**SUPERIOR COURT, STATE OF CALIFORNIA**
**COUNTY OF SANTA CLARA**

**(Dept 16 is now hearing cases that were formerly in Dept 2)**

## Honorable Amber Rosen, Presiding

Felicia Samoy, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408.882.2270

**DATE: 11-30-23 TIME: 9 A.M.**

**All those intending to speak at the hearing are requested to appear by video.**

**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 prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)**

**TO CONTEST THE RULING: Before 4:00 p.m. today 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 strongly prefers in person appearances. If you must appear virtually, please use video. To access the link, click on the below link or copy and paste into your internet browser and scroll down to Department 16.
https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml

TO SET YOUR NEXT HEARING DATE: You no longer need to file a blank notice of motion to obtain a hearing date. Phone lines are now open for you to call and reserve a date before you file your motion. If moving papers are not filed within 5 business days of reserving the date, the date will be released for use in other cases. Where to call for your hearing date: 408-882-2430 When you can call: Monday to Friday, 8:30 am to 12:30 pm

**FINAL ORDERS:** The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

**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.

**SUPERIOR COURT, STATE OF CALIFORNIA**
**COUNTY OF SANTA CLARA**

**(Dept 16 is now hearing cases that were formerly in Dept 2)**

## Honorable Amber Rosen, Presiding

Felicia Samoy, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408.882.2270

**DATE: 11-30-23 TIME: 9 A.M.**

**All those intending to speak at the hearing are requested to appear by video.**

**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 prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)**

| LINE # | CASE # | CASE TITLE | RULING |
|---|---|---|---|
| LINE 1 | 23CV413334<br>Motion: Quash | Muhammad Khan vs Bay Area Criminal Lawyers et al | See Tentative Ruling. Court will prepare the final order. |
| LINE 2 | 19CV349521<br>Motion: Compel | Mora Estates I, LLC vs Peer Deeds LLC et al | See Tentative Ruling. Defendant PD shall submit the final order within 20 days. |

**SUPERIOR COURT, STATE OF CALIFORNIA**
**COUNTY OF SANTA CLARA**

**(Dept 16 is now hearing cases that were formerly in Dept 2)**

## Honorable Amber Rosen, Presiding

Felicia Samoy, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408.882.2270

**DATE: 11-30-23 TIME: 9 A.M.**

**All those intending to speak at the hearing are requested to appear by video.**

**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 prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)**

| | | | |
|---|---|---|---|
| LINE 3 | 23CV413592<br>Motion: Admissions Deemed Admitted | Wells Fargo Bank, N.A. vs Armando Quant | Plaintiff Wells Fargo moves for an order stating that the truth of matters specified in the Request for Admissions of propounded on Defendant, ARMANDO QUANT, an individual, be deemed admitted pursuant to §§ 2033.010, 2033.020, 2033.250, 2033.280, and 2033.420 of the Code of Civil Procedure (CCP).<br>On or about June 21, 2023, Plaintiff served its first set of discovery, namely, Request for 13 Admissions - Set One on Defendant. Defendant has failed to respond, despite efforts to meet and confer by Plaintiff. When a party fails to timely respond, as is the case here, the propounding may move the court for an order that the requests be deemed admitted. CCP § 2033.280(b) and (c). The Court then must grant that order, unless Defendant were, before tomorrow's hearing, to serve a proposed response to the requests for admission that is in substantial compliance with CCP § 2033.220. See CCP § 2033.280(c).<br>Defendant has filed a response basically arguing that the credit card was not his or that the charges at issue were fraudulently charged to him. This is not the same as responding to the requests for admissions propounded by Plaintiff and is not a defense to the motion at issue.<br>The motion is GRANTED for the 13 Admissions included as Ex 1 and Plaintiff shall submit the final order. Plaintiff is ordered to attend the hearing. |

**SUPERIOR COURT, STATE OF CALIFORNIA**
**COUNTY OF SANTA CLARA**

**(Dept 16 is now hearing cases that were formerly in Dept 2)**

## Honorable Amber Rosen, Presiding

Felicia Samoy, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408.882.2270

**DATE: 11-30-23 TIME: 9 A.M.**

**All those intending to speak at the hearing are requested to appear by video.**

**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 prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)**

| | | | |
|---|---|---|---|
| LINE 4 | 19CV351156<br>Motion: Order for A/F & Costs | Christopher Smith vs FORD MOTOR COMPANY et al | Notice now appearing proper, Plaintiff's unopposed motion for attorney's fees and costs is GRANTED in part. Plaintiff's time and rate are reasonable, such that its request for fees in the amount of $25,928 is GRANTED. The Court declines to award a multiplier as this case was not particularly complex nor out of the norm for a Song Beverly case, nor were the risks unusual. The Court also declines to grant anticipatory fees of $3500, particularly given that Defendant filed no opposition. The Court also grants costs of $1,606.59. Defendant shall pay Plaintiff's counsel a total of $27,534.59 within 20 days of the final order. Plaintiff shall submit the final order. |
| LINE 5 | 23CV418637<br>Hearing: Petition Compel Arbitration | Isaac Aguilar vs Tesla, Inc. | See Tentative Ruling. Defendant shall submit the final order. |
| LINE 6 | 23CV419678<br>Motion hearings for Prejudgment Possession | Santa Clara Valley Transportation Authority vs Filice Estates Vineyards, LLC et al | Notice appearing proper, Plaintiff's (VTA's) unopposed motion for prejudgment possession is GRANTED. Plaintiff shall submit the final order. |
| LINE 7 | 2009-1-CV-153711<br>Motion: Reconsider 10/20/23 order | First Century Plaza LLC vs Sorrento Pavilion LLC, et al | The motion for reconsideration is DENIED. The Court made its ruling independent of the claim of exemption. While the Court's 10/20/23 Order did mention the claim of exemption, the Order also set out several independent reasons to deny the underlying motion. (10/20/23 Order at pp. 3-6). Judgment Creditor shall submit the final order. |

**SUPERIOR COURT, STATE OF CALIFORNIA**
**COUNTY OF SANTA CLARA**

**(Dept 16 is now hearing cases that were formerly in Dept 2)**

## Honorable Amber Rosen, Presiding

Felicia Samoy, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408.882.2270

**DATE: 11-30-23 TIME: 9 A.M.**

**All those intending to speak at the hearing are requested to appear by video.**

**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 prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)**

| | | | |
|---|---|---|---|
| LINE 8 | 20CV374668<br>Motion: Order for terminating sanctions | Violet Williamson vs MOSAIC DANCE AND FITNESS, LLC, a California limited liability company et al | Defendant has once again abused the discovery process by failing to timely produce discovery, by requiring Plaintiff to file yet another discovery motion, and by filing a perfunctory response at the last minute with the required discovery responses. This Court notes that it has previously ordered monetary sanctions against Defendant and even warned Defendant of its need to comply with its orders, or the court could find that monetary sanctions were insufficient to obtain compliance. The Court orders that Defendant pay $2,997 in sanctions to Plaintiff, and that this amount along with any outstanding discovery sanctions amount be paid within 10 days of the final order. If Defendant fails to abide this order, the Court will likely impose evidentiary and/or issue sanctions if asked. Plaintiff shall submit the final order. |
| LINE 9 | | | |
| LINE 10 | | | |
| LINE 11 | | | |
| LINE 12 | | | |

**- oo0oo -**

**Calendar Line 1**
**Case Name:** *Khan v. Bay Area Criminal Lawyers, PC, et al.*
**Case No.:** 23CV413334

According to the allegations of the complaint, in February 2018, plaintiff Muhammad Khan ("Plaintiff") was convicted of a felony and sentenced to the California Department of Corrections and Rehabilitation ("CDCR") for a term of nine years. (See complaint, ¶ 10.) For trial, Plaintiff had retained Chuck Smith, who filed the notice of appeal on February 9, 2018. (See complaint, ¶ 11, exh. A.) Plaintiff was assigned counsel from the Sixth District Appellate Project ("SDAP"), Jared Coleman, who prepared and filed a criminal appeal, and prepared and planned to file a habeas petition with the Sixth District. (See complaint, ¶¶ 12-13.) Plaintiff reviewed the draft and suggested additional investigative work that Mr. Coleman was unable to do or did not have funds for. (See complaint, ¶ 14.) Plaintiff then floated the habeas petition draft to private attorneys for opinion and possible hiring, and was referred to defendant Alexander Patrick Guilmartin ("Guilmartin"), an attorney with defendant Bay Area Criminal Lawyers, PC ("BACL"). (See complaint, ¶¶ 15-16.) Guilmartin, Cohen, and BACL are hereinafter referred to collectively as "defendants." In April or May 2019, Plaintiff spoke with Mr. Guilmartin and what BACL could do. (See complaint, ¶¶ 17-18.) After speaking with his supervising attorney at BACL, defendant David Jonathan Cohen ("Cohen"), Guilmartin told Plaintiff that the draft would be denied if submitted and that defendants would improve it and do additional investigative and lab work, and accomplish this within a year for $15,000. (See complaint, ¶¶ 19-20.) Among the matters to be included in the new habeas petition drafted by Guilmartin under Cohen's supervision was a failure to bring up DNA exculpatory evidence for which additional lab work was warranted. (See complaint, ¶ 21.) In July 2019, BACL was paid $8,000 as an initial retainer and Plaintiff's family began paying the remainder on an agreed upon installment plan. (See complaint, ¶ 22.) Guilmartin stated that he would begin working on the habeas petition draft and request DNA work and other lab work to support the petition, and visit Plaintiff at CDCR. (See complaint, ¶ 27.)

From July 2019 to December 2019, Guilmartin told Plaintiff that he would visit Plaintiff soon and that defendants were busy with a murder trial until the end of 2019. (See complaint, ¶¶ 30-31.) Guilmartin did not respond to Plaintiff's letters; however, Guilmartin spoke to Plaintiff and told Plaintiff that, due to the COVID epidemic, he would neither be in the office nor be able to visit Plaintiff. (See complaint, ¶¶ 32-34.) Plaintiff then continued to ask for updates on the progress of the habeas petition; however, Guilmartin neither completed the petition, nor sought to get DNA work or other lab work to support the petition, nor responded to Plaintiff's requests for updates. (See complaint, ¶¶ 35-41.) In June 2020, Guilmartin communicated for the first time to Plaintiff that defendants would wait on the final decision of Plaintiff's appeal to start work on the habeas petition. (See complaint, ¶ 47.) At the end of June 2020, Guilmartin informed Plaintiff of his futile efforts to set up a call and that the lead case for which Plaintiff's appeal was waiting was decided. (See complaint, ¶ 48.)

In August 2020, the California Supreme Court transferred the appeal to the Sixth District with directions to vacate its decision and to reconsider the cause in light of *People v. Frahs* (2020) 9 Cal.5th 618. (See complaint, ¶ 53; see also *People v. Khan* (2020) 267 Cal.Rptr.3d 695 [471 P.3d 1001].) In October 2020, the Sixth District reversed the trial court's judgment and remanded the matter to the trial court to consider Khan's eligibility for diversion. (See complaint, ¶ 54; see also *People v. Khan* (Oct. 13, 2020, No. H045524) ___Cal.App.5th___ [2020 Cal. App. Unpub. LEXIS 6659, at *44].)

In August and September 2020, Plaintiff wrote to Guilmartin and Cohen requesting updates and expressing concern regarding the habeas representation. (See complaint, ¶¶ 56-57.) In November 2020, defendants sent a new contract to Plaintiff's sister, changing the scope of representation and changing the flat fee model to an hourly rate. (See complaint, ¶¶ 63-64.) Defendants then assessed new fees and solicited further payment from Plaintiff's sister without Plaintiff's knowledge or agreement. (See complaint, ¶¶ 65-70.) When Plaintiff was finally notified about the alteration of the contract in January 2021, Plaintiff wrote to defendants, but defendants refused to discuss the matter with Plaintiff. (See complaint, ¶¶ 71-74.)

In March 2021, Plaintiff spoke with Guilmartin about the contract changes, and Guilmartin stated that it was Cohen's idea and would circle back with Cohen on the issue. (See complaint, ¶¶ 75-77.) Plaintiff asked Guilmartin to have defendants put the plan and filing dates for the habeas petition in writing; however, Guilmartin stated that they were hesitant to put anything in writing. (See complaint, ¶ 78.) Plaintiff then communicated to defendants that he was okay with the Public Defender representing him on remittitur, and attorney Smith stated that he would contact the court and be appointed as counsel. (See complaint, ¶¶ 80-82.) Plaintiff informed Guilmartin of Smith's intent to represent Plaintiff in the trial court and Guilmartin contacted Smith, discussed it with Cohen and informed Plaintiff that Smith did not file an application but that defendants would do so pursuant to *Harris v. Super. Ct*., as defendants would have better access to discovery, evidence and other evidence in support the habeas petition if they were appointed. (See complaint, ¶¶ 83-84.) Guilmartin also stated in April 2021 that he planned to use the public defender as a conduit to request discovery, experts and funding for the habeas petition. (See complaint, ¶ 86.)

On April 20, 2021, Plaintiff was transferred to the Santa Clara County jail. (See complaint, ¶ 87.) In April and May 2021, defendants Guilmartin, Cohen and BACL filed an ex parte application to be appointed as counsel funded by the Independent Defender's Office (IDO). (See complaint, ¶¶ 88-89.) Defendants also filed a section 170.6 challenge of the judge, which was denied. (See complaint, ¶ 90.) While the IDO was funding the defendants, they did not seek DNA work or other lab work to support the petition as they had previously promised, and in June 2021, the defendants filed a writ of mandate on the denial of the section 170.6 challenge. (See complaint, ¶¶ 92-95.) Defendants continued to return Plaintiff's calls for updates on the habeas petition, and in November 2021, a petition for review was filed on the Sixth District's denial of the writ of mandate. (See complaint, ¶¶ 96-101.)

Plaintiff asked Guilmartin about the DNA work and additional lab work initially promised on hiring, and Guilmartin stated that they would not perform such work unless Plaintiff provided further funding. (See complaint, ¶¶ 103-107.) Plaintiff then began looking into the costs for DNA work and lab work, and Plaintiff spoke with Cohen on the phone. (See complaint, ¶¶ 116-121.) Cohen refused to refund Plaintiff the costs that Plaintiff had paid for such work and instead promised that he would impose deadlines on Guilmartin to complete the habeas petition and the DNA and lab work to support the petition. (See complaint, ¶¶ 122-123.) Plaintiff paid an additional $3,000 for the work at Cohen's request. (See complaint, ¶ 124.) Regardless, defendants did not complete the work as Cohen promised. (See complaint, ¶¶ 125-130.) After Guilmartin again refused to work on Plaintiff's case and berated Plaintiff for expressing concerns regarding Guilmartin's unavailability, Guilmartin told Plaintiff to fire him on the habeas representation and to file a *Marsden* hearing to remove him from diversion. (See complaint, ¶¶ 131-136.) After discussing Guilmartin's behavior with his family, Plaintiff

sent an email to Cohen. (See complaint, ¶ 137.) On March 7, 2022, Guilmartin apologized to Plaintiff for his behavior and stated that he would follow up with the court, look at getting lab work done, send a funding application and try to have another attorney help with discrete tasks. (See complaint, ¶ 138.) In fact, defendants did not accomplish those promised tasks with any kind of competency. (See complaint, ¶¶ 142-169.) Defendants were investigated by the California State Bar for their misrepresentations and misconduct. (See complaint, ¶¶ 139-141.)

On March 30, 2023, Plaintiff filed a complaint against defendants BACL, Guilmartin, and Cohen asserting causes of action for:

1) Conversion (against all defendants);
2) Fraudulent deceit (against all defendants);
3) Breach of contract (against all defendants);
4) Fraud/intentional misrepresentation (against all defendants);
5) False promise (against all defendants);
6) Concealment (against all defendants);
7) Unfair business practices (against all defendants); and,
8) Negligent hiring, retention and supervision (against Cohen).

Defendants move to quash service of the complaint for improper service. Defendants argue that proper service was not effectuated because when the Sheriff's deputy arrived at BACL's office and served copies of the complaint and summons on the firm's receptionist, neither Cohen nor Guilmartin were present at the office. (See Defs.' memorandum of points and authorities in support of motion to quash ("Defs.' memo"), p.5:3-21.) Defendants do not present any evidence in support of their motion; however, defendants do state that it is based on "all records, papers and pleadings on file in this action." (*Id*. at p.1:25-26.) Defendants do not request judicial notice of any such records, but the Court takes judicial notice of the proofs of service as to each of the defendants. In opposition, Plaintiff also refers to the proofs of service. Each of these proofs of service indicate that the summons and complaint were personally served on each of them. As defendants have not provided any evidence to the contrary, the motion to quash service on them is DENIED.

The Court will prepare the Order.

**- oo0oo -**

**Calendar Line 2**
**Case Name:** *Mora Estates I, LLC v. Peer Deeds LLC, et al.*
**Case No.:** 19CV349521

On February 10, 2023, plaintiff Mora Estates I, LLC ("Plaintiff") served form interrogatories ("FIs"), requests for admissions ("RFAs"), special interrogatories ("SIs"), and requests for production of documents ("RPDs") on defendant Peer Deeds LLC ("PD"). However, Plaintiff was suspended by the California Secretary of State. On March 8, 2023, PD actually provided objection-only responses based on Plaintiff's suspension. On March 14, 2023, Plaintiff was revived by the Secretary of State. On April 3, 2023, Plaintiff's counsel met and conferred with PD's counsel, and the parties agreed to treat the discovery requests as if served on April 4, 2023. On May 3, 2023, PD's counsel sought an additional two-week extension, which Plaintiff granted. On May 17, 2023, PD's counsel sought an additional one-week extension, which Plaintiff granted. On May 24, 2023, PD served verified discovery responses. On June 21, 2023, Plaintiff met and conferred regarding PD's responses, and Plaintiff sought further responses by July 5, 2023. PD emailed on July 5, 2023 requesting an extension to July 14, 2023 and PD agreed to extend Plaintiff's deadline to file a motion to compel to July 28, 2023. PD sought an additional extension to July 21, 2023, which Plaintiff granted and on July 21, 2023, PD provided amended discovery responses. However, PD did not include amended responses to RFAs and did not serve its document production. On July 26, 2023, PD served its document production without seeking an extension to serve the document production after July 21, 2023. Plaintiff also noted that its amended responses to SIs 4, 10, 19 and 24 were unchanged.

On August 9, 2023, Plaintiff filed the instant motion to compel further responses to SIs 4, 10, 19 and 24. Plaintiff also seeks monetary sanctions in the amount of $4,835 against PD and its counsel.

Upon receiving Plaintiff's counsel's August 14, 2023 meet and confer letter, PD advised Plaintiff that it would be providing amended responses to address all issues and requested that the motion be withdrawn. Plaintiff's counsel declined to withdraw the motion. On August 25, 2023, PD proposed to Plaintiff that the parties submit the instant discovery dispute to the Court's Discovery Resolution Facilitator Program in order to resolve the matter more efficiently and cost-effectively; however, Plaintiff rejected the proposal. On September 1, 2023, PD served verified further responses to discovery, including to SIs 4, 10, 19 and 24.

In opposition, PD argues that the motion is moot. Plaintiff asserts in reply that the motion is not moot, citing *County of San Benito v. Super. Ct*. (2023) 96 Cal.App.5th 243.[1]

**PLAINTIFF'S MOTION TO COMPEL FURTHER RESPONSES**

Here, Plaintiff sought further responses to SIs 4, 10, 19 and 24. It received further responses to SIs 4, 10, 19 and 24. These responses include more information than that submitted by Defendant's earlier amended responses of July 21st, indicating that Plaintiff had a basis for file this motion to compel. Plaintiff did not meet and confer with respect to PD's further responses, however, and it would appear that the responses to at least 10, 19, and 24 are

[1] Plaintiff cites to page 278; however, this is clearly a mistake. There is no page 278 in the opinion.

now satisfactory. With regards to discovery, the Santa Clara County Bar Association Code of Professionalism states that "[a] lawyer should engage in a meaningful and good faith effort to resolve discovery disputes and should only bring discovery issues to the court for resolution after these efforts have been unsuccessful." (Santa Clara County Bar Association Code of Professionalism, § 10 ("Discovery"); see also Santa Clara County Bar Association Code of Professionalism, § 11 ("Motion practice") (stating that "[a] lawyer should engage in a good faith effort to resolve the issue before filing a motion… [i]n particular, civil discovery motions should be filed sparingly").) If the motion is not moot, then Plaintiff has not adequately met and conferred on the further responses it has received.

The motion to compel further responses to SIs 4, 10, 19 and 24 is DENIED without prejudice to a motion to compel further responses as to the responses provided on September 1, 2023, as there was no meet and confer. It would seem that the response to SI 4 is still not complete, as the further response of September 1st states that the responding party believes there were phone conversations but then provides no facts about the number, timing or content of those calls, nor denies remembering any of those facts.

**PLAINTIFF'S REQUEST FOR MONETARY SANCTIONS**

Plaintiff requests monetary sanctions in the amount of $4,835 against PD and its counsel. Plaintiff has not prevailed in this motion and Plaintiff did not comply with CCP § 2023.040 in requesting sanctions. The notice includes only Peer Deeds, while the memo includes counsel as well. No facts supporting the request were included in the declaration in support of the motion. Not until the declaration filed in support of the reply did Plaintiff supply any facts regarding rates or time spent to support the motion. This is insufficient and thus the request for sanctions is DENIED.

**CONCLUSION**

The motion to compel further responses to SIs 4, 10, 19 and 24 is DENIED without prejudice to a motion to compel further responses as to the responses provided on September 1, 2023.

Plaintiff's request for monetary sanctions is DENIED.

Defendant PD shall submit a proposed order for the Court's signature within 20 calendar days of the hearing.

**- oo0oo -**

**Calendar Line 5**
**Case Name:** *Isaac Aguilar v. Tesla*
**Case No.:** *23CV418637*

Defendant Tesla brings a motion to compel arbitration based on the arbitration clause in the Motor Vehicle Order Agreement ("Order Agreement") signed by Plaintiff.

Tesla asks this Court to take judicial notice of the complaint in this case. That request is GRANTED.

Plaintiff does not contest that the Order Agreement includes an arbitration clause or that he signed the Agreement. The arbitration clause states:

> **Agreement to Arbitrate.** Please carefully read this provision, which applies to any dispute between you and Tesla, Inc. and its affiliates, (together "Tesla").
>
> If you have a concern or dispute, please send a written notice describing it and your desired resolution to resolutions@tesla.com.
>
> If not resolved within 60 days, you agree that any dispute arising out of or relating to any aspect of the relationship between you and Tesla will not be decided by a judge or jury but instead by a single arbitrator in an arbitration administered by the American Arbitration Association (AAA) under its Consumer Arbitration Rules. This includes claims arising before this Agreement, such as claims related to statements about our products.
>
> We will pay all AAA fees for any arbitration, which will be held in the city or county of your residence. To learn more about the Rules and how to begin an arbitration, you may call any AAA office or go to www.adr.org.
>
> The arbitrator may only resolve disputes between you and Tesla, and may not consolidate claims without the consent of all parties. The arbitrator cannot hear class or representative claims or requests for relief on behalf of others purchasing or leasing Tesla vehicles. In other words, you and Tesla may bring claims against the other only in your or its individual capacity and not as a plaintiff or class member in any class or representative action. If a court or arbitrator decides that any part of this agreement to arbitrate cannot be enforced as to a particular claim for relief or remedy, then that claim or remedy (and only that claim or remedy) must be brought in court and any other claims must be arbitrated.
>
> If you prefer, you may instead take an individual dispute to small claims court.
>
> You may opt out of arbitration within 30 days after signing this Agreement by sending a letter to: Tesla, Inc.; P.O. Box 15430; Fremont, CA 94539-7970, stating your name, Vehicle Identification Number, and intent to opt out of the arbitration provision. If you do not opt out, this agreement to arbitrate overrides any different arbitration

agreement between us, including any arbitration agreement in a lease or finance contract. (Ex. 1 to Decl. of Kim).

Plaintiff contends that the arbitration clause is both procedurally and substantively unconscionable, such that it cannot be enforced. "'[T]he doctrine of unconscionability has both a procedural and a substantive element, the former focusing on oppression or surprise due to unequal bargaining power, the latter on overly harsh or one-sided results.'" *Sanchez v. Valencia Holding Co., LLC,* (2015) 61 Cal. 4th 899, 910 (citation omitted). Both must be present, though not in the same degree, for the court to exercise its discretion to refuse to enforce an arbitration agreement. *Id*.

Plaintiff claims the agreement is procedurally unconscionable because he had no ability to negotiate it or its terms and because he was not given a copy of the AAA rules applicable to the agreement. As Plaintiff himself acknowledges, "[a] 'meaningful opportunity to negotiate or reject the terms of a contract requires, at a minimum, that a party have reasonable notice of the opportunity to negotiate or reject the terms of the contract and an actual, meaningful, and reasonable choice to exercise that discretion.' (*Circuit City Stores, Inc. v. Mantor* (9th Cir. 2003) 335 F.3d 1101, 1106.)" Opp. at p4. Here, Plaintiff had that. The Arbitration Clause specifically allows the buyer to "opt out of arbitration within 30 days after signing this Agreement by sending a letter" to Telsa. Plaintiff fails to even acknowledge this opt out clause, much less contend that it was hidden, a surprise, unreasonable or hard to comply with. Because Plaintiff could easily have opted out of the arbitration agreement, his contention that it was procedurally unconscionable fails.

Nor was the agreement procedurally unconscionable because Telsa failed to provide Plaintiff with a copy of the AAA rules. First, the agreement itself contained a hyperlink to the rules, such that he could have easily accessed them. Secondly, in circumstances like those present in this case, failure to provide the AAA rules has specifically been rejected as a basis for finding the arbitration agreement unconscionable. See *Lane v. Francis Capital Management LLC* (2014) 224 Cal.App.4$^{th}$ 676, 691 -92 (failure to attach copy of the AAA rules did not render the agreement procedurally unconscionable, particularly where rules were referenced in the agreement, were easily accessible on the Internet, and were not modified in any manner).

Because there was no procedural unconscionability, the Court need not even address substantive unconscionability, but will do so, nonetheless.

Plaintiff claims the agreement is substantively unconscionable because it is one-sided in that Telsa has chosen the right to arbitrate, as well as the forum, and the rules. Opp. p5. He then cites cases to support his claim where only one party was allowed to designate the arbitrator. Telsa has no such power here, however, and the agreement is not overly one-sided. The arbitration agreement requires both sides, not just one side, to arbitrate any claims. The agreement states that the arbitration will be administered by the AAA. That does not mean that Tesla has the ability to choose the arbitrator. In fact, the very case relied on by Plaintiff, *Chavarria v. Ralphs Grocery Co.* (2013) 733 F.3d 916 (see Opp. p6), specifically indicates that institutional arbitration administrators, such as AAA, "have established rules

and procedures to select a neutral arbitrator." *Chavarria*, 733 F.3d at 923. Accordingly, Plaintiff fails to cite to any substantive unconscionability in the agreement.

The Motion to Compel Arbitration is GRANTED and the case is stayed pending arbitration. Defendant shall submit the final order within 20 days. Plaintiff is admonished not to waste the Court's time by forcing litigation of patently unmeritorious motions.

-oo0oo-