SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 16
(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: 10-10-24 TIME: 9 A.M.

All those intending to speak at the hearing are requested to appear in person or by video. Parties are asked NOT to appear by telephone only.

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 will call the cases of those who appear in person first. If you 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. You must use the current link.

TO SET YOUR NEXT HEARING DATE: You no longer need to file a blank notice of motion to obtain a hearing date. You may make an online reservation to 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. Go to the Court's website at www.scscourt.org to make the reservation.

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.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	23CV423540 Hearing: Order of Examination	NBT BANK vs RONALD MENDEZ	In light of the judgment having having been satisfied in full, the matter is OFF CALENDAR.
LINE 2	22CV395193 Motion: Strike	ROGELIO LLAMAS, JR. vs SF MARKETS, LLC et al	See Tentative Ruling. Court will issue the final order.
LINE 3	22CV395193 Hearing: Demurrer	ROGELIO LLAMAS, JR. vs SF MARKETS, LLC et al	See Tentative Ruling. Court will issue the final order.
LINE 4	23CV426795 Hearing: Motion Summary Judgment	Shari Begun vs Samira Rathnayake, MD et al	Given Plaintiff's statement of nonopposition, Defendant Jonathan Paulsen's motion for summary judgment is GRANTED. Defendant shall submit the final order within 10 days.
LINE 5	21CV385112 Hearing: For Relief from Order Deeming Admitted Requests	Quintara Biosciences, Inc. vs Gangyou Wang et al	Continued to Dec 5, 2025
LINE 6	21CV391580 Motion: Compel	Husam Abu-Haimed et al vs Xpeng Inc. et al	See Tentative ruling. Court will issue the final order.

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

LINE 7	23CV427141 Motion: Compel	VELOCITY INVESTMENTS LLC vs JOHN MADRID	Parties are ordered to appear at the hearing. The Court tentatively denies the motion to compel, as each of the requests asks for information relating to Velocity's claim, yet Velocity no longer has any claim as it dismissed its complaint, and as such there is nothing to disclose. At the hearing, the Court wants to know whether Velocity intends to file any kind of responsive pleading to the amended cross-complaint based on its claim that cross-complainant lacks standing.
LINE 8	24CV429325 Motion: Compel	Lynda Powers vs CITIBANK, N.A	See Tentative Ruling. Defendant shall submit the final order within 10 days.
LINE 9	24CV445030 Hearing: For Trial Preference Pursuant CCP 35 & 36	Carleen Kendall vs Jill Steinacker	Good cause appearing, the unopposed motion is GRANTED. Parties are ordered to a trial setting conference on 10/15/24 at 11 am and shall meet and confer on trial dates, prior to that hearing. If parties cannot appear for a 10/15/24 hearing, they must contest this tentative ruling and appear at the 10/10/24 hearing. Plaintiff shall submit the final order granting trial preference within 10 days.
LINE 10			
LINE 11			
LINE 12			
LINE 13			

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LINE 14			
LINE 15			
LINE 16			
LINE 17			

- oo0oo -

Calendar Lines 2 and 3
Case Name: *Llamas v. Sprouts Farmers Markets, LLC, et al.*
Case No.: 22CV395193

This is a trip and fall action. According to the allegations of the complaint, on October 23, 2021, plaintiff Rogelio Llamas, Jr. ("Plaintiff") was crossing through the parking lot of the premises shared by Sprouts Famers Market ("Sprouts"), located near 111 E. El Camino Real in Sunnyvale, when he tripped on a piece of exposed rebar protruding from a concrete parking wheel stop, and fell, incurring severe personal injuries. (See complaint, ¶ Prem.L-1.)

On February 23, 2022, Plaintiff filed a form complaint against Sprouts and Premier Grocery, Inc. ("Premier") and Doe defendants 1-50, asserting causes of action for:

1) Premises liability (against Sprouts and Premier and Does 1-50); and,
2) General negligence (against Sprouts and Premier and Does 1-50).

On April 7, 2022, Plaintiff filed an amendment to the complaint, substituting The Diocese of San Jose ("Diocese") for Doe 1.

On March 29, 2024, cross-complainants SF Markets, LLC ("SF Markets") and Diocese (collectively, "cross-complainants") filed a cross-complaint ("XC") against Home Depot U.S.A., Inc., Dick's Sporting Goods, Inc. and Ross Stores Inc. (sued as "Ross Dress for Less Inc.", hereinafter "Ross") (collectively, "cross-defendants"), asserting causes of action for:

1) Comparative indemnity and apportionment of fault (against all cross-defendants);
2) Total equitable indemnity (against all cross-defendants);
3) Contribution (against all cross-defendants);
4) Declaratory relief (against all cross-defendants);
5) Contractual indemnity (against all cross-defendants);
6) Breach of contract (against all cross-defendants);
7) Declaratory relief—duty to defend (against all cross-defendants); and,
8) Declaratory relief—duty to indemnify (against all cross-defendants).

Cross-defendant Ross demurs to the fifth and sixth causes of action on the ground that they are uncertain and fail to state facts sufficient to constitute a cause of action. Ross also moves to strike the fifth and sixth causes of action on the ground that they are inconsistent with the terms of the agreement attached to the XC.

I. CROSS-DEFENDANT ROSS' DEMURRER TO THE FIFTH AND SIXTH CAUSES OF ACTION OF THE XC

Fifth cause of action for contractual indemnity and sixth cause of action for breach of contract

Ross demurs to the fifth and sixth causes of action, asserting that no cause of action exists against it because the agreements attached to the XC do not show that Ross is a party to the contracts. (See *Clemens v. Am. Warranty Corp.* (1987) 193 Cal.App.3d 444, 452 (stating that "[u]nder California law, only a signatory to a contract may be liable for any breach"); see also *Burnett v. Chimney Sweep* (2004) 123 Cal.App.4th 1057, 1071 (stating that "Courtland-

Dane is entitled to judgment on the pleadings as to the cause of action for breach of contract because it was not a party to the lease"); see also *Tri-Continent Internat. Corp. v. Paris Savings & Loan Assn*. (1993) 12 Cal.App.4th 1354, 1359 (stating that "Tri-Continent cannot assert a claim for breach of contract against one who is not a party to the contract").)

The attachments to the XC are:

- a lease between M. Duckgeischnel Reed and Federated Department Stores, Inc., dated December 24, 1976;
- an amendment to the lease, dated September 30, 1980;
- a second amendment to the lease, between M. Duckgeischnel Reed and Federated Department Stores, Inc., dated July 12, 1982;
- an assignment and assumption between Federated Department Stores and John S. Banchero and Stephen Barry Moore as assignees, dated May 31, 1983;
- a third amendment to the lease, between M. Duckgeischnel Reed and BanMoor Group IV as tenant, dated May 21, 1984;
- Agreement of lease between Federated Department Stores, Inc. as landlord and Ross Stores, Inc. as tenant, dated January 12, 1983;
- First amendment to lease for 119 E. El Camino Real in Sunnyvale with The DinMoor Group as landlord and Ross Stores, Inc. as tenant, dated July 13, 1998;
- Second amendment to lease for 119 E. El Camino Real in Sunnyvale with The DinMoor Group as landlord and Ross Stores, Inc. as tenant, dated September 20, 2002; and,
- Third amendment to lease between Sunnyvale Retail Owner, LLC as Landlord and Ross Dress for Less, Inc. as tenant, dated February 3, 2020, referencing Second amendment to lease dated September 20, 2002.

While Ross has a leasehold interest at the subject property, the attached exhibits do not demonstrate that *cross-complainants* have such an interest. The fifth cause of action alleges that "various written Lease Agreements (hereinafter referred to as the 'Agreements') was entered into between Cross-Complainants and Cross-Defendants, and ROE Cross-Defendants 1 through 50, wherein Cross-Defendants and ROE Cross-Defendants agreed to indemnify and hold harmless Cross-Complainants for any and all obligations which may be imposed upon Cross-Complainants as a result of the principal action described in Paragraph 4… [and a] true and correct copy of these Agreements is attached collectively hereto as Exhibit 'A' and is incorporated herein by reference." (XC, ¶ 19.) "As a general rule in testing a pleading against a demurrer the facts alleged in the pleading are deemed to be true, however improbable they may be." (*Del E. Webb Corp. v. Structural Materials Co*. (1981) 123 Cal.App.3d 593, 604; see also *Executive Landscape Corp. v. San Vicente Country Villas IV Assn.* (1983) 145 Cal.App.3d 496, 499 (stating that "[w]e must accept as true all facts pleaded in the complaint"); see also *Stecks v. Young* (1995) 38 Cal.App.4th 365, 369 (stating that "[w]e accept as true all properly pleaded allegations stated in the complaint"); see also *McBride v. Smith* (2018) 18 Cal.App.5th 1160, 1173 (stating that "[w]e assume the truth of the properly pleaded factual allegations, facts that reasonably can be inferred from those expressly pleaded and matters of which judicial notice has been taken"); see also *SC Manufactured Homes, Inc. v. Liebert* (2008) 162 Cal.App.4th 68, 82 (stating that "[w]e assume the truth of the properly pleaded factual allegations, facts that reasonably can be inferred from those expressly pleaded, and facts of which judicial notice can be taken").) "If the allegations in the complaint conflict with the facts included in exhibits attached to or referenced in the complaint, 'we rely on and accept as

true the contents of the exhibits.'" (*McBride*, *supra*, 18 Cal.App.5th at p.1173; see also *SC Manufactured Homes*, *supra*, 162 Cal.App.4th at p.83 (stating same); see also *Stecks*, *supra*, 38 Cal.App.4th at p.369 (stating "[w]e also accept as true all facts appearing in exhibits attached to the complaint and give such facts precedence over contrary allegations in the complaint"); see also *Executive Landscape Corp*., *supra*, 145 Cal.App.3d at p.499 (stating that "[w]e ignore allegations of conclusion of law, and where the allegations in the body of the complaint are contrary to documents incorporated by reference in it, we treat the documents as controlling over their characterization in the pleading"); see also *Dodd v. Citizens Bank of Costa Mesa* (1990) 222 Cal.App.3d 1624, 1627 (stating that "facts appearing in exhibits attached to the complaint will also be accepted as true and, if contrary to the allegations in the pleading, will be given precedence"); see also *Holland v. Morse Diesel Internat., Inc.* (2001) 86 Cal.App.4th 1443, 1447 (stating that "[i]f facts appearing in the exhibits contradict those alleged, the facts in the exhibits take precedence").) While the fifth cause of action alleges that cross-complainants entered into the agreements attached to the complaint, the agreements actually attached to the complaint do not state that cross-complainants actually entered into the agreements, and the complaint does not otherwise explain how cross-complainants might have a leasehold interest or how Ross otherwise owed a contractual duty to indemnify cross-complainants.

In opposition, cross-complainants argue that Ross' arguments are "disingenuous, given that Ross has already produced documents in discovery pursuant to Sprouts' formal August 11, 2023 Subpoena (RFJN, Exhibit A) which demonstrate the existence of contractual obligations held by Ross and DSGI for the completion of repair work to the subject parking lot." (Cross-complainants' memorandum of points and authorities in opposition to demurrer to fifth and sixth causes of action of the complaint ("Opposition"), pp.5:6-28, 6:1-7.) "Further, the document production by Ross contains an e-mail thread between DSGI and Ross that expressly cites from a written lease agreement… [with] excerpts [that] are identical to portions of the January 12, 1983, Lease Agreement between the former owner of the subject property (Federated Department Stores) and Ross that is already included in Exhibit A to Sprouts and Diocese's Cross-Complaint." (Opposition, p.6:8-26.) Cross-complainants thus conclude that "it is 'not reasonably subject to dispute' that, one month prior to the Incident, two of the Cross-Defendants herein had actively negotiated the payment for repairs that were made to the subject parking lot pursuant to a written lease agreement relating to the Property." (Opposition, pp.6:26-28, 7:1.)

As stated above, cross-complainants rely on their request for judicial notice of Ross' documents produced in response to Sprouts' August 11, 2023 deposition subpoena for production of business records. (See cross-complainants' request for judicial notice, exh. A.) It does not appear that these letters/emails reference cross-complainants. However, even if these documents showed that Ross owed a contractual duty to indemnify cross-complainants, the Court cannot take judicial notice of the contents of these documents as true. (See *Tenet Healthsystem Desert, Inc. v. Blue Cross of California* (2016) 245 Cal.App.4th 821, 836 (sating that "the truth of statements contained in the document and their proper interpretation are not subject to judicial notice"); see also *Fremont Indemnity Co. v. Fremont General Corp*. (2007) 148 Cal.App.4th 97, 113 (stating that "[t]aking judicial notice of a document is not the same as accepting the truth of its contents or accepting a particular interpretation of its meaning… [w]hen judicial notice is taken of a document… the truthfulness and proper interpretation of the document are disputable"); see also *TSMC North America v. Semiconductor Manufacturing*

Internat. Corp. (2008) 161 Cal.App.4th 581, 594, fn. 4 (stating that "discovery responses… are not a proper matter for judicial notice").)

Accordingly, Ross' demurrer to the fifth and sixth causes of action of the XC is SUSTAINED with 10 days leave to amend.

II. CROSS-DEFENDANT ROSS' MOTION TO STRIKE THE FIFTH AND SIXTH CAUSES OF ACTION OF THE XC

In light of the above ruling regarding the demurrer, Ross' motion to strike the fifth and sixth causes of action is MOOT.

The Court will prepare the Order.

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Calendar Line 6
Case Name: *Abu-Haimed, et al. v. XPeng, Inc., et al.*
Case No.: 21CV391580

This is an action for a failure to provide compensation in connection with an employment agreement. Plaintiffs Husam Abu-Haimed ("Abu-Haimed"), Kuo-Chin Lien ("Lien"), Bin Zeng ("Zeng"), Yang Yang ("Yang"), Sinan Karahan ("Karahan"), Hanxiao Deng ("Deng"), Daryl Sew ("Sew"), Kim C. Ng ("Ng"), Qi Fu ("Qi") and Dongdong Fu ("Dongdong") (collectively, "Plaintiffs") are former employees of defendant XMotors.ai, Inc. ("XMotors") who were promised the issuance of stock options, but claim they were not provided those options despite having earned them.

On August 4, 2022, Plaintiffs filed a second amended complaint ("SAC") against defendants XPeng Inc. ("XPeng") and XMotors.ai, Inc. ("XMotors") (collectively, "Defendants"), asserting causes of action for:

1) Breach of contract (against XPeng and XMotors);
2) Breach of implied covenant of good faith and fair dealing (against XPeng and XMotors);
3) Fraudulent inducement (against XPeng and XMotors);
4) Intentional misrepresentation (against XPeng and XMotors);
5) Concealment (against XPeng and XMotors);
6) Constructive termination (plaintiffs Lien, Dongdong, Zeng and Ng against XPeng and XMotors);
7) Failure to pay earned wages in violation of Labor Code §§ 201, 202 (against XPeng and XMotors); and,
8) Unfair business practices (against XPeng and XMotors).

On December 20, 2022, Plaintiffs propounded their first set of special interrogatories ("SIs") on defendant XMotors. On January 10, 2024, XMotors provided its responses. XMotors' responses state that it would not respond to SI numbers 4 and 5. After multiple meet and confer attempts, XMotors provided further responses to other SIs but still stated that it would not respond to SI 5. The parties met and conferred again; however, they were unsuccessful at resolving the issue and on May 31, 2024, Plaintiffs moved to compel a further response to SI 5.

III. PLAINTIFFS' MOTION TO COMPEL A FURTHER RESPONSE TO SPECIAL INTERROGATORY NUMBER 5

SI 5 and XMotors' response

SI 5 seeks XMotors to "IDENTIFY all prospective or actual United States-based employees of [XMotors] to whom [XMotors] offered a grant of shares in XPeng from the date of [Xmotors'] incorporation/formation through the date of XPeng's United States initial public offering." (SI 5.)

In response to SI 5, XMotors stated that it would not respond to the interrogatory and objected on the grounds of overbreadth, vagueness, ambiguity, undue burden, oppression, lack

of relevance, the attorney-client privilege, the attorney work product doctrine, and the constitutional right to privacy embodied in the California constitution.

Parties' assertions

Plaintiffs argue that the names of witnesses that XMotors offered shares of XPeng to as a component of their compensation is relevant to the subject matter of the lawsuit and is therefore discoverable. Plaintiffs note that the time of the grant of shares is limited to its relatively short corporate history from its incorporation date, October 18, 2017 to the August 27, 2020 IPO.

In opposition, XMotors argues that the relevant issue is whether *Plaintiffs* were offered equity grants when they joined XMotors, not whether other employees were offered equity grants. Further, they argue that the other employees are clearly protected by privacy rights.

XMotors must provide a further response

XMotors' objections to SI 5 on the grounds of vagueness, ambiguity, undue burden, oppression, attorney-client privilege and attorney work product doctrine are OVERRULED.

In opposition, XMotors does not address the objections based on vagueness, ambiguity, undue burden, oppression, attorney-client privilege, or the attorney work product doctrine. These objections by XMotors are OVERRULED.

XMotors' objections to SI 5 on the grounds of lack of relevance and overbreadth are OVERRULED.

XMotors argues that because SI 5 seeks the names and contact information of those prospective or actual employees offered a grant of shares in XPeng, SI 5 is overbroad and lacks relevance. (See XMotors' opposition to motion to compel further response to SI 5 ("Opposition"), p.5:18-23.) XMotors argues that "[w]hether other prospective or actual employees were offered equity grants has no bearing whatsoever on Plaintiffs' case… [because t]hese employees or would be employees know nothing about Plaintiffs' circumstances and whether Plaintiffs were offered binding equity grants." (Opposition, pp.5:23-27, 6:1-2.)

According to the allegations of the SAC, all Plaintiffs accepted a lesser salary than they otherwise would have had they not been offered shares in XPeng and were specifically told that they would be granted a certain number of shares, vested over the next 4 years of their employment. (See SAC, ¶¶ 22-23.) XPeng, however, concealed that this component of their compensation was subject to conditions precedent such as corporate restructuring or continued employment through an IPO, and in some cases, changed the vesting commencement date to a date after the first day of employment. (See SAC, ¶¶ 24-31.) The SAC alleges not only the breach of the individual contracts with these plaintiffs but also fraudulent inducement, concealment, violation of the Labor Code and unfair business practices. XPeng generally denies that it made any misrepresentations in connection with its employment offers, concealed any such information, or concealed this information as a business practice. (See XPeng's answer to the SAC, p.1:6-8 (stating that it "generally denies each and every material allegation of the Complaint").) XPeng's business practice in its offers of compensation, including any conditions precedent or changes of the terms of compensation, are at issue in this case; those

persons who were offered those compensation packages in connection with their employment—whether current employees, former employees or prospective employees—would all be persons who would have information related to XPeng's business practice.

"The scope of discovery is very broad." (*Tien v. Super. Ct. (Tenet Healthcare Corp.)* (2006) 139 Cal.App.4th 528, 535; see also *Children's Hospital Central California v. Blue Cross of California* (2014) 226 Cal.App.4th 1260, 1276 (stating that "[t]he scope of permissible discovery is very broad").) "For discovery purposes, information is relevant if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement." (*Children's Hospital Central California*, *supra*, 226 Cal.App.4th at pp.1276-1277 (also stating that "[a]dmissibility is not the test… [r]ather, it is sufficient if the information sought might reasonably lead to other admissible evidence"); see also *Moore v. Mercer* (2016) 4 Cal.App.5th 424, 44 (stating that "[i]n the context of discovery, evidence is 'relevant' if it might reasonably assist a party in evaluating its case, preparing for trial, or facilitating a settlement"); see also *Haniff v. Super. Ct. (Hohman)* (2017) 9 Cal.App.5th 191, 205 (Sixth District stating that "Section 2017.010 has been construed to authorize discovery of information that is relevant because 'it 'might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement'"").) "This right to discovery includes the right to 'obtain[]… the identity and location of persons having knowledge of any discoverable matter.'" (*Tien*, *supra*, 139 Cal.App.4th 528, 535; see also *Pioneer Electronics (USA), Inc. v. Super. Ct. (Olmstead)* (2007) 40 Cal.4th 360, 374 (California Supreme Court stating that "[o]ur discovery statute recognizes that 'the identity and location of persons having [discoverable] knowledge' are proper subjects of civil discovery"); see also *Williams v. Super. Ct. (Marshalls of CA, LLC)* (2017) 3 Cal.5th 531, 541 (California Supreme Court stating that "[t]his right [to discovery] includes an entitlement to learn 'the identity and location of persons having knowledge of any discoverable matter'"); see also *Puerto v. Super. Ct. (Wild Oats Markets, Inc.)* (2008) 158 Cal.App.4th 1242, 1249-1250 (stating that "[t]he disclosure of the names and addresses of potential witnesses is a routine and essential part of pretrial discovery… [o]ne glance at the form interrogatories approved by the Judicial Council, particularly the interrogatories in the 12.0 series, demonstrates how fundamentally routine the discovery of witness contact information is… [t]hese standard form interrogatories request the names, addresses, and telephone numbers of witnesses to the relevant incident, persons possessing tangible objects relevant to the investigation, and persons who have been interviewed or given statements about the incident, or made a report or investigation of the incident"); see also *Ross v. Super. Ct. (County of Riverside)* (2022) 77 Cal.App.5th 667, 686 (stating that "one valid purpose of discovery is to "'obtain[] … the identity and location of persons having knowledge of any discoverable matter"); see also *Gonzalez v. Super. Ct. (City of San Fernando)* (1995) 33 Cal.App.4th 1539, 1546 (stating that "[d]iscovery may be obtained of the identity and location of persons having knowledge of any discoverable matter… [m]ore specifically, the identity of witnesses must be disclosed if the witness has 'knowledge of any discoverable matter,' including fact, opinion and any information regarding the credibility of a witness").)

"A party may use interrogatories to request the identity and location of those with knowledge of discoverable matters." (*Williams*, *supra*, 3 Cal.5th 531, 541.) "To show an interrogatory seeks relevant, discoverable information 'is not the burden of [the party propounding interrogatories].'" (*Id*.) As a litigant, it is entitled to demand answers to its interrogatories, as a matter of right, and without a prior showing, unless the party on whom those interrogatories are served objects and shows cause why the questions are not within the purview of the code section." (*Id*.) "While the party propounding interrogatories may have the

burden of filing a motion to compel if it finds the answers it receives unsatisfactory, the burden of justifying any objection and failure to respond remains at all times with the party resisting an interrogatory." (*Id*.) In *Williams*, *supra*, the plaintiff sought names, addresses, telephone numbers and company employment information for 16,500 employees who worked for the defendant employer Marshalls. (*Id*. at p.539.) As in the instant SAC, Williams asserted violations of the Labor Code against Marshalls and that there was a "practice of requiring employees, including Plaintiff… to commit[] Labor Code violations, pursuant to systematic companywide policies, against Williams and others…." (*Id*. at p.543.) The defendant employer likewise objected on the basis of overbreadth and relevance, arguing that the plaintiff was requesting contact information for employees not sharing his position, job classification and store location, and the trial court sustained the geographic objection. (*Id*. at p.542.) The California Supreme Court noted that Marshall's objection of overbreadth "turns in the first instance on whether the request for it is 'reasonably calculated to lead to the discovery of admissible evidence… [and u]nder the Legislature's 'very liberal and flexible standard of relevancy,' any 'doubts as to relevance should generally be resolved in favor of permitting discovery.'" (*Id*.) Citing *Puerto*, *supra*, 158 Cal.App.4th 1242, the *Williams* court reversed the trial court's decision as to the overbreadth objection, stating that:

> As the court explained, "[c]entral to the discovery process is the identification of potential witnesses. 'The disclosure of the names and addresses of potential witnesses is a routine and essential part of pretrial discovery.' [Citation.] Indeed, our discovery system is founded on the understanding that parties use discovery to obtain names and contact information for possible witnesses as the starting point for further investigations…." (*Id*. at pp. 1249–1250; see, e.g., *Crab Addison, Inc. v. Superior Court* (2008) 169 Cal.App.4th 958, 967 [87 Cal. Rptr. 3d 400] [trial court properly ordered disclosure of contact information for defendant's California employees; only in "'unusual circumstances'" will such discovery be restricted].)

(*Williams*, *supra*, 3 Cal.5th at pp.543-544, citing *Crab Addison, Inc. v. Superior Court* (2008) 169 Cal.App.4th 958, 967 (*Williams* court stating that the "trial court [in *Crab Addison*] properly ordered disclosure of contact information for defendant's California employees; only in 'unusual circumstances' will such discovery be restricted).)

Here, as in *Puerto* and *Williams*, Plaintiffs seek names and contact information of potential witnesses regarding XPeng's allegedly unfair business practice of offering a grant of shares and violation of the Labor Code as well as the alleged fraud and concealment of information regarding that offer.

XMotors argues that "this is not a 'pattern and practice' discrimination case, and any purported evidence of XMotors breaching its contracts with others would be inadmissible to prove that XMotors breached the alleged contracts with Plaintiffs." (Opposition, pp.6:21-27, 7:1-8.) However, as the Sixth District has stated, "[a]dmissibility is not the test and information unless privileged, is discoverable if it might reasonably lead to admissible evidence." (*Haniff*, *supra*, 9 Cal.App.5th at p.205.) Moreover, this case does not merely involve a breach of contract as XMotors suggests. XMotors is correct that this is not a discrimination case, but that does not preclude the possibility of an unfair, unlawful or

fraudulent business practice as Plaintiffs have alleged. XMotors instead cite to federal authority from other states which are not relevant since they only pertain to discrimination cases.

XMotors assert that "Plaintiffs have offered no plausible reasons for why the identity and contact information of other employees is discoverable." (Opposition, p.7:7-8.) As previously stated, the California Supreme Court has stated that "the burden of justifying any objection and failure to respond remains at all times with the party resisting an interrogatory." (*Williams*, *supra*, 3 Cal.5th 531, 541.) Moreover, Plaintiffs' reasons for the discovery of the identity and contact information of other employees is supported by the previously cited California case authority.

XMotors also argues that *Puerto* "is not analogous in the least… [because] XMotors has not identified the actual or prospective employees as percipient witnesses in this case." (Opposition, pp.8:26-28, 9:1-23 (also stating that "unlike *Puerto*, this is not a case where a party identifies relevant percipient witnesses to the litigation it has access to and then refuse to provide their contact information as expressly required by Form Interrogatory 12.1").) Clearly, XMotors misunderstands *Puerto*. The *Puerto* court specifically noted that "[c]entral to the discovery process is the identification of potential witnesses." (*Puerto*, *supra*, 158 Cal.App.4th at p.1249.) "The disclosure of the names and addresses of potential witnesses is a routine and essential part of pretrial discovery." (*Id*. at pp.1249-1250.) XMotors' argument that it may obstruct Plaintiffs' right of discovery of the identity and contact information of potential witnesses by simply refusing to identify those witnesses is disingenuous. XMotors further argues that its "position is that whether employees received stock options has no relevance whatsoever to Plaintiffs' claims." (Opposition, p.9:19-20.) However, for reasons already stated, XMotors is incorrect; moreover, XMotors' unsupported desire as to the boundaries relevance do not have a bearing on the scope of relevance as defined by the Civil Discovery Act.

XMotors fails to justify its objection based on relevance and overbreadth, instead asserting without citation to any authority that SI 5 "seeks information that is not likely to lead to discoverable material … as a matter of logic and common sense…." (Opposition, p.6:1-2.) As XMotors fails to justify the objections based on relevance and overbreadth, the objections are hereby OVERRULED.

<u>XMotors' objection to SI 5 on the ground of the right of privacy is also OVERRULED.</u>

As XMotors acknowledges, the California Supreme Court has indicated that in "assessing claims of invasion of privacy under the state Constitution… the claimant must possess a 'legally protected privacy interest'… the privacy claimant must possess a reasonable expectation of privacy under the particular circumstances… the invasion of privacy complained of must be "serious" in nature, scope, and actual or potential impact to constitute an 'egregious' breach of social norms… [and] that interest must be measured against other competing or countervailing interests in a 'balancing test.'" (*Pioneer Electronics*, *supra*, 40 Cal.4th at pp.370-371.)

XMotors asserts that "there is no question that XMotors job applicants have an expectation of privacy… [as p]rospective and actual XMotors employees—many of whom were likely interviewing while they were employed by another employer—clearly had an

expectation that their identities and contact information the fact that they were interviewing for new employment to be kept confidential." (Opposition, p.6:3-7.) In support of this assertion, XMotors only cites to federal case authority which is not binding. (See *Haynes v. EMC Mortgage Corp*. (2012) 205 Cal.App.4th 329, 335 (stating that "[w]e, of course, are not bound by federal decisions on matters of state law"); see also *M'Guinness v. Johnson* (2015) 243 Cal.App.4th 602, 625 (stating same); see also *Gregg v. Uber Technologies, Inc*. (2023) 89 Cal.App.5th 786, 804, fn. 6 (stating that "Uber also cites two federal district court decisions, which are not binding upon this court"); see also *Metalclad Corp. v. Ventana Environmental Organizational Partnership* (2003) 109 Cal.App.4th 1705, 1715 (stating that "the decisions of the lower federal courts are not binding precedent [citation], particularly on issues of state law"); see also *Satyadi v. West Contra Costa Healthcare Dist*. (2014) 232 Cal.App.4th 1022, 1031 (stating that "the opinions of lower federal courts are not binding on us, particularly on issues of California law").)

While XMotors fails to proffer any case authority to support its assertion that there is a legally protected privacy interest, and while XMotors asserts that it is "not analogous in the least," the *Puerto* court indicated that "it is most probable that the employees gave their addresses and telephone numbers to their employer with the expectation that they would not be divulged externally except as required to governmental agencies or to benefits providers… a reasonable expectation in light of employers' usual confidentiality customs and practices." (*Puerto*, *supra*, 158 Cal.App.4th at p.1252.) Thus, there is a legally protected privacy interest and there is a reasonable expectation of privacy under the particular circumstances. Thus, the Court must determine whether, balanced against other competing or countervailing interests, this invasion of privacy is "serious" in nature, scope, and actual or potential impact to constitute an 'egregious' breach of social norms. In *Puerto*, *supra*, the court determined that the same sought-after information "while personal, is not particularly sensitive, as it is merely contact information, not medical or financial details, political affiliations, sexual relationships, or personnel information." (*Id*. at p.1253 (also stating that "[t]his is basic civil discovery").) "As the Supreme Court pointed out in *Pioneer*, the information sought by petitioners here—the location of witnesses—is generally discoverable, and it is neither unduly personal nor overly intrusive." (*Id*. at p.1254.)

Moreover, in balancing Plaintiffs' right to access relevant information necessary to pursue the litigation, the "general public interest in 'facilitating the ascertainment of truth in connection with legal proceedings' and in obtaining just results in litigation' (*id*. at p,1256), with the proffered privacy interest in information that is "not particularly sensitive," the balancing weighs in favor of Plaintiffs' right to discovery. This information is directly relevant to their allegations of an unfair, fraudulent, and unlawful business practice. (See *Britt v. Super. Ct. (San Diego Unified Port Dist.)* (1978) 20 Cal.3d 844, 859 (stating that "[w]hen such associational activities are directly relevant to the plaintiff's claim, and disclosure of the plaintiff's affiliations is essential to the fair resolution of the lawsuit, a trial court may properly compel such disclosure").) Moreover, the parties have entered into a protective order which was filed on January 11, 2023. (See *Pioneer*, *supra*, 40 Cal.4th at p.371 (stating that "[p]rotective measures, safeguards and other alternatives may minimize the privacy intrusion").) Therefore, even if the invasion of privacy was considered "serious" in nature, scope and actual or potential impact to constitute an "egregious" breach of social norms, in balancing other interests, the information is discoverable.

XMotors' objection to SI 5 on the ground of the right of privacy is OVERRULED.

Plaintiffs' motion to compel a further response is GRANTED

For reasons stated above, XMotors' objections to SI 5 are OVERRULED, and Plaintiffs' motion to compel a further response to SI 5 is GRANTED.

XMotors shall provide a further, verified, code-compliant response to SI 5 without objections within 20 calendar days of this order.

XMotors' request for monetary sanctions

In opposition to the motion, XMotors requests monetary sanctions in the amount of $5,480. XMotors did not prevail in opposing the motion and does not identify against whom the sanctions should be awarded. (See Code Civ. Proc. § 2023.040 (stating that "[a] request for a sanction, shall, in the notice of motion, identify every person, party, and attorney against whom the sanction is sought").) XMotors' request for monetary sanctions is DENIED.

Plaintiffs' request for monetary sanctions

In connection with their motion, Plaintiffs request monetary sanctions against XMotors in the amount of $3,435. The request is code-compliant and Plaintiffs prevailed on their motion. However, Plaintiffs' attorney seeks 4.5 hours for the motion, $60 for the filing fee and an additional 3 hours to review the opposition and draft the reply brief. The Court does not award anticipatory costs. Accordingly, Plaintiffs' request for monetary sanctions is GRANTED in part in the amount of $2,085 (($450 x 4.5 hours) + $60 filing fee).

Conclusion

XMotors' objections to SI 5 are OVERRULED, and Plaintiffs' motion to compel a further response to SI 5 is GRANTED.

XMotors shall provide a further, verified, code-compliant response to SI 5 without objections within 20 calendar days of this order.

XMotors' request for monetary sanctions is DENIED.

Plaintiffs' request for monetary sanctions is GRANTED in part. Counsel for XMotors shall pay counsel for Plaintiffs $2,085.00 within 10 calendar days of this Order.

The Court will prepare the Order.

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Calendar Line 8
Case Name: Powers v. Citibank
Case No.: 24CV429325

Defendant Citibank brings this motion to compel arbitration. Plaintiff opposes the motion on the basis that the arbitration clause is both procedurally and substantively unconscionable. Plaintiff does not dispute that there is a valid arbitration clause or that the dispute is within the scope of the arbitration agreement.

Legal Standard

A heavy presumption weighs the scales in favor of arbitrability, *Cione v. Foresters Equity Servs., Inc*. (1997) 58 Ca1.App.4th 625, 642, and courts will indulge every intendment to give effect to arbitration proceedings, *Powers v. Dickson, Carlson & Campillo* (1997) 54 Cal.App.4th 1102, 1109. The person claiming unconscionability as a defense has the burden of proof on these issues. *Sonic-Calabasas A, Inc. v. Moreno* (2013) 57 Cal.4th 1109, 1148-49. If a court finds as a matter of law that a contract or any clause is unconscionable, the court has the power to refuse to enforce the contract or clause or may limit the application of the unconscionable clause to avoid an unconscionable result. Cal. Civ. Code § 1670.5(a).

Both procedural and substantive unconscionability must be present, but not in the same degree. This sliding scale approach means that the more substantively oppressive the agreement is, less evidence of procedural unconscionability is needed, and vice versa. *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 114.

Procedural Unconscionability

The procedural element tests the circumstances of contract negotiation and formation and focuses on oppression or surprise due to unequal bargaining power. *Armendariz*, 24 Cal.4th at 114. Oppression occurs when a contract involves lack of negotiation and meaningful choice, and surprise occurs where the alleged unconscionable arbitration provision is hidden within a printed form. *Pinnacle Museum Tower Assn. v. Pinnacle Mkt. Dev. (US), LLC* (2012) 55 Cal.4th 223, 247. For example, the court in *Serafin* stated that oppression exists in adhesion contracts when the stronger party drafts the contract and presents it to the weaker party on a "take-it-or-leave-it basis." *Serafin v. Balco Properties Ltd*., LLC (2015) 235 Cal.App.4th 165, 179. Here, Plaintiff claims that this was the case and that there was no opportunity for negotiation or revision. But, as Plaintiff concedes, the agreement allows for the Plaintiff to reject the arbitration provision by sending a written rejection notice within 45 days. (See Decl. of Delage, Ex. A, p.9). As such, it was not a take-it-or-leave-it provision. That Plaintiff may have failed to read the entire agreement is not Defendant's doing and Plaintiff cites to nothing to suggest that Defendant did not allow Plaintiff time to fully review the agreement or anything else that would excuse Plaintiff from the clear and unambiguous language of the agreement.

Plaintiff also claims unfair surprise because she was unsophisticated and the arbitration clause was not explained to her. The provision explains how arbitration works. It is not in small print, is not hidden in the agreement, and is written in clear language. There is no unfair surprise in the arbitration agreement.

Plaintiff fails to show the agreement is procedurally unconscionable.

Substantive Unconscionability

Plaintiff next argues that the arbitration provision is substantively unconscionable because it requires the application of Delaware law. (See Motion p6). Defendant contends that it is South Dakota law that applies. (See Reply p4.) Regardless, the statement of the applicable law is a choice of law provision, and is not part of the arbitration clause. As Defendant correctly points out, whether the case were in arbitration or in court, the enforceability of the choice of law provision may be asserted and it is a different analysis from whether an arbitration clause is enforceable. Even if the arbitration clause were not enforced, the choice of law provision would remain. As such, the choice of law provision is not relevant to the question of the enforceability of the arbitration clause and does not render it substantively unconscionable.

Conclusion

Because Plaintiff cannot show either procedural or substantive unconscionability. The motion to compel arbitration is GRANTED. Defendant shall submit the final order within 10 days.

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