SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 10
Honorable Frederick S. Chung

Rachel Tien, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408-882-2210

DATE: April 23, 2024 TIME: 9:00 A.M.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

The courthouse is open: Department 10 is now fully open for in-person hearings, as of April 18, 2023. The court strongly prefers **in-person** appearances for all contested law-and-motion matters. For all other hearings (*e.g.*, case management conferences), the court strongly prefers either **in-person or video** appearances. Audio-only appearances are permitted but disfavored, as they cause significant disruptions and delays to the proceedings. Please use telephone-only appearances as a last resort.

Scheduling motion hearings: Please call 408-882-2430 between 8:30 a.m. and 12:30 p.m. (Mon.-Fri.) to reserve a hearing date for your motion *before* you file and serve it. You must then file your motion papers no more than five court days after reserving the hearing date, or else the date will be released to other cases.

CourtCall is no longer available: Department 10 uses Microsoft Teams for remote hearings. Please click on this link if you need to appear remotely, and then scroll down to click the link for Department 10: https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml. Again, the court strongly prefers in-person or video appearances. Telephonic appearances are a sub-optimal relic of a bygone era.

Recording is prohibited: As a reminder, most hearings are open to the public, but state and local court rules prohibit recording of court proceedings without a court order. This prohibition applies to both in-person and remote appearances.

Court reporters: Unfortunately, the court is no longer able to provide official court reporters for civil proceedings (as of July 24, 2017). If any party wishes to have a court reporter, the appropriate form must be submitted. See https://www.scscourt.org/general_info/court_reporters.shtml.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	22CV397405	Pricilla Gallego v. Spread Your Wings, LLC	Order of examination: parties to appear.
LINE 2	23CV412410	Liang Sun v. Larry Stone et al.	Click on LINE 2 or scroll down for ruling in lines 2-3.
LINE 3	23CV412410	Liang Sun v. Larry Stone et al.	Click on LINE 2 or scroll down for ruling in lines 2-3.
LINE 4	2015-1-CV-284282	Jose C. Arvizu et al. v. Patrick Eugene Oliver	Click on LINE 4 or scroll down for ruling.
LINE 5	22CV398988	Sandman, Inc. v. Andres Hernandez et al.	Motion to compel inspection of property: parties to appear. The court's understanding is that the parties submitted an ADR stipulation agreeing to binding arbitration *before* this motion was filed. Accordingly, this discovery issue should be raised with the arbitrator rather than the court. The court would like an update regarding the status of the arbitration.
LINE 6	22CV401668	Steinberg Hart v. Z&L Properties, Inc.	Motion to compel deposition of Yonggang "Frank" Cui: notice is proper, and the court has received no response from defendant Z&L Properties, Inc. Although the motion fails to explain who Cui is, the court understands from the March 7, 2024 hearing that he is either the current or former president of Z&L Properties. Given Cui's multiple failures to appear for deposition, the court finds good cause to GRANT the motion and orders Cui to appear within 14 days of notice of entry of this order for his deposition. In addition, the court GRANTS plaintiff's request for sanctions IN PART: Cui must pay **$2,177.50** (2.5 hours at $475/hour plus $990 for cancelled court reporting services) within 30 days of notice of entry of this order.

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LINE #	CASE #	CASE TITLE	RULING
LINE 7	20CV372167	State Farm Mutual Automobile Insurance Company v. Jose Morales	Click on LINE 7 or scroll down for ruling.
LINE 8	21CV386123	West Coast Netting, Inc. v. Halo Maritime Defense Systems, Inc.	Motion to be relieved as counsel: parties to appear.
LINE 9	22CV405279	Chicago Title Company v. Christina Mary Ibanez et al.	Motion for discharge and for reasonable attorney's fees: notice is proper, and the motion is unopposed. (The court understands that all remaining defendants are in default.) Good cause appearing, the court GRANTS the motion, as well as plaintiff's request for $3,000 in attorney's fees. Plaintiff shall submit the proposed order(s) for the court's signature.
LINE 10	24CV429393	Dat Ngoc Dang v. Tesla, Inc.	Click on LINE 10 or scroll down for ruling.

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Calendar Lines 2-3
Case Name: *Liang Sun v. Larry Stone et al.*
Case No.: 23CV412410

I. BACKGROUND

In this lawsuit, plaintiff Liang Sun takes issue with property taxes that have been levied on his home in Santa Clara County. He filed his complaint, a form complaint, on March 14, 2023 against defendants Larry Stone and Frank Masi, who are the Santa Clara County Assessor and a real property appraiser employed by the County Assessor, respectively. Stone and Masi are the only named defendants in the complaint. The form complaint does not identify any "Doe" defendants in paragraph 1, where all defendants are supposed to be identified. In paragraph 6, however, Sun has checked the box stating that Doe defendants "1-5" were the "agents or employees of other named defendants."

The complaint does not allege compliance with any claim presentation requirement, as none of the boxes in paragraph 9 of the form are checked. In paragraph 10, where causes of action are to be identified, the only box checked is "Other," with the following text filled in: "Unethical behavior intentionally inflated the property tax to benefit the county." The damages alleged in paragraph 11 are: "Forced to pay inflated taxes and legal expenses." In addition to compensatory damages, Sun requests punitive damages. (See Complaint, ¶ 14.)

The complaint attaches a letter to the court, dated March 13, 2023, that states, in part: "The county has a history of mismanagement and unethical and illegal behavior to overcharge homeowner property tax." In addition, the complaint attaches correspondence with the County Assessment Appeals Board and the County Board of Supervisors referring to Stone and Masi and further complaining about property taxes being levied by Santa Clara County.

Sun is self-represented, which is sometimes referred to as appearing "in propria persona." "[W]hen a litigant is appearing in propria persona, he is entitled to the same, but no greater, consideration than other litigants and attorneys. Further, the in propria persona litigant is held to the same restrictive rules of procedure as an attorney." (*Burnete v. La Casa Dana Apartments* (2007) 148 Cal.App.4th 1262, 1267 [internal citations omitted]; see also *Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543 [self-represented litigants "are held to the same standards as attorneys" and must comply with the rules of civil procedure]; *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985 ["A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation."].)

On April 14, 2023, Stone and Masi filed an answer to the complaint. The filing of this answer cut off Sun's ability to amend his complaint substantively without first obtaining leave from the court. (See Code Civ. Proc., § 472.) On December 11, 2023, Sun filed a Doe amendment attempting to substitute the County of Santa Clara as "Doe #1."

Currently before the court are two matters: (1) a motion for judgment on the pleadings ("JOP") filed by Stone and Masi on December 13, 2023, and (2) a motion to strike the Doe amendment, filed by Stone and Masi on December 27, 2023. Sun has not filed an opposition brief, but he did file a "declaration in support of opposition to motion for summary judgment" on January 8, 2024, which was apparently intended to respond to both motions.

II. REQUEST FOR JUDICIAL NOTICE

Defendants Stone and Masi have submitted a request for judicial notice in support of the JOP motion. "Judicial notice may not be taken of any matter unless authorized or required by law." (Evid. Code, § 450.) A precondition to judicial notice in either its permissive or mandatory form is that the matter to be noticed be relevant to the material issue before the court. (*Silverado Modjeska Recreation and Park Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 307 [citing *People v. Shamrock Foods Co*. (2000) 24 Cal.4th 415, 422, fn. 2].) It is the court, and not the parties, that determines relevance. Evidence Code section 453, subdivision (b), requires a party seeking notice to "[furnish] the court with sufficient information to enable it to take judicial notice of the matter."

Here, Stone and Masi request judicial notice of two documents: an Assessment Appeal Application for Tax Refund by Liang, dated July 10, 2020 (Exhibit A), and a written decision of Assessment Appeals Board, dated September 20, 2022 (Exhibit B). In addition, they request judicial notice of the fact that there is no evidence in the County's records of Sun's compliance with the Government Claims Act. (The request refers to this as "Exhibit C.") These requests are made pursuant to Evidence Code section 452, subdivision (c), which governs "[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States."

The court denies judicial notice of Exhibit A, as an application by an individual homeowner is not an "official act" of any governmental entity under section 452(c). The court grants judicial notice of Exhibit B, but only as to the fact of the written decision, not as to the correctness of any findings and conclusions in the decision.

As for Exhibit C, Stone and Masi correctly note that when a complaint asserts compliance with the Government Claims Act, the court may take judicial notice that the entity's records do not show compliance with claim presentation requirements. (*Gong v. City of Rosemead* (2014) 226 Cal.App.4th 363, 376.) The court takes judicial notice only of the existence of those documents and not the statements therein if the truth of those statements is reasonably subject to dispute. (*Fremont Indem. Co. v. Fremont General Corp*. (2007) 148 Cal.App.4th 97, 113-114.) Strictly speaking, this authority does not apply here, as the complaint fails to allege compliance with the Government Claims Act and fails to allege any excuse from compliance. Nevertheless, because Sun has indicated in opposition to the JOP motion that he does not believe he is required to comply with any claim presentation requirement set forth in the Government Claims Act, the court grants the request for judicial notice as to Exhibit C.

III. MOTION FOR JUDGMENT ON THE PLEADINGS

A. General Standards

A JOP motion "is equivalent to a belated general demurrer." (*Sprague v. County of San Diego* (2003) 106 Cal.App.4th 119, 127.) It has the same function as a general demurrer, but it is made after the time for demurrer has expired. Except as provided by statute (Code Civ. Proc., § 438), the rules governing demurrers apply.

As with any demurrer, the court may consider only the "face of the pleading"—*i.e.*, the text of the pleading under attack, any exhibits attached to that pleading, and any material of which the court has taken judicial notice. As with a demurrer, facts appearing in exhibits attached to the complaint are given precedence over inconsistent allegations in the complaint. (See *Holland v. Morse Diesel Int'l, Inc.* (2001) 86 Cal.App.4th 1443, 1447; *Barnett v. Fireman's Fund Ins. Co*. (2001) 90 Cal.App.4th 500, 505 ["[T]o the extent the factual allegations conflict with the content of the exhibits to the complaint, we rely on and accept as true the contents of the exhibits and treat as surplusage the pleader's allegations as to the legal effect of the exhibits."].)

Finally, as with a demurrer, the court may not consider extrinsic evidence when ruling on a motion for JOP. (See *Sykora v. State Dept. of State Hospitals* (2014) 225 Cal.App.4th 1530, 1534, citing *Cloud v. Northrup Grumman Corp.* (1998) 67 Cal.App.4th 995, 999 ["Presentation of extrinsic evidence . . . is not proper on a motion for judgment on the pleadings."].) Declarations constitute extrinsic evidence. Therefore, the court has only considered the declaration of counsel Mark Bernal to the extent that it describes the meet-and-confer efforts required by Code of Civil Procedure section 439. The court has not considered the contents of the exhibits attached to the Bernal declaration.

Sun's "declaration in support of opposition to motion for summary judgment" is also, technically, extrinsic evidence that should not be considered. Nevertheless, because this declaration consists primarily of arguments rather than facts outside the scope of the pleadings, the court treats this declaration as if it were a brief containing points and authorities in opposition to the motion. At the same time, the court has *not* considered the letter attached to Sun's declaration.

B. Discussion

Stone and Masi argue that the complaint fails to state sufficient facts to set forth a cause of action and also demonstrates a lack of jurisdiction because it fails to allege compliance with the claim presentation requirement of the Government Claims Act. (See Memorandum, p. 1:19-24.)

The Government Claims Act (Gov. Code, § 810 et seq.) "establishes certain conditions precedent to the filing of a lawsuit against a public entity. As relevant here, a plaintiff must timely file a claim for money or damages with the public entity. (§ 911.2.) The failure to do so bars the plaintiff from bringing suit against that entity. (§ 945.4.)" (*State of California v. Superior Court (Bodde)* (2004) 32 Cal.4th 1234, 1237 (*Bodde*); see also *California Restaurant Management Systems v. City of San Diego* (2011) 195 Cal.App.4th 1581, 1591.)

"[F]ailure to allege facts demonstrating or excusing compliance with the claim presentation requirement subjects a claim against a public entity to a demurrer for failure to state a cause of action." (*Bodde, supra*, 32 Cal.4th at p. 1239; see also *Lowry v. Port San Luis Harbor Dist.* (2020) 56 Cal.App.5th 211, 218 [citing *Bodde* and applying it to a motion for JOP].)

While the complaint here fails to state the basis for suing Stone and Masi, the attachments establish that they are being sued in their capacities as employees or agents of the County of Santa Clara. Thus, the court agrees with Stone and Masi that the complaint fails to

allege either compliance, or an excuse from compliance, with the Government Claims Act. As they note, the complaint alleges that their misconduct occurred on June 21, 2022, and so Sun had until December 21, 2022 (six months) to present his claim. (Gov. Code, § 911.2, subd. (a).) He never did so. Instead, he filed this court action on March 14, 2023, which was already too late.[1]

The court therefore grants the motion for judgment on the pleadings.

As with a demurrer, when a motion for judgment on the pleadings is granted, it is not up to the court to figure out how a complaint can be amended to state a cause of action. Rather, the burden is on the plaintiff to show in what manner he or she can amend the complaint, and how that amendment will change the legal effect of the pleading. (*Medina v. Safe-Guard Products* (2008) 164 Cal.App.4th 105, 112, fn. 8; see also *Shaeffer v. Califia Farms, LLC* (2020) 44 Cal.App.5th 1125, 1145 ["The onus is on the plaintiff to articulate the 'specifi[c] ways' to cure the identified defect, and absent such an articulation, a trial or appellate court may grant leave to amend 'only if a potentially effective amendment [is] both apparent and consistent with the plaintiff's theory of the case. [Citation.]'"].)

Sun has not expressly requested leave to amend or articulated any manner in which the complaint could be amended to comply with the Government Claims Act. Even though this court routinely grants leave to amend on a first pleading challenge—even where the pleading party has failed to show any basis for granting such leave—the court finds that any attempted amendment in this particular instance would be futile, given the timelines involved and given Sun's apparent refusal to accept the fact that the claim presentation requirement applies to his case. Accordingly, the court denies leave to amend.

IV. MOTION TO STRIKE THE DOE AMENDMENT

A. General Standards

Under Code of Civil Procedure section 436, a court may strike out any irrelevant, false, or improper matter inserted into any pleading, or strike out all or part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. The grounds for a motion to strike must appear on the face of the challenged pleading or from matters of which the court may take judicial notice. (Code Civ. Proc., § 437(a); see also *City and County of San Francisco v. Strahlendorf* (1992) 7 Cal.App.4th 1911, 1913.) In ruling on a motion to strike, the court reads the challenged pleading as a whole, all parts in their context, and assumes the truth of all well-pleaded allegations. (See *Turman v. Turning Point of Central California, Inc*. (2010) 191 Cal.App.4th 53, 63, [citing *Clauson v. Super. Ct*. (1998) 67 Cal.App.4th 1253, 1255].)

As is the case with a demurrer or a motion for judgment on the pleadings, the court cannot consider extrinsic evidence in ruling on a motion to strike. This includes declarations. As noted above, the court has considered the Bernal declaration submitted in support of the motion only to the extent it addresses the meet-and-confer efforts required by Code of Civil

[1] In addition, defendants note that Sun failed to file a late claim application under Government Code section 911.4, subdivisions (a)-(b), which would have been due on June 21, 2023.

Procedure section 435.5. The court has only examined Sun's "declaration in support of opposition to motion for summary judgment" to determine if it makes any legal arguments in opposition to the motion to strike.

B. Discussion

Stone and Masi seek to strike Sun's December 11, 2023 amendment to the complaint to substitute the County as "Doe #1," because it was filed after Stone and Masi had already filed their answer, because Sun failed to file a motion for leave to amend, and because the County was already a known defendant at the time of the filing of the original complaint. (Memorandum, p. 2:10-18.)[2] The Court GRANTS the motion to strike the amendment.

First, under Code of Civil Procedure section 472, subdivision (a), Sun could no longer amend his complaint without leave of court after Stone and Masi had filed their answer on April 14, 2023. Although Code of Civil Procedure section 474 normally allows a party to file Doe amendments without leave of court even after other defendants have filed an answer—and even though those Doe amendments "relate back" to the original filing date of the complaint—that provision does not apply here, because the complaint and its attachments make it clear that Sun has always known that the entity levying property taxes on his property was the County of Santa Clara:

> Section 474 allows a plaintiff who is ignorant of a defendant's identity to designate the defendant in a complaint by a fictitious name (typically, as a "Doe"), and to amend the pleading to state the defendant's true name when the plaintiff subsequently discovers it. When a defendant is properly named under section 474, the amendment relates back to the filing date of the original complaint. Section 474 provides a method for adding defendants after the statute of limitations has expired, but this procedure is available only when the plaintiff is genuinely ignorant of the facts establishing a cause of action against the party to be substituted for a Doe defendant. "The question is whether [the plaintiff] knew or reasonably should have known that he had a cause of action against [the defendant]." "Ignorance of the *facts* giving rise to a cause of action is the 'ignorance' required by section 474, and the pivotal question is, 'did plaintiff know *facts*?' not 'did plaintiff know or believe that [he] had a cause of action based on those facts?'"

(McClatchy v. Coblentz, Patch, Duffy & Bass, LLP (2016) 247 Cal.App.4th 368, 371-372 [emphasis and brackets in original; citations omitted].) In this case, Sun was never "genuinely ignorant" of the County of Santa Clara's identity or its role in assessing his property taxes. His attachments to the complaint make that plain. Thus, the proper vehicle for adding the County as a defendant was not through a Doe Amendment, but rather through a motion for leave to amend.[3]

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[2] Stone and Masi also suggest that Sun's purported refusal to meet and confer is somehow a basis for striking the amendment. This is incorrect.

[3] Another reason why the Doe amendment was improper, as noted above, was that the original complaint failed to identify any Doe defendants in paragraph 1, where it was first required to identify them on the form.

Second, as defendants point out, a motion for leave to amend would also have been improper by December 11, 2023, in any event, because the statute of limitations to name the County as a defendant expired on March 20, 2023. Under Revenue and Taxation Code section 5151, subdivision (a), Sun had six months from the Assessment Appeals Board's September 20, 2022 decision to bring suit against the County. His attempt to name the County as a defendant on December 11, 2023 was nearly nine months too late.

Because the foregoing defect cannot be cured, given the clear statutory deadline, the court also must deny leave to amend under Code of Civil Procedure section 472a, subdivision (d).

V. CONCLUSION

The court GRANTS the motion for judgment on the pleadings and DENIES leave to amend under section 472a, subdivision (c). The court GRANTS the motion to strike the amendment to the complaint and DENIES leave to amend under section 472a, subdivision (d).

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Calendar Line 4
Case Name: *Jose C. Arvizu et al. v. Patrick Eugene Oliver*
Case No.: 2015-1-CV-284282

This case was filed in 2015, and it apparently resulted in a judgment on September 12, 2016.[4] Since then, plaintiffs Jose Arvizu and Gabriela Castillo have engaged in numerous efforts to have defendant Patrick Eugene Oliver comply with that judgment, including several orders for additional monetary sanctions against Oliver. Plaintiffs now seek an order to show cause regarding contempt "for [Oliver's] wilful violation of the Court's Orders." (Memorandum, p. 2:3.) Because contempt is the wrong means by which to enforce a money judgment, the court denies the motion.

Money judgments are generally enforceable via the Enforcement of Judgments Law, which is set forth in Code of Civil Procedure sections 680.010-724.260 and which is a "'"comprehensive and precisely detailed scheme" governing enforcement of money judgments.'" (*O'Brien v. AMBS Diagnostics, LLC* (2016) 246 Cal.App.4th 942, 947 [citations omitted].) Contempt, by contrast, is generally used to enforce judgments that are "not otherwise enforceable" under the Enforcement of Judgments Law (Code Civ. Proc., § 717.010)—*e.g.*, judgments and orders that provide for injunctive relief, child support, spousal support, or other judgments and orders under the Family Code. Indeed, the California Constitution makes it clear that money judgments are *not* enforceable by contempt. (See Cal. Const., art I, § 10 ["A person may not be imprisoned in a civil action for debt or tort, or in peacetime for a militia fine."].) As a consequence, this motion is not well taken.

The motion is DENIED.[5]

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[4] According to an "Amended Judgment" of the court, dated September 17, 2019 and signed by Judge Pierce, "This amended judgment amends the Court's original Judgment retroactively to [*illegible*] of entry of the original Judgment on 9/12/16 nunc pro tunc." Although the undersigned cannot find any original judgment from 2016 in the court file, the undersigned interprets this language of the amended judgment as establishing the original date of the judgment as September 12, 2016.

[5] Plaintiffs have filed numerous requests for judicial notice of prior court orders from this court and the bankruptcy court overseeing Oliver's bankruptcy proceedings. The court takes judicial notice of the prior orders under Evidence Code section 452, subdivision (d).

Calendar Line 7
Case Name: *State Farm Mutual Automobile Insurance Company v. Jose Morales*
Case No.: 20CV372167

Defendant Jose Morales moves to set aside a default judgment that was entered against him on June 15, 2022, more than 22 months ago, and more than 19 months before this motion was filed. The stated basis for the motion is Code of Civil Procedure section 473, subdivision (b).[6] Plaintiff State Farm Mutual Automobile Insurance Company ("State Farm") opposes. The court agrees with State Farm that the motion fails to set forth a basis for vacating the default judgment.

First, the motion is untimely under section 473(b). A motion under this section and subdivision must be brought within *six months* of the default judgment. This motion is over a year too late.

Second, the motion fails to describe anything that might be characterized as "mistake, inadvertence, surprise, or excusable neglect" under section 473(b). Instead, the motion repeatedly tries to place the blame on State Farm, arguing that State Farm deceptively failed to notify Morales's insurer (Anchor General) about this lawsuit and again failed to notify Anchor about the default against Morales. (For its part, State Farm contends that it did notify Anchor about the lawsuit on November 17, 2020, and that it also notified Anchor about the entry of default on June 23, 2021.) In any event, these complaints about the plaintiff's conduct do not qualify as "mistake, inadvertence, surprise, or excusable neglect" on the part of *defendant*.

Third, Morales could potentially be eligible for relief under Code of Civil Procedure section 473.5, which allows for relief from a default judgment within two years (as opposed to six months), if he did not receive "actual notice" of the action. But in this case, Morales admits that he received a copy of the summons and complaint *by mail*, so he concedes actual notice even as he contests the accuracy of State Farm's proof of service. Therefore, section 473.5 (which Morales has not raised in any event) does not apply.

For these reasons, the motion is DENIED.

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[6] Morales also attempts to argue that service "should have been quashed" under Code of Civil Procedure section 415.10, because the proof of service was "improper and defective." According to Morales, the description of him by the process server as a "40 year old Hispanic, who stood 5 feet 8 inches tall" and who weighed 180 pounds on November 4, 2020 did not match the traffic collision report in this case, which described Morales as 25 years old and 5 feet 4 inches tall (and weighing 200 pounds) on February 5, 2020. Morales submits no authority for the proposition that service may retroactively be quashed after a judgment has been entered, nor does he submit any authority for the proposition that a process server's inaccurate description of the recipient of service necessarily nullifies the service. The court is not aware of any such authority. Indeed, the court finds that the process server's description of Morales here was somewhat inaccurate but not so clearly different that it must necessarily have been a different person—particularly given that service was accomplished at *Morales's residence*.

Calendar Line 10
Case Name: *Dat Ngoc Dang v. Tesla, Inc.*
Case No.: 24CV429393

In this "lemon law" case under the Song-Beverly Consumer Warranty Act, defendant Tesla, Inc. ("Tesla") moves to compel arbitration, based on arbitration provisions contained in an order agreement and a sales agreement with plaintiff Dat Ngoc Dang, who purchased a 2023 Tesla Model S directly from Tesla. Dang opposes arbitration on the ground that the arbitration provisions in these agreements were unconscionable. The court finds this argument to be meritless and grants the motion.

The party challenging a contractual arbitration provision bears the burden of proving that it is both procedurally and substantively unconscionable. (*OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 126.) This may be done on a sliding scale, where the more substantively oppressive the contract term, the less evidence of procedural unconscionability is required, and vice versa. (*Id.* at pp. 125-126.) Nevertheless, both must be shown.

In this case, Dang argues that the arbitration provision is procedurally unconscionable because it was presented in a contract of adhesion. The court concludes that this constitutes a showing of procedural unconscionability, though a relatively slight one. (See *Diaz v. Sohnen Enterprises* (2019) 34 Cal.App.5th 126, 132 [the fact of an adhesion contract is insufficient to make an agreement unconscionable on its own]; *Sanchez v. Carmax Auto Superstores California, LLC* (2014) 224 Cal.App.4th 398, 402 [same].) Dang advances no other evidence to show surprise (*e.g.*, fine print, indecipherable jargon) or oppression (*e.g.*, undue pressure from the drafting party's salespersons). Instead, Dang argues that Tesla failed to provide "a copy of the relevant arbitration rules or even advise which rules would be chosen." (Opposition, p. 5:3-4.) The court finds that this contention mischaracterizes the arbitration provision in the sales agreement, which actually provides:

> You or we may choose the American Arbitration Association (www.adr.org) or National Arbitration and Mediation (www.namadr.com) as the arbitration organization to conduct the arbitration. If you and we agree, you or we may choose a different arbitration organization. You may get a copy of the rules of an arbitration organization by contacting the organization or visiting its website.

(Retail Installment Sale Contract, p. 5.) Under *Lane v. Francis Capital Management LLC* (2014) 224 Cal.App.4th 676, 691-692, this type of agreement is expressly permissible. If the rules are "easily accessible" on the internet, then the failure to attach those same rules is not a basis for finding procedural unconscionability. (*Ibid.*)

Dang also fails to make a material showing of substantive unconscionability. Substantive unconscionability focuses on whether the contractual provision is unduly harsh or one-sided. One of the hallmarks of substantive unconscionability is a lack of mutuality, where the provisions apply unequally to the parties. (*Cobb v. Ironwood Country Club* (2015) 233 Cal.App.4th 960, 968-969.) Here, Dang shows nothing that is unduly harsh or one-sided in the language of the arbitration provision itself. The fact that it includes two of the most well-known dispute resolution providers in the country (AAA and NAM) is not in and of itself a harsh or one-sided outcome. Dang mischaracterizes the arbitration provisions by making it seem like Tesla has more power to "elect" arbitration than Dang. (See Opposition, pp. 5:24-

6:25.) The court has reviewed the language of the provisions and finds that this is not a fair reading of the arbitration provisions. Each side has the ability to elect arbitration; AAA is a presumptive arbitration provider, but the parties may mutually agree on a different provider.

Dang also contends that the arbitration provision unfairly "requires the consumer to pay all costs above $5,000." (Opposition, p. 6:26-28.) Once again, this mischaracterizes the arbitration agreement. It does not require the buyer to pay "all costs" above $5,000; instead, it provides that Tesla will pay the first $5,000 of any fees and costs, and then the parties will jointly *share* the liability for any costs above $5,000:

> We will pay the filing, administration, service, or case management fee and the arbitrator or hearing fee up to a maximum of $5,000, unless the law or the rules of the chosen arbitration organization require us to pay more. *You and we* will pay the filing, administration, service, or case management fee and the arbitrator or hearing fee *over $5,000 in accordance with the rules and procedures of the chosen arbitration organization*. The amount we pay may be reimbursed in whole or in part by decision of the arbitrator if the arbitrator finds that any of your claims is frivolous under applicable law.

(Retail Installment Sale Contract, p. 5 [emphasis added].) This language is not one-sided against the consumer. On its face, it does not come close to meeting Dang's burden of showing substantive unconscionability. When combined with Dang's slight showing of procedural unconscionability, the court finds that Dang has not advanced any valid basis for finding the arbitration agreements he signed to be unenforceable.

The motion is GRANTED and the case is STAYED under Code of Civil Procedure section 1281.4. The court VACATES the case management conference that is currently scheduled for July 2, 2024 and instead sets this matter for a case status review regarding arbitration on **November 7, 2024 at 10:00 a.m.** in Department 10.

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