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Superior Court of California,  
County of Los Angeles  
12/22/2025 7:21 PM  
David W. Slayton,  
Executive Officer/Clerk of Court,  
By Y. Tarasyuk, Deputy Clerk

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Attorneys for Defendants Silver VR  
Technologies, Inc., Theta Labs, Inc., and Mitchell Liu

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

**ANDREA BERRY**, an individual,  
  
Plaintiff,  
  
v.

**SILVER VR TECHNOLOGIES, INC.**, a  
Delaware corporation; **THETA LABS, INC.**,  
a Delaware corporation; **MITCHELL LIU**,  
an individual; and **DOES 1-10**, inclusive,  
  
Defendants.

Case No. 25STCV36594

**DECLARATION OF ELIZABETH L.  
MCDUGALL IN SUPPORT OF  
DEFENDANTS' EX PARTE  
APPLICATION FOR LEAVE TO FILE  
OVERLENGTH MEMORANDUM IN  
SUPPORT OF DEFENDANTS'  
MOTION TO COMPEL ARBITRATION  
AND, IN THE ALTERNATIVE, TO  
TRANSFER VENUE**

Date: December 24, 2025  
Time: 8:30 a.m.  
Dept.: 55  
Before: The Hon. Alison Mackenzie

1 I, Elizabeth L. McDougall, do hereby declare:

2 1. I am an attorney licensed to practice before all Courts in the State of California. I  
3 am senior counsel at Kronenberger Rosenfeld, LLP, attorneys of record for Defendants Sliver VR  
4 Technologies, Inc., Theta Labs, Inc., and Mitchell Liu (collectively “Defendants”). I have first-  
5 hand personal knowledge of the facts set forth below unless otherwise stated and, if called upon  
6 as a witness, I could and would competently testify to the matters set forth below based upon my  
7 own personal knowledge.

8 2. I make this declaration in support of Defendants’ *Ex Parte* Application to File an  
9 Overlength Memorandum in Support of their Motion to Compel Arbitration and, in the Alternative,  
10 to Transfer Venue.

11 3. In response to Plaintiff’s complaint filed in this Court on December 15, 2025,  
12 Defendants are seeking to compel arbitration pursuant to a written agreement executed by Plaintiff  
13 and, if arbitration is denied, Defendants seek to transfer the action to Santa Clara County Superior  
14 Court where all Defendants reside. Co-counsel for Defendants sent correspondence to Plaintiff’s  
15 counsel asking for their stipulation to these requests and is awaiting their reply.

16 4. In the meantime, on December 19, 2025, I emailed Plaintiff’s counsel a follow-up  
17 message requesting their consent to Defendants filing an overlength memorandum in support of  
18 the Motion to Compel Arbitration and, in the Alternative, to Transfer Venue, which we were then  
19 drafting. A true and correct copy of my email is attached hereto as **Exhibit A**. In the email, I also  
20 extended Defendants’ offer to consent to a request by Plaintiff to file an overlength brief in any  
21 opposition to Defendants’ anticipated motion. Ex. A. In the evening of December 21, 2025,  
22 Plaintiff’s counsel responded to the correspondence from co-counsel regarding stipulations to  
23 arbitration and a transfer of venue and to the email from me asking for consent to file the overlength  
24 memorandum but declined to discuss the requests until after the holidays. Ex. A.

25 5. Defendants’ memorandum in support of its Motion to Compel Arbitration and, in  
26 the Alternative, to Transfer Venue in its current draft form is attached hereto as **Exhibit B**. The  
27 draft memorandum is currently twenty (20) pages exclusive of the caption, tables, and attachments  
28 permitted by the California Rules of Court. If Plaintiff will not stipulate to arbitration or the transfer

1 of venue, Defendants will file the memorandum in substantially the form of Exhibit B. Any  
 2 changes will only involve formatting, completion of declaration cites, and any necessary  
 3 procedural update regarding Plaintiff’s response to Defendants’ requests for stipulation to  
 4 arbitration and the transfer of venue.

5 6. Defendants ask for this Court’s permission to file an overlength memorandum  
 6 because their motion includes both the request to compel arbitration and, in the alternative, the  
 7 request to transfer to a proper venue. The regular fifteen-page limit for memoranda in support of  
 8 motions is insufficient to identify the relevant facts and law to the Court and explain why  
 9 arbitration is mandated and, if denied, why transfer to the venue in which all the Defendants reside  
 10 is appropriate. The two requests are consolidated into one motion to avoid the risk, explained in  
 11 the memorandum in support of this application, that assertion of one may waive the right to assert  
 12 the other.

13 7. On December 22, 2025, at approximately 5:00 p.m., I emailed Plaintiff’s counsel  
 14 providing a copy of Defendants’ *Ex Parte* Application to File an Overlength Memorandum in  
 15 Support of their Motion to Compel Arbitration and, in the Alternative, to Transfer Venue, and of  
 16 this declaration, and informing Plaintiff’s counsel that the application was set for presentation on  
 17 December 24, 2025, at 8:30 a.m. in Department 55 of the Stanley Mosk Courthouse. A true and  
 18 correct copy of this email is attached hereto as **Exhibit C**. I also asked Plaintiff’s counsel to advise  
 19 whether they would appear to oppose the application. Ex. C. As of the time of filing this declaration  
 20 and the *ex parte* application, I have not received a response from Plaintiff’s counsel.

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

23 Executed this 22 day of December 2025 at Los Angeles, California.

*Liz McDougall*

Elizabeth L. McDougall

# **EXHIBIT A**

---

**From:** Liz McDougall <liz@kr.law>

**Sent:** Sunday, December 21, 2025 10:18 PM

**To:** James Baker <james@kingsiegel.com>

**Cc:** Gallagher, Dennis <dgallagher@fisherphillips.com>; Hernandez, Yorleny <yhernandez@fisherphillips.com>; Josue Avila <josue@kingsiegel.com>; Julian Burns King <julian@kingsiegel.com>; Robert King <robert@kingsiegel.com>; Karl Kronenberger <karl@kr.law>; Jeff Rosenfeld <Jeff@kr.law>; Araneda, Juan <jaraneda@fisherphillips.com>

**Subject:** Re: Andrea Berry vs. Sliver VR Technologies, Inc., et al.

Dear James,

Thank you for your reply.

We agree it is unfortunate that this matter interrupts the holidays. However, that is an issue of your making, not ours. In response to the complaint you filed the week before Christmas, we will do what is best to defend our clients, including filing the *ex parte* application tomorrow.

The request for your simple "yes" or "no" regarding arbitration of the plaintiff's claims and transfer of venue by December 24, 2025, also stands. The Los Angeles County Superior Courts continue to operate throughout the holidays except December 25. If you do not respond by close of business on December 24, we will assume that your client will not stipulate to arbitration or the requested transfer of venue and we will proceed accordingly.

That said, we wish you very happy holidays.

Liz

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**From:** James Baker <james@kingsiegel.com>

**Sent:** Sunday, December 21, 2025 7:26 PM

**To:** Liz McDougall <liz@kr.law>; Araneda, Juan <jaraneda@fisherphillips.com>

**Cc:** Gallagher, Dennis <dgallagher@fisherphillips.com>; Hernandez, Yorleny <yhernandez@fisherphillips.com>; Josue Avila <josue@kingsiegel.com>; Julian Burns King <julian@kingsiegel.com>; Robert King <robert@kingsiegel.com>; Karl Kronenberger <karl@kr.law>; Jeff Rosenfeld <Jeff@kr.law>

**Subject:** Re: Andrea Berry vs. Sliver VR Technologies, Inc., et al.

Counsel,

We are more than happy to meet and confer. But these deadlines are not justified given the holidays. The attorneys on this matter are out of the office this week for Christmas. And, unless I am mistaken, I do not believe there are any deadlines necessitating a response to Mr. Araneda's letter by the day after Christmas. Likewise, Defendants can apply *ex parte* for an overlength brief as late as 24 hours before the brief is due. So, no deadlines compel defendants to apply for it tomorrow.

Thus, we are able to respond to Defendants' requested stipulations or otherwise meet and confer during the week of December 29. To this end, can you please confirm that Mr. Araneda's letter also addresses the grounds for arbitration and change of venue as to all the defendants?

Thanks,

**James H. Baker Jr.**

Counsel, King & Siegel LLP  
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Sacramento, CA 95825  
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**From:** Liz McDougall <liz@kr.law>

**Sent:** Friday, December 19, 2025 4:16 PM

**To:** James Baker <james@kingsiegel.com>; Robert King <robert@kingsiegel.com>; Julian Burns King

<julian@kingsiegel.com>

**Cc:** Josue Avila <josue@kingsiegel.com>; Hernandez, Yorleny <yhernandez@fisherphillips.com>; Gallagher, Dennis <dgallagher@fisherphillips.com>; Araneda, Juan <jaraneda@fisherphillips.com>; Karl Kronenberger <karl@kr.law>; Jeff Rosenfeld <Jeff@kr.law>

**Subject:** Re: Andrea Berry vs. Sliver VR Technologies, Inc., et al.

Dear King & Siegel Counsel,

Our firm represents Theta Labs and Mitchell Liu in this matter, and we are co-counsel with Fisher Phillips representing Sliver VR Technologies.

Following up on Mr. Araneda's letter asking your client to stipulate to arbitration and a transfer of venue of this case, we hope you will agree. However, in the event that you don't, I am writing to ask if you will consent to the defendants filing an overlength brief (memorandum of points and authorities) in support of their combined Motion to Compel Arbitration and, In the Alternative, to Transfer Venue. Because the two requests are included in a single motion, it was not possible to stay within the 15-page limit.

Even with your consent (and of course, if you don't consent), we are required to seek the court's permission to file an overlength memorandum by ex parte application. Rule 3.1113(e). We intend to file the application late afternoon on Monday, December 22. It would be ideal if you reply before then so we may include in the application that you consented or declined to consent to the overlength memorandum.

If motion practice over arbitration and venue does become necessary, we would reciprocally consent to an overlength memorandum on behalf of your client if you contest our clients' motion.

Thank you in advance for your consideration. We look forward to working with you.

Best regards,

Liz McDougall

---

Liz McDougall

SENIOR COUNSEL

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Phone: 415-955-1155 ext. 138

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---

**From:** Araneda, Juan <jaraneda@fisherphillips.com>  
**Sent:** Friday, December 19, 2025 3:14 PM  
**To:** James Baker <james@kingsiegel.com>; Robert King <robert@kingsiegel.com>; Julian Burns King <julian@kingsiegel.com>  
**Cc:** Josue Avila <josue@kingsiegel.com>; Hernandez, Yorleny <yhernandez@fisherphillips.com>; Gallagher, Dennis <dgallagher@fisherphillips.com>  
**Subject:** Andrea Berry vs. Sliver VR Technologies, Inc., et al.

Dear Counsel,

Please see attached letter.

Thank you,



**Juan Araneda**  
Partner

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[jaraneda@fisherphillips.com](mailto:jaraneda@fisherphillips.com) | O: (415) 490-9012

[vCard](#) | [Bio](#) | [Website](#) *On the Front Lines of Workplace Law<sup>SM</sup>*

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*This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error, then immediately delete this message.*

# **EXHIBIT B**

1 **FISHER & PHILLIPS LLP**

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20 Facsimile: (415) 955-1158

21 Attorneys for Defendants  
22 SLIVER VR TECHNOLOGIES, INC., THETA  
23 LABS, INC., AND MITCHELL LIU

24  
25 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
26 FOR THE COUNTY OF LOS ANGELES

27 Andrea Berry, an individual,  
28  
29 Plaintiff,

30 v.

31 Sliver VR Technologies, Inc., a Delaware  
32 Corporation; Theta Labs, Inc., a Delaware  
33 corporation; Mitchell Liu, an individual; and  
34 DOES 1 through 10, inclusive,

35 Defendants.

Case No: 25STCV36594

*[Assigned for all purposes to the Honorable Hon. Alison Mackenzie, Dept. 55]*

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF DEFENDANTS'  
MOTION TO COMPEL ARBITRATION AND, IN  
THE ALTERNATIVE, TO TRANSFER VENUE**

*[Filed concurrently with Notice of Motion;  
Declarations of XXXX, Abdul Johnson, William  
Norling, Mitchell Liu, and [Proposed] Order]*

Date:  
Time:  
Place:  
Before:  
**Reservation ID:**  
Action Filed: December 15, 2025  
Trial Date: None Set

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Defendants Sliver VR Technologies, Inc. (“Sliver”), Theta Labs, Inc. (“Theta Labs” or “Theta”)  
3 (Sliver and Theta Labs are referred to collectively herein as the “Company”), and Mitchell Liu (“Liu”)  
4 (collectively, “Defendants”), by and through their undersigned counsel, respectfully submit this  
5 memorandum of points and authorities in support of their Motion to Compel Arbitration and, in the  
6 Alternative, to Transfer Venue.

7 **I. INTRODUCTION**

8 This matter, initiated by Plaintiff Andrea Berry (“Plaintiff” or “Berry”), is not a whistleblower  
9 action, nor is it a legitimate employment dispute. It is an effort by Plaintiff—a disgruntled former  
10 employee—to weaponize the courts in pursuit of a quick payday. Plaintiff has asserted a panoply of  
11 claims arising out of her employment with the Company. Each of Plaintiff’s claims lacks any merit,  
12 but more importantly, they all fall within the scope of an arbitration agreement.

13 Plaintiff joined the Company in 2022 as Head of Business Development. In this role, she was  
14 responsible for business development. With time Berry became much less active in her pursuit of new  
15 business, which was a troubling development as her role was Head of Business Development.  
16 Disappointed with Plaintiff’s performance and hoping to encourage her to regain her previous form,  
17 the Company created an incentive program for *just* Plaintiff. Plaintiff was offered a sales bonus for  
18 each new strategic partner that she was able to sign. This attempt at motivation failed, as Plaintiff  
19 signed no new strategic partners.

20 After the bonus carrot failed, the Company then tried to motivate Plaintiff by shifting her focus  
21 to what it considered exciting new directions: focusing on a mixture of artificial intelligence,  
22 streaming, and professional sports corporations. Again, this shift brought about no improvement in  
23 performance. Near the end of her employment, Plaintiff had ceased committing the time and energy  
24 to her job that warranted a full-time position. For example, she sent roughly 10 emails that were  
25 directly related to her work in December of 2024, 10 the following January, 16 in February, and 10 in  
26 March. *None* of those emails were efforts to reach out to new clients as business partners, which was  
27 the primary function of her role. This is not the level of commitment expected of a full-time Head of  
28 Business Development.

1 Plaintiff's efforts and performance no did not justify a full-time salary. Nevertheless, rather  
2 than terminate her employment, the Company gave Plaintiff the option of cutting back to part-time  
3 employment, or to transition away from the Company. Plaintiff chose the latter, and her employment  
4 ended on April 28, 2025. Her allegations that she was sidelined from her duties and terminated for  
5 reporting allegedly fraudulent conduct are meritless.

6 For example, Plaintiff alleges she witnessed and reported practices by Theta Labs, including  
7 the supposed fake partnership announcements, claimed misrepresentations about a chatbot, purported  
8 NFT improprieties, and employee fund diversion. Plaintiff further claims that she suffered retaliation  
9 through isolation from decision-making. However, contrary to Plaintiff's claims, there is no record of  
10 any complaints by Plaintiff prior to her termination. The one time Plaintiff raised concerns about an  
11 employee's misconduct, the company promptly investigated and took action.

12 Moreover, Plaintiff's allegations regarding alleged fraud and other purported misconduct by  
13 Defendants are unfounded. Actual evidence will prove the facts below which establish the falsity of  
14 Plaintiff's claims.

15 • The company did not engage in a "pump and dump" scheme with company and partner  
16 tokens, i.e., artificially inflating token values and then selling allocations before employees could  
17 access their vested tokens. Company and partner token price fluctuations corresponded directly with  
18 broader cryptocurrency market trends, which affected the entire industry. In fact, approximately 90%  
19 of the top 100 cryptocurrencies experienced price patterns similar to Theta's tokens.

20 • While "partner" can be a vague term, the company's partner relationships were very  
21 real. Google for example executed an enterprise validator node contract with the company and the  
22 company signed an infrastructure contract with Google as part of a strategic partnering. Trusted Media  
23 Brands also signed a strategic enterprise validator node agreement with the company. Further, the  
24 company was one of only four or five platforms (along with YouTube and Facebook) to partner with  
25 NASA under a special limited license to stream NASA content.

26 • What the complaints label "fraud" are based the plaintiffs' lack of knowledge or  
27 misunderstanding of circumstances. For example, there was no "bribe" paid to POG Digital Inc. There  
28 were multiple grants and investments made by the company to support the project. Regarding change

1 of the POG unlock date from May 1 to May 15, 2024, that decision was made by POG Digital Inc. It  
2 was merely communicated to company employees by a Theta representative. And with respect to  
3 Replay tokens, Replay managed their token launch entirely themselves.

4 • When alerted to the alleged kickback scheme by a company employee relating to Secret  
5 Pineapple Society NFTs, the company responded with immediate action. The response included  
6 internal investigation, involvement of outside counsel, implementation of further protective measures,  
7 and resolution with the NFT creator.

8 • As all tech start-up companies do, Theta employees often brainstormed business ideas  
9 and opportunities around new products. One idea discussed was a generative-AI text-to-image model  
10 which could (like most such models) be used to generate NSFW content. In the discussion, it was  
11 suggested that, if launched, such a product should be under a different brand to protect the company’s  
12 enterprise customers. After one or two meetings, the idea was discarded and the product was never  
13 developed.

14 • As a policy, the company never makes any guarantees about business trajectories,  
15 particularly the projected value of employee token-based compensation. Such caution is typical for  
16 start-ups, which must remain nimble and adjust to market trends.

17 • The company is lauded for its positive working environment.

18 Now, Plaintiff seeks to evade a valid and enforceable TriNet Dispute Resolution Protocol  
19 (“DRP” or “Arbitration Agreement”)—which includes an arbitration agreement—with the Company  
20 and its professional employer organization (“PEO”), TriNet, by filing her (baseless) claims in court  
21 rather than in arbitration—the very forum she agreed to when she joined the Company.

22 Specifically, under the DRP, all disputes “arising out of or relating to” Plaintiff’s employment  
23 must be heard in arbitration. This agreement to arbitrate Plaintiff’s claims is broad and enforceable,  
24 and both the Federal Arbitration Act and California law strongly favor enforcement of such  
25 agreements. Courts routinely compel arbitration in cases just like this, recognizing that parties’  
26 contractual agreements should be given force, and that doubts about the scope of arbitrability must be  
27 resolved in favor of arbitration. To allow Plaintiff to proceed in court would not only disregard the  
28 parties’ contract, but would also reward Plaintiff’s attempt at extortionate litigation. Therefore,

1 Defendants respectfully request that the Court grant their motion to compel arbitration and send this  
2 dispute to the forum that Plaintiff agreed to.

3 In the unlikely event that the Court does not compel arbitration (on some or all of Plaintiff's  
4 claims), Defendants request that the action is transferred to Santa Clara County where Liu resides and  
5 where Sliver and Theta Labs have their principal places of business. Having worked with Defendants,  
6 Plaintiff is well aware of the locations of their residence and principal business locations. Her decision  
7 to nonetheless file the instant action in Los Angeles County appears based solely and improperly on her  
8 residence in Los Angeles. In light of this bad faith, Defendants should be awarded their reasonable  
9 attorneys' fees and expenses for the transfer of venue portion of this motion.

## 10 **II. SUMMARY OF RELEVANT FACTS**

### 11 **A. Sliver and Theta Labs Are Engaged in Interstate Commerce**

12 Sliver is an evolving technology company with business operations spanning multiple different  
13 markets, including virtual entertainment, blockchain technology, non-fungible tokens ("NFT"), and  
14 artificial intelligence ("AI"). (Norling Decl. ¶X & Ex. \_\_.) Theta Labs is a wholly-owned subsidiary  
15 of Sliver and both are led by the co-founder Liu. (Norling Decl. ¶X & Ex. \_\_.) Sliver and Theta Labs  
16 have their principal places of business in San Jose, California, and Liu resides in Los Altos, California;  
17 both cities are in Santa Clara County.

18 Theta Labs is a software development company that provides decentralized cloud and  
19 blockchain infrastructure for AI, video, and rendering. Theta Labs markets its cloud infrastructure  
20 services on the internet and works with enterprises and universities worldwide, including those that  
21 are located within and outside of California. (*Id.* at ¶ X.) Theta Labs utilizes equipment and programs  
22 to service its clients from businesses all over the world and throughout the United States, including  
23 those found outside of California. (*Id.*) In addition, Theta Labs uses interstate communication  
24 networks including U.S. Mail, the internet, and cellular telephones to run its business operations,  
25 including an official website (<https://www.thetatoken.org/>). (*Id.*) Accordingly, Theta Labs, and Sliver  
26 through its subsidiary Theta Labs, routinely engage in interstate transactions.

### 27 **B. Plaintiff Is Bound By the Arbitration Agreement**

28 Plaintiff started her employment with the Company as Head of Business Development on March

1 28, 2022. (Complaint ¶ 1.) Since before Plaintiff’s employment, the Company has utilized TriNet, a  
2 licensed Professional Employer Organization (PEO), for administrative needs such as providing access  
3 to certain personnel information and documents for its employees. (Johnson Decl., at ¶ 3; Norling Decl.,  
4 at ¶ [REDACTED].) Sliver is TriNet’s customer company and Plaintiff’s “worksite employer” as defined in the  
5 DRP. (Norling Decl., at ¶¶ [REDACTED].) Per the DRP, Sliver was Plaintiff’s “worksite employer” and Plaintiff  
6 was Sliver’s “worksite employee.” (Johnson Decl., at ¶ 6, Norling Decl., at ¶¶ [REDACTED].)

7 As part of its role as a PEO, TriNet provides general administrative services to its customers,  
8 such as Sliver, including payroll processing and access to certain personnel documents. (Johnson Decl.,  
9 at ¶ 3; Norling Decl., at ¶ [REDACTED].) TriNet also provides Sliver’s employees access to certain employment  
10 policies, records, and information, including TriNet’s employee handbook and other policies, through  
11 a password protected online portal. (Johnson Decl., at ¶ 4; Norling Decl., at ¶ [REDACTED].) Newly hired worksite  
12 employees of Sliver access the online portal as part of the employment onboarding. (Johnson Decl., at  
13 ¶ 7; Norling Decl., at ¶ [REDACTED].)

14 Although Sliver’s employees are provided access to TriNet’s online portal and receive payroll  
15 processed by TriNet, they retain their status as worksite employees of Sliver, and Sliver retains the  
16 responsibilities of hiring employees and directing their day-to-day work, as well as making  
17 performance-based decisions regarding its employees. (Norling Decl., at ¶¶ [REDACTED].) All applicants and  
18 employees of Sliver are informed at the commencement of their employment of the existence of Sliver’s  
19 PEO relationship with TriNet. (Johnson Decl., at ¶ 7; Norling Decl., at ¶ [REDACTED].)

20 Before beginning their employment, Sliver employees are provided with TriNet’s Terms and  
21 Conditions Agreement (“TCA”), which contains the DRP through the online portal. (Johnson Decl., at  
22 ¶¶ 10-11, Ex. A; Norling Decl., at ¶ [REDACTED].) The DRP explicitly states that it is intended to be “the full  
23 and complete agreement for resolution of covered disputes between you and TriNet (and its employees,  
24 officers, and agents), and between you and your company (and its employees, officers, and agents).”  
25 (Johnson Decl., at ¶ 10, Ex. A, p. 7.) Worksite employees, like Plaintiff, are provided with unlimited  
26 time to review the TCA via its online portal and are provided the option to accept or reject the TCA.  
27 (Johnson Decl., at ¶ 11.) Plaintiff was also provided unlimited opportunities to ask questions about the  
28 DRP before accepting it. (Norling Decl., at ¶ [REDACTED].)

1 Individuals like Plaintiff are provided with password protected access to the online portal, such  
2 that only they can create their unique portal account, only they can have access to their account, and  
3 only they can accept or reject the TCA. The password associated with each online portal account is  
4 created by and only known to the individual account holder. (Johnson Decl., at ¶¶ 7-12.)

5 TriNet then keeps, in the ordinary course of its business, contemporaneous records of the precise  
6 moment when employees click the “I Accept” button for the TCA, thereby agreeing to its terms.  
7 (Johnson Decl., at ¶¶ 10-17). The foregoing process was in place on March 28, 2022, the date Plaintiff  
8 accepted the Arbitration Agreement. (*Id.* at ¶¶ 7-12.) When an individual, like Plaintiff, clicks the “I  
9 Accept” button after being presented with the TCA/DRP for review, the column entitled “Accepted” in  
10 that individual’s online portal account is marked with a “Y.” (*Id.* at ¶ 13.) If the individual has not  
11 clicked the “I Accept” button or clicks the “Reject” button, then the column entitled “Accepted” in their  
12 online portal account screenshot is marked with a “N.” (*Id.*)

13 Similarly, if an individual opts out of the class, collective, and representative private attorney  
14 general action waiver by clicking the box in subsection (d) of the DRP, then the column entitled  
15 “CLS\_ACT\_WAIVR” in that individual’s online portal account is marked with a “Y.” (*Id.*) If the  
16 individual chooses to waive their class claims and not opt out, the column entitled  
17 “CLS\_ACT\_WAIVR” in their online portal account screenshot is marked with a “N.” (*Id.*)

18 TriNet’s records reflect that on March 28, 2022, Plaintiff clicked “I accept” to accept the terms  
19 of the TCA, containing the DRP. (Johnson Decl., at ¶¶ 10-16; Ex. B.) TriNet’s records further reflect a  
20 “N” under Plaintiff’s “CLS\_ACT\_WAIVR” column in Plaintiff’s online portal account, indicating that  
21 Plaintiff chose to waive her class, collective, representative and private attorney general action claims.  
22 (*Id.*, ¶¶ 10-16, Ex. A-B.) As mentioned above, the TCA includes a clause regarding dispute resolution  
23 protocol, which expressly states that the DRP covers any dispute arising out of or relating to Plaintiff’s  
24 employment with Sliver and all other intended beneficiaries:

25 Subject to the limitations in subsection (b), **this DRP covers any dispute arising out**  
26 **of or relating to your co-employment with TriNet, including your TriNet co-**  
27 **employer, and/or arising out of or relating to your employment with your**  
28 **company**, as well as any dispute with any employee, officer or director of TriNet or of  
a TriNet customer (all of whom, in addition to TriNet customers, are intended to be  
beneficiaries of this DRP) (“covered dispute”).  
(Johnson Decl., at ¶ 10, Ex. A, p. 5 (emphasis added).)

1 The TCA’s provision permits employees to opt out of the class, collective, representative, or  
2 private attorney general action waiver. (*Id.* at ¶ 10, Ex. A, p. 7.) TriNet maintains records of the e-mail  
3 that was sent to Plaintiff’s email accounts, confirming her acceptance of the TCA and DRP, and  
4 providing a copy for the user’s records. (*Id.* at ¶ 16, Ex. C.) Plaintiff electronically accepted the  
5 Arbitration Agreement/DRP on March 28, 2022, and her obligations thereunder continued through and  
6 after her employment. (Johnson Decl., at ¶ 10, Ex. A, p. 5; Norling Decl., at ¶ [REDACTED], Ex. [REDACTED].)

7 **C. Procedural History and Plaintiff’s Refusal to Arbitrate Her Claims**

8 Plaintiff filed her Complaint in the Los Angeles County Superior Court on December 15, 2025.  
9 On December 19, 2025, in accordance with *Code of Civil Procedure* section 1281, counsel for  
10 Defendants sent Plaintiff’s counsel a letter requesting that Plaintiff submit her claims to binding  
11 arbitration, which enclosed a copy of the TCA containing the Arbitration Agreement/DRP. Declaration  
12 of XXXX (“XXXX Decl.”) ¶ [REDACTED], Ex. [REDACTED].) In the evening of December 21, 2025, Plaintiff’s counsel  
13 responded to the correspondence but declined to discuss the request until after the holidays. (*Id.*, at  
14 ¶¶ [REDACTED], Ex. [REDACTED].) In addition, counsel for Defendants sent Plaintiff’s counsel a letter asking that Plaintiff  
15 stipulate to transfer of the case to its proper venue in Santa Clara County Superior Court. (Declaration  
16 of XXXX (“XXXX Decl.”), at ¶ [REDACTED], Ex. [REDACTED].) The letter put Plaintiff and her counsel on notice of  
17 Defendants’ intention to file a motion to transfer venue and to seek recovery of fees for the motion  
18 absent a stipulation. (*Id.*) Plaintiff’s counsel also responded to this request in the evening of December  
19 21, 2025, but again declined to discuss the requested stipulation until after the holidays. (*Id.* at ¶ [REDACTED].)

20 **III. LEGAL ARGUMENT**

21 **A. The FAA Requires Arbitration of Plaintiff’s Claims**

22 **1. The FAA Controls Pursuant to the Terms of the Arbitration Agreement**

23 Sliver and Plaintiff agreed that the FAA would govern application of the Arbitration Agreement.  
24 (Johnson Decl., at ¶ 10, Ex. A, p. 5.) Further, Section 2 of the FAA provides for the enforcement of  
25 arbitration provisions in any contract involving commerce “save upon such grounds as exist at law or  
26 in equity for the revocation of any contract.” (9 U.S.C. § 2.) The United States Supreme Court has long  
27 held that the phrase “involving commerce” must be broadly construed in favor of enforcing an  
28 agreement under the FAA. (*See, e.g., Perry v. Thomas*, (1987) 482 U.S. 483, 490.) “[E]videncing a

1 transaction involving commerce” simply means that “the ‘transaction’ in fact ‘involv[es]’ interstate  
2 commerce, even if the parties did not contemplate an interstate commerce connection.” (*Allied-Bruce*  
3 *Terminix Cos., Inc. v. Dobson* (1995) 513 U.S. 265, 281 (enforcing arbitration agreement under the  
4 FAA despite parties’ not anticipating engaging in activities in interstate commerce).)

5 Sliver engages in interstate commerce such that the Arbitration Agreement falls within the scope  
6 of the FAA. (*Circuit City Stores, Inc. v. Adams* (2001) 532 U.S. 105, 109.) Courts consistently hold that  
7 contracts between local employees and companies that do business in more than one state involve  
8 “commerce” within the meaning of the FAA. (*See e.g. Circuit City Stores, Inc. v. Adams* (2001) 532  
9 U.S. 105, 119 (FAA applies to employment contract between a local “sales counselor” and a “national  
10 retailer”); *Nelsen v. Legacy Partners Residential, Inc.* (2012) 207 Cal.App.4th 1115, 1120, n.2 (finding  
11 “no dispute the FAA governs the arbitration agreement” between California based property manager  
12 and his nationwide employer).)

13 The U.S. Supreme Court has held that arbitration agreements specifically in employment  
14 contracts are valid and enforceable under the FAA. (*Epic Sys. Corp. v. Lewis* (2018) 138 S.Ct. 1612,  
15 1632 (employment arbitration agreements “must be enforced as written”); *Circuit City Stores, Inc.*, 532  
16 U.S. at 123 (“We have been clear in rejecting the supposition that the advantages of the arbitration  
17 process somehow disappear when transferred to the employment context.”).)

18 Similarly, the California Supreme Court has recognized the FAA applies in California.<sup>1</sup>  
19 (*Broughton v. Cigna Healthplans of Cal.* (1999) 21 Cal.4th 1066, 1078 (applying the FAA to claim  
20 alleged under California law).) Indeed, California courts are required to enforce arbitration agreements  
21 pursuant to the federal common law that has developed under the FAA. (*Southland Corp. v. Keating*  
22 (1984) 465 U.S. 1, 17 (reversing California Supreme Court judgment denying enforcement of the  
23 arbitration agreement).) By the terms of the Arbitration Agreement, which Plaintiff accepted, the FAA  
24 applies to this dispute. Thus, the Arbitration Agreement is valid and enforceable under governing law.

## 25 **2. The FAA Requires Enforcement of the Arbitration Agreement**

26 <sup>1</sup> California has its own strong public policy favoring arbitration, codified in the California Arbitration  
27 Act. (*Code Civ. Proc.* §§ 1281 *et seq.*; *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 9 (“the  
28 Legislature has expressed a strong public policy in favor of arbitration as a speedy and relatively  
inexpensive means of dispute resolution”); *see also Armendariz*, 24 Cal.4th at 103 (mandatory  
employment arbitration agreement lawful so long as it satisfies certain requirements).)

1 In determining whether claims are arbitrable, the Court must be guided by the principle that  
2 arbitration agreements are favored and are to be broadly construed with any doubts being resolved in  
3 favor of coverage. (*See Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp* (1983) 460 U.S. 1, 24-  
4 25.) “The court’s role, according to the [United States] Supreme Court . . . must be strictly limited to a  
5 determination of whether the party resisting arbitration agreed to arbitrate.” (*O’Malley v. Wilshire Oil*  
6 *Co.* (1963) 59 Cal.2d 482, 491.) “A heavy presumption weighs the scales in favor of arbitrability.” (*Id.*  
7 (*citing United Steelworkers of America v. Warrior & Gulf Navigation Co.* (1960) 363 U.S. 574, 582–  
8 83).) Thus, under the FAA, this Court’s inquiry on this motion is limited to determining: (1) whether a  
9 valid agreement to arbitrate exists, and if it does; (2) whether the agreement encompasses the dispute at  
10 issue. (9 U.S.C. § 4; *Chiron Corp. v. Ortho Diagnostic Sys., Inc.* (9th Cir. 2000) 207 F.3d 1126, 1130;  
11 *Simula, Inc. v. Autoliv, Inc.* (9th Cir. 1999) 175 F.3d 716, 719–20.) In this case both questions must be  
12 answered in the affirmative.

13 (a) The DRP Constitutes a Valid Arbitration Agreement

14 The U.S. Supreme Court has held that arbitration agreements in the employment context are  
15 valid and enforceable. (*Viking River Cruises, Inc. v. Moriana* (“*Viking River*”) (2022) 142 S.Ct. 1906,  
16 1925; *Circuit City, supra* 532 U.S. at 119 (the FAA compels enforcement of employment contracts).)  
17 Even arbitration agreements imposed as a mandatory condition of employment are enforceable under  
18 the FAA. (*Viking River, supra*, at 1925 (enforcing mandatory arbitration agreement in employment  
19 context); *EEOC v. Luce, Forward, Hamilton & Scripps* (9th Cir. 2003) 345 F.3d 742, 745 (compulsory  
20 agreement to arbitrate employment claims is valid and enforceable).)

21 California courts also recognize that employers may unilaterally impose mandatory arbitration  
22 as a condition of employment. (*Lagatree v. Luce, Forward, Hamilton & Scripps* (1999) 74 Cal.App.4th  
23 1105, 1127 (“the cases uniformly agree that a compulsory pre-dispute arbitration agreement is not  
24 rendered unenforceable just because it is required as a condition of employment or offered on a ‘take it  
25 or leave it’ basis”).) Here, the Arbitration Agreement is almost identical to the one recently analyzed  
26 and upheld in *Viking River*, which was also prepared by TriNet. The U.S. Supreme Court’s ruling in  
27 *Viking River* has addressed enforceability and validity of this arbitration agreement.

28 (b) Plaintiff’s Claims are Within the Scope of the Arbitration Agreement

1 The Arbitration Agreement contains broad language regarding the scope of claims that must be  
2 resolved exclusively through final and binding arbitration:

3 [T]his DRP covers any dispute arising out of or relating to your co-employment with  
4 TriNet, including your TriNet co-employer, and/or arising out of or relating to your  
5 employment with your company, as well as any dispute with an employee, officer or  
6 director of TriNet or of a TriNet customer (all of whom, in addition to TriNet  
7 customers, are intended to be beneficiaries of this DRP) (“covered dispute”).

8 (Johnson Decl., at ¶ 10, Ex. A, p. 5.)

9 Plaintiff, in accepting her obligations under the Arbitration Agreement, affirmatively  
10 acknowledged that: “I confirm that I have read and understand the contents of this TCA including, but  
11 not limited to, **the [DRP], which includes my agreement to a mandatory arbitration of disputes  
12 arising out of or relating to my employment and a waiver of my right to a jury trial (except as  
13 specifically provided in the DRP).**” (*Id.* Ex. A, p. 8; emphasis in original.)

14 Every claim alleged by Plaintiff in her Complaint arises from her employment with Sliver.  
15 Plaintiff asserts causes of action for (1) Whistleblower Retaliation under Labor Code section 1102.5;  
16 (2) Sex/Gender Discrimination under the Fair Employment and Housing Act (“FEHA”); (3) Failure to  
17 Prevent Discrimination and Retaliation under the FEHA; (4) Fraudulent Concealment; (5) Wrongful  
18 Termination; and (6) Failure to Pay Wages and Waiting Time Penalties under the Labor Code.

19 In summary, every alleged wrongful act of Defendants arose out of, or is related to, her  
20 employment with Sliver. Thus, there is no question that Plaintiff signed a valid arbitration agreement,  
21 and this Court should not depart from *Viking River’s* holding that the language in the Arbitration  
22 Agreement is valid and enforceable.

### 23 **B. California Law Requires Arbitration of Plaintiff’s Claims**

24 The Arbitration Agreement is expressly governed by the FAA. Nevertheless, the Arbitration  
25 Agreement also satisfies the minimal requirements for enforceability under the California Arbitration  
26 Act as set forth in *Armendariz v. Foundation Health Psychcare Services* (2000) 24 Cal.4th 83, 91.

27 The party resisting arbitration bears the burden of establishing grounds for revocation of an  
28 agreement they signed. (*Securitas Sec. Servs. USA, Inc. v. Sup. Ct. (Edwards)* (2015) 234 Cal.App.4th  
1109, 1116.) To the extent that Plaintiff may contend that there are grounds for revocation of her  
Arbitration Agreement, she will be unable to satisfy her burden. The Arbitration Agreement is neither

1 procedurally nor substantively unconscionable, and it satisfies all of California’s requirements for the  
2 arbitration of non-waivable statutory rights set forth in *Armendariz v. Foundation Health Psychcare*  
3 *Services, Inc.* (2000) 24 Cal.4th 83, 102-13. To the extent Plaintiff raises defenses to enforceability of  
4 the Arbitration Agreement, Sliver will address them in its reply brief.

5 **1. The Arbitration of Claims is Favored under California Law**

6 Mirroring the FAA, California’s Arbitration Act requires courts to compel arbitration of any  
7 controversy covered by the terms of a written agreement to arbitrate. Specifically, California *Code of*  
8 *Civil Procedure* Section 1281.2 provides: “On petition of a party to an arbitration agreement alleging  
9 the existence of a written agreement to arbitrate a controversy and that a party thereto refuses to arbitrate  
10 such controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if  
11 it determines that an agreement to arbitrate the controversy exists. . . .” (*Id.*)

12 California courts have consistently recognized this state’s strong public policy in favor of  
13 enforcing arbitration agreements. (*See, e.g., Armendariz, supra*, 24 Cal.4th at 97 (“California law, like  
14 federal law, favors enforcement of valid arbitration agreements.”); *Moncharsh v. Heily & Blase* (1992)  
15 3 Cal.4th 1, 9 (California has a “strong public policy in favor of arbitration”); *McManus v. CIBC World*  
16 *Markets Corp.* (2003) 109 Cal.App.4th 76, 85 (“There is a public policy in favor of arbitration under...  
17 state law”).) In light of this strong public policy, “any doubts regarding the arbitrability of a dispute are  
18 resolved in favor of arbitration.” (*Howard v. Goldblum* (2018) 30 Cal.App.5th 659, 663.) Accordingly,  
19 this Court must review the Arbitration Agreement executed by Plaintiff in the context of California’s  
20 strong presumption of enforceability. This Court must decide any close questions of law or fact in favor  
21 of the enforcement of the Arbitration Agreement.

22 **2. The Arbitration Agreements Satisfy the Armendariz Requirements**

23 The California Supreme Court in *Armendariz* held that an arbitration agreement must include  
24 the following terms to be valid: (1) provide for a neutral arbitrator; (2) provide for more than minimal  
25 discovery; (3) require the arbitrator to issue a written decision; (4) provide for the same remedies that  
26 would otherwise be available to the employee in court; and (5) not require the employee to bear the  
27 costs unique to arbitration. (*Armendariz*, 24 Cal.4th at 102.) Here, the Arbitration Agreements meets all  
28 of the *Armendariz* requirements, and must be enforced.

1 Here, the Arbitration Agreement is fully compliant with *Armendariz*. First, the Arbitration  
2 Agreement provides that the parties are to select a neutral arbitrator “by mutual agreement of the  
3 parties.” (Johnson Decl., at ¶ 10, Ex. A, p. 6.) Additionally, the Arbitration Agreement provides for  
4 adequate civil discovery, requires the arbitrator to issue a written decision, and provides for the same  
5 remedies that would otherwise be available to the employee in court. (*Id.* at Ex. A, p. 7.) Specifically,  
6 the Arbitration Agreement provides that the arbitration will be conducted “under the applicable  
7 employment arbitration rules and procedures of the Judicial Arbitration and Mediation Services, Inc.  
8 (“JAMS”).” (*Id.* at Ex. A, p. 6) The procedural rules of the JAMS:

- 9 • Require exchange of “relevant, non-privileged documents, including, without limitation,  
10 copies of all documents in their possession or control on which they rely in support of  
11 their positions,” and allow for depositions, supplementary document production, and  
12 third-party discovery;
- 13 • Provide that the “award shall consist of a written statement signed by the Arbitrator  
14 regarding the disposition of each claim and the relief, if any, as to each claim . . . [and]  
15 a concise written statement of the reasons for the Award, stating the essential findings  
16 and conclusions on which the Award is based”; and
- 17 • Further provide that “[t]he arbitrator may grant any remedy or relief that is just and  
18 equitable and within the scope of the Parties’ agreement, including, but not limited to,  
19 specific performance of a contract of any other equitable legal remedy.” Further, the  
20 award “may allocate attorneys’ fees and expenses and interest...if provided by the  
21 Parties’ Agreement or allowed by applicable law.”

22 (XXXX Decl., at ¶ 4, Ex. [redacted] at 10-11, 14-15.)

23 Finally, the Arbitration Agreement does not require Plaintiff to bear costs unique to arbitration  
24 and instead provides that Defendants “will pay the fees of the arbitrator and the arbitration.” (Johnson  
25 Decl., at ¶ 10, Ex. A, p. 7.) As such, the Arbitration Agreement complies with the requirements in  
26 *Armendariz* and a valid and enforceable arbitration agreement exists between Plaintiff and Defendants.

### 27 **3. The Arbitration Agreement Is Not Unconscionable**

28 A party challenging an arbitration agreement on the grounds of unconscionability must establish  
both procedural and substantive unconscionability. (*See Nguyen v. Applied Med. Res. Corp.* (2016) 4  
Cal.App.5th 232, 247 (“Both procedural and substantive unconscionability must be present for the court  
to refuse to enforce [an arbitration] contract under the doctrine of unconscionability”).) The relationship

1 between procedural and substantive unconscionably operates on a sliding scale such that when “the  
2 degree of procedural unconscionability of an adhesion agreement is low,” “the agreement will be  
3 enforceable unless the degree of substantive unconscionability is high,” and vice versa. (*Serpa v.*  
4 *California Sur. Investigations, Inc.* (2013) 215 Cal.App.4th 695, 704.)

5 Procedural unconscionability involves “the manner in which agreement to the disputed term was  
6 sought or obtained, such as unequal bargaining power between the parties and hidden terms included in  
7 contracts of adhesion.” (*Szetela v. Discover Bank* (2002) 97 Cal.App.4th 1094, 1099.) However, “[t]he  
8 adhesive nature of the contract will not always make it procedurally unconscionable. When bargaining  
9 power is not grossly unequal and reasonable alternatives exist, oppression typically inherent in adhesion  
10 contracts is minimal.” (*Roman v. Sup. Ct. (Flo–Kem, Inc.)* (2009) 172 Cal.App.4th 1462, 1470.) The  
11 California Supreme Court has held. that adhesive employment contracts are not subject “to the same  
12 degree of scrutiny as ‘[c]ontracts of adhesion that involve surprise or other sharp practices.’” (*Baltazar*  
13 *v. Forever 21* (2016) 62 Cal.4th 1237, 1245.)

14 Here, Plaintiff was not subjected to any “surprise or other sharp practices” that would warrant a  
15 finding of procedural unconscionability. The Arbitration Agreement is less than four pages. (Johnson  
16 Decl. at ¶ 10, Ex. A.) It is clearly labeled a “Dispute Resolution Protocol (“DRP”) and Mandatory  
17 Arbitration of Claims.” (*Id.*) The Arbitration Agreement has clear sections and titles; there no hidden  
18 terms set forth in small print. (*Id.*) The Arbitration Agreement states in bold that the DRP “**requires**  
19 **that arbitration will be used instead of going before a court (for a judge or jury trial) and that NO**  
20 **JURY TRIAL WILL BE PERMITTED (unless applicable law does not allow enforcement of a**  
21 **pre-dispute jury trial waiver in the particular circumstances presented).**” (*Id.* at ¶ 10, Ex. A., p. 5.)  
22 Plaintiff also had an unlimited amount of time to review the Arbitration Agreement and ask questions.  
23 Consequently, Plaintiff cannot show the Arbitration Agreement is procedurally unconscionable.

24 The Arbitration Agreement is also not substantively unconscionable. Substantive  
25 unconscionability “focuses on the terms of the agreement and whether those terms are so one-sided as  
26 to *shock* the conscience.” (*Kinney v. United Healthcare Servs.* (1999) 70 Cal.App.4th 1322, 1330  
27 (internal quotations omitted).) Substantive unconscionability will be found only when the terms of an  
28 agreement create “overly harsh” or “one-sided” results. (*Little v. Auto Stiegler, Inc.* (2003) 29 Cal.4th

1 1064, 1071.) Here, the Arbitration Agreement is bilateral and applies equally to all parties bound by the  
2 agreement. (Johnson Decl. at ¶ 10, Ex. A at p. 5.) Further, the Arbitration Agreement satisfies the  
3 requirements set forth for a lawful arbitration agreement in *Armendariz*, 24 Cal.4th at 102. Moreover,  
4 the Arbitration Agreement does not contain the explicit or implicit one-sided provisions that California  
5 courts have rejected, *e.g.* it does not contain provisions that alter the statute of limitations for the  
6 employee’s claims, or limit the type of discovery an employee may conduct. (*Stirlen v. Supercuts, Inc.*,  
7 (1997) 51 Cal.App.4th 1519, 1542; *Kinney v. United Healthcare Services, Inc.* (1999) 70 Cal.App.4th  
8 1332, 1330-1332.) As a result, Plaintiff cannot show the Arbitration Agreement is substantively  
9 unconscionable. Because the Arbitration Agreement is neither procedurally nor substantively  
10 unconscionable, it must be enforced according to its terms.

#### 11 **IV. ALL PARTIES ARE BOUND TO ARBITRATE UNDER THE ARBITRATION** 12 **AGREEMENT**

##### 13 **A. Defendants Liu and Theta Labs are Third-Party Beneficiaries.**

14 California law permits a non-signatory to enforce an arbitration agreement as a third-party  
15 beneficiary to the agreement. (*Suh v. Superior Court* (2010) 181 Cal.App.4th 1504.) Significantly, a  
16 third-party beneficiary “need not be named or identified individually to be an express beneficiary, [nor  
17 is there a] . . . requirement that ‘both of the contracting parties must intend to benefit the third  
18 party.’” (*Sprinks v. Equity Res. Briarwood Apts* (2009) 171 Cal.App.4th 1004, 1022.) Instead, it is  
19 sufficient that a third party shows, “that he is a member of the class of persons for whose benefit [the  
20 contract] was made.” (*Ibid.*)

21 Here, although not express parties to the Arbitration Agreement, Defendants Liu and Theta Labs  
22 are unquestionably a third-party beneficiaries of the Agreement. The Agreement expressly applies to  
23 “any dispute with an employee, officer, or director . . . of a TriNet customer.” (Johnson Decl. ¶10 & Ex.  
24 A, p. 5.) As noted, Sliver of which Theta Labs is a wholly-owned subsidiary is a TriNet client, and Mr.  
25 Liu is Sliver’s CEO. (Johnson Decl., ¶ 6; Norling Decl. ¶X & Ex. \_\_\_.) Moreover, Plaintiff alleges in her  
26 Complaint that Defendants Sliver and Theta Labs are her joint employers. (Compl. at ¶7.) As such,  
27 Theta Labs and Liu are third-party beneficiaries with respect to Plaintiff’s claims, and the claims against  
28 them must be arbitrated.

1           **B. Plaintiff’s Allegations Mandate Enforcement as to all Defendants.**

2           “[T]raditional principles’ of state law allow a contract to be enforced by or against nonparties  
3 to the contract through ‘assumption, piercing the corporate veil, alter ego, incorporation by reference,  
4 third-party beneficiary theories, waiver and estoppel’ [citation] . . . .” (*Arthur Andersen LLP v. Carlisle*  
5 (2009) 556 U.S. 624, 631; accord, *Bouton v. USAA Casualty Ins.* (2008) 167 Cal.App.4th 412, 424.)  
6 For example, “a Plaintiff’s allegations of an agency relationship among defendants is sufficient to allow  
7 the alleged agents to invoke the benefit of an arbitration agreement . . . even though the agents are not  
8 parties to the agreement.” (*Thomas v. Westlake* (2012) 204 Cal.App.4th 605, 614–615.)

9           Here, the Complaint alleges, “each Defendant was an agent, servant, employee, partner, joint  
10 employer, integrated enterprise, and/or joint venture of every other Defendant and was acting within the  
11 scope of that relationship with each of the other Defendants.” (Complaint ¶7.) Thus, Plaintiff’s own  
12 allegations of agency relations, joint employment, alter ego, etc., amongst Defendants are sufficient to  
13 permit enforcement of the Arbitration Agreement as to all Defendants.

14           **C. Plaintiff is Estopped from Denying Arbitrability as to all Defendants.**

15           “Under [the doctrine of equitable estoppel] . . . a non-signatory defendant may invoke an  
16 arbitration clause to compel a signatory plaintiff to arbitrate its claims when the causes of action against  
17 the non-signatory are intimately founded in and intertwined with the underlying contract.” (*JSM*  
18 *Tuscany, LLC v. Superior Court* (2011) 193 Cal.App.4th 1222, 1237, internal quotations omitted, citing  
19 *Boucher v. Alliance Title Co., Inc.* (2005) 127 Cal.App.4th 262, 268.) “The rule applies to prevent  
20 parties from trifling with their contractual obligations.” (*Ibid.*, quoting *Turtle Ridge Media Group, Inc.*  
21 *v. Pacific Bell Directory* (2006) 140 Cal.App.4th 828, 833.)

22           Estoppel clearly applies here, where Plaintiff has pleaded exactly the same cause of action and  
23 theories of liability against all Defendants (i.e., Causes of Action 1-6). Further, all of Plaintiff’s claims  
24 directly arise from her employment with Sliver, which is governed by the Arbitration Agreement. On  
25 these facts, Plaintiff is equitably estopped from denying arbitrability as to all Defendants.

26           **V. THIS COURT SHOULD SEVER ANY UNENFORCEABLE PROVISION OF THE**  
27           **ARBITRATION AGREEMENTS**

28           If the Court were to determine that any provision of the Arbitration Agreement is unenforceable,

1 Defendants, nonetheless, are entitled to enforce the valid provisions of the agreements pursuant to the  
2 severability clause. (*See Viking River*, 143 S.Ct., at 1925 (“Based on this [severability] clause, Viking  
3 was entitled to enforce the agreement insofar as it mandated arbitration of [plaintiff’s] individual PAGA  
4 claim.”); *Rent-A-Ctr., W., Inc. v. Jackson* (2010) 561 U.S. 63, 70 (an unenforceable provision of an  
5 arbitration agreement may be severed to retain the remaining provisions).)<sup>2</sup> Severance of an  
6 unconscionable provision in an arbitration agreement in California is preferred unless the agreement is  
7 “permeated” with unconscionability. (*Armendariz* (2000) 24 Cal.4th at 122.)

8 The Arbitration Agreement’s severability clause states: “[i]f any portion of this DRP is  
9 determined to be unenforceable, the remainder of this DRP will still be enforceable...” (Johnson Decl.,  
10 at ¶ 10, Ex. A, p. 8.) Thus, to the extent that any provision in the Arbitration Agreement is found to be  
11 unenforceable, the Court should sever it and enforce the remainder of the Arbitration Agreement.

12 **VI. PLAINTIFF’S LAWSUIT SHOULD BE STAYED PENDING COMPLETION OF**  
13 **ARBITRATION**

14 Defendants move the Court for an order staying this action pending this Motion and the  
15 completion of arbitration, pursuant to *Code of Civil Procedure* section 1281.4, which provides, in  
16 pertinent part:

17 If an application has been made to a court of competent jurisdiction...for an order to  
18 arbitrate a controversy which is an issue involved in an action or a proceeding before a  
19 court of this State and such application is undetermined, the court in which such action  
or proceeding is pending **shall**, upon motion of a party to such action, stay the action  
or proceeding until the application for an order to arbitrate is determined...

20 (*Id.*; emphasis added.)

21 To the extent any claims remain which are not dismissed or compelled to arbitration,  
22 continuation of any proceedings in court would be disruptive to the arbitration of Plaintiff’s claims. In  
23 addition, allowing any proceeding to continue in court during the arbitration would waste both the  
24 Court’s and the Parties’ resources. It would also diminish the effectiveness and efficiency that

25 \_\_\_\_\_  
26 <sup>2</sup> California law also allows an unenforceable provision to be severed from the remainder of the  
27 arbitration agreement. (Cal. Civ. Code § 1670.5(a) (“If the court as a matter of law finds the contract  
28 or any clause of the contract to have been unconscionable at the time it was made the court may . . .  
enforce the remainder of the contract without the unconscionable clause”); (*Little v. Auto Stiegler, Inc.*  
(2003) 29 Cal.4th 1064, 1075 (concluding the “offending provision can be severed and the rest of the  
arbitration agreement left intact” when the arbitration agreement included a severability provision).)

1 arbitration was meant to achieve. Therefore, this case should be stayed pending completion of  
2 contractually required arbitration.

3 **VII. IF DEFENDANTS’ MOTION FOR ARBITRATION IS NOT GRANTED,**  
4 **PLAINTIFF’S LAWSUIT SHOULD BE TRANSFERRED TO ITS PROPER VENUE**  
5 **IN SANTA CLARA COUNTY SUPERIOR COURT.**

6 In the event the Court declines to compel arbitration, Defendants move the Court in the  
7 alternative to transfer the action to its proper venue in Santa Clara County Superior Court. Plaintiff  
8 alleges nine causes of action against one individual defendant and two entity defendants, none of  
9 whom “reside” in Los Angeles County. The only resident of Los Angeles County in this lawsuit  
10 is Plaintiff. Venue is not determined based on Plaintiff’s residence. Rather, since the complaint  
11 includes multiple “transitory” causes of action and an individual defendant, venue is proper where the  
12 individual defendant resides. Accordingly, absent arbitration, Defendants request transfer of the case  
13 or remaining claims to Santa Clara County Superior Court.

14 **A. When an Action is Filed in an Improper Venue, the Court Must Transfer the**  
15 **Action to a Court with Proper Venue That is Selected by the Moving Defendants.**

16 On a timely motion by any defendant, at or before the time an answer to the complaint would  
17 be due, the court must order a transfer of an action “when the court designated in the complaint is  
18 not the proper court” to any “proper” county court venue requested by the moving defendant(s). (See  
19 Code Civ. Proc. §§ 396b, 397(a); *Cholakian & Assocs. v. Superior Court* (2015) 236 Cal.App.4th  
20 361, 373.) Indeed, the court must transfer the action to the county court selected by the moving  
21 defendant(s) even where some of the defendants may have other residences that would also be proper  
22 venues. (See *Cubic Corp. v. Superior Court* (1986) 186 Cal.App.3d 622, 625.)

23 **B. Venue for This Action Should Be Determined by the Residence of the Individual**  
24 **Defendant.**

25 **1. The General Rule is That a Defendant Has a Right to Litigate in the County**  
26 **of His or Her Residence Regardless of the Residence of the Plaintiff.**

27 The general rule regarding venue is that a defendant has the right to have an action litigated in  
28 the county where he, she, or it resides. “Except as otherwise provided by law, and subject to the power



1 correct only in the county of a Defendant’s residence. (See *Kaluzok v. Brisson*, *supra*, 27 Cal.2d at 763;  
2 *Thielen v. Superior Court* (1963) 219 Cal.App.2d 217; *Claycomb v. Caronna* (1952) 113 Cal.App.  
3 2d 561, 565; *Krogh v. Pacific Gateway Co.* (1909) 11 Cal.App. 237.)

4 The “mixed action” rule of venue requires an action to be venued in the county where at least  
5 one of the individual defendants resides, regardless of: (1) the residence of the plaintiff; (2) whether  
6 venue may be proper as to some of the causes of action; and (3) whether venue may be proper as to  
7 the one or more of the entities under broader entity rules of venue. Venue for this case is therefore only  
8 proper at the place where the individual “defendants or some of them reside at the commencement of  
9 the action.” (Code Civ. Proc., § 395(a).) This is Santa Clara County Superior Court.

10 **C. Under the “Mixed” Action Rule, Where Individual Defendants Are Joined with**  
11 **an Entity Defendant, Venue is Only Proper in the County of Residence of Any of**  
12 **the Individual Defendants, Even If Venue Would Be Proper as to the Entity**  
13 **Under a Non-Residence Venue Rule Applicable to the Entity.**

14 Here, the “mixed” action rule also limits Plaintiff’s choice of venue to the county of residence  
15 of the individual Defendant because Plaintiff has joined both individuals and entities as Defendants.  
16 In other words, the wider choices of venue permitted in actions solely against a corporation or other  
17 entity under statutes like CCP §395.5 are not available where an individual is named as a co-  
18 defendant. (See *Brown v. Superior Court* (1984) 37 Cal.3d 477, 482.) Such suits may only be  
19 commenced in the county in which the “defendants or some of them reside.” (Code Civ. Proc., §  
20 395(a).) If a plaintiff sues elsewhere, as done here, any individual defendant can move to compel  
21 transfer of the action to the county in which he or she resides. (See *Brown v. Superior Court* (1984) 37  
22 Cal.3d 477, 482 n. 6; *Walker v. Wells Fargo Bank & Union Trust Co.* (1937) 24 Cal.App.2d 220.)

23 For example, in *J.C. Millett Co. v. Latchford-Marble Glass Co.* (1956) 144 Cal.App.2d 838,  
24 840, plaintiffs, who resided in San Francisco, brought a lawsuit in San Francisco Superior Court  
25 against three corporate defendants and eight individual defendants who all resided in Los Angeles.  
26 Venue was based on a non-residence venue ground that was only applicable to the corporate  
27 defendants. The trial court denied the defendants’ motion to change venue from San Francisco to  
28 Los Angeles. The Court of Appeal reversed and transferred the case to Los Angeles because the

1 eight individual defendants, considered separately, were entitled to defend suit in Los Angeles where  
2 they resided. The Court held:

3 “When a corporation is properly sued other than at its residence on a  
4 transitory cause of action, and individual defendants are joined who, if  
5 sued alone, would be entitled to be sued in the county of their residence,  
6 the plaintiff waives his right against the corporation, and the individual  
7 defendants are entitled to a change to the county of their residence.”

8 (*Id.* at p. 840.)

9 **D. None of the Defendants “Reside” in Los Angeles County Whereas the Individual  
10 Defendant and the Entity Defendants All “Reside” in Santa Clara County.**

11 Here, none of the Defendants reside in Los Angeles County. To the contrary, the sole  
12 individual defendant resided in Santa Clara County at the time the Complaint was filed and continues  
13 to reside in Santa Clara County. (Lui Declaration, at ¶     .) Further, Sliver and Theta Labs had their  
14 principal places of business and headquarters in Santa Clara County at the time the Complaint was  
15 filed and continue to maintain their principal places of business and headquarters there. (Lui Decl., at ¶  
16     .) Under the “mixed” action rule set forth above, venue is proper in Santa Clara County. This action  
17 should therefore be transferred to the Santa Clara Superior Court.

18 **E. The Court Should Award Defendants Their Attorneys’ Fees and Costs for the  
19 Venue Portion of This Motion.**

20 Code of Civil Procedure section 396b, subdivision (b) provides for an award of  
21 discretionary attorney’s fees and costs to the prevailing party in connection with any motion to transfer  
22 venue. (*See also Metzger v. Silverman* (1976) 62 Cal.App.3d Supp. 30, 40 (“the court is empowered to  
23 assess attorney fees against a lawyer who files an action in the wrong county or a lawyer who files a  
24 motion for a change of venue found to be without merit.”).) The fees are chargeable only against the  
25 filing attorney and not against the party. (*See Code Civ. Proc.*, § 396b(b).)

26 In the event, arbitration of the entire action is not ordered and the Court must address  
27 Defendants’ alternative motion to transfer venue, Defendants respectfully request that the Court order  
28 Plaintiff to pay the reasonable attorney’s fees and costs that Defendants have incurred in  
preparing the venue transfer portions of this motion.

1 **VIII. CONCLUSION**

2 For all of the foregoing reasons, Defendants respectfully request that the Court grant their motion  
3 to compel arbitration and stay all court proceedings under California *Code of Civil Procedure*  
4 section 1281.4 pending the outcome of individual arbitration. If Defendants’ motion for arbitration is  
5 denied in whole or in part, Defendants alternatively request that the Court transfer any remaining claims  
6 to the Santa Clara County Superior Court.

7  
8 Dated: December \_\_\_, 2025

Respectfully submitted,

9 FISHER & PHILLIPS LLP

10 By:

11 **XXXX**

12 Attorneys for Defendants  
13 SLIVER VR TECHNOLOGIES, INC., THETA LABS,  
14 INC., AND MITCHELL LIU

1 **PROOF OF SERVICE**

2 (C.C.P. §§ 1011, 1013, 1013(a) and 2015.5; Cal. Rules of Court, rules 2.306 and 2.251)

3 *Berry v. Sliver VR Technologies, Inc., et al., Case No.: XXXX*

4 I am employed in the County of San Francisco, State of California in the office of a member of  
5 the bar of this Court whose direction the following service was made. I am over the age of 18 and am  
6 not a party to this action. My business address is One Montgomery Street, Suite 3400, San Francisco,  
7 California.

8 On the date set forth below, I served the foregoing document entitled: **MEMORANDUM OF  
9 POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS’ MOTION TO COMPEL  
10 ARBITRATION AND, IN THE ALTERNATIVE, TO TRANSFER VENUE** on all the appearing  
11 and/or interested parties in this action by placing  *the original*  *a true copy* thereof addressed as  
12 follows:

13 *Attorneys for Plaintiff*

14  **[VIA ELECTRONIC SERVICE]** I certify that on the date below, I electronically filed the above  
15 document(s) using an authorized electronic filing service provider, **Green Filing LLC**, which will  
16 also send notification of such filing to the designated recipients as stated above. The Transaction  
17 Receipt is managed by the Court’s authorized Case Management System, Odyssey® eFileCA. (See  
18 CCP § 1010.6 and CRC Rules 2.250 through 2.259.)

19  **[VIA EMAIL]** I certify that on the date below, I served the above listed document(s) via electronic  
20 mail to the listed recipient(s) email address(es) and such transmission was sent from the following  
21 sender: *lwahlberg@fisherphillips.com*. I did not receive any electronic message or other indication  
22 that the transmission was unsuccessful.

23  **[VIA OVERNIGHT DELIVERY]** I enclosed the document(s) in an envelope or package  
24 provided by an overnight delivery carrier and addressed to the person(s) at the address(es) listed  
25 above. I placed the envelope or package for collection and overnight delivery at an office or a  
26 regularly utilized drop box of the overnight carrier.

27 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
28 true and correct. Executed on December 22, 2025 at San Francisco, California.

29 \_\_\_\_\_ By: \_\_\_\_\_  
30 Print Name Signature

# **EXHIBIT C**

## Gracie Wichtendahl

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**From:** Liz McDougall  
**Sent:** Monday, December 22, 2025 5:13 PM  
**To:** James Baker  
**Cc:** Josue Avila; Hernandez, Yorlenny; Gallagher, Dennis; Hernandez, Yorlenny; Josue Avila; Julian Burns King; Robert King; Karl Kronenberger; Jeff Rosenfeld; Araneda, Juan  
**Subject:** Andrea Berry vs. Sliver VR Technologies, Inc., et al.  
**Attachments:** Defendants' Ntc of Ex Parte App and Ex Parte App to File Overlength Brief re MTC Arb; MPA.pdf; Decl of L. McDougall ISO Ex Parte App to File Overlength Brief re MTC Arb and Venue.pdf; Exhibit A.pdf; EXHIBIT B.pdf; Proposed Order.pdf

Dear James,

Following up on our communications last week and last night, attached is Defendants' Ex Parte Application to File an Overlength Memorandum in Support of their Motion to Compel Arbitration and, in the Alternative, to Transfer Venue, with the supporting declaration and proposed order.

As you'll see, the application is set for presentation on December 24, 2025, at 8:30 a.m. in Department 55 of the Stanley Mosk Courthouse.

Please let us know if you will appear to oppose the application.

Thank you and best regards,

Liz

---

Liz McDougall

**SENIOR COUNSEL**

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