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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

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

Plaintiffs,

v.

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

Defendants.

CASE NO. CGC-25-631212

PLAINTIFFS' OPPOSITION TO SMARTRENT TECHNOLOGIES' MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS PENDING ARBITRATION

Action Filed: December 4, 2025
Trial Date: None

DATE: April 29, 2026
TIME: 9:00 a.m.
DEPT.: 302

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I. INTRODUCTION

Plaintiffs bring this case to protect their constitutional and statutory rights, and the rights of other California tenants, against landlord-sanctioned privacy invasions in the home. SmartRent's motion to compel arbitration would, instead, make this case about an irrelevant and fundamentally self-serving clickwrap-based relationship that it cannot even show any tenant accepted. Considered in the full factual and legal context, SmartRent's motion is without merit and should be denied.

The purported contract SmartRent seeks to enforce is no standard consumer agreement. SmartRent's services relate to a landlord-tenant relationship governed by a lease, where the landlord unilaterally installed SmartRent devices in Plaintiffs' homes and created SmartRent accounts in their names. From tenants' perspective, SmartRent's role was to provide them with electronic keys to their homes. No reasonable tenant expected to find "terms" for a separate contract during that transaction.

As the party seeking arbitration, SmartRent bears the burden to prove a valid agreement. In the online-contract setting, that requires proof that it provided notice of its terms that was reasonable in the particular circumstances, and that those terms were clearly accepted. SmartRent relies exclusively on the Lorey declaration to establish notice, but the declaration does not show what any Plaintiff actually saw, whether any terms were even hyperlinked, or which version of its terms Plaintiffs supposedly agreed to. SmartRent fails to acknowledge that Plaintiffs were only in contact with SmartRent because their landlord created accounts under a lease that purported to require compliance. SmartRent's weak showing of "notice" is deficient on these facts and its motion fails for this reason alone. *See infra* Section III.A.

SmartRent's motion fails to account for reasonable expectations arising from the leases that govern Plaintiffs' homes, at issue in their interactions with SmartRent. The leases reject arbitration, stating that "all legal action arising from this Lease *shall* be tried in the county where the Community is located." SmartRent claims that Plaintiffs also agreed to arbitrate, but even if so, where two agreements point in different directions on dispute resolution, the Court decides which one governs. Here, the *leases*—not SmartRent's Terms—must govern. *See infra* Section III.B.

SmartRent also cannot deny Plaintiffs the ability to seek public injunctive relief. Under California law, a contract term is unenforceable to the extent it purports to prohibit arbitration of

claims for public injunctive relief while simultaneously prohibiting those claims in another forum. Public injunctive relief is relief that has the primary purpose and effect of prohibiting unlawful acts that threaten future injury to the general public. Plaintiffs seek such relief here. *See* Section III.C.

Plaintiff San Francisco Tenants Union cannot be compelled to arbitrate for a separate reason. It did not sign SmartRent's Terms of Service, and its claims are not based on rights created by those terms. Its claims arise from legal duties Plaintiffs contend Defendants owe under California law. A nonsignatory may be compelled to arbitrate only in limited circumstances, and equitable estoppel does not apply where the claims arise from duties independent of the contract containing the arbitration clause. *See* Section III.D.

SmartRent also has not shown that the arbitrator, rather than the Court, should decide whether this case belongs in arbitration. That issue can be delegated only by clear and unmistakable agreement. SmartRent's incorporation of AAA rules does not, by itself, establish delegation where the contract is adhesive and the contract language is not clear. That is the situation here. Because the Terms are not clear on who decides arbitrability, that issue remains for the Court. Moreover, any such delegation would be unconscionable in the circumstances. *See* Section III.E.

A broad arbitration clause still reaches only claims with a sufficient connection to the contract containing it. The claims in this case are beyond the scope of SmartRent's terms for its mobile application. They arise from privacy violations in Plaintiffs' and other tenants' homes and from the collection and use of information generated there. *See* Section III.F.

Finally, even if SmartRent's arbitration clause is a valid agreement, it is permeated with unconscionability, and the Court should decline to enforce it on that basis. *See* Section III.G.

For these reasons, the Court should deny SmartRent's Motion.

II. BACKGROUND

Equity Residential and its subsidiaries (collectively, "EQR") are Tenant Plaintiffs' landlord. SmartRent Technologies, Inc. ("SmartRent") is a technology vendor that manufactures and sells "SmartHome" hardware and software to landlords. EQR purchased smart locks, smart thermostats, and other devices from SmartRent, as well as access to software systems that provide "property insights" from the "live data" those devices collect. Compl. ¶ 78.

Adrian Phua, Will Solis, and Elana Diestel ("Tenant Plaintiffs") are individuals who signed residential lease agreements with EQR. Compl. ¶¶ 2, 17–19. EQR unilaterally activated SmartHome devices inside their homes—years after they moved in, for Phua and Solis, as part of a nationwide "rollout." *Id.* ¶ 45. Plaintiffs allege that their only "choice with respect to SmartRent, [] was the illusory choice: to live with ongoing surveillance inside their homes, or to find new homes." *Id*. ¶¶ 45, 52. They "bring this action to affirm that the constitutional protections of home privacy are not optional, and to restore tenants' rightful control over their most personal spaces." *Id*. ¶ 2. Plaintiff San Francisco Tenants Union (the "Tenants Union") is a donation-based, member-supported nonprofit that "brings this action for injunctive relief to protect the privacy rights of its current and future members who reside in rental properties owned and operated by EQR." *Id*. ¶¶ 1, 20.

A. Tenant Plaintiffs' Contractual Lease with EQR

Tenant Plaintiffs' leases with EQR govern their tenancy. They are attached as Exhibits A-C to the Declaration of Melissa Gardner in the form currently available to Plaintiffs, and cited herein as Solis-, Phua-, and Diestel-. As detailed in Plaintiffs' Opposition to EQR's Motion ("EQ-Opp."), each EQR lease comprises a "Term Sheet" attaching "Terms and Conditions." EQ-Opp. § II.B. Leases dated after 2022 include a "SmartHome Addendum." Phua-23, Diestel-22. That Addendum states that "The Premises have been or will be equipped with SmartHome technology which includes a keyless entry system … Policies, procedures and instructions relating to the SmartHome technology will be provided to you. Your failure to comply with such policies, procedures and instructions will constitute a default under the terms of your Lease." Phua-23, Diestel-22.

The leases mandate California courts as the forum for disputes, and application of California law. Solis-8; Phua-8; Diestel-9, ¶ 35 ("[A]ll legal action arising from this Lease **shall be tried** in the county where the Community is located.") (emphasis added). EQR and tenants each acknowledge that the Lease "contains our entire agreement," and "neither of us have relied on any representations, express or implied, that are not contained in this Lease." Solis-9; Phua-9; Diestel-9, ¶ 36.

B. Tenants' Interactions Through EQR with SmartRent

EQR created Tenant Plaintiffs' SmartRent accounts. After Tenant Plaintiffs signed their leases and moved in, EQR activated SmartHome devices transmitting "live data" to SmartRent from

their homes. Compl. ¶ 78. EQR then used information it had obtained through the leasing process to register SmartRent accounts in their names. *Id*. ¶ 46. On information and belief, EQR created those accounts pursuant to a non-public Master Services Agreement ("MSA") and/or "Order Form" between EQR and SmartRent, which neither Defendant put in the record. *See* Gardner Decl. ¶ 14. The 2024 and 2025 Terms of Service ("ToS") SmartRent seeks to enforce here are expressly subordinate to any MSA between EQR and SmartRent, which the ToS provides "will control" in the event of a conflict. Lorey 9-17, 12-17 ¶ 29.4.[1]

SmartRent used Tenant Plaintiffs' contact information to send them two emails. Plaintiffs Solis and Phua received emails "to receive [their] access credential," i.e., to obtain a key, for their homes. Gardner Decl. Exs. E-F. A second email stated that Plaintiffs could *complete* registration for their SmartRent accounts to "manage" the already-on SmartHome devices through SmartRent's mobile App. *Id.* SmartRent submits different emails, which it says unspecified residents receive following move-in, but does not claim any Tenant Plaintiff received those emails. Lorey Decl. ¶ 14; Ex. 5. Regardless, they also show that SmartRent accounts were created by EQR, and that SmartRent contacted tenants to fulfill EQR's obligation to provide access to the premises. *Id.* ("Welcome . . . You'll need a PIN code to enter your home"; "*Complete* account registration").

The emails Plaintiffs received contained a hyperlink to SmartRent's Privacy Policy, but no reference to SmartRent's ToS. *See* Gardner Decl. Exs. E-F. They contained a hyperlink where tenants could create a password for the pre-existing accounts. *See id.*; Lorey Decl. Exs. 1-3. On information and belief, it is not possible for an individual to access any of the screens shown in SmartRent's Exhibits 1-4 unless their landlord already created an account with their email address. Gardner Decl. ¶¶ 5-10. SmartRent's exhibits suggest that tenants who created a new password had to check a box acknowledging they agreed to "our Terms." Lorey Decl. Ex. 1. Or alternatively, that such tenants had to check a box acknowledging they agreed to "our Terms of Service." *Id*. Ex. 2-3.

SmartRent never says which screenshot it contends Tenant Plaintiffs saw. SmartRent states that the text "Terms" or "Terms of Service" "appears as" a hyperlink, but submits nothing to show

[1] Plaintiffs re-submit SmartRent's ToS, Exhibits 9, 11, and 12 to the Lorey Declaration, as Exhibits 9, 11, and 12 to the Gardner Declaration because SmartRent's submission was not readily navigable. Citations to Lorey 9-, 11-, and 12- are to page numbers to the resubmitted copies. Gardner Decl. ¶ 14.

that it was, in fact, a hyperlink or that it linked to a particular document. Lorey Decl. ¶ 6. SmartRent shows that documents entitled SmartRent Terms of Service existed, somewhere, but offers nothing to show that particular versions were accessible from hyperlinks on the "create a new password" page to which its emails may have directed. *Id*. ¶ 16; Lorey 9, 11, 12. Instead, its declarant offers the legal conclusion that Tenant Plaintiffs "agreed" to SmartRent's ToS on specific dates. Lorey Decl. ¶¶ 10-12 (April 12, 2023 (Solis), June 19, 2024 (Phua), May 12, 2023, January 22, 2024, and October 24, 2025 (Diestel)). To support these dates for Plaintiff Diestel, SmartRent states that it has "requir[ed] residents to review and agree to the updated Terms of Service to continue using the application" since 2022, while making no claim the other Plaintiffs who resided with Smart Home devices in 2023 and 2024 supposedly did so. *Id*. ¶¶ 8, 10, 12.

C. SmartRent's Privacy Policy

SmartRent's Privacy Policy is no contract. It is a non-negotiable description of how SmartRent will "collect, use, and disclose" the information it obtains through its app and from tenants' homes. Lorey Decl. Ex. 6, 7 at 1. The Privacy Policy does not incorporate SmartRent's ToS by reference, and does not state that individuals are bound by SmartRent's ToS.

By its own terms, SmartRent's Privacy Policy is inapplicable when SmartRent interacts with residents on behalf of a landlord: "When we engage with you on behalf of a Landlord, your PII will be processed pursuant to their privacy policy, not ours"; "we process or maintain PII on behalf of your Landlord in our role as a service provider to the Landlord." *Id.* ¶ 12.

D. SmartRent's Terms of Service

Three versions of SmartRent's ToS existed at relevant times. The "2023 ToS" existed when EQR created accounts for Solis and Diestel in April and May 2023, respectively; the "2024 ToS" existed when EQR created an account for Phua in June 2024; the "2025 ToS" exists today. Lorey Decl. ¶¶ 21-24; Compl. ¶ 2. All versions of SmartRent's ToS confirm that EQR created Plaintiffs' SmartRent accounts: "[W]e may collect [your name, e-mail address] from your Landlord, and you will be required to set your password." Lorey 9-11, 12-11 ¶ 15; Lorey 11-4 (property manager registers account). The 2024 ToS and 2025 ToS are subordinate to SmartRent and EQR's MSA, which has never been available to Plaintiffs. Lorey 9-17, 12-17 ¶ 29.4 (MSA "will control").

1. The 2024 and 2025 Terms

The 2024 and 2025 ToS purport to apply to SmartRent devices in rented homes. They "govern[] your access to and use of . . . Services," defined to include "the services or Network offered by SmartRent . . . where you visit, park, work, or live." Lorey 9-1, 12-1 ¶ 1. Both ToS versions acknowledge that SmartRent "Services" are provided under, and subject to, residential lease agreements. *Id*. 9-13; 12-13 ¶ 19 ("You may terminate your access to the Services as set forth in the agreement between you and the Landlord," upon termination "the rights granted by the Landlord will cease immediately"); *Id*. 9-11, 9-12; 12-11, 12-12 ¶ 16 ("Acting on behalf of you, your Property Manager, [or] your Landlord,… we may provide notices to you"); 9-2; 12-2 ¶ 3.1.1. ("Network service termination will be processed in accordance with the terms established with your Landlord.").

In the 2024 and 2025 ToS, the "Dispute Resolution section" defines "SmartRent" to include "its directors, employees, agents, affiliates, licensees, service providers, property landlord, and property manager." *Id.* 9-14-15; 12-14-15 ¶ 23. It requires arbitration in Arizona of "[a]ny controversy or claim arising out of or relating to this contract." *Id.* It prohibits "representative" arbitration proceedings, providing that "this agreement does not permit…any claims brought as a plaintiff or class member in any class or representative arbitration proceeding"; tribunals "may not otherwise preside over any form of a representative or class proceeding." *Id.*

Regarding arbitrability, "[t]he tribunal shall have the power to rule on any challenge to its own jurisdiction," but it "has no power to rule on the validity or enforceability of the agreement to arbitrate solely on an individual basis." If the prohibition on "class arbitration" is nonetheless deemed unenforceable, the remaining portions remain in force. *Id*. Arbitration proceedings cannot commence until after a 45-day pre-dispute process concludes, and claims can only be brought within one year, regardless of when relevant facts are discovered. *Id.* The arbitration is confidential, such that "any rulings, decisions, or orders of the arbitrator), shall . . . not be disclosed to anyone other than the parties to this Agreement." *Id.* There is no allowance to opt out of the Dispute Resolution section.

2. The 2023 Terms

The 2023 ToS is materially different from later iterations. It only purports to apply to SmartRent's website and mobile app, not the Smart Home technology where people live. Lorey 11-1.

Instead of terminating "Services" pursuant to lease agreements, in the 2023 ToS SmartRent "reserves the right to terminate access to your account . . . for any reason or no reason." Lorey 11-6.

The arbitration-related material in the 2023 ToS, defined as "Provision," is four pages long, and self-negating. It applies to disputes with "the Company," defined as "THE SMARTRENT.COM, INC." and that company's "parents, subsidiary, and affiliate companies," but not its landlord. Lorey 11-1; 11-11. No company by that name existed in 2023. Gardner Decl. ¶ 13.

The Provision continues, "WE EACH AGREE THAT, EXCEPT AS PROVIDED BELOW," to the same 45-day pre-dispute procedure required by the later ToS, whether claims are "pursued in court or arbitration." Lorey 11-11. The "Provision" itself does not always apply, but "*If* this Provision applies," arbitration may be commenced where the claimant lives, rather than only in Arizona. *Id.* 11-11 (emphasis added), 11-12. The arbitrator still may not preside over any "representative proceeding." *Id.* If any requirement to pursue arbitration individually is "found to be illegal or unenforceable" the "entire Provision will be unenforceable and the Dispute will be decided by a court." *Id.* 11-13. The Provision survives amendments to SmartRent's ToS: "Notwithstanding any provision in this Agreement to the contrary, we agree that if the Company makes any change to this Provision (other than a change to the Notice Address), you may reject any such change and require the Company to adhere to the language in this Provision if a dispute between us arises." *Id.* 11-13.

This Court need not untangle the knot of the four-page Provision's confusing language. Just below the Provision, under the heading "General," the 2023 ToS rescinds any requirement to arbitrate, stating "Any disputes relating to these Terms or this Site will be heard in the courts located in Maricopa County in the State of Arizona." *Id.* 11-13.

III. ARGUMENT

A. SmartRent Fails to Show Mutual Assent Because There Was No Assent.

SmartRent's ToS is not a validly formed contract. The parties' consent to the "same thing" is a requirement of formation. *Brockman v. Kaiser Found. Hosps.*, 114 Cal. App. 5th 569, 585–86 (2025), reh'g denied (Oct. 16, 2025), review denied (Dec. 17, 2025) ("Mutual assent is determined under an objective standard applied to the outward manifestations or expressions of the parties, i.e., the reasonable meaning of their words and acts . . . .").

1. Plaintiffs Had No Reason to Expect to Encounter New Terms.

The record here reflects a lack of mutual assent. The "outward manifestations" reflect that the SmartRent account and app were part of the landlord-tenant home-access arrangement governed by the lease, not a separate bargain with SmartRent. EQR installed and activated SmartRent technology in tenants' homes, created accounts in tenants' names, and—through SmartRent—sent emails with instructions to access the accounts, and their homes, consistent with lease provisions that "Policies, procedures and instructions relating to the SmartHome technology will be provided to you." Diestel-22; Phua-23. Viewed from tenants' perspective, SmartRent was the landlord's chosen system for implementing the "SmartHome" technology provided for in the lease, not an independent company offering a new and entirely optional service.

"[I]n order to establish mutual assent for the valid formation of an internet contract, a provider must first establish the contractual terms were presented to the consumer in a manner that made it apparent the consumer was assenting to those very terms when checking a box…." *Sellers v. JustAnswer LLC*, 73 Cal. App. 5th 444, 461 (2021). SmartRent relies on the color of alleged hyperlinks and contends that "the Parties manifested mutual assent" because tenants were "***required***" to check a box next to the words "Terms of Service." Mot. at 14 (emphasis original). But "the full context of any transaction is critical to determining whether any particular notice is sufficient to put a consumer on inquiry notice of contractual terms contained on a separate, hyperlinked page." *Sellers*, 73 Cal. App. 5th at 453. While "clickwrap" presentations, such as SmartRent's, can be adequate in some contexts, "there is no bright-line test for finding that a particular design element is adequate in every circumstance." *Godun v. JustAnswer LLC*, 135 F.4th 699, 710 (9th Cir. 2025) (citation omitted); *Herzog v. Super. Ct.*, 101 Cal. App. 5th 1280, 1296 (2024), review denied (Aug. 28, 2024) ("categorizing the purported agreement as a clickwrap does not resolve the formation question . . . ."). This is because "the context of the transaction... can undermine the inference the consumer had notice of the terms to which they were assenting when they clicked the associated checkbox." *Id*. at 1296–97 (emphasis added); *Berman v. Freedom Fin. Network, LLC*, 30 F.4th 849, 868 (9th Cir. 2022) ("Whether [] notice is sufficiently conspicuous will turn on the transactional context . . . .").

Here, a reasonable tenant receiving instructions for how to open her door, in a relationship

already governed by a residential lease, would not expect to find new and different "terms" for the key. That context—and the fact these terms are subordinate to an undisclosed MSA with EQR—stands in stark contrast to the typical consumer and employment cases SmartRent relies on. *Compare* Mot. at 13, citing *Swift v. Zynga Game Network, Inc.*, 805 F. Supp. 2d 904 (N.D. Cal. 2011) (free online videogame app); *Keebaugh v. Warner Bros. Ent. Inc.*, 100 F.4th 1005 (9th Cir. 2024) (Game of Thrones mobile app); *Cornell v. Desert Fin. Credit Union*, 254 Ariz. 477 (2023) (credit union account); *24 Hour Fitness, Inc. v. Superior Ct.*, 66 Cal. App. 4th 1199 (1998) (gym employment agreement); *B.D. v. Blizzard Ent., Inc.*, 76 Cal. App. 5th 931 (2022) (videogames). "Because website providers have full control over the design of their websites, the onus is on them to provide adequate notice of contractual terms, particularly where [] the consumer is not likely expecting to be bound by such terms." *Sellers*, 73 Cal. App. 5th at 481 (citation omitted). SmartRent was required to "explicitly notify a user of the legal significance" at the time. *Berman*, 30 F.4th at 858. *Cf*. *Herzog*, 101 Cal. App. 5th at 1300 (no contract where users had "no reason to anticipate encountering during the app launch new contractual terms governing their use of [] a device they had already acquired . . . .").

SmartRent ignores that context, and its showing on "notice" thus falls far short. Notably, Lorey does not testify from complete records of what any Plaintiff actually saw, what document any alleged hyperlink opened, or which version of any Terms were truly available. Rather, Lorey is only willing to say that words "appear as," rather than "are" hyperlinks. Lorey Decl. ¶ 6; Ex. 2 (testifying records from *last year* are "cut[ ]off"). Despite these critical gaps, SmartRent asks the Court to accept Lorey's testimony to the legal conclusion that Plaintiffs "agreed" to the 2024 and 2025 ToS that the Court cannot even evaluate without the MSA. Further, because this alleged clickwrap required only acknowledgment, not review, the Court would also have to infer that a reasonable tenant in these circumstances understood "Terms" or "Terms of Service" to mean SmartRent's ToS rather than their lease "Terms" or the "policies" that EQR's SmartHome Addendum required them to comply with. If any hyperlink in Exhibits 1–3 of the Lorey Declaration actually opened SmartRent's Terms, rather than EQR's or some other document, SmartRent provided inadequate notice of that fact.

SmartRent also suggests that Plaintiffs are bound by the ToS through its Privacy Policy. On the contrary, the Privacy Policy states that the *landlord's* privacy policy controls in the relevant

context: "When we engage with you on behalf of a Landlord, your PII [Personally Identifiable Information] will be processed pursuant to their privacy policy, not ours;" "we process or maintain PII on behalf of your Landlord in our role as a service provider." Lorey Decl. Exs. 6, 7 at ¶ 12. SmartRent's claims that Plaintiffs "agreed" to its Privacy Policy are also unsupported. Mot. at 5; Lorey Decl. ¶ 4. SmartRent requests that the Privacy Policy be "read," not agreed to. Lorey Decl. Exs. 1-3. Nothing in SmartRent's Privacy Policy itself indicates that the ToS is binding. *See id.*

Questions of individual proof reveal further fatal gaps in Lorey's testimony. Plaintiffs Solis and Diestel became subject to SmartRent in 2023. SmartRent contends that Plaintiff Solis agreed to its 2024 ToS based entirely on its reservation in the 2023 ToS to "change . . . provisions" at any time. Mot. at 8. But SmartRent fails to prove Solis even agreed to the 2023 ToS. Its argument for imposing the 2024 or 2025 ToS on Plaintiff Diestel is based entirely on Lorey's statement that unspecified business records contain dates. Lorey Decl. ¶ 10. Even if Solis and Diestel assented to the 2023 ToS *and* a subsequent version, the 2023 ToS gave them a continuing right to "reject" changes "if a dispute between us arises," as it has now. Lorey 11-13. Plaintiff Phua could only be subject to the 2024 ToS because EQR installed SmartRent in his home in 2024, and he moved out of his EQR residence in 2025. Compl. ¶ 18, 45; Lorey 12-13 ¶ 19. Yet Lorey provides only a date, with no detail about the context of his supposed agreement. *Id.* ¶ 11.

2. Plaintiffs Had No Expectation of Entering a Bargain.

Even if they were expecting to find terms, Plaintiffs had no expectation of rejecting them. Tenant Plaintiffs, like any reasonable tenant under these circumstances, considered completing the set-up for their already-existing SmartRent account and checking any required boxes as a necessary step to comply with EQR's instructions and avoid default under the lease. Phua-23, Diestel-22. Even the remote possibility of that default would have to be taken very seriously. EQR reserved the power, under the lease, in the event of a claimed default, to "give[] [a tenant] notice to cure or correct such default, tak[e] action to recover possession of the Premises via the eviction process or otherwise, and/or terminat[e] the Lease, all in accordance with applicable law." Solis-7; Phua-8; Diestel-8, ¶ 27. In other words, tenants—if they were in fact presented with some terms—faced a Hobson's choice: check the box, or face the legal might of their landlord, who could take away their home.

B. The Selection of This Forum in the EQR Leases Controls.

Even if the Court finds sufficient evidence that any Plaintiff agreed to the 2024 or 2025 ToS generally, the ToS cannot be considered in isolation. Plaintiffs' lease with EQR and SmartRent's ToS were part of the same transaction by which EQR provided tenants access to their homes. Those agreements should therefore be construed together. *Ahern v. Asset Mgmt. Consultants, Inc.*, 74 Cal. App. 5th 675, 693–94 (2022) ("agreements relating to one transaction" should be construed "in light of one another"); *Alberto v. Cambrian Homecare*, 91 Cal. App. 5th 482, 490 (2023).

Once the agreements are read together, there is an unavoidable conflict. The Lease directs "all legal action arising from this Lease" to California courts. Solis-8, Phua-8, Diestel-9, ¶ 35. SmartRent's related ToS, by contrast, requires arbitration in Arizona. Where related agreements point in different directions on forum, the Court must decide which contract governs before enforcing any delegation clause. *Coinbase, Inc. v. Suski*, 602 U.S. 143, 148–50 (2024). That is especially true here, where SmartRent attempted to draft the ToS to pull landlords into the definition of "SmartRent" for purposes of its arbitration provision. Lorey 9-14; 12-14 ¶ 23 (Of course, the provision actually defines "SmartRent" to include "*its* . . . property landlord," not Plaintiffs' landlord, and any ambiguity should be construed against SmartRent, as the drafter, Cal. Civ. Code § 1654).

The lease controls. It is the primary agreement governing Plaintiffs' homes, including the means by which EQR facilitates Plaintiffs' access to them, i.e., SmartRent accounts and mobile app. The 2024 and 2025 ToS make clear they are subordinate to the leases. *See, e.g.*, Lorey 9-13; 12-13 at ¶ 19 ("terminate . . . as set forth in the agreement between you and the Landlord"); Lorey Decl. Exs. 6, 7 at ¶ 12 ("their privacy policy, not ours"). If Plaintiffs in fact saw a ToS, it was only through the landlord-tenant relationship. Requiring arbitration here would allow an end run around the governing agreement.

C. SmartRent's Ban on Representative Proceedings is Unenforceable.

SmartRent also cannot deny Plaintiffs the ability to seek public injunctive relief. A contract term is unenforceable to the extent it purports to prohibit arbitration of claims for public injunctive relief while simultaneously prohibiting those claims in another forum. *McGill v. Citibank, N.A.*, 2 Cal. 5th 945, 951–66 (2017). Public injunctive relief is relief that has the primary purpose and effect

of prohibiting unlawful acts that threaten future injury to the public. *Id.* at 955.

The net effect, in all versions of SmartRent's ToS, of sending "any and all disputes" to arbitration in which "representative" proceedings are barred, and imposing confidentiality (Lorey 9-15; 11-11; 12-15) is that no Plaintiff can pursue "injunctive relief prohibiting Defendants from violating tenant privacy rights as alleged," or otherwise pursue their "action to . . . restore tenants' rightful control over their most personal spaces" in any forum. Compl. ¶ 7; Prayer. The Tenants Union is necessarily "representative" and has no ability to proceed in arbitration at all.

The 2024 and 2025 ToS permit the Court to sever unenforceable provisions, but the Court should decline to sever the unlawful restrictions and refuse to enforce the arbitration clause as a whole. California law does not require courts to salvage arbitration provisions that are permeated by overreaching or can be enforced only through judicial reformation. *See Armendariz v. Found. Health Psychcare Servs., Inc.*, 24 Cal. 4th 83, 127 (2000). Even if some reformation were warranted, the Court should deny SmartRent's motion under Code of Civil Procedure section 1281.2(c) to avoid conflicting rulings with litigation "arising out of the same… series of related transactions" with EQR.

The Court should deny SmartRent's motion as to Solis and Diestel for the independent reason that if any ToS applies to them, it is the 2023 ToS, which requires their claims to be heard in Court. The arbitration Provision in the 2023 ToS is self-negating under *McGill*. It denies the arbitrator "the power to award relief to, against or for the benefit of any person who is not a party to the proceeding," which is unenforceable absent a way to seek that relief in court. Lorey 11-12. It further provides that, if that prohibition is found to be unenforceable—which it is—"this entire Provision will be unenforceable and the Dispute will be decided by a court." Lorey 11-13.

D. <u>The Tenants Union Cannot Be Compelled to Arbitrate.</u>

Defendants do not and could not dispute that the Tenants Union never agreed to the ToS. All contracts—whether written, oral, or implied-in-fact—require consent in the formation. Cal. Civ. Code §§ 1550, 1595; *Bouton v. USAA Casualty Ins. Co.*, 43 Cal. 4th 1190, 1202 (2008).

Any hypothetical agreements by Tenants Union members would likely bear the defects identified above. And any such agreements (if they exist) cannot be imputed to the Tenants Union. As a 501(c)(4) non-profit, the Tenants Union may contract as authorized by the organization's

bylaws, articles of incorporation, or other law. *See* Cal. Corp. Code § 5140 (empowering non-profit corporations to contract, subject to bylaws and articles of incorporation). "A nonprofit corporation . . . has all the powers of a natural person in carrying out its activities." *ECC Const., Inc. v. Ganson*, 82 Cal. App. 4th 572, 575–76 (2000), as modified (July 24, 2000).

SmartRent's equitable estoppel theory fails because the Tenant Union's claims are not "intertwined" with the ToS. To bind a nonsignatory to an arbitration agreement, "the causes of action . . . must be intimately founded in and intertwined with the underlying contract obligations . . . [and] must premise liability on duties imposed by the agreement itself." *Ballesteros v. Ford Motor Co.*, 109 Cal. App. 5th 1196, 1207–08 (2025) (citation modified). Equitable estoppel aims to prevent a non-signatory from "having it both ways" by seeking both to impose duties under an agreement and deny an arbitration provision's applicability. *See Goldman v. KPMG, LLP*, 173 Cal. App. 4th 209, 220–21 (2009) ("The linchpin for equitable estoppel is equity—fairness.") (citation modified). This is not a case for breach of SmartRent's ToS. The Tenant Union's claims are not "intimately founded in" the ToS, but rather arise from its mission to advocate for tenants against predatory and invasive conduct. *Namisnak v. Uber Techs., Inc.*, 971 F.3d 1088, 1095 (9th Cir. 2020) (rejecting estoppel argument).

SmartRent relies on *JSM Tuscany, LLC v. Super. Ct.*, 193 Cal. App. 4th 1222 (2011), which has been distinguished numerous times in relevant aspects. *See Theresa D. v. MBK Senior Living LLC*, 73 Cal. App. 5th 18, 31–32 (2021) (distinguishing *JSM*, finding "[d]efendants make no showing that plaintiff's claims . . . rely on the terms of the [] agreement rather than on defendants' alleged violation of duties imposed by law."); *Ballesteros*, 109 Cal. App. 5th at 1212 (distinguishing *JSM* where "the [JSM] nonsignatory, unlike [defendant], had an 'integral' relationship to a signatory . . . ."). Here, the Tenants Union has no relationship with SmartRent and brings claims to vindicate its members' rights. It would be fundamentally unfair, equitable estoppel's chief concern, to require the Tenants Union to arbitrate these claims, particularly in Arizona under Arizona law.

E. <u>The Court Can Rule on Issues Beyond the "Threshold."</u>

Courts can entertain challenges to an agreement to arbitrate unless the parties "clearly and unmistakably" demonstrate their intent to have such questions resolved in arbitration. *Id.* at 80. SmartRent argues that reference in its ToS to AAA Commercial Rules sufficiently demonstrates such

intent, and identifies courts that have agreed. Mot. at 18. But, whether this suffices to block a given dispute behind that "threshold" depends on "context." *Mondragon v. Sunrun Inc.*, 101 Cal. App. 5th 592, 611 (2024). "California courts have questioned or rejected the argument that, for unsophisticated parties…, merely incorporating by reference the AAA arbitration rules is a clear and unmistakable agreement to delegate arbitrability decisions." *Id.* at 604. This Court should reject the argument too. The ToS itself is also unclear regarding delegation, since it contemplates the provision on class arbitration being deemed "unenforceable" by *someone* even though the arbitrator has "no power" to rule on that issue. *Wilson v. Wells Fargo & Co.*, 2021 WL 1853587, at *3 (S.D. Cal. May 10, 2021) (similar contract "directly indicate[s] the court has the ability to declare a provision unenforceable").

The delegation clause is separately unconscionable. "[U]nconscionability doctrine is concerned… with terms that are 'unreasonably favorable to the more powerful party[,]'" including terms that "…contravene the public interest or public policy[.]" *Sanchez v. Valencia Holding Co., LLC*, 61 Cal. 4th 899, 911 (2015) (citations omitted). It is procedurally unconscionable because it is buried in the middle of a lengthy paragraph in an even lengthier document, which no Plaintiff was required read to ostensibly manifest assent. It is substantively unconscionable because it would require each Plaintiff to travel to Arizona, within one year, for a decision applying *commercial* rules to a tenant dispute, on whether claims involving in-home surveillance underway before any ToS, are within the scope of its app ToS. *See* Compl. ¶¶ 97-114, 142-148; *see also, e.g.*, Mot. at 10 (arguing that tenants "consented" to "installation," which had already occurred, by agreeing to its ToS). The California legislature recently confirmed how unreasonable such a requirement is by prohibiting agreements entered after January 1, 2025 from requiring consumers to arbitrate outside California a claim arising in California, or under another state's law. Cal. Civ. Code § 1799.208(a).[2]

Upon obtaining a ruling in Arizona, Plaintiffs would have to keep it confidential except as "required by law," making it doubtful they could even move to lift SmartRent's requested stay because no Plaintiff is "required" to continue pursuing litigation. The Tenants Union could not even seek a ruling on arbitrability, because it is necessarily barred as a "representative" plaintiff. Lorey 9-

[2] If the Court finds that Plaintiff Diestel did enter a contract with SmartRent in 2025, pursuant to § 1799.208(c) Plaintiff will seek compensation for attorney time and expenses required to enforce her rights if SmartRent makes further efforts to impose Arizona arbitration or Arizona law.

15; 12-15 ¶ 23. For these and the reasons set forth above, Plaintiffs "lacked a meaningful choice" if they agreed to delegate questions of arbitrability. *OTO, L.L.C. v. Kho*, 8 Cal. 5th 111, 125 (2019).

F. Plaintiffs' Claims Are Outside the Scope of Any Agreement.

A broad arbitration clause still reaches only claims that arise from, or have a sufficient connection to, the contract containing it. *Rice v. Downs*, 248 Cal. App. 4th 175, 186–87 (2016). As explained in Plaintiffs' Opposition to EQR's Motion, that connection is absent here. EQ-Opp. § III.G.

G. SmartRent's Arbitration Provisions are Unconscionable.

Once the Court determines that arbitrability was not delegated, California law then permits it to refuse enforcement of an unconscionable clause, or the contract as a whole if unconscionability permeates it. Cal. Civ. Code § 1670.5(a); *Armendariz*, 24 Cal. 4th at 121-27; *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 68–72 (2010).

The arbitration provisions here are procedurally unconscionable because SmartRent's ToS was imposed through a process in which tenants were told they "must" agree in order to use the access system for their homes and avoid lease consequences. Arbitration depends on consent, not coercion. *OTO*, 8 Cal. 5th at 129. The provisions are also substantively unconscionable, structured to redirect California tenants' claims into SmartRent's chosen forum and on SmartRent's chosen terms—terms SmartRent can change at any time while disclaiming responsibility for ensuring that notice of material changes is received, and which are never fully disclosed because they are subject to a private MSA—all while restricting tenants' remedies in a context where they cannot avoid new terms without giving up their homes. Lorey 9-1, 12-1-2; 9-14, 12-14 ¶ 22, 9-17, 12-17 ¶ 29.4. The Court should, for the additional and independently sufficient reasons that they are unconscionable and lack mutuality of obligation, refuse to enforce the arbitration provisions in SmartRent's ToS and deny the motion to compel.

IV. CONCLUSION

The Court should deny SmartRent's Motion because it is not based on a valid agreement. To the extent that it is, the agreement does not require arbitration in this case and is unconscionable. If the Court finds that any Plaintiff could be compelled to arbitrate any claim, it should exercise its discretion under Code of Civil Procedure section 1281.2(c) to avoid conflicting rulings.

DATED: April 7, 2026

Respectfully Submitted,

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San Francisco Tenants Union, et al. v. SmartRent Technologies, Inc., et al.
Case No.: CGC-25-631212

PROOF OF SERVICE

I 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 21 Masonic Avenue, Suite A, San Francisco, California 94118.

On today's date, I served the following document(s) described as **PLAINTIFFS' OPPOSITION TO SMARTRENT TECHNOLOGIES' MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS PENDING ARBITRATION** on all parties in this action as follows:

Jura C. Zibas Margo A. Crawford WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP 655 Montgomery Street, Suite 900 San Francisco, California 94111 Email: jura.zibas@wilsonelser.com margo.crawford@wilsonelser.com Facsimile: (415) 434-1370	Theane Evangelis Jeremy S. Smith Daniel M. Rubin Amanda M. Sadra GIBSON, DUNN & CRUTCHER LLP 333 South Grand Avenue Los Angeles, California 90071 Email: tevangelis@gibsondunn.com jssmith@gibsondunn.com drubin@gibsondunn.com asadra@gibsondunn.com Facsimile: (213) 229-7520

__X__ By E-Service. By emailing the document(s) to the persons at the e-mail address(es), pursuant to and consistent with Code of Civil Procedure §§ 1010.6(a)(2), (4), (5), and 1010.6(3). No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

_____ By Mail. By placing a true copy of the above-referenced document(s) in a sealed envelope. I am readily familiar with the firm's practice of collection and processing of mailing. Under the practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepared at San Francisco, California in the ordinary course of business.

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

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
Rachael Payne