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9 *Management LLC, Equity-Tasman Apartments LLC,*
Archstone Daggett Place LLC, Archstone South Market
10 *LP, and EQR-Terraces Limited Partnership (collectively,*
"Equity Defendants")

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN FRANCISCO

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

15 Plaintiffs,

16 v.

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

23 Defendants.
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CASE NO. CGC-25-631212

**EQUITY DEFENDANTS' NOTICE OF
MOTION AND MOTION TO COMPEL
ARBITRATION AND STAY PROCEEDINGS
PENDING ARBITRATION;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

[Filed concurrently with [Proposed] Order]

HEARING:

Date: April 29, 2026

Time: 9:00 a.m.

Dept.: 302

Judge: Hon. Joseph M. Quinn

Action Filed: December 4, 2025

Trial Date: None Set

1 **TO 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, Defendants Equity Residential, ERP Operating Limited Partnership, Equity
4 Residential Management LLC, Equity-Tasman Apartments LLC, Archstone Daggett Place LLC,
5 Archstone South Market LP, and EQR-Terraces Limited Partnership (collectively, “Equity” or “Equity
6 Defendants”) will, and hereby do, join Defendant SmartRent Technologies, Inc.’s Motion to Compel
7 Arbitration and Stay Proceedings Pending Arbitration and incorporate by reference the facts and
8 arguments from that concurrently filed motion into this Motion. Equity also moves this Court for an
9 order compelling Plaintiffs to arbitration and staying all proceedings pending a ruling on this Motion
10 and the completion of arbitration proceedings. This Motion is brought pursuant to Federal Arbitration
11 Act, 9 U.S.C. § 1 et seq., and in the alternative California Code of Civil Procedure § 1281.2, as well as
12 9 U.S.C. § 3 and California Code of Civil Procedure § 1281.4, on the grounds that (1) this dispute may
13 not be litigated in this judicial forum because it is subject to binding arbitration; and (2) all proceedings
14 in this Court should be stayed pending the outcome of this Motion and the completion of arbitration.

15 This Motion is brought based on the grounds presented in this Notice, the attached
16 Memorandum of Points and Authorities, SmartRent’s motion to compel and the materials attached
17 thereto, and such oral or documentary evidence that may properly be considered by the Court at the
18 time of the hearing on this Motion.

19
20 DATED: February 24, 2026

21 GIBSON, DUNN & CRUTCHER LLP

22
23 By: /s/ Jeremy S. Smith
24 Jeremy S. Smith

25 *Attorneys for Equity Defendants*
26
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Equity provides smart home technology—including electronic locks, thermostats, and leak
4 sensors—to residents at certain California properties, to lower its residents’ utility bills, avoid safety
5 and maintenance issues, and lower the carbon footprint of its buildings. Three individual Plaintiffs
6 (“Resident Plaintiffs” Adrian Phua, William Solis, and Elana Dietsel) and the San Francisco Tenants
7 Union (“Union Plaintiff”) bring this action, alleging Equity and SmartRent, which provides the smart
8 home technology available to Equity residents, have violated certain privacy laws by providing these
9 systems. Equity disputes that Plaintiffs’ privacy rights have been infringed in any manner.

10 But this Court need not address Plaintiffs’ allegations on the merits because the Resident
11 Plaintiffs and Union Plaintiff members agreed to SmartRent’s Terms of Service, which provide that
12 any claim arising out of or related to the agreement shall be resolved through individual arbitration.
13 Notwithstanding that arbitration provision, Plaintiffs initiated a lawsuit in this Court. Accordingly,
14 Equity hereby joins SmartRent’s motion and moves to compel individual arbitration.

15 Under the Federal Arbitration Act’s governing standard, this Court should compel this case to
16 arbitration. It cannot be seriously disputed that a valid arbitration agreement exists and that agreement
17 delegates questions of arbitrability to the arbitrator in the first instance. Those two facts alone should
18 resolve this motion. Even if arbitrability questions were not delegated to the arbitrator, Plaintiffs’
19 claims still arise out of or depend upon SmartRent’s Terms of Service, subjecting them to arbitration.

20 Plaintiffs cannot avoid arbitration by arguing that neither the Equity Defendants nor Union
21 Plaintiff were signatories to SmartRent’s Terms of Service. Those terms define SmartRent to include,
22 among other things, the “property manager” and “property landlord,” which expressly covers the
23 Equity Defendants. Even if they did not, the doctrine of equitable estoppel would still bar Plaintiffs
24 from avoiding arbitration against the Equity Defendants. Similarly, the non-signatory Union Plaintiff
25 must be compelled to arbitrate under the doctrine of equitable estoppel, because its claims likewise
26 arise out of and relate to the Terms of Service agreed to by its members.

27 Because a valid agreement to arbitrate exists and encompasses Plaintiffs’ claims, the Court
28 should compel this case to arbitration and stay all proceedings pending arbitration.

II. FACTUAL BACKGROUND

A. SmartRent’s Innovative Technology and Its Benefits

At the core of SmartRent’s “smart home” platform is a suite of devices—including thermostats, door locks, and leak detectors—that provide residents with greater control over their living environment through a mobile application. (Lorey Decl. ¶ 2.) For example, smart thermostats allow residents to customize and automate the temperature settings in their home while helping to manage energy use, potentially saving the resident money, while smart door locks enable keyless entry, remote access for trusted guests, and added security. (*Id.* ¶ 3.) Together, these devices connect through SmartRent’s software tools to enhance security and efficiency and lower costs for residents. (*Ibid.*)

B. Residents Agreed to SmartRent’s Terms of Service.

Equity provides residents with notice of installation of smart home devices via an addendum to its standard lease, among other ways. (Compl. ¶ 48; *id.* ¶ 50 [admitting Plaintiffs Phua and Dietsel signed the “SmartHome Addendum”]; *id.* ¶ 94 [Equity has “generic reservations of rights in its lease and policies” regarding SmartRent devices]). Beyond consenting via the addendum, the Complaint alleges each resident is “required” to install “SmartRent’s proprietary mobile application, the ‘SmartRent App’” to “access features of the locks on their doors, and where applicable, thermostats, and leak sensors.” (*Id.* ¶ 65.) All Resident Plaintiffs did so. (*Id.* ¶¶ 2–3, 22, 45–46, 64–65; Lorey Decl. ¶¶ 6–10.) SmartRent records similarly confirm that for Equity buildings with residents the Union Plaintiff purportedly represents, 70–85% downloaded, installed, and registered accounts on the App. (Lorey Decl. ¶ 13.) And only four resident units opted out of smart home technology installation in those buildings. (*Id.* ¶ 15.) By registering accounts, residents agreed to both SmartRent’s Service Agreement and Terms of Service (“Terms of Service”) and Privacy Policy, which is incorporated into or repeatedly referenced in the Terms of Service. (*Id.*, Exs. 11 at p. 4 [April 2023 Terms of Service], 12 § 9, 16). As SmartRent explains, the Terms of Service contain a binding arbitration provision, which Plaintiffs had clear notice of and assented to.¹ (SmartRent Mot. §§ II.B, II.B.i.)

¹ Unless otherwise noted, all references to Terms of Service are to the January 2024 version. Although Plaintiff Dietsel also agreed to the September 2025 Terms of Service, there are no material differences between these versions, including to the arbitration clause. (Lorey Decl. ¶ 10 & Exs. 9, 12.)

1 **C. The Terms of Service Contain an Arbitration Agreement That Applies to Equity.**

2 The Terms of Service govern the services “offered by SmartRent at the single-family house,
3 student rental, apartment, and/or apartment complex (‘Property’) where you visit, park, work, or live
4 (collectively, the “Services)” and describe how SmartRent collects, uses, and discloses personally
5 identifiable information. (Lorey Decl., Ex. 7 at pp. 1–2, Ex. 12 at p. 1.)² Section 23 is the “Dispute
6 Resolution and Arbitration; Class Action Waiver” provision:

7 This Dispute Resolution and Arbitration; Class Action Waiver section (collectively, the
8 “**Dispute Resolution**”) provides that *all disputes between you and SmartRent shall* be
9 resolved by *binding arbitration* and that you expressly waive your right to a court or jury trial
10 and/or your right to initiate a class action. For the purposes of this Dispute Resolution section,
the reference to SmartRent includes its directors, employees, agents, affiliates, licensees,
service providers, *property landlord, and property manager.*”

11 (*Id.*, Ex. 12 § 23, italics and bolding added.)

12 Moreover, the arbitration provision provides “any and all disputes, whether presently in
13 existence or based on acts or omissions in the past or in the future, will be resolved exclusively and
14 finally by binding arbitration rather than in court” and that “[a]ny controversy or claim arising out of
15 or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the
16 American Arbitration Association in accordance with its Commercial Arbitration Rules.” (Lorey
17 Decl., Ex. 12 § 23.) It further states that “[a]ll matters within the scope of the Federal Arbitration Act
18 (9 U.S.C. 1, et seq.) will be governed by it and not by any state arbitration law.” (*Ibid.*) The arbitration
19 “tribunal shall have the power to rule on any challenge to its own jurisdiction or to the validity or
20 enforceability of any portion of the agreement to arbitrate.” (*Ibid.*) And the arbitration agreement
21 requires individual arbitration. (*Ibid.*)

22 **D. Plaintiffs’ Allegations Against Equity and SmartRent.**

23 Notwithstanding the agreement to arbitrate, Plaintiffs filed this suit on December 4, 2025.
24 Resident Plaintiffs are current or former residents of buildings owned, operated, and controlled by
25 Equity Residential, a real estate investment trust, as well as its subsidiaries and affiliates. (Compl.
26 ¶¶ 17–19.) The Union Plaintiff’s members are made up of renters across San Francisco, an unidentified

27 _____
28 ² Unless otherwise noted, all references to the Privacy Policy are to the April 2023 version. Although
SmartRent updated its Privacy Policy in August 2024, there are no material differences between these
versions. (Lorey Decl., Exs. 6–7.)

1 subset of whom either live or used to live at Equity apartment buildings in the city. (*Id.* ¶¶ 20–23.)

2 Plaintiffs allege that SmartRent has worked as Equity’s “partner” and “agent” to improperly
3 conduct “surveillance” and “gain visibility into [] tenants’ homes.” (Compl. ¶¶ 1, 37, 48–49, 52, 54.)
4 Defendants allegedly do this by requiring Plaintiffs to accept as a “condition of tenancy” the installation
5 and use of SmartRent’s smart home systems. (*Id.* ¶¶ 2, 4, 45). Plaintiffs make these allegations despite
6 consenting to the installation of this technology in both their lease agreement and the SmartRent Terms
7 of Service, which “govern[] [residents’] access to and use of the Network, Services, and [Webs]ite, and
8 the contents therein” and describe clearly how resident data is collected, used, and disclosed. (Lorey
9 Decl., Ex. 7 at pp. 1–2, Ex. 12 § 1.)

10 III. LEGAL STANDARD

11 Congress enacted the FAA “in response to a perception that courts were unduly hostile to
12 arbitration.” (*Epic Systems Corp. v. Lewis* (2018) 584 U.S. 497, 506.) The FAA reflects a “liberal
13 federal policy favoring arbitration,” which makes arbitration agreements “valid, irrevocable, and
14 enforceable as written.” (*AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 344, 346, citations
15 omitted.) Consistent with that policy, courts must “rigorously enforce agreements to arbitrate.”
16 (*Lagatree v. Luce, Forward, Hamilton & Scripps* (1999) 74 Cal.App.4th 1105, 1118, citations omitted.)

17 The arbitration provision in SmartRent’s Terms of Service expressly asserts that arbitration
18 shall governed by the FAA (Lorey Decl., Ex. 12 § 23), which alone is sufficient to invoke it, because
19 parties to an arbitration agreement have “considerable latitude to choose what law governs some or all
20 its provisions” (*DirectTV, Inc. v. Imburgia* (2015) 577 U.S. 47, 53–54; see *Buckeye Check Cashing,*
21 *Inc. v. Cardegna* (2006) 546 U.S. 440, 442–444 [applying FAA to agreement stating it “shall be
22 governed by the Federal Arbitration Act”]). The FAA also “applies to contracts that involve interstate
23 commerce.” (*Barrera v. Apple American Group LLC* (2023) 95 Cal.App.5th 63, 76.) Because the
24 parties “expressly” agreed the FAA would govern (i.e., there is “no ambiguity regarding the parties’
25 intent”) and the contract involved interstate commerce, the FAA’s substantive and procedural rules
26 apply. (*Cronus Investments, Inc. v. Concierge Services* (2005) 35 Cal.4th 376, 394, italics removed;
27 *Tuufuli v. West Coast Dental Administrative Services* (2026) 117 Cal.App.5th 1048, 1053–1054.)

1 On motions to compel arbitration, a court’s role is “limited to determining (1) whether a valid
2 agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute[s] at
3 issue.” (*Chiron Corp. v. Ortho Diagnostic Systems Inc.* (9th Cir. 2000) 207 F.3d 1126, 1130.)

4 IV. ARGUMENT

5 The Court should order this case to arbitration because Plaintiffs and other residents entered
6 into a valid and binding arbitration agreement when they agreed to the Terms of Service via the
7 SmartRent App and the arbitration provision delegates questions of arbitrability to the arbitrator in the
8 first instance.³ Even if the Court were to reach the question of arbitrability, all of Plaintiffs’ claims are
9 encompassed by the broad scope of the arbitration provision. The Equity Defendants can invoke these
10 provisions because they are express third-party beneficiaries of the arbitration agreement and under the
11 doctrine of equitable estoppel. Accordingly, arbitration is the proper forum for Plaintiffs’ claims.

12 A. A Valid Agreement to Arbitrate Exists.

13 The first element of a successful motion to compel is satisfied because a valid arbitration
14 agreement exists. Though the agreement is governed by the FAA, courts assess this issue by
15 “apply[ing] ordinary state-law principles that govern the formation of contracts.” (*First Options of*
16 *Chicago, Inc. v. Kaplan* (1995) 514 U.S. 938, 944.) While courts typically look to the forum state’s
17 laws (here, California), the Terms of Service provide Arizona law applies. (Lorey Decl., Ex. 12 § 24.)
18 Which law the Court applies is of no moment because a valid agreement to arbitrate exists under both.

19 For contracts consummated online, the key factor is still mutual assent. “While Internet
20 commerce has exposed courts to many new situations, it has not fundamentally changed the
21 requirement that ‘[m]utual manifestation of asset, whether by written or spoken word or by conduct, is
22 the touchstone of contract.’” (*B.D. v. Blizzard Entertainment, Inc.* (2022) 76 Cal.App.5th 931, 944,
23 citation omitted; accord *Johnson v. Earnhardt’s Gilbert Dodge, Inc.* (Ariz. 2006) 132 P.3d 825, 828.)

24 There was mutual assent here. Under both California law and Arizona law, assent may take the
25 form of words, action, or even silence or inaction. In other words, a party can manifest assent without
26

27 ³ Equity files this motion in lieu of filing an answer, demurrer, or other responsive pleading, and
28 reserves the right to file a demurrer in the event this motion is denied. (Civ. Proc. Code, § 1281.7 [“A
petition pursuant to Section 1281.2 may be filed in lieu of filing an answer to a complaint. The
petitioning defendant shall have 15 days after any denial of the petition to plead to the complaint”].)

1 actually reviewing the terms of the agreement. (*Keebaugh v. Warner Bros. Entertainment Inc.* (9th
2 Cir. 2024) 100 F.4th 1005, 1015 [“inquiry notice” can satisfy contract assent requirements]; see *Cornell*
3 *v. Desert Fin. Credit Union* (Ariz. 2023) 524 P.3d 1133, 1140 [“The conduct of a party may manifest
4 assent,” citing Restatement (Second) of Contracts § 19(3)].) Accordingly, an internet-based contract
5 is validly formed when a provider establishes “the contractual terms were presented to the consumer
6 in a manner that made it apparent the consumer was assenting to those very terms when checking a box
7 or clicking a button.” (*B.D., supra*, 76 Cal.App.5th at p. 944, internal quotations omitted.)

8 Resident Plaintiffs and 70–85% of residents in the buildings Union Plaintiff purports to
9 represent assented to the Terms of Service, including the arbitration clause, when they registered
10 accounts on the SmartRent App. (Lorey Decl. ¶¶ 10–13.) In doing so, Resident Plaintiffs and other
11 residents affirmatively checked a box with text immediately adjacent, stating: “By checking the box,
12 you agree to our Terms of Service and acknowledge that you have read our Privacy Policy.” (*Id.*, Ex.
13 2.) Accordingly, residents had clear notice that checking the box would constitute assent.

14 The requirement that residents click a checkbox renders the Terms of Service a quintessential
15 “clickwrap agreement,” which Arizona, California, and federal courts routinely enforce. A “clickwrap
16 agreement” “ask[s] customers to agree to the terms, displayed somewhere on [a] website, by clicking
17 on an ‘I accept’ or ‘I agree’ button.” (*B.D., supra*, 76 Cal.App.5th at p. 944; see *Keebaugh, supra*, 100
18 F.4th at p. 1014.) Courts do not hesitate to enforce such agreements when parties have manifested
19 assent to terms via electronic checkboxes, and the parties are advised that “the act of clicking will
20 constitute assent to the terms and conditions of an agreement.” (*Oberstein v. Live Nation*
21 *Entertainment, Inc.* (9th Cir. 2023) 60 F.4th 505, 515, citation omitted; *B.D., supra*, 76 Cal.App.5th at
22 p. 946; accord *FreeLife Internat., Inc. v. Clear Perceptions Marketing* (D.Ariz. Mar. 6, 2008) 2008
23 WL 660065, at *2; *Brittain v. Twitter Inc.* (D.Ariz. Jan. 4, 2019) 2019 WL 110967, at *1.)

24 Plaintiffs cannot credibly argue that residents lacked clear and conspicuous notice of the Terms
25 of Service. Both the context of the transaction at issue—i.e., residents registering accounts on the
26 SmartRent App, which Plaintiffs allege controls the use of smart home systems in the units—as well
27 as the visual design elements of the SmartRent App indicate Plaintiffs and residents had conspicuous
28 notice of the terms. (*B.D., supra*, 76 Cal.App.5th at p. 936; *Oberstein, supra*, 60 F.4th at p. 516.)

1 Residents were prompted via email to install the App. (Lorey Decl. ¶ 14 & Ex. 5.) That email
2 explained residents should “Complete Account Registration” on the “SmartRent Resident App” to
3 “enjoy your new smart community,” including the use of electronic locks, thermostats, and leak
4 sensors. (*Id.*, Ex. 5.) Courts have noted a “prudent internet user” who downloads “an app to [their]
5 own device . . . necessarily anticipates ongoing access to that app.” (*Keebaugh, supra*, 100 F.4th at
6 p. 1020.) That “continuing relationship” between residents and the App is one ground that places a
7 reasonably prudent user “on notice for a link to the terms.” (*Oberstein, supra*, 60 F.4th at p. 517.)

8 The visual design of the SmartRent App registration flow similarly provides adequate notice.
9 Notice is conspicuous when it is “displayed in a font size and format such that the court can fairly
10 assume that a reasonably prudent Internet user would have seen it.” (*Keebaugh, supra*, 100 F.4th at
11 p. 1014, citation omitted.) In deciding whether a party had clear and conspicuous notice of online
12 terms, courts consider criteria like “the size, color, contrast, and location of any text notices; the
13 obviousness of any hyperlinks; and overall screen clutter.” (*B.D., supra*, 76 Cal.App.5th at p. 947,
14 internal quotation omitted.) Here, the hyperlink to the Terms of Service appeared adjacent to the
15 checkbox users had to click to register their accounts. (Lorey Decl., Ex. 2.) That hyperlink was offset
16 from the surrounding text because the phrase “Terms of Service” was both capitalized and an offsetting
17 color from the rest of the text. (*Ibid.*) And the checkbox and notice appeared on an uncluttered screen,
18 where the hyperlink was prominently featured and unobscured. (*Ibid.*) These facts are sufficient to
19 show clear and conspicuous notice under Arizona and California law. (*Keebaugh, supra*, 100 F.4th at
20 pp. 1020–1021; *Scott-Ortiz v. CBRE Inc.* (D.Ariz. 2020) 501 F.Supp.3d 717, 725–726 [rejecting
21 challenges when “[t]here was no unfair surprise or fine print,” the “arbitration clause was clearly
22 marked,” and plaintiff had to “affirmatively verify that he was accepting the . . . terms”].)

23 Plaintiffs cannot reasonably dispute that residents are bound by a valid agreement to arbitrate
24 that is contained within the Terms of Service they agreed to.

25 **B. The Parties Delegated Arbitrability Issues to the Arbitrator, Not This Court.**

26 This Court need not examine whether Plaintiffs’ claims fall within the scope of the arbitration
27 clause because it delegates issues of arbitrability to the arbitrator. Under the FAA, parties to an
28 arbitration agreement may agree to have the “arbitrator, rather than a court[,] . . . resolve threshold

1 arbitrability questions.” (*Henry Schein, Inc. v. Archer & White Sales, Inc.* (2019) 586 U.S. 63, 65;
2 *Adams v. Conn Appliances Inc.* (D.Ariz. Aug. 3, 2017) 2017 WL 3315204, at *6.) When parties
3 “clearly and unmistakably” agree to delegate such “gateway issues” (*Brennan v. Opus Bank* (9th Cir.
4 2015) 796 F.3d 1125, 1130, italics removed, citation omitted), the court “possesses no power to decide”
5 questions of arbitrability (*Henry Schein, supra*, 586 U.S. at p. 68; see *Malone v. Super. Ct.* (2014) 226
6 Cal.App.4th 1551, 1559–1560 [when a party challenges “the agreement as a whole . . . the delegation
7 clause is severed out and enforced; thus, the arbitrator, not the court, will determine whether the
8 agreement is enforceable”]; *Garcia v. Roblox Corp.* (C.D. Cal. Feb. 11, 2026) 2026 WL 413636, at p.
9 *6 [“if the Court treats the delegation provision as valid, it must compel arbitration and leave any
10 challenge to the validity of the agreement as a whole for the arbitrator,” internal quotation omitted]).
11 Parties can “clearly evidence[] their intention to accord the arbitrator the authority to determine issues
12 of arbitrability” by incorporating rules that give arbitrators that power. (*Rodriguez v. Am.*
13 *Technologies, Inc.* (2006) 136 Cal.App.4th 1110, 1123; see also *Brennan, supra*, 796 F.3d at p. 1130.)

14 Here, the arbitration provision provides claims “shall be settled by arbitration administered by
15 the American Arbitration Association in accordance with its Commercial Arbitration Rules.” (Lorey
16 Decl., Ex. 12 § 23.) Those rules, in turn, specify “[t]he arbitrator shall have the power to rule on his or
17 her own jurisdiction, including any objections . . . to the arbitrability of any claim or counterclaim,
18 without any need to refer such matters first to a court.” (*Id.*, Ex. 13 at R-7(a).) Both federal and
19 California courts have repeatedly recognized that “incorporation of the AAA rules constitutes clear and
20 unmistakable evidence that contracting parties agreed to arbitrate arbitrability” under the FAA.
21 (*Brennan, supra*, 796 F.3d at p. 1130; *Caremark, LLC v. Chickasaw Nation* (9th Cir. 2022) 43 F.4th
22 1021, 1031; *Aanderud v. Super. Ct.* (2017) 13 Cal.App.5th 880, 892.)

23 Given that residents agreed to binding, individual arbitration and to delegate arbitrability
24 questions to the arbitrator, Plaintiffs cannot now “ignore the contract and resort to the courts.”
25 (*Southland Corp. v. Keating* (1984) 465 U.S. 1, 7.) Under the FAA, this Court should compel
26 arbitration pursuant to this agreement, leaving for the arbitrator any gateway arbitrability questions.

27 **C. In Any Event, Plaintiffs’ Claims Are Subject to Arbitration.**

28 Even if the Court were to consider whether the arbitration agreement encompasses this dispute

1 (it should not), Plaintiffs should still be compelled to arbitration because their claims fall within the
2 broad scope of the arbitration agreement. “A broad clause includes language that requires arbitration
3 of ‘any claim arising from or related to’ the agreement.” (*Ahern v. Asset Management Consultants,*
4 *Inc.* (2022) 74 Cal.App.5th 675, 689; *PPG Industries, Inc. v. Pilkington plc* (D.Ariz. 1993) 825 F.Supp.
5 1465, 1478 [similar].) Such broad language gives rise to a presumption that the parties intended to
6 arbitrate claims, including tort and statutory claims, relating to the agreement. (*Coast Plaza Doctors*
7 *Hospital v. Blue Cross of Cal.* (2000) 83 Cal.App.4th 677, 681 & fn. 2, 684; *Ramos v. Super. Ct.* (2018)
8 28 Cal.App.5th 1042, 1052; [“It has long been the rule in California that a broadly worded arbitration
9 clause . . . may extend to tort claims that may arise under or from the contractual relationship,” citation
10 omitted]; *Sandquist v. Lebo Automotive, Inc.* (2016) 1 Cal.5th 233, 248.) In other words, “[f]or a
11 party’s claims to come within the scope of such a clause, the factual allegations of the complaint ‘need
12 only touch matters covered by the contract containing the arbitration clause.’” (*Ramos, supra*, 28
13 Cal.App.5th at p. 1052, quoting *Simula, Inc. v. Autoliv, Inc.* (9th Cir. 1999) 175 F.3d 716, 721.)

14 That test is met here. This arbitration clause covers “all disputes between [residents] and
15 SmartRent” and “[a]ny controversy or claim arising out of or relating to this contract, or the breach
16 thereof.” (Lorey Decl., Ex. 12 § 23.) Plaintiffs’ claims center on the “forced installation” of SmartRent
17 devices in “Tenant Plaintiffs’ homes and the homes of Tenants Union members.” (Compl. ¶108; see
18 also *id.* ¶¶ 110, 123, 133, 146.) The use of those devices and the collection of any data is governed by
19 the Terms of Service. (Lorey Decl., Ex. 12 § 6.) So Plaintiffs’ claims indisputably “touch” the matters
20 covered by the Terms of Service. (*Ramos, supra*, 28 Cal.App.5th at pp. 1052–1053 [finding plaintiff’s
21 claims within the scope of a broad arbitration provision even though plaintiff raised no breach of
22 contract claim, because the agreement would shed light on “key issues in her lawsuit”].)

23 Even if this were a close call (it is not), “any doubts concerning the scope of arbitrable issues
24 should be resolved in favor of arbitration.” (*Moses H. Cone Memorial Hospital v. Mercury*
25 *Construction Corp.* (1983) 460 U.S. 1, 24–25.) The Court must “order arbitration unless it can be said
26 with assurance that the arbitration clause is not susceptible to an interpretation that covers the asserted
27 dispute.” (*Victrola 89, LLC v. Jaman Properties 8 LLC* (2020) 46 Cal.App.5th 337, 356, citation
28 omitted; *Coast Plaza Doctors Hospital, supra*, 83 Cal.App.4th at p. 686 [same].) Plaintiffs have “the

1 burden of demonstrating that an arbitration clause cannot be interpreted to require arbitration of the
2 dispute.” (*Victrola 89, supra*, 46 Cal.App.5th at p. 356, quoting *Rice v. Downs* (2016) 248 Cal.App.4th
3 175, 185.) They cannot carry that burden “unless the agreement *clearly* does not apply to the dispute
4 in question.” (*Vianna v. Doctors’ Management Co.* (1994) 27 Cal.App.4th 1186, 1189, italics added,
5 citation omitted; *Cione v. Foresters Equity Services, Inc.* (1997) 58 Cal.App.4th 625, 642 [materially
6 same].) Plaintiffs cannot come close to meeting that burden given the broad language of the arbitration
7 agreement covering “all disputes between [residents] and SmartRent” and “[a]ny controversy or claim
8 arising out of or relating to this contract, or the breach thereof.” (Lorey Decl., Ex. 12 § 23.)

9 **D. Equity Can Invoke the Arbitration Agreement and the Union Plaintiff Cannot**
10 **Avoid the Arbitration Agreement.**

11 **i. The Equity Defendants Are Third-Party Beneficiaries and Equitable**
12 **Estoppel Mandates Arbitration Anyway.**

13 Even though the Equity Defendants were not express signatories to the Terms of Service, Equity
14 still may compel arbitration of Plaintiffs’ claims, for two reasons.

15 *First*, Equity is an express beneficiary of the arbitration clause. California and Arizona law
16 recognize non-signatories to a contract may enforce its provisions if the parties intended the non-
17 signatory to benefit. (*Northstar Financial Advisors Inc. v. Schwab Investments* (9th Cir. 2015) 779
18 F.3d 1036, 1063 [California]; *Newman v. Lifeline Systems, Co.* (D. Ariz. July 7, 2009) 2009 WL
19 1993345, at *4–5 [Arizona].) Third-party beneficiary status exists when “a person or class of persons”
20 is noted as a beneficiary in the agreement. (*Newman, supra*, 2009 WL 1993345, at *4; *Ronay Family*
21 *Limited P’ship v. Tweed* (2013) 216 Cal.App.4th 830, 838–839 [explaining it is “not necessary that the
22 beneficiary be named and identified as an individual,” as “[a] third party may enforce a contract where
23 he shows that he is a member of a class of persons for whose benefit it was made,” internal quotations
24 omitted].) That rule applies with equal force to arbitration agreements. (*Ronay Family, supra*, 216
25 Cal.App.4th at p. 838 “[A] third party beneficiary of an arbitration agreement may enforce it”].)

26 The Equity Defendants are part of the class of persons the arbitration clause is intended to cover
27 and therefore are intended beneficiaries of the provision. The arbitration provision defines SmartRent
28 to include the “property manager” and “property landlord.” (Lorey Decl., Ex. 12 § 23.) Plaintiffs
repeatedly allege the Equity Defendants “own and operate” the properties Resident Plaintiffs live or

1 lived in and the buildings where members of the Union Plaintiff live. (Compl. ¶¶ 24–32.) There can
2 be no serious dispute that the arbitration clause applies to the Equity Defendants. And the fact that the
3 contract itself requires that “*all disputes* between you and SmartRent” be “resolved by binding
4 arbitration” is conclusive evidence that the Equity Defendants—which are encompassed by the
5 definition of SmartRent in the arbitration provision—are intended, direct beneficiaries of the arbitration
6 agreement. (See, e.g., *Supplies for Industry, Inc. v. Christensen* (Ariz. Ct. App. 1983) 659 P.2d 660,
7 662.) So the Equity Defendants may invoke the arbitration provision here.

8 *Second*, even if the Equity Defendants were not third-party beneficiaries, Plaintiffs still must
9 arbitrate because of the doctrine of equitable estoppel. Under federal, California, and Arizona law,
10 when a “plaintiff brings a claim which relies on contract terms against a defendant, the plaintiff may
11 be equitably estopped from repudiating the arbitration clause contained in that agreement,” even when
12 the defendant (or plaintiff, or both) is not a signatory. (*JSM Tuscany, LLC v. Super. Ct.* (2011) 193
13 Cal.App.4th 1222, 1239, citations omitted; see also *Mollecular Analytical Systems v. CIPHERGEN*
14 *Biosystems, Inc.* (2010) 186 Cal.App.4th 696, 717 [similar]; *CVS Pharmacy, Inc. v. Gamble Family*
15 *Pharmacy* (D.Ariz. 2012) 2012 WL 13448148, at p. *6 [similar and applying federal, Arizona, and
16 California law].) It would be inequitable to allow a party to bring claims “dependent upon or
17 inextricably intertwined with” a contract’s terms and yet at the same time allow the party to “repudiat[e]
18 the contract’s arbitration clause.” (*JSM Tuscany, supra*, 193 Cal.App.4th at pp. 1240–1241; see also
19 *JTF Aviation Holdings Inc. v. CliftonLarsonAllen LLP* (Ariz. 2020) 472 P.3d 526, 530.)

20 In *CVS Pharmacy*, the court permitted non-signatory defendants to enforce an arbitration
21 provision on equitable estoppel grounds after finding plaintiffs’ trade secret misappropriation claim
22 was “intimately intertwined” with agreements containing the arbitration provision. (*CVS Pharmacy,*
23 *supra*, 2012 WL 13448148, at p. *5.) Because plaintiffs alleged that their trade secret information was
24 used “without express or implied consent,” plaintiffs had to establish that the way the defendants used
25 the information “exceeded the scope” of what they agreed to. (*Id.* at p. *6.) That meant the “success”
26 of plaintiffs’ claims would “turn, in large part, upon the interpretation of the terms and conditions in
27 the” underlying agreements, and therefore equitable estoppel required plaintiffs to arbitrate all their
28 claims. (*Ibid.*) The court explained that failing to compel arbitration in such circumstances would “fly

1 in the face of fairness.” (*Ibid.*, citation omitted.)

2 The same is true here as well. There is no question Plaintiffs’ claims are “intertwined” with the
3 Terms of Service. The key issue for each claim is whether the smart home technology in Equity units
4 conducts improper “surveillance” of residents and/or improperly collects data. Specifically, Plaintiffs
5 complain SmartRent devices collect and track data, such as the status of residents’ smart locks, location
6 data, and the status of thermostats and leak sensors, including what temperature the thermostat is set
7 to. (Compl. ¶¶ 44, 58–60, 63, 68.) Plaintiffs also allege the same information is collected or relayed
8 through the SmartRent mobile app and website. (*Id.* ¶¶ 66, 68). It is this supposed data collection and
9 tracking that serves as the basis of Plaintiffs’ constitutional privacy claim (*id.* ¶ 101 [alleging Plaintiffs
10 “have a reasonable expectation of privacy in . . . their homes and the details of their daily life against
11 monitoring and surveillance by their landlords and their landlords’ business partners]); common law
12 claim for intrusion upon seclusion (*id.* ¶ 110 [“Defendants’ forced installation of surveillance devices
13 in Tenant Plaintiffs’ homes and the homes of tenants represented by the Plaintiff Tenants Union without
14 their consent constitutes an invasion of privacy”]); breach of the covenant of quiet enjoyment claim
15 (*id.* ¶ 123 [alleging Defendants “substantially interfere with [the] use and enjoyment of the premises”
16 in part by “installing and subjecting Tenant Plaintiffs to mandatory . . . surveillance technologies that
17 monitor activities inside the home”]); private nuisance claim (*id.* ¶ 133 [materially same]); and San
18 Francisco Rent Ordinance claim (*id.* ¶ 146 [alleging violations based in part on “deceptively omitting
19 the full scope of data collected by the SmartRent App in tenant disclosures”]).

20 Although Plaintiffs conveniently fail to mention the Terms of Service, those Terms govern the
21 very conduct Plaintiffs complain of here. Specifically, they govern both access to and use of
22 SmartRent’s network, services, and website, as well as the information SmartRent may collect and
23 share with others, including Equity, and as explained above the January 2024 terms of service and
24 previous versions incorporate or repeatedly reference SmartRent’s Privacy Policy. (Lorey Decl., Exs.
25 11 at p. 4 [April 2023 Terms of Service]; 12 §§ 1, 9, 16 .) The Terms of Service and Privacy Policy
26 provide a detailed description of how SmartRent “collect[s], use[s], and disclose[s]” both “personally
27 identifiable information” and other data. (*Id.*, Ex. 7 at p. 1.) Plaintiffs agreed that data like a resident’s
28 “geographic location, analytical data, temperature settings and leak monitors, security data, motion and

1 broken glass sensors” is not personally identifiable information. (*Id.* § 1.) Plaintiffs also consented to
2 the collection of such data and acknowledged that the collection of geographic data could be turned off
3 at any time. (*Ibid.*) The Terms and Privacy Policy also make clear that SmartRent may share
4 information with a resident’s landlord for the purpose of “monitor[ing] the condition and safety of the
5 apartment and the Property.” (*Id.* § 3.) Moreover, Plaintiffs are undoubtedly aware of the import of
6 the Terms of Service to their claims, since the Complaint alleges that the relevant “privacy policies”
7 misled residents in disclosing the scope of the information collected. (Compl. ¶¶ 46, 89, 91.)

8 Simply put, just like in *CVS Pharmacy*, Plaintiffs’ claims concerning SmartRent’s and Equity’s
9 actions cannot be resolved without reference to the Terms of Service and therefore “are ‘intertwined’
10 with the contract providing for arbitration.” (*CVS Pharmacy, supra*, 2012 WL 13448148 at p. *5.)

11 **ii. The Union Plaintiff Is Equitably Estopped From Avoiding Arbitration.**

12 Likewise, the Union Plaintiff cannot avoid arbitration because it did not sign the agreement.
13 When a non-signatory “plaintiff brings a claim which *relies on contract terms* against a [signatory]
14 defendant, the plaintiff may be equitably estopped from repudiating the arbitration clause contained in
15 that agreement.” (*JSM Tuscany, supra*, 193 Cal.App.4th at p. 1239, citations omitted; see also
16 *Mollecular Analytical Systems, supra*, 186 Cal.App.4th at p. 717 [materially same but with respect to
17 a non-signatory defendant].) As courts have explained, it would be inequitable to allow a party to bring
18 claims “dependent upon or inextricably intertwined with” a contract’s terms and yet at the same time
19 allow the party to “repudiat[e] the contract’s arbitration clause.” (*JSM Tuscany, supra*, 193
20 Cal.App.4th at pp. 1240–1241.) The fact that the contracts at issue were “integral to [plaintiffs’]
21 claims” is precisely why the Court of Appeal in *JSM Tuscany* held that arbitration was appropriate even
22 when there were both non-signatory plaintiffs and defendants. (*Ibid.*)

23 Fairness demands that the Union Plaintiff’s claims, like those of the signatory Resident
24 Plaintiffs, be compelled to arbitration. As explained above, the Union Plaintiff’s claims are
25 “intertwined” with the Terms of Service. (*Supra* IV.D.i.) Because, as in *JSM Tuscany*, the Union
26 Plaintiff’s claims concerning SmartRent’s and Equity’s actions cannot be resolved without evaluating
27 the Terms of Service, the Union Plaintiff is equitably estopped from avoiding arbitration.

28 Moreover, allowing residents to circumvent binding arbitration agreements by having the non-

1 signatory Union Plaintiff pursue claims on their behalf would “fly in the face of fairness.” (*CVS*
2 *Pharmacy, supra*, 2012 WL 13448148, at p. *6, citation omitted.) More than 70% of residents in
3 buildings the Union Plaintiff purports to represent *did* consent to arbitration, including the one Resident
4 Plaintiff who alleges she is a union member. (Lorey Decl., ¶¶ 10, 13; Compl. ¶ 17.) And by the Union
5 Plaintiff’s own admission, it is pursuing these claims to remedy alleged injuries to its members, not
6 because the Union itself has suffered any injury. (Compl. ¶¶ 20–23.) Because it stepped into the shoes
7 of its resident members, fairness requires that the Union Plaintiff be bound by the arbitration agreement
8 to the same extent its members would be. (See *Johnson v. County of Fresno* (2003) 111 Cal.App.4th
9 1087, 1096.) All Plaintiffs must therefore be compelled to arbitration.

10 **E. There Are No Valid Defenses to Arbitration.**

11 All questions regarding the enforceability of the agreement—including whether there are valid
12 contractual defenses (there are not)—have been delegated to the arbitrator, so the Court’s inquiry need
13 not and should not reach such arguments. (*Supra* IV.B.) But even if the Court were to entertain them,
14 no valid contractual defenses apply here. Plaintiffs cannot, for example, satisfy the “high bar” for
15 showing unconscionability (procedural or substantive) under either California or Arizona law. (*Shelby*
16 *v. Brookdale Senior Living, Inc.* (9th Cir. May 25, 2022) 2022 WL 1657245, at *2.) Procedural
17 unconscionability is concerned with unfair surprise in contract formation. (*Pinnacle Museum Tower*
18 *Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 347; accord *Leo India Films*
19 *Ltd. v. GoDaddy.com LLC* (D.Ariz. May 31, 2023) 2023 WL 3740567, at p. *4.) But as described
20 above, residents had clear and conspicuous notice of the arbitration provision in the Terms of Service
21 and cannot now claim surprise. (*Supra* IV.A.) And substantive unconscionability is found only when
22 terms are “so one-sided as to oppress or unfairly surprise an innocent party,” or there is “an overall
23 imbalance in the obligations and rights imposed by the bargain, and significant cost-price disparity.”
24 (*Russ v. United Services Auto Assn.* (D.Ariz. May 11, 2017) 2017 WL 1953458, at *4.) But *nothing*
25 within the agreement’s arbitration provision favors Defendants over Plaintiffs, unfairly or otherwise.

26 **F. This Case Must Be Stayed Pending Arbitration.**

27 This case must be stayed pending a ruling on this Motion and, if so ordered, pending resolution
28 of the arbitrations. (Code Civ. Proc. § 1281.4.) “If a court of competent jurisdiction . . . has ordered

1 arbitration of a controversy which is an issue involved in an action or proceeding pending before a
2 court of this State, the court . . . shall . . . stay the action or proceeding until an arbitration is had in
3 accordance with the order to arbitrate.” (*Ibid.*, italics added.) Similarly, 9 U.S.C. § 3 mandates the
4 court “shall . . . stay the trial of the action” when it is “satisfied that the issue involved in [the] suit or
5 proceeding is referable to arbitration under [an agreement in writing for such arbitration].” This
6 procedure “is clear and unambiguous: it requires that the trial court stay an action pending before it
7 while an application to arbitrate the subject matter of the action is pending in a court of competent
8 jurisdiction.” (*Twentieth Century Fox Film Corp. v. Super. Ct.* (2000) 79 Cal.App.4th 188, 192; see
9 *Heritage Provider Network, Inc. v. Super. Ct.* (2008) 158 Cal.App.4th 1146, 1152 [“continuation of
10 the proceedings in the trial court disrupts the arbitration proceedings and can render them ineffective,”
11 citation omitted].) The stay requirement applies regardless of “whether the movant is a party to the
12 arbitration agreement.” (*Heritage Provider Network, supra*, 158 Cal.App.4th at p. 1152, citing *Marcus*
13 *v. Super. Ct.* (1977) 75 Cal.App.3d 204, 209.) Accordingly, the Court must stay proceedings until the
14 arbitrations are complete.

15 In the alternative, if this Court compels arbitration with respect to Plaintiffs’ claims against
16 SmartRent but not Equity, the proceedings left in court should be stayed until the SmartRent
17 arbitrations are complete. When there is “a severance of arbitrable from inarbitrable claims, the trial
18 court has the discretion to stay proceedings on the inarbitrable claims pending resolution of the
19 arbitration.” (*Cruz v. PacifiCare Health Systems, Inc.* (2003) 30 Cal.4th 303, 320; see Code Civ. Proc.
20 § 1281.4.) Though what “the trial court chooses to do in this situation is a matter of its discretion,”
21 courts are “guided largely by the extent to which the possibility of inconsistent rulings may be avoided.”
22 (*Metis Development LLC v. Bohacek* (2011) 200 Cal.App.4th 679, 692–693.) The Plaintiffs’ claims
23 against Equity and SmartRent are undergirded by the same set of basic (but ultimately false)
24 allegations. To avoid the risk of conflicting decisions, the proceedings against Equity should be stayed.

25 V. CONCLUSION

26 The Equity Defendants respectfully request an order (1) compelling Plaintiffs to submit their
27 claims to individual arbitration and (2) staying all proceedings pending the Court’s decision on this
28 Motion and the completion of the arbitrations.

1 DATED: February 24, 2026

GIBSON, DUNN & CRUTCHER LLP

2
3
4 By: /s/ Jeremy S. Smith
Jeremy S. Smith

5
6 *Attorneys for Defendants Equity Residential, ERP*
7 *Operating Limited Partnership, Equity Residential*
8 *Management LLC, Equity-Tasman Apartments LLC,*
9 *Archstone South Market LP, and EQR-Terraces Limited*
10 *Partnership*

1 **PROOF OF SERVICE**

2 I, Blake J. Hirst, declare as follows:

3 I am employed in the County of Los Angeles, State of California, I am over the age of
4 eighteen years and am not a party to this action; my business address is 333 South Grand
5 Avenue, Los Angeles, CA 90071-3197, in said County and State. On February 24, 2026, I
6 served the following document(s):

7 **EQUITY DEFENDANTS’ NOTICE OF MOTION AND MOTION TO
8 COMPEL ARBITRATION AND STAY PROCEEDINGS PENDING
9 ARBITRATION; MEMORANDUM OF POINTS AND AUTHORITIES IN
10 SUPPORT THEREOF**

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

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- 23 **BY ELECTRONIC SERVICE THROUGH AN EFSP:** On the above-mentioned date, I caused the documents
24 to be sent to a court-approved Electronic Filing Service Provider (“EFSP”), for electronic service and filing.
25 Electronic service will be accomplished by the EFSP’s case-filing system at the electronic notification addresses
26 as shown above.
- 27 **BY ELECTRONIC MAIL (E-MAIL):** I caused a true PDF copy of the above-mentioned document(s) to be
28 transmitted by e-mail on the date indicated above to the parties identified above at their respective e-mail
addresses cited above. I am readily familiar with this office’s practice for transmissions by e-mail.
Transmissions are sent as soon as possible and are repeated, if necessary, until they are reported as completed

