SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 20, Honorable Socrates Peter Manoukian, Presiding

Courtroom Clerk: Hien-Trang Tran-Thien
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"Every case is important" . . . . . "No case is more important than any other."—United States District Judge Edward Weinfeld (https://www.nytimes.com/1988/01/18/obituaries/judge-edward-weinfeld-86-dies-on-us-bench-nearly-4-decades.html)

"The Opposing Counsel on the Second-Biggest Case of Your Life Will Be the Trial Judge on the Biggest Case of Your Life."—Common Wisdom.

As Shakespeare observed, it is not uncommon for legal adversaries to "strive mightily, but eat and drink as friends." (Shakespeare, The Taming of the Shrew, act I, scene ii.)" (*Gregori v. Bank of America* (1989) 207 Cal.App.3d 291, 309.)

Counsel is duty-bound to know the rules of civil procedure. (See *Ten Eyck v. Industrial Forklifts Co.* (1989) 216 Cal.App.3d 540, 545.) The rules of civil procedure must apply equally to parties represented by counsel and those who forgo attorney representation. (*McClain v. Kissler* (2019) 39 Cal.App.5th 399.)

By Standing Order of this Court, all parties appearing in this Court are expected to comply with the Code of Professionalism adopted by the Santa Clara County Bar Association: https://www.sccba.com/code-of-professional-conduct/

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DATE: Thursday, 02 May 2024
TIME: 9:00 A.M.

This Department uses Zoom for Law and Motion and for Case Management Calendars. Please use the Zoom link below.

This Court expects all counsel and litigants to comply with the Tentative Rulings Procedures that are outlined in Local Civil Rule 8(E) and ***California Rules of Court***, rule 3.1308. If the Court has not directed argument, oral argument must be permitted only if a party notifies all other parties and the Court at (408) 808-6856 before 4:00 p.m. on the court day before the hearing of the party's intention to appear. A party must notify all other parties by telephone or in person. A failure to timely notify this Court and/or the opposing parties may result in the tentative ruling being the final order in the matter.

You may use these links for Case Management Conferences and Trial Setting Conferences without Court permission. Informal Discovery Conferences and appearances on Ex Parte applications will be set on Order by the Court.

Join Zoom Meeting
https://scu.zoom.us/j/96144427712?pwd=cW1JYmg5dTdsc3NKNFBpSjlEam5xUT09
Meeting ID: 961 4442 7712
Password: 017350

Join by phone:
+1 (669) 900-6833
Meeting ID: 961 4442 7712

One tap mobile
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By appearing in this Department, whether in-person or by remote video platform, you represent that you have read the protocols of this Department, that you understand them, and that you will comply with them.

APPEARANCES.

Appearances are usually held on the Zoom virtual platform. However, we are currently allowing in-court appearances as well. If you do intend to appear in person, please advise us when you call to contest the tentative ruling so we can give you current instructions as to how to enter the building. If the doors to the Old Courthouse are locked, please see the deputies at the metal detector next door at 191 North First Street.

Whether appearing in person or on a virtual platform, the usual custom and practices of decorum and attire apply. (See ***Jensen v. Superior Court (San Diego)*** (1984) 154 Cal.App.3d 533.). Counsel should use good quality equipment and with sufficient bandwith. Cellphones are very low quality in using a virtual platform. Please use the video function when accessing the Zoom platform. The Court expects to see the faces of the parties appearing on a virtual platform as opposed to listening to a disembodied voice.

For new Rules of Court concerning remote hearings and appearances, please review California ***Rules of Court***, rule 3.672.

"A person's name is to him or her the sweetest and most important sound in any language."—Dale Carnegie. All Courts of California celebrate the diversity of the attorneys and the litigants who appear in our Courts. Do not hesitate to correct the Court or Court Staff concerning the pronunciation of any name or how anyone prefers to be addressed. As this Court is fond of saying, "with a name like mine, I try to be careful how I pronounce the names of others." Please inform the Court how you, or if your client is with you, you and your client prefer to be introduced. The Court encourages the use of diacritical marks, multiple surnames and the like for the names of attorneys, litigants and in court papers. You might also try www.pronouncenames.com but that site mispronounces my name.

Please notify this Court immediately if the matter will not be heard on the scheduled date. ***California Rules of Court***, rule 3.1304(b). If a party fails to appear at a law and motion hearing without having given notice, this Court may take the matter off calendar, to be reset only upon motion, or may rule on the matter. ***California Rules of Court***, rule 3.1304(d). A party may give notice that he or she will not appear at a law and motion hearing and submit the matter without an appearance unless this Court orders otherwise. This Court will rule on the motion as if the party had appeared. California Rules of Court, rule 3.1304(c). Any uncontested matter or matters to which stipulations have been reached can be processed through the Clerk in the usual manner. Please include a proposed order.

All proposed orders and papers should be submitted to this Department's e-filing queue. Do not send documents to the Department email unless directed to do so.

While the Court will still allow physical appearances, all litigants are encouraged to use the Zoom platform for Law & Motion appearances and Case Management Conferences. Use of other virtual platform devices will make it difficult for all parties fully to participate in the hearings. Please note the requirement of entering a password (highlighted above.) As for personal appearances, protocols concerning social distancing and facial coverings in compliance with the directives of the Public Health Officer will be enforced. Currently, facemasks are not required in all courthouses. If you appear in person and do wear a mask, it will be helpful if you wear a disposable paper mask while using the courtroom microphones so that your voice will not be muffled.

Individuals who wish to access the Courthouse are advised to bring a plastic bag within which to place any personal items that are to go through the metal detector located at the doorway to the courthouse.

Sign-ins will begin at about 8:30 AM. Court staff will assist you when you sign in. If you are using the Zoom virtual platform, it will helpful if you "rename" yourself as follows: in the upper right corner of the screen with your name you will see a blue box with three horizontal dots. Click on that and then click on the "rename" feature. You may type your name as: Line #/name/party. If you are a member of the public who wishes to view the Zoom session and remain anonymous, you may simply sign in as "Public."

CIVILITY.

In the 50 years that this Judge has been involved with the legal profession, the discussion of the decline in civility in the legal profession has always been one of the top topics of continuing education classes.

This Court is aware of a study being undertaken led by Justice Brian Currey and involving various lawyer groups to redefine rules of civility. This Judge has told Justice Currey that the lack of civility is due more to the inability or unwillingness of judicial officers to enforce the existing rules.

The parties are forewarned that this Court may consider the imposition of sanctions against the party or attorney who engages in disruptive and discourteous behavior during the pendency of this litigation.

COURT REPORTERS.

This session will not be recorded. No electronic recordings, video, still photography or audio capture of this live stream is allowed without the expressed, written permission of the Superior Court of California, County of Santa Clara. State and Local Court rules prohibit photographing or recording of court proceedings whether in the courtroom or while listening on the Public Access Line or other virtual platform, without a Court Order. See Local General Rule 2(A) and 2(B); ***California Rules of Court***, rule 1.150.

This Court no longer provides for Court Reporters in civil actions except in limited circumstances. If you wish to arrange for a court reporter, please use Local Form #CV-5100. All reporters are encouraged to work from a remote location. Please inform this Court if any reporter wishes to work in the courtroom. This Court will approve all requests to bring a court reporter. Counsel should meet and confer on the use of a court reporter so that only one reporter appears and serves as the official reporter for that hearing.

PROTOCOLS DURING THE HEARINGS.

During the calling of any hearing, this Court has found that the Zoom video platform works very well. But whether using Zoom or any telephone, it is preferable to use a landline if possible. IT IS ABSOLUTELY NECESSARY FOR ALL INDIVIDUALS TO SPEAK SLOWLY. Plaintiff should speak first, followed by any other person. All persons should spell their names for the benefit of Court Staff. Please do not use any hands-free mode if at all possible. Headsets or earbuds of good quality will be of great assistance to minimize feedback and distortion.

The Court will prepare the Final Order unless stated otherwise below or at the hearing. Counsel are to comply with ***California Rules of Court***, rule 3.1312.

TROUBLESHOOTING TENTATIVE RULINGS.

To access a tentative ruling, move your cursor over the line number, hold down the "Control" key and click. If you see last week's tentative rulings, you have checked prior to the posting of the current week's tentative rulings. You will need to either "REFRESH" or "QUIT" your browser and reopen it. Another suggestion is to "clean the cache" of your browser. Finally, you may have to switch browsers. If you fail to do any of these, your browser may pull up old information from old cookies even after the tentative rulings have been posted.

This Court's tentative ruling is just that—tentative. Trial courts are not bound by their tentative rulings, which are superseded by the final order. (See *Faulkinbury v. Boyd & Associates,* Order On Defendant S1 51, LLC's Motion To Strike

***Inc.* (2010) 185 Cal.App.4th 1363, 1374-1375.) The tentative ruling allows a party to focus his or her arguments at a subsequent hearing and to attempt to convince the Court the tentative should or should not become the Court's final order. (*Cowan v. Krayzman* (2011) 196 Cal.App.4th 907, 917.) If you wish to challenge a tentative ruling, please refer to a specific portion of the tentative ruling to which you disagree.**

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 1	19CV345499	Sergev Firsov vs Yevgeniy Babichev et al	**Order of Examination of Sergey Firsov.** Having been declared a vexatious litigant, Mr. Firsov is subject to a prefiling order. On 13 February 2024, Mr. Firsov filed a challenge to this Department pursuant to ***Code of Civil Procedure***, § 170.1 etc. that challenge was stricken per order filed on 16 February 2024. On 12 March 2024, this Court continued the hearing to today's date. Unless the parties agree otherwise, both parties are to appear in Department 20 at 9:00 AM via the Zoom virtual platform. The appropriate oath will be administered by the Court and the parties may conduct the examination off-line and report back to the Court. The parties may meet and confer on how to conduct the examination remotely. NO FORMAL TENTATIVE RULING.
LINE 2	19CV345499	Sergev Firsov vs Yevgeniy Babichev et al	**Order of Examination of Third-Party Kateryna Pomogaibo.** SEE LINE #1.
LINE 3	22CV393277	Second Osborn, LLC vs Le Garden HB, LLC.	**Motion of Third-Party Bank of Stockton for Protective Order and Request for Monetary Sanctions.** This Court has executed a proposed stipulation and protective order. Is this motion MOOT? NO TENTATIVE RULING.
LINE 4	23CV416458	Linda Thy et al vs S1 51, LLC. et al	**Motion of Defendant S1 51, LLC To Strike Portions of Plaintiff's Complaint.** The motion is DENIED. SEE ATTACHED TENTATIVE RULING.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 5	23CV427952	Anil Godbole vs Satish Soman	**Demurrer of Defendant to Plaintiff's Complaint.** No opposition papers have been filed. "A failure to oppose a motion may be deemed a consent to the granting of the motion." (California ***Rules of Court***, rule 8.54(c)(pertaining to appellate Rules)] and leads to the presumption that there are no meritorious arguments. (see ***Sexton v. Superior Court*** (1997) 58 Cal.App.4th 1403, 1410.) The demurrer is SUSTAINED with 20 days leave to amend. NO FORMAL TENTATIVE RULING.
LINE 6	18CV326154	Richard Soukoulis vs Diana Southern et al	**Motion of Plaintiffs/Cross-Defendants to Amend the Verified Answer to the Southern's Verified Cross-Complaint.** On 22 April 2024, the Sutherlands filed a dismissal with prejudice of their cross-complaint. Is the motion MOOT? NO TENTATIVE RULING.
LINE 7	22CV393229	First Street Holdings, LLC et al vs Ronald Werner	**Motion of Defendant/Cross-Complainant Timothy Bumb for Summary Judgment/Adjudication on the Cross-Complaint.** NO TENTATIVE RULING. The parties are invited to appear either in the Courtroom or on the Zoom virtual platform to argue the matter on the merits.
LINE 8	22CV393229	First Street Holdings, LLC et al vs Ronald Werner	**Motion of Defendant/Cross-Complainant Timothy Bumb for Summary Judgment/Adjudication on the First Cause of Action for Declaratory Relief.** NO TENTATIVE RULING. The parties are invited to appear either in the Courtroom or on the Zoom virtual platform to argue the matter on the merits.
LINE 9	22CV393229	First Street Holdings, LLC et al vs Ronald Werner	**Motion of Plaintiff to Compel Defendants to Provide Further Responses to and Compliance with Subpoenas to Richard Patch andCoblenz Patch Duffy & Bass LLP for Testimony and for Documents.** NO TENTATIVE RULING. The parties are invited to appear either in the Courtroom or on the Zoom virtual platform to argue the matter on the merits.
LINE 10	22CV397119	Sutter's Place, Inc. vs S.J. Bayshore Development, LLC	**Motion of Defendant SJ Bayshore Development LLC to Compel Plaintiff to Provide Further Responses to and Compliance with Subpoenas to Richard Patch andCoblenz Patch Duffy & Bass LLP for Testimony and for Documents.** NO TENTATIVE RULING. The parties are invited to appear either in the Courtroom or on the Zoom virtual platform to argue the matter on the merits.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 11	22CV397265	Manuel Villareal; Claudina Villareal vs Home Depot U.S.A., Inc.	**Motion of Defendant Home Depot USA, Inc. to Compel Discovery Responses and for Monetary Sanctions.** Continued by stipulation and order from 18 April 2024. No opposition papers have been filed. "A failure to oppose a motion may be deemed a consent to the granting of the motion." (California ***Rules of Court***, rule 8.54(c)(pertaining to appellate Rules)] and leads to the presumption that there are no meritorious arguments. (see ***Sexton v. Superior Court*** (1997) 58 Cal.App.4th 1403, 1410.) This Court further notes that on 06 March 2024 plaintiff substituted new counsel. The parties should use the Tentative Ruling Protocol to advise this Court that they wish to proceed. NO TENTATIVE RULING. The parties are invited to appear either in the Courtroom or on the Zoom virtual platform to argue the matter on the merits. Please use the Tentative Ruling Protocol to indicate that you will appear and how you wish to appear.
LINE 12	23CV415803	Antonio Pina vs James Lau, MD et al	**Motion of Defendants Dr. Lau and Stanford Health Care to Compel Plaintiff to Provide Further Responses to Special Interrogatories, Set One, and Request for Monetary Sanctions.** The motion of defendant Dr. Lau and Stanford Health Care to compel plaintiff to further responses to Form Interrogatories is GRANTED in its entirety. The motion of defendant Dr. Lau to compel plaintiff to further responses to Special Interrogatories is GRANTED in its entirety. The motion of defendant Stanford Health Care to compel plaintiff to further responses to Special Interrogatories is GRANTED in its entirety. The motions of Dr. Lau and Stanford Health Care to compel plaintiff to provide further responses to Request for Admissions is GRANTED and DENIED as follows: The motion is GRANTED as to Request No. 4 and DENIED BUT MODIFIED as to Request No. 7. Code compliant responses are due within twenty days of the filing and service of this order. Plaintiff is to pay the sum of $4410.00 to plaintiff is to pay the sum of $4,410.00 to counsel for defendants within twenty days of the filing and service of this order. SEE ATTACHED TENTATIVE RULING.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 13	23CV415803	Antonio Pina vs James Lau, MD et al	**Motion of Defendant Stanford Health Care to Compel Plaintiff to Provide Further Responses to Special Interrogatories, Set One, and Request for Monetary Sanctions.** SEE LINE #12.
LINE 14	23CV415803	Antonio Pina vs James Lau, MD et al	**Motion of Defendants Dr. Lau and Stanford Health Care to Compel Plaintiff to Provide Further Responses to Requests for Production of Documents, Set One, and Request for Monetary Sanctions.** SEE LINE #12.
LINE 15	23CV415803	Antonio Pina vs James Lau, MD et al	**Motion of Defendants Dr. Lau and Stanford Health Care to Compel Plaintiff to Provide Further Responses to Form Interrogatories, Set One, and Request for Monetary Sanctions.** SEE LINE #12.
LINE 16	23CV418757	Jiayan Li et al vs Ting Hong et al	**Motion of Plaintiffs to Compel Defendant Morad Mahpour to Provide Discovery Responses.** This defendant contends that there is no privity of contract between plaintiffs and this defendant. Therefore, this defendant asks this Court to delay making any decision on discovery obligations until there has been a ruling on this defendant's demurrer, currently set for 06 June 2024. Ordinarily, the right to discovery generally does not depend on the status of the pleadings. Deficiencies in the pleadings do not affect either party's right to conduct discovery. (***Budget Finance Plan v. Superior Court*** (1973) 34 Cal.App.3d 794, 797; ***Mattco Forge, Inc. v. Arthur Young & Co.*** (1990) 223 Cal.App.3d 1429, 1436, fn. 3.) This Court believes it is practical to reset the hearing on this motion to 06 June 2024 to follow the pending demurrer. The request to continue the hearing to that date is GRANTED. NO FORMAL TENTATIVE RULING. NO TENTATIVE RULING. The parties are invited to appear either in the Courtroom or on the Zoom virtual platform to argue the matter on the merits. Please use the Tentative Ruling Protocol to advise this Court if you wish to appear and how you will appear.
LINE 17	\23CV421287	Mark Zanette vs Covenant Care California LLC; Covenant Care, LLC; Covenant Holdco, LLC.	**Petition of Defendants to Compel Arbitration.** The motion of defendants to compel contractual arbitration is GRANTED. SEE ATTACHED TENTATIVE RULING.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 18	23CV423546	Irina Buckvar; Owen Buckvar vs Bernard Buckvar as trustee etc.; Commissioner of Housing and Urban Development; Mortgage Electronic Registration Systems Inc. and Related Cross-Complaint.	**Motions of Plaintiffs for Partition and Interlocutory Judgment etc.** This Court believes that plaintiffs are entitled to bring the partition action and any issues of waiver and/or as estoppel or laches or any other equitable defense can be litigated in the partition action. Therefore, the motion is partially granted. However, the Court believes that because of the prima facie showing of equitable defenses, the issuance of an interlocutory judgment at this point is not appropriate. Counsel should meet and confer and agree upon a proper referee to conduct the partition evaluation. As for the discovery motions of the defendant, plaintiffs are ordered to provide code-compliant responses within 20 days of the filing and service of this order. The Court will deem any objections WAIVED except as to any response in which a privilege was asserted. If a privilege was asserted, plaintiffs must support it with an appropriate privilege log. The request of defendant for monetary sanctions is DENIED as this Court believes that the unavailability of the counsel for plaintiff due to a family emergency is credible. SEE ATTACHED TENTATIVE RULING.
LINE 19	23CV423546	Irina Buckvar; Owen Buckvar vs Bernard Buckvar as trustee etc.; Commissioner of Housing and Urban Development; Mortgage Electronic Registration Systems Inc. and Related Cross-Complaint.	**Motions of Plaintiffs for Partition and Interlock You Tory Judgment etc.** SEE LINE #18.
LINE 20	23CV423546	Irina Buckvar; Owen Buckvar vs Bernard Buckvar as trustee etc.; Commissioner of Housing and Urban Development; Mortgage Electronic Registration Systems Inc. and Related Cross-Complaint.	**Discovery Motions of Defendant.** SEE LINE #18.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 21	21CV378059	Michael Disanto vs Anthem Builders Inc.; Lockwood Hills Federal Credit Union; Jusitn Baker; Patricia Moskalik. and related cross-complaint.	**Motion of Defendant Anthem Builders To Continue Trial Date.; Motion of Defendant Anthem Builders, Inc. for Leave to File a Cross-Complaint against Ironwood Commercial Builders, Inc.** This section is set for trial on 10 June 2024. Defendant Anthem Builders seeks to continue the trial date for at least three months. Plaintiff has settled with defendant Lockwood Hills Federal Credit Union. This action was filed on 23 February 2021. The Trial Court Delay Reduction Act mandates that 100% of civil cases should be resolved within two years of filing. No party has filed opposition to the motion. On the order of this Court denying the ex parte application to continue the trial and set this matter for hearing, this Court indicated it would ask questions about when Defendant Anthem Builders learned the identity of Ironwood Commercial Builders, Inc. the proposed new party who performed some type of services involving sheet rock. This Court intends to DENY the motion. The motion of defendant Anthem Builders, Inc. for Leave to file a Cross-Complaint against Ironwood Commercial Builders, Inc. is GRANTED. Counsel for Anthem Builders, Inc. should submit the proposed cross-complaint to the clerk via the e-filing queue and then serve a file-endorse copy on Cross-Defendant, who will then have 20 days leave within which to RESPOND. NO FORMAL TENTATIVE RULING.
LINE 22	22CV407085	Fidelity National Title Company vs Juan Flores et al	**Motion of Plaintiff Fidelity National Title Company for Discharge and for Reasonable Attorneys Fees.** No opposition papers have been filed. "A failure to oppose a motion may be deemed a consent to the granting of the motion." (California ***Rules of Court***, rule 8.54(c)(pertaining to appellate Rules)] and leads to the presumption that there are no meritorious arguments. (see ***Sexton v. Superior Court*** (1997) 58 Cal.App.4th 1403, 1410.) On the merits, the motion is GRANTED in its entirety. Counsel for plaintiff is to prepare notice of entry of this order. NO FORMAL TENTATIVE RULING.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 23	23CV426329	Michael Merino vs Leenette Merino; Dorothy Boakye-Donkor; Rattana Kim.	**Motion of Defendants for Trial Preference.** This current motion is made pursuant to ***Code of Civil Procedure***, §§ 1060 and 1062.3 as defendants claim that this declaratory relief action is entitled to trial preference. This Court wishes to advise the parties that it does know the Balabanian family and that Nanor Balabanian was an intern for this Judge approximately 10 years ago. NO TENTATIVE RULING.
LINE 24	19CV355878	Harper Athanassious et al vs Alan Schroeder, MD et al	**Compromise of Minor's Claim.** Due to the seriousness of the injuries here, this Court would like to set a special hearing. Counsel should appear on the virtual platform and select a date later this week or next week in the afternoon. This Court is also interested in learning how the attorney's fees were calculated in this matter. NO TENTATIVE RULING.
LINE 25	20CV372277	John Doe vs San Jose Unified School District	**Compromise of Minor's Claim.** Due to the seriousness of the injuries here, this Court would like to set a special hearing. Counsel should appear on the virtual platform and select a date later this week or next week in the afternoon. This Court is also interested in learning how the attorney's fees were calculated in this matter. NO TENTATIVE RULING.
LINE 26			SEE ATTACHED TENTATIVE RULING.
LINE 27			SEE ATTACHED TENTATIVE RULING.
LINE 28			SEE ATTACHED TENTATIVE RULING.
LINE 29			SEE ATTACHED TENTATIVE RULING.
LINE 30			SEE ATTACHED TENTATIVE RULING.

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Calendar Line 4

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

DEPARTMENT 20

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(For Clerk's Use Only)

CASE NO.: 23CV416458 **Linda Thy, et al., v. S1 51, LLC. et al.**
DATE: 2 May 2024 **TIME: 9:00 am** **LINE NUMBER: 04**

This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 20 in the Old Courthouse, 2nd Floor, 161 North First Street, San Jose. Any party opposing the tentative ruling must call Department 20 at 408.808.6856 and the opposing party no later than 4:00 PM on 3 May 2024. Please specify the issue to be contested when calling the Court and Counsel.

Order On Defendant S1 51, LLC's Motion To Strike

I. Statement of Facts

This is a landlord-tenant matter. Plaintiffs Linda Thy and her minor child (collectively, "Plaintiffs") lived in a rental property located at 500 Race Street, San Jose, 95113 (the "Property"). (First Amended Complaint ("FAC"), ¶ 1.) Defendants S1 51, LLC ("Owner") and Greystar California, Inc. ("Greystar") (collectively, "Defendants") are the legal owners and/or companies managing the Property. (*Id*., ¶¶ 17-18.)

In or around October 2022, plaintiff Thy entered into a rental agreement for an apartment at the Property. (FAC, ¶¶ 14, 27, Ex. A.) On or about 10 October 2022, after they began sleeping in the subject apartment, Plaintiffs noticed bite marks on their bodies. (*Id*., ¶ 30.) Upon learning that the bite marks could have been from bedbugs, Thy immediately notified "Rudy," the on-site manager, that there was a bedbug infestation in the apartment. (*Id*., ¶ 34.)

Through their agents and representatives, Defendants told Thy on multiple occasions that they would have the apartment inspected for pests. (FAC, ¶¶ 35-37.) Defendants told Thy that she would be responsible for the cost of a canine inspection ($300.00). (*Id*., ¶ 40.) Thy provided Defendants with photos of bedbugs and bedbug bites. (*Id*., ¶¶ 48-49.) Defendants failed to remediate the bedbug issue for an extended period until Plaintiffs were forced to vacate the Property. (*Id*., ¶¶ 44-54.) Despite Plaintiffs' requests, Defendants have not made an offer of reimbursement or relocation expenses. (*Id*., ¶ 56.)

Defendants were aware of a bedbug infestation in the Property for an extended period before October 2022. (FAC, ¶ 57.[1]) Despite this, Defendants failed to abate the bedbug problem or provide Plaintiffs with notice of it. (*Ibid*.) Plaintiffs made monthly rental payments on time or made every reasonable effort to do so. (*Id*., ¶ 58.)

On May 17 2023,[2] Plaintiffs filed a complaint against Owner and Greystar, setting forth causes of action for:

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[1] "In Fact, Defendants aware of the bed bug infestation at the complex affected multiple units for extended period prior October 2022, as prior and current tenants' complaint about the bed bug infestation in their units, including but not limited to adjacent Units to the Plaintiffs' Unit. Defendants failed to abate the bed bug infestation from the Subject property and Subject Unit. Additionally, Defendants failed to provide notice to Plaintiffs about the widespread bed bug infestation at the apartment complex prior to October 2022. "

(1) Breach of Warranty of Habitability (Civil Code § 1941.1)

(2) Breach of Warranty of Habitability (Health & Safety Code § 17920.3)

(3) Negligence

(4) Nuisance

(5) Intentional Infliction of Emotional Distress

(6) Breach of Contract

(7) Unfair Business Practices (Violation of Business & Professions Code § 17200, et seq.)

(8) Fraudulent Concealment.

On 20 September 2023, Owner filed a demurrer to the fifth, seventh, and eighth causes of action of Plaintiffs' FAC, as well as a motion to strike portions of the complaint. On 9 January 2024, the court overruled Owner's demurrer in its entirety and granted the motion to strike in part and denied it in part.

On 18 January 2024, Plaintiffs filed the FAC against Owner and Greystar, setting forth causes of action for:

(1) Breach of Warranty of Habitability (Civil Code § 1941.1)

(2) Breach of Warranty of Habitability (Health & Safety Code § 17920.3)

(3) Negligence

(4) Nuisance

(5) Intentional Infliction of Emotional Distress

(6) Breach of Contract

(7) Unfair Business Practices (Violation of Business & Professions Code § 17200, et seq.)

(8) Fraudulent Concealment.

On 26 February 2024, Owner filed a motion to strike portions of Plaintiffs' FAC.

II. Motions to Strike in General

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

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

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[2] This Department intends to comply with the time requirements of the Trial Court Delay Reduction Act (Government Code, §§ 68600–68620). The California Rules of Court state that the goal of each trial court should be to manage limited and unlimited civil cases from filing so that 100 percent are disposed of within 24 months. (Ca. St. Civil Rules of Court, Rule 3.714(b)(1)(C) and (b)(2)(C).

"As with demurrers, the grounds for a motion to strike must appear on the face of the pleading under attack, or from matter which the court may judicially notice." (***Weil & Brown***, et al., California Practice Guide: Civil Procedure Before Trial (The Rutter Group 2023) ¶7:168, p. 7(l)-77 [citing ***Code Civ. Proc.***, § 437].) "Thus, for example, defendant cannot base a motion to strike the complaint on affidavits or declarations containing extrinsic evidence showing that the allegations are 'false' or 'sham.' Such challenges lie only if these defects appear on the face of the complaint, or from matters judicially noticeable." (***Id***. at ¶ 7:169, pp. 7(l)-75 to 7(l)-76.)

"In passing on the correctness of a ruling on a motion to strike, judges read allegations of a pleading subject to the motion to strike as a whole, all parts in their context, and assume their truth." (***Clauson v. Super. Ct.*** (1998) 67 Cal.App.4th 1253, 1255 (***Clauson***).) "In ruling on a motion to strike, courts do not read allegations in isolation." (***Ibid***.) Generally speaking, motions to strike are disfavored and cannot be used as a vehicle to accomplish a "line item veto" of allegations in a pleading. (***PH II, Inc. v. Superior Court*** (1995) 33 Cal.App.4th 1680, 1683.) However, where irrelevant allegations are "scandalous, abusive, disrespectful and contemptuous," they should be stricken from the pleading. (***In re Estate of Randall*** (1924) 194 Cal. 725, 731.)

III. Defendant S1 51, LLC's Motion to Strike

Defendant Owner, S1 51, LLC, moves to strike the FAC's allegations regarding punitive and exemplary damages.[3] (Notice of Motion and Motion to Strike Portions of Plaintiffs' First Amended Complaint ("Motion"), p. 4, lns. 18- 23.)

To properly plead a claim for punitive damages, a plaintiff must allege the defendant was guilty of malice, oppression, or fraud and the ultimate facts underlying such allegations. (***Civ. Code***, § 3294, subd. (a); ***Clauson v. Superior Court*** (1998) 67 Cal.App.4th 1253, 1255.)

In ***G.D. Searle & Co. v. Superior Court*** (1975) 49 Cal.App.3d 22, 26, the court wrote: "In California the award of damages by way of example or punishment is controlled by ***Civil Code*** section 3294, which authorizes that kind of award against a tortfeasor who has been guilty of 'oppression, fraud or malice, express or implied.'"

> Notwithstanding relaxed pleading criteria, certain tortious injuries demand firm allegations. Vague, conclusory allegations of fraud or falsity may not be rescued by the rule of liberal construction. When the plaintiff alleges an intentional wrong, a prayer for exemplary damage may be supported by pleading that the wrong was committed willfully or with a design to injure. When nondeliberate injury is charged, allegations that the defendant's conduct was wrongful, willful, wanton, reckless or unlawful do not support a claim for exemplary damages; such allegations do not charge malice.

(***Id***. at ¶ 29, internal citations omitted.)

"Punitive damage allegations cannot be pleaded generally. The complaint must allege facts showing statutory 'oppression,' 'malice' or 'fraud' [Citation]." (***Hanning III, Flahvan & Kelly***, California Practice Guide: Personal Injury (The Rutter Group 2020) ¶ 5:428, p. 5-225, citing Code Civ. Proc. § 3294, subd. (a).) "In determining whether a complaint states facts sufficient to sustain punitive damages, the allegations are to be read in context with

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[3] Owner requests that the Court take judicial notice of its tentative decision posted in reference to Owner's demurrer and motion to strike regarding the initial complaint. Owner makes this request within its Motion but not with a separately filed request for judicial notice. "Any request for judicial notice must be made in a separate document listing the specific items for which notice is requested and must comply with rule 3.1306 (c)." (Cal. ***Rules of Court***, Rule 3.1113, subd. (l).) The request is DENIED.

This Court would come to the same conclusion even if the request for judicial notice was considered on the merits. "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 Rec. & 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 n.2.) A previous tentative ruling by this Court is not particularly helpful in this situation.

other facts alleged in the complaint. [Citations.]" (***Ibid.***, citing: ***Monge v. Superior Court*** (1986) 176 Cal.App.3d 503; ***Perkins v. Superior Court*** (1981) 117 Cal.App.3d 1, 6 (***Perkins***).)

> When there is no evidence the defendant intended to harm the plaintiff, there must be evidence of conduct that is both will and despicable [to recover punitive damages]. Conscious disregard for the safety of another may be found where the defendant is aware of the probable dangerous consequences of his or her conduct and he or she willfully fails to avoid such consequences. "Despicable conduct" is conduct that is so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by ordinary decent people. Such conduct has been described as having the character of outrage frequently associated with crime.

(***Johnson & Johnson Talcum Powder Cases*** (2019) 37 Cal.App.5th 292, 332-333, internal punctuation and citations omitted.)

Malice is defined as, "conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights and safety of others." (***Civ. Code***, § 3294, subd. (c)(1).) "Oppression" is defined as "despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of the person's rights." (***Civ. Code***, § 3294, subd. (c)(2).) "Despicable conduct," in turn, has been described as conduct that is "so vile, base, contemptible, miserable, wretched, or loathsome that it would be looked down upon and despised by ordinary decent people." (***Mock v. Michigan Millers Mutual Ins. Co.*** (1992) 4 Cal.4th 306, 331.)

Here, Owner argues that the FAC's allegations in support of punitive damages are not sufficient under a clear and convincing evidence standard and that ratification of the on-site property manager's actions by Owner is not clearly set forth. (Motion, p. 6, lns. 15-16.) Owner also points out that the FAC repeatedly refers to the subject property as a hotel when it is in fact an apartment building. (*Id.*, pp. 6, ln. 25 – 7, ln. 4.)

According to Owner, the FAC lacks specific factual allegations supporting the prayer for punitive damages and instead relies solely upon conclusory, self-serving statements. (*Id.*, p. 9, lns. 26-27.) Owner asserts that because it is a corporate defendant, the FAC must allege wrongful conduct on the part of an officer, director, or managing agent. (*Id.*, p. 10, lns. 3-8.) According to Owner, the FAC here makes only vague reference to the on-site property manager being a managing agent and ratifying the offensive acts. (*Id.*, p. 10, lns. 8-11, citing FAC, ¶¶ 119, 186.)

In opposition, Plaintiffs contend Owner's arguments go beyond the face of the pleading and prematurely argue the merits of the case. (Opposition, p. 4, lns. 7-8.) Plaintiffs admit that the FAC's references to a "hotel" were made in error and have no bearing on the punitive damages raised by Owner's motion. (*Id.*, p. 3, lns. 18-20.) Plaintiffs, citing ***Perkins***, assert that even if the FAC contains conclusory allegations, such allegations need not be stricken when they are supported by sufficient facts. (*Id.*, p. 4, lns. 16-19.) Plaintiffs argue they have sufficiently alleged that Rudy was Owner's managing agent, and the Owners knew of the uninhabitable conditions because Rudy knew of those conditions. (*Id.*, p. 6, lns. 14-26, citing FAC, ¶¶ 222, 82, 101.) Plaintiffs contend the FAC alleges both that Owner's conduct was despicable and that it was carried out with a willful and wanton disregard of the rights or safety of others. (*Id.*, pp. 7, ln. 24 – 8, ln. 18.)

In this case, the FAC's allegations regarding repeated notice of the bedbug condition to the on-site manager, coupled with the allegations that Owner consciously ignored the peril posed by the bedbug condition, are sufficient to support the prayer for punitive damages at the pleading stage. In the court's view, a landlord's conduct in consciously ignoring the peril of a bedbug outbreak affecting occupied units displays "despicable conduct which is carried on by the defendants with a willful and wanton disregard of the right and safety of others." (***Civ. Code***, § 3294, subd. (c)(1).)

Contrary to Owner's suggestion, Plaintiffs need not meet the clear and convincing evidence standard in pleading their causes of action and prayer for punitive damages. (See ***Civ. Code***, § 3294, subd. (a), ["In an action for the breach of an obligation not arising from contract, where it is *proven* by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant" (emphasis added)]; see also ***Clauson***,

supra, 67 Cal.App.4th at p. 1255 ["In passing on the correctness of a ruling on a motion to strike, judges read allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth. [Citations.]"]; see also ***Perkins***, *supra*, 117 Cal.App.3d at pp. 6-7 ["Pleading the language of the statute is not objectionable when sufficient facts are alleged to support the allegation. [Citation.] [¶] Petitioner's complaint provided notice to real party and the other defendants of petitioner's precise claims against them and adequately pleaded a cause of action for punitive damages."].) A finding of malice against a corporate defendant may be based upon circumstantial evidence. (See ***Nolin v. National Convenience Stores, Inc.*** (1979) 95 Cal.App.3d 279, 288 (malice is often "proven by circumstantial evidence alone").)

The FAC alleges that plaintiff Thy immediately notified the on-site manager of a bedbug issue when she became aware of it. (FAC, ¶ 34.) As amended, the FAC now details the efforts taken by Thy to inform Defendants of the bedbug issue (including providing photographs of bedbugs and bedbug bites), and the Defendants' response. (*Id.*, ¶¶ 35 – 44.)

Here, the FAC alleges facts which, if proven, would show that Owner's on-site manager knew of the bedbug infestation. (FAC, ¶¶ 19, 26, 34, 37, 53, 62-63, 82-83, 101-102, 118, 160, 222, 230.) For example, the FAC now alleges that Owner had regular records that related to pest control – which specifically included bedbugs – and Owner failed to take action to abate the bedbug infestation that injured Plaintiffs. (FAC, ¶¶ 62-63, 230.)

Owner apparently acknowledges there were regular pest-control efforts but asserts that this shows good intentions. (Motion, p. 7, lns. 13-21.) However, the court is not persuaded by Owner's arguments that the request for punitive damages should be stricken because there is no allegation that the onsite manager informed Owner that a pest control treatment was unsuccessful and because there is no allegation that Plaintiffs took action, such as washing their sheets, to ensure that bedbugs would not return. (*Id.*, p. 7, lns 5-12.)

Whether the on-site manager in this case was a "managing agent" under the heightened standard required against a corporate defendant is a "question of fact for decision on a case-by-case basis." (***White v. Ultramar*** (1999) 21 Cal.4th 563, 567.) It its prior tentative decision, the court said that the complaint's allegations regarding Owner's managing-agent were insufficiently conclusory, highlighting the following: "Defendants' managing agents … authorized and/or ratified all offensive acts outlined … [in] all causes of action included through the Complaint." (See Complaint, ¶ 157.)

However, on these facts now alleged in the FAC, the court finds that Plaintiffs have properly pleaded that the on-site manager is the agent of Owner because it alleges that the manager had ongoing communication with plaintiff Thy regarding the details of pest control inspections, from which the court can infer that the on-site agent had both the authority to order particular pest control procedures and the duty to notify Owner of an ongoing bedbug problem. (FAC, ¶¶ 34 – 54.)

Additionally, Owner was given notice and a reasonable time to correct the deficiency, with notice allegedly occurring both through information conveyed to the on-site manager and through regular records documenting an on-going bedbug problem at the subject apartment building. (Id., ¶¶ 34, 36, 62-63, 230.)

Accordingly, Owner's motion to strike the portions of the FAC regarding punitive/exemplary damages is DENIED.

IV. Tentative Ruling.

The tentative ruling was duly posted.

V. Case Management.

The matter is calendared for a Trial Setting Conference on 09 July 2024 at 11:00 AM in this Department. The Court will be setting the trial in the case approximately 6 to 8 months after that date on forward.

This Court expects that discovery is well underway and that the parties have discussed alternate dispute resolution.

This Court understands that the parties appreciate that the claim for punitive damages is of importance for both sides. The parties should also realize that this Court expects that the exchange of discovery will produce hard facts instead of a series of boilerplate objections.

VI. Conclusion

Defendant S1 51, LLC.'s motion to strike [Code Civ. Proc., § 436] portions of Plaintiffs' First Amended Complaint is DENIED.

DATED:	**HON. SOCRATES PETER MANOUKIAN** **Judge of the Superior Court** **County of Santa Clara**

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SUPERIOR COURT, STATE OF CALIFORNIA COUNTY OF SANTA CLARA **DEPARTMENT 20** **161 North First Street, San Jose, CA 95113** **408.882.2320 · 408.882.2296 (fax)** ***smanoukian@scscourt.org*** ***http://www.scscourt.org***	*(For Clerk's Use Only)*

CASE NO.: 23CV415803 **Antonio Pina vs James Lau, MD et al**
DATE: 02 May 2024 **TIME: 9:00 am** **LINE NUMBER: 12, 13, 14, 15**

This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 20 in the Old Courthouse, 2nd Floor, 161 North First Street, San Jose. Any party opposing the tentative ruling must call Department 20 at 408.808.6856 and the opposing party no later than 4:00 PM on 01 May 2024. Please specify the issue to be contested when calling the Court and Counsel.

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Orders On Discovery Motions of Defendants.

I. Statement of Facts.

Plaintiff filed this complaint on 22 of August 2022.[4] The complaint alleges causes of action for:

1. Strict Products Liability – Inadequate Warning;
2. Negligence:
3. Fraudulent Concealment;
4. Express Warranty; and
5. Medical Negligence.

The sole cause of action against Stanford Health Care and Dr. Lau's medical negligence. Further discussion of the facts can be found in the order of this Court filed on 04 March 2024.

This case involves medical malpractice and medical products liability. Plaintiff claims to have suffered injuries as a result of having had surgery at Stanford and the implanting of various hernia mesh devices. Plaintiff alleges that the Defendants have never obtained any studies, data, testing or other evidence to demonstrate that the collagen coating of the Parietex Mesh provided any clinical advantage to patients as compared with the "bare" polyester mesh.

The Court begins its discussion with the observation that the 38-page Complaint and the 38-page First Amended Complaint are probably one of the more detailed complaints that this Court has seen in personal injury and/or medical malpractice actions. It appears this Court that, in drafting the complaint, counsel for plaintiff did a thorough job investigating facts of the case and the background of the medical appliance in particular.

II. Discovery Motions.

On 24 August 2023, these defendants served upon plaintiff form interrogatories, set one, special interrogatories, set one, request for production of documents, set one, and request for statement of damages.

After issues of eService were brought to light, defendants reserve the discovery requests.

On 02 November 2023, plaintiff served by mail his responses to the foregoing discovery requests. Defendants were not satisfied with the responses. Satisfactory meet and confer took place.

III. Analysis.

Concerning any claim of untimely-filed or served papers, this Court offers the following:

Section 1005(b) of the ***Code of Civil Procedure*** provides: "All papers opposing a motion so noticed shall be filed with the court and a copy served on each party at least nine court days. . . . . before the hearing." This Court has discretion whether to consider late filed paper. (***Kapitanski v. Von's Grocery Co***. (1983) 146 Cal.App.3d 29, 32-33.) However, the court may also exercise its discretion to consider late-filed opposition papers. (See ***Hobson v. Raychem Corp.*** (1999) 73 Cal.App.4th 614, 625; ***Rancho Mirage Country Club Homeowners Assn. v. Hazelbaker*** (2016) 2 Cal.App.5th 252.

[4] This Department intends to comply with the time requirements of the Trial Court Delay Reduction Act (Government Code, §§ 8600–68620). The California Rules of Court state that the goal of each trial court should be to manage limited and unlimited civil cases from filing so that 100 percent are disposed of within 24 months. (Ca. St. Civil ***Rules of Court***, Rule 3.714(b)(1)(C) and (b)(2)(C).

California ***Rules of Court***, rule 3.1300, subdivision (d) states, "No paper may be rejected for filing on the ground that it was untimely submitted for filing. If the court, in its discretion, refuses to consider a late filed paper, the minutes or order must so indicate."

All papers were read, reviewed, and considered on the merits.

A. Right to Discovery.

"Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, "Our discovery statute recognizes that "the identity and location of persons having [discoverable] knowledge" are proper subjects of civil discovery. (Code of Civil Procedure, § 2017.010; see Judicial Council of Cal. Form Interrogatories Nos. 12.1–12.7.)" (***Pioneer Electronics (USA), Inc. v. Superior Court*** (2007) 40 Cal.4th 360, 374.)

In exercising its discretion in determining what is relevant for purposes of discovery, this Court follows the approach articulated in ***Norton v. Superior Court*** (1994) 24 Cal.App.4th 1750, 1761 and ***Volkswagen of America, Inc. v. Superior Court*** (2006) 139 Cal.App.4th 1481, 1497:

> "In accordance with the liberal policies underlying the discovery procedures, California courts have been broad-minded in determining whether discovery is reasonably calculated to lead to admissible evidence. As a practical matter, it is difficult to define at the discovery stage what evidence will be relevant at trial. Therefore, the party seeking discovery is entitled to substantial leeway. Furthermore, California's liberal approach to permissible discovery generally has led the courts to resolve any doubt in favor of permitting discovery. In doing so, the courts have taken the view if an error is made in ruling on a discovery motion, it is better that it be made in favor of granting discovery of the nondiscoverable rather than denying discovery of information vital to preparation or presentation of the party's case or to efficacious settlement of the dispute. The courts have also taken the view that wherever possible objections to discovery should be resolved by protective orders addressing the specific harm shown by the respondent as opposed to a more general attack on the 'relevancy' of information the proponent seeks to discover."

"[T]he claim that a party is engaged upon a fishing expedition is not, and under no circumstances can be, a valid objection to an otherwise proper attempt to utilize the provisions of the discovery statutes. Should the so-called fishing expedition be subject to other objections, it can be controlled." (***Greyhound Corp. v. Superior Court of Merced County*** (1961) 56 Cal.2d 355, 386).

"[F]ishing expeditions are permissible in some cases. (***Greyhound Corp. v. Superior Court*** (1961) 56 Cal. 2d 355, 385 [although fishing may be improper or abused in some cases, that "is not of itself an indictment of the fishing expedition per se"].)" (***Gonzalez v. Superior Court*** (1995) 33 Cal.App.4th 1539, 1546.)

"[T]he court may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression. In granting or refusing such order the court may impose upon either party or upon the witness the requirement to pay such costs and expenses, including attorney's fees, as the court may deem reasonable." (***Greyhound Corp. v. Superior Court of Merced County***, supra at 370-371.)

B. Boilerplate and Nuisance Objections.

Boilerplate objections fall far short of the required standards of proper responses. (See, e.g., ***Code of Civil Procedure***, § 2031.210(3) (requiring responding party to "respond separately to each item or category" in one of three manners, including "an objection to the particular demand") (emphasis added); id. § 2031.240(b) (requiring

objecting party to "identify with particularity any document . . . To which an objection is being made" and "set forth clearly the extent of, and the specific ground for, the objection") (emphasis added).)

A party cannot plead ignorance to information which can be obtained from sources within its control. (See ***Deyo v. Kilbourne*** (1978) 84 Cal.App.3d 771, 782). A party can be compelled to produce records located in another state or country if they are shown to be under the party's control. [See ***Boal v. Price Waterhouse & Co.*** (1985) 165 Cal.App.3d 806, 810-811, 212: Los Angeles partner in national accounting firm subpoenaed to produce records from partnership office in New York for trial in California.)

General or boilerplate objections are improper and may not be indiscriminately raised to evade discovery obligations. (See ***Korea Data Systems Co. v. Superior Court*** (1997) 51 Cal.App.4th 1513, 1516 (boilerplate objections "[lack] . . .the specificity the statute mandates" and their use may be sanctionable).)

A failure to provide adequate responses and the refusal explain the basis for their objections may evince a lack of good faith. (See ***Cembrook v. Superior Court*** (1961) 56 Cal.2d 423, 430 (objections to entire sets of requests for admissions indicates a lack of good faith).)

For instance, Plaintiffs' vagueness, ambiguity, and overbreadth objections are without merit. Defendants crafted the interrogatories based on the claims in this case. Further, the disputed interrogatories are limited in scope and narrowly tailored to obtain only relevant information about this case. As such, objections based on vagueness, ambiguity or over breadth are unfounded.

A. Dr. Lau's and Stanford Health Care's Form Interrogatories.

The responding party must give an answer to each interrogatory that is as complete and straightforward as possible. (***Scheiding v. Dinwiddie Construction Co.*** (1999) 69 Cal.App.4th 64, 76.) Each answer must be complete in itself—that is, an answer cannot simply instruct the discovering party to consult other documents for the information. (***Deyo v. Kilbourne*** (1978) 84 Cal. App. 3d 771, 782-84.) If the responding party must refer to other documents to answer an interrogatory, it must either (1) specifically identify the documents and summarize their contents or 2) produce the documents under ***Code of Civil Procedure*** § 2030.230. (***Deyo*** at 784.)

Form Interrogatory No. 6.7, 10.1, 10.2, 12.1, 12.5, 14.1: Plaintiff prefaced every response with the objection on the grounds that the term "incident" is vague and ambiguous.

Section 4 of the Judicial Form Interrogatories (DISC-001) defines "Incident" as "[including] the circumstances and events surrounding the alleged accident, injury, or other occurrence or breach of contract giving rise to this action or proceeding."

This motion is GRANTED in its entirety. Plaintiff is to provide code-compliant responses within twenty days of the filing and service of this Order.

B. Stanford Health Care's Special Interrogatories.

The foregoing instructions on Form Interrogatories apply equally to Special Interrogatories.

Special Interrogatory No. 3, 4, 7, 8, 10, 13, 28, 29, 30, 31, 32: These special interrogatories seek information about past hospitalizations and the specific allegations of negligent conduct on the part of these defendants. Plaintiff has objected to the Special Interrogatories on the grounds of irrelevance, burden and so forth.

The motion is GRANTED in its entirety. Plaintiff is to provide code-compliant responses within twenty days of the filing and service of this Order.

C. Dr. Lau's Special interrogatories.

Special Interrogatory No. 3, 4, 7, 8, 10: These requests are similar to those in the special interrogatories served on defendant Stanford Health Care. The same instructions and orders will apply.

D. Dr. Lau's and Stanford Health Care's Request for Production of Documents.

Code of Civil Procedure, § 2031.240 states that if the responding party objects to the demand for inspection of an item or category of item, the response must identify with particularity any document, tangible thing, or land falling within any category of item in the demand to which an objection is being made. (***Code of Civil Procedure***, § 2031.240, subd. (b)(1).)

Code of Civil Procedure, § 2031.210(a) gives the responding party three options of responses. "The party to whom an inspection demand has been directed shall respond separately to each item or category of item by any of the following:

(1) A statement that the party will comply with the particular demand for inspection and any related activities

(2) A representation that the party lacks the ability to comply with the demand for inspection of a particular item or category of item.

(3) An objection to the particular demand.

"A representation of inability to comply with the particular demand for inspection shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand. This statement shall also specify whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party. The statement shall set forth the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item." (***Code of Civil Procedure***, § 2031.230.)

"(a) If only part of an item or category of item in an inspection demand is objectionable, the response shall contain a statement of compliance, or a representation of inability to comply with respect to the remainder of that item or category. (b) If the responding party objects to the demand for inspection of an item or category of item, the response shall do both of the following: (1) Identify with particularity any document, tangible thing, or land falling within any category of item in the demand to which an objection is being made. (2) Set forth clearly the extent of, and the specific ground for, the objection. If an objection is based on a claim of privilege, the particular privilege invoked shall be stated. If an objection is based on a claim that the information sought is protected work product under Chapter 4 (commencing with Section 2018.010), that claim shall be expressly asserted. (c)(1) If an objection is based on a claim of privilege or a claim that the information sought is protected work product, the response shall provide sufficient factual information for other parties to evaluate the merits of that claim, including, if necessary, a privilege log. (2) It is the intent of the Legislature to codify the concept of a privilege log as that term is used in California case law. Nothing in this subdivision shall be construed to constitute a substantive change in case law. (***Code of Civil Procedure***, § 20310.240.)

"[S]pecific responses and objections must be made to each item listed in a request; blanket objections are improper. (***Scottsdale Ins. Co. v. Superior Court*** (1997) 59 Cal.App.4th 263, 275.) Making general objections that are not connected to any particular item or category of items does not comply with the code and may be sanctionable. (***Korea Data Systems Co., Ltd. V. Superior Court*** (1997) 55 Cal.App.4th 1513, 1516.)

Request for Production No. 4: This request asked for information concerning benefits paid by insurance companies as well as copies of health, medical, or disability insurance policies. Plaintiff objected that this information is not relevant etc. and invokes the collateral source rule. ***Civil Code***, § 3333.1 specifically allows for discovery of this type.

If plaintiff does not have the actual policies of insurance in his possession, he should provide whatever information he does have concerning these policies. These include the names of the policies and policy numbers if he has them. If he does not have them, he should specifically say so that he does not have them following a diligent search.

The motion is GRANTED. Plaintiff is to provide code-compliant responses within twenty days of the filing and service of this Order.

Request for Production No. 7: This Request seeks any and all employment records etc. in plaintiff's custody or control.

Plaintiff's objection here is well taken. Defendants are willing to request records from 01 July 2013 (5 years prior to the July 2018 surgery) to the present. This Court assumes that this concession of limitation was made in the preparation of the instant motion. The Court will ask plaintiff to respond to this request with a list of employers, addresses, and dates of employment from 01 July 2013 to the present time. Plaintiff is requested to provide this response within twenty days of the filing and service of this Order.

D. Request of Defendants for Monetary Sanctions.

Code of Civil Procedure, § 2023.040 states: "A request for a sanction shall, in the notice of motion, identify every person, party, and attorney against whom the sanction is sought, and specify the type of sanction sought. The notice of motion shall be supported by a memorandum of points and authorities, and accompanied by a declaration setting forth facts supporting the amount of any monetary sanction sought."

Defendants make code-compliant request for monetary sanctions and are awarded monetary sanctions as follows:

Stanford Health Care's Special Interrogatories:	$1,020.00
Dr. Lau's Special Interrogatories	[duplicative of SHC's motion]
Form Interrogatories to Both Defendants	2,430.00
Request for Production of Documents to Both Defendants	960.00
TOTAL:	**$4,410.00**

IV. Tentative Ruling.

The tentative ruling was duly posted.

V. Case Management.

The case is set for a Case Management Conference on 09 July twenty twenty-four at 10:00 AM in Department 20.

The parties should continue with discovery and discussions concerning alternate dispute resolution. The Court will also ask about the status of the medical device defendants.

VI. Order.

The motion of defendant Dr. Lau and Stanford Health Care to compel plaintiff to further responses to Form Interrogatories is GRANTED in its entirety.

The motion of defendant Dr. Lau to compel plaintiff to further responses to Special Interrogatories is GRANTED in its entirety.

The motion of defendant Stanford Health Care to compel plaintiff to further responses to Special Interrogatories is GRANTED in its entirety.

The motions of Dr. Lau and Stanford Health Care to compel plaintiff to provide further responses to Request for Admissions is GRANTED and DENIED as follows: The motion is GRANTED as to Request No. 4 and DENIED BUT MODIFIED as to Request No. 7.

Code compliant responses are due within twenty days of the filing and service of this order.

Plaintiff is to pay the sum of $4410.00 to plaintiff is to pay the sum of $4410.00 to counsel for defendants within twenty days of the filing and service of this order.

_____ _____

DATED: **HON. SOCRATES PETER MANOUKIAN**
Judge of the Superior Court
County of Santa Clara

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SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
DEPARTMENT 20

161 North First Street, San Jose, CA 95113
408.882.2320 · 408.882.2296 (fax)
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(For Clerk's Use Only)

CASE NO.: 23CV421287 **Mark Zanette vs Covenant Care California LLC; et al.**
DATE: 02 May 2024 **TIME: 9:00 am** **LINE NUMBER: 17**

This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 20 in the Old Courthouse, 2nd Floor, 161 North First Street, San Jose. Any party opposing the tentative ruling must call Department 20 at 408.808.6856 and the opposing party no later than 4:00 PM on 01 May 2024. Please specify the issue to be contested when calling the Court and Counsel.

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Order On Motion Of Defendants
To Compel Arbitration.

I. Statement of Facts.

Plaintiff filed this complaint on 18 August 2023.[5] the complaint states a cause of action for dependent adult abuse [***Welfare & Institution Code***, §§ 15600, et seq.] and for negligent hiring and supervision (***CACI*** 426.)

Plaintiff is a dependent adult between 18 and 64 years of age with physical and mental limitations that restrict his ability to carry out normal activities etc. (Complaint, ¶ 23.)

Plaintiff alleges that through a plot devised and executed by the defendants through its Governing Body defendants retained as many residents as possible for the purpose of generating revenue from the provision of "skilled" nursing care and other services which are offered but are, in reality, nonexistent or subpar at best. This scheme has resulted in a lucrative business model for defendants. In fiscal year 2022 alone, the defendants collected a total of $12,036,480.00 for the provision of skilled nursing care services. $4,068,970.00 was funded by Medicare and $816,685.00 provided by Medi-Cal. This revenue flows directly into the pockets of the defendants in the specific direction of its Governing Body while residents such as plaintiff receive little or no treatment in exchange for such compensation. (Complaint, ¶ 16.)

[5] This Department intends to comply with the time requirements of the Trial Court Delay Reduction Act (Government Code, §§ 8600–68620). The California Rules of Court state that the goal of each trial court should be to manage limited and unlimited civil cases from filing so that 100 percent are disposed of within 24 months. (Ca. St. Civil ***Rules of Court***, Rule 3.714(b)(1)(C) and (b)(2)(C).

As a result of the neglect of the defendants, plaintiff suffered a severe pressure sore on his left but tox which accelerated the deterioration of his health etc. (Complaint, ¶ 26.)

II. Motion to Compel Arbitration.

Defendants contends that the agreement to arbitrate is valid and enforceable under the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 et seq. and California law. defendants claim that even if the arbitration agreement did not expressly agree that the FAA would apply, the FAA still applies to arbitration provisions in "any contract evidencing a transaction involving interstate commerce." (9 U.S.C. § 2.)[6]

Defendants request that this Court issue an order staying this action and compelling plaintiff to submit the arbitrable claims to final and binding arbitration. (***Federal Ins. Co. v. Superior Court*** (1998) 60 Cal.App.4th 1370, 1374-1375; ***Code of Civil Procedure***, § 1281.4).

Plaintiff contends that

1. defendants failed to prove the existence of an agreement to arbitrate;
2. defendants failed to prove that electronic signature affixed to the arbitration agreement is attributable to the plaintiff;
3. defendants failed to properly authenticate the arbitration agreement;
4. the arbitration agreement is void as a matter of law pursuant to federal and California law because the agreement is substantially unconscionable. The claim is that there is no enforceable delegation clause authorizing an arbitrator to decide unconscionability and the validity of unfair terms, based on recent Court of Appeal cases such ***Aixtron, Inc. v. Veeco Instruments, Inc.*** (2020) 52 Cal.App.5th 360, confirmed by ***McConnell v. Advantest Am., Inc.*** (2023) 92 Cal.App.5th 596, 613.

III. Analysis.

A. Arbitration Agreements in General.

1. Burden of Proving the Validity of an Arbitration Agreement.

Defendants, as the parties the party attempting to compel arbitration, bear the burden of proving the existence of a valid agreement to arbitrate. (***Engalla v. Permanente Medical Group, Inc.*** (1997) 15 Cal.4th 951, 971.)

In moving to compel arbitration, the defendant's first burden is to establish the existence of an agreement to arbitrate. Defendant need only prove, by a preponderance of the evidence, that an agreement to arbitrate Plaintiff's

[6] The FAA's "reach is expansive and coincides with that of the commerce clause." (***Scott v. Yoho*** (2016) 248 Cal.App.4th 392, 00-401 [FAA preempted 30-day rescission period for health care professional negligence arbitration agreements under ***Health & Safety Code***, § 1295(c)]). "The commerce clause power could be exercised to preempt contrary state law 'in individual cases without showing any specific effect upon interstate commerce' if in the aggregate the economic activity in question would represent 'a general practice ... subject to federal control.' Only that general practice need bear on interstate commerce . . . ." (Id.). A California skilled nursing facility's participation in and receipt of revenues from Medicare involves interstate commerce for purposes of determining the applicability of the FAA to an arbitration agreement. (***Valley View Health Care, Inc. v. Chapman*** (ED CA 2006) 992 F.Supp.2d 1016, 1038-1039). Furthermore, a skilled nursing facility's purchase of goods in interstate commerce is sufficient to trigger the application of the FAA. (Id.).

claims exists. (***Rosenthal v. Great Western Fin. Sec. Corp.*** (1996) 14 Cal.4th 394, 413; ***Condee v. Longwood Mgmt. Corp.*** (2001) 88 Cal.App.4th 215, 218-219 (2001).

2. Favored Method of Dispute Resolution.

Arbitration is a favored method of dispute resolution under both federal law (***Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*** **(**1983) 460 U.S. 1) and state law (***Madden v. Kaiser Foundation Hospitals*** (1976) 17 Cal.3d 699) because it is supposed to be expeditious, it economical, and a way of relieving overburdened court calendars.[7]

Plaintiff cites the case of ***Morgan v. Sundance, Inc.*** (2022) 596 U.S. 411, 418 for the proposition that there is no policy favoring arbitration under the FAA.[8] This Court does not read so much into the case. Justice Kagan wrote that the FAA did not authorize federal courts to create an arbitration-specific procedural rule requiring a finding of harm before a party could waive its right to arbitration.

3. Duty to Read The Agreement.

Plaintiff declares that he does not recall signing any agreement arbitrate this lawsuit. But as plaintiff pointed out in reply papers, there is nothing in his declaration that questions the validity of the signature affixed to the arbitration agreement. Defendant's employee Kenya Villa declared that the agreement is a true and correct copy downloaded from defendants' computer system. My Hang Ho declares that she saw plaintiff sign the arbitration agreement.

"[A] party is bound by provisions in an agreement which he signs, even though he has not read them and signs unaware of their existence." (***N.A.M.E.S. v. Singer*** (1979) 90 Cal.App.3d 653, 656; see also ***George v. Bekins Van & Storage Co.*** (1949) 33 Cal.2d 834, 848-849.)

"Where a party to a written contract wishes to avoid liability . . . on the ground that he did not know its contents, the question, in the absence of misrepresentation, fraud, undue influence, and the like, turns on whether he was guilty of negligence in signing without such knowledge." (***Knox v. Modern Garage & Repair Shop*** (1924) 68 Cal.App. 583, 587.)

Further, when a party "is negligent in not informing himself of the contents, and signs or accepts the agreement with full opportunity of knowing the true facts, he cannot avoid liability 0n the ground that he was mistaken concerning such terms." (***Id.***; see also ***Greve v. Taft Realty Company*** (1929) 101 Cal.App. 343, 351-353.) "Generally, it is not reasonable to fail to read a contract; this is true even if the plaintiff relied on the defendant's assertion that it was not necessary to read the contract. Reasonable diligence requires a party to read a contract before signing it. (citations omitted.)" (***Brown v. Wells Fargo Bank, N.A.*** (2008) 168 Cal.App.4th 938, 959.)

Thus, as long as a party entering into the contract has the capacity to read and to understand it, the party will be bound by its contents and is not permitted to say that its explicit provisions are contrary to its intention or understanding. (***Palmquist v. Mercer*** (1954) 43 Cal.2d 92, 98; ***Estate of Wilson*** (1976) 64 Cal.App.3d 786, 802; ***Varco-Pruden, Inc. v. Hampshire Construction Co.*** (1975) 50 Cal.App.3d 654, 660; ***Larsen v. Johannes*** (1970) 7 Cal.App.3d 491, 501.)

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[7] This Court's opinion on this subject may conflict with these venerable authorities but is of no moment. This Court declines to use referral to arbitration, contractual or otherwise, solely for the purpose of clearing the calendars of this Court.

[8] Opposition Papers, Page 5, lines 4-6.

This Court will observe that "A heavy presumption weighs the scales in favor of arbitrability; an order directing arbitration should be granted unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." (***Gear v. Webster*** (1968) 258 Cal.App.2d 57, 61.) (internal quotation marks modified.)

B. Unconscionability Of Arbitration Agreements.

Plaintiff must establish that this (Agreement is nevertheless unenforceable under the doctrine of unconscionability. (***Engalla v. Permanente Medical Group*** (1997) 15 Cal.4th 951, 972 ("a party opposing the petition [to compel arbitration] bears the burden of proving by a preponderance of the evidence any fact necessary to its defense").

To preclude enforcement under the doctrine of unconscionability, Plaintiff must establish that:

1. the Agreement is procedurally unconscionable; and
2. the Agreement is substantively unconscionable.

"An agreement is procedurally unconscionable where there is 'oppression' arising from unequal bargaining power or 'surprise' arising from hidden or buried terms in a long or complex printed form." (***McManus v. CIBC World Markets Corp.*** (2003) 109 Cal.App.4th 76, 87 (2003). The California Supreme Court has reiterated that a 'contract term is not substantively unconscionable when it merely gives one side a greater benefit; rather, the offending term "must be so one-sided as to shock the conscience." (***Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC*** (2012) 55 Cal.4th 223, 246; ***Sanchez v. Valencia Holding Co.*** (2015) 61 Cal.4th 899, 910-911.)

The following language appears in a text box, at the top of page 1, in bold font, above and apart from the terms of the agreement: "'Resident shall not be required to sign this arbitration agreement as a condition of admission to this facility." The caption of the agreement similarly states: "DISPUTE RESOLUTION AGREEMENT if (read Carefully – Not Part of Admission Agreement). Paragraph 16 further states: "This Agreement may be rescinded by written notice from either Party, including Resident's Legal Representative and/or Agent, if any, and as appropriate, to the other Party within thirty (30) days of signature."[9]

Procedural unconscionability "requires inequality of bargaining power accompanied by a lack of disclosure of material provisions." (***Robinson v. City of Manteca*** (2000) 78 Cal.App.4th 452, 459.) There is no requirement under contract law that parties prove each provision of a contract was negotiated for those provisions to be enforced. In ***Robinson***, the plaintiff could not prove his signing of an agreement was procedurally unconscionable, even when the plaintiff was presented with the document on a take-it-or-leave-it basis, the provisions were not reviewed with him, and the document was given to him with the signature page open. (Id. at 455). In finding that the plaintiff's procedural unconscionability argument failed due to lack of surprise, the Court of Appeal stated that "there is no allegation he was prevented from reading the agreement on the day of execution, only that it was open to the signature page." (Id. at 459).

[9] cf. ***Dougherty v. Roseville Heritage Partners*** (2020) 47 Cal.App.5th 93, 99: "Plaintiffs argued the Agreement was *procedurally* unconscionable because it was 'buried in the middle of' 70 pages of admission documents. [Defendants' agent also did not go over the Agreement with Dougherty, and plaintiffs were not provided a copy of the AAA commercial rules which would govern the arbitration proceedings. Plaintiffs also pointed to a provision in the Agreement that allowed defendants to modify the Agreement on 30 days' notice."

A contract term is not conscionable when it merely gives one side a greater benefit; rather the term must be so one-sided as to shock the conscience." (***See Pinnacle Museum Tower Association v. Pinnacle Market Development (US), LLC*** (2016) 55 Cal.4th 223, 246 (2016) (emphasis added and citations omitted).

In ***Dougherty v. Roseville Heritage Partners*** (2020) 47 Cal.App.5th 93, the Court of Appeal held that the he trial court did not err in denying a motion to compel arbitration of elder abuse and wrongful death claims because an arbitration agreement contained in a large packet of admission materials for an elder residential care facility evinced a high degree of procedural unconscionability, thus requiring only a low level of substantive unconscionability to render it unenforceable under ***Code of Civil Procedure***, § 1281, which was shown by discovery restrictions that were likely to frustrate statutory remedies under ***Welfare & Institutions Code***, § 15657, and a predispute contractual jury trial waiver that was not authorized by ***Code of Civil Procedure***, § 631, and was unenforceable. Because multiple defects rendered the agreement procedurally and substantively unconscionable, the trial court did not abuse its discretion in finding it permeated with unconscionable provisions and denying severance.

Plaintiff argues the Agreement was adhesive, but the adhesive aspect of an agreement is not dispositive, and adhesiveness only connotes a "low level" of unconscionability. (***Davis v. Kozak*** (2020) 53 Cal.App.5th 897, 907.)

An arbitration agreement is not unenforceable simply because it is required as a condition of employment. An adhesion contract is not procedurally unconscionable unless a party can show the existence of oppression, surprise, or "lack of reasonable commercial alternatives." (***Gilmer v. Interstate/Johnson Lane Corp.***, 500 U.S. 20 (1991): a predispute arbitration agreement is not invalid merely because it is imposed as a condition of employment); ***Roman* v. Superior *Court*** (2009) 172 Cal.App.4th 1462, 1471: take it or leave it arbitration agreement not procedurally unconscionable simply because it was an adhesive contract required for employment).)

Absent some special element of unfair advantage, an arbitration agreement is mutually advantageous and inclusion of an arbitration provision in commercial contracts is common. (See ***Keating v. Superior Court*** (1982) 31 Cal.3d 584, 594-595.) When the parties could reasonably anticipate an arbitration clause, and the agreement is not unduly oppressive, the arbitration provision will be enforced even if the contract is adhesive. (Ibid.) A party asserting unconscionability as a defense has the heavy burden of establishing that condition. (***Woodside Homes of California v. Superior Court*** (2003) 107 Cal.App.4th 1728 [citing ***Westlye v. Look Sports, Inc***. (1993) 17 Cal.App.4th 1715, 1738-1739.)

C. Reformation of Arbitration Agreements.

Further, to the extent that any term is considered unconscionable, California has a history of severing those provisions and enforcing the rest of the arbitration agreement. (see ***Serpa v. California Surety Investigations, Inc.*** (2013) 215 Cal.App.4th 695, 710; ***Gutierrez v. Autowest, Inc.*** (2003) 114 Cal.App.4th 77, 92).

Negligence in not reading the instrument before signing is not a bar to reformation. (***Baines v. Zuieback*** (1948) 84 Cal.App.2d 483, 491; ***California Packing Corp. v. Larsen***, 187 Cal. 610, 614; ***Travelli v. Bowman*** (1907) 150 Cal. 587, 591[10]; ***Payne v. California Union Fire Insurance Co.***, 129 Cal.App. 582, 587; ***Hercules Gasoline Co. v. Security Ins. Co.*** 122 Cal.App. 499, 503; ***Cantlay v. Olds & Stoller Inter Exch.***, 119 Cal.App. 605, 619; 5 Williston on Contracts, 4340, § 1548, n. 6; anno., 45 A.L.R. 700, 703.)

Civil Code, § 1670.5 does not authorize courts to reform arbitration agreements by augmentation. ***Code of Civil Procedure***, § 1281.2 authorizes the court to refuse arbitration if grounds for revocation exist, not to reform the agreement to make it lawful. (See ***Armendariz v. Foundation Health Psychcare Services, Inc.*** (2000) 24 Cal 4th 83 at 125.)

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[10] "It has been frequently decided that the mere failure of a party to read an instrument with sufficient attention to perceive an error or defect in its contents will not prevent its reformation at the instance of the party who executes it thus carelessly. . . . ."

This Court believes that because the defendants here have established the existence of a valid agreement to arbitrate which has been authenticated. This Court will find that plaintiff expressly agreed to binding arbitration by signing the Arbitration Agreement, whether he read it or not. This Court does not have any reason to "reform" of the arbitration agreement.

D. Discovery.

Judicate West provides that the parties may conduct discovery to which they agree. (Judicate West Rule 9.1). Therefore, if Plaintiff feels the limitations are too constricting, the parties can agree to increase the number of interrogatories, document requests, and depositions.

There do not otherwise appear to be any serious limitations on discovery here because the discovery is implicitly incorporated into the parties' agreement to arbitrate as a matter of law. (See ***Armendariz v. Foundation Health Psychcare Services, Inc.***, supra at 106, 107.)

In ***Aixtron, Inc. v. Veeco Instruments Inc.***(2020) 52 Cal.App.5th 360 (2020), the Court of Appeal found that arbitrators do not have the power to compel non-party discovery prior to hearing. This Court believes that if there was such a limit, all a party would have to do to invalidate an otherwise valid arbitration agreement would be to identify a laundry list of potential witnesses and claim there would not be adequate discovery if the arbitrator had no power to compel them.

Plaintiff has ample opportunity to obtain an order from the eventual arbitrator compelling third-party discovery. (***Code of Civil Procedure***, § 1297.271; ***Berglund v. Arthroscopic & Laser Surgery Ctr. of San Diego, L.P.*** (2008) 44 Cal.4th 528, 537.) For example, The Court must enforce an agreement that clearly and unmistakably delegates gateway issues to the arbitrator. (See ***Brennan v. Opus Bank*** (9th Cir. 2015) 796 F. 3d 1125, 1132.)

IV. Tentative Ruling.

The tentative ruling was duly posted.

V. Case Management.

A Case Management Conference is set for 04 June 2024 at 10:00 am in Department 20. That date will be VACATED, and the matter set for ADR Review/Dismissal Review on April 10 2025 and 10:00 AM in Department 20.

VI. Order.

The motion of defendants to compel contractual arbitration is GRANTED.

_____ _____

DATED:

HON. SOCRATES PETER MANOUKIAN
Judge of the Superior Court
County of Santa Clara

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Calendar Line 18

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
DEPARTMENT 20

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(For Clerk's Use Only)

CASE NO.: 23CV423546 **Irina Buckvar; Owen Buckvar vs Bernard Buckvar as Trustee et al.**
DATE: 02 May 2024 **TIME: 9:00 am** **LINE NUMBER: 18, 19, 20[**

This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 20 in the Old Courthouse, 2nd Floor, 161 North First Street, San Jose. Any party opposing the tentative ruling must call Department 20 at 408.808.6856 and the opposing party no later than 4:00 PM on 01 May 2024. Please specify the issue to be contested when calling the Court and Counsel.

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Orders on:
1. Motion of Plaintiffs for Interlocutory Judgment for Partition and Appointment of Partition Referee;
2. Motion of Plaintiffs for Interlocutory Judgment for Partition and Appointment of Partition Referee; and
3.Motion of Defendant to Compel Further Responses to Requests for Admissions and for Sanctions.

I. Statement of Facts.

Plaintiffs, husband-and-wife, filed this complaint on 28 September 2023[11] against Bernard, the 86-year-old father/father-in-law of the plaintiffs. Plaintiffs claim that they are title owners of record of the property and are therefore entitled to partition by seeking the sale of a single-family home located at 10757 Linda Vista Drive, Cupertino, California 95014 (the "Property").

Defendant claims that this case is about a son and daughter-in-law attempting to force an elderly father and father-in-law from the home where he has resided for over 50 years. Defendant has, from the initiation of this case, attempted to prove that he is the sole and proper owner of the real property located in question. He claims that, in an effort of fatherly kindness, Bernard put Owen on title to the Property to obtain a loan to help Owen and Irina purchase their own residence.

All three individuals are title owners of record of the property. Plaintiff Owen[12] is the owner of an undivided one-eighth (1/8) interest in the property. Irina is the owner of an undivided three-eighths (3/8) interest in the property. Bernard is the owner of an undivided one-half (1/2) interest in the Property. The three individuals apparently hold the title as tenants-in-common.

On 13 November 2023, Bernard filed a cross-complaint against Defendants alleging causes of action for resulting trust, constructive trust, accounting, financial elder abuse, breach of fiduciary duty, and quiet title.

II. Motions.

A. Partition.

It seems that the parties are no longer communicating, and they have been unable to reach an agreement to divide the property. The plaintiffs seek the appointment of Dennis Badagliacco to act as the partition referee to conduct the marketing and sale of the property.

B. Discovery.

Defendant has filed discovery motions to compel plaintiff to respond to certain discovery requests.

The current motion on file and get on calendar is the motion to compel further responses to request for admissions. A technical problem is that the calendar clerk did not calendar any of the other motions (motions to compel further responses to request for production of documents, special interrogatories, form interrogatories.)

However, this Court has reviewed the motions and is prepared to rule on them.

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[11] This Department intends to comply with the time requirements of the Trial Court Delay Reduction Act (Government Code, §§ 8600–68620). The California Rules of Court state that the goal of each trial court should be to manage limited and unlimited civil cases from filing so that 100 percent are disposed of within 24 months. (Ca. St. Civil ***Rules of Court***, Rule 3.714(b)(1)(C) and (b)(2)(C).

[12] "For the sake of clarity, we refer to the [parties] by their first names. We mean no disrespect in doing so." (***In re Marriage of Leonard*** (2004) 119 Cal.App.4th 546, 551, fn. 2; see ***Rubenstein v. Rubenstein*** (2000) 81 Cal.App.4th 1131, 1136, fn. 1; ***Estate of O'Connor*** (2018) 26 Cal.App.5th 871, 875, fn. 2.)

III. Analysis.

This Court has reviewed the order filed on 22 March 2024 on the demurrer of cross-defendants Owen and Irina to the cross-complaint.

A. Partition.

Partition is an equitable action that is governed by statute. (***Code of Civil Procedure***, § 872.010 et seq.) Property may be partitioned by physical division, sale of the property and division of the proceeds, or court approved and supervised partition by appraisal. (Code of Civil Procedure, §§ 873.210-290, 873.510-850, & 873.910-980.)

"A co-owner of real or personal property may bring an action for partition. (***Code of Civil Procedure***, § 872.210.) The primary purpose of a partition suit is to partition the property, that is, to sever the unity of possession." (citations omitted, internal punctuation modified) (***LEG Investments v. Boxler*** (2010) 183 Cal.App.4th 484, 493; see also ***14859 Moorpark Homeowner's Assn. v. VRT Corp.*** (1998) 63 Cal.App.4th 1396, 1404-1405 ["'partition'" is "'the procedure for segregating and terminating common interests in the same parcel of property'"].)

Defendant opposes the motion, claiming that plaintiffs either waived the right to partition by failing to reside at the property and nonpayment of the mortgage. Defendant also claims that the partition action should be precluded by the doctrine of laches since plaintiffs unreasonably delayed the bringing of this action.

This Court believes that plaintiffs are entitled to bring the partition action and any issues of waiver and/or as estoppel or laches or any other equitable defense can be litigated in the partition action. However, the Court believes that because of the prima facie showing of equitable defenses, the issuance of an interlocutory judgment at this point is not appropriate.

Counsel should meet and confer and agree upon a proper referee to conduct the partition evaluation.

B. Defendant's Discovery Motions.

"Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, "Our discovery statute recognizes that "the identity and location of persons having [discoverable] knowledge" are proper subjects of civil discovery. (Code of Civil Procedure, § 2017.010; see Judicial Council of Cal. Form Interrogatories Nos. 12.1–12.7.)" (***Pioneer Electronics (USA), Inc. v. Superior Court*** (2007) 40 Cal.4th 360, 374.)

In exercising its discretion in determining what is relevant for purposes of discovery, this Court follows the approach articulated in ***Norton v. Superior Court*** (1994) 24 Cal.App.4th 1750, 1761 and ***Volkswagen of America, Inc. v. Superior Court*** (2006) 139 Cal.App.4th 1481, 1497:

> "In accordance with the liberal policies underlying the discovery procedures, California courts have been broad-minded in determining whether discovery is reasonably calculated to lead to admissible evidence. As a practical matter, it is difficult to define at the discovery stage what evidence will be relevant at trial. Therefore, the party seeking discovery is entitled to substantial leeway. Furthermore, California's liberal approach to permissible discovery generally has led the courts to resolve any doubt in favor of permitting discovery. In doing so, the courts have taken the

view if an error is made in ruling on a discovery motion, it is better that it be made in favor of granting discovery of the nondiscoverable rather than denying discovery of information vital to preparation or presentation of the party's case or to efficacious settlement of the dispute. The courts have also taken the view that wherever possible objections to discovery should be resolved by protective orders addressing the specific harm shown by the respondent as opposed to a more general attack on the 'relevancy' of information the proponent seeks to discover."

"[T]he claim that a party is engaged upon a fishing expedition is not, and under no circumstances can be, a valid objection to an otherwise proper attempt to utilize the provisions of the discovery statutes. Should the so-called fishing expedition be subject to other objections, it can be controlled." (***Greyhound Corp. v. Superior Court of Merced County*** (1961) 56 Cal.2d 355, 386).

"[F]ishing expeditions are permissible in some cases. (***Greyhound Corp. v. Superior Court*** (1961) 56 Cal. 2d 355, 385 [although fishing may be improper or abused in some cases, that "is not of itself an indictment of the fishing expedition per se"].)" (***Gonzalez v. Superior Court*** (1995) 33 Cal.App.4th 1539, 1546.)

"[T]he court may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression. In granting or refusing such order the court may impose upon either party or upon the witness the requirement to pay such costs and expenses, including attorney's fees, as the court may deem reasonable." (***Greyhound Corp. v. Superior Court of Merced County***, supra at 370-371.)

Plaintiffs have objected to the discovery requests on various boilerplate grounds. The Court overrules those objections. The Court notes the length of time over which the facts in this case took place and believes that the requests are entirely proper.

Plaintiffs are ordered to provide code-compliant responses within 20 days of the filing and service of this order. The Court will deem any objections WAIVED except as to any response in which a privilege was asserted. If a privilege was asserted, plaintiffs must support it with an appropriate privilege log.

The request of defendant for monetary sanctions is DENIED as this Court believes that the unavailability of the counsel for plaintiff due to a family emergency is credible.

IV. Tentative Ruling.

The tentative ruling was duly posted.

V. Case Management.

The Court notes that two discovery motions are reserved for 25 June 2024 at 9:00 AM in this Department.

The case is set for a Case Management Conference on 10 September 2024 at 10:00 AM in this Department. This Court will consider setting the matter for a court trial at that time.

VI. Order.

This Court believes that plaintiffs are entitled to bring the partition action and any issues of waiver and/or as estoppel or laches or any other equitable defense can be litigated in the partition action. Therefore, the motion is

partially granted. However, the Court believes that because of the prima facie showing of equitable defenses, the issuance of an interlocutory judgment at this point is not appropriate.

Counsel should meet and confer and agree upon a proper referee to conduct the partition evaluation.

As for the discovery motions of the defendant, plaintiffs are ordered to provide code-compliant responses within 20 days of the filing and service of this order. The Court will deem any objections WAIVED except as to any response in which a privilege was asserted. If a privilege was asserted, plaintiffs must support it with an appropriate privilege log.

The request of defendant for monetary sanctions is DENIED as this Court believes that the unavailability of the counsel for plaintiff due to a family emergency is credible.

DATED:

HON. SOCRATES PETER MANOUKIAN
Judge of the Superior Court
County of Santa Clara

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