendants' Ex. H [R. Clark's Responses to Special

Interrogatories, Set One], Response to No. 27 [describing the first insertion: "[Dr. Rosenstein] was not satisfied with the initial placement, so she visibly wiggled the needle in her hand, which by our estimate would have moved the tip of the needle as much as ~1" up/down and side to side within the abdomen/uterus area. Responding Party's wife was in a great amount of pain during this attempt[.]"].) Regarding Defendants' hearsay objections, an expert witness may rely on hearsay in forming his opinion, although his description of the hearsay statement may not serve as independent proof of the facts described in that statement. (*Korsak v. Atlas Hotels, Inc.* (1992) 2 Cal.App.4th 1516, 1524-1525; accord *Garibay, supra*, 161 Cal.App.4th 735, 743.)

7. The Court does not rule on this objection because this content was not material to its disposition of the motion. (Code Civ. Proc., § 437c, subd. (q).)

8. Here, Dr. Fitzgibbons opines that Mrs. Clark's infection "was caused by the contaminated needle from Dr. Rosenstein's first amniocentesis attempt (contaminated by Bacteroides fragilis and Clostridium ramosum from the bowel) being reused" and thus "introduc[ing]" those bacteria "into Mrs. Clark's amniotic fluid." (Fitzgibbons Dec., ¶ 19.) Defendants object that there is nothing in evidence to establish that the first needle attempt perforated Ms. Clark's bowel, so this is not competent expert testimony under *Bushling* and *Garibay*. The Court overruled Defendants' objection (No. 6) to expert testimony opining, based on the degree of pain Ms. Clark experienced during the first needle attempt and the way Dr. Rosenstein was moving the needle during that attempt, that the needle contacted Mrs. Clark's bowel during the first attempt at the procedure. (Fitzgibbons Dec., ¶ 15.) Dr. Fitzgibbons further opines that the needle became "contaminated" through this contact. (*Ibid.*) Thus, there is in fact evidence before the Court to establish that the first needle attempt perforated Mrs. Clark's bowel. Overruled.

9. Overruled. Dr. Fitzgibbons opines "that it was the first attempted needle puncture that contaminated the needle with bacteria from Mrs. Clark's bowel" and that Mrs. Clark's infection, and the resulting death of her baby, was caused by reuse of this same needle on the second attempt at the procedure. He bases his opinion that the first needle puncture perforated Mrs. Clark's bowel on the facts "that the needle from the first attempt was not in the amniotic sac and was being moved up and down, side to side, and in and out causing severe pain disproportionate to the procedure." For reasons already stated, the Court disagrees with Defendants' contention that the facts offered to support this opinion are not in evidence. Overruled.

10. Sustained. (*Bushling, supra*, 117 Cal.App.4th 493, 511; *Garibay, supra*, 161 Cal.App.4th 735, 742-743.) The Court can locate no evidence to support the assertion that Mrs. Clark had her bra and pants on when the needle was placed on her stomach.

Merits

" '[I]n any medical malpractice action, the plaintiff must establish: "(1) the duty of the professional to use such skill, prudence, and diligence as other members of his profession commonly possess and exercise; (2) a breach of that duty; (3) a proximate causal connection between the negligent conduct and the resulting injury; and (4) actual loss or damage resulting from the professional's negligence.” [Citation.]’ ” (*Hanson v. Grode* (1999) 76 Cal.App.4th 601, 606 [quoting *Gami v. Mullikin Medical Center* (1993) 18 Cal.App.4th 870, 877].) What adherence to the standard of care looks like under the circumstances of a case, whether the defendant’s conduct breached that standard of care, and whether such breach proximately caused the plaintiff’s injury must be established by expert testimony. (*Avivi v. Centro Medico Urgente Medical Center* (2008) 159 Cal.App.4th 463, 467; *Zaragoza v. Adam* (2025) 109 Cal.App.5th 113, 118-119.)

Dr. Rosenstein’s Motion

<u>Issue No. 1 – Medical Malpractice: Breach</u>

To prepare for the procedure, Dr. Rosenstein “sterilize[d] the patient’s abdomen” using a substance called Chlorhexidine. (Rosenstein Dec., ¶ 4; see also UMF No. 15.) Dr. Rosenstein made two attempts to extract amniotic fluid from Ms. Clark, meaning two needle insertions. (UMF No. 7.) After the first attempt, Dr. Rosenstein placed the needle on Ms. Clark’s abdomen for approximately 30 seconds to 2 minutes. (*Ibid.*) During this period, the needle was within the sterile field on the abdomen. (UMF No. 16; see also Rosenstein Dec., ¶ 5.) Dr. Rosenstein then used this same needle for the second attempt. (UMF No. 17.) Plaintiffs claim this conduct did not meet the standard of care.

Defendants present the expert testimony of Dr. David Miller, M.D., a licensed medical doctor board-certified in obstetrics, gynecology, and maternal fetal medicine with close to 40 years of experience. (Miller Dec., ¶ 1.) Dr. Miller reviewed Mrs. Clark’s medical records, the transcripts of her and Mr. Clark’s depositions, and Dr. Rosenstein’s declaration. (*Id.* at ¶ 3.) He attests that “[i]t is not uncommon for a physician to need two needle attempts for an amniocentesis[,]” and that “[t]his occurs in approximately 2-5% of cases[,]” even “in the absence of negligence.” (*Id.* at ¶ 6(b).) Dr. Miller further attests that the “[s]tandard of care did not require that Dr. Rosenstein use a new needle for the second attempt because the abdomen area was appropriately sterilized beforehand and the needle remained in the sterile field at all times.” (*Ibid.*) Dr. Miller’s opinion is that Dr. Rosenstein’s belief that the needle was sterile at the time of the second attempt (see Rosenstein Dec., ¶ 5) was reasonable under the circumstances (*id.* at ¶ 6(b)). Based on Dr. Miller’s education, experience, and training, and on his review of the relevant documents, his opinion is that Dr. Rosenstein always adhered to the standard of care in her performance of the amniocentesis procedure. (*Id.* at ¶ 6.) This evidence is sufficient to meet Defendants’ initial burden as to the breach issue.

In opposition, Plaintiffs offer the Declaration of Dr. Michael Fitzgibbons, a licensed medical doctor board-certified in Infectious Diseases and Internal Medicine. (Fitzgibbons Dec., ¶ 1.) Plaintiffs call upon Dr. Fitzgibbons for his expertise in “sterile techniques to be used by health care providers in amniocentesis procedures or any procedures that invade the body of the patient.” (*Id.* at ¶ 4.) Dr. Fitzgibbons has five decades of experience as a medical doctor in his stated specialties. (*Id.* at ¶ 12 & Ex. A.) Defendants do not object to Dr. Fitzgibbons’ qualification as an expert. Dr. Fitzgibbons opines, based on his “familiar[ity] with the level of skill, knowledge and care that [a] reasonably careful doctor should possess and use in circumstances the same or similar to those presented” here, and particularly with regard to "sterile techniques," is that "[r]emoving the needle and abandoning the amniocentesis and laying the used needle onto Mrs. Clarks stomach from Dr. Rosenstein's first amniocentesis attempt and then reusing the same contaminated needle to puncture the skin, abdomen, uterus and amniotic sac is a breach of the standard of care." (*Id.* at ¶¶ 4-5, 15.) Defendants have not objected to this material. This is minimally sufficient to carry Plaintiffs' burden in opposition to the motion on the issue of breach, particularly given the mandate that the Court interpret Plaintiffs' showing liberally. (*Binder*, *supra,* 75 Cal.App.4th 832, 838.) Contrary to Defendants' contentions in their reply, Plaintiffs do not need to show that Dr. Rosenstein *negligently* perforated Mrs. Clark's bowel during the first attempt at the procedure. (Reply, p. 3.) They can rest on negligent reuse of the needle as the breach underlying their medical negligence claim provided they can causally connect *that* breach (as opposed to perforation of the bowel) to Mrs. Clark's injuries, and they will only need to cross that bridge if Defendants meet their own burden as to the causation issue.

<u>Issue No. 2 – Medical Malpractice: Causation</u>

"Medical negligence is fundamentally negligence," so the "substantial factor" causation standard applicable to negligence actions generally applies to medical malpractice claims. (See *Uriell v. Regents of University of California* (2015) 234 Cal.App.4th 735, 744.)

Mrs. Clark experienced cramping and pain after returning home on the day of the amniocentesis procedure. (UMF No. 19.) The next day, she was admitted to the hospital for vaginal bleeding, cramping, and a fever. (UMF NO. 22.) She was diagnosed with chorioamnionitis and spontaneously delivered her baby, stillborn, at 16 weeks and 3 days gestation. (*Ibid.*) Cultures of Mrs. Clark's blood detected Bacteroides fragilis, and she was treated with antibiotics. (UMF Nos. 23-24.)

Dr. Miller, the defense expert, opines that the use of the same needle for the second attempt was not a substantial factor in Mrs. Clark's injuries or in the death of her baby. (Miller Dec., ¶ 7 & 7(a).) He explains that it is "extremely unlikely that the needle became contaminated when it was placed on the patient's abdomen prior to the second attempt because the abdomen was sterile and the needle remained within the sterile field at all times" and that "the blood cultures . . . did not detect any flora commonly associated with skin organisms[.]" (*Id.* at ¶ 7(a).) This is sufficient to carry Defendants' burden as to the issue of causation.

Plaintiffs' expert, Dr. Fitzgibbons, notes that blood cultures were taken from Mrs. Clark after she delivered her child, and the laboratory identified the organisms therein as Bacteroides fragilis and Clostridium ramosum. (Fitzgibbons Dec., ¶ 18.) These "are anaerobic bacteria whose ecologic niche is the human bowel." (*Ibid.*) Dr. Fitzgibbons opines that the needle became contaminated through contact with Mrs. Clark's bowel during the first attempt at the procedure. (Fitzgibbons Dec., ¶ 20.) He bases this opinion on the degree to which Dr. Rosenstein was wiggling the needle during the first attempt, during which the needle was outside the amniotic sac, and on the degree of pain Mrs. Clark was experiencing, which in Dr. Fitzgibbons' professional opinion was "disproportionate to the procedure." (*Ibid.*) He further opines that the bacteria was introduced into Mrs. Clark's amniotic fluid when the needle, contaminated by contact with the bowel during the first attempt, was inserted into Mrs. Clark's amniotic sac during the second attempt. (*Id.* at ¶ 19.) This is enough to create a dispute of material fact as to whether the reuse of the needle was a substantial factor in what happened to Mrs. Clark and her unborn daughter.

Defendants object that Dr. Fitzgibbons does not explain how he knows "that the infection was not introduced during the first needle attempt[,]" and therefore was unaffiliated with reuse of the needle, "if that is when the bowel was perforated." (Defendants' Evidentiary Objections, p. 12 [Obj. No. 8].) The significance of this is that if the first needle attempt perforated Mrs. Clark's bowel, then, according to defense expert Dr. Miller, "the peritoneal cavity was already contaminated" on the first attempt, and the stage was set for Mrs. Clark to develop a bacterial infection regardless of whether Dr. Rosenstein used a new needle for the second attempt. (Miller Dec., ¶ 7(a).) "[A] second needle would not have made a difference[.]" (*Ibid.*) Dr. Miller's declaration is conclusory on this point, as he does not explain how a contaminated peritoneal cavity relates to chorioamnionitis or affects the amniotic fluid. (See *Jennings v. Palomar Pomerado Health Systems, Inc.* (2003) 114 Cal.App.4th 1108, 1117 [expert opinion is "conclusory" where it is "unaccompanied by a reasoned explanation connecting the factual predicates to the ultimate conclusion"]; see also *Binder, supra*, 75 Cal.App.4th 832, 838 [moving party's evidence is to be strictly construed].) The Court is not a doctor and will not guess at what the peritoneal cavity is or how it relates to the amniotic sac. These facts are not in evidence. Dr. Fitzgibbons explains exactly how, in his opinion, bacteria were introduced into Mrs. Clark's amniotic fluid during the second attempt specifically: The needle did not penetrate the amniotic sac in the first attempt, but instead penetrated Mrs. Clark's bowel and became contaminated, and on the second attempt, Dr. Rosenstein took that same contaminated needle and stuck it directly into the amniotic fluid. (Fitzgibbons Dec., ¶¶ 14, 19-20.) This is enough to create a triable issue as to causation.

Defendants also argue that Plaintiffs' expert declarations are flawed because they rely in part on Mr. and Mrs. Clark's (both laypersons) observations of the amniocentesis procedure and Mrs. Clark's subjective reports of her degree of pain. Defendants protest that "[t]his is not reliable evidence to show a complication during a medical procedure[,] let alone negligence during that procedure." (Reply, p. 4.) First, Plaintiffs are not relying on the Clarks' observations, or Mrs. Clark's description of her pain, to establish either "a complication" or "negligence." They are relying on their experts' opinions to establish those things. Those experts' opinions may be based on matter "of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject to which his testimony relates" (Evid. Code, § 801, subd. (b)) and healthcare providers regularly rely on a patient's reports to form their medical opinions. Second, at summary judgment, a court does not weigh evidence (*J.P. Morgan Trust Co. of Delaware v. Franchise Tax Bd.* (2022) 79 Cal.App.5th 245, 262) and so is not concerned with whether it is "reliable" as opposed to whether it is admissible and competent.

Bird v. Saenz (2002) 28 Cal.4th 910 and *Morton v. Thousand Oaks Surgical Hospital* (2010) 187 Cal.App.4th 926, both cited by Defendants in connection with this argument, do not suggest that an expert's consideration of a lay patient's subjective experience has any bearing on the admissibility of his expert opinion and in fact do not address any issue presented by the instant motion (both cases concern an element of the tort of negligent infliction of emotional distress). The analogy Defendants attempt to draw based on these cases (see Reply, p. 4) takes both cases far out of their proper context and simply does not make sense. A patient does not need to "perceive [a] breach of the standard of care" (*ibid.*) to offer a medical expert useful information that can help inform that expert's opinion of whether a breach occurred.

Defendants request that if the Court determines that Plaintiffs' opposition is sufficient to create a triable issue, it give Defendants "the opportunity to depose Dr. DeVore and Dr. Fitzgibbons regarding the foundation of their opinions pursuant to *St. Mary Medical Center v. Superior Court* (1996) 50 Cal.App.4th 1531[.]" Under *St. Mary*, "where a party presents evidence that raises a significant question relating to the foundation of an expert's opinion filed in support of or in opposition to a motion for summary judgment or summary adjudication," the court may allow the party to depose the expert on the subject of the foundation for his or her opinion. (50 Cal.App.4th 1531, 1534.) For this to be proper, "[t]here must be objective facts presented which create a significant question regarding the validity of the affidavit or declaration which, if successfully pursued, will impeach the foundational basis of the affidavit or declaration in question." (*Id.* at p. 1541.)

In the instant case, Defendants do not point to any objective facts undermining the foundations of Plaintiffs' experts' opinions, but argue more generally that "Plaintiffs' experts rely on evidence that is unreliable, inadmissible and fundamentally incorrect." (Reply, p. 8.) This does not meet the standard set in *St. Mary's*. The Court considered each one of Defendants' evidentiary objections carefully. It sustained their objections to Plaintiffs' experts' declarations wherever the declarations rendered opinions expressly based on facts not in evidence. Under the circumstances presented here, Defendants may attempt to undermine Plaintiffs' expert witnesses at trial.

<u>Issue No. 3: Loss of Consortium Claim</u>

Defendants' argument here is that this cause of action fails because the medical malpractice claim does. (See UMF Nos. 31-32.) As Plaintiffs have avoided summary adjudication of the medical malpractice claim, this argument fails.

Dr. Rosenstein's motion for summary judgment/summary adjudication is DENIED.

The Regents' Motion

"[A] private hospital must exercise such reasonable care toward a patient as his known condition may require[.]" (*Thomas v. Seaside Memorial Hospital of Long Beach* (1947) 80 Cal.App.2d 841, 847.) Exercising such reasonable care entails, among other things, "provid[ing] procedures, policies, facilities, supplies, and qualified personnel reasonably necessary for the treatment of its patients." (CACI No. 514 [duty of hospital in a medical negligence case].)

The Regents' liability, as opposed to Dr. Rosenstein's, is an afterthought in Defendants' brief. Dr. Miller offers a conclusory opinion that the Regents "provided procedures, policies, facilities, supplies and qualified personnel reasonably necessary for the treatment of its patient Ms. Clark." (Miller Dec., ¶¶ 8 & 9(c).) Dr. Miller does not set forth any factual basis for this opinion and did not review any of the hospital's procedures or policies in preparation to provide this opinion. (See Miller Dec., ¶ 3 [listing the materials he reviewed].) Dr. Miller's declaration is also not sufficient to qualify him to offer expert testimony on the sufficiency of the hospital's policies and procedures, as opposed to Dr. Rosenstein's adherence to the standard of care in her treatment of Mrs. Clark. (See Evid. Code, § 720.) The Regents' motion is DENIED based on failure to meet the initial burden associated with summary judgment or adjudication.

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

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

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

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE 08/14/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0009471

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

PLAINTIFF: HAROLD PERRY vs. DEFENDANT: GOODWILL FO THE SAN FRANCISCO BAY	

NATURE OF PROCEEDINGS: MOTION – COMPEL ARBITRATION

RULING

Defendant Goodwill of the San Francisco Bay's ("Goodwill") petition to compel arbitration is GRANTED as follows: Plaintiff Harold Perry ("Plaintiff") is compelled to arbitrate his First through Ninth Causes of Action to the extent he brings them in his individual capacity. (9 U.S.C. § 4.) To the extent he brings these claims as a representative of a class of similarly situated people, these claims are dismissed based on the class action waiver in the parties' arbitration agreement. All litigation in this case is stayed pending the outcome of the arbitration. (9 U.S.C. § 3.)

Allegations

This is a putative class action for alleged employment law violations. Plaintiff has worked for Goodwill since approximately October 2025 as an Assistant Store Manager at the San Rafael location. Plaintiff alleges he was misclassified as salaried/exempt because he was employed under the "Assistant Manager" title even though he was not permitted to exercise independent judgment, routinely performed the same job duties as the non-exempt employees including, performing heavy manual labor, operating forklifts, loading trailers, handling cash, pricing furniture, and stocking merchandise, and his day-to-day duties were less than 50% managerial in nature, and more than 50% non-managerial in nature. The class-wide theory alleges a pattern and practice of wage abuse, off-the-clock work, missed meal and rest breaks, untimely and inaccurate pay, and unreimbursed business expenses.
On March 18, 2026, Plaintiff filed his complaint alleging nine (9) causes of action.

The Court now considers Defendant's petition to compel Plaintiff to arbitrate all of his individual claims against Defendant pursuant to the Mutual Arbitration and Class Action Waiver Agreement ("Agreement") electronically signed by Plaintiff on October 20, 2025. Defendant simultaneously requests an order dismissing Plaintiff's complaint to the extent it brings claims on behalf of others and staying the case pending the Court's ruling on this motion and/or pending completion of arbitration.

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 other grounds as stated in *Ferguson v. Corinthian Colleges, Inc.* (9th Cir. 2013) 733 F.3d 928, 937.) 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.)

Discussion

I. FAA Applies

The FAA (9 U.S.C. §§ 1-14) governs contractual arbitration in written contracts involving interstate or foreign commerce or maritime transactions. (9 U.S.C. §§ 1, 2.) "The 'principal purpose' of the FAA is to 'ensur[e] that private arbitration agreements are enforced according to their terms.' " (*Lacayo v. Catalina Restaurant Group Inc.* (2019) 38 Cal.App.5th 244, 257 [citing *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 344].) The parties may elect to apply the FAA, even if there is no interstate commerce. (*Victrola 89, LLC v. Jaman Properties 8, LLC* (2020) 46 Cal.App.5th 337, 355.)

Here, Goodwill provides a declaration that it is involved in interstate commerce. (Decl. of Sydney Robertson ("Robertson Decl."), ¶ 2.) Furthermore, the Agreement adopts the FAA: "interpretation, enforcement, and proceedings under this Agreement shall be governed by the Federal Arbitration Act, 9 U.S.C. Section 1, et. seq. ("FAA")." (*Id.*, at Ex. A.) The FAA applies.

II. Existence and Authentication of Agreement

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 existence of a valid agreement to arbitrate is a "question of arbitrability" to be decided by the court unless the parties expressly agree otherwise. (*Howsam v. Dean Witter Reynolds, Inc.* (2002) 537 U.S. 79, 83.)

The party seeking to arbitrate must prove the existence of the agreement. (*Pinnacle, supra*, 55 Cal.4th at 236.) If it does so, the burden shifts to the party opposing arbitration to "demonstrate that an arbitration provision cannot be interpreted to require arbitration of the dispute" or that the agreement is otherwise unenforceable. (*Coast Plaza Doctors Hospital v. Blue Cross of California* (2000) 83 Cal.App.4th 677, 686-87.)

In its moving papers, Defendant demonstrates that the Agreement was electronically signed by Plaintiff on October 20, 2025, and is governed by the FAA. (Robertson Decl., ¶ 2, Exh. A.) In opposition, Plaintiff does not dispute the existence of the Agreement or that he electronically signed it. The burden thus shifts to Plaintiff to demonstrate that the agreement is unenforceable.

III. Delegation

Under the FAA, the enforceability of an arbitration agreement is ordinarily to be determined by the court. That parties may agree in the arbitration provision, however, that the enforceability issue will be delegated to the arbitrator. (E.g., *AT&T Technologies v. Communications Workers*

(1986) 475 U.S. 643, 649.) To establish this exception, it must be shown by “clear and unmistakable” evidence that the parties intended to delegate the issue to the arbitrator. (*First Options of Chicago, Inc. v. Kaplan* (1995) 514 U.S. 938, 944; see *Rent-A-Center, West, Inc. v. Jackson* (2010) 561 U.S. 63, 68-69, fn. 1 [“‘[u]nless the parties clearly and unmistakably provide otherwise, the question of whether the parties agreed to arbitrate is to be decided by the court, not the arbitrator’”]; *AT&T, supra*, 475 U.S. at p. 649.)

Here, Goodwill there is a delegation clause which states: “the arbitrator shall have the exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this agreement including, but not limited to, any claim that all or any part of this agreement is void or voidable.” (Robertson Decl. Ex. A.) However, as Plaintiff argues, at the severability clause, the Agreement states: “Any dispute over the formation, enforceability, validity, or severability of any provision of this Agreement shall be resolved by a court of competent jurisdiction. If any portion of this Agreement is adjudged to be void or otherwise unenforceable, in whole or in part, such adjudication shall not affect the validity of the remainder of this Agreement.” Goodwill does not address Plaintiff’s argument regarding this ambiguity in reply. The language does not meet the “clear and unmistakable” evidence test and as such the Court shall address enforceability.

II. Unconscionability

While California and federal law favor the enforcement of valid arbitration agreements, courts will not enforce
an arbitration agreement that is unconscionable. (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 96-99.) The prevailing view is that for a court to refuse to enforce a contract due to unconscionability, each of two types of unconscionability must be present, but not necessarily to the same degree. (*Id.* at 114.) “Procedural unconscionability pertains to the making of the agreement; it focuses on the oppression that arises from unequal bargaining power and the surprise to the weaker party that results from hidden terms or the lack of informed choice.” (*Ajamian v. CantorCO2e, L.P.* (2012) 203 Cal.App.4th 771, 793.) “Substantive unconscionability arises when a contract imposes unduly harsh, oppressive, or one-sided terms.” (*Id.* at p. 795.) “[T]he more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa.” (*Armendariz, supra,* 24 Cal.4th 83, 114.)

A. Procedural Unconscionability

The Agreement is an adhesion contract, or “a standardized contract which, imposed and drafted by the party of superior bargaining strength, relegates to the subscribing party only the opportunity to adhere to the contract or reject it.” (*Neal v. State Farm Ins. Companies* (1961) 188 Cal.App.2d 690, 694.) The adhesive nature of a contract is sufficient to establish “a minimal degree of procedural unconscionability.” (*Gatton v. T-Mobile USA, Inc.* (2007) 152 Cal.App.4th 571, 586.) However, the fact that the arbitration agreement is an adhesion contract does not render it automatically unenforceable as unconscionable. (*Carlson v. Home Team Pest Def., Inc.* (2015) 239 Cal.App.4th 619, 631.) Instead, to determine whether an arbitration agreement satisfies the “procedural element of unconscionability,” courts focus on “two factors: oppression and surprise.” (*Ibid.*) “Oppression” arises from an inequality of bargaining power which results in no real negotiation and “an absence of meaningful choice.” (*Ibid.*) “Surprise” involves the extent to which the supposedly agreed-upon terms of the bargain are hidden in the prolix printed form drafted by the party seeking to enforce the disputed terms. (*Ibid*.)

Plaintiff states he was told to download and sign in the Paylocity application on his own personal cell phone and to complete the onboarding documents there. (Decl. of Harold Perry (“Perry Decl.”) ¶ 7.) Plaintiff scrolled quickly through the documents on his phone screen and signed where he was directed to sign. (*Id.* ¶¶ 10-12.) Modern employees routinely transact business via mobile devices, and cell phone execution alone does not establish oppression absent evidence that the format was inadequate or deceptive. The record contains no evidence that Plaintiff's phone screen was objectively too small to display the agreement legibly or that Paylocity's mobile interface was incompatible with mobile viewing. Plaintiff states he moved quickly and did not read the documents carefully. The compressed timeline reflects Plaintiff's voluntary choice. (See *Brookwood v. Bank of Am.* (1996) 45 Cal.App.4th 1667, 1674 ["A party cannot use his own lack of diligence to avoid an arbitration agreement".]

For the foregoing reasons, Plaintiff's evidence of oppression and surprise establishes a modest degree of procedural unconscionability. Nevertheless, "procedural unconscionability alone does not invalidate a contract." (*Nelson v. Dual Diagnosis Treatment Ctr., Inc.* (2022) 77 Cal.App.5th 643, 662.)

B. 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.)

Plaintiff's primary argument for substantive unconscionability is that the Agreement is an "infinite agreement" under *Cook v. University of Southern California* (2024) 102 Cal.App.5th 312. I n *Cook*, the Second District deemed the University of Southern California's standard employee arbitration agreement unenforceable due to unconscionability. The court's ruling was based on three factors. First, the arbitration agreement embraced *all* claims that the employee and USC might have against each other, including those having nothing to do with the employment relationship. (102 Cal.App.5th 312, 322.) Second, the agreement survived indefinitely. (*Id.* at p. 326.) This indefinite duration, coupled with the all-encompassing scope of the agreement, meant that " 'for the rest of her life, if [the employee] were to suffer an injury related to USC or its related entities, [she] could be ordered to arbitrate such claims.' " (*Id.* at p. 318 [quoting the trial court's ruling].) For example, "if she was 'the victim of a botched surgery in a USC hospital in 15 years, her claims could be subject to the arbitration agreement.' " (*Ibid.*) Finally, the agreement lacked mutuality because it required the employee to arbitrate her claims "against USC 'or any of its related entities, . . . or its or their officers, trustees, administrators, employees or agents, in their capacity as such or otherwise[,]' " but did not require USC's related entities to arbitrate their claims against the employee. (*Id.* at p. 326.) It thus "provid[ed] a significant benefit to USC's related entities without any reciprocal benefit to [the employee]." (*Id.* at p. 328.)

In *Ayala-Ventura v. Superior Court* (2026) 119 Cal.App.5th 241, the Fifth District confronted an employee arbitration agreement very similar to that in *Cook*. The court stated that even if the agreement did endure indefinitely and embrace *any* claim the employee might have against the employer, even claims completely unrelated to the employment relationship, those factors did not make it unconscionable under the circumstances presented. According to the Fifth District, "[t]he agreement in *Cook* was unconscionable in part because of the multifarious ways in which a claim against USC 'completely unrelated to [Cook's] employment' could arise." (*Id.* at p. 257.)

Given "the well-known, broad capacity of USC's reach[,] Cook could be subject to the arbitration agreement forever in any manner of ways including not just a botched surgery but an injury while attending a USC football game in 15 years." (*Id.* at p. 258.) By contrast, the defendant employer in *Ayala-Ventura* was a provider of commercial janitorial services and so, by its nature, did not generate litigation opportunities in a number or variety approaching an entity like USC. (*Id.* at pp. 258-258.)

Regarding the third factor identified in *Cook*, mutuality, the *Ayala-Ventura* court was simply untroubled by the fact that the agreement required the employee to arbitrate her claims against the employer's other employees and agents, but not vice versa. It did not consider this to count toward a finding of unconscionability. (*Id.* at p. 259.)

Applying *Cook* and *Ayala-Ventura* to the facts presented, the Court concludes that the Agreement is not an unenforceable infinite agreement. The Agreement provides that both Goodwill and Plaintiff: "mutually agree to the resolution by arbitration of all claims or controversies relating to pre-employment, employment, and post-employment conduct, including but not limited to separation and/or termination of employment, that the Company may have against Employee, or Employee may have against the Company, its officers, directors, employees, or agents, the Company's parent, subsidiary, and affiliated entities, the Company's benefit plans or the plans' sponsors, fiduciaries, administrators, affiliates and agents, and/or all successors and assigns of any of them, and/or the Company's client(s) ("Covered Disputes")."

Plaintiff argues the Agreement requires arbitration of disputes that have nothing to do with Plaintiff's employment. Defendant argues the Agreement read reasonably and confirms that the Agreement is directed at employment-related claims, including disputes arising before employment, during employment, and following separation. Construing the Agreement in a manner that avoids unconscionability, the Court interprets the Agreement as applying to only employment-related claims. (*Ayala-Ventura*, *supra*, 119 Cal.App.5th at 255-256.) Given this interpretation, the Agreement is self-limiting in time as it only applies to employment related claims. Once the employment ends, no further facts giving rise to claims can develop.

Moreover, the Agreement requires both Goodwill and Plaintiff to arbitrate their clams. Plaintiff argues the Agreement requires Plaintiff to arbitrate against multiple third parties that are not named. *Cook* explicitly acknowledged that an arbitration agreement "cannot be unconscionable simply because it provides benefits to third parties." (*Cook*, *supra*, 102 Cal.App.5th at 348.) Accordingly, the Court does not find substantive unconscionability on mutuality grounds.

Plaintiff has demonstrated some degree of procedural unconscionability inherent in any adhesive contract. As a result, he needed a very compelling showing of substantive unconscionability to have the Agreement deemed unenforceable on unconscionability grounds. (See *Armendariz*, *supra*, 24 Cal.4th 83, 114 [discussing this sliding-scale approach].) He has not made one.

III. Class Claims

Where the FAA applies, it preempts state law rules limiting the enforceability of class and representative action waivers in arbitration agreements. (See *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 366 [overruled in part by *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639, 662].) Such waivers are enforced according to their terms.

The Agreement states that "To the maximum extent permitted by law, Employee hereby waives any right to bring on behalf of persons other than Employee, or to otherwise participate with others in, any class, collective or representative action, or other federal, state or local statute or ordinance of similar effect in federal or state court.

Employee, however, retains the right to bring said claims in arbitration, including those claims under the California Private Attorneys General Act ("PAGA"), on an individual basis, should they so desire." (Robertson Decl., Exh. A.) As a result, his class action claims are properly dismissed.

The Motion to Compel Arbitration is therefore GRANTED; the class claims DISMISSED, and this action is STAYED pending the outcome of that arbitration.

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

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

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