SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 3
Honorable William J. Monahan, Presiding
Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2130

DATE: 8/1/2024 TIME: 9:00 A.M.

TO CONTEST THE RULING: Before 4:00 p.m. today (7/31/2024) you must notify the:

(1) Court by calling (408) 808-6856 and
(2) Other side by phone or email that you plan to appear and contest the ruling.
(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

TO APPEAR AT THE HEARING: The Court prefers in-person appearances or by Teams. If you must appear virtually, please use video.

FOR YOUR NEXT HEARING DATE: Please reserve your next hearing date using Court Schedule—an online scheduling tool that can be found on the Santa Clara County court website.

FINAL ORDERS: The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.) **Please Note:** Any proposed orders must be submitted with the Judicial Council Form EFS-020 Proposed Order (Cover Sheet). Please include the date, time, dept., and line number.

COURT REPORTERS: The Court no longer provides official court reporters. If any party wants a court reporter, the appropriate form must be submitted. See court website for policy and forms.

LINE #	CASE #	CASE TITLE	RULING
LINE 1	24CV429513	Valarie Phillips vs Chloe Young et al	Demurrer to First Amended Complaint Ctrl Click (or scroll down) on Line 1 for tentative ruling. The court will prepare the order.
LINE 2	24CV430501	Aleiandro De La O vs Nip Pham	Motion: Strike Portions of Plaintiff's Complaint Ctrl Click (or scroll down) on Line 2 for tentative ruling. The court will prepare the order.
LINE 3	20CV372580	Rafael Martinez vs Christian Ceja	Motion: Set Aside Default and to Dismiss by defendant Christian Ceja Ctrl Click (or scroll down) on Line 3 for tentative ruling. The court will prepare the order.

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 3
Honorable William J. Monahan, Presiding

Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2130

DATE: 8/1/2024 TIME: 9:00 A.M.

LINE 4	24CV432307	Nadla Johnson vs Kathy Layendecker et al.	Hearing: Motion hearing to compel arbitration by defendants Castilleja School Foundation and Kathy Layendecker Ctrl Click (or scroll down) on Line 4 for tentative ruling. The court will prepare the order.
LINE 5	24CV440826	In re: 67-69-73-75 E Hedding St., San Jose, CA 95112	Hearing: Other for Claim of Surplus Funds by claimant Tyler Chan Unopposed and GRANTED. Moving party to submit order for signature by court.
LINE 6	21CV376082	Navy Federal Credit Union vs Dana Lewis	Motion: Enforce Settlement and Enter Judgment based upon stipulated settlement by plaintiff Navy Federal Credit Union OFF CALENDAR. The proof of service by mail filed 6/20/2024 does *not* list the supporting declaration or the memorandum of points and authorities in the documents served by mail. It only lists the "Notice of Motion and Motion to Enforce Stipulated Judgement Based Upon Stipulated Settlement" which is the title of the 2-page notice filed 6/20/2024. All the supporting documents must be served (and listed in the proof of service), not just the notice.
LINE 7			
LINE 8			
LINE 9			
LINE 10			
LINE 11			
LINE 12			

- oo0oo -

Calendar Line 1
Case Name: *Valarie Phillips v. Chloe Young et al.*
Case No.: 24CV429513

I. Background[1]

Self-represented plaintiff Valarie Philips ("Plaintiff") brings her First Amended Complaint ("FAC") against Chloe Young ("Young"), Denise Buckner ("Buckner"), Nuzhat Shaikh ("Shaikh"), and Yvette Carpenter ("Carpenter") (collectively, "Defendants").

a. Parties

Plaintiff is a registered nurse who was employed as a Coordination of Care Service Director at Kaiser Santa Clara Hospital ("Kaiser") from June 6, 2022 until November 2023. (FAC, p. 7.)

Young was an Assistant Nurse Manager, Case Manager at Kaiser and a subordinate of Plaintiff. (FAC, p. 8.) Young was hired by Plaintiff. (FAC, p. 9.) Buckner and Shaikh were Patient Care Coordinators Case Managers under Plaintiff's leadership. (FAC, p. 10.) Carpenter was an Administrative Assistant for the Director of Care Coordination Service Director and reported to Plaintiff. (FAC, p. 11.)

b. Facts

During Plaintiff's tenure at Kaiser, Defendants made efforts to defame, disgrace, and otherwise demean her reputation and character to inflict emotional, financial, and physical harm to Plaintiff. (FAC, pp. 12-13.) In January 2023, Plaintiff became aware of work practice issues that the frontline nursing staff were dealing with while under the leadership of a non-nurse. (FAC, p. 13.) During the process of addressing these concerns, Plaintiff discovered the plot to spread statements about her character and professional capabilities throughout Kaiser. (*Ibid*.) She also discovered Defendants' intent to seclude her from enacting activities, processes, or interventions to resolve issues with the work environment. (*Ibid*.)

On May 1, 2024, Plaintiff filed her FAC, including a combination of a Judicial Form Complaint and written allegations.

The FAC asserts multiple causes of action against the Defendants, including:

1) Defamation [against Young];
2) Gross Negligence [against Young];
3) Defamation [against Buckner];
4) Defamation [against Shaikh];
5) Defamation/Negligence [against Shaikh];
6) Defamation [against Carpenter]; and
7) False Imprisonment [against Carpenter].

On June 3, 2024, Defendants filed a demurrer to each cause of action. Plaintiff opposes the motion.

II. Procedural Issues

As an initial matter, the Court notes that Plaintiff's opposition vastly exceeds the 15-page limit set forth in Rule 3.1113, subdivision (d) of the California Rules of Court. Plaintiff's opposition is 35-pages long. While the Court has exercised its discretion to review and

[1] The First Amended Complaint lacks paragraph numbers and line numbers, and so any citations to this pleading are by page number. Any amended pleading filed by Plaintiff going forward shall include clearly labeled, numbered causes of action and numbered paragraphs on proper pleading paper. (See Cal. Rules of Court, Rule 2.112.)

consider the entire opposition, the Court admonishes Plaintiff that future briefings that exceed the page limits listed in the Rules of Court may be disregarded. (See *County of Orange v. Smith* (2005) 132 Cal.App.4th 1434, 1444 [self-represented litigants are entitled to the same, but no greater, consideration than other litigants and attorneys].)

III. Demurrer Legal Standard

The court, in ruling on a demurrer, treats it "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214.)

IV. Analysis

Defendants demur to each cause of action in the FAC.

a. First Cause of Action – Defamation (Chloe Young)

Defendants demur to the first cause of action on the following grounds: 1) it fails to plead defamation with the requisite degree of specificity; 2) it is barred by the applicable one-year statute of limitations; 3) it is based on privileged statements; and 4) it is based on non-actionable statements of opinion.

"The elements of a defamation claim are (1) a publication that is (2) false, (3) defamatory, (4) unprivileged, and (5) has a natural tendency to injure or causes special damage." (*Wong v. Jing* (2010) 189 Cal.App.4th 1354, 1369.) Defamation is effected by either: libel or slander. (Civ. Code, § 44.) Slander and libel are species of defamation: slander claims are based upon an oral communication and libel claims are based upon written communication. (See *Jackson v. Mayweather* (2017) 10 Cal.App.5th 1240, 1259-1260; *Nguyen-Lam v. Cao* (2009) 171 Cal.App.4th 858, 867.)

Specificity

Slander and libel are both statutory causes of action that must be pled with specificity. (See *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790 ["general rule that statutory causes of action must be pleaded with particularity"]; see also FAC, p. 16 [citing Civil Code].) The Supreme Court has held that "slander can be charged by alleging the substance of the defamatory statement." (*Okun v. Superior Court* (1981) 29 Cal.3d 442, 458.) Whereas "the words constituting an alleged libel must be specifically identified, if not pleaded verbatim, in the complaint." (*ZL Technologies, Inc. v. Does 1–7* (2017) 13 Cal.App.5th 603, 616 (*ZL Technologies*) [internal quotations omitted].)

Defendants argue that all of the statements alleged to be attributable to Young are non-specific and conclusory. Here, the FAC alleges that on February 8, 2023, Young sent an email advising the Registered Nurse Care Coordinators that they "save lives" despite Plaintiff previously explaining to staff they do not save lives. (FAC, p. 24.) The contents of the entirety of the email sent by Young are not included in the pleading or attached as an exhibit. Plaintiff additionally alleges that on January 16, 2023, Young refused to complete a task and stated that it was not part of her job duties. (FAC, p. 27.) Based on the allegations in the FAC, it is not clear who Young made this statement to or whether it was through an email communication or verbally. Thus, the Court does not find that the first cause of action is pled with the requisite

specificity and the demurrer may be sustained on this ground. Accordingly, the Court need not address the remaining arguments to the first cause of action.

The demurrer to the first cause of action is SUSTAINED with 15 days leave to amend.

b. Second Cause of Action – Gross Negligence (Chloe Young)

Defendants demur to the second cause of action on the grounds it 1) fails to plead facts establishing negligence or gross negligence; and 2) is based on privileged statements.

"Gross negligence is pleaded by alleging the traditional elements of negligence: duty, breach, causation, and damages. However, to set forth a claim for gross negligence the plaintiff must also allege conduct by the defendant involving either want of even scant care or an extreme departure from the ordinary standard of conduct." (*Chavez v. 24 Hour Fitness USA, Inc.* (2015) 238 Cal.App.4th 632, 640 [internal citations and quotations omitted].)

Defendants first assert that Plaintiff cannot avoid defamation law by pleading that her claim sounds in negligence. (Demurrer, p. 12:24-26, citing *Felton v. Schaeffer* (1991) 229 Cal.App.3d 229, 239 (*Felton*).) In *Felton*, a trial court entered judgment in favor of a job applicant who asserted a negligence and medical malpractice claim against a medical center and physician. The Court of Appeal reversed. In addition to holding that there was no duty relationship, the Court of Appeal held that the complaint suggested on its face that defendants were protected under the libel law by the qualified privilege of Civil Code section 46, subdivision (c), concerning nonmalicious communications to an interested person, and the job applicant could not avoid that defense by pleading negligence and malpractice theories, under which no defense would be available to defendants. The *Felton* Court explained: that if plaintiffs "were permitted to sue in negligence, we perceive plaintiffs would seek to evade the strictures of libel law . . . by framing all libel actions as negligence causes of action, merely by pleading the defendant was negligent (i.e., in believing the defamatory information to be true)." (*Felton*, *supra*, 229 Cal.App.3d at p. 239.)

Defendants contend the claim for gross negligence is based on Plaintiff's alleged disagreement with Young about whether Care Coordinators perform lifesaving functions at Kaiser and that Young misled staff for whom she was responsible for when she made this statement. (Demurrer, p. 13:1-5, citing FAC, p. 29.) Plaintiff further alleges that Young's defamatory statement was grossly negligent and showed a reckless disregard for the truth. (Demurrer, p. 13:5-7, citing FAC, p. 31.) In opposition, Plaintiff appears to admit that her gross negligence claim is actually one for defamation. Under the opposition's Gross Negligence heading on page 12, Plaintiff contends the FAC "pleads defamation" and that the FAC "explicitly allege[s] [Young] falsely defamed Plaintiff." (Opposition, p. 13.) Finally, Plaintiff also contends that Young's "slanderous acts" were grossly negligent. (Opposition, p. 15.) Thus, the demurrer to the second cause of action may be sustained on the basis that it is duplicative of the first cause of action and does not sufficiently allege gross negligence.

As such, the demurrer to the second cause of action is SUSTAINED without leave to amend.

c. Third Cause of Action – Defamation (Denise Buckner)

Defendants demur to the third cause of action on the following grounds: 1) it fails to plead defamation with the requisite degree of specificity; 2) it is barred by the applicable one-year statute of limitations; 3) it is based on privileged statements; 4) it is based on non-actionable statements of opinion; and 5) it is preempted.

Plaintiff alleges Buckner is a Patient Care Coordinator Case Manager under Plaintiff's leadership. (FAC, p. 10.) Plaintiff alleges Buckner sent a defamatory email asserting her discontent with Plaintiff's choice for Resource Manager; made defamatory statements during a

team meeting where she voiced her anger and discontent regarding Plaintiff's selection for Resource Manager; and made statements about Plaintiff's inability to lead, lack of knowledge in hiring, competency to carry out goals and Kaiser's agenda and then began to praise Young and stated Plaintiff's lack of good judgment was the reason Young did not get the Resource Manager position. (FAC, pp. 32-33.) The Court will address Defendants' fourth argument first.

Non-Actionable Statements of Opinion

Defendants contend that the above statements made by Buckner are statements of opinion and are therefore non-actionable. (Demurrer, p. 11:10-12, citing *Campanelli v. Regents of the Univ. of Cal.* (1996) 44 Cal.App.4th 572, 580.)

In opposition, Plaintiff asserts that an opinion defense is sustainable only when the statement made is "true opinion" and that here, the statements made were false and not factual. (Opposition, p. 9.) Plaintiff further argues that whether Buckner's statements were slanderous as a matter of fact or opinion is a legal question for the jury. (Opposition, p. 24.)

"The sine qua non of recovery for defamation is the existence of falsehood. Because the statement must contain a provable falsehood, courts distinguish between statements of fact statements of opinion for purposes of defamation liability. Although statements of fact may be actionable as libel, statements of opinion are constitutionally protected." (*Sanders v. Walsh* (2013) 219 Cal.App.4th 855, 862 [internal quotations omitted].) "The critical question is not whether a statement is fact or opinion, but whether a reasonable fact finder could conclude the public statement declares or implies a provably false assertion of fact." (*Ibid.* [internal quotations omitted].) "The crucial question of whether challenged statements convey the requisite factual imputation is ordinarily a question of law for the court. Only once the court has determined that a statement is reasonably susceptible to such defamatory interpretation does it become a question for the trier of fact whether or not it was so understood." (*Summit Bank v. Rogers* (2012) 206 Cal.App.4th 669, 696 [internal citations and quotations omitted].)

Here, based on the allegations that Buckner was "expressing her discontent" and made statements based on "her position of hostility, anger, [and] discontent," the Court finds that Buckner's statements were statements of opinion that did not convey a factual imputation but instead were statements made out of anger because of who Plaintiff chose for the Resource Manager position. (See FAC, pp. 32-33.) Thus, the demurrer may be sustained as non-actionable opinion and the Court need not address the remaining arguments.

Accordingly, the demurrer to the third cause of action is SUSTAINED with 15 days leave to amend.

d. Fourth Cause of Action – Defamation (Nuzhat Shaikh)

Defendants demur to the fourth cause of action on the grounds 1) it fails to plead defamation with the requisite degree of specificity; 2) it is barred by the applicable one-year statute of limitations; 3) it is based on privileged statements; 4) it is based on non-actionable statements of opinion; and 5) it is preempted.

Plaintiff alleges that Shaikh sent an email to Plaintiff's supervisor stating that Plaintiff is incompetent and is creating stress for the frontline team. Shaikh sent an additional email that advised Plaintiff's supervisor that having Care Coordinators document participation in multidisciplinary rounds was inappropriate and would put the Care Coordinators in a bad position and impact hospital quality scores.

The Court finds Defendants' first argument that the allegations lack the requisite specificity persuasive. The FAC alleges Shaikh's statements are written; however, they are not pleaded verbatim or specifically identified but instead summarized by Plaintiff. (See *ZL Technologies, Inc., supra,* 13 Cal.App.5th at p. 616.) Further, the Court also finds persuasive

Defendants' argument that the statements are protected by the common interest privilege given that Shaikh was emailing a direct supervisor to address workplace concerns. (See e.g., *Kelly v. General Telephone Co.* (1982) 136 Cal.App.3d 278, 285 [common interest privilege "may exist where the communicator and recipient have a common interest and the communication is reasonably calculated to further that interest"]; *Smith v. Hatch* (1969) 271 Cal.App.2d 39, 47 ["qualified privilege creates a presumption that the communication is made innocently and without malice . . ., the pleadings must contain affirmative allegations of malice in fact, and malice must exist as a fact in order to destroy the privilege. . ."].)

Based on the foregoing, the demurrer to the fourth cause of action is SUSTAINED with 15 days leave to amend.

e. Fifth Cause of Action – Defamation/Negligence (Nuzhat Shaikh)

Defendants demur to the fifth cause of action on the grounds 1) it fails to plead defamation with the requisite degree of specificity; 2) it is barred by the applicable one-year statute of limitations; 3) it is based on privileged statements; 4) it is based on non-actionable statements of opinion; and 5) it is preempted.

Plaintiff's fifth cause of action alleges Shaikh sent another text/email to Plaintiff's supervisors indicating that she and the frontline staff were unaware of how to participate in a program. (FAC, p. 40.) Plaintiff contends this made her look badly and that the response from her supervisor was one of disappointment. (FAC, p. 41.) For the same reasons as in the fourth cause of action, the demurrer to the fifth cause of action is SUSTAINED with 15 days leave to amend.

f. Sixth Cause of Action – Defamation (Yvette Carpenter)

Defendants demur to the sixth cause of action on the grounds 1) it fails to plead defamation with the requisite degree of specificity; 2) it is barred by the applicable one-year statute of limitations; 3) it is based on privileged statements; 4) it is based on non-actionable statements of opinion; and 5) it is preempted.

Here, the FAC alleges that Carpenter defamed Plaintiff by changing the number of the on-call escalation phone number at the direction of the Assistant Manager who was on call on the date she changed the phone number. (FAC, p. 42.) The changing of a phone number and then admitting in an email that the number was changed does not constitute a false publication such that Plaintiff may state a cause of action for defamation. Thus, the demurrer to the sixth cause of action is SUSTAINED with 15 days leave to amend.

g. Seventh Cause of Action – False Imprisonment (Yvette Carpenter)

Finally, Defendants demur to the seventh cause of action on the grounds it 1) fails to plead facts establishing false imprisonment and 2) is based on privileged statements.

"False imprisonment is the unlawful violation of the personal liberty of another. The courts have held that false imprisonment occurs when the victim is compelled to remain where [she] does not wish to remain, or to go where [she] does not wish to go." (*People v. Oliver* (2020) 54 Cal.App.5th 1084, 1096, citing Penal Code, § 236 [internal quotations omitted].) The tort of false imprisonment "consists of the nonconsensual, intentional confinement of a person, without lawful privilege, for an appreciable length of time, however short." (*Fermino v. Fedco, Inc.* (1994) 7 Cal.4th 701, 715 [internal quotations omitted].) "Restraint may be effectuated by means of physical force, threat of force or of arrest, confinement by physical barriers, or by means of any other form of unreasonable duress." (*Ibid*. [internal citations omitted].)

Defendants first argue the pleading contains no facts concerning how Plaintiff was prevented from exiting, how long she was prevented from exiting, or how Carpenter's interrogation of the resource manager retrained Plaintiff. (Demurrer, p. 14:14-17.) Defendants next assert that there are no facts alleged demonstrating Carpenter had an intent to confine Plaintiff. (Demurrer, p. 14:17-18.) Finally, they contend that facts demonstrating the alleged confinement are based on privileged workplace communications with Carpenter and the other employee and cannot support a false imprisonment claim as a matter of law under Civil Code section 47. (Demurrer, p. 14:18-21, citing *Hunsucker v. Sunnyvale Hilton Inn* (1994) 23 Cal.App.4th 1498, 1504.)

Plaintiff's opposition entirely fails to address any of these points raised by Defendants. (See *Westside Center Associates v. Safeway Stores 23, Inc.* (1996) 42 Cal. App. 4th 507, 529 [failure to challenge a contention in a brief results in the concession of that argument].) Moreover, the Court is persuaded by Defendants' argument that the FAC is devoid of sufficient allegations to constitute the tort of false imprisonment. Particularly, there are no allegations that anyone intended to confine *Plaintiff*.

As such, the demurrer to the seventh cause of action is SUSTAINED with 15 days leave to amend.

V. Conclusion and Order

The demurrer to the first, third, fourth, fifth, sixth, and seventh causes of action is SUSTAINED with 15 days leave to amend. The demurrer to the second cause of action is SUSTAINED without leave to amend.

The court will prepare the order.

- oo0oo -

Calendar Line 2
Case Name: *Maria Magdalena De La O, et al. v. Nip S. Pham*
Case No.: 24-CV-430501

Motion to Strike Portions of the Complaint by Defendant Nip S. Pham

Factual and Procedural Background

This is a landlord-tenant action brought by plaintiffs Maria Magdalena De La O, Gilbert Axxell Rodriguez De La O, a minor by and through his Guardian ad Litem, Maria Magdalena De La O, and Alejandro Manuel Borba De La O (collectively, "Plaintiffs") against defendant Nip S. Pham ("Pham").

According to the complaint, Plaintiffs resided in an apartment building and agreed to pay rent and abide by lawful tenant obligations in exchange for defendant Pham, the owner and manager of the building, allowing them to have possession of a unit in the building. (Complaint at ¶¶ 1-2.)

By virtue of the landlord/tenant relationship and/or lease contract, defendant Pham owed Plaintiffs the duty to comply with building, fire, health and safety codes, ordinances, regulation, and other laws and to maintain the premises in a habitable condition. (Complaint at ¶ 7.) Pham breached this duty by failing to correct substandard conditions which included deficiencies related to garbage, plumbing, lack of hot water, rodent infestations, and loss of use of the premises for various periods of time. (Id. at ¶ 8.)

Plaintiffs nonetheless paid full or partial rent to defendant Pham, or where legally excused from paying any or a portion of such rent to Pham, due to the building's uninhabitable condition. (Complaint at ¶ 10.) Plaintiffs notified Pham of the uninhabitable conditions, or the conditions were obvious to Pham upon reasonable inspection, but Pham failed to respond or adequately respond in a reasonable amount of time. (Ibid.)

Defendant Pham's repeated breaches of the warranty of habitability reduced the value of all tenancies, caused personal bodily injuries to the inhabitants, and caused Plaintiffs to feel the natural anxiety that an ordinary person feels under the relatively uniform unhealthy and unsafe conditions. (Complaint at ¶ 16.)

On February 6, 2024, Plaintiffs filed the operative complaint against defendant Pham alleging causes of action for:

(1) Breach of Implied Warranty of Habitability;
(2) Breach of Statutory Warranty of Habitability;
(3) Breach of the Covenant of Quiet Enjoyment;
(4) Negligence;
(5) Violation of Civil Code section 1942.4;
(6) Private Nuisance;
(7) Violation of Unfair Competition Law (Bus. & Prof. Code, § 17200).

On June 10, 2024, defendant Pham filed the motion presently before the court, a motion to strike portions of the complaint. Plaintiffs filed written opposition. Pham filed reply papers.

Motion to Strike Portions of the Complaint

Defendant Pham moves to strike the demand in the complaint for attorney's fees.

Legal Standard

A court may strike out any irrelevant, false, or improper matter asserted in a pleading. (Code Civ. Proc., § 436, subd. (a).) A court may also strike out all or any part of a pleading not filed in conformity with the laws of the State of California. (Code Civ. Proc., § 436, subd. (b).) The grounds for a motion to strike shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice. (Code Civ. Proc., § 437, subd. (a).)

Irrelevant matter includes "immaterial allegations." (Code Civ. Proc., § 431.10, subd. (c).) "An immaterial allegation in a pleading is any of the following: (1) An allegation that is not essential to the statement of a claim or defense; (2) An allegation that is neither pertinent to nor supported by an otherwise sufficient claim or defense; (3) A demand for judgment requesting relief not supported by the allegations of the complaint or cross-complaint." (Code Civ. Proc., § 431.10, subd. (b).)

"As with demurrers, the grounds for a motion to strike must appear on the face of the pleading under attack, or from matter which the court may judicially notice." (Edmon & Karnow, *California Practice Guide: Civil Procedure Before Trial* (The Rutter Group 2024) ¶ 7:168, p. 7(l)-79 citing Code Civ. Proc., § 437.) "Thus, for example, defendant cannot base a motion to strike the complaint on affidavits or declarations containing extrinsic evidence showing that the allegations are 'false' or 'sham.' Such challenges lie only if these defects appear on the face of the complaint, or from matters judicially noticeable." (Id. at ¶ 7:169, p. 7(l)-79.)

"In passing on the correctness of a ruling on a motion to strike, judges read allegations of a pleading subject to the motion to strike as a whole, all parts in their context, and assume their truth." (*Clauson v. Super. Ct.* (1998) 67 Cal.App.4th 1253, 1255.) "In ruling on a motion to strike, courts do not read allegations in isolation." (*Ibid.*)

Analysis

According to the notice of motion, defendant Pham moves to strike the demand for attorney's fees in the complaint because such a request is not substantiated by contract.

"In the absence of some special agreement, statutory provision, or exceptional circumstances, attorney's fees are to be paid by the party employing the attorney." (*Howard v. Schaniel* (1981) 113 Cal.App.3d 256, 266; Code Civ. Proc., § 1021.)

The court notes there a number of procedural issues with respect to the instant motion to strike.

First, it appears that defendant Pham did not properly serve the motion to strike as there is no proof of service filed with the court. (See Code Civ. Proc., § 1005, subd. (b) ["Unless otherwise ordered or specifically provided by law, all moving and supporting papers shall be served and filed at least 16 court days before the hearing."].) Plaintiffs concede as much by claiming they never received an actual motion served by Pham which resulted in the untimely filing and service of the opposition. (See OPP at p. 2:1-3.) But, since Plaintiffs do not appear to be at fault for the untimely opposition and have submitted a response on the merits, the court will consider the opposition. (See *Tate v. Super. Ct.* (1975) 45 Cal.App.3d 925, 930 ["It is well settled that the appearance of a party at the hearing of a motion and his or her opposition to the motion on its merits is a waiver of any defects or irregularities in the notice of motion."].)

Second, the moving party is required to engage in meet and confer efforts prior to the filing of a motion to strike. (Code Civ. Proc., § 435.5, subd. (a).) Defendant Pham did not submit a meet and confer declaration with the court in support of the motion to strike. But, "[a] determination by the court that the meet and confer process was insufficient shall not be grounds to grant or deny the motion to strike." (Code Civ. Proc., § 435.5, subd. (a)(4).)

Third, "[a] notice of motion to strike a portion of a pleading must quote in full the portions sought to be stricken except where the motion is to strike an entire paragraph, cause of action, count, or defense. Specifications in a notice must be numbered consecutively." (Cal. Rules of Court, rule 3.1322.) Defendant Pham 's notice of motion fails to quote verbatim the portion of the complaint addressing Plaintiffs' request for attorney's fees in violation of the rules of court.

Also, a party filing a motion must serve and file a supporting memorandum. (Cal. Rules of Court, rule 3.113(a).) The court may construe the absence of a memorandum as an admission that the motion is not meritorious and cause for its denial. (Ibid.) The memorandum must contain a statement of facts, a concise statement of the law, evidence and arguments relied on, and a discussion of the statutes, cases, and textbooks cited in support of the position advanced. (Cal. Rules of Court, rule 3.113(b).) Defendant Pham has not submitted a memorandum of points and authorities in support of the motion to strike and thus fails again to comply with the rules of court.

As to the merits, defendant Pham contends Plaintiffs' request for attorney's fees is not supported by contract because there is no attached contract to the pleading. (See Notice of Motion at p. 1.) This contention however is undeveloped as it is not supported by citation to legal authority. (See *Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 979 [court need not consider point unsupported by legal authority]; see also *Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 52 ["We are not required to examine undeveloped claims or to supply arguments for the litigants"].) And, even if there was no contract to support an award for attorney's fees, Plaintiffs, in the alternative, request attorney's fees under Civil Code sections 1942.4 and 1942.5. (See Complaint at Prayer for Relief No. 3.)

Section 1942.4, subdivision (b)(2) provides "[t]he prevailing party shall be entitled to recovery of reasonable attorney's fees and costs of the suit in amount fixed by the court."

Similarly, section 1942.5 (i) states "[i]n any action brought for damages for retaliatory action, the court shall award reasonable attorney's fees to the prevailing party if either requests attorney's fees upon the initiation of the action."

Based on the foregoing, the motion to strike portions of the complaint (i.e. Plaintiffs' demand for attorney's fees) is DENIED.

Disposition

The motion to strike portions of the complaint is DENIED.

The court will prepare the Order.

- oo0oo -

Calendar Line 3
Case Name: Rafael Martinez vs Christian Emanuel Corona Ceja
Case No.: 20CV372580

Defendant Christian Emanuel Corona Ceja ("Defendant")'s motion to set aside default under Code of Civil Procedure ("CCP") section 473.5 and to dismiss this matter for failure to timely serve pursuant to CCP section 538.210(a) is GRANTED.

Defendant's Request for Judicial Notice (RJN) is GRANTED. The court takes judicial notice from the documents in the court's own file of:

1. The Plaintiff's Complaint on file herein: The Complaint that was filed on 10/21/2020.
2. The Order approving leave to serve by publication: The Order After Ex Parte Application to serve by Publication that was filed on 10/24/2022.
3. The Proof of Service: The Proof of Publication by the San Jose Post-Record that was filed on 11/1/2023.
4. Entry of default: The Defendant's Default was entered three times by the clerk (twice on 12/4/2023) both filed on 12/4/2023 and (once on 12/5/2023) filed on 12/5/2023.

CCP section 473.5, subd (a) states:

When service of a summons has not resulted in actual notice to a party in time to defend the action and a default or default judgment has been entered against him or her in the action, he or she may serve and file a notice of motion to set aside the default or default judgment and for leave to defend the action. The notice of motion shall be served and filed within a reasonable time, but in no event exceeding the earlier of: (i) two years after entry of a default judgment against him or her; or (ii) 180 days after service on him or her of a written notice that the default or default judgment has been entered.

CCP section 583.210, subd. (a) states:

The summons and complaint shall be served upon a defendant within three years after the action is commenced against the defendant. For the purpose of this subdivision, an action is commenced at the time the complaint is filed.

CCP section 583.250 states:

(a) If service is not made in an action within the time prescribed in this article:

(1) The action shall not be further prosecuted and no further proceedings shall be held in the action.

(2) The action shall be dismissed by the court on its own motion or on motion of any person interested in the action, whether named as a party or not, after notice to the parties.

(b) The requirements of this article are mandatory and are not subject to extension, excuse, or exception except as expressly provided by statute.
CCP section 583.240 states in part:
In computing the time within which service must be made pursuant to this article, there shall be excluded the time during which any of the following conditions existed:
….

(d) Service, for any other reason, was impossible, impracticable, or futile due to causes beyond the plaintiff's control. Failure to discover relevant facts or evidence is not a cause beyond the plaintiff's control for the purpose of this subdivision.

The Law Revision Commission Comments to CCP section 583.240 state in part:

Subdivision (d) continues the substance of subdivision (f)(2) of former Section 581a. It is based on appellate decisions, but it also makes clear that there is only an excuse for causes beyond the plaintiff's control and that failure to discover relevant facts or evidence does not excuse compliance. This overrules *Hocharian v. Superior Court*, 28 Cal.3d 714, 621 P.2d 829, 170 Cal. Rptr. 790 (1981). The excuse of impossibility, impracticability, or futility should be strictly construed in light of the need to give a defendant adequate notice of the action so that the defendant can take necessary steps to preserve evidence. Contrast Section 583.340 and Comment thereto (liberal construction of excuse for failure to bring to trial within a prescribed time). This difference in treatment is consistent with one aspect of the policy announced in Section 583.130—plaintiff must exercise diligence—and recognizes that service, unlike bringing to trial, is ordinarily within the control of the plaintiff.

(CCP § 583.240 (Deering, Lexis Advance through the 2024 Regular Session Ch 22).)

Defendant filed the instant motion to dismiss for failure to serve within three years after the complaint was filed on 10/21/2020. Defendant argues that this action must be dismissed because Plaintiff completed service by publication on Defendant on 11/1/2023, 11 days after Defendant alleges the three-year period elapsed on 10/21/2023.

However, Plaintiff contends that service of the summons and complaint was impossible or impracticable during the approximately three-month period Plaintiff's counsel was incapacitated in 2022. Plaintiff asserts that period must be excluded from the computation of the three-year period pursuant to CCP section 583.240(d).

Here, Plaintiff showed that: Because of unanticipated complications related to knee replacement surgery, Plaintiff's counsel Ismal Perez became incapacitated and was unable to perform *any* legal work for approximately three months from March 3, 2022, until June 6, 2022. He did not go to his office at all during that time. Plaintiff's counsel is a sole practitioner who does not have any assistants, employees or co-workers to help him. He had no ability to do legal work at home. This situation arose due to causes beyond the plaintiff's control, since Plaintiff's counsel had no reason to expect that he would suffer such severe complications following knee-replacement surgery.

Accordingly, Plaintiff argues that if the period in which Plaintiff's counsel was incapacitated (from 3/3/2022 until 6/6/2022) is excluded from the computation of the three-year period, the applicable period is extended to approximately 1/12/2024. Since the service by publication was completed long before that date (on 11/1/2023), Plaintiff contends that service in the present case was within the statutory period.

The exceptions codified in CCP section 583.240(d) are construed strictly against Plaintiff. CCP section 583.240(d) limits its exceptions to circumstances "beyond plaintiff's control." In this case, the failure to timely serve Plaintiff was within Plaintiff's control.

Plaintiff obtained his Order After Ex Parte Application to serve by Publication on or about 10/24/2022. This Order was obtained *after* Plaintiff's counsel had recovered from his knee replacement surgery and returned to his office in June of 2022. Accordingly, the failure to accomplish timely service was within Plaintiff's control when it received that order on or about 10/24/2022. The service by publication could have been accomplished within three years of filing the complaint.

The Order allowing service by publication on 10/24/2022 provided the mechanism for service and indeed Defendant was ultimately served by publication on 11/1/2024, 11 days after the three-year period expired on 10/21/2023. There is no evidence that service on Defendant was impossible. No facts existed that made his service impractical. (See e.g. *Shipley v. Sugita* (1996) 50 Cal.App.4th 320, 324 [three-year period for service is *not* tolled during period of time when plaintiff erroneously believed based on his own lawyer's false statements, that defendant had been properly served].)

Accordingly, the court agrees with the Defendant's argument that this case must be dismissed for failure to serve within three years pursuant to CCP section 538.210(a).

Defendant's motion to set aside default under CCP section 473.5 and to dismiss this matter for failure to timely serve pursuant to CCP section 538.210(a) is GRANTED.

The court will prepare the order.

- oo0oo -

Calendar line 4
Case Name: *Nadia Johnson, et al. vs Castilleja School Foundation, et al.*
Case No.: 24CV432307

Defendants Castilleja School Foundation dba Castilleja School ("Castilleja") and Kathy Layendecker ("Defendants")' motion for order compelling plaintiff Nadia Johnson ("Plaintiff") to arbitrate her claims in this matter pursuant to the Federal Arbitration Act ("FAA") (9 U.S.C. § 1, et seq. and the California Arbitration Act ("CAA") (California Code of Civil Procedure ("CCP") § 1280 et seq.) is GRANTED.

Defendants' request that this matter be dismissed is DENIED. Defendants' alternative request that this matter be stayed pending the outcome of the arbitration with Plaintiff is GRANTED.

Federal and State Law Strongly Favor Enforcement of Arbitration Agreements

Federal and California law strongly favor the enforceability of arbitration agreements and require that – where parties have agreed to arbitrate – they must do so in lieu of litigating in court. (*Buckeye Cheek Cashing, Inc. v. Cardegna* (2006) 546 U.S. 440, 443; *Moses H. Cone Mem. Hospital v. Mercury Constr. Corp.* (1983) 460 U.S. 1, 24-25; *Harris v. Tap Worldwide, LLC* (2016) 248 Cal.App.4th 373, 380 ["California law favors enforcement of valid arbitration agreements."]; the United States Arbitration Act, commonly referred to as the Federal Arbitration Act or "FAA"; California Arbitration Act, CCP § 1280 et seq., "CAA".) In almost identical language, each Act makes arbitration agreements valid, irrevocable, and enforceable except on grounds that exist for revocation of any type of contract generally. (Code Civ. Proc., § 1281; 9 U.S.C. § 2; *Serpa v. California Surety Investigations, Inc.* (2013) 215 Cal.App.4th 695, 701.)

The FAA

The FAA creates a strong presumption in favor of arbitration. (*Nguyen v. Applied Med. Res. Corp.* (2016) 4 Cal.App.5th 232, 245.) Its main purpose is to "ensur[e] that private arbitration agreements are enforced according to their terms" and it "preempts any state law rule that "stand[s] as an obstacle to the accomplishment of the FAA's objectives." (*Nguyen, supra*, 4 Cal.App.5th at p. 246, quoting *Carbajal v. CWPSC* (2016) 245 Cal.App.4th 227, 238.) The FAA applies to contracts in the employment context where the employment affects interstate commerce. (*Carmax Auto Superstores Cal. LLC v. Hernandez* (9th Cir. 2015) 94 F.Supp.3d 1078, 1099.)

The FAA provides that "[a] written provision in any … contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract … shall be valid, irrevocable, and enforceable, save upon grounds as exist at law or in equity for the revocation of any contract." (9 U.S.C. § 2.) The phrase "involving commerce" is the "functional equivalent of affecting commerce," which is "a term of art that ordinarily signals the broadest permissible exercise of Congress's commerce clause power." (*Nguyen, supra,* 4 Cal.App.5th at p. 246 (citations omitted).) The minimal nexus to interstate commerce required by the FAA exists here.

Under the FAA, the basic role for this Court is to determine whether the movant has

shown that: (1) a valid arbitration agreement exists and, if so, (2) the arbitration agreement encompasses the claims at issue. (*Kilgore v. KeyBank, N.A.* (9th Cir. 2012) 673 F.3d 947, 955-56.) The party opposing arbitration must demonstrate that the arbitration agreement is invalid. (*See Green Tree Fin. Corp. v. Randolph* (2000) 531 U.S. 79, 91-92.) Doubts as to whether Plaintiff's claims are subject to arbitration must be resolved in favor of arbitration. (*See Moses H. Cone Mem. Hospital v. Mercury Constr. Corp.* (1983) 460 U.S. 1, 24-25; *A&T Tech., Inc. v. Communication Workers of Am.* (1986) 475 U.S. 643, 650.)

Parties may "specify by contract the rules under which the arbitration will be conducted." (*See Volt Info. Scis. v. Bd. of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 470, 477-79 (1989) [contracts lawfully may opt out of FAA coverage].)

The CAA

"[T]he procedural provisions of the CAA [the California Arbitration Act] apply in *California* courts by default. . . . [T]he parties may '*expressly* designate that any arbitration proceeding [may] move forward under the FAA's procedural provisions rather than under state procedural law.' [Citation.] Absent such an express designation, however, the FAA's procedural provisions do not apply in state court." (*Valencia v. Smyth* (2010) 185 Cal.App.4th 153, 174-175; see *Mave Enterprises, Inc. v. Travelers Indemnity Co.* (2013) 219 Cal.App.4th 1408, 1429 ["the procedural provisions of the CAA" apply in California courts "absent a choice-of-law provision expressly mandating the application of the procedural law of another jurisdiction"].)

CCP section 1281.2, subdivision (c), is among the CAA's procedural provisions that may be enforced by California courts even with respect to arbitration contracts subject to the FAA's substantive rules. (See *Volt*, *supra*, 489 U.S. at pp. 470, 477-479 [application of section 1281.2 to stay arbitration would not undermine the goals and policies of, and is not preempted by, the FAA in a case where the parties have agreed that their arbitration agreement will be governed by California law].)

The CAA requires courts to enforce arbitration clauses where one party has shown the existence of an agreement to arbitrate that encompasses the dispute in question, unless the party opposing arbitration demonstrates that the petitioner waived the right to compel arbitration, or that grounds exist for revocation of the agreement. (*See* Code Civ. Proc., § 1281.2; *see generally St. Agnes Medical Center v. PacifiCare of California* (2003) 31 Cal.4th 1187.) The CAA states in relevant part:

> On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party thereto refuses to arbitrate such 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: (a) [t]he right to compel arbitration has been waived by the petitioner; or (b) [g]rounds exist for the revocation of the agreement.

(CCP § 1281 [emphasis added].)

Valid Arbitration Agreements Encompassing Plaintiff's Claims Exist

"The party seeking arbitration bears the initial burden of demonstrating the existence of an arbitration agreement." (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development*

(US), LLC (2012) 55 Cal.4th 223; *see also United Steelworkers of Am. V. Warrior & Gulf Navigation Co.* (1960) 363 U.S. 574, 582-83 [courts must defer to arbitration unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute…"]; *Vianna v. Doctor's Management Co.* (1994) 27 Cal.App.4th 1186, 1189 [any "[d]oubts as to whether an arbitration clause applies to a particular dispute are to be resolved in favor of sending the parties to arbitration."].)

The party seeking arbitration has the "burden of proving the existence of a valid arbitration agreement by a preponderance of the evidence, while a party opposing the petition bears the burden of proving by a preponderance of the evidence any fact necessary to its defense." The trial court "sits as the trier of fact, weighing all the affidavits, declarations, and other documentary evidence, and any oral testimony the court may receive at its discretion, to reach a final determination." (*Ruiz v. Moss Bros. Auto Group, Inc*. (2014) 232 Cal.App.4th 836, 842; *Gamboa v. Northeast Community Clinic* (2021) 72 Cal.App.5th 158, 164-165.)

"[T]o bring a motion to compel arbitration, a party must plead and prove: '(1) the parties' written agreement to arbitrate a controversy ...; (2) a request or demand by one party to the other party or parties for arbitration of such controversy pursuant to and under the terms of their written arbitration agreement; and (3) the refusal of the other party or parties to arbitrate such controversy pursuant to and under the terms of their written arbitration agreement.'" (*Betancourt v. Prudential Overall Supply*, 9 Cal.App.5th 439, 444-445 (2017).)

The arbitration proponent must first recite verbatim, or provide a copy of, the alleged agreement. (Cal. Rules of Court, rule 3.1330; *Condee v. Longwood Management Corp.* (2001) 88 Cal.App.4th 215, 219.) A movant can bear this initial burden "by attaching a copy of the arbitration agreement purportedly bearing the opposing party's signature." *(Espejo v. Southern Calif. Permanente Med. Group*, 246 Cal.App.4th 1047, 1060 (2016).) Defendants met the burden to establish the existence of an agreement to arbitrate by attaching the Agreements that were signed by Plaintiff to the Honig Declaration.

Additionally, Defendants demanded arbitration. (Burch Decl., ¶ 3.) Plaintiff would not agree to submit to arbitration. (Burch Decl., ¶ 4.) Thus, Defendants have satisfied the two remaining requirements in bringing this motion. In any event, Plaintiff "filing of a lawsuit rather than commencing arbitration proceedings as required by the agreement affirmatively establishes [Platintiff's] refusal to arbitrate the controversy." (*Hyundai Amco America, Inc. v. S3H, Inc.* (2014) 232 Cal.App.4th 572, 577.)

> The circumstances relevant to establishing oppression include, but are not limited to (1) the amount of time the party is given to consider the proposed contract; (2) the amount and type of pressure exerted on the party to sign the proposed contract; (3) the length of the proposed contract and the length and complexity of the challenged provision; (4) the education and experience of the party; and (5) whether the party's review of the proposed contract was aided by an attorney.

(*Grand Prospect Partners, L.P. v. Ross Dress for Less, Inc.* (2015) 232 Cal.App.4th 1332, 1348.)

Plaintiff signed two of the three Agreements electronically via DocuSign. Both federal and California law provide that electronic signatures have the same force and effect as

handwritten signatures, and Castilleja has properly authenticated Plaintiff's electronic signature. (See Honig Decl. ¶¶ 2-20.) Further the evidence showed Plaintiff signed one of them via handwritten signature.

Here, Defendants have met their burden of proof of the existence of a valid arbitration agreement by a preponderance of the evidence. Plaintiff received and electronically signed the terms of the three-page mutual arbitration agreement three times. Plaintiff signed the arbitration agreement on Oct. 13, 2020 (even though she did not begin work for the school until July 2021). In 2022, Plaintiff received the Arbitration Agreement on March 18 and the school provided her until April 1 to review and sign, a period of 2 weeks. Plaintiff signed it for the second time on March 28, 2022. Plaintiff admits that she had two months to consider the arbitration agreement that she signed for a third time on Feb. 28, 2023.

Plaintiff's claim that she believed that signing the Arbitration Agreement was a requirement of her employment is disingenuous. Plaintiff admits in her declaration that "no one from Castilleja advised me … that an agreement regarding arbitration would be required as a part of my employment." (Johnson Decl., ¶ 8.) Moreover, the plain language of the Arbitration Agreement contradicts Plaintiff's claim as it states:

> "This Arbitration Agreement is not an employment agreement and its provisions do not alter Employee's relationship to School."

(Honing Decl., Ex. A, p. 3.) The agreement goes on to give instructions on how to revoke or modify the Arbitration Agreement. (*Id*.)

Plaintiff's opposition points to the fact that after 2 months, HR Director Honig came to Plaintiff's office to follow up on the 2023 Arbitration Agreement. Plaintiff never expressed that she had concerns or confusion about the agreements---rather she told Honig that *other employees* expressed concerns and confusion about the form. (Johnson Decl, ¶ 26.) Plaintiff could have simply told Honig that she refused to sign the Arbitration Agreement (but she did not). Plaintiff's opposition relies on paraphrased statements made by Honig that it is " 'just how it's done there, and we have to sign it every year' (or similar words)." (Johnson Decl., ¶ 17.) Neither Honig, nor anyone else at Castilleja told Plaintiff that she was required to sign the agreement. Moreover, as the Assistant Head of School for Curriculum and Community, Plaintiff was apparently a high-ranking member of the School's leadership team. There was no persuasive element of surprise, duress, or manipulation.

Plaintiff "is a highly qualified educator and leader, with a Bachelor of Arts and Master of Arts in English, [and] a PhD in Cultural and Literary Studies." (Burch Decl. Ex. A at p. 4.) Plaintiff is obviously capable of reading and comprehending the three-page Arbitration Agreement. With ample time to do so, Plaintiff voluntarily signed the agreement on three separate occasions over a three-year period. If she had any confusion about the agreement, she had three years to seek legal counsel (but apparently did not). Even after she allegedly experienced workplace harassment, Plaintiff still signed the agreement—evidencing her assent to arbitrate her claims. Moreover, a plaintiff's failure to read or understand the arbitration clause is no defense to its enforcement. (*Madden v. Kaiser Found. Hops*. (1976) 17 Cal.3d 699, 710; *Bolanos v. Khalatian* (1991) 231 Cal.App.3d 1568.).

The arbitration agreements by its terms covers all the claims in Plaintiff's first amended

complaint.[2] Each cause of action falls within the scope of the Arbitration Agreement. The Agreements state:

> **Binding Arbitration of Disputes and Claims**. Employee and School voluntarily agree to arbitrate any dispute or claim covered by this Arbitration Agreement and agree that the arbitrator's award shall be final and binding. The parties further agree that arbitration under this Arbitration Agreement shall be the exclusive remedy for resolving any such dispute and/or claim, except as provided below. The parties acknowledge that part of the consideration in entering to this Arbitration Agreement is their recognition that arbitration provides an affordable, expeditious and less hostile manner of resolving a dispute or claim than litigation, and that both parties can benefit by agreeing to resolve disputes through arbitration. By entering into this Arbitration Agreement, ***both parties are waiving any right they may otherwise have to resolve a dispute in a court of law before a jury***, and instead are accepting the use of arbitration.

(Honig Decl., Ex. A, H and K [emphasis in original].)

Not only are the Agreements enforceable as Plaintiff's claims against the school but also as to the individual defendant Kathy Layendecker, Acting Head of School. The Agreements expressly state:

> The terms "School" is defined as the entity identified at the beginning of this agreement as well as any affiliate entity, employee, agent, supervisor, hear od School, Department Heads, Division Heads, administrative team, Board of Trustees trustee, attorney, officer, benefit plan, benefit plan sponsor, fiduciary, administrator, successor, or assignee thereof.

(Honing Decl., Ex. A., H and K.)

In her First Amended Complaint, Plaintiff identifies Layendecker as Acting Head of School of Castilleja. Accordingly, Layendecker is entitled to enforce the terms of the Agreements with respect to the respective claims asserted against her in her individual capacity.

Plaintiff's Burden

Once the moving party establishes the existence of the arbitration agreement, the burden shifts to the party opposing arbitration to establish the factual basis for any defense to the enforcement of the arbitration agreement. (*Rosenthal v. Great W. Fin. Sec. Corp.* (1996) 14 Cal.4th 394, 413; *Condee v. Longwood Management Corp.* (2001) 88 Cal.App.4th 215, 219.) Plaintiff's opposition raises the defense of unconscionability.

Unconscionability

> Unconscionability has both a procedural and a substantive element. (*OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 125 (OTO).) Procedural unconscionability "'addresses the

[2] Plaintiff's first amended complaint against Defendants is for (1) discrimination based on race, skin color, gender, sex, ancestry, and association with a protected class (Gov. Code § 12940(a)); (2) hostile work environment based on race, skin color, gender, sex, ancestry, and association with a protected class (Gov. Code § 12940(j)); (3) retaliation & aiding and abetting retaliation (Gov. Code § 12940(h)-(i)); (4) failure to prevent discrimination, harassment, and retaliation (Gov. Code § 12940(k)); (5) wrongful termination in violation of public policy (6) unfair business practices (Bus. & Prof. Code § 17200); and (7) defamation (Civil Code §§ 45, 45a, 46).

> circumstances of contract negotiation and formation, focusing on oppression or surprise due to unequal bargaining power.'" (*Ibid.*) "'Substantive unconscionability pertains to the fairness of an agreement's actual terms and to assessments of whether they are overly harsh or one-sided.'" (*Ibid.*) *Both elements must be proven*, but they are evaluated on a sliding scale: "the more substantively oppressive the contract term, the less evidence of procedural unconscionability is required" to find it unenforceable, "and vice versa." (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 114 (*Armendariz*).)

(*Haydon v. Elegance at Dublin* (2023) 97 Cal.App.5th 1280, 1287 (Haydon) [emphasis added].)

> **Procedural Unconscionability**
>
> In assessing procedural unconscionability, courts ask "whether circumstances of the contract's formation created such oppression or surprise that closer scrutiny of its overall fairness is required." (*OTO, supra*, 8 Cal.5th at p. 126.) Oppression occurs "'"'where a contract involves lack of negotiation and meaningful choice'"'" and surprise involves the extent to which "'"'the allegedly unconscionable provision is hidden within a prolix printed form.'"'" (*Ibid.*)

(*Haydon, supra,* 97 Cal.App.5th at p.1287.)

> "Procedural unconscionability focuses on '"'oppression'"' or '"'surprise'"' due to unequal bargaining power. [Citation.] 'Oppression arises from an inequality of bargaining power that results in no real negotiation and an absence of meaningful choice. Surprise involves the extent to which the supposedly agreed-upon terms are hidden in a prolix printed form drafted by the party seeking to enforce them.'" (*Baxter v. Genworth North America Corp.* (2017) 16 Cal.App.5th 713, 722 [224 Cal. Rptr. 3d 556] (*Baxter*).)
>
> "Unconscionability analysis begins with an inquiry into whether the contract is one of adhesion. [Citation.] 'The term [contract of adhesion] signifies 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.'" (*Armendariz, supra*, 24 Cal.4th at p. 113.) "Arbitration contracts imposed as a condition of employment are typically adhesive." (*OTO, supra*, 8 Cal.5th at p. 126.)

(*Davis v. Kozak* (2020) 53 Cal.App.5th 897, 906.)

The arbitration provision is a three-page form contract which are clearly labeled "MUTUAL AGREEMENT TO ARBITRATE." The record sufficiently demonstrates that the agreement was presented as a condition of employment along with other documents. It was presented as a standardized nonnegotiable term of employment. A complaining party need not show it tied to negotiate standardized contract terms to establish procedural unconscionability. (*David v Kozak, supra*, 53 Cal.App.5th at p. 907; *OTO, supra*, 8 Cal.5th at p. 127; *Carbajal v. CWPSC, Inc*. (2016)245 Cal.App.4th 227, 244 (*Carbajal*).)

The record also sufficiently demonstrates the parties' unequal bargaining positions. The unequal bargaining power between Castilleja and Plaintiff was reasonably apparent from the party's relationship. (*Carbajal, supra*, 245 Cal.App.4th at p. 244.) Indeed, "few employees are in a position to refuse a job because of an arbitration provision." (*Armendariz, supra*, 24 Cal.4th at p. 115.) Furthermore, because Defendants first presented the arbitration agreement in the context of hiring Plaintiff as a new employee, the court must be "particularly attuned" to the danger of oppression and overreaching in this setting. (*OTO, supra*, 8 Cal.5th at p. 127.) Here, the evidence established that Plaintiff signed the agreement two additional times after she was hired. Accordingly, the court finds that Plaintiff has carried her burden to show that the arbitration agreement was a contract of adhesion.

"By itself, however, adhesion establishes only a 'low' degree of procedural unconscionability. (*David v Kozak, supra*, 53 Cal.App.5th at p 907.) Plaintiff did *not* persuasively establish any other sharp practice on the part of Defendants such as lying, manipulating or placing her under duress. Plaintiff is clearly educated and had the opportunity to read the agreement before she signed it three times.

Moreover, the Agreements are stand-alone documents, which are clearly labeled "MUTUAL AGREEMENT TO ARBITRATE." Each paragraph is labeled in bold, underlined text. The Agreements specify that the AAA Employment Mediation Procedure will apply to any dispute and provides the website where Plaintiff can obtain the AAA rules. (Honig Decl., Ex. A, H and K.) (See *Lane v. Francis Capital Mgmt. LLC*, 224 Cal.App.4th 676, 691 (2014) ("There could be no surprise, as the arbitration rules referenced in the agreement were easily accessible to the parties—the AAA rules are available on the Internet.").)

The agreement is set forth in a standalone three-page document clearly labeled as "MUTUAL AGREEMENT TO ARBITRATE", with standard size and readable text. The agreement does not contain overly long or complicated sentences or use statutory references and legal jargon. (Cf. *OTO, supra*, 8 Cal.5th at p. 128 [sentences were "complex, filled with statutory references and legal jargon"].)

Here, Plaintiff was given sufficient time to consider the arbitration agreement before signing it on three different occasions. Accordingly, the court finds after considering all the facts and circumstances that Plaintiff has only demonstrated a *low degree* of procedural unconscionability based on the agreements' adhesive nature. (*David v Kozak, supra*, 53 Cal.App.5th at p 910.)

Further, any after-the-fact claim that Plaintiff did not understand the Arbitration Agreements does not render the Agreements invalid because "[w]hen a person with the capacity of reading and understanding an instrument signs it, [s]he may not, in the absence of fraud, coercion or excusable neglect, avoid its terms on the ground she failed to read it before signing it." (*Bolanos v. Khalatian*, 231 Cal.App.3d 1586, 1590 (1991).) The failure to read or understand an arbitration clause is no defense. (*Madden v. Kaiser Found. Hosps.*, 17 Cal.3d 699, 710 (1976).)

Substantive Unconscionability

Substantive unconscionability focuses on whether the terms are "one sided" or "overly harsh." (*Armendariz, supra*, 24 Cal.4th at 114.) The test for substantive unconscionability is whether the contract terms are "so extreme" as to "shock the conscience." (*California Grocers Assn. v. Bank of America*, 22 Cal.App.4th 205, 214-215 (1994).) In assessing substantive unconscionability, the "paramount consideration" is mutuality of the obligation to arbitrate. (*Nyulassy v. Lockheed Martin Corp*., 120 Cal.App.4th 1267, 1287 (2004).)

Plaintiff must demonstrate that the Arbitration Agreement is "so extreme" or "unfair" as to "shock he conscience." (*24 Hour Fitness v. Sup. Ct.* (1998) 66 Cal.App.4th 1199, 1213.) Here, the Mutual Agreement to Arbitrate before a neural arbitrator guaranteeing adequate discovery and a written decision clearly does **no**t rise to the level of unfairness required to disturb the parties' intent when signing the agreement.

Plaintiff failed to meet her burden of proof by a preponderance of evidence that there was any substantive unconscionability regarding those terms. Since Plaintiff needed to prove both procedural and substantive unconscionability (see *Armendariz, supra,* 24 Cal.4th at p. 114), she failed to meet her burden of proof by a preponderance of the evidence to establish her unconscionability defense with respect to those terms. (*Ibid*.)

The Arbitration Agreement is Mutual

The "Mutual Agreement to Arbitrate" signed by Plaintiff is a mutual, bilateral agreement. The California Supreme Court rejected the argument that an arbitration agreement is substantively unconscionable where the agreement made it clear that it was mutual: "The arbitration agreement at issue here makes clear that the parties mutually agree to arbitrate all employment-related claims…. That provision clearly covers claims an employer might bring as well as those an employee might bring." (Baltazar, supra at 1249.) Here, the Arbitration Agreement Plaintiff signed also makes it clear that it is mutual – as the word "mutual" is in the title of the document at the top of the first page. (Honig Decl., Ex. A at p. 1.) Here, both Plaintiff and Defendants are equally bound by the terms of the Agreements with respect to claims against one another arising from the employment relationship.

The Arbitration Agreement Satisfies the *Armendariz* Factors

Under *Armendariz*, an agreement requiring arbitration of "unwaivable statutory claims" is lawful if it: "(1) provides for neutral arbitrators, (2) provides for more than minimal discovery, (3) requires a written award, (4) provides for all of the types of relief that would otherwise be available in court, and (5) does not require employees to pay either unreasonable costs or any arbitrators' fees or expenses as a condition of access to the arbitration forum." (*Armendariz, supra,* 24 Cal. 4th at 102.) The present agreement satisfies the five *Armendariz* factors.

Arbitration is a Fair Neutral Forum to Resolve Disputes

First, the Agreements provide: "A single, neutral arbitrator shall be mutually selected by the parties in accordance with the AAA Employment Arbitration Rules within thirty (30) days of the request for arbitration." (Honig Decl., Ex. A, H and K.)

Much of Plaintiff's Opposition argues that arbitration is inherently unfair because it requires confidentiality and favors institutional players. Here, Defendants are: 1) a private school (Castilleja), and 2) an individual person (Layendecker). They are not "institutional players." Moreover, Plaintiff and Defendants have equal access to Castilleja's former employees. Castilleja cannot compel its former employees to testify any more or less than Plaintiff can.

Plaintiff also implies that arbitration may have a chilling effect on the testimony of current and former employees. Quite the opposite is true. The confidential nature of the arbitration proceedings may encourage current and former employees to come forth and testify in a manner that they may be reticent to do in a public forum.

Plaintiff's argument that AAA Employment arbitration rule 23 ("Rule 23") is substantively unconscionable or that it violates CCP section 1001(b) is without merit. (See Plaintiff's Opp., pp. 11-12.) Plaintiff failed to quote the actual language of Rule 23 entitled "Confidentiality" which states:

> The arbitrator shall maintain the confidentiality of the arbitration and shall the authority to make appropriate rulings to safeguard that confidentiality,*unless* the parties agree otherwise or *the law provides to the contrary*."

(*Id*. [emphasis added].) Here, Rule 23 clearly provides that the arbitrator does *not* need to maintain the confidentiality of the arbitration when "the law provides to the contrary." Accordingly, it does *not* violate CCP section 1001(b) and is clearly distinguishable from the confidentiality provisions in the cases Plaintiff cites *Hasty v. American Automobile Association* (2023) 98 Cal.App.5th 1041, 1061[involving an "overly broad" confidentiality clause "because the employee 'is essentially barred from conducting informal discovery"] and *Murrey v. Superior Court* (2023) 87 Cal.App.5th 1223, 1242 ["AAA/JAMS rules are generally accepted as fair"].)

The Arbitration Agreement Provides for Adequate Discovery

Second, the applicable Federal Rules of Federal Procedure provide for adequate discovery. The Agreements state that the "arbitrator will allow the parties to conduct adequate discovery to pursue or defend the claims." (Honig Decl., Ex. A, H and K.) Moreover, under the Agreements, the neutral's discretion would be subject to the AAA Rule 9 which states that:

> The arbitrator shall have the authority to order such discovery, by way of deposition, interrogatory, document production, or otherwise, as the arbitrator considers necessary to a full and fair exploration of the issues in dispute, consistent with the expedited nature of arbitration.

(Burch Decl., Ex. D.)

The Arbitration Agreement provides that "[t]he arbitrator will allow the parties to conduct adequate discovery to pursue or defend the claims." (Honig Decl., Ex. A at p. 2.) Normally courts "assume that the arbitrator will operate in a reasonable manner in conformity with the law." (*Dotson v. Amgen, Inc.* (2010) 181 Cal.App.4th 975, 984.) Where "the arbitrator has authority to order additional discovery if the arbitrator determines that action is necessary to allow fair arbitration of the claim" the provision eliminates any unconscionability. (*Ramirez v. Charter Commc'ns, Inc*., 2024 WL 3405593, at *12 (Cal. July 15, 2024).)

Armendariz itself recognizes that discovery "sufficient to adequately arbitrate… as determined by the arbitrator" will constitute "more than minimal discovery." (*Armendariz supra* at 106.) Here, AAA Rule 9 gives the neutral arbitrator authority to order discovery – including depositions – as necessary for a full and fair exploration of the issues in dispute. If this case, with a single plaintiff and only seven causes of action, truly warrants more discovery, the neutral arbitrator has the power to grant Plaintiff that right. Plaintiff has failed to show any substantive unconscionability with respect to the provisions for discovery in the Arbitration Agreements.

The Agreements Provide for All of the Types of Relief Available in Court

Fourth, the Agreements provide for all relief that would be available in court, stating: the "The burdens of proof and presenting evidence, the legal standards to be applied, and the remedy awarded shall be the same as that which a court of competent jurisdiction would apply." (Honig Decl., Ex. A, H and K.) The Agreements further set forth that "[t]he arbitrator shall have the power to award any type of legal or equitable relief available in a court of competent jurisdiction." (*Id*.) In addition, the Agreements state that the Arbitrator "shall issue a written opinion with the arbitrator's award." (*Id*.)

The Agreements Provide for Castilleja to Pay for the Costs of Arbitration

Fifth, the Agreements require Castilleja to pay for the costs of arbitration, stating, "While normally all fees and expenses charged by AAA and/or the arbitrator are paid equally by the two sides, Employer shall pay the then current AAA filing fee, the arbitrator's fees, and other costs and expenses associated with the AAA arbitration forum." (Id.)

Accordingly, Defendants have established that the Arbitration Agreements are substantively fair under all of the *Armendariz* factors.

The Arbitration Agreement has Only One Substantively Unconscionable Clause

The Arbitration Agreement provides that:

> c. If either party files a claim or action against the other in court when the claim or action is otherwise encompassed by this Arbitration Agreement, the responding party shall be entitled to dismissal and/or injunctive relief regarding such action along with recovery of the respondent's costs, losses, and attorneys' fees related to such other action or proceeding.

Plaintiff's Opposition argues that this language is substantively unconscionable under *Patterson v Superior Ct.* (2021) 70 Cal.App.5th 473 (*Paterson*). (See Plaintiff's Opp. pp. 7-8.) The Arbitration Agreement at issue here states that "the arbitrator may award attorney's fees, costs and expenses the prevailing party to the extent that such fees could be awarded if the action were brought in a court of competent jurisdiction." (Honig Decl., Ex. A at p. 2 (emphasis added).) Therefore, Defendants argue that the Arbitration Agreement itself prohibits any award of attorneys' fees in violation of FEHA.

Defendants also argue that this Arbitration Agreement is distinguishable from *Patterson* due to the language of the clause regarding award of attorney's fees. In *Patterson*, the agreement **required** that attorney's fees be awarded. (Plaintiff's Opp. at pp. 8:26-9:3 [emphasis added.]) Here, Defendants argue that the Arbitration Agreement states that they are

"entitled to dismissal **and/or** injunctive relief regarding such action along with recovery of the costs, losses and attorneys' fees." (Honig Decl., Ex. A at p. 1 [emphasis added].) Defendants argue that the use of the "and/or" language here indicates that a mere dismissal of the lawsuit is an appropriate remedy. This argument, however, is *not* persuasive. The "and/or" language is between "dismissal" and "injunctive relief". The language clearly provides that the Defendants would receive either or both remedies of "dismissal and/or injunctive relief "*along with recovery of* the costs, losses and *attorneys' fees* related to such other action or proceeding." (Emphasis added.)

The recent Supreme Court decision in *Ramirez v Charter Communications, Inc*. makes clear that this language "is unconscionable because it unambiguously violates FEHA. The policy favoring arbitration cannot save it. *Patterson v. Superior Court, supra,* 70 Cal.App.5th 473 is disapproved to the extent it is inconsistent with the views expressed herein. (*Ramirez v. Charter Communications, Inc.* (July 15, 2024, No. S273802) ___Cal.5th___ [2024 Cal. LEXIS 3696, at *46] (*Ramirez*).)

Accordingly, the court agrees with Plaintiff that this clause has the potential to result in an unlawful award of attorney fees under FEHA and is substantively unconscionable. As the Supreme Court in *Ramirez* explained:

> "Several well-established rules govern [the] imposition of fees and costs incurred in actions under" FEHA. (*Patterson, supra,* 70 Cal.App.5th at p. 477.) FEHA grants a trial court discretion to award "reasonable attorney's fees and costs" to "the prevailing party." (Gov. Code, § 12965, subd. (c)(6).) However, it also provides that "a prevailing *defendant* shall not be awarded fees and costs unless the court finds the action was frivolous, unreasonable, or groundless when brought, or the plaintiff continued to litigate after it clearly became so." (Gov. Code, § 12965, subd. (c)(6), italics added.) The legislative intent behind this asymmetric rule is "clear[:] To allow a prevailing FEHA defendant to collect fees and costs … when the plaintiff brought a potentially meritorious suit that ultimately did not succeed would undercut the Legislature's intent to promote vigorous enforcement of our civil rights laws." (*Pollock v. Tri-Modal Distribution Services, Inc.* (2021) 11 Cal.5th 918, 949.)
>
> *Armendariz, supra*, 24 Cal.4th 83 articulated a second rule governing FEHA fees and costs. "[W]hen an employer imposes mandatory arbitration as a condition of employment, the arbitration agreement or arbitration process cannot generally require the employee to bear any type of expense that the employee would not be required to bear if he or she were free to bring the action in court." (*Armendariz*, at pp. 110–111.) We reasoned that this [*38] rule would "ensure that employees bringing FEHA claims will not be deterred by costs greater than the usual costs incurred during litigation." (*Id.* at p. 111.)
>
> Read together, the statutes and *Armendariz* make clear that an arbitration agreement imposed as a condition of employment cannot require an employee to pay attorney fees to the employer in the arbitration of a statutory claim, unless the arbitrator finds that the action was frivolous, unreasonable, or groundless when brought, or that the employee continued to litigate after it clearly became so. The Court of Appeal correctly concluded that Section K could violate the dictates of FEHA and *Armendariz*. The provision unambiguously requires an award of attorney fees, even if the moving party

> is a defendant in a FEHA action and the arbitrator has made no finding of frivolity, groundlessness, or continued litigation. Permitting payment of attorney fees in these circumstances would be inconsistent with *Armendariz*'s directive that a mandatory arbitration agreement cannot require employees to bear any expense that they would not be required to bear if they were able to bring the action in court. The provision thus creates a potential obligation to pay costs only in an arbitral setting. [*39] The provision would also undermine the public policy embodied in FEHA's asymmetric rule. As a result, the clause is unconscionable.

(*Ramirez v. Charter Communications, Inc.* (July 15, 2024, No. S273802) ___Cal.5th___ [2024 Cal. LEXIS 3696, at *37-39].)

This is the *only* clause that the court agrees with Plaintiff is substantively unconscionable. Plaintiff has *not* met her burden of proof to show that any other clause in the Arbitration Agreements was substantively unconscionable.

Severance

> Civil Code section 1670.5, enacted in 1979, "codifie[s] the principle that a court can refuse to enforce an unconscionable provision in a contract." [*47] (*Armendariz, supra*, 24 Cal.4th at p. 114.) It provides: "If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result." (Civ. Code, § 1670.5, subd. (a).) If a contractual clause is found unconscionable, the court may, in its discretion, choose to do one of the following: (1) refuse to enforce the contract; (2) sever any unconscionable clause; or (3) limit the application of any clause to avoid unconscionable results. (*Farrar v. Direct Commerce, Inc.* (2017) 9 Cal.App.5th 1257, 1273–1274 (*Farrar*).) The "strong legislative and judicial preference is to sever the offending term and enforce the balance of the agreement." (*Roman, supra*, 172 Cal.App.4th at p. 1477.) Though the "statute appears to give a trial court some discretion as to whether to sever or restrict the unconscionable provision or whether to refuse to enforce the entire agreement," it "also appears to contemplate the latter course only when an agreement is 'permeated' by unconscionability." (*Armendariz, supra*, 24 Cal.4th at p. 122.) The trial court's decision to act as Civil Code section 1670.5 permits is reviewed for abuse of discretion. (*Murphy v. Check 'N Go of California, Inc.* (2007) 156 Cal.App.4th 138, 144 (*Murphy*).)

(*Ramirez v. Charter Communications, Inc.* (July 15, 2024, No. S273802) ___Cal.5th___ [2024 Cal. LEXIS 3696, at *46-47].)

Here, the Arbitration Agreements state:

> If any provision of this Arbitration 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.

(Honig Decl., Ex. A at p. 3.) Accordingly, Defendants requested "to the extent that any provision is deemed unenforceable the provision shod be sever4ed and the remainder of the Agreement remains valid and enforceable by agreement of the parties." (Reply, p. 9.)

Here, the court finds only one unlawful provision that is substantively unconscionable, and it exercises its discretion to strike and sever the following language from the Arbitration Agreements:

> c. If either party files a claim or action against the other in court when the claim or action is otherwise encompassed by this Arbitration Agreement, the responding party shall be entitled to dismissal and/or injunctive relief regarding such action along with recovery of the respondent's costs, losses, and attorneys' fees related to such other action or proceeding.

Accordingly, the court orders binding arbitration in accordance with the balance of the Arbitration Agreements.

Plaintiff's Public Policy Arguments

Plaintiff failed to meet her burden of proof by a preponderance of the evidence that the Arbitration Agreements were not enforceable as a matter of Public Policy.

Plaintiff's opposition claims that requiring Plaintiff to sign the arbitration agreements was a violation of Labor Code section 432.6. (Plaintiff's Opp. p. 6.) However, Labor Code section 432.6, subsection (f) clearly states "Nothing in this section is intended to invalidate a written arbitration agreement that is otherwise enforceable under the Federal Arbitration Act (9 U.S.C. Sec. 1 et seq.). (Cal Lab Code § 432.6. subd. (f).)

Plaintiff concedes that the Ninth Circuit's decision in Chamber of Commerce of the *USA et al. v. Becerra et al.*, No. 2:19-cv-02456 (E.D. Cal. Jan. 1, 2024) permanently enjoined the enforcement of sections 432.6(a), b), and (c) of the California Labor Code where the alleged "waiver of any right, forum, or procedure" is the entry into an arbitration agreement that is covered by the FAA. The court does **not** find Plaintiff's contention that the FAA is not applicable to the Arbitration Agreements at issue persuasive. (See Plaintiff's Opp. pp. 12-15.)

Plaintiff and Castilleja Engaged in Interstate Commerce Such that the FAA Applies

The FAA provides for enforcement of arbitration provisions in any contract "evidencing a transaction involving commerce." (9 USC § 2; see *Rent-A-Center, West, Inc. v. Jackson* (2010) 561 US 63, 67, 130 S.Ct. 2772, 2776; *Rogers v. Royal Caribbean Cruise Line* (9th Cir. 2008) 547 F3d 1148, 1153-1154). Here, the FAA applies because: 1) the employment agreement between Plaintiff (a North Carolina resident) and Castilleja (a California school) constitutes interstate commerce; 2) Plaintiff admits that she chaperoned a class trip to Arizona as part of her job duties at Castilleja. (Johnson Decl., ¶4.); 3) Plaintiff purchased School supplies - paid for by Castilleja - from out-of-state vendors; 4) Castilleja paid for Plaintiff to travel to various conferences as part of her employment; and 5) the Arbitration Agreement explicitly states that the School is engaged in interstate commerce and the FAA applies.

Plaintiff's claim that the FAA exempts employment contracts is an inaccurate statement of law. Plaintiff cites cases that are distinguishable from the instant case because they involve the mere local transport of goods where the goods themselves are engaged in interstate commerce. In *Bissonnette v. LePage Bakeries Park S., LLC* (2024) 601 U.S. 246, the employees at issue loaded and unloaded trucks at a bakery. *Carmona v. Domino's Pizza, LLC*

(9th Cir. 2023) 73 F.4th 1135, involved pizza delivery drivers. In both cases, there was no evidence that the employees actually traveled to another state in the course of their employment – which is the case here. Further, there is no indication that the employees in those cases were residents of another state when they signed arbitration agreements. Here, Plaintiff lived in North Carolina when she signed the first Arbitration Agreement with California-based Castilleja – which is the epitome of interstate commerce. Moreover, Plaintiff admits that she traveled to Arizona as part of her employment at Castilleja. While Plaintiff's argument may be creative, it is not an accurate statement of law and does not defeat Defendants' extensive evidence of Plaintiff's engagement in interstate commerce. As such, the FAA applies, and arbitration is appropriate here.

Defendants' Request to Stay Action

According to CCP § 1281.4:

> If an application has been made to a court … for an order to arbitrate a controversy which is an issue involved in an action or proceeding pending before a court of this State and such application is undetermined, the court in which such action or proceeding is pending shall, upon motion of a party to such action or proceeding, stay the action or proceeding until the application for an order to arbitrate is determined and, if arbitration of such controversy is ordered, until an arbitration is had in accordance with the order to arbitrate or until such earlier time as the court specifies.

(CCP § 1281.4.)

Additionally, Section 3 of the Federal Arbitration Act (F.A.A.) states that the court "shall, on application of one of the parties, stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration." (9 U.S.C. § 3.) Furthermore, per a recent U.S. Supreme Court ruling in *Smith v. Spizzirri* (2024) 144 S. Ct. 1173, for cases involving an arbitration dispute, "the court does not have discretion to dismiss the suit on the basis that all the claims are subject to arbitration." (*Id.* at 1176.)

For these reasons, Defendants' request to dismiss this action is DENIED. Defendant's alternative request to stay this action pending the outcome of the arbitration with Plaintiff is GRANTED.

Defendants' Objections to Evidence

Defendants' Objections to Evidence are OVERRULLED. They do *not* affect the outcome of this motion.

Conclusion

Defendants' motion to compel arbitration with Plaintiff is GRANTED.

Defendants' request to dismiss this action is DENIED. Defendants' alternative request to stay this action pending the outcome of the arbitration with Plaintiff is GRANTED.

The court will prepare the order.

- oo0oo –

Calendar Line 5

- oo0oo -

Calendar Line 6

- oo0oo -

Calendar Line 7

- oo0oo -

Calendar Line 8

- oo0oo -

Calendar line 9

- oo0oo -

Calendar line 10

- oo0oo -

Calendar line 11

- oo0oo -

Calendar line 12

- oo0oo -

Calendar line 13

- oo0oo -