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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

**EQUITY DEFENDANTS' REPLY IN SUPPORT OF MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS PENDING ARBITRATION**

**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

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## I. INTRODUCTION

Plaintiffs' opposition impermissibly attempts to recast the complaint's allegations, reading out the centrality of SmartRent's technology and the alleged "surveillance" and "data collection," to avoid having to arbitrate this dispute. The Court should reject that effort because Plaintiffs' claims are plainly intertwined with the SmartRent Terms of Service ("TOS"), which contain a binding arbitration provision. Plaintiffs' attempts to avoid arbitration all fall flat:

*First*, Plaintiffs' suggestions that no valid arbitration agreement exists because they never manifested agreement to be bound by the TOS is undermined by both the law and facts: they unambiguously checked a box that stated by doing so they "*agree*" to the TOS, which in turn requires arbitration of "*all* Disputes between you and the Company." (Lorey Decl., Ex. 2, italics added.)

*Second*, Plaintiffs cannot avoid arbitration by arguing the dispute falls outside of the arbitration clause because that is an issue for the arbitrator, and even if the Court does address the issue, the language of the clause is broad and Plaintiffs' claims focus on SmartRent technology, not Equity leases.

*Third*, Plaintiffs cannot avoid the plain language of SmartRent's arbitration agreement making the "landlord"—here Equity—an express third-party beneficiary. The claim that the TOS are referring to *SmartRent's*, not *residents'*, "property landlord" and "property manager" defies common sense.

*Fourth*, equitable estoppel mandates all claims against all Defendants must be arbitrated, even though Equity is not a signatory to the agreement, because the claims are inherently inseparable.

This Court should grant Equity's motion to compel arbitration and stay this action.

## II. ARGUMENT

### A. A Valid Arbitration Agreements Exists.

As SmartRent explains (SR Reply § II), the TOS contain a valid arbitration agreement. Plaintiffs' arguments to the contrary are not well taken. *First*, Plaintiffs failed to "produc[e] evidence to challenge the authenticity of the agreement" (*Gamboa v. Northeast Community Clinic* (2021) 72 Cal.App.5th 158, 165); the opposition instead makes a legal argument that "Plaintiffs never manifested an agreement to be bound" by the TOS (Opp. p. 11). Not so. Resident Plaintiffs, and 70–85% of residents in buildings Union Plaintiff purports to represent, agreed to the TOS by clicking a checkbox that stated "you agree to our Terms." (Lorey Decl. ¶ 13 & Ex. 2.) These "clickwrap agreements" are

routinely enforced when parties are advised "the act of clicking will constitute assent to the terms and conditions of an agreement." (Mot. pp. 13–14; *Oberstein v. Live Nation Ent., Inc.* (9th Cir. 2023) 60 F.4th 505, 515, citation omitted; *B.D. v. Blizzard Ent., Inc.* (2022) 76 Cal.App.5th 931, 946.)

There is no serious dispute that when Plaintiffs downloaded the SmartRent mobile app, they had adequate notice they were assenting to the TOS. Next to the checkbox was a hyperlink to the TOS, appearing on an uncluttered screen and offset from surrounding text by capitalization and color. (Lorey Decl., Ex. 2; *Keebaugh v. Warner Bros. Ent. Inc.* (2024) 100 F.4th 1005, 1014, citation omitted.) This is enforceable because "[t]here was no unfair surprise or fine print" and Plaintiffs had to "affirmatively verify that [they were] accepting the . . . terms." (*Scott-Ortiz v. CBRE Inc.* (D.Ariz. 2020) 501 F.Supp.3d 717, 725–726.) And residents were not agreeing to something like "a free trial" where users are "less likely [to] scrutinize the page for small text." (*Oberstein*, *supra*, 60 F.4th at pp. 516–517, citation omitted.)

Plaintiffs' vague contention that Equity's involvement in the relationship between Plaintiffs and SmartRent changes the analysis is unsupported by any authority. (Opp. pp. 10–11.) That Equity provided certain contact information to SmartRent so residents could complete the account *registration* process does not somehow make the subsequent notice provided to residents less obvious or change the fact the residents affirmatively agreed to the TOS by checking the box.

*Second*, Plaintiffs' argument that if the "2023 ToS applies" it does not require arbitration (Opp. p. 12) ignores the actual language of the 2023 TOS. The 2023 TOS explicitly requires "all Disputes between you and the Company shall be resolved by binding arbitration," "replac[ing] the right to go to court." (Lorey Decl., Ex. 11 ¶ 19.) Moreover, while Plaintiffs argue "EQR offers no explanation" for why Plaintiffs who agreed to the 2023 TOS should be subject to more recent versions, that ignores the factual evidence before the Court. Since at least 2022, SmartRent has prompted in-app review of its TOS, requiring residents to review and agree to the updated TOS to continue using the app. (*Id.* ¶ 8 & Ex. 4.) Moreover, the 2023 TOS states SmartRent "can change, update, or add or remove provisions of these Terms, at any time" and tells users "[b]y using this Site after the Company has updated the Terms, you are agreeing to all the updated Terms." (*Id.*, Ex. 11 ¶ 2.) And both the 2024 and 2025 TOS inform users "[t]he Agreement . . . supersedes and replaces any prior or contemporaneous

understandings and agreements." *(Id.*, Ex. 9 § 29.4; Ex. 12 § 29.4.) So whether Resident Plaintiffs agreed to the 2023 TOS is irrelevant because the explicit agreement to the 2024/2025 TOS and continued use of SmartRent technologies means they are subject to the valid arbitration agreement contained in the revised TOS. (*Cavalry SPV I, LLC v. Watkins* (2019) 36 Cal.App.5th 1070, 1081.)

In sum, Equity has thus met its burden of establishing a valid arbitration agreement exists. (*Gamboa*, *supra*, 72 Cal.App.5th at p. 165.)

**B. The Parties' Delegation of Arbitrability Issues to the Arbitrator Was Clear.**

Plaintiffs also cannot avoid arbitration by contesting the scope of the arbitration agreement. Plaintiffs do not dispute that California and Arizona courts have repeatedly held incorporation of AAA rules constitutes sufficient evidence that parties agreed to arbitrate arbitrability. (Mot. p. 15.) Moreover, several versions of the TOS not only reference the AAA rules but also expressly state the arbitration "tribunal shall have the power to rule on any challenge to its own jurisdiction or to the validity or enforceability of any portion of the agreement to arbitrate." (Lorey Decl., Ex. 9 § 23, Ex. 12 § 23.) Plaintiffs' attempts to circumvent the parties' express agreement do not withstand scrutiny.

*First*, Plaintiffs cannot create ambiguity about delegation where there is none. Plaintiffs heavily rely on *Mondragon v. Sunrun Inc.* (2024) 101 Cal.App.5th 592, 608, where the agreement contained a reference to AAA rules "for arbitration," but included an exception for PAGA claims, creating "ambigu[ity]" regarding whether a court should decide if a claim fell within the carveout. Here, by contrast, the agreement unambiguously provides "arbitration *replaces* the right to go to the court to resolve disputes" because "*all* disputes . . . will be resolved *exclusively* and finally by binding arbitration rather than in court." (Lorey Decl., Ex. 9 § 23, Ex. 12 § 23, italics added.) In such circumstances, as *Mondragon* recognized, "the analysis might be different." (*Supra*, 101 Cal.App.5th at p. 608.) Plaintiffs' reliance on *Wilson v. Wells Fargo & Co.* (S.D.Cal. May 10, 2021) 2021 WL 1853587, at pp. *2–3, where plaintiff argued there was "contradictory [language] with respect to 'enforcement' of the Arbitration Agreement," fares no better. Here too, Plaintiffs assert the agreement is "unclear" on delegation because it contemplates "*someone*" ruling on the unenforceability of class arbitrations "though the arbitrator has 'no power' to rule on that issue." (SR Opp. p. 19). But that provision merely limits an arbitrator's authority, providing she may *not* find a representative arbitration

permissible. (Lorey Decl., Ex. 9 § 23, Ex. 12 § 23.) Such waivers do not impact delegation. (*Sanchez v. Valencia Holding Co., LLC* (2015) 61 Cal.4th 899, 924.) Moreover, in *Wilson* itself, the court found the parties "agreed to arbitrate gateway issues of arbitrability" and granted defendant's motion to compel, rejecting plaintiff's contention that a venue provision referencing lawsuits in court created ambiguity about who decides such threshold issues. (*Wilson*, *supra*, 2021 WL 1853587, at pp. *3–4.)

*Second*, Plaintiffs contend that if the delegation clause is effective, it is unconscionable. (Opp. p. 18.) Not so. The lone case Plaintiffs rely on (*Sanchez*) does not help them. In *Sanchez*, *supra*, 61 Cal.4th at p. 915, the arbitration provision provided if an arbitrator awarded injunctive relief the losing party could request a new arbitration—i.e., get a do over. Yet the court still found the clause was *not* unreasonably one-sided and unenforceable. (*Id.* at pp. 916–917.) Plaintiffs' complaint that the agreement is substantively unconscionable because proceedings shall be held in Arizona (Opp. p. 18) is not half as strong, since (1) the provision applies to all parties, (2) nothing suggests the parties could not agree to remote proceedings, and (3) the AAA rules expressly allow for remote hearings. (SR Reply § III.c [agreeing to remote proceedings]; AAA Commercial Arbitration Rules, R-25.) [1]

If the unconscionability argument is based on a supposed violation of Civil Code § 1799.208(a), which since 2025 has prohibited a "seller" from requiring a "consumer" to arbitrate outside California or under another state's law, that does not work either. (Opp. p. 18.) Equity does not concede SmartRent is a "seller," a necessary prerequisite. In any event, it was only Diestel who agreed to the 2025 TOS, so the 2025 law does not apply to any other Resident Plaintiffs. That aside, the statute is preempted by the FAA—which governs the TOS (Lorey Decl., Ex. 12 § 23)—because it (1) applies only to arbitration and thus violates the "equal footing" principle and (2) "stand[s] as an obstacle" to the FAA's "overarching purpose" to "ensure the enforcement of arbitration agreements according to their terms." (*AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 339, 343–344; *Saheli v. White Mem'l Med. Ctr.* (2018) 21 Cal.App.5th 308, 323 [California laws preempted when they "discriminate against arbitration by placing special restrictions on waivers of judicial forums"].)

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[1] Plaintiffs cite *no authority* for the contention that the delegation clause was "procedurally unconscionable because it is buried in the middle of a lengthy paragraph." (SR Opp. p. 19.) And of course not: any state law imposing an obligation to "highlight the arbitration clause" or specifically call it to plaintiff's attention "would be preempted by the FAA." (*Sanchez*, *supra*, 61 Cal.4th at p. 914.)

### C. Plaintiffs' Claims Are Subject to Arbitration.

Even if the Court ultimately decides arbitrability (it should not), Plaintiffs' contention that the claims are not subject to arbitration should be rejected. *First*, the argument that the claims "lack the necessary connection to" and are not "rooted" in the TOS (Opp. pp. 18–20) ignores the complaint. The central theory of liability is that SmartRent's technology constitutes unlawful "surveillance" and "data collection." (Compl. ¶¶ 69, 88, 100.) And the arbitration clause covers "*all* disputes between you and SmartRent" and "[a]ny controversy or claim arising out of or relating to this contract," which easily covers those allegations. (Lorey Decl., Ex. 12 § 23.) This is a quintessential broad arbitration clause because it requires "arbitration of *any claim* arising from or *related to* the agreement." (*Ahern v. Asset Management Consultants, Inc.* (2022) 74 Cal.App.5th 675, 689, cleaned up.) Even if this were a close call, Plaintiffs have not carried their burden of demonstrating the TOS cannot be interpreted to require arbitration; they fail to show "the agreement clearly does not apply to the dispute." (*Vianna v. Doctors' Management Co.* (1994) 27 Cal.App.4th 1186, 1189, citation omitted.)

*Second*, Plaintiffs' argument that the claims arise from the Equity leases, and are not subject to the arbitration provision, is flawed. (Opp. pp. 9–10.) Though Plaintiffs reimagine their complaint as a simple landlord-tenant dispute, that is belied by the fact that Plaintiffs sued SmartRent, an entity they concede is neither a landlord or property manager nor a party to the leases. (Compl. ¶¶ 1, 37.) SmartRent is not "merely" a "part of the dispute's factual background" (Opp. p. 16), but the first named Defendant (Compl. p. 1). Indeed, pages upon pages of allegations are dedicated to describing in detail SmartRent's technology and its supposed capabilities as well as its "profit motives." (*Id.* ¶¶ 54–69, 88–90, 93–95.) There would be no suit without SmartRent. And the opposition cannot be employed to retreat from the complaint's allegations to avoid arbitration. Plaintiffs' insistence that the claims against Equity are limited to the "installation" of SmartRent technology (Opp. pp. 7, 9, 11–12) contradicts the complaint, which alleges the *use* of the devices "forc[es] Tenant Plaintiffs to live under . . . constant unblinking digital observation" and allows for "systemic monitoring." (Compl. ¶¶ 6, 70.) In fact, the first paragraph succinctly summarizes the thrust of the claims: "Plaintiffs . . . bring this action against . . . Equity Residential . . . and EQR's technology partner SmartRent Technologies, Inc., for transforming their homes and living spaces into environments of surveillance, where their

movements, associations, and other activities in the home are continually tracked and analyzed." (*Id.* ¶ 1.) Plaintiffs' claims go far beyond whether "hardware" was installed in their units.

*Third*, Plaintiffs cannot avoid the arbitration clause by pointing to a choice-of-law provision in the leases. (Opp. pp. 9–10.) That provision states: "[t]his Lease shall be governed by the laws of the state in which the Community is located, and all legal action *arising from this Lease* shall be tried in the county where the Community is located." (Gardner Decl., Dietsel-9, Solis-8.) "'[N]arrow clauses' stating only 'arising from' 'have generally been interpreted to apply only to disputes regarding the interpretation and performance of the agreement.'" (*Vaughn v. Tesla, Inc.* (2023) 87 Cal.App.5th 208, 221, citation omitted.) But Plaintiffs' case does not concern the "interpretation and performance" of the leases. This is a dispute about whether the conduct at issue—the alleged collection, processing, and sharing of data—amounts to a violation of California's constitutional right to privacy, the common law, and a local San Francisco ordinance. (Compl. ¶¶ 9–114, 129–148). To argue otherwise, all Plaintiffs can point to is the breach of the covenant of quiet enjoyment claim. (Opp. p. 16.) But that claim, brought only by the Resident Plaintiffs, is also based on the supposed improper collection of data—i.e., the alleged "mandatory, intrusive surveillance technologies that monitor [] activities inside the home"—just like all of the other claims. (Compl. ¶ 123.) It is not based on the specific language of the leases. In any event, Plaintiffs cite no authority for the proposition that the TOS are somehow "subordinate" to the leases, or even if they were, to suggest Equity would not be permitted to use well-established doctrines of California law to invoke the TOS's arbitration provision. (Opp. pp. 10–11.)

**D. Equity Is a Third-Party Beneficiary.**

Plaintiffs' contention that Equity is not a third-party beneficiary of the arbitration provision and therefore cannot invoke it is easily rebutted. (Opp. pp. 12–13.) In deciding whether a third-party beneficiary exists, "the intent of . . . the parties to the contract . . . 'is to be ascertained from the writing alone, if possible.'" (*LaBarbera v. Security Nat'l Ins. Co.* (2022) 86 Cal.App.5th 1329, 1341, quoting Civ. Code § 1639.) To recap, the provision states "all disputes between [Plaintiffs] and SmartRent shall be resolved by binding arbitration." (Lorey Decl., Ex. 12 § 23.) SmartRent is defined to include Plaintiffs' "property manager" and "property landlord"—i.e., Equity. (*Ibid.*) Because Equity is among the "class of persons" noted in the agreement, it is a third-party beneficiary. (*Newman v. Lifeline*

*Systems, Co.* (D.Ariz. July 7, 2009) 2009 WL 1993345, at *4; *Ronay Family Limited P'ship v. Tweed* (2013) 216 Cal.App.4th 830, 838–839 [similar].)

In attempting to erase Equity from the TOS, Plaintiffs ask the Court to abandon common sense. Plaintiffs argue the parties actually intended to arbitrate disputes between residents and *SmartRent's* landlord, because the arbitration provision uses the word "its" rather than "your." (Opp. p. 12.) As Plaintiffs correctly note, questions of third-party beneficiary status must be resolved "by way of commonsense reasoning about the relationships in the case." (*Mahram v. Kroger Co.* (2024) 104 Cal.App.5th 303, 312.) In evaluating the list of entities included in the arbitration provision's definition of SmartRent, commonsense dictates the use of the word "its" was a typo, and the parties were referring to the *resident's* "property landlord, and property manager." Reading the provision as requiring SmartRent's own property landlord and property manager to arbitrate disputes with residents using SmartRent's services makes little sense—there is no conceivable scenario where users of SmartRent's technology would have claims against those entities. "[C]ourts must avoid an interpretation of a contract that leads to an absurd result." (*Roe v. Austin* (Ariz. Ct. App. 2018) 433 P.3d 569, 575; *Eucasia Schools Worldwide, Inc. v. DW August Co.* (2013) 218 Cal.App.4th 176, 182 [materially same].)

Plaintiffs' reliance on *Marham* is inapposite. There, a grocery store tried to claim third-party beneficiary status relating to a contract between a delivery service and the plaintiff customer. (*Mahram*, *supra*, 104 Cal.App.5th at p. 308.) Because "[t]he identity and welfare of the grocer were incidental to the contracting parties" and the evidence did not support the grocer being a beneficiary to the contract, third-party beneficiary status was not shown. (*Id.* at p. 312.) Here, "commonsense reasoning about the relationships" between Plaintiffs, Equity, and SmartRent demonstrate a much closer connection between the parties. (*Ibid.*) Equity and Plaintiffs, unlike a grocery store and a delivery service's customers, have a close contractual relationship. And unlike the "fungible" relationship in *Mahram*, Plaintiffs entered a direct contractual relationship with SmartRent to use its technology at Equity properties. (*Id.* at p. 313.) SmartRent and Equity also have a close relationship, aimed at using best practices to implement smart home technology at Equity properties. Unlike in *Mahram*, where "[n]othing" suggested the grocery store "was anything special either to" the delivery service or its customers, both Plaintiffs and SmartRent expressly contemplated giving, and did give, third-party

benefits to Equity as a property landlord/manager throughout the TOS. (*Ibid.*)

Finally, Plaintiffs' attempt to distinguish Equity's binding authority fails too. As in *Tweed*, *supra*, 216 Cal.App.4th at pp. 838–839, Plaintiffs and SmartRent intended to extend the arbitration provision's terms to Equity. And just like in *Northstar Financial Advisors Inc. v. Schab Investments* (9th Cir. 2015) 779 F.3d 1036, 1063–1064, the contract here explicitly contemplates extending third-party benefits to Equity throughout its text. This Court should rely on applicable authority and hold Equity was an intended third-party beneficiary of the TOS's arbitration provision.

**E. Equitable Estoppel Also Mandates Arbitration.**

Equity has also demonstrated Plaintiffs are equitably estopped from pursuing their claims in court. No one disputes the "'equitable estoppel doctrine applies when a party has signed an agreement to arbitrate but attempts to avoid arbitration by suing nonsignatory defendants for claims that are based on the same facts and are inherently inseparable from arbitrable claims against signatory defendants.'" (*Laswell v. AG Seal Beach, LLC* (2010) 189 Cal.App.4th 1399, 1407, citation omitted.) Rather than confront the fact that their allegations are intertwined with SmartRent's TOS (Mot. pp. 17–19), Plaintiffs argue estoppel does not apply because they did not bring a claim for *breach*. (Opp. p. 16.) But estoppel focuses not on the form but "*the nature* of the claims asserted" (*Boucher v. Alliance Title Co., Inc.* (2005) 127 Cal.App.4th 262, 272, italics added); the inquiry is whether the claim "derives from, relies on, or is intimately intertwined with the subject contract containing the arbitration agreement" (*Molecular Analytical Sys. v. Ciphergen Biosystems, Inc.* (2010) 186 Cal.App.4th 696, 717). "To apply equitable estoppel only when a complaint expressly references the agreement containing an arbitration clause would either limit the application of the doctrine to contractual claims or invite tort and statutory claimants to craft complaints to avoid any mention of the agreement," but "[n]o authority or principle supports either the limitation or encouragement of misleading artful pleading." (*Gonzalez v. Nowhere Beverly Hills LLC* (2024) 107 Cal.App.5th 111, 127.)

Though Plaintiffs' claims are for violations of constitutional, common, and local law, the core of each is the allegation that SmartRent devices were used for "surveillance" and collection, processing, and sharing of resident data. (Compl. ¶¶ 44, 58–60, 63, 66, 68, 101, 110, 123, 133, 146.) There is no credible dispute that whatever alleged data was collected and shared from SmartRent devices is

governed by the TOS, which acknowledges Equity's role as landlord and property manager and allows Equity to compel arbitration. (Lorey Decl., Ex. 12 § 23.) "Given the contractual and actual relationships among the parties," Plaintiffs claims "are legally intertwined" with the TOS "that contains the incorporated arbitration clause." (*Turtle Ridge Media Group, Inc. v. Pacific Bell Directory* (2006) 140 Cal.App.4th 828, 834; *Goldman v. KPMG, LLP* (2009) 173 Cal.App.4th 209, 213–214 ["The *sine qua non* for allowing a nonsignatory to enforce an arbitration clause based on equitable estoppel is that the claims the plaintiff asserts against the nonsignatory are dependent on or inextricably bound up with the contractual obligations of the agreement containing the arbitration clause"].)

Plaintiffs' attempts to distinguish *JSM Tuscany, LLC v. Superior Court* (2011) 193 Cal.App.4th 1222, binding authority on this Court, and *CVS Pharmacy, Inc. v. Gamble Family Pharmacy* (D.Ariz. Oct. 22, 2012) 2012 WL 13448148, are easily dismissed. (Opp. pp. 16–17.) Despite Plaintiffs' argument to the contrary, *Theresa D. v. MBK Senior Living LLC* (2021) 73 Cal.App.5th 18, does not distinguish *JSM Tuscany* in any meaningful way. Rather, it merely noted that *JSM Tuscany* concerned a non-signatory defendant's ability to compel arbitration of a signatory plaintiff—the *exact* circumstance present here. (*Theresa D.*, *supra*, 73 Cal.App.5th at p. 31.) And *CVS Pharmacy*, though unpublished, remains good law in Arizona and no authority Plaintiffs rely on shows otherwise. Other cases Plaintiffs point to—*Ngo*, *Kramer*, and *Ford*—to create distance between Equity and SmartRent are inapposite. They involve situations when a car manufacturer was sued for breach of warranty and attempted to take advantage of an arbitration clause in an agreement between the purchaser-plaintiff and the car dealership. (Opp p. 16.) In the automobile-warranty context, "warranties from a manufacturer that is not a party to a sales contract are not part of the contract of sale" as a matter of law. (*Ngo v. BMW of N. Am., LLC* (9th Cir. 2022) 23 F.4th 942, 949, citation omitted.) There is no similar legal principle at play here.

Moreover, Plaintiffs' appeal to amorphous principles of equity (Opp. pp. 14–16) is irrelevant. Equitable estoppel is not concerned with general, subjective notions of fairness, but specifically whether it is fair for a party, like Plaintiffs, that "has signed an agreement to arbitrate" "to avoid arbitration by suing nonsignatory defendants for claims that are based on the same facts and are inherently inseparable from arbitrable claims against signatory defendants." (*Laswell*, *supra*, 189

Cal.App.4th at p. 1407, citation omitted.) So the cases Plaintiffs rely on, which have nothing to do with equitable estoppel, are inapposite. (Opp. p. 14, citing *Tunkl v. Regents of University of California*, and *Henrioulle v. Marin Ventures, Inc.*) Equitable estoppel requires arbitration here.

Finally, Plaintiffs' arguments regarding Union Plaintiff are similarly misplaced. (Opp. pp. 17–18.) Plaintiffs argue the Union Plaintiff's claims "arise" from its claimed "mission" of advocating for residents. (*Id.* p. 17.) But the Union's "mission" is not what gives rise to the claimed harm, nor is it a basis for imposing liability. What matters is whether the claims are inextricably intertwined with the TOS, which they indisputably are. Plaintiffs also argue it would be unfair for the Union (or its members) to have to arbitrate its claims on an individual basis but cite nothing to support that proposition. Nothing in the opposition changes the fact that it would be inequitable to allow a party to bring claims "dependent upon or inextricably intertwined with" a contract's terms and at the same time allow the party to "repudiate[] the contract's arbitration clause." (*JSM Tuscany*, *supra*, 193 Cal.App.4th at pp. 1240–1241; *Johnson v. County of Fresno* (2003) 111 Cal.App.4th 1087, 1096.)

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

Plaintiffs do not contest the case must be stayed pending the Court's order and, if the motion is granted, resolution of the arbitrations. (Opp. p. 20 [addressing none of Equity's authorities].) Instead, Plaintiffs vaguely warn against "further delay" (*ibid.*), but that makes little sense given this motion is Equity's *first* response to the complaint. Plaintiffs' fallback argument—that, under § 1281.2(c), the entire case should proceed in Court even if the claims are in part subject to arbitration (Opp. p. 20)—should be rejected. The FAA provides a court "shall . . . stay the trial of the action" if it is satisfied any "issue involved in [the] suit or proceeding is referable to arbitration." (9 U.S.C. § 3.) Even if § 1281.2(c) were applicable, it would stand as an obstacle to and thus be preempted by the FAA. (*Concepcion*, *supra*, 563 U.S. at p. 352.) And if that were not the case, the best way to avoid conflicting rulings if the Court partially grants this motion is to stay whatever claims remain in litigation until the arbitrations are resolved.

## III. CONCLUSION

The Court should (1) compel Plaintiffs to submit their claims to individual arbitration and (2) stay proceedings pending the Court's order on this motion and the completion of the arbitrations.

DATED: April 22, 2026

GIBSON, DUNN & CRUTCHER LLP

By: */s/ Jeremy S. Smith*
Jeremy S. Smith

*Attorneys for Defendants Equity Residential, ERP Operating Limited Partnership, Equity Residential Management LLC, Equity-Tasman Apartments LLC, Archstone South Market LP, and EQR-Terraces Limited Partnership*

**PROOF OF SERVICE**

I, Blake J. Hirst, declare as follows:

I am employed in the County of Los Angeles, State of California, I am over the age of eighteen years and am not a party to this action; my business address is 333 South Grand Avenue, Los Angeles, CA 90071-3197, in said County and State. On April 22, 2026, I served the following document(s):

**EQUITY DEFENDANTS' REPLY IN SUPPORT OF MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS PENDING ARBITRATION**

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

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☑ **BY ELECTRONIC SERVICE THROUGH AN EFSP**: On the above-mentioned date, I caused the documents to be sent to a court-approved Electronic Filing Service Provider ("EFSP"), for electronic service and filing. Electronic service will be accomplished by the EFSP's case-filing system at the electronic notification addresses as shown above.

☑ **BY ELECTRONIC MAIL (E-MAIL)**: I caused a true PDF copy of the above-mentioned document(s) to be transmitted by e-mail on the date indicated above to the parties identified 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 and without error. In sending the foregoing document by e-mail, I followed this office's ordinary business practices.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on Aprill 22, 2026.

*/s/ Blake J. Hirst*
Blake J. Hirst