SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 1
Honorable Eunice Lee, Presiding
TBD, Courtroom Clerk
191 North First Street, San Jose, CA 95113

DATE: February 19, 2026 TIME: 9:00 A.M. and 9:01 A.M.

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

****Please specify the issue to be contested when calling the Court and counsel****

LAW AND MOTION TENTATIVE RULINGS

FOR APPEARANCES: Department 1 is fully open for in-person hearings. The Court strongly prefers **in-person** appearances for all contested law and motion matters. For all other hearings, appearances must be **in-person or by video.** Department 1 uses Unicorn Digital Courtroom (UDC) platform. Please click on this link if you need to appear remotely and then scroll down to the link for Department 1: https://santaclara.courts.ca.gov/online-services/remote-hearings. This system requires advance registration with a case number and hearing date. **Telephonic appearances are prohibited, unless permitted by the Court. (**Local Rule 5)**.** If you must appear virtually, you must use video.

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

FOR COURT REPORTERS: The Court is no longer able to provide official court reporters for civil proceedings (as of July 24, 2017). If you want to have a court reporter to report your hearing, you must submit the appropriate form, which can be found here:
https://www.scscourt.org/general_info/court_reporters.shtml

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

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LAW AND MOTION TENTATIVE RULINGS

LINE 1	24CV452959	Edward Ionel vs Mirantis, Inc.	**Demurrer** Scroll down to Line 1 for Tentative Ruling.
LINE 2-4	25CV462475	Monica Ramos et al. vs Angela Pollard, MD et al	**Demurrer (Line #2)** **Motion to Strike (Line #3)** **Demurrer (Line #4)** Scroll down to 2-4 for Tentative Ruling.

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LAW AND MOTION TENTATIVE RULINGS

LINE 5	23CV420598	Shyuan Yang et al vs Syed A. Khurram et al.	**Motion for Summary Judgment** This motion is MOOT based on the Court's previous ruling on February 10, 2026, denying Defendant/Cross-complainant Khurram's Motion for Leave to Amend Cross Complaint and granting Plaintiff and Cross-Defendants Compass and Plaintiff and Cross-Defendants Keller Williams Motion for Determination of Good Faith Settlement. Pursuant to California Code of Civil Procedure section 877.6(c): A determination by the court that the settlement was made in good faith shall bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault. Furthermore, in *Willdan v. Sialic Contractors Corp.* (2007) 158 Cal.App.4th 47, 54: A settlement made in good faith under sections 877 and 877.6 bars claims against the settling defendant for contribution or indemnity by other joint tortfeasors, including claims for total indemnity, partial indemnity and implied contractual indemnity. (*Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1032 ["good faith settlement bars a claim for implied contractual indemnity"]; *Far West Financial Corp. v. D & S Co.* (1988) 46 Cal.3d 796, 817 ["a tort defendant who has entered into a good faith settlement within the meaning of section 877.6, subdivision (c) is absolved of any further liability for all equitable indemnity claims"].).

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LAW AND MOTION TENTATIVE RULINGS

LINE 6	23CV428395	Jeffrey Raymond, individual and a successor to Christina Raymond vs Anthony Juco et al	**Motion to Compel Defendant Simona Atondo to Provide Further Reponses to Requests for Admission or in the Alternative to Deem Responds Admitted; Request for Sanctions** On October 9, 2025 Plaintiff Jeffrey Raymond filed a motion to compel defendant Simona Atondo to provide further responses to request for admission under Code of Civil Procedure section 2033.290, or in the alternative to deem responses admitted; and request for sanctions in the amount of $1,060.00 under section 2033.060. The motion was accompanied by proof of service via on that same day. Per Code of Civil Procedure section 1005(b) opposition papers were due on February 4, 2026. No opposition papers were filed. On January 14, 2025, the plaintiff served first set of written discovery on defendant Atonda. Responses were due on February 18. Defendant served untimely responses on April 1, 2025 without proof of services attached. On Sember 5, 2025, the plaintiff attempted to meet-and-confer with Defendant Atonda regarding the motion and request for sanctions and received no response A failure to oppose a motion may be deemed a consent to the granting of the motion. California Rule of Court Rule 8.54c. Failure to oppose a motion leads to the presumption that the plaintiff has no meritorious arguments. (*Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, 489). Moving party meets its burden of proof. The motion to deem the responses admitted are GRANTED. The court also awards sanctions in the amount of $1,060.00. Moving party to provide the Order.

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LAW AND MOTION TENTATIVE RULINGS

LINE 7	24CV436418	Temor Aryobi vs Oscar Bakhitiari et al	**Motion to Compel Defendant Naftoon, Inc. to Provide Further Discovery Responses to Plaintiff's Special Interrogatories, Set One; Request for Sanctions** On October 16, 2025 Plaintiff Temor Aryobi filed a motion to compel defendant Naftoon, Inc. d/b/a/ Steven's Creek Nissan ("Naftoon" and "Defendant") to provide further responses to Plaintiff's Special Interrogatories, set one; and request for sanctions in the amount of $2,505.00 against Defendant and its counsel of record, Leech & McGreevy, LLP. The motion was accompanied by proof of service via on that same day. Per Code of Civil Procedure section 1005(b) opposition papers were due on February 4, 2026. No opposition papers were filed. On April 21, 2025, the plaintiff served defendant Naftoon with written discovery, including Plaintiff's Special Interrogatories, set one. The defendant responded on June 6, 2025. The plaintiff asserts that defendant's responses to special interrogatories nos. 1 through 4 were blanket objections. Those special interrogatories sought names, telephone numbers, email addresses, and reason for termination of each employee whose employment ended for any reason between July 1, 2023 and January 31, 2024. Between June 18, 2025 to July 2025, parties met-and-conferred a number of times regarding further responses. On September 12, 2025, parties met-and-conferred and agreed that "Plaintiff would narrow the scope of his request to include only those individuals who held the same position as plaintiff during his period of employment with Defendants. Within that same correspondence, Defendant's informed Plaintiff that supplemental responses would be provided." (Plaintiff's Motion, p. 4; Exhibit E). The plaintiff did not receive any supplemental responses. Plaintiff's

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LAW AND MOTION TENTATIVE RULINGS

			counsel attempted to meet-and-confer about discovery and then in October about a motion to compel and received no response. A failure to oppose a motion may be deemed a consent to the granting of the motion. California Rule of Court Rule 8.54c. Failure to oppose a motion leads to the presumption that the plaintiff has no meritorious arguments. (*Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, 489). Moving party meets its burden of proof. The motion to compel further responses to plaintiff's special interrogatories, set 1 is GRANTED. The court also awards sanctions in the amount of $2,505.00. Moving party to provide the Order.
LINE 8	24CV438701	James Bodwin vs Valerie Chan et al	**Motion Compel Defendant Valerie Chan's Further Response to Special Interrogatory, No. 1, Set Two and Motion for Sanctions.** Scroll down to Line 8 for Tentative Ruling.
LINE 9-10	25CV453643	Norma Navarro vs Ralph Borelli et al	**Motion to Compel (Line #9)** and **Motion to Quash (Line #10)** OFF Calendar. This matter has been reassigned to Department 12 and will be heard on September 9, 2026 at 9:00 a.m. in Department 12.

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LAW AND MOTION TENTATIVE RULINGS

LINE 11	23CV428101	Walter Eugene Neal, Jr vs Sandra Copas et al	**Motion to Reconsider** Defendants Sandra and Bryan Copas filed a motion for reconsideration or otherwise clarify the portion of its September 11, 2025, Order where the Honorable Shella Deen denied "Defendants' request for treble damages and punitive damages" due to "insufficient evidence presented, or good cause, to award the same." This motion was filed on September 18, 2025 by Defendants' attorney Karin Sweigart. Plaintiff Walter Eugene Neal, Jr., opposes the motion. On February 4, 2026, there was a substitution of attorney for Defendant from Ms. Sweigart to Sandra and Bryan Copas appearing in pro per. No new affidavits or supplemental briefing were submitted in regards to this motion. On September 11, 2025, the Court entered a final judgment denying Defendants general and punitive damages under Code of Civil Procedure section 47.1 based on lack of sufficient evidence or show good cause for award of damages. The Court granted attorneys' fees in the amount of $13,513.45 and $2,436.25 in cost to the Defendant. The Honorable Shella Deen stated, "Defendants' request for treble damages and punitive damages are DENIED, as there is insufficient evidence presented, or good cause, to award the same."). Defendants argue that it did not have an opportunity to present damages; no showing of good cause is required; and that a prevailing defendant in an anti-SLAPP matter should be entitled to damages. Defendants claimed no evidence had been gathered to seek damages. However, after a motion on the hearing the same tentative was adopted as no parties contested the same order on May 6, 2025. On December 23, 2025, the Honorable Shella Deen denied Defendants' motion to open discovery for the limited purposes of ascertaining evidence related to punitive damages. The court held that "After the

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LAW AND MOTION TENTATIVE RULINGS

			hearing on May 6, 2025, the Court ruled, in part that "Defendants request for tremble damages and punitive damages are DENID, as there is insufficient evidence presented, or good cause to the award the same. . ."" There was no request or argument at the hearing, prior to the ruling, as to any request for discovery to try to establish the items that had been denied. The denial of that request was also not made without prejudice. In that motion Defendants made a request for damages and that request was denied." Defendants previously submitted an ex parte order for reconsideration and a continuance of this motion that was denied on February 13, 2026 based on failure to show good cause. No new affidavit or evidence was presented since the subsequent filings and orders. Defendant has not met its burden of demonstrating a valid basis for reconsideration. "According to the plain language of the statute, a court acts in excess of jurisdiction when it grants a motion to reconsider that is not based upon 'new or different facts, circumstances, or law.'" (*Gilberd v. AC Transit* (1995) 32 Cal.App.4th 1494, 1500.). After cull consideration, the motion for reconsideration is Denied. There is no newly discovered fact, circumstance or law that would warrant reconsideration and/or which could not have been presented at the time of the original hearings set forth above. Defendants' motion for reconsideration is DENIED.
LINE 12	24CV434290	Manuel Panilag vs Armando Contreras et al	**Motion to Vacate (Line #12)** OFF Calendar. This matter has been reassigned to Department 13 and will be heard on March 13, 2026 at 9:00 a.m. in Department 13.

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LAW AND MOTION TENTATIVE RULINGS

LINE 13	25CV471229	Warren Lindstaedt et al vs Daryl Tate et al	**Hearing: Petition Compel Arbitration** Scroll down to Line 13 for Tentative Ruling.

9:00 A.M.

Calendar Line #	**1**
Case Name	Edward Ionel vs Mirantis, Inc.
Case No.	24CV452959

Demurrer

I. BACKGROUND

Plaintiff Edward R. Ionel ("Plaintiff") is a San Jose resident and current employee of Defendant Mirantis, Inc. headquartered in Campbell, California ("Mirantis" or "Defendant"). (First Amended Complaint ["FAC"] at ¶¶ 1, 10.)

Plaintiff is the Head of Growth and the son of former CEO Adrian Ionel ("Adrian") who was terminated in January 2024. (FAC at ¶ 10.) The Complaint alleges Adrian had disclosed potential legal violations by board members throughout 2023, including self-dealing transactions, breaches of fiduciary duty, and violations of California Corporations Code. (*Id.* at ¶ 12.) Adrian was terminated on January 4, 2024 and replaced by Alex Freedland. (*Id.* at ¶ 21.)

The Complaint alleges following Adrian's termination, Alex Freedland, the new CEO if Mirantis subjected Plaintiff to harassing conduct. (FAC at ¶ 23.) This included an hour-long intimidating meeting disparaging Adrian, repeated false accusations that Adrian never brought the Lens purchase proposal to the board, public mockery of Adrian's innovations like "ZeroOps" during leadership meetings, and constant disparaging remarks creating a suffocating work atmosphere. (*Id.* at ¶¶ 23-28.)

Plaintiff alleges he was retaliated against because of his father's protected activities. He alleges Mirantis retaliated against him by denying his promotion to Chief Marketing Officer, removing him from the Lens business team without cause, excluding him from strategic meetings and leadership conferences, and hiring an external candidate for the General Manager position without considering him. (FAC at ¶¶ 31, 37, 39, 40, 41, 42.)

Plaintiff filed suit on November 27, 2025. Following adjudication on demurrer, Plaintiff filed a First Amended Complaint ("FAC") on August 19, 2025. Plaintiff brings a single cause of action for unlawful retaliation in violation of public policy. Defendant filed the instant demurrer on September 22, 2025. Plaintiff filed his opposition on February 4, 2026. Defendant filed its reply on February 10, 2025.

II. PRELIMINARY MATTERS

A. Timeliness

"A person against whom a complaint or cross-complaint has been filed may, within 30 days after service of the complaint or cross-complaint, demur to the complaint or cross-complaint." (Code Civ. Proc., § 430.40, subd. (a).)[1] Even if a demurrer is untimely filed, the Court has discretion to hear the demurrer so long as its action ". . . 'does not affect the substantial rights of the parties.' [Citations.]" (See *McAllister v. County of Monterey* (2007) 147 Cal.App.4th 253, 281-282.)

[1] All further undesignated statutory references are to the Code of Civil Procedure.

As noted above, The FAC was filed on August 19, 2025. Defendant filed the instant demurrer on September 22, 2025. The Court finds the demurrer timely filed within the 30-day period.

B. Meet & Confer

"Before filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer." (§ 430.41, subd. (a).) "As part of the meet and confer process, the demurring party shall identify all of the specific causes of action that it believes are subject to demurrer and identify with legal support the basis of the deficiencies." (§ 430.41, subd. (a)(1).) "Any determination by the court that the meet and confer process was insufficient shall not be grounds to overrule or sustain a demurrer." (§ 430.41, subd. (a)(4).)

The Declaration of Katarzyna Ryzewska indicates that the parties attempted to meet and confer by telephone on September 17, 2025. (Declaration of Katarzyna Ryzewska at ¶ 2.) Defendant's counsel identified the specific causes of action that it believes are subject to demurrer. (*Ibid.*) The parties were unable to resolve their dispute and Defendant filed the instant demurrer. (*Ibid.*) The Court finds these meet and confer efforts sufficient and proceeds to consider the merits of the demurrer.

C. Requests for Judicial Notice

Alongside their moving papers, Defendant requests judicial notice of the following documents:

1. The June 11, 2024 Job Change Notification Letter signed by Plaintiff Edward Ionel on June 11, 2024, attached as Exhibit A
2. The March 26, 2024 Compensation Change Letter signed by Plaintiff Edward Ionel on March 26, 2024, attached as Exhibit B.

(Defendant's Request for Judicial Notice at ¶¶ 1, 2.)

Defendant seeks judicial notice of these documents pursuant to Evidence Code section 452, subdivision (h). Subdivision (h) provides that judicial notice may be taken of "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources reasonably indisputable accuracy." (Evid. Code § 452, subd. (h).) "These include, for example, facts which are widely accepted as established by experts and specialists in the natural, physical, and social sciences which can be verified by reference to treatises, encyclopedias, almanacs, and the like or by persons learned in the subject matter." (*See Gould v. Md. Sound Indus.* (1995) 31 Cal.App.4th 1137, 1145.) The documents Defendant seeks judicial notice of are not capable of immediate and accurate determination by indisputable sources. They are not the type of information that can be conferred by reference to a treatise or encyclopedia. For these reasons, Defendant's Request for Judicial Notice of the Job Change Letters is DENIED.

Plaintiff similarly requests judicial notice of:

1. Email from jira@mirantis.jira.com to Plaintiff regarding ticket HR-13315 for the "Change Edward Ionel title from – Director Go To Market TO: Director of Growth Marketing (Head of Growth)" dated June 10, 2024, attached hereto as Exhibit A

2. Email from jira@mirantis.jira.com to Plaintiff regarding ticket HR-13315 being closed with "Updated HR Systems with new title" dated June 11, 2024, attached hereto as Exhibit B

(Plaintiff's Request for Judicial Notice at ¶¶ 1, 2.)
Plaintiff also requests judicial notice pursuant to Evidence Code section 452, subdivision (h). For the same reasons, judicial notice of these documents is improper because these documents are not capable of immediate and accurate determination by indisputable sources such as a treatise or encyclopedia. Therefore, Plaintiff's Request for Judicial Notice is DENIED.

Lastly, Defendant on reply requests judicial notice of the Hearing Transcript on Mirantis's Demurrer to Plaintiff's complaint pursuant to Evidence Code section 452, subdivision (d). (Defendant's Reply Request for Judicial Notice at ¶ 1.) Evidence Code section 452, subdivision (d) permits judicial notice of "[r]ecords of (1) any court of this state or (2) any court of record of the United States or any state of the United States." "This includes any orders, findings of fact and conclusions of law, and judgments within court records." (*Lockley v. Law Office of Cantrell, Green, Peckich, Cruz, and Mchort* (2001) 91 Cal.App.4th 875, 882.) Since a hearing transcript is part of the court record, the Court may take judicial notice of it. (See, e.g., *Bailey v. Safeway, Inc.* (2011) 199 Cal.App.4th 206, 210 n.3 [taking judicial notice of a reporter's transcript].) Accordingly, Defendant's Request for Judicial Notice on reply is GRANTED.

III. LEGAL STANDARD

A demurrer must distinctly specify the grounds upon which a pleading is objected to; a demurrer lacking such specification may be disregarded. (§ 430.60.) Defendants object to the Complaint pursuant to Code of Civil Procedure section 430.10, subdivision (e).

As relevant to the instant case, "[t]he party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in Section 430.30, to the pleading on any one or more of the following grounds: . . . (e) The pleading does not state facts sufficient to constitute a cause of action." (§ 430.10, subd. (e).) A demurrer may be utilized by "[t]he party against whom a complaint [ ] has been filed" to object to the legal sufficiency of the pleading as a whole, or to any "cause of action" stated therein, on one or more of the grounds enumerated by statute. (§§ 430.10, 430.50, subd. (a).)

The court in ruling on a demurrer treats it "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688 [citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318].) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods Corp*. (1983) 35 Cal.3d 197, 213-214.) In ruling on a demurrer, courts may consider matters subject to judicial notice. (*Scott v. JPMorgan Chase Bank, N.A*. (2013) 214 Cal.App.4th 743, 751.) Evidentiary facts found in exhibits attached to a complaint can be considered on demurrer. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.)

IV. DISCUSSION

As noted in the Court's prior order, unlawful retaliation in violation of public policy is not a claim and was derivative of his claim for hostile work environment, which was sustained. The Court instead construed this claim as a *Tamney*[2] claim. (Order After Hearing at pp. 8:15-9:21.) The Court determined that Plaintiff's complaint to human resources was not the cause of his demotion, which had occurred before any such complaint had been made. (*Ibid.*) The Court also determined that Plaintiff had failed to identify a public policy that had been violated from the alleged retaliatory conduct. (*Ibid.*) Plaintiff also could not rely on the Fair Employment and Housing Act ("FEHA") as the basis for the violation of public policy because he was not a member of a protected class. (Order After Hearing at pp. 7:25-8:14.)

In this version of the pleadings, Plaintiff relies on the same set of facts but a different theory of liability to allege unlawful violation of public policy. Plaintiff urges the Court to construe this claim as one arising under Labor Code § 1102.5. (Opposition at pp. 10:16-11:12.) In paragraph 54 of the FAC, Plaintiff alleges "[t]hese retaliatory acts violate Labor Code § 1102.5 and the California public policy prohibiting retaliation as set out under the Fair Employment and Housing Act pursuant to Government Code § 12940(k)." (FAC at ¶ 54.) The parties evaluate the facts of this case under Labor Code § 1102.5.

The Court is, in any event, to "look past the form of the pleading to its substance and ignore any erroneous or confusing labels . . . [.] (*Rosen v. St. Joseph Hospital of Orange County* (193 Cal.App.4th 452, 458.) The Court is to give the complaint a "reasonable interpretation, reading it as a whole and their parts in their context." (*Sprinkles v. Associated Indemnity Corp.* (2010) 188 Cal.App.4th 69, 75.) Thus, while unlawful retaliation against public policy is not a cause of action, the Court looks past this label and construes the substance of these facts pursuant to Labor Code § 1102.5 as referenced in paragraph 54 of the FAC.

A. Labor Code section 1102.5

Labor Code section 1102.5, subdivision (b) states:

> An employer, or any person acting on behalf of the employer shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

[2] *Tamney v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167 (*Tamney*)

Furthermore, Labor Code section 1102.5, subdivision (h) states, "[a]n employer, or a person acting on behalf of the employer, shall not retaliate against an employee because the employee is a family member of a person who has, or is perceived to have engaged in any acts protected by this section."

To establish a prima facie case of retaliation under Labor Code section 1102.5, a plaintiff must show that " '(1) he engaged in a protected activity; (2) his employer subjected him to an adverse employment action, and (3) there is a causal link between the two.' [Citation.]" (*McVeigh v. Recology San Francisco* (2013) 213 Cal.App.4th 443, 468.) A section 1102.5 claim can be based on an assertion that an employee was retaliated against for reporting illegal activity by a fellow employee. (*Id.* at p. 471.) While not requiring the same specificity as fraud, the general rule is that statutory causes of action must be pled with particularity. (See *Lopez v. Southern California Rapid Transit District* (1985) 40 Cal.3d 780, 795; *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790.)

1. Protected Activity

"[A]n employee need not prove an actual violation of law; it suffices if the employer fired him for reporting his 'reasonably based suspicions' of illegal activity." (*Green v. Ralee Engineering Co.* (1998) 19 Cal.4th 66, 87.) Still a plaintiff must include allegations that clearly "state or show that [the employee] had a reasonable basis to suspect" illegal activity. (*Ferrick v. Santa Clara University* (2014) 231 Cal.App.4th 1137, 1346 (*Ferrick*).)

Thus, Labor Code section 1102.5 does not require the employee to have actual knowledge of any statute being violated at the time of reporting; the reasonableness of his or her belief is determined by the *existence* of a law that could form the basis for such belief. Where no such law is identified, the claim has not been pled with sufficient particularity.

The Court begins by first considering whether Adrian Ionel engaged in any protected activity for which Plaintiff has been the target of retaliatory acts by Defendant. The FAC generally alleges "Adrian Ionel disclosed potential violations of laws, rules, and regulations to the board of directors of Mirantis throughout 2023." However, the facts suggest otherwise:

> 15. . . . In February 2023, Adrian disclosed to the board of directors and Insight Partners a surprise inbound investment inquiry from Coatue Management, a top-tier technology investor. . . .
> 16. Once Caotue Management's interest became known, Insight Partners and its representatives stopped progressing on any proposed Lens transaction. Instead, on February 27, 2023, Adrian Ionel received a distressed call from prominent investor Jerry Murdock, who revealed that Horing had pressed him to withdraw a fully committed $9 million purchase of Mirantis shares. Horing allegedly told Jerry Murdock he "had a problem with Adrian" and insisted on the pullout—despite no misconduct or breach by Adrian. Adrian Ionel had honored every commitment made during his Insight Partners meeting and continued to invite proposals that never materialized.
> 17. The unexpected withdrawal of the investment created a severe liquidity crisis. Akkiraju—who had supported the Jerry

> Murdock investment in his board role—coordinated with Horing to block it without disclosing the $9 million investment to the board. Adrian Ionel viewed this as a breach of fiduciary duty, especially given that Akkiraju's actions forced Mirantis to secure emergency financing from Comerica Bank within three days to meet capital obligations.
> 18. Separately, Adrian Ionel grew concerned about board member Alex Freedland's ("Freedland") increasing financial desperation. Despite personally facilitating a successful $5 million stock sale for Freedland and Boris Renski ("Renski"), Freeland later sought a consulting arrangement and sales commissions from prior deals. In spring 2023, Freedland surprised Adrian Ionel by requesting to sell shares linked to and during Coatue's $100 million proposed investment. Adrian Ionel helped secure a side deal at $3.14 per share—double last 409A valuation—only to learn that Freedland had secretly added Renski to the sale without prior disclosure. Renski and his family are longtime business partners of Freedland. Adrian Ionel believed this violated Freedland's fiduciary duties to Mirantis's shareholders.
> 19. In May 2023, after confronting Freedland about these undisclosed dealings, Adrian Ionel noted a deterioration in their relationship. Around the same time, Freedland and his ally Jim Dvorkin pressured Ionel to find personal liquidity for Freedland stating "your job is to find a deal that works for the people at the table." Adrian Ionel viewed this manipulation as further evidence of self-dealing and putting financial interests of board members ahead of the interests of the shareholders they are to represent.(FAC at ¶¶ 15-19.)

While it may have been Adrian Ionel's subjective belief that Horing, Freedland, and Dvorkin were in breach of their fiduciary duties, these allegations at no point state that Adrian reported this belief to the board of directors or anyone else in a higher position of authority to investigate these dealings. As stated on reply, these allegations instead describe a series of business and personal disputes. (Reply at p. 3:22.) Adrian Ionel did not actually complain of any perceived misconduct. Thus, based on these facts Adrian Ionel did not engage in protected activity. Plaintiff is left with the mere conclusory assertion that his father unveiled violations of the law to the board of directors without the particularity required by the statute.

To the extent, Plaintiff has engaged in protected activity, as noted by the Court in its prior order, Plaintiff alleges he was constructively demoted after his father was terminated but before he filed his complaint to human resources. (Order After Hearing at pp. 8:15-9:21.) Thus, this cannot serve as the causal link between the protected activity and adverse employment action. (See, e.g., *Ferrick, supra,* (2014) 231 Cal.App.4th 1337, 1358.)

Plaintiff adds that he was excluded from strategic meetings and leadership conferences after he filed his complaint to human resources.[3] (FAC at ¶¶ 37-42.) An adverse employment action must "materially affect the terms and conditions of employment." (*Yanowitz v. L'Oreal USA, Inc.* (2005) 35 Cal.4th 1028, 1036.) "[A]dverse treatment that is reasonably likely to impair a reasonable employee's job performance or prospects for advancement or promotion" can constitute an adverse action. (*Id.* at pp. 1054-1055.) Plaintiff here has not alleged how exclusion from these meetings materially affects the terms and conditions of his employment. Therefore, he has not sufficiently alleged an adverse employment action.

Plaintiff requests leave to amend the FAC and bears the burden of proving an amendment would cure the defect identified on demurrer. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081; see also *Medina v. Safe-Guard Products* (2008) 164 Cal.App.4th 105, 112 fn. 8 (*Medina*) [As the Rutter practice guide states 'It is not up to the judge to figure out how the complaint can be amended to state a cause of action. Rather, the burden is on the plaintiff to show in what manner he or he can amend the complaint, and how that amendment will change the legal effect of the pleading.'"]; *Drum v. San Fernando Valley Bar Ass'n*. (2010) 182 Cal.App.4th 247, 253 [citing *Medina*].)

"[W]here the plaintiff requests leave to amend the complaint, but the record fails to suggest how the plaintiff could cure the complaint's defects, 'the question as to whether or not [the] court abused its discretion [in denying the plaintiff's request] is open on appeal … .' (Code Civ. Proc., § 472c, subd. (a).) Because the trial court's discretion is at issue, we are limited to determining whether the trial court's discretion was abused as a matter of law. Absent an effective request for leave to amend the complaint in specified ways, an abuse of discretion can be found 'only if a potentially effective amendment were both apparent and consistent with the plaintiff's theory of the case.'" (*Jenkins v. JPMorgan Chase Bank, N.A*. (2013) 216 Cal App 4th 497, 507, disapproved on another ground in *Yvanova v. New Century Mortg. Corp* (2016) 62 Cal.4th 919, 939, fn. 13.)

Given the liberality of amendment, the Court will GRANT 20 DAYS' LEAVE TO AMEND for Plaintiff to allege whether his father made his perceived violations of the law known to the board of directors or any other entities with authority as set forth in Labor Code section 1102.5.

Plaintiff is reminded that when a demurrer is sustained with leave to amend, the leave must be construed as permission to the pleader to amend the causes of action to which the demurrer has been sustained, not add entirely new causes of action. (*Patrick v. Alacer Corp.* (2008) 167 Cal.App.4th 995, 1015.) To raise claims entirely unrelated to those originally alleged requires either a new lawsuit or a noticed motion for leave to amend. Absent prior leave of court an amended complaint raising entirely new and different causes of action may be subject to a motion to strike. (See also *Harris v. Wachovia Mortg., FSB* (2010) 185 Cal.App.4th 1018, 1023 ["Following an order sustaining a demurrer or a

[3] To the extent Defendant raises the common-interest privilege to argue the statements made about Plaintiff's father were covered under the privilege, these arguments are more appropriately considered under a hostile work environment claim, which has already been rejected by the Court. (See Demurrer at p. 11:3-20; Order After Hearing at pp. 6:11-8:14.) The issue here is whether Plaintiff has engaged in a protected activity for which he has been subject to an adverse employment action as opposed to whether certain statements made were privileged or expressed with malice such that they created a severe or pervasive work environment.

motion for judgment on the pleadings with leave to amend, the plaintiff may amend his or her complaint only as authorized by the court's order. The plaintiff may not amend the complaint to add a new cause of action without having obtained permission to do so, unless the new cause of action is within the scope of the order granting leave to amend."].) The Court's order does not authorize the addition of any new claims or parties.

V. CONCLUSION

The demurrer to the FAC is SUSTAINED WITH 20 DAYS' LEAVE TO AMEND.

Calendar Line #	**2-4**
Case Name	Monica Ramos et al. vs Angela Pollard, MD et al
Case No.	25CV462475

Demurrer (Line #2); Motion to Strike (Line #3); and Demurrer (Line #4)

Before the court is (1) defendant The Regents of the University of California's demurrer to plaintiffs' second amended complaint; (2) defendants Angela M. Pollard, M.D.; Angela M. Pollard, M.D., Inc.; Above Parr Women's Center; Pollard Wellness Inc.; Christine Marie Kulle, NP; Raelyssa Muaava; and Dellanira Molina ("Pollard Defendants") demurrer to plaintiffs' second amended complaint; and (3) Pollard Defendants' motion to strike plaintiffs' second amended complaint. Pursuant to California Rule of Court 3.1308, the court issues its tentative ruling as follows.

I. BACKGROUND.

Defendant The Regents of the University of California ("Regents") and the Pollard Defendants, among others, undertook the care and treatment of plaintiff Monica Ramos ("Monica")[4] and rendered professional services in the diagnosis, care and treatment of her beginning on March 1, 2023, when she sought prenatal care, through and including the birth of plaintiff Rocco Ramos ("Rocco") on October 6, 2023, and thereafter. (Second Amended Complaint ("SAC"), ¶36.)

Said prenatal care was rendered by gynecologist and obstetrician, defendant Angela Michelle Pollard, M.D. ("Dr. Pollard") and her practice groups/ corporations. (SAC, ¶36.) Defendant Dr. Pollard was assisted by defendants Christine Kulle, NP; Raelyssa Muaava; Kaliah Mendoza; and Dellanira Molina. (SAC, ¶36.)

Defendant Dr. Pollard documented the following in plaintiff Monica's chart concerning the birth of plaintiff Rocco: … date of delivery: 10/6/2023 … The neonate went to the pediatric staff due to concerns about the face presentation. Club feet and shortened arms were also noticed. (SAC, ¶37.)

The morning after his birth, plaintiff Rocco was transferred to Lucile Packard Children's Hospital at Stanford ("Packard Hospital") for a higher level of care than was available at El Camino Hospital in Los Gatos. (SAC, ¶38.) On admission to Packard Hospital's Neonatal Intensive Care Unit ("NICU") on October 7, 2023, plaintiff Rocco's physicians documented

[4] The court refers to the plaintiffs, who share the same last name, by their first name for clarity. The court means no disrespect.

the following: … multiple congenital abnormalities. Prenatal course and genetic testing prior to delivery were unremarkable … He was noted to have several congenital abnormalities not noted on prenatal US. (SAC, ¶38.)

Plaintiff Rocco was born with a birth defect called arthrogryposis multiplex congenita (AMC) as well as quadriplegic cerebral palsy, both of which are incurable, non-progressive conditions that will cause lifelong disability and special needs. (SAC, ¶42.) Had plaintiff Monica been given any information that her unborn son had any sort of fetal anomaly as early as May 5, 2023 [18 weeks, 2 days gestational age] to make an informed decision, she would have elected to have a second-trimester surgical abortion for pregnancy termination due to fetal anomalies. (SAC, ¶42.)

All of plaintiff Monica's ultrasounds were conducted at defendants' offices. (SAC, ¶43.) Had defendant Dr. Pollard made an informed medical decision that plaintiff Monica needed something other than a standard ultrasound examination on May 5, 2023, the OB/GYN should have either referred plaintiff Monica to a maternal fetal medicine (MFM) physician for consultation or she should have sent her patient to a qualified radiology/ ultrasound clinic who performs these exams for OB/GYNs that do not maintain their own in-office machine capable of performing, recording and interpreting a targeted ultrasound examination. (SAC, ¶57.) Defendant Dr. Pollard and others negligently failed to refer plaintiff Monica to a specialist and negligently failed to diagnose any fetal anomaly. (SAC, ¶125.)

On July 15, 2024, plaintiffs Rocco (by and through his guardian ad litem Monica), Monica, and Richard Ramos ("Richard") filed a complaint in Alameda County Superior Court against defendant Dr. Pollard and others asserting causes of action for:

(1) Wrongful Life
(2) Wrongful Birth
(3) Intentional Tort – Medical Battery – Conditional Consent
(4) Fraud – Intentional Misrepresentation
(5) Breach of Fiduciary Duty
(6) Negligence Per Se
(7) Unjust Enrichment

On or about November 15, 2024, plaintiffs filed the operative FAC which continued to assert the same seven causes of action asserted in the original complaint.

On or about March 13, 2025, the Alameda County Superior Court issued an order granting defendant Regents' motion to transfer venue. On or about April 3, 2025, Santa Clara County Superior Court assumed jurisdiction over this action.

On May 28, 2025, defendant Regents filed a demurrer to the third through seventh causes of action of plaintiffs' FAC.

On September 11, 2025, the Honorable Shella Deen sustained defendant Regents' demurrer to the third [medical battery], fifth [breach of fiduciary duty], and sixth [negligence per se] causes of action but overruled defendant Regents' demurrer to the fourth [fraud] and seventh

[unjust enrichment] causes of action. On September 19, 2025[5], plaintiffs filed the now operative SAC which asserts causes of action for:

(1) Wrongful Life
(2) Wrongful Birth
(3) Intentional Tort – Medical Battery – Conditional Consent
(4) Fraud – Intentional Misrepresentation
(5) Breach of Fiduciary Duty
(6) Unjust Enrichment

On October 21, 2025, defendant Regents filed one of the three motions now before the court, a demurrer to the third [medical battery] and fifth [breach of fiduciary duty] causes of action of plaintiffs' SAC. Also on October 21, 2025, the Pollard Defendants filed the two other motions now before the court, a demurrer to the third through sixth causes of action of plaintiffs' SAC and a motion to strike portions of plaintiffs' SAC.

II. DEFENDANT REGENTS' DEMURRER TO PLAINTIFFS' SAC IS SUSTAINED, IN PART, AND OVERULED, IN PART.

A. Defendant Regents' demurrer to the third cause of action [intentional tort – medical battery – conditional consent] is OVERRULED.

In their third cause of action, plaintiffs allege, in relevant part, "On March 1, 2023, at her first prenatal visit with Defendant CHRISTINE MARIE KULLE, NP, Plaintiff [Monica] expressly stated: 'This is an unplanned pregnancy, but I want to continue as long as the baby is healthy.' … Plaintiff's statement placed Defendants on notice that her consent to prenatal care, labor, and delivery was expressly conditioned on confirmation that the fetus was healthy." (SAC, ¶139.) "On March 24, 2023, … Plaintiff reiterated that she would continue with her pregnancy only if forthcoming anomaly scans confirmed the baby was healthy." (SAC, ¶140.) "On April 21, 2023, … Plaintiff again complained of not feeling fetal movement and repeated to Dr. Pollard that she would continue her pregnancy only if the targeted ultrasound confirmed no anomalies." (SAC, ¶141.) "On May 5, 2023 … Plaintiff appeared for her targeted second-trimester anatomy ultrasound. ... Prior to and during the May 5 appointment, Plaintiff expressly told Defendants [Dr. Pollard], [Kulle], technician defendant Kevin Pung, and other staff present that she consented to continue prenatal care, labor, and delivery only on the condition that the targeted ultrasound revealed no fetal anomaly." (SAC, ¶¶142 – 143.)

Under a conditional consent theory, "a patient may place conditions on the doctor's authority to perform an operation, and the doctor who violates the conditions may be liable for battery." (*Conte v. Girard Orthopaedic Surgeons Medical Group, Inc.* (2003) 107 Cal.App.4th 1260, 1269 (*Conte*) citing *Ashcraft v. King* (1991) 228 Cal.App.3d 604, 610.) In *Ashcraft*, "[c]onsent was given for surgery to correct a curvature of the spine of a 16-year-old girl, but the consent was expressly conditioned on the use of only family-donated blood for necessary transfusions. [Citation.] The surgeon ignored the condition and used blood from the general supplies on hand at the hospital, some of which came from an HIV-positive donor. [Citation.] Subsequently, the girl became HIV positive." (*Conte*, *supra*, 107 Cal.App.4th at p. 1269.) "There are three elements to a claim for medical battery under a violation of conditional consent: the patient must show his consent was conditional; the doctor intentionally violated

[5] On September 29, 2025 and December 22, 2025, plaintiffs filed a Notice of Errata regarding the SAC correcting the caption and case number to reflect the change of venue from Alameda County to Santa Clara County.

the condition while providing treatment; and the patient suffered harm as a result of the doctor's violation of the condition." (*Id.*)

Initially, defendant Regents demurs to the third cause of action on the basis that the expressed condition is too "intangible" or not sufficiently specific as in *Ashcraft* where consent was conditioned upon the use of "family-donated" blood as opposed to any other blood. While the court might agree if the express condition was only that plaintiff's baby was "healthy" as alleged at paragraphs 139 – 140 of the SAC, plaintiffs are more specific in their allegations at paragraphs 141 – 143 wherein plaintiff alleges she consented only on the express condition that "the targeted ultrasound confirmed no fetal anomalies."

Secondarily, defendant Regents contend plaintiffs' medical battery conditional consent claim fails because there are no allegations that defendant Regents acted intentionally in violating the conditional consent. "Battery is an intentional tort. [Citations.] Therefore, a claim for battery against a doctor as a violation of conditional consent requires proof the doctor intentionally violated the condition placed on the patient's consent. [Citation.]" (*Piedra v. Dugan* (2004) 123 Cal.App.4th 1483, 1498.)

Defendant Regents point to paragraph 142 of the SAC where plaintiffs themselves allege, "The chart notes for May 5 state 'suspected fetal anomaly not found' and record that the calvarium, intracranial anatomy, cerebellum, choroid plexus, cisterna magna, ventricles, fetal profile, face, lips, nose, orbits, heart, stomach, diaphragm, kidneys, bladder, spine, umbilical cord insertion, three-vessel cord, right and left arms and hands, right and left legs and feet, and genitalia were 'within normal limits.'" According to defendant Regents, this allegation essentially states that plaintiff's condition (no fetal anomalies) had been satisfied and so defendant did not/ could not violate the condition placed on plaintiff's consent.

In opposition, plaintiffs argue defendant Regents ignore the subsequent allegations at paragraphs 144 – 145 which plaintiffs contend give rise to an inference of defendant's intentional violation of the conditional consent. There, plaintiffs allege that "the ultrasound worksheet from May 5 contained the notation 'arms remained cross,' indicating restricted fetal movement" and that "this notation was never disclosed to Plaintiff." Moreover, the May 5 ultrasound was performed "in-office" using an ultrasound machine "not capable of storing and reviewing dynamic imaging as required for detailed anatomic assessment" as opposed to the "level 2 ultrasound" which was previously ordered. (SAC, ¶¶141 and 144.)

In this court's view, these allegations are at least sufficient to create a triable issue as to whether defendants acted intentionally in violation of plaintiff's expressed condition. (*Cf. Kaplan v. Mamelak* (2008) 162 Cal.App.4th 637, 647 (*Kaplan*)—"In the absence of any definitive case law establishing whether operating on the wrong disk within inches of the correct disk is a 'substantially different procedure,' we conclude the matter is a factual question for a finder of fact to decide and, at least in this instance, not one capable of being decided on demurrer.") Although not framed as a "substantially different procedure," plaintiff is alleging defendant employed an ultrasound machine less capable of detecting fetal anomalies [and consequently less capable of satisfying plaintiff's express condition] than the ultrasound which was ordered. An "[intentional deviation from the consent/] battery occurs if

the physician performs a 'substantially different treatment' from that covered by the patient's expressed consent." (*Kaplan*, *supra*, 162 Cal.App.4th at p. 646.)[6]

These allegations are also what distinguish this case from *Saxena v. Goffney* (2008) 159 Cal.App.4th 316 which defendant Regents relies upon as a further argument in support of its demurrer to the third cause of action. Plaintiffs are alleging more than just the lack of informed consent.

Accordingly, defendant Regents' demurrer to the third cause of action of plaintiffs' SAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for medical battery – conditional consent is OVERRULED.

B. Defendant Regents' demurrer to the fifth cause of action [breach of fiduciary duty] is SUSTAINED.

"The elements of a cause of action for breach of fiduciary duty are the existence of a fiduciary relationship, its breach, and damage proximately caused by that breach." (*Knox v. Dean* (2012) 205 Cal.App.4th 417, 432; see also CACI, No. 4100.) "While breach of fiduciary duty is a question of fact, the existence of legal duty in the first instance and its scope are questions of law." (*Kirschner Brothers Oil, Inc. v. Natomas Co.* (1986) 185 Cal.App.3d 784, 790.)

In demurring, defendant Regents contends this fifth cause of action remains defective for the reason the court sustained the earlier demurrer:

> this breach of fiduciary duty cause of action is impermissibly duplicative of plaintiffs' negligence based cause of action [citing] *Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal.4th 992, 1000 where the court stated, "whether the cause of action is denominated 'ordinary' or 'professional' negligence, or both, ultimately only a single standard can obtain under any given set of facts."
>
> [In the FAC], the alleged breach of fiduciary duty would appear to encompass the same set of facts particularly in view of plaintiffs' allegation at paragraph 155 wherein plaintiff Monica alleges "she was harmed by Defendants' breach of the fiduciary duty to use reasonable care" and paragraph 158 wherein

[6] In other contexts, intent may be inferred from circumstantial evidence. "Since direct proof of fraudulent intent is often impossible, the intent may be established by inference from acts of the parties." (*Santoro v. Carbone* (1972) 22 Cal.App.3d 721, 727.) "Fraudulent intent must often be established by circumstantial evidence, and may be 'inferred from such circumstances as defendant's … failure even to attempt performance, . . .'" (*Locke v. Warner Bros.* (1997) 57 Cal.App.4th 354, 368.) "Of course, the agreement between conspirators need not be proved by direct evidence, but may be shown by circumstantial evidence that tends to show a common intent. In fact, in the absence of a confession by one of the conspirators, it is usually very difficult to secure direct evidence of a conspiracy, so that in the usual case the ultimate fact of a conspiracy must be determined from those inferences naturally and properly to be drawn from those matters directly proved." (*Peterson v. Cruickshank* (1956) 144 Cal.App.2d 148, 163.) "In discrimination cases, proof of the employer's reasons for an adverse action often depends on inferences rather than on direct evidence." (*Cucuzza v. City of Santa Clara* (2002) 104 Cal.App.4th 1031, 1038.). Here, the court would also agree with plaintiffs that the allegations at paragraphs 144 – 145 give rise to an inference of defendant's intentional violation of the conditional consent.

> plaintiff Monica alleges, "Defendants failed to act as reasonably licensed healthcare providers would have acted under the similar circumstances."(Order re Demurrer filed September 11, 2025 at page 7, line 20 to page 8, line 2.)[7]

Although plaintiffs have added allegations to the SAC, defendant Regents maintains the cause of action is merely duplicative of plaintiffs' other negligence based claims.

In opposition, plaintiffs rely principally upon *Moore v. Regents of University of California* (1990) 51 Cal.3d 120 (*Moore*) where the California Supreme Court held that a plaintiff stated a cause of action against his physician and other defendants for using his cells in potentially lucrative medical research without his permission. Plaintiff alleged that his physician failed to disclose preexisting research and economic interests in the cells before obtaining consent to the medical procedures by which they were extracted.

> [I]n soliciting the patient's consent, a physician has a fiduciary duty to disclose all information material to the patient's decision. [Citation.] These principles lead to the following conclusions: (1) a physician must disclose personal interests unrelated to the patient's health, whether research or economic, that may affect the physician's professional judgment; and (2) a physician's failure to disclose such interests may give rise to a cause of action for performing medical procedures without informed consent or breach of fiduciary duty. (*Moore*, *supra*, 51 Cal.3d at p. 129.)

This court emphasizes that the breach of fiduciary duty would appear to encompass the same harm as the negligence based claims, which is something that the Honorable Shella Deen previously identified and hone in on. In relevant part, plaintiffs' SAC alleges, "Defendants' conduct (relating to breach of fiduciary duty) was a substantial factor in causing Plaintiff's harm, including the loss of informed choice, emotional distress, costs of ongoing medical care, and other legally cognizable damages." (SAC, ¶163.)

The *Moore* court rejected the treating doctor's argument that, essentially, the scientific use of the plaintiff's cells does not amount to any separate harm.

> Golde argues that the scientific use of cells that have already been removed cannot possibly affect the patient's medical interests. The argument is correct in one instance but not in another. If a physician has no plans to conduct research on a patient's cells at the time he recommends the medical procedure by which they are taken, then the patient's medical interests have not been impaired. In that instance the argument is correct. On the other hand, a physician who does have a preexisting research interest might, consciously or unconsciously, take that into consideration in recommending the procedure. In that instance the argument is incorrect: the physician's extraneous motivation may affect his judgment and is, thus, material to the patient's consent.(*Moore*, *supra*, 51 Cal.3d at p. 131.)

[7] The Request for Judicial Notice in Support of Defendant The Regents of the University of California's Demurrer to Plaintiff's Second Amended Complaint is GRANTED, but only insofar as the existence of the document, not necessarily the truth of any matters asserted therein. (See Evid. Code §452, subd. (d); see also *People v. Woodell* (1998) 17 Cal.4th 448, 455.)

Indeed, the plaintiff in *Moore* alleged that following the consented procedure of spleen removal, plaintiff returned for visits at the doctor's direction where the doctor "withdrew additional samples of 'blood, blood serum, skin, bone marrow aspirate, and sperm.'" (*Id.* at p. 126.) At the very least, this amounted to separate distinguishable harm above and beyond the consented procedure and directly related to the doctor's concealment of his research motives.

Here, in contrast, plaintiff's alleged harm at paragraph 163 of the SAC encompasses the same harm as plaintiffs' negligence based claims. (See also *Hindin v. Rust* (2004) 118 Cal.App.4th 1247, 1257 – 1258—discussing primary right theory; see also *Panos v. Great Western Packing Co.* (1943) 21 Cal.2d 636—a single injury gives rise to a single cause of action.) Whether by defendants' neglect in identifying fetal anomalies or by defendants' breach of a fiduciary duty to disclose an unlawful profit motive in choosing to perform an allegedly inferior "in-house" ultrasound, plaintiff lost the ability to make an informed decision whether to continue with pregnancy or abort and now claim the same resulting damages arising from the birth of plaintiff Rocco who suffers from birth defect(s).

Accordingly, defendant Regents' demurrer to the fifth cause of action of plaintiffs' SAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for breach of fiduciary duty is SUSTAINED WITHOUT LEAVE TO AMEND.

III. POLLARD DEFENDANTS' DEMURRER TO PLAINTIFFS' SAC IS SUSTAINED, IN PART, AND OVERRULED, IN PART.

A. Pollard Defendants' demurrer to the third cause of action [intentional tort – medical battery – conditional consent] is OVERRULED.

According to the Pollard Defendants, plaintiffs' third cause of action sounds in negligent misdiagnosis. However, as discussed above in connection with defendant Regents' demurrer, at paragraphs 141 – 143 of the SAC, plaintiff alleges she consented to continue with prenatal care only on the express condition that "the targeted ultrasound confirmed no fetal anomalies." In addition, the allegations found at paragraphs 144 – 145 of the SAC give rise to an inference of defendants' intentional violation of the conditional consent in choosing to perform the ultrasound "in-house" using a less capable machine despite the earlier order for a "level 2 ultrasound."

Accordingly, Pollard Defendants' demurrer to the third cause of action of plaintiffs' SAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for medical battery – conditional consent is OVERRULED.

B. Pollard Defendants' demurrer to the fourth cause of action [fraud – intentional misrepresentation] is OVERRULED.

"The elements of fraud, which give rise to the tort action for deceit, are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage." (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638 (*Lazar*).) "Fraud actions are subject to strict requirements of particularity in pleading. … Accordingly, the rule is everywhere followed that fraud must be specifically pleaded." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 216.)

Pollard Defendants contend, initially, that there has been no misrepresentation made to plaintiff Monica. Pollard Defendants assert that billing codes are communications between providers and payors, not patients. This argument reflects a misreading or misunderstanding of plaintiff Monica's fourth cause of action. The SAC instead alleges, in relevant part, "Defendants [falsely] represented to MONICA that a fact was true – that her … ultrasound examination performed on May 5, 2023, revealed [fetal] anatomy that was visualized and within normal limits." (SAC, ¶¶150 – 151.) "In truth, the ultrasound worksheet from May 5 contained the notation 'arms remained cross,' indicating restricted fetal movement," an "abnormal or concerning finding[]." (SAC, ¶¶144 – 145.) In other words, defendants represented to plaintiff Monica that the fetal ultrasound was normal when it was not.

Pollard Defendants argue further that reliance is absent. A general statement of reliance is alleged at paragraph 154. A more specific allegation of reliance is found earlier at paragraph 143 wherein plaintiffs allege, "After being told 'suspected fetal anomaly not found,' Plaintiff reaffirmed that she was proceeding only because the condition she had communicated had been satisfied."

Accordingly, Pollard Defendants' demurrer to the fourth cause of action of plaintiffs' SAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for fraud – intentional misrepresentation is OVERRULED.

C. Pollard Defendants' demurrer to the fifth cause of action [breach of fiduciary duty] is SUSTAINED.

For the same reasons discussed in connection with defendant Regents' demurrer to the fifth cause of action for breach of fiduciary duty, Pollard Defendants' demurrer to the fifth cause of action of plaintiffs' SAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for breach of fiduciary duty is SUSTAINED WITHOUT LEAVE TO AMEND.

D. Pollard Defendants' demurrer to the sixth cause of action [unjust enrichment] is OVERRULED.

In *Melchior v. New Line Productions, Inc.* (2003) 106 Cal.App.4th 779, 793, the court wrote, "[T]here is no cause of action in California for unjust enrichment. "The phrase 'Unjust Enrichment' does not describe a theory of recovery, but an effect: the result of a failure to make restitution under circumstances where it is equitable to do so." [Citations.] Unjust enrichment is "'a general principle, underlying various legal doctrines and remedies,' " rather than a remedy itself. [Citation.] It is synonymous with restitution."

In *McBride v. Houghton* (2004) 123 Cal.App.4th 379 (*McBride*), the court wrote, "Unjust enrichment is not a cause of action, however, or even a remedy, but rather a general principle, underlying various legal doctrines and remedies. It is synonymous with restitution. Unjust enrichment has also been characterized as describing the result of a failure to make restitution. [¶] In reviewing a judgment of dismissal following the sustaining of a general demurrer, we ignore erroneous or confusing labels if the complaint pleads facts which would entitle the plaintiff to relief. Thus, we must look to the actual gravamen of [plaintiff's] complaint to determine what cause of action, if any, he stated, or could have stated if given leave to amend. In accordance with this principle, we construe [plaintiff's] purported cause of action for unjust enrichment as an attempt to plead a cause of action giving rise to a right to restitution."

> There are several potential bases for a cause of action seeking restitution. For example, restitution may be awarded in lieu of breach of contract damages when the parties had an express contract, but it was procured by fraud or is unenforceable or ineffective for some reason. [Citations.] Alternatively, restitution may be awarded where the defendant obtained a benefit from the plaintiff by fraud, duress, conversion, or similar conduct. In such cases, the plaintiff may choose not to sue in tort, but instead to seek restitution on a quasi-contract theory (an election referred to at common law as "waiving the tort and suing in assumpsit"). [Citation.] In such cases, where appropriate, the law will imply a contract (or rather, a quasi-contract), without regard to the parties' intent, in order to avoid unjust enrichment. [Citation.] (*McBride*, *supra*, 123 Cal.App.4th at pp. 387 – 388; internal citations and punctuation omitted.)

Significantly, "there is no particular form of pleading necessary to invoke the doctrine of restitution." (*Dinosaur Development, Inc. v. White* (1989) 216 Cal.App.3d 1310, 1315 [internal quotation marks omitted].) As the *McBride* court instructs, the court should overlook the labels given by the plaintiff and instead focus on whether there is a basis for restitution.

To the extent plaintiffs have stated a cause of action for fraud, there is a factual basis to support a claim for unjust enrichment. Pollard Defendants contend the SAC also fails to identify the source or amount of any payment which would support restitution. While a claim for fraud requires specificity, the court is of the opinion that it does not require plaintiffs to identify the source or amount of payment which would support restitution. (See *Lazar*, *supra*, 12 Cal.4th at p. 645—"this particularity requirement necessitates pleading facts which 'show how, when, where, to whom, and by what means the representations were tendered.'")

Accordingly, Pollard Defendants' demurrer to the sixth cause of action of plaintiffs' SAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for unjust enrichment is OVERRULED.

IV. POLLARD DEFENDANTS' MOTION TO STRIKE PLAINTIFFS' SAC IS DENIED.

In light of the court's ruling above with regard to the fifth cause of action, Pollard Defendants' motion to strike the fifth cause of action [breach of fiduciary duty] of the SAC is deemed MOOT. The court is of the opinion that the Pollard Defendants' motion to strike the third, fourth, and sixth causes of action, or portions thereof, is largely repetitive of arguments raised on demurrer. Accordingly, Pollard Defendants' motion to strike the third, fourth, and sixth causes of action of plaintiffs' SAC, or portions thereof, is DENIED.

Moving party to prepare the Order.

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Calendar Line #	**8**
Case Name	James Bodwin vs Valerie Chan et al
Case No.	24CV438701

Motion Compel Defendant Valerie Chan's Further Response to Special Interrogatory, No. 1, Set Two and Motion for Sanctions.

Before this Court is Plaintiff and Cross-defendant, James Bodwin's ("Plaintiff") Motion to Compel Defendant Valerie Chan's Further Responses to Special Interrogatory No., 1, Set Two. Defendant Valerie Chan opposes the motion on the grounds that parties were meeting-and-conferring regarding responses and did not reach an impasse.

The Court has carefully reviewed the moving papers Motion to Compel (totaling 7 pages); O Declaration of Jon Ustundag in Support and Exhibits A – K (totaling 38 pages); Separate Statement by Plaintiff (totaling 5 pages); Opposition and objections to the motion (totaling 9 pages); Declaration of John D. Pernick in Support of Defendant Valerie Chan's Opposition to Plaintiff's Motion to Compel (9 pages); Separate Statement by Plaintiff (totaling 4 pages); Plaintiff's Replay Brief (totaling 7 pages); and the pleadings.

On April 10, 2025, Plaintiff propounded Special Interrogatory, No. 1, Set two on Defendant Chan seeking the identity of investors whose actual or potential investment was included in a financial report that was disclosed to the Board in November 2023.

SPECIAL INTERROGATORY NO. 1:

As related to each INVESTOR presentation in the financial report disclosed to the BOARD in November 2023, IDENTIFY the INVESTORS whose actual or potential investment was included in the report.

On May 27, 2025, Defendant Valerie Chan responded as follows:

RESPONSE TO SPECIAL INTERROGATORY NO. 1:

Defendant objects on the grounds that the interrogatory is vague and ambiguous. Defendant further objects on the grounds that the interrogatory is overbroad and unduly burdensome. Defendant further objects on the ground that the request exceeds the permissible scope of discovery by seeking information not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects on the grounds that the request seeks financial or other confidential and business proprietary information. Defendant further objects to the extent the request seeks information or documents protected by the attorney-client privilege, the attorney work product doctrine and/or other privileges, protections, or doctrines of similar effect.

On October 17, 2025, the Plaintiff filed a motion to compel further responses to the above special interrogatory under Code of Civil Procedure section 2030.300 objecting to Ms. Chan's boilerplate response. Plaintiff asserts that the information is not vague and ambiguous and relates to its cause of actions for breach of fiduciary duty, misrepresenting and falsifying financial information of Persimmons to Investors. (Plaintiff's Moving papers, p. 3-4). Plaintiff contends that Special Interrogatory No. 1 refers to a financial report

including information regarding the amount of funds that Persimmons had raised and implicated presentations that Valerie Chan had presented to investors, including both actual and potential investors, that was disclosed to co-Defendant Persimmons' board of directors, including Plaintiff in November 2023. (*Id.*). Plaintiff states that the financial report did not disclose the identities of the actual or potential investors, which is relevant to the breach of fiduciary cause of action against Defendant Chan, specifically, misrepresenting and falsifying financial information of Persimmons to investors, and that "Ms. Chan represented three (3) different seed funding numbers . . . to three (3) different venture capital investors" and that "Ms. Chan refused to disclose or provide access to any financial documents to Mr. Bodwin, falsely and alarmingly stating that only she was entitled to have access to Persimmons' financial documents." (*Id; see also,* Complaint). Plaintiff opposes Defendant's claim to privilege as the special interrogatory simply seeks the identities of investors that Defendant Chan made in her presentations and to and whose actual or potential investment was included in the funding financial report that was presented to the Persimmons Board Member. Plaintiff also asserts that any information that is confidential and proprietary is covered by a protective order that parties executed in this matter. Despite meeting-and-conferred with Defendant Chan's counsel, Plaintiff alleges to have reached an impasse.

Defendant Chan opposes Plaintiff's assertion that parties were at an impasse about the deficient responses to special interrogatory No.1, set two. Defendants claim that parties were actively engaged in good faith discussions to resolve the matter. Defendant Chan provided a further update that she did not have "any recollection of making any represent that the amount of Persimmons seed funding was $700,000.00, $650,000.00, or $550,000.00." (Defendant's Separate Statement, p. 4). Defendant also argues that the Plaintiff never objected to Defendant Chan's responses to be "without merit" or "boilerplate" or that Defendant would have addressed this issue. Finally, Defendant's alleged that Plaintiff seeking to ascertain the identities of the investors is moot as Plaintiff admits that "it appears that [the] issue may be reasoned[,]" as Defendant Chan has agreed to and is in the process of producing documents with the identities of the investors unredacted.(*Id.*).

Plaintiff disputes Defendant's paraphrasing of the dispute as being moot as an egregious and dishonest mischaracterization. (Plaintiff's Response/Reply, p. 5). Plaintiff contends that Defendant Chan engaged in dilatory tactics waiting ten months after Plaintiff served the special interrogatory No.1, set two and four months after a motion to compel was filed. Four days after Defendant Chan filed an opposition, defense counsel stated it would provide a supplemental response by February 13, which is three days after Plaintiff's February 10 reply was due. As of February 10, Plaintiff had not received any further response.

Upon review of the briefing and foregoing, the court orders as follows:

<u>REQUEST FOR SPECIAL INTERROGATORY NO. 1:</u> GRANTED. As of February 10, 2026 and this tentative ruling, there has been no showing that further responses were provided by Defendant Chan. Thus, the discovery dispute remains at issue and is not moot. The request is relevant and reasonably calculated to lead to the discovery of admissible evidence based on its cause of actions for breach of fiduciary duty, misrepresenting and falsifying financial information of Persimmons to Investors. Defendant represented that Defendant Chan has agreed to and is in the process of producing documents with the identities of the investors unredacted. Any concerns that there may be confidential

information have and may be addressed in the protective order executed by the parties in this matter. Defendant Chan is to provide proof of responses to said special interrogatory or provide a verified response within 14 days of this order.

Motion for Sanctions:

Plaintiff also seeks sanctions in the amount of $5,520.00 for expenses ($60 for filing fees) and attorney's fees (7 hours at an hourly rate of $500 for attorney Michael Kang and 4 hours at the rate of $490 for Jon Ustundag) that the Plaintiff incurred regarding the motion. Plaintiff contends that the Defendant never provided a legitimate reason as to why Ms. Chan cannot simply identify the investors whose actual or potential investment was included in a financial report that was disclosed to the Board in November 2023. (Plaintiff's Moving papers, p. 5-6 and Declaration of Ustundag).

Pursuant to Code of Civil Procedure section 2031.310(h), "the court shall impose a monetary sanction…against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel further response to a demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust."

Here, Plaintiff included rates for two separate attorneys who engaged in some overlapping work for the same discovery dispute, motion, reply and argument. Thus, the Court will award 5 hours of work at the rate of $490 for attorneys' fees and $60 in filing fees for a total award of $2,510.00.

Moving party to prepare formal order.

Calendar Line #	**13**
Case Name	Warren Lindstaedt et al vs Daryl Tate et al
Case No.	25CV471229

Hearing: Petition Compel Arbitration

Before the Court is Defendant Sunrun Installation Services, Inc.'s ("Defendant" or "Sunrun") Motion to Compel Arbitration and Stay or Dismiss Proceedings. Plaintiffs Warren and Patty Lindstaedt ("Plaintiffs") oppose the motion on the grounds that the arbitration provision is procedurally and substantively unconscionable; fraud or misrepresentation provides grounds for rescission; law and equity provide denial of the motion; and failure to complete mediation as a precursor to enforcing arbitration as a waiver.

The Court has carefully review moving papers filed by Defendant Sunrun, notice of motion (totaling 4 pages); Defendants' memorandum of points an authorities (totaling 12 pages); Declaration of Kelley Molton in Support of the motion, including Exhibit A "Agreement from Sunrun's business records" (totaling 67 pages); Plaintiff's memorandum of points an authorities to Sunrun's motion to compel arbitration and stay or dismiss proceedings (totaling 13 pages); Plaintiffs' memorandum of points an authorities (totaling 5 pages); Declaration of Rosanna E. Fristed in Support of Plaintiff's Opposition, including Exhibit A (totaling 62 pages); Declaration of Warren D. Lindstaedt in Opposition (totaling 3 pages);

Declaration of Patty J. Lindstaedt in Opposition (totaling 3 pages); Response/Replay by Sunrun (totaling 10 pages); and the pleadings.

The court in ruling on a petition to compel arbitration, is guided by general principles of California contract law, must first determine whether the parties actually agreed to arbitrate the dispute. *Diaz v Sohnen Enters.* (2019) 34 CA5th 126, 129. A party that wishes to pursue arbitration must take active steps to secure that right because an arbitration agreement is not self-executing. (*Fleming Distribution Co. v. Younan* (2020) 49 Cal.App.5th 73, 80-81. To properly involve the right to involve arbitration, it must be timely and participate in conduct consistent with intent to arbitrate. Here, Defendant has moved to compel arbitration based on an executed contract. Plaintiff's counsel contends that she was unable to locate the applicable AAA Consumer Arbitration Rules and Due Process Protocol. In response, Defendant cites the above provision and AAA guidelines on AAA website. (*Id*, p. 3, footnote 1). Defendant specially points to the following portion as an unequivocal affirmation of understanding the arbitration provision:

"BY INITIALING, YOU AGREE TO ARBITRATION AND WAIVE YOUR RIGHT TO A JURY TRIAL…." (Defendant's Reply, p. 3; Declaration of Molton, Exhibit A, p. 25; Declaration of Rosanna E. Fristed, Exhibit A, p. 29). This portion is highlighted in a light blue rectangle and unlike other portions of the document the wording is in all uppercase letters. Then at the end of that text in normal case letter the term "Agreed and accepted by" is listed with "(Initials)" listed on the right side.

Similarly, on page 45 of the contract that is highlighted in a light blue rectangle is another signature page with an all-encompassing agreement of the contract. "By my signature below, I authorize automatic electronic payment and accept these Terms and Conditions and acknowledge that I will receive a separate electronic request to securely enter by bank account." The Account Holder is listed as "Warrant Lindstaedt" in plain text print in two separate areas followed by a Docusign electronic signature and date of "5/22/2024." In addition to this agreement, Defendant's point that Plaintiffs concede that they completed a recorded welcome call affirming their understandings and terms of the agreement. (Defendant's Reply, p. 3). Defendants argue that there is long-standing law for enforcing arbitration clauses as a matter of contract. (*La Frontera Center, Inc. v. United Behavioral Health, Inc.* (D.N.M. 2017), 268 F. Supp.3d 1167, 1193).

Here, the Plaintiffs Warren and Patty Lindstaedt submitted declarations representing that they are both over the age of 65, live on fixed incomes, and have no experience in solar energy. (Declarations of Warren Lindstaedt and Patty Lindstaedt). Plaintiffs state that salesman Daryl Tate solicited them to enter a contract for solar energy a took advantage of the elderly couple who did not have experience with solar energy. Plaintiff points to the alleged fraud committed by Sunrun, including misrepresenting the terms of the contract stating that the term is 20 years, when it was 25 years; not including a price over the life of its term; verbally telling the Plaintiffs that the cost would not exceed $148,000, when the cost appears closer to $217,000.00; and making false statements to Pacific Gas & Electric on behalf of Plaintiffs. (Declaration of Rosanna E. Fristed, p. 3). Plaintiffs assert that Sunrun never provided them with a Solar Consumer Protection Guide despite asking Mr. Tate for a copy and is required by the California Public Utilities Commission. Plaintiffs also allege telling Mr. Tate the font of the contract on the DocuSign agreement presented to them on

Mr. Tate's iPad was very small and claimed they could not read it and did not feel comfortable singing it. Plaintiffs contend that the contract uses arcane terms, making it difficult for laypeople to understand.

Plaintiff argue that allegations of fraud provide grounds for rescinding the agreement under *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951. (Plaintiff's Opposition, p. 7). Plaintiffs allege that claims of fraudulent inducement to enter a contract, including one with an arbitration provision, are promissory fraud, with a promise to do something in the future, and if that promise is made without such intent, it is implied misrepresentation of facts that are actionable fraud. Specifically, Plaintiffs challenge the Defendants one-way confidentiality provision; less formal rules of arbitrations; efficiency of arbitration; cash promotion Defendant provided Plaintiffs that an oversized system would reduce PG&E bills; and selling a product ". . . with a term exceeding their executed natural lifetimes." Thus, Plaintiffs claim to suffer damages, but state they need not show any pecuniary loss to prevail on recission. (*Id.,* at 6).

Plaintiff also opposes the petition to compel arbitration on the grounds that fraud or intentional misrepresentation is automatic grounds for contractual recission, and thus, based on their cause of action, Defendant's motion to compel arbitration must be denied. Defendants contend that *Engalla* is inapplicable and asserts that Plaintiff cannot meet its burden of providing the factors under *Manderville v. PCG&S Group, Inc.* (2007) 146 Cal.App.4th 1486: (1) Defendant represented to the Plaitniff that an important fact was true; (2) the representation was false; (3) Defendant knew that the representation was false when he or she made it, or the defendant made the representation recklessly and without regard for its truth; (4) Defendant intended that Plaintiff rely on the representation; (5) Plaintiff reasonably relied on the representation; (6) Plaintiff was harmed; and (7) Plaintiff's reliance on Defendant's representation was a substantial factor in causing that harm to Plaintiff. Defendant contends that the Plaintiffs fails to meet its burden under this analysis in its Complaint or Opposition by failing to establish elements with specificity.

Defendants point to the fact that ultimately, Plaintiffs signed the Agreement and there was no showing that Defendant misrepresented a false material fact or that he made a reckless representation without regard for the truth. Further, there was no showing that Plaintiffs reasonably relied on such representation that Defendant made and thus suffered harm, and that representation was a substantial factor in causing the harm. Defendant also asserts that the Agreement covers all disputes, including claims related to amendments, disclosures, change orders, collections, privacy, and customer information. Here, Defendant claims that the issue of arbitrability, including the validity of the Agreement are reserved for the arbitrator.

Plaintiff asserts that the arbitration clause is unconscionable and thus should be invalid. Defendants respond that the Plaintiff cannot meet the procedural and substantive elements to prove unconscionability by a preponderance of evidence. (*Sanchez v. Valencia Holding Co., LLC* (2015) 61 Cal.4th 899, 928). An evaluation of unconscionability is highly dependent on context. "The test is not simple, nor can it be mechanically applied." The doctrine often requires inquiry into the "commercial setting, purpose, and effect" of the contract or contract provision. . . And, as noted, the substantive unfairness of the terms must be considered in light of any procedural unconscionability. The ultimate issue in every case is whether the

terms of the contract are sufficiently unfair, in view of all relevant circumstances, that a court should withhold enforcement. (*Id.,* at p. 911- 912). In *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83 97, the California Supreme Court set forth a two-prong sliding-scale test, procedural (oppression or surprise due to unequal bargaining power) and substantive (one sided or overly harsh results), to determine unconscionability of an arbitration clause. Plaintiff asserts that there was procedural unconscionability based on Sunrun's 51-page "take it or leave it basis" DocuSign that gave Plaintiff six minutes to review despite his alleged discomfort with illegibility. Plaintiffs contend that based on the elderly age of the Plaintiffs, no prior experience with solar energy, there was oppression or surprise due to unequal bargaining powers. Further, Plaintiffs challenge the language in the arbitration provision that covers "all disputes (except certain disputes about this clause)" as overbroad, vague, and one-sided.

Defendant contends that Plaintiff could not prove that Plaintiff was given a six-minute time limit and mere adhesion does not invalidate a contract. Defendant also points out that Mr. Tate and the Plaintiff engaged in phone calls more than once, had several meetings, and spoke in detail about solar, and Plaintiff ultimately voluntarily signed the Agreement and completed a recorded welcome call affirming receipt of and understanding the Agreement. (Defendant's Reply, p. 7). In terms of the substantive element, Plaintiff claims that the shortened statute of limitation, waiver of class action, waiving incidental, consequential and punitive damages, as well as confidentiality indicates a one-sided agreement. Defendant contends that the terms does not "shocks the conscience" as a standard for weighing substantive unconscionability. Defendant points out the limited damages applies to both sides and points to the fact Plaintiff voluntarily agreed to sign the agreement. Defendant also asserts that nearly identical arbitration provision in solar agreements has been found to be conscionable in California and across the country. (*Id.,* at p. 8). Even if there were attributes of adhesion that alone does not prove unconscionability, the court may consider factors such as whether the contract had minimum levels of integrity. (*Graham v. Scissor-Tail,* (1981) 28 Cal.3d 807, 827).

Plaintiff also argues that Defendant waived its right to arbitration for failure to comply with mediation before seeking to enforce arbitration under

Plaintiffs contend that by failing to fulfill its condition-precedent to arbitration, namely mediation, Defendant has waived its right to arbitration under Code of Civil Procedure section 1218.2(a). (Declaration of Rosanna E. Fristed, p. 2). Plaintiffs challenge that Defendant failed to provide a complete portion of the arbitration clause and provides the following clause:

ARBITRATION OF DISPUTES AND CLASS WAIVER:

Unless legally prohibited, you and we mutually agree to settle any Dispute related to this contract in good faith via mediation, which will be administered by the American Arbitration Association ("AAA") with a mediator selected from the AAA National Roster of Mediators. If we cannot settle within 60 days of the initial mediation session, either party may elect to require to resolve our Dispute via binding arbitration. Our binding arbitration will be administered by the AAA before a sole arbitrator in accordance with AAA's Consumer Arbitration Rules. Judgment on the arbitrator's decision may be entered in any court that has

jurisdiction on the dispute. You and we mutually agree to keep the arbitration proceedings and submissions confidential as well your customer account information confidential. You also agree to bring claims against us only in your individual capacity.

YOU ARE WAIVING THE RIGHT TO INITIATE OR PARTICIPATE IN A CLASS ACTION OR SIMILAR PROCEEDING, INCLUDING IN A PRIVATE ATTORNEY GENERAL CAPACITY. We will pay the cost of initiating any arbitration proceedings, regardless of who prevails. If the arbitrator finds in your favor, we'll pay your attorney's fees and expenses of travel to the arbitration.

(Declaration of Fristed, p. 3; Exhibit A). Plaintiff claims despite attempts to discuss resolution as contemplated above, the Defendant has failed to fulfill this condition and points to the fact that Defendant does not provide any proof of meeting the initial mediation. Defendant assert that a failure to mediate the case results in a waiver of arbitration.

Strong public policies in California favor enforcement of agreements to arbitrate disputes. (*OTO, L.L.C. v Kho* (2019) 8 C5th 111, 125; *Prima Donna Dev. Corp. v. Wells Fargo Bank, N.A.* (2019) 42 CA5th 22, 35; *Cione v. Foresters Equity Services, Inc.* (1997) 58 Cal.App.4th 625 ("a heavy presumption weighs the scales in favor of arbitrability. . .")). A judge must order arbitration of any dispute that the judge determines is within the parties' arbitration agreement, unless the right to compel arbitration has been waived (see Weil & Brown et al., Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2025) Chapter §§3.36 and 3.49–3.52) or the agreement is otherwise unenforceable (*Id.,* at §§3.39–3.48; *see also, Wagner Constr. Co. v Pacific Mechanical Corp.* (2007) 41 C4th 19, 26; *Garcia v Superior Court* (2015) 236 CA4th 1138, 1144. See *Victrola 89, LLC v Jaman Props. 8 LLC* (2020) 46 CA5th 337, 356 (judge should order arbitration unless it can be said with assurance that arbitration clause is not susceptible of an interpretation that covers the asserted dispute; any reasonable doubt as to whether claim falls within arbitration clause must be resolved in favor of arbitration); *Aanderud v Superior Court* (2017) 13 CA5th 880, 890 (doubts concerning scope of arbitrable issues should be resolved in favor of arbitration)).

Upon review of the foregoing, the Court finds that the moving party has met their prima facie burden that a valid arbitration agreement was executed between the parties and the dispute in questions falls within the scope of those arbitration agreements. (*Bruni v. Didion* (2008) 160 Cal.App.4th 1272, 128. Although the Plaintiff objects, it has not met its burden of showing by a preponderance of evidence that arbitration agreement is not procedurally and substantively unconscionable. The terms of the arbitration provision are equally applied. *(Armendariz v. Foundation Health Psychare Services, Inc.* (2000) 24 Cal.4th 83).

However, the terms of the contract clearly state that mediation is a precursor to arbitration. Here, no evidence was provided by Defendants that there were any attempts to mediate the matter. Plaintiffs' counsel stated in the Declaration that despite multiple attempts to resolve the matter and mediate, Defendant did not respond. Thus, the binding arbitration request without proof that there were attempts to mediate the matter is premature. The Court DENIES the motion to compel arbitration without prejudice

Moving party to prepare the Order.

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