# SUPERIOR COURT OF CALIFORNIA
# COUNTY OF MARIN

DATE: 07/14/26 TIME: 1:30 P.M. DEPT: A CASE NO: CIV2102919

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: G. STRATFORD

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| PLAINTIFF: SHIYING JIN ET AL.<br><br>vs.<br><br>DEFENDANT: BUCK INSTITUTE FOR RESEARCH ON AGING | |

NATURE OF PROCEEDINGS: MOTION – COMPEL – DISCOVERY FACILITATOR PROGRAM

RULING

Defendants' motion to compel Plaintiffs' further depositions is **DENIED** to the extent Defendants seek to ask questions which were previously asked at Plaintiffs' earlier deposition sessions, regardless of the propriety of counsel's instructions not to answer. The motion as to these questions is untimely. Defendants' motion is **GRANTED** with respect to questions pertaining to new events, documents, and other witness testimony, but further depositions are limited to 4 additional hours for each Plaintiff. Defendants' request for sanctions is **DENIED**.

***Procedural Deficiency***

Both Defendants and Plaintiffs failed to file declarations of non-resolution as required by Local Rule 2.13H. However, the appointed discovery facilitator, Margaret Farley, has advised the Court that the parties participated in the discovery process and that no resolution was reached. Accordingly, the Court will consider the motion but reminds the parties to comply with all applicable rules when filing matters with the court.

***Procedural Background***

Plaintiffs Shiying Jin and Lei Lei filed their Complaint against Defendants Buck Institute for Research on Aging and Eric Verdin on July 28, 2021, alleging breach of contract, retaliation, hostile work environment harassment, discrimination, failure to prevent harassment, discrimination or retaliation, wrongful termination, defamation per se, and misappropriation of trade secrets.

On June 9, 10 and 11 (half day) 2025, Defendants deposed Plaintiff Lei. On June 11 (half day), June 12 and 13, they deposed Plaintiff Jin. (Declaration of Johanna Kramer ("Kramer Decl."), ¶3.) During the depositions, Plaintiffs' counsel instructed the witness not to answer a number of questions. (*Id*., ¶¶4, 5 and Exhs. A and B.) At the conclusion of the last deposition session for each Plaintiff, Defendants' counsel stated that Defendants were going to keep the depositions open because there were a number of questions that counsel did not allow the witnesses to answer. (*Id*., ¶6 and Exhs. A and B.) The certified transcripts were completed on June 25, 2025 (Lei) and June 28, 2025 (Jin). (Declaration of Shelley A. Molineaux ("Molineauz Decl."), ¶3 and Exhs. 1 and 2.)

From July through October 2025 and again from January through April 2026, the parties met and conferred regarding deposition scope limitations, scheduling, and location. The parties agreed to pause deposition practice to pursue mediation which occurred in December 2025. (Kramer Decl., ¶7.) On March 3, 2026, Plaintiffs' counsel took the position that Defendants had waived their right to compel further deposition testimony due to the passage of time. (*Id*., ¶10.) Following meet and confer efforts, Defendants served notices of deposition for Plaintiffs. Plaintiffs objected to the notices and stated that they would not produce Plaintiff Lei for any continued deposition and would produce Plaintiff Jin for only two hours limited to mitigation of damages. As a result, Defendants pulled the scheduled depositions off calendar. (*Id*., ¶¶12-15.)

***Discussion***

Defendants move for an order compelling Plaintiffs to appear for and complete their continued depositions, without improper instructions or objections, and seek monetary sanctions for what they contend is an abuse of the discovery process by Plaintiffs.

<u>Questions Asked in Plaintiffs' Earlier Deposition Sessions</u>

To the extent Defendants seek an order allowing further depositions so that they can re-ask questions Plaintiffs were instructed not to answer, the motion is denied as untimely. Code of Civil Procedure Section 2025.460(e) provides: "If a deponent fails to answer any question . . . that is specified in the deposition notice or a deposition subpoena, the party seeking that answer or production may adjourn the deposition or complete the examination on other matters without waiving the right at a later time to move for an order compelling that answer or production under Section 2025.480." Section 2025.480(b) requires a motion to compel to be made "no later than 60 days after the completion of the record of the deposition."

Defendants do not dispute that they did not file their motion within the 60 day period contemplated by Section 2025.460(e). Courts have characterized discovery motion to compel deadlines as mandatory.

In *Sexton v. Superior Court* (1997) 58 Cal.App.4th 1403, the court held that the 45 deadline to file a motion to compel the production of documents under Section 2031.310(c) (formerly Section 2031(*l*)) is mandatory. The *Sexton* court stated that "the time within which to make a motion to compel production of documents is mandatory and jurisdictional just as it is for motions to compel further answers to interrogatories . . . we do not believe the 45-day limitation is 'jurisdictional' in the fundamental sense, but is only 'jurisdictional' in the sense that it renders the court without authority to rule on motions to compel other than to deny them." (*Id*. at p. 1410.)

In *Unzipped Apparel, LLC v. Bader* (2007) 156 Cal.App.4$^{th}$ 123, the court addressed the 60 day deadline in Section 2025.480(b) in the context of a document subpoena to a nonparty who fails to produce documents. The court stated that the 60 day deadline applies in this context because a response to a business records subpoena, such as objections, is a "record of the deposition." The court held that the subpoenaing party had 60 days from receipt of the objections to file its motion to compel and that "[t]he deadline was mandatory." (*Id*. at p. 136 [citing *Sexton*].) The court reversed the trial court's order granting the subpoenaing party's motion to compel. *In Board of Registered Nursing v. Superior Court* (2021) 59 Cal.App.5$^{th}$ 1011, the court addressed a similar issue, holding that the subpoenaing party had 60 days to file a motion to compel from the date objections were served. The court noted that this 60 day period was not extended by meet and confer efforts because the meet and confer process is part of a discovery deadline; it does not extend it. (*Id.* at pp. 1034-1035.)

In *Young v. Daimler AG* (2014) 228 Cal.App.4$^{th}$ 855 n. 7, the First District discussed the issue in the context of waiver, stating that "appellants have waived any issues regarding inadequate discovery by failing to raise them in a timely fashion in the court below, either through appropriate motions to compel or otherwise. (See Code Civ. Proc., § 2025.480, subd. (b) [60-day deadline for motion to compel with respect to inadequate deposition testimony]; see also *id.,* §§ 2030.300, subd. (c) [45 day waiver of right to compel further response for written interrogatories], 2031.310, subd. (c) [same for document inspection], 2033.290, subd. (c) [same for requests for admission].)"

In *Weinstein v. Blumberg* (2018) 25 Cal.App.5$^{th}$ 316, the court held that a motion to compel further responses at a deposition is not "made" until the required supporting papers were served. Because the moving party did not serve the moving papers until 15 days before the hearing, its motion was untimely under Section 2025.480. The court stated: "The 60-day deadline was mandatory. Serving a notice of motion and motion to compel on December 6, 2016, without the supporting papers identified therein rendered the motion untimely." (*Id.* at p. 321 [citing *Unzipped*].)

Based on the above authority, Defendants' motion is denied to the extent they seek to re-ask Plaintiffs questions that Plaintiffs were previously instructed not to answer. The motion is untimely. Defendants cite no authority that given the mandatory nature of the 60-day deadline, the Court can allow their motion upon a showing of good cause. Defendants do not make a showing of good cause for this portion of their motion in any event. The earlier deposition sessions took place almost a year before Defendants filed this motion. While Defendants argue that they were meeting and conferring prior to the filing of their motion in April, meet and confer efforts do not extend a motion to compel deadline. (*See Board of Registered Nursing*, 59 Cal.App.5th at pp. 1034-1035.) Defendants also argue that the parties agreed to pause depositions while pursuing mediation, but that did not happen until after the 60-day deadline had already passed. (Molineaux Decl., ¶4.)

The motion as to previously asked questions is denied for the additional reason that Defendants failed to file a separate statement in compliance with California Rule of Court 3.1345. (See *Mills v. U.S. Bank* (2008) 166 Cal.App.4th 871, 893 [where motion fails to include a separate statement, a trial court is "well within its discretion" to deny the motion on that basis].) Defendants do not dispute that a separate statement was required for this portion of their motion. (See Reply, pp. 7-9.)

<u>Other Questions</u>

Defendants seek to compel the continued depositions of Plaintiffs for an additional reason, i.e., to examine Plaintiffs about post-deposition developments, documents produced after Plaintiffs' earlier depositions, and topics arising from witness testimony obtained after those earlier depositions.

Because this is an employment case, Plaintiffs' depositions are not limited to seven hours. (Code Civ. Proc. § 2025.29(a), (b)(4).) Further, Section 2025.610 allows for a subsequent deposition of a party upon a showing of good cause.

Defendants have shown good cause to compel further deposition testimony from Plaintiffs. Defendants' motion is granted to the extent Defendants seek to question Plaintiffs about post-deposition events or developments, documents, and witness testimony. Defendants may depose each Plaintiff for an additional four hours on these topics.

### ***Sanctions***

Defendants' request for sanctions under section 2025.480(j) is denied. For the reasons discussed above, Plaintiffs have acted with substantial jurisdiction and other circumstances make the imposition of sanctions unjust.

*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 July, 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: 07/14/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0001341

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: G. STRATFORD

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|---|---|
| PLAINTIFF: MINNIE ROSE MCBRIDE<br>vs.<br>DEFENDANT: WILLIAM MONTI ET AL. | |

NATURE OF PROCEEDINGS: MOTION – SUMMARY JUDGMENT

RULING

Defendant/Cross-Complainant Michael Monti's ("Defendant") Motion for Summary Adjudication in favor of Defendant and against Plaintiff/Cross-Defendant Minnie McBride ("Plaintiff") is **DENIED.**

***Background***

This dispute concerns real property and improvements commonly known as and located at 55 Buena Vista Ave., Stinson Beach, California ("the Property"). Plaintiff alleges she and Defendant are co-owners of the Property. On November 13, 2023, Plaintiff filed suit for partition, accounting, and breach of fiduciary duty. On November 9, 2025, Plaintiff filed a Second Amended Complaint, adding a quiet title cause of action. The quiet title cause of action has been bifurcated and is separately set and now pending trial on August 4, 2026.

Presently before the Court is Defendant's Motion for Summary Adjudication on the quiet title cause of action. In its April 17, 2026, Order, this Court found good cause to hear the Motion less than 30 days prior to the commencement of trial.

***Requests for Judicial Notice***

Defendant's Requests for Judicial Notice Nos. 2-4 are GRANTED. (Evid. Code, §§ 452(c), 452(h), 453.) The document submitted in Request No. 1 is not a file endorsed copy of the pleading, therefore notice is not properly taken and the Request is DENIED. As to the documents contained in Requests Nos. 2-4, the Court takes notice of the existence documents, the fact that they were filed/recorded etc., but not the truth of statements contained therein.

Plaintiff's Requests for Judicial Notice Nos. 3-7 are GRANTED. (Evid. Code, § 452(d).) The Court takes notice of the existence documents, the fact that they were filed/recorded etc., but not the truth of statements contained therein. The remaining Requests are DENIED.

### *Objections to Evidence*

Plaintiff's Objections to Evidence Nos. 1-14 are OVERRULED.[1]

Defendant's Objections to Evidence (Requests for Judicial Notice) Nos. 1-6 are OVERRULED.
Defendant's Objections to Evidence (Holsinger Decl.) No. 1 is OVERRULED.[2]
Defendant's Objections to Evidence (McBride Decl.) Nos. 1, 6, 7, and 8 are OVERRULED. Objections Nos. 2-5 are SUSTAINED. (Evid. Code, §§ 350, 403, 702, 800, 1523.)
Objections to Evidence (Wulf Decl.) Nos. 1-3 and 5-6 are OVERRULED. Objection No. 4 is SUSTAINED. (Evid. Code, §§ 1200, 1201.)
Objections to Evidence (Fisher Decl.) Nos. 1-5 are OVERRULED.

### *Legal Standard*

A party may move for summary judgment "if it is contended that the action has no merit or that there is no defense to the action or proceeding." (Code Civ. Proc., § 437c, subd. (a)(1).) "[I]f all the evidence submitted, and all inferences reasonably deducible from the evidence and uncontradicted by other inferences or evidence, show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law," the moving party will be entitled to summary judgment. (*Adler v. Manor Healthcare Corp.* (1992) 7 Cal.App.4th 1110, 1119.)

A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims of damages, or one or more issues of duty. (Code Civ. Proc., § 437c(f).) A summary adjudication motion is subject to the same rules and procedures as a summary judgment motion. (*Lomes v. Hartford Financial Service Group, Inc.* (2001) 88 Cal.App.4th 127, 131.)

The moving party bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact, and if the party does so, the burden shifts to the opposing party to make a prima facie showing of the existence of a triable issue of material fact.

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[1] Defendant is correct that Plaintiff's objections violate California Rules of Court, rule 3.1354(c). Notwithstanding this failure to comply, the Court considers the objections as Defendant has had an opportunity to respond.

[2] In the future, the Court requests counsel consecutively number objections without restarting for ease of reference.

(*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850; accord Code Civ. Proc., § 437c, subd. (p)(2).) "Once the defendant ... has met that burden, the burden shifts to the plaintiff... to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto." (*Ibid*.) "If the plaintiff cannot do so, summary judgment should be granted." (*Avivi v. Centro Medico Urgente Med. Ctr*. (2008) 159 Cal.App.4th 463, 467, as modified (Jan. 24, 2008).)

When deciding whether to grant summary judgment, the court must consider all the evidence set forth in the papers (except evidence to which the court has sustained an objection), as well as all reasonable inferences that may be drawn from that evidence, in the light most favorable to the party opposing summary judgment. (*Ibid*.; see also Code Civ. Proc., § 437c, subd. (c).)

***Discussion***

Defendant brings this Motion pursuant to Code of Civil Procedure section 437(c) arguing that he is entitled to summary adjudication on the cause of action for quiet title in the Second Amended Complaint ("SAC"). Specifically, Defendant argues there is no triable issue as to any material fact regarding the termination of joint tenancy.

Plaintiff contends that she "has acceded to the interest of defendant William Monti in and to the Property by virtue of the joint tenancy in effect at the time of his death." (SAC, ¶ 28.) Defendant counters that on August 11, 2023, the joint tenancy was severed as to Decedent's interest by his authorized agent under a Power of Attorney (the "Severance Deed").

Defendant contends the undisputed material facts demonstrate the Severance Deed was properly executed and because the Severance Deed was recorded during the severing joint tenant's lifetime, it terminated the right of survivorship as a matter of law. (Civ. Code, § 683.2, subd. (c)(1); Defendant's Undisputed Material Facts ("DUMF") Nos. 1-12.)

Defendant has satisfied his burden on Summary Adjudication and the burden therefore shifted back to Plaintiff to demonstrate the existence of a triable issue of material fact. Plaintiff has done so. (See Plaintiff's Response to Defendant's Separate Statement "PRSS" Nos. 1-6, 8-10.)[3]

Defendant argues that the "disputes" of material facts raised by Plaintiff go beyond those theories raised in the SAC. Plaintiff's SAC alleges that the "purported termination of joint tenancy by or on behalf of defendant William Monti was defective in that (a) there was no notarization of the signature of defendant William Monti and (b) there was no power of attorney

[3] Although the PRSS does not specifically list "Disputed" or "Undisputed" as required (see California Rules of Court, rule 3.1350), the facts in dispute are clear from Plaintiff's response.

attached to the document." (SAC, ¶ 23.) Plaintiff's opposition disputes Defendant's material facts in connection with the validity of the DPOA and the validity of the signature and notarization on of the Severance Deed. (PRSS Nos. 1-6, 8-10.) Factual issues presented in opposition to a motion for summary judgment should be considered if the controlling pleading, construed broadly, encompasses them. (*Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1257, as modified on denial of reh'g (July 7, 2008).) The SAC reasonably interpreted as a whole and reading its parts in their context, broadly encompasses these challenges.

For these reasons, the Motion for Summary Adjudication is denied.

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

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

DATE: 07/14/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0001410

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: G. STRATFORD

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| PLAINTIFF: ALFREDO ALVARADO<br>vs.<br>DEFENDANT: BIANCHINI, INC., ET AL. | |

NATURE OF PROCEEDINGS: MOTION – RELIEVE COUNSEL

RULING

The motion of Attorneys James Miller and Timothy Hastie to be Relieved as Counsel for Defendants is **GRANTED.** (Code Civ. Proc.,§ 284.)

The Court issues an Order to Show Cause ("OSC") to all Defendants. As a business entity, Defendant Bianchini, Inc. is required to be represented in legal proceedings by an attorney admitted to the practice of this State. Failure to obtain counsel may result in the entry of default. The individual Defendants may represent themselves in the proceeding but are required to attend all court hearings.

The Court issues an Order to Show Cause ("OSC") to Defendants to demonstrate they are represented (either by counsel or self-represented as to the individual defendants). The OSC shall be heard on **August 28, 2026. at 9 am in Courtroom A. All other dates are vacated. The Court will assign future dates, if any, at the hearing on the OSC.** The withdrawing attorneys are ordered to provide all Defendants with written notice of this OSC and next hearing date and file a proof of service that notice has been given.

*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: 07/14/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0004855

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: NATHAN JAMES CAVENEY

vs.

DEFENDANT: ALLBIRDS, INC.

NATURE OF PROCEEDINGS: MOTION – OTHER: LIFT STAY

RULING

The unopposed motion of Defendant Allbirds, Inc. to lift the stay for the limited purpose of considering its motion for summary adjudication is **GRANTED**.

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

*The Zoom appearance information for July, 2026 is as follows:*
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# SUPERIOR COURT OF CALIFORNIA
# COUNTY OF MARIN

DATE: 07/14/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0006252

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: G. STRATFORD

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| PLAINTIFF: COOPER KLINGER<br><br>vs.<br><br>DEFENDANT: NEW RIDE ELECTRIC LLC | |

NATURE OF PROCEEDINGS: MOTION – AMEND FIRST COMPLAINT

RULING

**In light of the late filing of Plaintiff's proposed amended pleading, Defendant may appear to request an opportunity to file a revised opposition. Otherwise, the Court's tentative is as follows:**

The motion of Plaintiff Cooper Klinger ("Plaintiff") for leave to file an amended complaint is **GRANTED.**

***Discussion***

Under Code of Civil Procedure section 473, subdivision (a)(1), the Court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding. As judicial policy favors resolution of all disputed matters in the same lawsuit, courts liberally permit amendments of the pleadings. (*Nestle v. Santa Monica* (1972) 6 Cal.3d 920, 939.) Denial is rarely justified unless opposing parties demonstrate unreasonable delay plus prejudice if the motion is granted. (*Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 564-565.)

Here, there is no claim of delay or prejudice. Instead Defendant asserts that many of the new claims are not well-pleaded. Generally, arguments attacking the merits of the proposed amendments do not justify denial of the motion. Courts allow the amendment and then let the parties test the legal sufficiency in other appropriate proceedings such as a demurrer. (*See Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048.)

The motion is therefore granted without prejudice to Defendant bringing an appropriate motion challenging the new pleading or claims.

*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: 07/14/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0006315

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: G. STRATFORD

PETITIONER: ROBERT ALLEN RAUDSO

vs.

DEFENDANT: JOSE GUILLEN ET AL.

NATURE OF PROCEEDINGS: MOTION – RELIEVE COUNSEL

RULING

**Appearances by all parties are required.**

The Court understands that there is a petition for fees pending before the Probate Court. In the present action, the Court intends to **VACATE all future dates and STAY the proceedings for a period of approximately 30 days.** This stay will allow Counsel for Plaintiff and the Conservator to consider the rulings of the Probate Court and then meet and confer to determine (1) whether withdrawal is still necessary, and (2) if so, how withdrawal can be accomplished without substantial prejudice to the Plaintiff/Conservatee. The Court will hold a further hearing on the motion on **August 18, 2026, at 1:30 p.m. in Courtroom A.**

*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: 07/14/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0006430

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: G. STRATFORD

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| PETITIONER: DEBORAH STEIN<br><br>vs.<br><br>DEFENDANT: HEADLANDS II OWNERS ASSOCIATION ET AL. | |

NATURE OF PROCEEDINGS: MOTION – COMPEL

RULING

Defendants Joseph Aiello's ("Aiello") motion to compel arbitration is DENIED. (Code Civ. Proc., § 1281.2,[1] subd. (c).)

***Allegations***

Plaintiff Deborah Stein ("Plaintiff") filed this action arising from alleged water intrusion from the unit at 282 Headlands Court into her unit at 242 Headlands Court, causing property damage and mold. On May 29, 2025, Plaintiff filed this action. On October 15, 2025, Plaintiff filed her operative Second Amended Complaint alleging claims for: 1) general negligence; and 2) breach of contract. Aiello was added as a Doe defendant on April 25, 2026. Multiple other defendants remain in the action.

Aiello now moves to compel arbitration and stay the entire pending litigation pursuant to Code of Civil Procedure section 1281.2. The motion is based on arbitration provisions in the Declaration of Covenants, Conditions and Restrictions ("CC&Rs") of Defendant Headlands II Homeowners Association ("HOA"), recorded April 27, 2017.

***Standard***

A party to an arbitration agreement may seek a court order compelling the parties to arbitrate a dispute covered by the agreement. (§ 1281.) A written agreement to submit future controversies to arbitration "is valid, enforceable and irrevocable, save upon such grounds as exist for the revocation of any contract." (*Ibid.*) "On petition of a party to an arbitration agreement alleging

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

the existence of a written agreement to arbitrate a controversy and that a party to the agreement refuses to arbitrate that controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists, unless it determines" that one of certain exceptions applies. (§ 1281.2.)

On a motion to compel arbitration, the moving party must prove by a preponderance of evidence the existence of the arbitration agreement and that the dispute is covered by the agreement. The burden then shifts to the resisting party to prove by a preponderance of the evidence a ground for denial (e.g., fraud, unconscionability, etc.). (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413; *Hotels Nevada v. L.A. Pacific Center, Inc.* (2006) 144 Cal.App.4th 754, 758.)

***Procedural Defect***

Aiello's notice of motion seeks "an Order to Compel Arbitration and stay the pending litigation," which by its terms would affect all parties to this action. Section 1290.4 requires that notice be given to all parties who have appeared in the proceeding. Multiple other defendants have appeared in this action. However, Aiello served the motion only on Plaintiff's counsel and not on any of the other defendants. The failure to serve all parties who would be affected by an order staying "the pending litigation" constitutes a procedural defect that would prejudice parties not given an opportunity to oppose a motion that purports to stay litigation against all defendants.

***Merits***

The arbitration provision upon which Aiello relies is found in Section 12.3(c)(2) of the CC&Rs and provides: "In the event of a dispute between Owners, affected Owners shall attempt to resolve any dispute by mediation... If mediation fails and the dispute continues, the parties shall proceed with binding arbitration administered by the American Arbitration Association." By its plain terms, this provision applies only to disputes "between Owners." The CC&Rs define "Owner" as "the owner of record in the chain of title, whether one or more Persons or entities, having a recorded fee simple title to or undivided fee interest in any Condominium."

However, Aiello has submitted no evidence establishing that he qualifies as an "Owner" under this definition. The only evidence submitted in support of the motion is a three-paragraph declaration from Aiello's counsel, attaching a copy of the CC&Rs. There is no evidence before the Court that Aiello holds recorded fee simple title to the unit at 282 Headlands Court. This evidentiary deficiency is fatal to the motion. Aiello cannot meet his threshold burden of proving a valid arbitration agreement applies to the parties when he has submitted no evidence that he is a party entitled to invoke the agreement.

Without proof that Aiello is an "Owner" as defined by the CC&Rs, he has not established his entitlement to invoke the arbitration clause in Section 12.3(c)(2). The motion is denied on this ground.

Defendant Joseph Aiello's Motion to Compel Arbitration is denied.

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

*The Zoom appearance information for July, 2026 is as follows:*
*https://marin-courts-ca-gov.zoomgov.com/j/1605267272?pwd=908CbP6TV2mhCAyai1nzo6lyz2dKaw.1*

Meeting ID: 160 526 7272
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*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: 07/14/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0007390

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: G. STRATFORD

| PETITIONER: WILLIS LEASE FINANCE CORPORATION ET AL.<br><br>vs.<br><br>DEFENDANT: CHUBB EUROPEAN GROUP SE ET AL. | |
|---|---|

NATURE OF PROCEEDINGS: MOTION – STAY DISCOVERY PENDING RESOLUTION OF DECLARATORY JUDGMENT ACTION

RULING

The motion for partial stay filed by Fidelis Underwriting Limited, Liberty Corporate Capital Limited as sole corporate member of Syndicate 4472 at Lloyd's for the 2021 year of account, Atrium Underwriters Limited for and on behalf of the 2021 underwriting members of Syndicate 609 at Lloyd's, Chaucer Corporate Capital (No. 3) Ltd. (UK) as the sole corporate member of Syndicate 1084 at Lloyd's for the 2021 year of account, and Lancashire Syndicates Limited for and on behalf of the participating 2021 underwriting members of Syndicate 3010 and Syndicate 2010 at Lloyd's (collectively, the "Moving Defendants"), is **DENIED**.

***Procedural Background***

On August 20, 2025, the Moving Defendants filed an action against Willis Lease Finance Corporation ("WLFC"), titled *Fidelis Underwriting Limited, et al. v. Willis Lease Finance Corporation*, Case No. CV0007356 (the "Declaratory Judgment Action"), alleging that they and WLFC reached an oral agreement to resolve an insurance coverage dispute under a policy severally subscribed by the Moving Defendants to WLFC. The dispute arose out of WLFC's claim for a 2022 loss of, or to, several aircraft engines located in Russia. The Moving Defendants seek declaratory relief and allege anticipatory breach of the oral agreement. No trial date has been set in the Declaratory Judgment Action, but the parties have recently stated in a joint case management conference statement that a trial in that case would be completed in two days.

Just a few weeks after the Declaratory Judgment Action was filed, on September 3, 2025, WLFC filed the instant action against the Moving Defendants as well as a number of other insurer defendants. WLFC alleges that the insurers are obligated to pay for the loss of three engines under the policy but have refused to do so. WLFC asserts causes of action for breach of contract and breach of the implied covenant of good faith and fair dealing.

***Standard***

"Trial courts generally have the inherent power to stay proceedings in the interests of justice and to promote judicial efficiency." (*Freiberg v. City of Mission Viejo* (1995) 33 Cal.App.4th 1484, 1489.) A court can stay discovery in one action pending resolution of another action. (See *Riddell, Inc. v. Superior Court* (2017) 14 Cal.App.5th 755, 765-66; *Haskel, Inc. v. Superior Court* (1995) 33 Cal.App.4th 963, 980.) When ruling on a request for a stay, one of the factors the court may consider is prejudice to the parties. (See *Riddell*, 14 Cal.App.5th at p. 766; *Great American Ins. Co. v. Superior Court* (2009) 178 Cal.App.4th 221, 236; *Avant! Corp. v. Superior Court* (2000) 79 Cal.App.4th 876, 885-886.)

Parties in a civil action are entitled to discover non-privileged, relevant information and a party requesting to limit or stay discovery has the burden of showing good cause for the request. (Code Civ. Proc., §§ 2017.010, 2019.020(b).)

***Discussion***

The Moving Parties seek an order staying WLFC's discovery efforts against them in this case pending resolution of the Declaratory Judgment Action. They contend that a stay is warranted because the Declaratory Judgment Action requires substantially less discovery, can be resolved quickly through a bench trial, and a resolution of the Declaratory Judgment Action in favor of the Moving Defendants would negate the need for discovery in this case as to the Moving Defendants. The Moving Defendants state that they have not yet served discovery in this case, but WLFC has propounded overbroad and burdensome requests on them.

WLFC opposes the motion, arguing that the insurer defendants in this case have sat on WLFC's claim for coverage for over four years and the requested stay would further delay resolution of this claim. While the Declaratory Judgment Action was filed first, it was only by a couple of weeks; the day after WLFC filed this case, the Moving Defendants served WLFC with their Complaint in the Declaratory Judgment Action. WLFC also argues that one of the grounds for the requested stay – that the Declaratory Judgment Action can negate the need for discovery against the Moving Defendants – is based on speculation and the unwarranted presumption that the Moving Defendants will prevail in that action.

WLFC further argues that a stay of discovery as against the Moving Defendants is impractical and helps only the Moving Defendants while simultaneously prejudicing WLFC. By way of example, WLFC notes that with a stay, it may have to engage in fact discovery as to the Moving Defendants at the same time it is engaging in expert discovery as to the other defendants, which is inefficient. Moreover, the trial in the Declaratory Judgment Action will not take place until October 2026 at the earliest, meaning WLFC will deprived of any discovery from the Moving Defendants in this case for over a year of litigation, and the insurers have already delayed payment under the Policy for four years. With respect to the Moving Defendants' arguments as to the scope of discovery in this case, WLFC states that its discovery requests are routine insurance coverage requests that have been answered by other defendants, and the propriety of specific requests are not before the Court in any event.

Defendants Global Aerospace Underwriting Managers Limited, Great Lakes Insurance SE, Berkshire Hathaway International Insurance Ltd., Houston Casualty Company, Mapfre Espana, Compania de Seguros y Reaseguros, S.A., Mitsui Sumitomo Insurance Company (Europe) Limited, Swiss Re International SE, Faraday Capital Limited as the sole member and capital provider to Faraday Syndicate 0435 at Lloyd's, Starr Managing Agents Limited on its own behalf and on behalf of all underwriting members of Lloyd's Syndicate 1919, Convex Insurance UK Limited, AXIS Specialty Europe SE, and Texas Insurance Company (the "AR Insurers") have filed a Response to the Moving Defendants' motion, arguing that a partial stay of discovery as against the Moving Defendants only would prejudice the AR Defendants who would be required to continue participating in discovery with WLFC. The AR Insurers argue that the Moving Defendants would gain an unfair advantage by using completed deposition transcripts of WLFC's fact and expert witnesses to tailor their own later examinations to the Moving Defendants' advantage and the AR Insurers' disadvantage, and the AR Insurers would be unable to depose the Moving Defendants' experts before filing summary judgment while the Moving Defendants could later oppose that motion with expert opinions the AR Insurers never had a fair chance to test. The AR Defendants also argue that the stay would further compress discovery timelines and hamper the parties' ability to coordinate contemporaneous depositions of key witnesses, or could require two depositions of these witnesses, some of whom are located outside of the United States.

The motion for partial stay is denied. The Court finds the arguments of WLFC and the AR Insurers regarding the impact of the requested stay on the parties and the proceedings to be compelling. The requested stay would unfairly favor one set of defendants and prejudice the other parties remaining in the case. The temporary stay issued at the March 29, 2026 ex parte hearing is dissolved.

*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: 07/14/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0009963

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: G. STRATFORD

| | |
|---|---|
| PETITIONER: VIOLETA ANSARI ET AL.<br><br>vs.<br><br>RESPONDENT: MERCEDES-BENZ USA, LLC, A DELAWARE LIMITED LIABILITY COMPANY ET AL. | |

NATURE OF PROCEEDINGS: MOTION – COMPEL ARBITRATION

RULING

Defendant Mercedes-Benz USA, LLC's motion to compel arbitration is **GRANTED**. This action is stayed pending resolution of the arbitration.

***Procedural Background***

On April 30, 2026, Plaintiffs Violeta Ansari and Marinq LLC filed their Complaint against Defendant Mercedes-Benz USA, LLC ("MB") and Swickard Marin Corporation dba Mercedes Benz of Marin ("MB Marin"), alleging that on February 16, 2024, they leased a new 2023 Mercedes-Benz EQE350X4 from Mercedes Benz of Walnut Creek ("MB Walnut Creek") and that they received certain warranties. Plaintiffs further allege that they brought the vehicle into MB's authorized repair facility, MB Marin, for repair on five occasions but the vehicle continues to suffer from defects. Plaintiffs assert causes of action against MB for breach of express warranty, breach of implied warranty, and violation of Civil Code Section 1793.2 under the Song-Beverly Act, and against MB Marin for negligent repair.

***The Arbitration Agreement***

MB's counsel attaches a copy of a Motor Vehicle Lease Agreement (the "Agreement") as Exhibit 2 to his declaration. The parties to the Agreement are Plaintiffs and MB Walnut Creek. Pages 4-5 contain a section titled "Important Arbitration Disclosures", which provides:

**The following arbitration provisions significantly affect your rights in any dispute with us. Please read the following disclosures and the arbitration provision that follows carefully before you sign the contract.**

1. If either of you or we choose, any dispute between you and us will be decided by arbitration and not in court.

2. If such dispute is arbitrated, you and we will give up the right to a trial by a court or a jury trial.

3. You agree to give up any right you may have to bring a class action lawsuit or class arbitration, or to participate in either as a claimant, and you agree to give up any right you may have to consolidate your arbitration with the arbitration of others.

4. The information that can be obtained in discovery from each other or from third persons in arbitration is generally more limited than in a lawsuit.

5. Other rights that you and/or we would have in court may not be available in arbitration.

Any claim or dispute, whether in contract, tort or otherwise (including any dispute over the interpretation, scope, or validity of this lease, arbitration section or the arbitrability of any issue), between you and us or any of our employees, agents, successors, assigns, or the vehicle distributor, including Mercedes-Benz USA, LLC (each a "Third Party Beneficiary"), which arises out of or relates to a credit application, this lease, or any resulting transaction or relationship arising out of this lease (including such relationship with third parties who do not sign this contract) shall, at the election of either you, us, or a Third Party Beneficiary, be resolved by a neutral, binding arbitration and not by a court action. Any claim or dispute is to be arbitrated on an individual basis and not as a class action. The arbitration shall be administered by the American Arbitration Association, or by any other organization that you may choose, subject to our or a Third Party Beneficiary's approval. You may get a copy of the rules of the American Arbitration Association by visiting its website at www.adr.org.

The arbitrator shall be an attorney or retired judge and shall be selected in accordance with the applicable rules. The arbitrator shall apply the law in deciding the dispute. The arbitration hearing shall be conducted in the federal district in which you reside. If you demand arbitration first, you will pay the claimant's initial arbitration filing fees or case management fees required by the

> applicable rules up to $125, and we will pay any additional filing fee or case management fee. We will pay the whole filing fee or case management fee if we demand arbitration first. We will pay the arbitration costs and fees for the first day of arbitration, up to a maximum of eight hours. The arbitrator shall decide who shall pay any additional costs and fees. Nothing in this paragraph shall prevent you from requesting that the arbitration entity reduce or waive your fees, or that we or a Third Party Beneficiary voluntarily pay an additional share of said fees, based upon your financial circumstances or the nature of your claim.
>
> This lease evidences a transaction involving interstate commerce. Any arbitration under this lease shall be governed by the Federal Arbitration Act (9 USC 1, *et seq*.) Judgment upon the award rendered may be entered in any court having jurisdiction.
>
> Notwithstanding this provision, both you and Lessor and Lessor's successors and assigns retain the right to exercise self-help remedies and to seek provisional remedies from a court, pending final determination of the dispute by the arbitrator. Neither you nor we waive the right to arbitrate by exercising self-help remedies, filing suit, or seeking or obtaining provisional remedies from a court.
>
> If any clause within this arbitration section, other than clause 3 or any similar provision dealing with class action, class arbitration or consolidation, is found to be illegal or unenforceable, that clause will be severed from this arbitration section, and the remainder of this arbitration section will be given full force and effect. If any part of clause 3 or any similar provision dealing with class action, class arbitration or consolidation is found to be illegal or unenforceable, then this entire arbitration section will be severed and the remaining provisions of this lease shall be given full force and effect as if the arbitration section of this lease had not been included in this lease. In no event shall an arbitrator be authorized to resolve a claim or dispute or make awards or grant relief exceeding the limitations in clause 3 or any similar provision on class actions, class arbitrations, or consolidation.

(Declaration of Ali Ameripour, Exh. 4 [emphasis in original].)

***Plaintiffs' Evidentiary Objections***

Plaintiffs object to Exhibit 2 to Mr. Ameripour's declaration, the Motor Vehicle Lease Agreement, on the grounds of hearsay and lack of foundation. These objections are overruled.

"For purposes of a petition to compel arbitration, it is not necessary to follow the normal procedures of document authentication. '[T]he court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists....' (§ 1281.2) The statute does not require the petitioner to introduce the agreement into evidence. A plain reading of the statute indicates that as a preliminary matter the court is only required to make a finding of the agreement's existence, not an evidentiary determination of its validity." (*Condee v. Longwood Management Corp*. (2001) 88 Cal.App.4th 215, 218-219.) "If the moving party meets its initial prima facie burden and the opposing party does not dispute the existence of the arbitration agreement, then nothing more is required for the moving party to meet its burden of persuasion." (*Gamboa v. Northeast Community Clinic* (2021) 72 Cal.App.5th 158, 165.) Once the moving party meets its initial burden by submitting a copy of the agreement, the burden shifts to the party opposing arbitration to identify a factual dispute as to the agreement's existence. (*Iyere v. Wise Auto Group* (2023) 87 Cal.App.5th 747, 755.) For example, if the opposing party disputes the authenticity of her signature, she must "offer admissible evidence creating a factual dispute as to the authenticity" of her signature. (*Ibid*.) "The opposing party can do this in several ways. For example, the opposing party may testify under oath or declare under penalty of perjury that the party never saw or does not remember seeing the agreement, or that the party never signed or does not remember signing the agreement." (*Gamboa*, 72 Cal.App.5th at p. 165.) "If the opposing party meets its burden of producing evidence, then in the third step, the moving party must establish with admissible evidence a valid arbitration agreement between the parties. The burden of proving the agreement by a preponderance of the evidence remains with the moving party." (*Id*. at pp. 165-166.)

Here, MB submits a copy of the Agreement and Plaintiffs do not dispute that the Agreement exists or that they signed the Agreement. MB has satisfied its burden under the authority discussed above.

Plaintiffs attempt to distinguish *Condee* on the ground that the petition in *Condee* was verified and the arbitration provision was authenticated by a custodian of records. The court's decision in *Condee* was not based on these facts, however. The *Condee* court held that once the petitioner "had alleged that the agreement exists, the burden shifted to respondents to prove the falsity of the purported agreement." (*Condee*, 88 Cal.App.4th at p. 219.) The First District cited *Condee* in *Iyere*, *supra*, noting: "The arbitration proponent must first recite verbatim, or provide a copy of, the alleged agreement. A movant can bear this initial burden by attaching a copy of the arbitration agreement purportedly bearing the opposing party's signature. At this step, a movant need not follow the normal procedures of document authentication and need only allege the existence of an agreement and support the allegation as provided in rule [3.1330]." (*Iyere*, 87 Cal.App.5th at p. 755 [citations and internal quotations omitted].) The Second District followed *Condee* in *Gamboa* and more recently in *Kostandian v. American Honda Motor Co., Inc*. (2026) 120 Cal.App.5th 872.

The *Ruiz* case relied upon by Plaintiffs is inapposite because the respondent there challenged the moving party's initial showing by averring that he did not recall signing the agreement. The court found that given this statement by the responding party, the burden shifted back to the moving party to prove the signature was authentic, which it did not do. (See *Ruiz v. Moss Bros. Auto Group, Inc*. (2014) 232 Cal.App.4th 836, 846.) Here, despite Plaintiffs' arguments to distinguish *Condee* and knowing the importance of submitting evidence in order to challenge the existence of the agreement under the relevant case law (including *Ruiz*), Plaintiffs do not do so here. Plaintiffs do not submit any declarations or other evidence challenging the Agreement submitted by MB. Accordingly, the Court finds that MB has satisfied its burden of showing the existence of an agreement to arbitrate, shifting the burden to Plaintiffs, and Plaintiffs have failed to satisfy their burden of challenging that agreement. The Court will therefore consider the Agreement in ruling on MB's motion.

***Request for Judicial Notice***

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

***Discussion***

<u>Third Party Beneficiary</u>

Plaintiffs contends that MB lacks standing because it is not a signatory to the Agreement. MB argues that it can enforce the Agreement as a third party beneficiary because the Agreement expressly states that MB is a third party beneficiary.

"A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it." (Civ. Code § 1559.) "[A] third party beneficiary of an arbitration agreement may enforce it." (*Fuentes v. TMCSF, Inc*. (2018) 26 Cal.App.5th 541, 552 [citation and internal quotations omitted].)

A non-signatory seeking to compel arbitration as a third-party beneficiary must demonstrate that (1) "the third party would in fact benefit from the contract;" (2) "a motivating purpose of the contracting parties was to provide a benefit to the third party;" and (3) permitting the third party to enforce the contract "is consistent with the objectives of the contract and the reasonable expectations of the contracting parties." (*Goonewardene v. ADP, LLC* (2019) 6 Cal. 5th 817, 830.)

Plaintiffs cite to *Ford Motor Warranty Cases*, 17 Cal.5th 1122 to support their argument that MB is not a third party beneficiary, but that case was based on an equitable estoppel theory rather than a third party beneficiary theory. Further, the agreement in *Ford Motor Cases* did not mention the manufacturer. (See *id*. at p. 1129 ["nothing in the agreement between plaintiffs and the seller dealers expressed an intent to empower third parties to invoke the arbitration clause"]. Here, not only is MB mentioned in the Agreement, it is expressly identified as a third party beneficiary. MB has therefore satisfied its burden in showing it is entitled to enforce the Agreement. (See *Ford Motor Warranty Cases* (2023) 89 Cal.App.5th 1324, 1339 ["If the signatories had intended to benefit FMC, such a purpose would have been easy to articulate. They could have simply named FMC—directly or by class as the vehicle's manufacturer—as a person entitled to compel arbitration"], *aff'd* 17 Cal.5th 1122; see also *McGee v. Mercedes-Benz USA LLC*, Case No. 25-cv-09671-JCS, 2026 WL 667822, *2-3 (N.D. Cal. March 9, 2026); *Khachatryan v. Mercedes-Benz USA, LLC*, No. 4:25-cv-02749-DMR, 2025 WL 2955995, *4 (N.D. Cal. Sept. 8, 2025); *Brown v. Mercedes-Benz USA, LLC*, No. 2:25-cv-02300-SVW-JC, 2025 WL 4231564, *4 (C.D. Cal. Aug. 13, 2025); *Durkin v. Mercedes-Benz USA LLC*, No. 3:25-cv-03064-WHO, 2025 WL 2263681, *2-3 (N.D. Cal. July 15, 2025); *Ghazzal v. Mercedes-Benz USA, LLC*, No. 2:24-cv-02163 WBS SCR, 2025 WL 406222, *1 (E.D. Cal. Feb. 5, 2025); *Ayad v. Mercedes-Benz USA, LLC*, No. 5:24-cv-01111-WLH-SK, 2024 WL 5369370, *2-3 (C.D. Cal. Oct. 21, 2024); *Attalah v. Mercedes-Benz USA, LLC*, No. 2:24-cv-01245-JDE, 2024 WL 4445275, *3-4 (C.D. Cal. Aug. 15, 2024).)

Plaintiffs' Claims fall within the Agreement

Plaintiffs argue that their claims are independent of the Agreement and therefore are not subject to the Agreement's arbitration provision. However, the language of the arbitration provision is broad and covers Plaintiffs' claims against MB. The Agreement requires arbitration of claims or disputes arising out of "any resulting transaction or relationship arising out of this lease (including such relationship with third parties who do not sign this contract)." This language covers claims and disputes arising out of Plaintiffs' relationship with MB. (See *Durkin*, 2025 WL 2263681 at *3; *Ghazzal*, 2025 WL 406222 at *2; *Attalah*, 2024 WL 4445275 at *4.)

Equitable Estoppel

Plaintiffs argue that MB does not have standing under the doctrine of equitable estoppel. Because the Court concludes that MB is an intended third party beneficiary, it need not address the issue of equitable estoppel. (See *Davis v. Nissan North America, Inc*. (2024) 100 Cal.App.5th 825, 843, review granted and dismissed, remanded [equitable estoppel and third party beneficiary "are separate and distinct theories for enforcement of an arbitration clause by someone who is not a party to the contract containing it"]; *Fuentes v. TMCSF, Inc*. (2018) 26 Cal.App.5th 541, 547 [describing equitable estoppel and third party beneficiary as two distinct means of enforcement of contract by nonsignatory]; *Ayad*, 2024 WL 5369370 at *4 ["Given the Court's conclusion regarding Defendant MBUSA's status as an intended third party beneficiary, the Court need not reach arguments concerning equitable estoppel as a basis to compel arbitration"].) MB has standing to move to compel arbitration as a third party beneficiary.

Civil Code Section 1790.1

Plaintiffs argue that the FAA does not apply because MB does not make a showing that the dispute involves interstate commerce, and that because the FAA does not apply, the anti-waiver provision of the Song-Beverly Act bars arbitration. The anti-waiver provision, Civil Code Section 1790.1, provides: "Any waiver by the buyer of consumer goods of the provisions of this chapter, except as expressly provided in this chapter, shall be deemed contrary to public policy and shall be unenforceable and void."

Plaintiffs' arguments lack merit. Where an agreement states that the FAA applies, there is no need to present evidence of interstate commerce. (See *Barrera v. Apple American Group LLC* (2023) 95 Cal.App.5th 63, 76; *Davis v. Shiekh Shoes, LLC* (2022) 84 Cal.App.5th 956, 963; *Victrola 89, LLC v. Jaman Properties 8 LLC* (2020) 46 Cal.App.5th 337, 355.)[1] The Agreement here clearly states that the FAA governs, so Section 1790.1 does not apply to preclude enforcement of the arbitration provision. Plaintiffs do not point to any provision of the Song-Beverly Act which precludes enforcement of an arbitration provision in any event.

Unconscionability

Plaintiffs argue that the Agreement is not enforceable because it is unconscionable.

"California law strongly favors arbitration . . . [and] establishes a 'presumption in favor of arbitrability.'" (*OTO, LLC v. Kho* (2019) 8 Cal.5th 111, 125 [citation omitted].) However, generally applicable contract defenses such as unconscionability may be applied to invalidate an arbitration agreement without contravening California law or the FAA. (*Ibid*.) In order to invalidate an arbitration agreement on this ground, the party opposing arbitration must prove that the agreement is both procedurally and substantively unconscionable. (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 114.) "'The procedural element addresses the circumstances of contract negotiation and formation, focusing on oppression or surprise due to unequal bargaining power. [Citations.] Substantive unconscionability pertains to the fairness of an agreement's actual terms and to assessments of whether they are overly harsh or one-sided.'" (*OTO*, 8 Cal.5th at 125 [citation omitted].) "Both procedural and substantive unconscionability must be shown for the defense to be established, but they need not be present in the same degree. Instead, they are evaluated on a sliding scale. [T]he more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to conclude that the term is unenforceable. Conversely, the more deceptive or coercive the bargaining tactics employed, the less substantive unfairness is

[1] There is nothing in the courts' rulings in the two cases cited by Defendants, *Woolls v. Superior Court* (2005) 127 Cal.App.4th 197 and *Hoover v. American Income Life Ins. Co.* (2012) 206 Cal.App.4th 1193, which indicates that the agreements there provided that the FAA would govern.

required." (*Ibid*. [citations and internal quotations omitted].) The party resisting arbitration bears the burden of proving unconscionability. (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC (2012)* 55 Cal.4th 223, 247.)

Plaintiffs argue that the Agreement is procedurally unconscionable because they had no ability to negotiate the language creating a "take it or leave it" scenario. Plaintiffs fail to present any evidence to support this claim, however, and they have the burden of proving unconscionability. (*Pinnacle,* 55 Cal.4th at p. 247.) Plaintiffs cannot meet this burden by arguing that MB does not present evidence relating to their contention. Moreover, even if Plaintiffs did meet their burden of presenting actual evidence to support their procedural unconscionability argument, the result would be a low degree of procedural unconscionability only. (See *Lennar Homes of California, Inc. v. Stephens* (2014) 232 Cal.App.4th 673, 689-690; *Dotson v. Amgen, Inc*. (2010) 181 Cal.App.4th 975, 981-982.)

Because Plaintiffs fail to produce any evidence of procedural unconscionability, the Court need not address whether the Agreement was substantively unconscionable. However, the Court notes that Plaintiffs have failed to make this showing as well. Plaintiffs argue that the Agreement is substantively unconscionable because it violates the anti-waiver provision of the Song-Beverly Act and it deprives Plaintiffs of their right to a jury trial. The first argument fails for the reason discussed above, and waiving a jury trial in an otherwise enforceable arbitration agreement does not make that agreement unconscionable.

Stay

MB's motion to compel arbitration is granted. This action is stayed pending resolution of the arbitration. (Code Civ. Proc. § 1281.4; 9 U.S.C. § 3.)

*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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