CAPITAL ONE N.A. v PETERSON

23CF14351

PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS

This is an action by Capital One, N.A. ("Plaintiff") against Chris Peterson ("Defendant") for the collection of a credit card debt in the sum of $13,579.52. Defendant filed a general denial as his Answer. The Court granted Plaintiff's motion to deem requests for admissions admitted on December 20, 2024.

Now before the Court is Plaintiff's motion for judgment on the pleadings. Plaintiff's counsel made sufficient meet and confer attempts prior to filing the instant motion.

I. Background

Defendant had a credit account issued by Plaintiff. (RFA 1.) Defendant received periodic statements regarding said credit account. (RFA 2.) As of December 8, 2023, Plaintiff owed a balance of $13,579.52 on said credit account. (RFA 3.) Plaintiff has failed to make payments on the credit account since December 8, 2023. (RFA 4.) The last payment on the credit account was made within the three years immediately prior to December 8, 2023. (RFA 5.)

On May 15, 2025, Plaintiff filed a notice of conditional settlement. However, at the August 20, 2025, OSC hearing Plaintiff informed the Court that Defendant had not returned the signed settlement agreement. On February 25, 2026, the Court entered a minute order dismissing the matter due to Plaintiff's own failure to file a notice of dismissal.

II. Legal Standard

A motion for judgment on the pleadings serves the same function as a demurrer but is made after the time for demurrer has expired. (Code Civ. Proc., § 438(c)(2); *Cloud v. Northop Grumman Corp*. (1998) 67 Cal.App.4th 995, 999.) Except as provided by statute, the rules governing demurrers apply. (*Id*.) The court must accept as true the factual allegations of the complaint and must give them a liberal interpretation. (*Gerawan Farming, Inc., v. Lyons* (2000), 24 Cal. 4th 468, 515-516.) In addition to the pleadings, the court "may consider matters that may be judicially noticed, including a party's admissions or concessions which cannot reasonably be controverted." (*Pang v. Beverly Hospital, Inc.* (2000) 79 Cal.App.4th 986, 989-990.)

If the motion is granted in favor of the plaintiff, "it shall be based on the grounds that the complaint states facts sufficient to constitute a cause of action against the defendant and the answer does not state facts sufficient to constitute a defense to the complaint. (Code Civ. Proc. §438(c)(3)(a).)

II. Legal Analysis

Defendant had a credit account issued by Plaintiff. (RFA 1.) Defendant received periodic statements regarding said credit account. (RFA 2.) As of December 8, 2023, Plaintiff owed a balance of $13,579.52 on said credit account. (RFA 3.) Plaintiff has failed to make payments on the credit account since December 8, 2023. (RFA 4.) The last payment on the credit account was made within the three years immediately prior to December 8, 2023. (RFA 5.)

A common count cause of action is used to allow a plaintiff to recover money that, under the circumstances, the defendant should be required to repay to avoid inequity. (*Rubenstein v. Fakheri* (2020) 49 Cal.App.5th 797, 809.) It "broadly applies 'whenever one person has received money which belongs to another, and which in 'equity and good conscience,' or in other words, in justice and right, should be returned. (*Ibid* [citations omitted].) To state a cause of action for a common count plaintiff must only allege, 1) the statement of indebtedness in a certain sum, (2) the consideration, and (3) nonpayment. (*Farmers Ins. Exchange v. Zerin* (1997) 53 Cal.App.4th 445, 460.)

Here Plaintiffs have pled and proven Plaintiff and Defendant entered into a contract for a consumer credit card (RFA No. 1) and that there is an indebtedness in the amount of $13,579.52 (RFA 3.) Plaintiff provided credit and Defendant used that credit to make consumer purchases. (RFA No. 2.) However, Defendant stopped making payments towards the balance on the subject account and has an unpaid balance on her account. (RFA 4.)

Plaintiff has carried its burden of demonstrating evidence supporting all the elements of its common count claim and that there are no affirmative defenses available. Defendant has failed to oppose the motion and makes no argument on his own behalf. (The Court finds the CMC ruling to dismiss the matter was improper as plaintiff had informed the Court that defendant failed to complete the proposed conditional settlement.)

III. Conclusion

Plaintiff's motion for judgment on the pleadings is **GRANTED**.

The clerk shall provide notice of this ruling to the parties forthwith. The Court intends to sign the submitted (Proposed) Order and Judgment.

VILLAFUERTE, et al v YGRENE ENERGY FUND, INC., et al

24CV47273

DEFENDANT'S MOTION TO SET ASIDE AND VACATE ORDER STRIKING DEFENDANT'S ANSWER, DEFAULT, AND DEFAULT JUDGMENT

This is a breach of contract action brought by Marco Villafuerte and Ximena Villafuerte ("Plaintiffs") against multiple defendants including Ygrene Energy Fund, Inc. ("Ygrene.")

Now before the Court is Ygrene's Motion for Relief from Default Judgment and Motion to Set Aside the order striking Ygrene's Answer.

A Court has discretion to set aside a default and grant leave to defend the action on grounds of "mistake, inadvertence, surprise or excusable neglect." (Code Civ. Proc., § 473(b).) The motion for discretionary relief must be filed within six months after the clerk's entry of default, which occurred here on October 7, 2025. Ygrene's initial ex parte application was filed on March 30, 2026, within six months of the October 7, 2025, default judgment. (Declaration of Noel J. Meza ("Meza Decl.") ¶ 11.) However, a proper motion was not filed until July 27, 2026, giving the Court the potential to find it was untimely. However, in keeping with the law's strong preference to resolve matters on their merits, the fact the ex parte extended time for a motion, and the failure to thereafter meet the six month timeline was the failure to follow the local rule procedures, a finding of untimeliness would lad to a new 473 motion for relief on attorney mistake for the failure to follow the rules. Therefore, the Court finds the motion is timely and will rule based on its substantive merits.

Plaintiffs filed this action on or about March 8, 2024. On May 6, 2024, while represented by attorney Daniel R. Paluch and his firm ("Prior Firm"), Ygrene filed its Answer. (Meza Decl. ¶ 4.) Mr. Paluch passed away unexpectedly on July 8, 2025. (*Id*. ¶ 5.) Prior Firm remained counsel of record, and Ygrene believed that it would continue to be represented appropriately by Prior Firm. (Declaration of Supriya Sachar ("Sachar Decl.") ¶ 3.) Ygrene instructed Prior Firm to contact Plaintiffs and seek a continuance of the Mandatory Settlement Conference that had been scheduled for September 8, 2025 but Prior Firm did not appear to do so and no one appeared at the conference on Ygrene's behalf. (*Id*. ¶ 4; Meza Decl. ¶ ¶ 6, 7.) Ygrene was not informed of these failures. (Sachar Decl. ¶ 5.) The Court then set an Order to Show Cause hearing for October 3, 2025, regarding whether Ygrene's Answer should be stricken. No one appeared for Ygrene at that hearing either and the Court struck Ygrene's Answer. Default judgment was thereafter entered against Ygrene on October 7, 2025. (*Id*. ¶ 8.) Current counsel has expressed that Ygrene did not know that the Answer was stricken, that default had been entered, of that the writ had been executed until later. (*Id*. ¶ ¶ 9, 10.)

On December 1, 2025, a writ of execution was filed by Plaintiffs. However, this writ was directed to the Sheriff of Calaveras County – whereas Ygrene's business address is in Sonoma County. Ygrene then retained new counsel and on December 17, 2025, the law firm of Pierson Ferdinand, LLP (attorney Meza's firm) filed its notice of appearance.

Thereafter, on March 20, 2026, another writ of execution was issued, this time in Sonoma County. Shortly thereafter, on April 1, 2026, Ygrene's new counsel filed its ex parte application for relief from default. At the hearing the only relief granted was a stay of the writ of execution; thereafter defendant failed to file a proper motion for 473 relief until July 27, 2026.

Plaintiffs oppose the motion, arguing that there are no grounds to grant the Defendants' motion because Ygrene and its new counsel inexcusably delayed seeking relief and the granting Ygrene's motion will cause Plaintiffs significant prejudice and harm.

The Court recognizes the apparent delay in seeking relief, but "because the law strongly favors trial and disposition on the merits, any doubts in applying section 473 must be resolved in favor of the party seeking relief from default." (*Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233.) This reflects the purpose behind section 473 and the judicial preference to "dispose of cases upon their substantial merits, and to give to the party claiming in good faith to have a substantial defense to the action an opportunity to present it." (*Mitchell v. California & Oregon Coast S.S. Co.* (1909) 156 Cal. 576, 579.)

Here, Ygrene reasonably assumed Prior Firm was continuing to handle the matter after the death of Mr. Paluch. Ygrene's representative avers that Ygrene was unaware that Prior Firm had missed both a settlement conference, an OSC hearing, and that default had been entered against it. (Sachar Decl. ¶ ¶ 3-5.) Ygrene's failure to do something prior to retaining new counsel was therefore the result of a reasonable mistake or excusable neglect. (*Alderman v. Jacobs* (1954) 128 Cal.App.2d 273, 276 ["Excusable neglect is that neglect which might have been the act of a reasonably prudent person under the same circumstances"].)

Ygrene's new counsel, Mr. Meza, avers that when it began representing Ygrene, the firm was inundated with different legal issues and matters and had to "triage" various matters involving Ygrene. (Meza Decl. ¶ 7.) Mr. Meza avers that during the transition process, communication with the Prior Firm was less than stellar and involved incomplete and inaccurate information, including that this case had been dismissed. (*Id*. ¶ 19.) Mr. Meza avers that, rather than immediately checking the Court's docket to determine the status of this case, his firm waited on information from Prior Firm and had no reason to believe that Ygrene – which had been represented from the case's inception – had a default entered against it. (*Id.* ¶ 20.) It was only after continued delay, that in March 2026 Mr. Meza's firm checked the Court's docket, and then became aware of the default and pending writ of execution. (*Id*. ¶ 21.)

The Court construes Mr. Meza's declaration to be an attorney's affidavit setting forth the "attorney's mistake, inadvertence, surprise or neglect," making relief from default mandatory in this case. (Code Civ. Proc. §473(b).)

Accordingly, given the totality of the circumstances, the judicial preference for decisions on their merits, and Mr. Meza's affidavit, the **motion for relief from default is GRANTED**. The original Answer filed on May 6, 2024 is reinstated.

Because the Court has relied on an affidavit of counsel regarding mistake, **Ygrene and its counsel shall pay $1,000.00 in compensatory legal fees and costs to Plaintiffs within 20 (twenty) days of this ruling**. (Code Civ. Proc. § 473(b)) to mitigate the prejudice asserted by plaintiffs.

The Court sets a Mandatory Settlement Conference on February 1, 2027, at 8:30 a.m. in Department 2. MSC Statements must be filed and served by 3:00 p.m. on January 20, 2027.

The clerk shall provide notice of this ruling to the parties forthwith. The Court intends to sign the submitted (proposed) Order.

RICE, et al v NELSON, et al

24CV47449

DEFENDANT'S MOTION TO STRIKE PUNITIVE DAMAGES ALLEGATIONS AND PRAYER FOR ATTORNEY'S FEES FROM PLAINTIFF's FIRST AMENDED COMPLAINT

On June 18, 2024, Victoria Rice and John Rice, Jr. ("Plaintiffs") filed their Complaint against Defendants Sharon Nelson, Mark Nelson (collectively, "Sellers") and real estate agent Wendy McCormick ("Agent") arising out of a real estate transaction between Plaintiffs and the Sellers.

On November 6, 2024, the Court sustained in part, and overruled in part, the demurrer filed by Agent. At that time, the court also granted in part, and denied in part, the motion to strike. Plaintiffs filed a First Amended Complaint ("FAC") on December 18, 2024.

Now before the Court is Sellers' motion to strike portions of the FAC

A motion to strike is subject to the deadlines set forth in Code Civ. Proc. § 435(b)(1) and therefore must be filed "within the time allowed to respond to a pleading." (*Ibid*; see also California Rules of Court 3.1322.) Here, the FAC was filed on December 18, 2024, and Sellers each filed an Answer on January 30, 2025. Nonetheless, the motion to strike was not filed until nineteen months later. However, despite the untimeliness of the motion, the Court has authority to act on its own initiative to strike improper matters and "at any time in its discretion, and upon terms it deems proper." (Code Civ. Proc. § 436.)

The Court may consider an untimely motion to strike "so long as its action does 'not affect the substantial rights of the parties." (*Jackson v. Doe* (2011) 192 Cal.App.4th 742, 750.)

There is no evidence of prejudice to the Plaintiffs and accordingly, the Court will therefore consider the merits of the motion.

I. FACTS AND PROCEDURAL HISTORY

In or around 2019 through 2020, Plaintiffs, with the help of Agent, sought to purchase a new home and were informed of an "amazing place" located at 974 Laurel Lane, Murphys, Calaveras County, California, 95247 ("Property.")(FAC ¶ 7.) Because of the restrictions in place during the Covid-19 epidemic, Agent provided Plaintiffs with a walk-through of the Property via video call. (*Id.* ¶ 8.) Plaintiffs, despite Agent's insistence that it was unnecessary, chose to have an inspection of the Property. (*Ibid*.)

Prior to execution of the sales agreement, Plaintiffs received a Real Estate Transfer Disclosure Statement ("Disclosure") which they allege fraudulently concealed significant defects, malfunctions, and environmental hazards affecting the Property. (FAC ¶ 10.) Plaintiffs allege that Sellers also concealed material information about the defects, malfunctions, and hazards in a document entitled Seller Property Questionnaire ("SPQ") (*Ibid*.)

On February 15, 2021, Plaintiffs attended the inspection of the Property where they were surprised to learn that the inspector ("Adelhelm") was Agent's spouse. Adelhelm's inspection report indicated that the Property was generally in good condition, with an old but still usable roof, and some minor erosion issues. (*Id.* ¶ 14.) On February 16, 2021, the Plaintiffs contacted Adelhelm via telephone to address specific concerns regarding the Property. During this call, Agent, who was present with Adelhelm, was fully aware of the Plaintiffs' inquiries and made statements aimed at alleviating Plaintiffs' concerns (i.e., with regards to their concerns about foundation erosion and holes, Agent stated it was attributable to rodents and an underground spring.) (*Id.* ¶ 16.)

On March 3, 2021, Plaintiffs met with Sellers and Agent to address concerns with the Property. (FAC ¶ 17.) Sellers advised Plaintiff of many upgrades and fixes but failed to disclose materially important information about deck issues, repair of the retaining wall, and issues with the stucco on the back of the house. (*Ibid*.) Based on the representations of Sellers and Agent, Plaintiffs entered into a purchase agreement and took ownership of the Property on March 10, 2021. (*Id*. ¶ ¶ 18, 19.)

In 2022, following significant rainstorms in the area, Plaintiffs became aware of numerous issues with the Property. (FAC ¶ 20.) Plaintiffs contacted Adelhelm who suggested they reach out to their home warranty company. (*Id*. ¶ 21.) Plaintiffs then learned from a contractor that the Property had serious structural concerns that would need to be repaired. (*Id*. ¶ 22.)

In February 2024, the Plaintiffs encountered Eugene Carr ("Carr"), a contractor who had rented the Property prior to its purchase by the Plaintiffs. (FAC ¶ 23.) Carr denied ever having made any repair work on the Property. (*Ibid*.) Later Plaintiffs learned that Sellers had been made aware (by Carr) of many structural issues with the deck but failed to make any repairs. (*Id.* ¶¶ 23-26.) In March 2024, Plaintiffs found black mold which was determined to have been caused by various defects, including the poorly constructed deck and retaining wall. (*Id*. ¶ 27.)

After inspections, Plaintiffs received a preliminary estimate for repair in the amount of $198,322.00 based on the extensive nature, the site conditions, the limited accessibility, and reconstruction costs. (FAC ¶ 30.)

As against the Sellers, Plaintiffs' FAC alleges causes of action for :1) breach of contract, 2) violation of California Civil Code § 1102, 3) fraud by concealment, and 4) fraudulent misrepresentations. Among other relief, Plaintiffs seek attorney's fees and punitive damages.

II. LEGAL STANDARD FOR MOTION TO STRIKE

A motion to strike lies either to strike: (1) any "irrelevant, false or improper matter inserted in any pleading"; or (2) any pleading or part thereof "not drawn or filed in conformity with the laws of this state, a court rule or order of court." (CCP § 436.) A motion to strike may also be used to strike allegations related to an improper request for relief. (*Saberi v. Bakhtiari* (1985) 169 Cal.App.3d 509, 517.) A motion to strike can be used to attack the entire pleading, or any part thereof—i.e., even single words or phrases. (*Warren v. Atchison, Topeka & Santa Fe Ry. Co.* (1971) 19 Cal.App.3d 24, 40.)

III. Analysis

A. Attorney's Fees

Attorney's fees are recoverable by a party only if specifically provided for by a statute or law, or if authorized by an express agreement between the parties. (*Nasser v. Superior Court* (1984) 156 Cal.App.3d 52, 56 ["Absent an agreement or statute, a party is generally precluded from recovery of attorney fees"].)

Plaintiffs do not identify any statute or contractual provision which would allow for attorney's fees. Accordingly, the motion to strike is granted, with leave to amend.

B. Punitive Damages

Punitive damages are recoverable where a plaintiff proves "by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice." (Civ. Code, § 3294.) Relevant to this case, "malice" means 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 rights or safety of others. (*Ibid*.)

Punitive damages are not allowable in breach of contract claims. (*Purcell v. Schweitzer* (2014) 224 Cal.App.4th 969, 976.) Accordingly, the request for punitive damages arising solely out of the breach of contract claim is improper and the motion to strike references to punitive damages in Paragraph 42 of the FAC is granted.

Sellers also move to strike the claims for punitive damages set forth in the cause of action for violation of Cal. Civil Code section 1102. Sellers argue that the allegations in this cause of action lack the specificity required for fraud claims.

The Court disagrees. "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." (*Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255.) That is, the Court does not "read allegations in isolation." (*Ibid*.) Here, throughout the FAC, Plaintiffs set out factual allegations alleging that Sellers knowingly and willfully acted in a manner that they knew would cause harm to Plaintiffs and that Plaintiffs were in fact harmed. (FAC ¶¶ 39-42;45-48; 61-63; 67-72.) Plaintiffs allege that Sellers intentionally misrepresented the condition of the Property both in meetings and on the various disclosure forms. (*Ibid*.) They further allege that Sellers purposefully and intentionally hid conditions – such as masking cracks or obscuring defects with objects – so that Plaintiffs would not know of the actual condition of the Property. (See e.g., FAC ¶ 17, 45, 46, 60.) Plaintiffs allege that all of these acts of concealment and misrepresentation were done for the economic benefit of Sellers.

At this stage of the proceedings, this is sufficient to allege conduct which could give rise to punitive damages.

Accordingly, the motion to strike references to punitive damages (outside the breach of contract cause of action) is denied.

IV. Conclusion

The **motion to strike reference to attorney's fees is GRANTED, with** 20 (twenty) days leave to amend. The **motion to strike reference to punitive damages is GRANTED as to Paragraph 42** of the FAC, **with** 20 (twenty) days leave to amend. The **motion to strike remaining references to punitive damages is DENIED**.

The clerk shall provide notice of this ruling to the parties forthwith. Defendant Sellers to submit a formal Order complying with Rule 3.1312 in conformity with this Ruling.

MCT GROUP v WALSH

25CF15585

PLAINTIFF'S MOTION TO COMPEL DEFENDANT'S DISCOVERY RESPONSES

Now before the Court is a motion to compel responses to discovery brought MCT Group ("Plaintiff") against David C. Walsh ("Defendant.") Defendant has not filed an opposition.

On March 26, 2026, Plaintiff served Defendant with Request for Production of Documents, Set One ("RPD") and Request for Admissions ("RFA") (collectively "Discovery") (Declaration of Aimee R. Morris ("Morris Decl.") ¶ 2, Ex. A.) Defendant never responded nor communicated with Plaintiffs' counsel about the Discovery. (*Id*. ¶¶ 4, 5.)

Pursuant to Code Civ. Proc. section 2031.300, if a party to whom requests for production of documents fails to serve a timely response then:

> (a) The party to whom the demand for inspection, copying, testing, or sampling is directed waives any objection to the demand, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:
>
> (1) The party has subsequently served a response that is in substantial compliance with Sections 2031.210, 2031.220, 2031.230, 2031.240 and 2031.280.
>
> (2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

Pursuant to Code Civ. Proc. section 2033.280, if a party to whom requests for admission are directed fails to serve a timely response, the following rules apply:

> (a) The party to whom the requests for admission are directed waives any objection to the requests, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:

> 1) The party has subsequently served a response that is in substantial compliance with Sections 2033.210, 2033.220, and 2033.230.
>
> 2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

Further, the Court shall deem the facts admitted as truth, unless it finds that the party to whom the RFAs were directed, “has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220.” (Code Civ. Proc. § 2033.280(c).)

A party moving to compel initial responses under these sections are not required to meet and confer. (*Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 411.)

Plaintiffs served Defendant with the Discovery on March 26, 2026. Defendant has not responded to the RFAs and has not filed an opposition.

Accordingly, the Court **GRANTS** Plaintiffs’ motion to compel responses to the RPDs. Defendant is to provide code-compliant responses, without objections, within fourteen (14) days of this order. The Court also **GRANTS** the motion to deem the facts as admitted as truth.

Plaintiff also seeks sanctions in the amount of $960.00. The Court must impose sanctions in the amount of $1,000.00 for the failure to respond to RPDs and to meet and confer in good faith (Code Civ. Proc. §2023.050. (a)(1) and (3).) Accordingly, Defendant is ordered to **pay sanctions** to Plaintiff in the amount of **$1,000.00** within fourteen (14) days of this order.

The clerk shall provide notice of this ruling to the parties forthwith. Plaintiff to submit a formal Order complying with Rule 3.1312 in conformity with this Ruling.

RAMIREZ v FAMILY DOLLAR, LLC, et al

25CV48285

DEFENDNATS' MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS

Before the Court is a renewed motion to compel arbitration filed by Defendants Family Dollar LLC, Family Dollar Services, LLC, and Family Dollar Operations, LLC (collectively "Defendants"). For the reasons set forth below, the motion is denied.

The Court DENIES Defendants' Request for Judicial Notice as the proffered declarations are not matters for which judicial notice is appropriate. However, the Court notes the four declarations were all appropriately verified and they all have been considered as evidence in reaching this decision.

I. **Factual and Procedural Background**

Plaintiff began working for Defendants as a clerk beginning in or around June 5, 2023. (Complaint ¶ 12.) When Plaintiff was initially hired, she informed her manager, Amy, that she suffered from mental disabilities, but she was able to perform the essential duties of her position with reasonable accommodation without endangering the health or safety of herself or other employees of Defendants. (*Id.* ¶ 13.) On or around November 5, 2023, Plaintiff requested medical leave due to a cancer diagnosis. (*Id.* ¶ 14.) Defendants then terminated Plaintiff's employment on November 6, 2023. (*Id.* ¶ 15.)

Plaintiff alleges she was wrongfully terminated because of her disability and request for accommodation. Plaintiff filed her complaint alleging various violations of California's Fair Housing and Employment Act.

On January 26, 2026, Defendants moved for an order compelling the matter to arbitration pursuant to an alleged arbitration agreement ("Agreement") between Plaintiffs and Defendants which the Court denied for the lack of any testimony or evidence contradicting plaintiff's claim that she never signed the arbitration agreement. Defendants have renewed the motion accompanied by a declaration from Defendants' Regional HR Manager asserting the agreement contains plaintiff's electronic signature as part of her onboarding package; Plaintiff opposes the motion.

II. Procedure and Burden of Proof on Petition to Compel Arbitration

In determining the enforceability of an arbitration agreement, the court considers "two 'gateway issues' of arbitrability: (1) whether there was an agreement to arbitrate between the parties, and (2) whether the agreement covered the dispute at issue." (*Omar v. Ralphs Grocery Co.* (2004) 118 Cal.App.4th 955, 961.) The trial court must first determine whether an "agreement to arbitrate the controversy exists." (Code Civ. Proc., 1281.2.) "Because the existence of the agreement is a statutory prerequisite to granting the petition, the petitioner bears the burden of proving its existence by a preponderance of the evidence." (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413.) The party seeking arbitration can meet its initial burden by attaching to the petition a copy of the arbitration agreement purporting to bear the respondent's signature. (*Espejo v. Southern California Permanente Medical Group* (2016) 246 Cal.App.4th 1047, 1060.) Alternatively, the moving party can meet its initial burden by setting forth the agreement's provisions in the motion. (Cal. Rules of Court, rule 3.1330.)

It then becomes Plaintiff's burden, in opposing the motion, to prove by a preponderance of the evidence any fact necessary to her opposition. (*Espejo*, *supra* 246 Cal.App.4th at 1057.) "Code of Civil Procedure section 1281.2 requires a trial court to grant a petition to compel arbitration 'if the court determines that an agreement to arbitrate the controversy exists.'" (*Avery v. Integrated Healthcare Holdings, Inc*. (2013) 218 Cal.App.4th 50, 59, quoting Code Civ. Proc. § 1281.2.)

Generally, on a petition to compel arbitration, the court must grant the petition unless it finds either (1) no written agreement to arbitrate exists; (2) the right to compel arbitration has been waived; (3) grounds exist for revocation of the agreement; or (4) litigation is pending that may render the arbitration unnecessary or create conflicting rulings on common issues. (*Desert Reg'l Med. Ctr. v. Miller*, (2022), 87 Cal.App.5th 295, 308.)

III. Legal Analysis

Defendants have met their initial burden of showing the existence of the Agreement that appears to have been signed by Plaintiff on September 23, 2023. (Declaration of Vincent Votta ("Votta Decl.") ¶31, Ex. C.) (*Espejo v. S.Cal. Permanente Med. Grp*. (2016) 246 Cal.App.4th 1047, 1060 [party moving to compel arbitration may meet their initial burden to show an agreement to arbitrate by attaching a copy of the agreement purportedly bearing the opposing party's signature].) Defendants assert that the Agreement was signed as a necessary and indispensable part of the online application process. (Votta Decl. ¶ ¶ 29-31.)

However, Plaintiff disputes that not only is the signature on the agreement not hers, but also, that she never submitted an online application. Specifically, Plaintiff avers that the only application she submitted was a hard-copy application, filled in by hand, and submitted in person at the store location of work located at 3502 Spangler Lane, Copperopolis, California. (Declaration of Ramona Ramirez ("Ramirez Decl.") ¶ ¶ 2-3.) Plaintiff alleges that *after* she was already hired, her manager Amy called her into her office to let her know that certain paperwork needed to be completed. (*Id.* ¶ 7.) Amy asked Plaintiff to use Amy's office computer to fill out the paperwork but there was an issue with the computer. (*Id*. ¶ ¶ 8,9.) Amy informed Plaintiff that Amy would take care of the paperwork and Amy later informed Plaintiff that she had in fact done so. (*Id*. ¶¶ 10, 11.) Plaintiff never saw the completed paperwork and believes that Amy signed the documents, including the Agreement, on Plaintiff's behalf without Plaintiff's knowledge. (*Id.* ¶¶ 10, 11.) Because Plaintiff has asserted under oath that she did not see or sign the arbitration agreement, she has successfully carried her burden of producing evidence that challenges the authenticity of the agreement. (*Gamboa v. Ne. Cmty. Clinic*, (2021) 72 Cal.App.5th 158, 165 [declaring under penalty of perjury that the opposing party never saw the arbitration agreement or signed it is sufficient evidence to challenge the authenticity of the agreement].)

Accordingly, the burden returns to Defendants to show, by a preponderance of the evidence, that the agreement is valid. (*Gamboa*, *supra* 72 Cal.App.5th at 165.)

In denying Defendant's previous motion to compel arbitration, the Court specifically noted that Defendants failed to provide any evidence or declaration from Amy – or anyone else present with Plaintiff when she alleged signed the Agreement – that contradicts Plaintiff's sworn statement. Defendant still do not provide any declaration from any individual who actually saw Plaintiff sign the Agreement. This time, however, Defendants do provide evidence that contradicts Plaintiff's statement that she was hired in June of 2023. (Declaration of Chad Thomas ("Thomas Decl.") ¶ ¶ 2, 3.) Mr. Thomas avers that the corporate records show that Plaintiff received her first paycheck in October of 2023 which would coincide with a hire date in September of 2023. (*Ibid*.) Defendant also provides evidence that all employment applications were done online so that there could never have been a paper application as Plaintiff states. (*Id.* ¶ 6.) And, Defendants assert, all individuals who *apply* online for a position with Defendant must consent to arbitration as part of the application process. (*Id*. ¶ 7.) Defendants provide evidence that an applicant would have agree to arbitrate before the online application can continue. (Declaration of Vince Votta ("Votta Decl.") ¶¶ 15, 16, 18.) Defendants then provide a copy of Plaintiffs' online application.

The application itself, however, does not explicitly show that Plaintiff agreed to the arbitration provision. The application states: "Please click arbitration.com and review Dollar Tree's I Agree Mutual Agreement to Arbitrate Claims and the Arbitration Program FAQs." (*Id*., Ex. B.) Next to the statement asking the applicant to "review" the arbitration agreement, is the phrase "I agree," apparently placed there by Plaintiff. Beneath that, is the sentence, "I acknowledge that I have received and read the Mutual Agreement to Arbitrate Claims, and I agree to its terms." However, there is no "I agree" placed next to the *acceptance* of the arbitration agreement. The next "I agree" is placed next to the statement involving applicant privacy rights. Thus, Defendant's own evidence fails to show that Plaintiff expressly agreed to the arbitration agreement.

However, *even* if the Court were to conclude that Plaintiff agreed to arbitrate as part of her application process, the Court cannot conclude that this would bind Plaintiff to agree to arbitrate as part of her employment. First, it is unclear from the documents provided whether the applicant would read the agreement to arbitrate – as part of the application process – to be limited to just the application process or whether it would extend outside the application to the employment itself.

Second, the application agreement would have been superseded by the alleged second consent to arbitrate done as part of the onboarding process. The second consent to arbitrate (allegedly electronically signed on September 23, 2023), specifically states that it is the "entire" agreement and does not incorporate any prior representations related to the arbitration agreement. (Votta Decl., Ex. C.) (See *Jarboe v. Hanlees Auto* Group (2020) 53 Cal.App.5th 539, 551 [agreement to arbitrate as part of application process was superseded by later employment agreement which purported to be the "entire" agreement between the parties].) However, that alleged electronically signed Agreement *is the very one* Plaintiff asserts was signed outside her presence by Amy. And, as before, Defendants have failed to provide a declaration from Amy (or anyone else present with Plaintiff) who can controvert Plaintiff's affidavit that she did not personally complete any of the onboarding paperwork or agree to arbitrate.

Defendants have not carried their burden to overcome Plaintiff's sworn statement that she did not sign an arbitration agreement.

Accordingly, the **motion to compel arbitration is DENIED**.

The clerk shall provide notice of this ruling to the parties forthwith. Plaintiff to submit a formal Order complying with Rule 3.1312 in conformity with this Ruling.