

1 JURA C. ZIBAS (SBN 217864)  
jura.zibas@wilsonelser.com  
2 MARGO A. CRAWFORD (SBN 349624)  
margo.crawford@wilsonelser.com  
3 WILSON ELSER MOSKOWITZ  
EDELMAN & DICKER LLP  
4 655 Montgomery St., Ste. 900  
San Francisco, CA 94111  
5 Telephone: (415) 625-9385  
Fax: (415) 434-1370

6 Attorneys for Defendant,  
7 SMARTRENT TECHNOLOGIES, INC.

8  
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF SAN FRANCISCO**

11  
12 SAN FRANCISCO TENANTS UNION,  
ADRIAN PHUA, WILLIAM SOLIS,  
13 and ELANA DIESTEL,

14 Plaintiffs,

15 v.

16 SMARTRENT TECHNOLOGIES, INC.,  
EQUITY RESIDENTIAL, a real estate  
investment trust, ERP OPERATING  
17 LIMITED PARTNERSHIP, a  
partnership, EQUITY RESIDENTIAL  
18 MANAGEMENT LLC, EQUITY-  
TASMAN APARTMENTS LLC,  
19 ARCHSTONE DAGGETT PLACE  
LLC, ARCHSTONE SOUTH MARKET  
20 LP, EQR-TERRACES LIMITED  
PARTNERSHIP, and DOES 1 through  
21 15,

22 Defendants.

CASE NO. CGC-25-631212

**DEFENDANT SMARTRENT  
TECHNOLOGIES, INC.'S NOTICE OF  
MOTION AND MOTION TO COMPEL  
ARBITRATION AND STAY PROCEEDINGS  
PENDING ARBITRATION**

*[Filed Concurrently with the Motion; Declaration  
of Matt Lorey; [Proposed] Order]*

Action Filed: December 4, 2025

Trial Date: None

**DATE:** April 29, 2026

**TIME:** 9 a.m.

**DEPT.:** 302

1 **TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on April 29, 2026, at 9:00 a.m., or as soon thereafter as the  
3 matter may be heard in Department 302 of the above-entitled court, Defendant SmartRent  
4 Technologies, Inc. (“SmartRent”) will and hereby does move this Court for an Order compelling  
5 Plaintiffs to arbitrate their claims against Defendant and to dismiss or stay this action pending  
6 completion of arbitration. SmartRent is joined in this Motion by Defendants Equity Residential,  
7 ERP Operating Limited Partnership, Equity Residential Management LLC, Equity-Tasman  
8 Apartments LLC, Archstone Daggett Place LLC, Archstone South Market LP, and EQR-Terraces  
9 Limited Partnership (collectively, “Equity” or “Equity Defendants”).

10 SmartRent makes this Motion pursuant to 9 U.S.C., sections 1 et seq., and California Code  
11 of Civil Procedure § 1281.4 on the grounds Plaintiffs are bound by a written agreement to arbitrate  
12 the subject matter of the Complaint against SmartRent and Equity, and while this Motion and  
13 arbitration of any Plaintiffs’ claims against any Defendant is pending, the proceedings before this  
14 Court should be stayed.

15 SmartRent’s Motion is based on this Notice, the Memorandum of Points and Authorities  
16 filed herewith, the Declaration of Matt Lorey, and exhibits thereto, and any other oral and  
17 documentary evidence that the Court may admit prior to or at the time of the hearing.

18  
19 Dated: February 23, 2026

**WILSON, ELSER, MOSKOWITZ,  
EDELMAN & DICKER LLP**

20  
21  
22 By: 

Margo A. Crawford  
Attorneys for Defendant,  
SMARTRENT TECHNOLOGIES, INC.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. SUMMARY OF ARGUMENT**

3 SmartRent Technologies, Inc. (“SmartRent”) is an enterprise real estate technology  
4 company that provides a management platform for property owners, managers, and residents.  
5 Partnering with property owners like Equity, SmartRent offers smart home solutions (locks,  
6 thermostats, and leak sensors) that provide convenience, safety, and an elevated living experience.

7 In this action, three individual Plaintiffs (“Resident Plaintiffs”: Adrian Phua, William Solis,  
8 and Elana Diestel), along with the San Francisco Tenants Union (“Plaintiff Union”), allege that  
9 these smart devices and associated services violate privacy law. SmartRent disputes these claims  
10 and rejects the assertion that Plaintiffs’ privacy rights have been infringed.

11 These substantive allegations are not properly before this Court because Plaintiffs are  
12 bound by SmartRent’s Terms of Service, which mandate individual arbitration for any related  
13 claims. Notwithstanding this provision, Plaintiffs initiated this lawsuit; accordingly, SmartRent  
14 moves to compel individual arbitration.

15 Under the Federal Arbitration Act, this Court should compel arbitration. A valid arbitration  
16 agreement exists that delegates questions of arbitrability to the arbitrator, so the Court need not  
17 proceed further. Should it, however, it would find Plaintiffs’ claims arbitrable under the Terms of  
18 Service. The doctrine of equitable estoppel bars non-signatory Plaintiffs from circumventing  
19 arbitration because their claims arise out of and relate to the Terms of Service.

20 Because a valid arbitration agreement exists and encompasses Plaintiffs’ claims,  
21 SmartRent asks the Court to compel individual arbitration and stay all proceedings pending a  
22 decision on this Motion and the completion of arbitration.

23 **II. FACTUAL BACKGROUND AND MATERIAL ALLEGATIONS**

24 **A. SmartRent Partners with Property Managers to Provide Convenient and  
25 Innovative Smart Home Services to Residents, Including Plaintiffs**

26 SmartRent Technologies, Inc. is an enterprise real estate technology company that provides  
a comprehensive management platform designed for property owners, managers and residents.

27 Partnering with property owners, SmartRent offers a suite of smart home solutions that  
28 provide comfort, safety, convenience and an elevated living experience for residents. Smart

1 thermostats allow residents to customize and automate the temperature settings in their home while  
2 helping manage energy use, potentially saving the resident money. Smart locks enable keyless  
3 entry, remote access for trusted guests, and added security. And smart leak sensors help prevent  
4 moisture-related or air-quality issues, prevent water damage and reduce the risk of mold and  
5 related problems. Smart hubs help residents manage their smart home devices all in one place and  
6 with a single smartphone app.

7 Residents access these services through the SmartRent Resident App (“SmartRent App”),  
8 a mobile and web application that allows residents to conveniently manage their smart home  
9 devices and submit service requests to property managers. Residents may access and manage their  
10 SmartRent devices by changing the temperature on thermostats, utilizing a front door access code  
11 or traditional physical key, or monitoring and managing these devices on wall-mounted hubs.  
12 (Declaration of Matt Lorey (“Lorey Decl.”), ¶ 3.) In order to utilize the enhanced features of the  
13 SmartRent App, residents must register for an account and agree to the Terms of Service and  
14 Privacy Policy. (*Id.*, ¶ 7.)

15 Plaintiffs allege, beginning in or around 2023, each resident was “required” to download  
16 and install “SmartRent’s proprietary application, the ‘SmartRent App’” to “access features of the  
17 locks on their doors, and where applicable, thermostats, and leak sensors.” (Compl. ¶¶ 6, 45-46,  
18 48-50, 65 & fn. 26.) And each Resident Plaintiff concedes that they did so. (*Id.* ¶¶ 2, 3, 22, 45-46.)  
19 Additionally, Plaintiff Union members allege they reside in Equity properties where SmartRent  
20 technologies are installed.<sup>1</sup> (Compl. ¶ 22.)

21 **B. Plaintiffs’ Agreement to SmartRent Terms of Service, Privacy Policy, and**  
22 **Arbitration Clause**

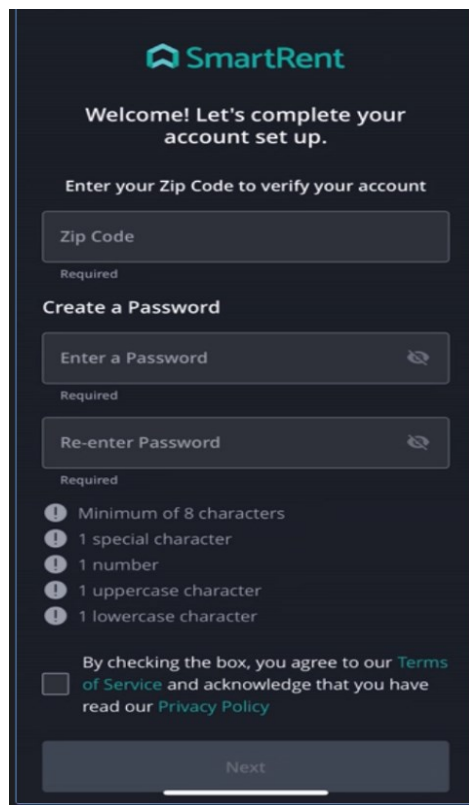
23 Plaintiffs allege each resident is “required” to download and install the SmartRent App  
24 beginning in 2023. (*Id.* ¶¶ 6, 45-46, 48-50, 65 & fn. 26.)

25 All SmartRent App “sign-up flows” dating back to at least 2021 required residents to agree  
26 to SmartRent’s operative Service Agreement and Terms of Use and Privacy Policy (collectively,  
27 “Terms of Service” or “ToS”). (Lorey Decl., ¶ 4.)

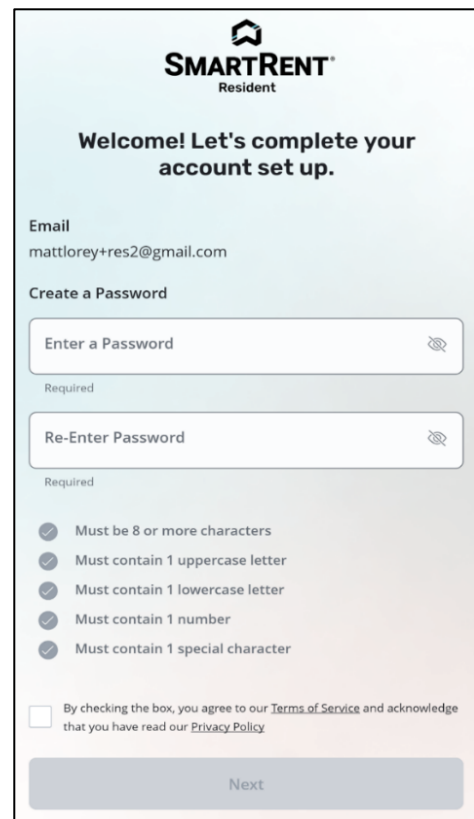
28 <sup>1</sup> Plaintiff Union alleges its members reside in three Equity properties: One Saint Francis Place, 855 Brannan Street,  
and 1330 Bush Street. (Compl. ¶ 22.) However, no SmartRent devices are installed or operated at 1330 Bush Street.  
(Lorey Decl., ¶ 13.)

1 As Plaintiffs acknowledge, residents “received an email with information to ‘manage all  
2 of the smart devices’” in their units “by downloading SmartRent’s app to their personal devices.”  
3 (Compl. ¶ 46; see also Lorey Decl., ¶ 14.) The email presents residents with a large black button  
4 with white text that states, “Complete Account Registration.” (*Id.*, ¶ 14, Ex. 5.) Once tenants click  
5 the “Complete Account Registration” button, they are prompted to install the SmartRent App on  
6 their personal cell phones. (*Ibid.*) After installation, residents proceed to the SmartRent App to set  
7 up their account. (*Ibid.*)

8 When a resident opens the SmartRent App, the screen states “SmartRent Resident” and  
9 “Welcome! Let’s complete your account set up.” (*Id.*, Exs. 2, 3.) As depicted below, in the bottom  
10 third of the screen is a check box, with text immediately adjacent stating: “By checking the box,  
11 you agree to our Terms of Service and acknowledge that you have read our Privacy Policy.” The  
12 “Terms of Service” and “Privacy Policy” are hyperlinked to the respective policies. (*Ibid.*)




26 2022-2025 SmartRent account set up page.  
27 (Lorey Decl., ¶ 6, Ex. 2.)

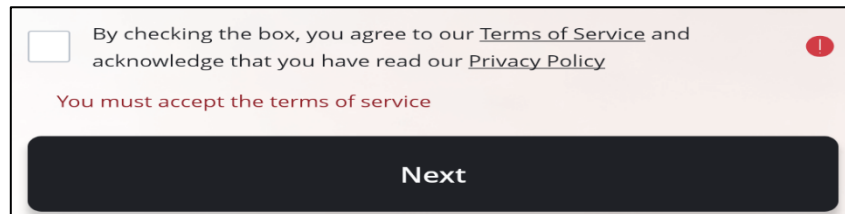


2025-present SmartRent account set up page.  
(Lorey Decl., ¶ 7, Ex. 3.)

28 <sup>2</sup>Based on available records, the 2022–2025 page is presented in dark mode; a cropped light mode version of the same screen is presented as Ex. 2 to the Lorey Decl. Both viewing modes are equally available to users. (Lorey Decl., ¶ 6.) In both modes “**Terms of Service**” and “**Privacy Policy**” appear as hyperlinks in teal. (*Id.*)

1 Residents *must* agree to SmartRent’s Terms of Service and indicate review of the Privacy  
2 Policy to register a SmartRent account. (Lorey Decl., ¶ 4.) If a resident attempts to register without  
3 checking the box agreeing to SmartRent’s Terms of Service, they are unable to proceed to the next  
4 screen and receive an error message. (*Ibid.*) These features have been consistent in the SmartRent  
5 App since at least 2021. (*Ibid.*)

6 Also, since 2021, if a resident attempts to create an account, but does not check the box  
7 agreeing to the terms of service, a red circle with an exclamation point (  ) appears in the lower  
8 right side of the screen next to the hyperlinks to the “Terms of Service” and “Privacy Policy”. (*Id.* ¶  
9 7, Exs. 1, 3.)



10 SmartRent account set up page ToS message. (*Lorey Decl.*, ¶ 7, Ex. 1.)

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15 Additionally, red lettering stating “You must accept the terms of service” appears under  
16 the same text. (*Ibid.*) SmartRent periodically updates its ToS. (*Id.*, ¶ 8.) Since at least 2022,  
17 SmartRent has prompted in-app review of updates to its ToS, requiring residents review the  
18 updated ToS to continue using the application. (*Ibid.*)

19 Given the above, in all instances, Plaintiffs were presented with clear and conspicuous  
20 notice of SmartRent’s Terms of Service which contained an arbitration provision, and Plaintiffs  
21 agreed to those terms, and thereafter continued to utilize the SmartRent App and devices. (Compl.  
22 ¶¶ 46, 50, 57, 64–65, 94; Lorey Decl., Exs. 2, 3, 4.)

23 **i. The Terms of Service and Arbitration Provisions**

24 As noted above, Plaintiffs allege each resident is “required” to download and install the  
25 SmartRent App beginning in 2023. (Compl. ¶¶ 45, 65 & fn. 26.) Plaintiffs and residents were put  
26 on notice of the Terms of Service and Privacy Policy through the SmartRent App’s registration  
27 process, which requires residents to agree to the SmartRent ToS, including an arbitration provision.

28 Indeed, SmartRent business records reflect that each of the Resident Plaintiffs downloaded,

1 installed, and registered accounts on the SmartRent App. (Lorey Decl., ¶¶ 9-12.) And 72-83% of  
2 residents in properties the Plaintiff Union represents here created accounts on the SmartRent App  
3 and affirmatively agreed to its Terms of Service. (*Id.*, ¶ 13.)<sup>3</sup>

4 ***Plaintiff Solis*** agreed to the SmartRent Terms of Service on April 12, 2023, and continued  
5 using SmartRent technologies until at least March 2024. (See Compl. ¶¶ 2, 4, 19; Lorey Decl., ¶¶  
6 8, 12, 23, Ex. 11, at p. 1, 10-11 [the April 2023 ToS itself includes a binding arbitration  
7 provision.]) By continued use, Plaintiff Solis is bound by the terms of service agreement in effect  
8 in March 2024, namely the SmartRent Service Agreement and Terms of Service dated January  
9 2024 (“January 2024 Agreement”). (*Id.*, Ex. 11, at p. 1 [“[t]he Company can change...provisions  
10 of these Terms at any time.... [b]y using this Site...you are agreeing to all updated Terms.”].)

11 ***Plaintiff Phua*** agreed to the SmartRent Terms of Service on June 19, 2024, and continued  
12 using SmartRent technologies until at least April 12, 2025. (*Id.*, ¶¶ 9, 11; See Compl. ¶¶ 3, 18, 64–  
13 65.) Having assented to SmartRent Terms of Service at least once on June 19, 2024, Plaintiff Phua  
14 is bound by the operative terms of that date, also the January 2024 Agreement. (Lorey Decl., ¶ 24,  
15 Ex. 12.)

16 ***Plaintiff Diestel*** agreed to SmartRent’s terms of service on October 24, 2025. (*Id.*, ¶ 10;  
17 See Compl. ¶¶ 3, 18, 64–65.) Plaintiff Diestel is bound by the arbitration provision in the *current*  
18 version of the SmartRent Service Agreement and Terms of Service, dated September 15, 2025.

19 Plaintiffs Solis and Phua agreed to SmartRent’s Terms of Service and agreed to arbitrate  
20 disputes, and are bound by the terms of the January 2024 version of the SmartRent Service  
21 Agreement and Terms of Service. (Lorey Decl., ¶¶ 11-12, 24, Ex. 12.) Similarly, Plaintiff Diestel  
22 is bound by the arbitration provision in the *current* version of the SmartRent Service Agreement  
23 and Terms of Service, dated September 15, 2025. (*Id.*, ¶¶ 10, 21, Ex. 9.) The arbitration provisions  
24 of the January 2024 and current terms of service are identical. (*Id.*, Exs. 9, § 23, 12 § 23.)

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<sup>3</sup> The Complaint asserts that *unnamed* additional Plaintiff Union member(s) reside in Equity properties utilizing SmartRent technologies. (Compl. ¶¶ 1–2, 6, 22.) Plaintiffs do not identify these individual(s). But, the Complaint indicates they too are individually bound by the *current* terms of the SmartRent ToS as dated September 15, 2025 (*Id.*, ¶¶ 45, 65 & fn. 26.), though SmartRent cannot determine the status of their acceptance to the ToS. Nonetheless, as demonstrated in Section IV.C., *infra*, as the Plaintiff Union invokes the ToS and Privacy Policy they are equitably estopped from repudiating the valid arbitration provision contained in the agreement invoked in this suit.

1 Each agreement, underneath the bolded heading “**Dispute Resolution and Arbitration;**  
2 **Class Action Waiver**” contains a broad arbitration clause:

3 [A]ll disputes between you and SmartRent shall be resolved by binding  
4 arbitration and that you expressly waive your right to a court or jury trial and/or your  
5 right to initiate a class action. For the purposes of this Dispute Resolution section, the  
6 reference to SmartRent includes its directors, employees, agents, affiliates, licensees,  
7 service providers, property landlord, and property manager.

8 (Lorey Decl., Exs. 9, § 23, 12 § 23, bold added.)

9 In addition, the arbitration clause provides in all-capitalized text:

10 ARBITRATION REPLACES THE RIGHT TO GO TO THE COURT TO RESOLVE  
11 DISPUTES. YOU AGREE THAT ANY AND ALL DISPUTES, WHETHER  
12 PRESENTLY IN EXISTENCE OR BASED ON ACTS OR OMISSIONS IN THE  
13 PAST OR IN THE FUTURE, WILL BE RESOLVED EXCLUSIVELY AND  
14 FINALLY BY BINDING ARBITRATION RATHER THAN IN COURT.

15 (*Ibid.*)

16 The arbitration provision further provides that “[a]ny controversy or claim arising out of  
17 or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the  
18 American Arbitration Association in accordance with its Commercial Arbitration Rules.” (Lorey  
19 Decl., Exs. 9, § 23, 12 § 23.) And it provides that “[a]ll matters within the scope of the Federal  
20 Arbitration Act (9 U.S.C. 1, et seq.) will be governed by it and not by any state arbitration law.”

21 (*Ibid.*) Moreover, the arbitration “tribunal shall have the power to rule on any challenge to its own  
22 jurisdiction or to the validity or enforceability of any portion of the agreement to arbitrate.” (*Ibid.*)

23 The arbitration agreement also requires individual arbitration and pre-suit notice. (*Ibid.*)

24 **ii. Plaintiffs’ Claims Fall Within the Scope of the Arbitration Agreement**

25 Plaintiffs filed suit against SmartRent and Equity on December 4, 2025. The three Resident  
26 Plaintiffs Elana Diestel, Adrian Phua, and William Solis are current or former Equity residents  
27 who use or used SmartRent smart home devices and related services in their Equity apartment  
28 units. (Compl. ¶¶ 17–19, 45–50.) The Plaintiff Union is a San Francisco-based nonprofit funded  
by its members, including unnamed individual members who reside in Equity apartment buildings

1 utilizing SmartRent technologies. (*Id.* ¶¶ 1, 20–22.)<sup>4</sup> Plaintiffs’ Complaint alleges that Equity, in  
2 partnership with SmartRent required as a “condition of tenancy” the installation and use of  
3 SmartRent’s smart devices and the use of SmartRent’s proprietary application to access the locks  
4 on their doors, thermostats, and leak sensors and other smart devices in their units.

5 The Complaint further alleges that SmartRent and Equity “through the app” obfuscate the  
6 scope of data collected, shared, and maintained by Defendants. (*Id.* ¶¶ 94–95.) Plaintiffs allege  
7 their use of SmartRent devices and services in Equity buildings created environments of  
8 surveillance. (*Id.* ¶¶ 1, 20–22.)

9 These allegations fall squarely within the scope of the arbitration agreement such that this  
10 dispute must be ordered to arbitration. (Lorey Decl., Exs. 9, § 23, 12 § 23, [“all disputes between  
11 you and SmartRent shall be resolved by binding arbitration...For the purposes of this Dispute  
12 Resolution section, the reference to SmartRent includes its agents, affiliates, licensees, service  
13 providers, property landlord, and property manager.]).

### 14 **iii. Plaintiffs Bring this Suit Despite Agreeing to Individual Arbitration**

15 Without notice, and despite agreeing to individually arbitrate this dispute and waiving the  
16 right to bring representative actions, (*Ibid.*), Plaintiffs filed this action which acknowledges each  
17 Resident Plaintiff used the SmartRent App, Equity provides notice of installation of smart home  
18 devices via an addendum to its standard lease notice, and that residents consented to the installation  
19 of this technology in both their lease agreement and the SmartRent Terms of Service, which  
20 “govern[] [residents’] access to and use of the Network, Services, and [Webs]ite, and the contents  
21 therein” and describe clearly how resident data is collected, used, and disclosed. (*Id.*, Ex. 9 § 1,  
22 Ex. 6 [Privacy Policy].)

23 SmartRent respectfully requests this Court stay this action and compel Plaintiffs to submit  
24 to binding individual arbitration against all Defendants.

### 25 **III. LEGAL STANDARD**

26 As stated by the United States Supreme Court, “The ‘principal purpose’ of the Federal  
27

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28 <sup>4</sup> Plaintiff Union alleges its members reside in three Equity properties: One Saint Francis Place, 855 Brannan Street,  
and 1330 Bush Street. (Compl. ¶ 22.) However, no SmartRent devices are installed or operated at 1330 Bush Street.  
(Lorey Decl., ¶ 13.)

1 Arbitration Act (‘FAA’) is to ‘ensur[e] that private arbitration agreements are enforced according  
2 to their terms.’” (*AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 344 [citing cases].) In  
3 applying the FAA, the California Supreme Court has stated that the FAA “stands as ‘a  
4 congressional declaration of a liberal federal policy favoring arbitration agreements,  
5 notwithstanding any state substantive or procedural policies to the contrary.’” (*Pinnacle Museum  
6 Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 235 [citing *Moses  
7 H. Cone Hospital v. Mercury Constr. Corp.* (1983) 460 U.S. 1, 24].)

8 Where a valid arbitration agreement exists, the Court must compel arbitration “in  
9 accordance with the terms of the agreement.” (9 U.S.C. § 4.) A court’s review of a motion to  
10 compel arbitration is limited to determining two “gateway” issues: (1) whether a valid agreement  
11 to arbitrate exists and, if it does (2) whether the agreement encompasses the dispute[s] at issue.”  
12 (*Chiron Corp. v. Ortho Diagnostic Syst. Inc.* (9th Cir. 2000) 207 F.3d 1126, 1130.)

#### 13 IV. ARGUMENT

14 Under the FAA, the Court should compel arbitration of all Plaintiffs and all claims.  
15 Plaintiffs, along with other residents, entered into a valid and enforceable arbitration agreement  
16 when they accepted the SmartRent Terms of Service upon using the SmartRent App. The  
17 arbitration provisions expressly delegate all threshold questions of arbitrability to an arbitrator, not  
18 a court. Even if the Court did examine arbitrability, Plaintiffs agreed to arbitrate all claims that  
19 they now bring. Finally, the Plaintiff Union is equitably estopped from circumventing arbitration  
20 because their claims invoke, challenge, and rely on, the SmartRent Terms of Service, and the  
21 Privacy Policy incorporated therein, which contains the arbitration agreement. Plaintiffs cannot in  
22 fairness pursue claims against SmartRent, based on the SmartRent Terms of Service, without also  
23 subjecting themselves to the provision requiring arbitration of disputes about the same agreement.

##### 24 A. The Federal Arbitration Act Governs the Arbitration Provision

25 The arbitration provision at issue here provides that “[a]ll matters within the scope of the  
26 Federal Arbitration Act (9 U.S.C. 1, et seq.) will be governed by it and not by any state arbitration  
27 law.” (Lorey Decl., Ex. 9 § 23.) Courts regularly apply the FAA where the agreement says the  
28 statute applies (e.g., *Valencia v. Smyth* (2010) 185 Cal.App.4th 153, 179, *Victrola 89, LLC v.*

1 *Jaman Properties 8 LLC* (2020) 46 Cal.App.5th 337, 346, *Buckeye Check Cashing, Inc. v.*  
2 *Cardegna* (2006) 546 U.S. 440, 442–444.) Where a valid arbitration agreement exists, the Court  
3 must compel arbitration “in accordance with the terms of the agreement.” (9 U.S.C. § 4.)

4 **B. Plaintiffs and SmartRent Formed a Valid Arbitration Agreement**

5 In determining the first gateway issue, Courts consider the validity of an arbitration  
6 agreement by “apply[ing] ordinary state-law principles that govern the formation of contracts.”  
7 (*First Options of Chicago, Inc. v. Kaplan* (1995) 514 U.S. 938, 944.) This Court typically applies  
8 “the law of the forum state when making choice of law determinations.” (*Nguyen v. Barnes &*  
9 *Noble Inc.* (9th Cir. 2014) 763 F.3d 1171, 1175.) However, courts strongly favor enforcing  
10 contractual choice-of-law provisions, as here where SmartRent’s ToS provide Arizona law shall  
11 apply (*Nedlloyd Lines B.V. v. Superior Court* (1992) 3 Cal.4th 459, 465; Lorey Decl., Exs. 9 § 23,  
12 12 § 23.)

13 Consistent with the FAA’s overarching purpose of promoting arbitration as a valid and  
14 enforceable dispute resolution mechanism, the United States Supreme Court affirmed that state  
15 law contract principles cannot be applied to disfavor the formation of arbitration agreements: “By  
16 its terms...the Act cares not only about the ‘enforcement’ of arbitration agreements, but also about  
17 their initial ‘validity,’ that is, about what it takes to enter into them.” (*Kindred Nursing Ctrs. Ltd.*  
18 *P’ship v. Clark*, (2017) 137 S. Ct. 1421, 1428.)

19 Here, a valid agreement to arbitrate exists under either California or Arizona law. Plaintiffs’  
20 Complaint outlines that they assented to, and had clear and conspicuous notice of, the SmartRent  
21 Terms of Service following move-in to Equity properties. Plaintiffs cannot reasonably dispute that  
22 residents are bound by a valid agreement to arbitrate that is contained within the Terms of Service.

23 **i. The Parties Manifested Mutual Assent**

24 In California, and Arizona, “[g]eneral principles of contract law determine whether the  
25 parties have entered a binding agreement to arbitrate.” (*Craig v. Brown & Root, Inc.* (2000) 84  
26 Cal.App.4th 416, 420; *Johnson v. Earnhardt’s Gilbert Dodge, Inc.* (Ariz. 2006) 132 P.3d 825,  
27 828.) Mutual assent to contract may be manifested by written or spoken words, or by conduct, and  
28 acceptance of contract terms may be implied through action or inaction. (*Binder v. Aetna Life Ins.*

1 Co. (1999) 75 Cal.App.4th 832, 850.)

2 A contract is formed by the mutual assent of the parties, which can be established by either  
3 actual or constructive knowledge of the contract terms. (*Swift v. Zynga Game Network, Inc.* (N.D.  
4 Cal. 2011) 805 F.Supp.2d 904, 911; *Keebaugh v. Warner Bros. Entertainment Inc.* (9th Cir. 2024)  
5 100 F.4th 1005, 1015 [“inquiry notice” can satisfy contract assent requirements]; see *Cornell v.*  
6 *Desert Fin. Credit Union* (Ariz. 2023) 524 P.3d 1133, 1140 [“The conduct of a party may manifest  
7 assent,” citing Restatement (Second) § 19(3)].)

8 Just as an arbitration clause within a gym contract may bind a party even if the party never  
9 actually read the clause, yet signed the handbook containing the agreement provision. (*24 Hour*  
10 *Fitness, Inc. v. Super. Ct.* (1998) 66 Cal.App.4th 1199, 1215.) So too, an internet-based agreement  
11 is validly formed when “the contractual terms were presented to the consumer in a manner that  
12 made it apparent the consumer was assenting to those very terms when checking a box or clicking  
13 a button.” (*B.D., supra*, 76 Cal.App.5th at p. 944, internal quotations omitted.)

14 As detailed in Section II.B.i., *supra*, each Resident Plaintiff and Plaintiff Union members  
15 using the App assented to the SmartRent ToS, containing an arbitration agreement, by  
16 affirmatively checking a box with text immediately to the right of it, stating: “By checking the  
17 box, you agree to our Terms of Service and acknowledge that you have read our Privacy Policy.”  
18 (Lorey Decl., ¶¶ 4, 6–13, Exs. 2, 3.) Accordingly, Plaintiffs had clear notice that checking the box  
19 would constitute assent to those agreements.

20 **ii. Plaintiffs Had Clear and Conspicuous Notice of the Terms**

21 The context and visual design of the resident account registration process indicate Plaintiffs  
22 had conspicuous notice of the Terms of Service. SmartRent’s checkbox requirement makes the  
23 Terms of Service Agreement a “clickwrap agreement,” which Arizona, California, and federal  
24 courts routinely enforce. A “clickwrap agreement” “asks customers to agree to the terms, displayed  
25 somewhere on [a] website, by clicking on an ‘I accept’ or ‘I agree’ button.” (*B.D., supra*, 76  
26 Cal.App.5th at p. 944; see also *Keebaugh, supra*, 100 F.4th at p. 1014.)

27 Courts do not hesitate to enforce such agreements where parties have manifested assent to  
28 terms via “electronic clicks” of a checkbox and the parties are advised that “the act of clicking will

1 constitute assent to the terms and conditions of an agreement.” (*Id.* at p. 946 [noting that both  
2 federal and California courts “generally find[] . . . clickwrap agreements to be enforceable”];  
3 *Oberstein v. Live Nation Entertainment, Inc.* (9th Cir. 2023) 60 F.4th 505, 515 [California law];  
4 accord *FreeLife Int’l, Inc. v. Clear Perceptions Mktg.* (D.Ariz. Mar. 6, 2008) 2008 WL 660065, at  
5 \*2 [applying Arizona law and finding a patron of website agreed to a contract when he “click[ed]  
6 the ‘I accept’ box to confirm his consent to be bound by [the] policies and procedures”]; *Tresona*  
7 *Multimedia LLC v. Legg* (D.Ariz. Feb. 4, 2015) 2015 WL 470228, at \*12 [ similar]; *Brittain v.*  
8 *Twitter Inc.* (D.Ariz. Jan. 4, 2019) 2019 WL 110967, at \*1 [similar].)

9 Residents were prompted via email to download and install the SmartRent App. (Lorey  
10 Decl., ¶ 14, Ex. 5.) That email explained residents needed to “Complete Account Registration”  
11 on the “SmartRent Resident App” to “enjoy your new smart community,” including the use of  
12 electronic locks, thermostats, and leak sensors. (*Id.*, Ex. 5.)

13 The visual design of the SmartRent App account set up page constitutes adequate notice of  
14 the Terms of Service. Notice is conspicuous when it is “displayed in a font size and format such  
15 that the court can fairly assume that a reasonably prudent internet user would have seen it.”  
16 (*Keebaugh, supra*, 100 F.4th at p. 1014.) In deciding whether a party had clear and conspicuous  
17 notice of online terms, courts consider criteria like “(1) the size of the text; (2) the color of the text  
18 as compared to the background it appears against; (3) the location of the text and, specifically, its  
19 proximity to any box or button the user must click to continue use of the website; (4) the  
20 obviousness of any associated hyperlink; and (5) whether other elements on the screen clutter or  
21 otherwise obscure the textual notice.” (*Sellers v. JustAnswer LLC* (2021) 73 Cal.App.5th 444,  
22 473.)

23 Throughout the time of Plaintiffs’ allegations, the SmartRent App account set-up page  
24 contained a hyperlink to the “Terms of Service” immediately adjacent to the checkbox, residents  
25 were **required** to click in order to register their SmartRent App accounts. (Lorey Decl., ¶¶ 4–7,  
26 Exs. 2–3.) The checkbox and notice appeared on an uncluttered screen, where the hyperlink was  
27 prominently featured and unobscured by other design elements. (*Ibid.*) That hyperlink and the  
28 phrase “Terms of Service” was offset from the surrounding text. From 2022–2025, the hyperlink

1 text was capitalized and in teal against a neutral background. (*Id.* Ex. 2.) From 2025 to present the  
2 hyperlinked text is capitalized and underlined in black, setting it apart from the other text. (*Id.* ¶ 7,  
3 Exs. 1, 3.)

4 Also, since 2021, if a resident attempts to make an account, but does not check the box  
5 agreeing to the Terms of Service, a red error circle with an exclamation point appears next to the  
6 hyperlinks. (*Ibid.*) Alongside the red exclamation point, red lettering stating “You must accept the  
7 terms of service” appears under the hyperlinked texts. (*Ibid.*)

8 While the context of App onboarding and visual design of the account set up page alone  
9 constitutes clear and conspicuous notice, residents receive further notice *inside* the App. Since at  
10 least 2022, SmartRent has pushed periodic in-app pop-ups, prompting residents to review and  
11 agree to the Terms of Service. (*Id.*, ¶ 8, Ex. 4.) The SmartRent App presented residents with a  
12 blocking interstitial screen titled “Terms of Service Update” that required action before residents  
13 could proceed. (*Ibid.*) The screen displayed a notice in legible text against a contrasting  
14 background stating: “SmartRent’s Terms of Service have recently been updated. To continue using  
15 the app, review and agree to the updated terms.” A “Continue” button appeared immediately below  
16 this notice. (*Ibid.*) Upon clicking “Continue,” residents were directed to the full Terms of Service,  
17 with a prominent black “I Agree” button positioned at the bottom of the screen. (*Ibid.*) Residents  
18 could not bypass these screens without taking multiple affirmative steps: clicking “Continue” to  
19 review the Terms and then clicking “I Agree” to manifest assent. (*Ibid.*)

20 These facts are sufficient to show clear and conspicuous notice under Arizona and  
21 California law. (*Keebaugh, supra*, 100 F.4th at pp. 1020–1021; *Scott-Ortiz v. CBRE Inc.* (D.Ariz.  
22 2020) 501 F.Supp.3d 717, 725–726 [rejecting challenges to arbitration agreement when “[t]here  
23 was no unfair surprise or fine print,” the “arbitration clause was clearly marked,” and plaintiff had  
24 to “affirmatively verify that he was accepting the terms”].)

### 25 C. The Plaintiff Union is Equitably Estopped from Avoiding Arbitration

26 Under the doctrine of equitable estoppel, the Plaintiff Union cannot circumvent  
27 arbitration based on its potential non-signatory status to SmartRent Terms. Under federal,  
28 California, and Arizona law, when a non-signatory “plaintiff brings a claim which *relies on*

1 *contract terms* against a [signatory] defendant, the plaintiff may be equitably estopped from  
2 repudiating the arbitration clause contained in that agreement.” (*JSM Tuscany, LLC v. Super. Ct.*  
3 (2011) 193 Cal.App.4th 1222, 1239, citations omitted, emphasis in original; see also *Molecular*  
4 *Analytical Sys. v. Cipher Gen Biosystems, Inc.* (2010) 186 Cal.App.4th 696, 717 [materially same  
5 but with respect to a non-signatory defendant]; *CVS Pharmacy, Inc. v. Gamble Family Pharmacy*  
6 (D.Ariz. 2012) 2012 WL 13448148, at p. \*6 [similar and applying federal, Arizona, and California  
7 law].)

8 Plaintiffs, including Plaintiff Union, allege the installation and use of SmartRent connected  
9 devices along with SmartRent’s proprietary application were a “condition of tenancy” in Equity  
10 units. (Compl. ¶ 96, see also: ¶¶ 6, 48–52, 88, 96, 146.) Specifically, Plaintiffs complain that  
11 SmartRent’s smart home devices collect and track data, such as the status of residents’ smart locks  
12 (*id.* ¶¶ 42, 58, 59), location data (*id.* ¶¶ 60, 68), and the status of thermostats and leak sensors (*id.*  
13 ¶¶ 60, 63). Plaintiffs also allege the same information is collected or relayed through the  
14 SmartRent mobile app and website. (*Id.* ¶¶ 66, 68), and that SmartRent and Equity “through the  
15 app” obfuscate the scope of data they collect, share, and maintain. (*Id.* ¶¶ 94–95.) Plaintiffs allege  
16 the SmartRent devices and services in Equity buildings created environments of surveillance. (*Id.*  
17 ¶¶ 1, 20–22.) It is this supposed data collection and tracking that serves as the basis of Plaintiffs’  
18 privacy and statutory claims against SmartRent and Equity (*Id.* ¶¶ 1, 96, generally.)

19 There is no question that Plaintiffs’ claims are “intertwined” with the Terms of Service  
20 such that Union Plaintiffs are equitably estopped from repudiating the arbitration clause contained  
21 in those agreements. It would be inequitable to allow a party to bring claims “dependent upon or  
22 inextricably intertwined with” a contract’s terms and yet at the same time allow the party to  
23 “repudiat[e] the contract’s arbitration clause.” (*JSM Tuscany, supra*, 193 Cal.App.4th at p. 1239;  
24 see also *JTF Aviation Holdings Inc. v. CliftonLarsonAllen LLP* (Ariz. 2020) 249 Ariz. 510, 514.)

25 While Plaintiffs circumvent mention of the Terms of Service in their Complaint, the Terms  
26 govern the very conduct Plaintiffs complain of here. Specifically, the Terms of Service govern  
27 both access to and use of SmartRent’s network, services, and website, as well as the information  
28 SmartRent may collect and share with others, including Equity. (Lorey Decl., Ex. 9 §§ 1, 29.4, Ex.

1 12 § 9, 16 [incorporating by reference SmartRent’s Privacy Policy into Terms of Service].) The  
2 Terms provide a detailed description of how SmartRent “collect[s], use[s], and disclose[s]” both  
3 “personally identifiable information” and other data. (*Id.* Exs. 6, 7 [Privacy Policies 2023-present]  
4 at 1.) Plaintiffs agreed that information like residents’ “geographic location, analytical data,  
5 temperature settings and leak monitors, security data, motion and broken glass sensors” is not  
6 personally identifiable information. (*Id.* § 1.) Plaintiffs also consented to the collection of such  
7 data and acknowledged that the collection of geographic data could be turned off at any time.  
8 (*Ibid.*) The Terms also make clear that SmartRent may share information with a resident’s landlord  
9 for the purpose of “monitor[ing] the condition and safety of the apartment and the Property”. (*Id.*  
10 § 3.) Plaintiffs are undoubtedly aware of the import of the Terms of Service to their claims, since  
11 the Complaint alleges that the relevant “privacy policies” mislead residents in disclosing the scope  
12 of the information collected. (Compl. ¶ 46.)

13 Plaintiffs’ claims concerning SmartRent’s and Equity’s actions cannot be resolved without  
14 reference to the Terms of Service, and they must therefore be equitably estopped from repudiating  
15 the arbitration terms of that exact same agreement.

16 **D. The Arbitrator Must Determine Arbitrability**

17 Turning to the second and final gateway issue, this Court need not examine whether  
18 Plaintiffs’ claims fall within the scope of the arbitration clause because the arbitration agreement  
19 delegates issues of arbitrability to the arbitrator.

20 When parties “clearly and unmistakably” demonstrate their intent to have the arbitrator  
21 decide arbitrability, those issues must be referred to the arbitrator. (*Rent-A-Center, W., Inc. v.*  
22 *Jackson* (2010) 561 U.S. 63, 70 [“An agreement to arbitrate a gateway issue is simply an  
23 additional, antecedent agreement the party seeking arbitration asks the court to enforce, and the  
24 FAA operates on this additional arbitration agreement just as it does on any other.”]; *Brennan v.*  
25 *Opus Bank* (9th Cir. 2015) 796 F.3d 1125, 1132 [absent unconscionability, “a court must enforce  
26 an agreement that, as here, clearly and unmistakably delegates arbitrability questions to the  
27 arbitrator.”]; *Adams v. Conn Appliances Inc.* (D.Ariz. Aug. 3, 2017) 2017 WL 3315204, at \*6.)  
28 The United States Supreme Court has reaffirmed the rule of deference to the “front-end” of the

1 arbitration process, ruling that courts must enforce contracts that delegate to an arbitrator the  
2 question whether a dispute is arbitrable in the first place. (*Henry Schein, Inc. v. Archer & White*  
3 *Sales, Inc.* (2019) 139 S.Ct. 524, 526.)

4 Here, the terms explicitly outline the clear delegation of authority to the arbitrator to  
5 determine threshold issues. Specifically, the Terms state that claims “shall be settled by arbitration  
6 administered by the American Arbitration Association (“AAA”) in accordance with its  
7 Commercial Arbitration Rules.” (Lorey Decl., Ex. 9 § 23, Ex. 12 § 23.) AAA Rules specify “[t]he  
8 arbitrator shall have the power to rule on his or her own jurisdiction, including challenges to the  
9 arbitrability of any claim or counterclaim without any need to refer such matters first to the court.”  
10 (*Id.*, Ex. 13 § R-7(a).)

11 By incorporating AAA Rules, “the parties clearly evidenced their intention to accord the  
12 arbitrator the authority to determine issues of arbitrability.” (*Rodriguez v. Am. Techs., Inc.* (2006)  
13 136 Cal.App.4th 1110, 1123 [citation omitted]; see also *Dream Theater, Inc. v. Dream Theater*  
14 (2004) 124 Cal.App.4th 547, 557 [incorporation of American Arbitration Association rules  
15 deemed “clear and unmistakable evidence of the intent that the arbitrator will decide whether a  
16 Contested Claim is arbitrable”].) “There could be no surprise, as the arbitration rules referenced in  
17 the agreement were easily accessible to the parties—the AAA rules are available on the Internet.”  
18 (*Lane v. Francis Capital Management LLC* (2014) 224 Cal.App.4th 676, 691 [citation omitted].)  
19 Through incorporation of the AAA Rules, the parties evidenced their intention that the arbitrator  
20 would determine all issues of arbitrability.

21 **E. Plaintiffs’ Claims Must Be Referred to Arbitration Even if The Court**  
22 **Chooses to Determine Arbitrability**

23 The Court need not, and should not, proceed further before concluding that this dispute  
24 belongs in arbitration, because any threshold questions of arbitrability are to be decided by the  
25 Arbitrator. However, Plaintiffs’ claims are all arbitrable even if the Court nonetheless chooses to  
26 rule on issues of arbitrability.

27 Under the FAA, a court must compel arbitration “unless it may be said with positive  
28 assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted  
dispute.” (*AT&T Techs., Inc.*, 475 U.S. at 650 [quotations and citations omitted].) “To require

1 arbitration, [Plaintiff’s] factual allegations need only ‘touch matters’ covered by the contract  
2 containing the arbitration clause and all doubts are to be resolved in favor of arbitrability.” (*Simula,*  
3 *Inc. v. Autoliv, Inc.* (9th Cir. 1999) 175 F.3d 716, 721 [citing *Mitsubishi Motors Corp. v. Soler*  
4 *Chrysler-Plymouth, Inc.* (1985) 473 U.S. 614, 625, fn 13].) It also is well established that “[t]he  
5 preference for arbitration is particularly strong when the arbitration clause is broad.” (*Homestake*  
6 *Lead Co. of Missouri v. Doe Run Resources Corp.* (N.D. Cal. 2003) 282 F. Supp. 2d 1131, 1138  
7 [citing *AT & T Techs., supra*, 475 U.S. at 650].) Similarly, “[c]lauses requiring arbitration of claims  
8 ‘arising out of or relating to’ a contract are considered broad.” (*Ibid.* [citing *Prima Paint Corp. v.*  
9 *Flood & Conklin Mfg. Co.* (1967) 388 U.S. 395, 398].)

10 Here, Plaintiffs agreed to a broad arbitration provision that includes the critical “arising out  
11 of or relating to” language. (Lorey Decl., Exs. 9 § 23, 12 § 23.) These allegations fall squarely  
12 within the scope of the arbitration agreement such that this dispute must be ordered to arbitration.  
13 (*Id.*, [“all disputes between you and SmartRent shall be resolved by binding arbitration...For the  
14 purposes of this Dispute Resolution section, the reference to SmartRent includes its agents,  
15 affiliates, licensees, service providers, property landlord, and property manager.]).

16 While Plaintiffs’ Complaint does not raise a breach of contract claim and avoids explicitly  
17 mentioning the SmartRent Terms of Service or Privacy Policy, Plaintiffs’ claims center on the  
18 “forced installation” of SmartRent devices in “Plaintiffs’ homes and the homes of tenants  
19 represented by the Plaintiff Tenants Union.” (Compl. ¶¶ 1, 20-22.) The Complaint further alleges  
20 that SmartRent and Equity, “through the [SmartRent] app,” obfuscate the scope of data collected,  
21 shared, and maintained by Defendants. (*Id.* ¶¶ 94-95.) The use and data collection from those  
22 devices is governed by the Terms of Service. (Lorey Decl., Exs. 9 § 6, 12 § 6.) Plaintiffs’ claims  
23 in this dispute indisputably touch upon matters within the Terms of Service. Therefore, the  
24 Arbitration Agreement should be enforced in this case, and this Motion should be granted.

25 **F. This Matter Must be Stayed Pending Arbitration**

26 The Code of Civil Procedure mandates that this action “shall” be stayed pending resolution  
27 of a petition to compel arbitration. (Code Civ. Proc., § 1281.4; *Twentieth Century Fox Film Corp.*  
28 *v. Superior Court* (2000) 79 Cal.App.4th 188, 192 [“This statute is clear and unambiguous: it

1 requires that the trial court stay an action pending before it while an application to arbitrate the  
2 subject matter of the action is pending in court of competent jurisdiction.”.) The FAA similarly  
3 requires a stay of proceedings pending the completion of arbitration. (9 U.S.C. § 3 [stating that the  
4 court, “upon being satisfied that the issue involved is referable to arbitration, shall on application  
5 stay the trial of the action until such arbitration has been had”]; Rodriguez v. American  
6 Technologies, Inc. (2006) 136 Cal.App.4th 1110, 1122.)

7  
8 **V. CONCLUSION**

9 Based on the foregoing, SmartRent respectfully requests that the Court enter an order  
10 compelling Plaintiffs to submit to individual arbitration and stay all proceedings before this Court  
11 pending the Court’s decision on this Motion and the completion of arbitration.

12 Dated: February 23, 2026

**WILSON, ELSER, MOSKOWITZ,  
EDELMAN & DICKER LLP**

13  
14  
15 By: 

16 Margo A. Crawford  
17 Attorneys for Defendant,  
18 SMARTRENT TECHNOLOGIES, INC.  
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**PROOF OF SERVICE**

I, the undersigned, am employed in the county of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is 655 Montgomery Street, Suite 900, San Francisco, CA 94111.

On February 23, 2026, I caused to be served the following document(s) described as follows:

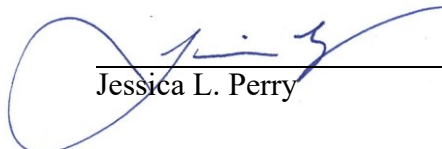
**DEFENDANT SMARTRENT TECHNOLOGIES, INC.’S NOTICE OF MOTION AND MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS**

on the parties stated below, by the following means of service:

**BY ELECTRONIC TRANSMISSION** – I caused a true PDF copy of the above-mentioned document(s) to be transmitted by e-mail on the date indicated above to the parties identified below at their respective e-mail addresses cited below

Jacob A. Snow, Esq. Nicolas A. Hidalgo, Esq. AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF NORTHERN CALIFORNIA 39 Drumm Street San Francisco, CA 94111 Ph: (415) 621-2493 <a href="mailto:jsnow@aclunc.org">jsnow@aclunc.org</a> ; <a href="mailto:nhidalgo@aclunc.org">nhidalgo@aclunc.org</a> <i>Attorneys for Plaintiffs</i>	Joseph Tobener, Esq. Sarah McCracken, Esq. TOBENER RAVENSCROFT LLP 21 Masonic Avenue, Suite A San Francisco, CA 94118 Ph: (415) 504-2165 <a href="mailto:jtobener@tobenerlaw.com">jtobener@tobenerlaw.com</a> ; <a href="mailto:smccracken@tobenerlaw.com">smccracken@tobenerlaw.com</a> <i>Attorneys for Plaintiffs</i>
Michael W. Sobol, Esq. Melissa Gardner, Esq. Linnea D. Pittman (Pro Hac Vice forthcoming) LIEFF CABRASER HEIMANN & BERNSTEIN, LLP 275 Battery Street, 29th Floor San Francisco, CA 94111 Ph: (415) 956-1000 <a href="mailto:msobol@lchb.com">msobol@lchb.com</a> ; <a href="mailto:mgardner@lchb.com">mgardner@lchb.com</a> ; <a href="mailto:lpittman@lchb.com">lpittman@lchb.com</a> <i>Attorneys for Plaintiffs</i>	Theane Evangelis, Esq. Jeremy S. Smith, Esq. Daniel M. Rubin, Esq. Amanda M. Sadra, Esq. GIBSON, DUNN & CRUTCHER LLP 333 South Grand Avenue Los Angeles, California 90071 Ph: (213) 229-7000 <a href="mailto:tevangelis@gibsondunn.com">tevangelis@gibsondunn.com</a> ; <a href="mailto:jssmith@gibsondunn.com">jssmith@gibsondunn.com</a> ; <a href="mailto:drubin@gibsondunn.com">drubin@gibsondunn.com</a> ; <a href="mailto:asadra@gibsondunn.com">asadra@gibsondunn.com</a> <i>Attorneys for Defendants Equity Residential, ERP Operating Limited Partnership, Equity Residential Management LLC, Equity-Tasman Apartments LLC, Archstone Daggett Place LLC, Archstone South Market LP, and EQR- Terraces Limited Partnership</i>

Executed on February 23, 2026, at San Francisco, California. I declare under penalty of perjury under the laws of the State of California, that the above is true and correct.

  
\_\_\_\_\_  
Jessica L. Perry