

1 JACOB A. SNOW (SBN 270988)
jsnow@aclunc.org
2 NICOLAS A. HIDALGO (SBN 339177)
nhidalgo@aclunc.org
3 AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA
4 39 Drumm Street
San Francisco, CA 94111
5 Telephone: (415) 621-2493

6 JOSEPH TOBENER (SBN 203419)
jtobener@tobenerlaw.com
7 SARAH MCCrackEN (SBN 313198)
smccracken@tobenerlaw.com
8 TOBENER RAVENSCROFT LLP
21 Masonic Avenue, Suite A
9 San Francisco, CA 94118
10 Telephone: (415) 504-2165

11 *Attorneys for Plaintiffs*

MICHAEL W. SOBOL (SBN 194857)
msobol@lchb.com
MELISSA GARDNER (SBN 289096)
mgardner@lchb.com
LİNNEA D. PITTMAN (*pro hac vice*
forthcoming)
lpittman@lchb.com
LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111
Telephone: (415) 956-1000

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF SAN FRANCISCO**

15 SAN FRANCISCO TENANTS UNION,
16 ADRIAN PHUA, WILLIAM SOLIS, and
ELANA DIESTEL,

17 Plaintiffs,

18 v.

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

24 Defendants.

CASE NO. CGC-25-631212

**PLAINTIFFS' OPPOSITION TO EQUITY
RESIDENTIAL'S MOTION TO COMPEL
ARBITRATION AND STAY
PROCEEDINGS PENDING
ARBITRATION**

Action Filed: December 4, 2025
Trial Date: None

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1 **I. INTRODUCTION**

2 This is a landlord-tenant privacy dispute arising from the landlord-tenant relationship. It
3 concerns EQR’s imposition of SmartRent technology on tenants for access to their homes, and EQR’s
4 use of the information it obtained via SmartRent from their homes. EQR’s relationship to Plaintiffs is
5 governed by valid residential leases.

6 The tenants’ leases in this case do not have arbitration clauses. In fact, the leases state that
7 legal actions must be “tried” under California law. EQR is not a party to SmartRent’s Terms of
8 Service, and it has not shown that those terms were made for EQR’s benefit. Nor does the fact that
9 tenants used SmartRent to access their homes establish a knowing agreement to give up the
10 contractual right to proceed in court against EQR, or even against SmartRent. Tenants were not
11 entering a separate bargain when they interacted SmartRent, EQR told them to rely on SmartRent to
12 obtain access their homes. In all respects, the tenants’ relationship with SmartRent derives from their
13 status as tenants of EQR.

14 Even if EQR could show that the Plaintiffs consented to specific clickwrap terms in a separate
15 agreement with SmartRent, which it cannot do, California law does not permit a residential landlord
16 to change its forum obligations through third-party clickwrap boilerplate terms. There is no evidence
17 the San Francisco Tenants Union even saw an arbitration agreement.

18 The motion fails for the additional reason that Plaintiffs’ claims do not arise from
19 SmartRent’s Terms of Service. This action concerns Defendants’ collection and use of data from
20 inside tenants’ homes, and the resulting invasion of privacy. Those claims do not depend on the
21 SmartRent terms and arose before any Plaintiff used SmartRent’s mobile application.

22 For these reasons, EQR’s motion should be denied.

23 **II. BACKGROUND**

24 In the interest of economy, Plaintiffs refer the Court to Section II of Plaintiffs’ concurrently-
25 filed Opposition to SmartRent’s Motion to Compel Arbitration (“SM-Opp.”), which describes the
26 factual background of this action and the pertinent SmartRent Technologies, Inc. (“SmartRent”)
27 contracts. Defendants Equity Residential, ERP Operating Limited Partnership, Equity Residential
28 Management LLC, Equity-Tasman Apartments LLC, Archstone Daggett Place LLC, Archstone

1 South Market LP, and EQR-Terraces Limited Partnership (collectively, “EQR”) have joined in
2 SmartRent’s Motion. EQR Motion to Compel (hereinafter, “Mot.”) at 2. The background relevant to
3 both Motions is substantially the same. Accordingly, Plaintiffs here provide only additional context
4 concerning this action and the relevant EQR lease agreements.

5 **A. Tenant Plaintiffs’ Claims Against EQR**

6 Plaintiffs challenge EQR’s forced installation and use in tenants’ homes of SmartRent’s
7 “Smart Home” hardware, including “smart” door locks. As alleged, SmartRent’s hardware transmits
8 “live data” to SmartRent, which in turn provides EQR “Resident behavior data,” “property insights,”
9 and “good information on what’s going on with [EQR’s] residents” taken from inside their homes.
10 Compl. ¶¶ 78, 81, 93.

11 EQR began a “nationwide rollout across its residential holdings” of SmartRent technologies
12 in or around 2023, which impacted Plaintiffs William Solis, Adrian Phua, and Elana Diestel (“Tenant
13 Plaintiffs”) directly. Compl. ¶ 45. Plaintiff Solis rented his home from EQR from 2017 to
14 approximately March 2024; EQR installed SmartRent technology in his home in April 2023. Plaintiff
15 Phua rented his home from EQR from August 2021 through August 2025; EQR installed SmartRent
16 technology in his home in June 2024. Plaintiff Diestel has rented her home from EQR since
17 approximately May 2023; SmartRent technology was installed in her home when she moved in. *Id.*
18 ¶¶ 2, 17–20, 45. EQR’s unilateral rollout also impacts members of Plaintiff San Francisco Tenants
19 Union (the “Tenants Union”), a donation-based, member-supported nonprofit whose mission is to
20 protect and advance the rights of San Francisco tenants. *Id.* ¶ 20. The Tenants Union has members
21 who reside in EQR properties where SmartRent technology has been, or will be, installed. *Id.* ¶ 22.

22 Plaintiffs allege that imposing “these living conditions—where the landlord and a profit-
23 seeking surveillance technology company accumulate and analyze a constant stream of detailed
24 information about activities inside the home” violates the right to privacy set forth in Article I Section
25 1 of the California Constitution; California’s common law right of privacy; Breach of the Covenant
26 of Quiet Enjoyment; Private Nuisance; and Tenant Harassment in violation of the San Francisco Rent
27 Ordinance. Compl. ¶¶ 88, 97–148. Plaintiffs allege that landlords like EQR have “no authority to
28 unilaterally waive tenants’ fundamental right to privacy in their own homes, not even as a condition

1 of the lease agreement,” and that EQR nonetheless purports to do so. Compl. ¶ 42.

2 Plaintiffs “bring this action to affirm that the constitutional protections of home privacy are
3 not optional, and to restore tenants’ rightful control over their most personal spaces.” Compl. ¶ 7.
4 Among other relief, Plaintiffs seek a Declaratory Judgment that “Defendants’ conduct constitutes an
5 invasion of the right to privacy,” and Plaintiffs Diestel and Tenants Union, whose standing arises
6 from the ongoing harm to current tenants and imminent threat of future harm to prospective tenants,
7 seek “injunctive relief prohibiting Defendants from violating tenant privacy rights as alleged.”
8 Compl. ¶ 149.

9 **B. Tenant Plaintiffs’ Lease and Binding Forum Agreement with EQR**

10 Tenant Plaintiffs’ leases with EQR govern their tenancy. Those contracts, which EQR omitted
11 from the record, are attached to the Declaration of Melissa Gardner in the form currently available to
12 Tenant Plaintiffs. Mr. Solis’s lease agreement for the term February 2022–February 2023 is attached
13 to the Gardner Declaration as Exhibit A. Mr. Phua’s lease agreement for the term August 2024–
14 August 2025 is attached as Exhibit B. Ms. Diestel’s lease agreement for the term June 2024–June
15 2025 is attached as Exhibit C. Plaintiffs have numbered the pages of each lease consecutively, and
16 refer to them herein as “Solis-,” “Phua-,” and “Diestel-,” respectively.

17 Each lease comprises a “Term Sheet,” setting forth the lease term and rent amount, which
18 incorporates other attached and specified documents, including one entitled “Terms and Conditions.”
19 Solis-1-2; Phua-1-2; Diestel-1-2. The Terms and Conditions govern EQR’s “Right to Enter” tenants’
20 homes and “Disclosure of Information” about tenants to third parties. Solis-5; Phua-5; Diestel-5,
21 ¶¶ 14, 16. They govern “Notices” from EQR using its tenants’ contact information, including by
22 email. Solis-8; Phua-8; Diestel-8, ¶ 29. They govern “Use” of the home, providing that it must
23 be “used solely as a private residence.” Solis-6; Phua-6; Diestel-6, ¶ 20.

24 At some point after 2022, EQR updated its form leases to address “Smart Home technology”
25 directly, through a “SmartHome Addendum” “effective as of the date on the Residential Lease.”
26 Diestel-22; Phua-23. The incorporated Addendum states that “The Premises have been or will be
27 equipped with Smart Home technology which includes a keyless entry system. . . . Policies,
28 procedures and instructions relating to the Smart Home technology will be provided to you. Your

1 failure to comply with such policies, procedures and instructions will constitute a default under the
2 terms of your Lease.” *Id.* EQR’s Resident Handbook, incorporated in its form lease, also prohibits
3 tenants from making efforts to “tamper with,” “remove” or even “unplug” the technology, further
4 requiring them to “comply with all manufacturer procedures for the Smart Home equipment.” Compl.
5 ¶ 49.

6 The leases are governed by California law. Solis-8; Phua-8; Diestel-9, ¶ 35 (the lease is
7 “governed by the laws of the state in which the Community is located”). And the leases mandate
8 courts as the forum for disputes. *Id.* (“[A]ll legal action arising from this Lease **shall be tried** in the
9 county where the Community is located.”) (emphasis added). Further confirming that tenants retain
10 access to the courts, the leases state, for EQR employees who are also EQR tenants, that “the
11 Arbitration Policy and Agreement [for employment disputes] . . . do[es] not apply to any dispute
12 related to your tenancy or this Lease.” Solis-4; Phua-4-5; Diestel-4, ¶ 10; *see also* Solis-7; Phua-8;
13 Diestel-8, ¶ 27 (discussing recovery of fees in “litigation”).

14 EQR and tenants mutually acknowledge that the Lease “contains our entire agreement
15 [N]either of us have relied on any representations, express or implied, that are not contained in this
16 Lease.” Solis-8; Phua-9; Diestel-9, ¶ 36.

17 **III. ARGUMENT**

18 **A. EQR’s Lease Forecloses Arbitration of this Tenancy Dispute.**

19 The underlying litigation at issue here is a landlord-tenant dispute. EQR admits that its form
20 lease is intertwined with the dispute, arguing that the lease “provides residents with notice of
21 installation of smart home devices” and establishes “consent[]” to EQR’s acts alleged. Mot. at 9.

22 Forum selection for Plaintiffs’ dispute with EQR is governed by the lease. Each lease requires
23 that “all legal action arising from this Lease shall be tried in the county where the Community is
24 located,” under California law. Solis-8; Phua-8; Diestel-9, ¶ 35. They confirm that disputes “related
25 to . . . tenancy” are not subject to arbitration. Solis-4; Phua-4-5; Diestel-4, ¶ 10. Each lease contains
26 an integration clause, acknowledging that the lease “contains [the] entire agreement. . . . [and that
27 there are no] representations, express or implied, that are not contained in this [l]ease.” Solis-8; Phua-
28 9; Diestel-9, ¶ 36. No lease attaches or otherwise incorporates SmartRent’s ToS.

1 EQR’s agreement to litigate tenancy-related disputes in court must be enforced. Where the
2 agreement itself is valid, forum selection clauses in a contract “typically will be enforced, absent a
3 showing that enforcement of the forum selection clause would be unfair or unreasonable.” *EpicentRx*,
4 *Inc. v. Superior Ct.*, 18 Cal. 5th 58, 74 (2025) (citations omitted); *see also Verdugo v. Alliantgroup*,
5 *L.P.*, 237 Cal. App. 4th 141, 146 (2015), as modified on denial of reh’g (June 25, 2015). “The
6 ‘enforcement of valid forum-selection clauses, bargained for by the parties, protects their legitimate
7 expectations and furthers vital interests of the justice system.’” *EpicentRx*, 18 Cal. 5th at 77 (quoting
8 *Atlantic Marine Constr. Co. v. U.S. Dist. Court for Western Dist. of Tex.*, 571 U.S. 49, 63 (2013)).

9 EQR argues that SmartRent’s ToS governs its conduct arising from Plaintiffs’ (and Tenants
10 Union members’) tenancy, but even if the ToS is related to the landlord-tenant dispute at issue here,
11 the Court must still decide which contract governs it for purposes of forum selection. *Coinbase, Inc.*
12 *v. Suski*, 602 U.S. 143, 148–50 (2024). SmartRent’s ToS and all the circumstances surrounding
13 Plaintiffs’ supposed agreement to it, only confirm that the parties expected EQR to comply with the
14 forum obligations in the lease. If Tenant Plaintiffs clicked SmartRent’s checkbox regarding some
15 terms of service, that occurred *only* because they were EQR’s tenants. Only tenants received emails
16 to complete the registration of accounts that their landlords had set up, and it does not appear to be
17 possible to reach the checkboxes any other way. SM-Opp. § II.B; Gardner Decl. ¶¶ 5-10. SmartRent
18 would not have been able to email Plaintiffs at all, if EQR had not provided SmartRent with their
19 contact information. SM-Opp. § II.B. Indeed, the lease said tenants *had to* comply with procedures
20 such as any terms that SmartRent provided to them, or face eviction. Diestel-22; Phua-23.

21 SmartRent’s 2024 and 2025 ToS themselves make clear they are subordinate to the lease.
22 They provide, for example, that tenants can terminate their “access to the [SmartRent] Services as set
23 forth in the agreement between you and the Landlord.” Lorey 9-13, 12-13 ¶ 19.¹ SmartRent’s Privacy
24 Policy, which is incorporated by reference in its ToS (but which does not incorporate the ToS in
25 return), further confirms that the landlord’s pre-existing obligations override contrary terms from

26 _____
27 ¹ Plaintiffs re-submit SmartRent’s ToS, Exhibits 9, 11, and 12 to the Lorey Declaration, as Exhibits 9,
28 11, and 12 to the Gardner Declaration because SmartRent’s submission lacked page numbers and was
not consistently searchable. Citations to Lorey 9-, 11-, and 12- herein are to page numbers added to
the resubmitted copies of those exhibits. *See* Gardner Decl. ¶ 14.

1 SmartRent: “As part of our Services, we process or maintain PII [Personally Identifiable Information]
2 on behalf of your Landlord in our role as a service provider to the Landlord. When we engage with
3 you on behalf of a Landlord, your PII will be processed pursuant to their privacy policy, not ours. If
4 we receive a privacy question from you about your Landlord's services, we will redirect your request
5 to the Landlord.” Lorey Decl. Exs. 6, 7 at ¶ 12.

6 The forum selection clause in the lease should be enforced. Any other result would undermine
7 objectively reasonable expectations that tenants would have for their relationship with SmartRent, as
8 well as the intent of the parties reflected in both EQR’s lease and SmartRent’s ToS.

9 **B. SmartRent’s ToS Does Not Require Plaintiffs to Arbitrate Disputes with EQR.**

10 Even if EQR could argue past its own leases, which it cannot, EQR’s Motion presumes that
11 SmartRent’s 2024 ToS and 2025 ToS are “valid agreements” between SmartRent and Plaintiffs. They
12 are not, because Plaintiffs never manifested an agreement to be bound by SmartRent’s terms, as
13 explained in the accompanying Opposition to SmartRent’s Motion. SM-Opp. § III.A. EQR overlooks
14 that its tenants do not “register accounts” with SmartRent, but only have the option to set passwords
15 for accounts that EQR had already registered in their names. Mot. at 9; *but see* SM-Opp. § II.B. EQR
16 relies on case law about expectations for “continuing relationships,” but omits that it was *EQR* that
17 engineered and established the relationship between SmartRent and its tenants and introduced
18 SmartRent as a means of opening the door to their homes, a context where no reasonable tenant
19 would expect to be bound by new “terms.” *See* Mot. at 14, citing *Oberstein v. Live Nation Ent., Inc.*,
20 60 F.4th 505, 516 (9th Cir. 2023); *but see* SM-Opp. § II.B; III.A. Tenants were only permitted to *end*
21 the relationship according to EQR’s terms. Lorey 9-13, 12-13 ¶ 19. That context dooms EQR’s
22 reliance on SmartRent’s “checkbox” and ambiguously worded potential hyperlinks, even if
23 SmartRent could prove any Plaintiff saw those words and checked a box, which Defendants have
24 failed to do. SM-Opp. § II.B; III.A.

25 Further, both SmartRent and EQR fail to grapple with the multiple versions of SmartRent’s
26 ToS that existed at relevant times. SM-Opp. at 15; *see also id.* at 11-12 (identifying material
27 differences between SmartRent’s 2023 ToS and the 2024 and 2025 ToS Defendants seek to enforce).
28 EQR offers no explanation why Plaintiff Solis’s and Diestel’s claims, which it concedes “center on

1 the ‘forced installation’ of SmartRent devices” *in 2023*, should be subject to the ToS its arguments
2 rely on, which did not exist until 2024 or 2025. Mot. at 16. EQR offers no reason to infer that
3 members of the Tenants Union purportedly agreed to SmartRent’s 2024 or 2025 ToS rather than the
4 2023 version, either. *Id.* at 19-20. If the 2023 ToS applies, it does not require arbitration here,
5 including because it provides “[a]ny disputes relating to these Terms or this Site will be heard in the
6 courts” SM-Opp. at 12; § III.A.

7 **C. EQR is Not a Third-Party Beneficiary of SmartRent’s ToS.**

8 Acknowledging that it is not a “signatory” of SmartRent’s 2024 or 2025 ToS, EQR
9 incorrectly asserts that it can enforce the arbitration provision as a third-party beneficiary. “A third
10 party beneficiary is someone who may enforce a contract because the contract is made expressly for
11 [their] benefit [a] person only incidentally or remotely benefited from a contract is not a third-
12 party beneficiary.” *Ford Motor Warranty Cases*, 89 Cal. App. 5th 1324, 1336 (2023), *aff’d*, 17 Cal.
13 5th 1122 (2025) (cleaned up). EQR has the burden “to prove that the agreements were intended to
14 benefit them.” *Jarboe v. Hanlees Auto Grp.*, 53 Cal. App. 5th 539, 550 (2020).

15 Under *Goonewardene v. ADP, LLC*, which “guides every modern third-party beneficiary case
16 in California,” EQR’s proof should be analyzed with “commonsense reasoning about the
17 relationships in the case” and what the contracting parties would “reasonably expect.” *Mahram v. The*
18 *Kroger Co.*, 104 Cal. App. 5th 303, 312 (2024) (applying *Goonewardene v. ADP, LLC*, 6 Cal. 5th
19 817, 830 (2019)). The parties’ reasonable expectations are discussed above, and in the opposition to
20 SmartRent’s brief filed herewith. SM-Opp. § III.A. EQR’s best evidence that any party intended
21 SmartRent’s arbitration clause to benefit EQR is dubious. SmartRent’s arbitration provision states,
22 “For the purposes of this Dispute Resolution section, the reference to SmartRent includes its
23 directors, employees, agents, affiliates, licensees, service providers, property landlord, and property
24 manager.” Mot. at 10. Defining “SmartRent” to include “its . . . property landlord,” rather than
25 *Plaintiffs’* property landlord, is not conclusive evidence of intent to benefit EQR. Lorey 9-14, 12-14 ¶
26 23. EQR can only establish third party beneficiary status if it shows that both SmartRent *and*
27 Plaintiffs had the “motivating purpose” to achieve that outcome by the relevant provision. *The*
28 *Kroger Co.*, 104 Cal. App. 5th at 312. A motivating purpose is “not simply knowledge that a benefit

1 to the third party may follow” *Goonewardene*, 6 Cal. 5th at 830. “It is not enough that a literal
2 interpretation of the agreements would benefit [nonsignatories].” *Jarboe*, 53 Cal. App. 5th at 550.
3 EQR offers no evidence that Plaintiffs intended to benefit EQR, except to state that they live in EQR
4 properties. Mot. at 17–18.

5 *The Kroger Co.* is on point. There, the court applied *Goonewardene* and held that a grocery
6 store was not a third-party beneficiary of an arbitration agreement between a consumer and an online
7 delivery service, even though the consumer’s purchases were fulfilled by the grocery store, which
8 obviously benefited from the additional business. Individuals shopping for groceries were motivated
9 to obtain groceries; the app provider was motivated to make money by delivering them. *Id.* at 311.
10 Similarly here, the evidence shows that Tenant Plaintiffs’ “motivating purpose,” to the extent their
11 individual motivations mattered at all in the context, was obtaining keys to their homes and possibly
12 managing SmartRent devices in their homes, not changing EQR’s forum obligations for landlord-
13 tenant disputes. EQR’s lease states that it is the “entire agreement,” so Plaintiffs could not have
14 expected to alter EQR’s forum obligations through a vendor’s app ToS. Solis-8; Phua-9; Diestel-9,
15 ¶ 36; *see also Neverkovec v. Fredericks*, 74 Cal. App. 4th 337, 349 (1999) (“intent” can be “gleaned
16 from reading the contract as a whole in light of the circumstances under which it was entered.”).
17 SmartRent’s motivation, for its part, was to sell services to its business clients, including EQR, much
18 like the service provider relationship at issue in *The Kroger Co.* If SmartRent’s Dispute Resolution
19 section was an agreement, Plaintiffs did not intend it to benefit EQR.

20 EQR’s authorities are inapplicable. The shareholders in *Northstar Financial Advisors Inc. v.*
21 *Schwab Investments*, were express beneficiaries because they approved the relevant contract, which
22 had benefiting shareholders as the “most basic aspect” of its performance. 779 F.3d 1036, 1063–64
23 (9th Cir. 2015). The “agent” encompassed by the arbitration provision in *Ronay Family Limited*
24 *Partnership v. Tweed*, was a member of the class of persons that *both* parties to the contract intended
25 to protect. 216 Cal. App. 4th 830, 838 (2013). None of EQR’s authorities support enforcing
26 SmartRent’s ToS for EQR’s benefit here.

27 **D. Nothing about Holding EQR to its Own Adhesion Contracts is Unfair.**

28 EQR next contends that, despite EQR’s agreement to try tenancy disputes in court, Plaintiffs

1 should be equitably estopped from “avoiding” arbitration with EQR, an argument which boils down
2 to the assertion that requiring EQR to litigate tenancy disputes in court would be unfair to the
3 landlord. “Estoppel is an equitable remedy and, as such, will only be applied to avoid injustice.”
4 *Tenzer v. Superscope, Inc.*, 39 Cal. 3d 18, 21 (1985). “The linchpin for equitable estoppel is equity—
5 fairness.” *Goldman v. KPMG, LLP*, 173 Cal. App. 4th 209, 220 (2009). In the arbitration context,
6 nonsignatories may invoke an arbitration agreement only where justice demands it, such as when “the
7 causes of action against the nonsignatory are intimately founded in and intertwined with the
8 underlying contract obligations.” *Jarboe*, 53 Cal. App. 5th at 553.

9 **1. Equitable Considerations Favor Plaintiffs.**

10 Justice does not support EQR’s Motion. It seeks relief that contravenes equitable principles
11 recognized by the California Supreme Court and codified by statute. The landlord-tenant relationship
12 is one that “affects the public interest,” and thus is subject to special protections against a landlord’s
13 overreach. In *Tunkl v. Regents of University of California*, the Supreme Court held that exculpatory
14 provisions in private contracts are unenforceable when imposed in a transaction affecting the public
15 interest. 60 Cal. 2d 92, 98–101 (1963). The Court identified six considerations—now known as the
16 *Tunkl* factors—for deciding whether a transaction affects the public interest: public regulation,
17 practical necessity, service to the public, unequal bargaining power, adhesion, and the placing of the
18 consumer’s person or property under the provider’s control. *Id.* In *Henriouille v. Marin Ventures, Inc.*,
19 the Supreme Court applied the *Tunkl* factors to residential leasing and held that all six are present in
20 the landlord-tenant relationship. 20 Cal. 3d 512, 518–20 (1978). Housing is heavily regulated, shelter
21 is a necessity, landlords offer housing to the public, tenants lack equal bargaining power, residential
22 leases are adhesive, and tenants’ persons and property are placed within the landlord’s control. *Id.*

23 *Henriouille* matters here because it identifies the governing public policy for evaluating
24 purported agreements between landlords and tenants: landlords may not use adhesive, lease-related
25 contracts to strip tenants of basic protections. Housing rights are codified in California Civil Code
26 section 1953, which prohibits a residential lease agreement from waiving a tenant’s “procedural
27 rights in litigation in any action involving his rights and obligations as a tenant” because the State
28 recognizes that justice requires such protection.

1 Applying Civil Code section 1953(a)(4), California courts have repeatedly held that
2 arbitration provisions are unenforceable in residential lease agreements. *See Jaramillo v. JH Real Est.*
3 *Partners, Inc.*, 111 Cal. App. 4th 394, 403-04 (2003); *Harris v. Univ. Vill. Thousand Oaks, CCRC,*
4 *LLC*, 49 Cal. App. 5th 847, 852-57 (2020); *Williams v. 3620 W. 102nd St., Inc.*, 53 Cal. App. 5th
5 1087, 1093 (2020). That statute broadly voids lease clauses that require tenants to give up protected
6 litigation rights in advance. Arbitration is one such waiver because it requires the tenant to surrender
7 the judicial forum and the right to jury trial before any dispute arises. That is why California courts
8 have repeatedly held that section 1953(a)(4) voids arbitration clauses in residential leases.

9 A federal court in *Brooks* reached the opposite result, but it is a single federal district court
10 decision and is not binding on this Court, nor does it undermine the equitable principles at issue here,
11 where Plaintiffs invoke section 1953 not to invalidate a provision of a residential lease, but to
12 demonstrate why EQR should not be permitted to enforce SmartRent’s ToS against its tenants. *See*
13 *Brooks v. Greystar Real Est. Partners, LLC*, No. 23-01729, 2024 WL 3489205, at *7 (S.D. Cal. July
14 19, 2024). *Brooks* treated section 1953 as though it were simply a state-law ban on residential
15 arbitration. Section 1953 is not so narrow. In *Henriouille*, the California Supreme Court expressly
16 considered section 1953 and made clear that the anti-waiver policy reflected in the statute did not
17 begin there and did not target arbitration alone. 20 Cal. 3d at 520–21. The Court explained that the
18 tenant’s rights arose under “the common law as it existed prior to the passage of that section.” *Id.* at
19 521. Section 1953 thus codified and reinforced an older California rule limiting landlord-imposed
20 waivers in residential leasing. That is why *Brooks* is unpersuasive. It skipped the real question—
21 whether section 1953 is best understood as a broader residential anti-waiver rule—and instead
22 assumed it was merely an anti-arbitration statute. This Court should follow the California appellate
23 decisions, and hold that injustice, if any, would result only if the Court grants EQR’s Motion.

24 EQR rents apartments to the public, not to sophisticated businesses with equal resources.
25 Tenants in San Francisco’s housing market have no meaningful ability to negotiate or reject separate
26 terms presented as a condition of getting into and keeping their homes. The SmartRent ToS is a
27 classic adhesion contract: standardized and imposed on a take-it-or-leave-it basis. And SmartRent is
28 not collateral to the tenancy. The evidence shows that it relates to entry into the apartment through

1 smart locks, operation of in-home devices such as thermostats and leak detectors, and information
2 collection and processing practices tied to tenants' homes. SM-Opp. § II.B.

3 Invoking justice does not permit EQR to do indirectly through SmartRent's clickwrap what
4 the law forbids it to do in its own lease. Allowing EQR to estop *Plaintiffs* from resisting EQR's
5 invocation of oppressive boilerplate terms for an app would contradict public policy declared in
6 *Henriouille*. Any landlord could evade California residential public policy simply by moving the
7 waiver out of the lease and into a third party's form contract, then requiring tenants to interact with
8 that party. Principles of equity do not support that.

9 **2. Plaintiffs' Claims Rise From EQR's Conduct as a Landlord, Not**
10 **SmartRent's ToS.**

11 Even focusing narrowly on case law surrounding equitable estoppel in the arbitration context,
12 EQR's arguments lack merit. Plaintiffs' claims arise from the physical installation of hardware in
13 their homes and EQR's ensuing exploitation of tenants' personal information. This case is analogous
14 to *Kramer and Ngo*, two Ninth Circuit cases. *See Kramer v. Toyota Motor Corp.*, 705 F.3d 1122 (9th
15 Cir. 2013); *Ngo v. BMW of North America*, 23 F.4th 942 (9th Cir. 2022). Plaintiffs assert statutory
16 and common law privacy claims based on conduct in and around their homes. Plaintiffs based no
17 allegation in their complaint on that alleged contract, because SmartRent's app is ancillary to their
18 claims. The only contract claim is for breach of the covenant of quiet enjoyment, which relates to the
19 residential lease. Under *Goldman, Kramer, and Ngo*, Equity cannot compel arbitration through
20 estoppel merely because SmartRent technology is part of the dispute's factual background. *Ford*
21 *Motor Warranty Cases*, 17 Cal. 5th 1122, 1137 (2025) (“[U]nless a party to an arbitration agreement
22 has used the substantive terms of that agreement as the foundation for his claims against a
23 nonsignatory, there is no reason in equity why he should be forced to arbitrate his claims against the
24 nonsignatory.”) (quoting *Goldman*, 1 Cal. App. 4th at 235); *Kramer*, 705 F.3d at 1128–30; *Ngo*, 23
25 F.4th at 948–50. EQR clearly agreed to litigation in California as discussed above.

26 To support its argument, EQR relies on the same distinguishable authority as SmartRent does
27 in its motion. Mot. at 18. *JSM Tuscanly, LLC v. Super. Ct.*, 193 Cal. App. 4th 1222, 1239 (2011), a
28 case where plaintiffs sued for breach of the contracts containing arbitration clauses, has been

1 distinguished in numerous relevant opinions. *See, e.g., Theresa D. v. MBK Senior Living LLC*, 73
2 Cal. App. 5th 18, 31–32 (2021) (analyzing and distinguishing *JSM*, finding “defendants make no
3 showing that plaintiff’s claims... rely on the terms of the [] agreement rather than on defendants’
4 alleged violation of *duties* imposed by law.”). Equity relies at length on *CVS Pharmacy, Inc. v.*
5 *Gamble Family Pharmacy*, 2012 WL 13448148 (D. Ariz. Oct. 22, 2012), an unpublished Arizona
6 opinion that appears not to have been cited by any court in the intervening fourteen years and is
7 distinguishable in every material respect. There, independent pharmacies brought trade secret
8 misappropriation claims against CVS Pharmacy, a nonsignatory that was the corporate “sister
9 company” of the signatory Caremark, owned by the same parent entity. 2012 WL 13448148, at *2,
10 *7. The court compelled arbitration because the pharmacies’ claims were “intimately intertwined”
11 with the Provider Agreements: proving misappropriation *required* interpreting provisions of the
12 Provider Agreements and therefore to allow nonsignatories to avoid the arbitration provision in those
13 agreements would “fly in the face of fairness.” *Id.* at *5–6. Here, none of Plaintiffs’ claims require
14 interpreting, let alone arise from, SmartRent’s ToS, nor is there any comparable corporate
15 relationship. EQR and SmartRent are independent companies in a business-to-business relationship
16 apparently governed by a separate Master Services Agreement, which they have chosen not to submit
17 to the Court. SM-Opp. at 9.

18 **E. The Tenants Union Cannot Be Compelled to Arbitrate.**

19 EQR’s distortion of relevant equitable principles also undermines its argument for compelling
20 the Tenants Union to arbitrate. The Tenants Union’s claims are no more “intertwined” with the ToS
21 than Tenant Plaintiffs’ claims are. Equitable estoppel aims to prevent a nonsignatory from “having it
22 both ways” by seeking both to impose duties under an agreement and deny an arbitration provision’s
23 applicability. *See Goldman*, 173 Cal. App. 4th at 220. The Tenants Union’s claims arise instead from
24 its mission to advocate for tenants against predatory and invasive conduct like that at issue here,
25 including EQR’s alleged abuse of its power in the landlord-tenant relationship to use surveillance
26 devices in tenants’ homes as a condition of continued tenancy. *See Namisnak v. Uber Techs., Inc.*,
27 971 F.3d 1088, 1095 (9th Cir. 2020) (rejecting estoppel argument). It would be fundamentally unfair,
28 equitable estoppel’s chief concern, to require the Tenants Union to arbitrate these claims individually

1 and confidentially—if the ToS permits them to arbitrate them at all—in Arizona under Arizona law.

2 **F. There Is No Agreement to Delegate Threshold Questions to an Arbitrator.**

3 EQR contends that SmartRent’s ToS clearly and unmistakably delegates questions of
4 arbitrability to Arizona arbitrators (Mot. at 14-15), but it does not, and would not be enforceable if it
5 did. Reference to AAA Rules is not dispositive in adhesive form contracts with unsophisticated
6 consumers such as tenants, particularly where, as here, the provision also suggests that a court has the
7 power to rule. *Mondragon v. Sunrun Inc.*, 101 Cal. App. 5th 592, 611 (2024); *Wilson v. Wells Fargo*
8 *& Co.*, No. 20-2307, 2021 WL 1853587, at *3 (S.D. Cal. May 10, 2021). SM-Opp. § III.E. The
9 delegation clause, if effective, is unconscionable because it requires Tenant Plaintiffs to travel to
10 Arizona, within one year of the “occurrence” of facts giving rise to their claims irrespective of their
11 rights under the discovery rule, and only after waiting 45 days for a pre-dispute response from
12 SmartRent, for a ruling on whether their claims were even subject to those oppressive requirements.
13 *Id.* In the 2025 ToS, the clause directly violates California law. Cal. Civ. Code § 1799.208(a). It is
14 unconscionable for the Tenants Union because it does not even permit them to seek such a ruling. *Id.*

15 **G. Plaintiffs’ Claims Are Not Even Subject to SmartRent’s Arbitration Clause.**

16 A broad arbitration clause still reaches only claims that arise from, or have a sufficient
17 connection to, the contract containing it. *Rice v. Downs*, 248 Cal. App. 4th 175, 186–87 (2016).

18 Plaintiffs’ claims lack the necessary connection to any version of the SmartRent ToS. Despite
19 broad language in the 2024 and 2025 ToS concerning where people “live,” the ToS agreements are
20 more reasonably understood to apply to use of SmartRent’s website, app and software services,
21 whereas Plaintiffs’ claims concern how physical devices installed inside their homes are sending live
22 data to third parties, including SmartRent, and being exploited by both Defendants. *See, e.g.*, Compl.
23 ¶ 44 (“By installing surveillance devices inside tenants’ homes, Defendants have fundamentally
24 breached [an established] privacy boundary. By collecting, retaining, and reserving rights to exploit
25 intimate information about what occurs within those walls, Defendants violate, on a daily basis,
26 protected rights in a space that the California Constitution deems paramount.”).

27 Plaintiffs do not allege breach of obligations in the ToS. Rather, their claims sound in
28 California Constitutional, common, and municipal law that protect their privacy and wellbeing in

1 their homes. The conduct at issue began before anyone was allegedly presented with a link to
2 SmartRent’s ToS, and the conduct would have continued whether or not they saw or checked any box
3 to agree to “Terms.” Use of SmartRent’s app, as alleged, at most provided “partial insight into what
4 information Defendants are collecting.” Compl. ¶ 6. SmartRent’s own declarant admits that the
5 devices in EQR tenants’ homes operate “without using the App or webpage” and that the ToS is
6 imposed on individuals “in order to utilize the SmartRent devices through the App or a web
7 browser,” described by SmartRent as “enhanced features” in its brief. Lorey Decl. at ¶¶ 3–4; SM-
8 Mot. at 5. The alleged misconduct through the devices inside the home is at the core of this litigation,
9 and it was already happening, and continued to happen, regardless of using SmartRent’s app.

10 Plaintiffs’ Complaint discusses SmartRent’s Privacy Policy (which is not a contract, and does
11 not incorporate the ToS), explaining that, by posting it, SmartRent purports to have rights to collect
12 “activities and information collected by or within the App and Services, such as turning lights on and
13 off, temperature settings, leak monitoring, photographs, parking, movement throughout the Property,
14 access to public and private areas of the Property,” and that SmartRent purports to have rights to use
15 the information and share it with EQR. Compl. ¶¶ 89–90. Pointing to outrageous reservations of
16 “rights” in a disclosure statement is not the same as relying on a contract that happens to incorporate
17 the statement. The Privacy Policy itself disclaims application to this case, stating, “[a]s part of our
18 Services, we process or maintain PII [Personally Identifiable Information] on behalf of your Landlord
19 in our role as a service provider to the Landlord. When we engage with you on behalf of a Landlord,
20 your PII will be processed pursuant to their privacy policy, not ours.” Lorey Decl. Exs. 6, 7 at ¶ 12.

21 EQR’s argument that these allegations “touch matters covered by the contract” overstates its
22 authority. The question, in the cases EQR cites, was not whether a contract (or a non-contractual
23 disclosure document mentioned in a contract, like SmartRent’s Privacy Policy) addresses some fact
24 alleged in the complaint, despite EQR’s suggestions otherwise. Mot. at 16. In this context, where the
25 claim is not for breach of a contract itself, the question is whether the *dispute* is “rooted in” the
26 relationship *created* by the contract. “Broad arbitration clauses are interpreted to apply to
27 extracontractual disputes between the contracting parties so long as they have their roots in the
28 relationship between the parties which was created by the contract.” *Ahern v. Asset Mgmt.*

1 *Consultants, Inc.*, 74 Cal. App. 5th 675, 692 (2022) (citations omitted); *Ramos v. Superior Ct.*, 28
2 Cal. App. 5th 1042, 1052 (2018). Courts look at not only the “ordinary meaning of the contractual
3 language,” but also “the circumstances under which the agreement was made.” *Ahern*, 74 Cal. App.
4 5th at 687.

5 Plaintiffs’ relationship with EQR could not be rooted in the ToS because it predated the ToS.
6 SmartRent was already collecting information from Tenant Plaintiffs’ homes before any ToS, and
7 EQR was already using it. EQR created SmartRent accounts in Tenant Plaintiffs’ names before any
8 ToS was allegedly offered. If the ToS created *any* separate relationship between any entity and
9 Plaintiffs, it was limited to providing access to the SmartRent app, as alleged. Compl. ¶ 6. Stated
10 more plainly, the tenants who never used SmartRent’s mobile app would have the exact same claims
11 asserted here against both EQR and SmartRent. SmartRent’s mobile app ToS is tangential to
12 Plaintiffs’ claims, at best.

13 **H. The Court Should Not Stay Any Aspect of this Case.**

14 EQR’s motion is a transparent attempt to delay resolution of the issues in this case, which
15 concerns the rights of not only Tenant Plaintiffs and Tenants Union members, but other tenants in
16 California and beyond who might be compelled by their landlord to live with surveillance devices in
17 order to remain in their homes. The Court should not reward those efforts with further delay.

18 The Court should require both EQR and SmartRent to face the tenants whose rights they have
19 violated in this Court, even if it finds that some aspect of some of their claims is subject to arbitration.
20 The Tenants Union, certainly, cannot pursue its claims in arbitration and should not have justice for
21 its current and future members denied by an adhesive app ToS it indisputably never agreed to. If the
22 Court finds that any Plaintiff has agreed to arbitrate any claim, it should exercise its discretion under
23 Code of Civil Procedure section 1281.2(c) and allow those claims to proceed in this litigation to
24 avoid conflicting rulings on overlapping factual and legal issues.

25 **IV. CONCLUSION**

26 The Equity Defendants’ motion should be denied in its entirety.
27
28

1 DATED: April 7, 2026

Respectfully Submitted,

2 By: 

3 Michael W. Sobol (SBN 194857)
4 msobol@lchb.com
5 Melissa Gardner (SBN 289096)
6 mgardner@lchb.com
7 Linnea D. Pittman (*pro hac vice forthcoming*)
8 lpittman@lchb.com
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111
Telephone: (415) 956-1000

9 Joseph Tobener (SBN 203419)
10 jtobener@tobernerlaw.com
11 Sarah McCracken (SBN 313198)
12 smccracken@tobernerlaw.com
TOBENER RAVENSCROFT LLP
21 Masonic Avenue, Suite A
San Francisco, CA 94118
Telephone (415) 504-2165

13 Jacob A. Snow (SBN 270988)
14 jsnow@aclunc.org
15 Nicolas A. Hidalgo (SBN 339177)
16 nhidalgo@aclunc.org
17 AMERICAN CIVIL LIBERTIES UNION
18 FOUNDATION OF NORTHERN CALIFORNIA
39 Drumm Street
San Francisco, CA 94111
Telephone: (415) 621-2493

19 *Attorneys for Plaintiffs*

3 PROOF OF SERVICE

4 I am employed in the County of San Francisco, State of California. I am over the age of
5 18 and not a party to the within action. My business address is 21 Masonic Avenue, Suite A, San
6 Francisco, California 94118.

7 On today's date, I served the following document(s) described as **PLAINTIFFS'**
8 **OPPOSITION TO EQUITY RESIDENTIAL'S MOTION TO COMPEL ARBITRATION**
9 **AND STAY PROCEEDINGS PENDING ARBITRATION** on all parties in this action as
10 follows:

| | |
|--|---|
| 11 Jura C. Zibas 12 Margo A. Crawford 13 WILSON ELSER MOSKOWITZ 14 EDELMAN & DICKER LLP 15 655 Montgomery Street, Suite 900 16 San Francisco, California 94111 17 Email: jura.zibas@wilsonelser.com 18 margo.crawford@wilsonelser.com 19 Facsimile: (415) 434-1370 | 20 Theane Evangelis 21 Jeremy S. Smith 22 Daniel M. Rubin 23 Amanda M. Sadra 24 GIBSON, DUNN & CRUTCHER LLP 25 333 South Grand Avenue 26 Los Angeles, California 90071 27 Email: tevangelis@gibsondunn.com 28 jssmith@gibsondunn.com drubin@gibsondunn.com asadra@gibsondunn.com Facsimile: (213) 229-7520 |
|--|---|

17 X By E-Service. By emailing the document(s) to the persons at the e-mail address(es),
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19 1010.6(3). No electronic message or other indication that the transmission was
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22 envelope. I am readily familiar with the firm's practice of collection and processing
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24 that same day with postage thereon fully prepared at San Francisco, California in the
25 ordinary course of business.

26 X By Fax. By forwarding the above-referenced document(s) by fax to the office of the
27 addressee(s) at the fax number listed above.

28 Executed on April 7, 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.


Rachael Payne