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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL DISTRICT

MYRA NISHIZAKI, an individual,

Plaintiff,

v.

IDEAL LIVING MANAGEMENT LLC DBA IDEAL LIVING, a California Limited Liability Company; PETER SPIEGEL, an individual; CARLTON NEWSOME, an individual, and DOES 1 through 100, inclusive,

Defendants.

Case No. 23VECV03833

[Assigned for all purposes to Hon. Virginia Keeny, Dept. W]

NOTICE OF PETITION AND PETITION FOR ORDER COMPELLING ARBITRATION; MEMORANDUM OF POINTS AND AUTHORITIES

[Filed concurrently with [Proposed] Order]

Date: December 12, 2023
Time: 8:30 a.m.
Place: Department W

RESERVATION ID: 786845417160

Complaint Filed: September 1, 2023

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TO THE COURT, PLAINTIFF AND HER ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendant Ideal Living Management, LLC dba Ideal Living, LLC ("Ideal Living" or "Defendant"), through its attorneys of record, will on December 12, 2023 at 8:30 a.m., appear before this Court in Department W, located at 6230 Sylmar Avenue, Van Nuys, California 91401, for a hearing on the within verified Petition for an order submitting this matter to arbitration pursuant to Code of Civil Procedure section 1281.2. No other named defendant is joining in this petition as no other defendant has been served or appeared.

This petition is made on the grounds that each cause of action in Plaintiff Myra Nishizaki's ("Nishizaki") Complaint falls under the scope of a valid arbitration agreement entered into between Ideal Living and Nishizaki.

This petition is based on this Notice, the verified Petition, the attached Memorandum of Points and Authorities, the arbitration agreement executed by Ideal Living and Nishizaki, and any other oral or documentary evidence that may be submitted at the hearing on this petition.

Dated: October 9, 2023

STUBBS ALDERTON & MARKILES, LLP

By: _____

Michael A. Sherman
Alexander P. Manglinong
Attorneys for Defendant IDEAL LIVING MANAGEMENT, LLC DBA IDEAL LIVING, LLC,

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VERIFIED PETITION TO COMPEL ARBITRATION

Defendant Ideal Living Management, LLC dba Ideal Living, LLC ("Ideal Living" or "Defendant") petitions the Court as follows:

1. In her employment application signed by Myra Nishizaki ("Nishizaki") in favor of Ideal Living dated March 1, 2019, among other things Nishizaki initialed the provision and signed the application, to the effect that:

> I understand that any and all disputes regarding my employment with the Company, including any disputes relating to the termination of my employment, are subject to the Alternative Dispute Resolution process, which includes final and binding arbitration. I also understand and agree, as a condition of employment, to submit any such disputes for resolution under that process, and I further agree to abide by and accept the decision of the arbitration panel as the final binding decision and resolution of any such disputes I may have.

A true and correct copy of Nishizaki's employment application (redacted to protect personal identifying information) containing her initialed provision is attached to this petition as Exhibit "A".

2. In the Agreement to be Bound by Alternative Dispute Resolution Policy ("Arbitration Agreement") dated March 5 and 6, 2019, Nishizaki agreed to be bound by Ideal Living's Company Alternative Dispute Resolution Policy (the "ADR Policy"). True and correct copies of the Arbitration Agreement and ADR Policy are attached to this petition as Exhibits "B" and "C".

3. Pursuant to the Arbitration Agreement, Nishizaki agreed to arbitrate all disputes arising out of her employment with Ideal Living, including the following claims as set forth on page 1:

> I also acknowledge and agree that employment disputes arising out of or related to my employment, the terms and conditions of my employment, and the termination of my employment, all of which are also subject to the ADR Policy, include, but are not limited to, the following: (a) alleged violations of federal, state and/or local constitutions, statutes or regulations, (including but not limited to claims under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act of 1967, the Equal Pay Act, and **any other statutory scheme encompassing claims of discrimination and harassment on the basis of race, color, age, religious creed, national origin, ancestry, disability, sexual orientation, gender identity, sex or any other characteristic protected by law); (b) claims based on any purported breach of contractual obligation, including breach of the covenant of good faith and fair dealing including but not limited to claims of wrongful termination or constructive termination; (c) claims based on any purported breach of duty arising in tort, including violations of**

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> **public policy, for emotional distress and defamation**; and (d) claims related to the payment or non-payment of my wages, expenses and/or the provisions of breaks as required by law, including, but not limited to, alleged violations of the Fair Labor Standards Act and any other statutory scheme governing wages or working hours.

(Exhibit B [emphasis added].)

4. The ADR Policy further sets forth the scope of arbitrable disputes between Ideal Living and Nishizaki. Pages 1 and 2 of the ADR Policy state the following in relevant part:

> Covered disputes include any dispute arising out of or related to your employment, the terms and conditions of your employment and/or the termination of your employment, including, but not limited to, the following:
>
> - Alleged **violations of federal, state and/or local constitutions, statutes or regulations**;
> - Claims of **unlawful harassment, discrimination, retaliation or wrongful termination** that cannot be resolved by the parties or during an investigation by an administrative agency (such as the Equal Employment Opportunity Commission); Covered claims include, but are not limited to, claims under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Equal Pay Act, and any other statutory scheme covering claims of discrimination or harassment on the basis of race, color, age, religious creed, national origin, ancestry, disability, sexual orientation, gender identity, sex or any other characteristic protected by law;
> - Claims based on any purported breach of contract (including breach of the covenant of good faith and fair dealing, **claims of wrongful termination** or constructive termination);
> - Claims based on any purported breach of duty arising in tort, including alleged violations of public policy and for **emotional distress**;
> - **Claims of defamation**, pre and post-termination . . . .

(Exhibit C [emphasis added].)

5. On September 1, 2023, Nishizaki filed her Complaint in this action. The Complaint alleges the following six causes of action: (1) Wrongful Termination; (2) Religious Discrimination (in violation of the Fair Employment Housing Act ("FEHA")); (3) Whistleblower Retaliation (in violation of FEHA); (4) Failure to Prevent Discrimination and Retaliation in Violation of FEHA; (5) Defamation; and (6) and Intentional Infliction of Emotional Distress. Each of these causes of action relates to Nishizaki's employment with Ideal Living and are covered under the terms of the Arbitration

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Agreement and/or ADR Policy.

6. On February 7, 2023, Nishizaki and Peter Spiegel, the founder and co-CEO of Ideal Living, had an in-person meeting in which they discussed matters relating to Ideal Living's business. Following the meeting, Nishizaki's boyfriend, David Najar, trespassed into Ideal Living's headquarters and confronted Mr. Spiegel. Mr. Najar, who is not and never was an Ideal Living employee, threatened to physically harm Mr. Spiegel and release false and defamatory statements about Mr. Spiegel, his domestic partner Kathleen "Katie" Williams, and Ideal Living if Mr. Spiegel did not agree to pay millions of dollars. Mr. Spiegel did not agree to these extortionist demands. Through text messages, emails, and voicemail messages Mr. Najar has sent in the months following this confrontation, Mr. Najar has continued to threaten physical, emotional, and financial harm on Mr. Spiegel, Ms. Williams, and Ideal Living. Mr. Najar has also insinuated in multiple instances and in a variety of ways that he has been stalking Mr. Spiegel and Ms. Williams in their private residence, which has caused them great mental distress. In connection with Mr. Najar's recent actions – and in particular escalating threats and harassment that has occurred directed by Mr. Najar to Mr. Spiegel and Ms. Williams in the past sixty days, Mr. Spiegel, Ms. Williams, and Ideal Living filed a separate lawsuit against Najar in the Los Angeles Superior Court (*Ideal Living, LLC, et al. v. David Najar, et al.*, Case No. 23VECV04262), and on September 26, 2023 Mr. Spiegel filed a Request for a Temporary Restraining Order against Mr. Najar, and on that same day obtained an emergency Civil Harassment, Temporary Restraining Order against Mr. Najar running in favor of Mr. Spiegel and Ms. Williams (*Spiegel v. Najar,* Case No. 23VERO01608). Ideal Living has not waived its right to resolve disputes with Nishizaki through arbitration, and no grounds exist for the revocation of the Arbitration Agreement or ADR Policy.

WHEREFORE, Defendant prays:

1. That the Court order Nishizaki to submit her claims to arbitration, to the tribunal of Signature Resolution and in accordance with American Arbitration Association (AAA) rules and procedures;

2. That all proceedings in this matter be stayed pending completion of arbitration;

3. That this Court retain jurisdiction over this matter to provide relief as necessary; and

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4. For such other and further relief as the Court deems proper.

Date: October 9, 2023

STUBBS ALDERTON & MARKILES, LLP

By: _____

Michael A. Sherman
Alexander P. Manglinong
Attorneys for Defendant IDEAL LIVING MANAGEMENT, LLC DBA IDEAL LIVING, LLC

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EXHIBIT A

IDEAL LIVING

Is an Equal Opportunity Employer

EMPLOYMENT APPLICATION

Please print in ink and answer all questions completely.

POSITION DESIRED:	WHEN CAN YOU REPORT?	SALARY DESIRED:	DATE OF APPLICATION:
Project Manager	3/11/19	[redacted]	3/1/19

PERSONAL INFORMATION

LAST NAME	FIRST	MIDDLE	SOC. SEC. NO.	HOME PHONE
NISHIZAKI	MYRA	KAY	[redacted]	( )

STREET ADDRESS / APT# / CITY / STATE / ZIP: [redacted]

WORK PHONE: ( )

EMAIL ADDRESS: [redacted]

CELL PHONE: [redacted]

HOW WERE YOU REFERRED TO THIS COMPANY?

HAVE YOU WORKED FOR THIS COMPANY BEFORE? ☒ YES ☐ NO

DO YOU HAVE RELATIVES WORKING FOR THIS COMPANY? ☐ YES ☒ NO

IF YES, LIST NAMES:

DO YOU HAVE A RELIABLE MEANS OF TRANSPORTATION TO AND FROM WORK? ☒ YES ☐ NO

IF DRIVING IS REQUIRED IN THE POSITION YOU APPLIED FOR, PLEASE ANSWER THE FOLLOWING:

- DO YOU HAVE A DRIVER'S LICENSE? ☒ YES ☐ NO

[redacted]

- HAVE YOU HAD YOUR DRIVER'S LICENSE SUSPENDED OR REVOKED WITHIN THE LAST 3 YEARS? ☐ YES ☒ NO
  - IF YES, PLEASE EXPLAIN:

SCHEDULING AND AVAILABILITY FOR WORK:

☒ FULL TIME ☐ PART TIME: ☐ TEMPORARY:

☐ OTHER: _____ # OF HOURS PER WEEK _____ AVAILABLE THROUGH _____

IF NECESSARY, ARE YOU ABLE AND AVAILABLE TO WORK ANY OF THE FOLLOWING:

OVERTIME	☒ YES	☐ NO	EVENINGS	☒ YES	☐ NO
OVERNIGHT	☒ YES	☐ NO	WEEKENDS	☒ YES	☐ NO
HOLIDAYS	☒ YES	☐ NO	BUSINESS TRAVEL	☒ YES	☐ NO

ARE YOU ANTICIPATING ABSENCES AWAY FROM WORK OF ANY DURATION? ☐ YES ☒ NO

IF YES, PLEASE EXPLAIN:

CAN YOU PRESENT EVIDENCE OF YOUR U.S. CITIZENSHIP OR PROOF OF YOUR LEGAL RIGHT TO WORK IN THIS COUNTRY? ☒ YES ☐ NO

(IF HIRED, PROOF OF LAWFUL RIGHT TO WORK IN THE U.S. WILL BE REQUIRED)

ARE YOU 18 YEARS OF AGE OR OLDER? ☒ YES ☐ NO

IF HIRED, CAN YOU FURNISH PROOF OF AGE? ☒ YES ☐ NO

EDUCATION

SCHOOL NAME / LOCATION	CIRCLE GRADE / YEARS COMPLETED	UNITS / CREDITS EARNED	GRADUATED / COMPLETED	MAJOR / DEGREE EARNED
HIGH SCHOOL: [redacted]	9 10 11 12		☐ NO ☒ YES	
JR. COLLEGE:	1 2		☐ NO ☐ YES	
UNIVERSITY: [redacted]	1 2 3 4		☐ NO ☒ YES	BA. + M.A.
TRADE SCHOOL / CERTIFICATIONS / LICENSES (LIST ANY PROFESSIONAL DESIGNATIONS):	1 2 3 4		☐ NO ☐ YES	

MILITARY *(TO BE COMPLETED BY BOTH MALE AND FEMALE APPLICANTS)*

HAVE YOU EVER SERVED IN THE UNITED STATES ARMED FORCES?	BRANCH:	FINAL RANK:	RELEVANT SKILLS ACQUIRED:
☐ YES ☒ NO IF YES, PROVIDE THE FOLLOWING:			

SKILLS *(CHECK ANY OF THE FOLLOWING SKILLS YOU POSSESS)*

LIST ANY FOREIGN LANGUAGES YOU KNOW:

Spanish	☒ READ	☒ WRITE	☒ SPEAK
Japanese	☒ READ	☒ WRITE	☒ SPEAK

OTHER APPLICABLE SKILLS - CHECK THOSE THAT APPLY:

☒ OFFICE 2010	☒ WINDOWS 7	☒ MAC / iOS	☒ QUICKBOOKS	☐ CONSTANT CONTACT
☐ ORACLE	☒ WINDOWS 8	☐ GOLDMINE	☐ PEOPLESOFT	☐ OTHER _____

ADDITIONAL INFORMATION *(AN AFFIRMATIVE ANSWER TO ANY OF THESE QUESTIONS MAY NOT NECESSARILY DISQUALIFY YOU FROM CONSIDERATION FOR EMPLOYMENT)*

HAVE YOU USED ANY NAME OTHER THAN THE NAME YOU ARE CURRENTLY USING WHILE ATTENDING SCHOOL OR WITH A PREVIOUS EMPLOYER? ☐ YES ☒ NO

IF YES, LIST THE NAME(S) YOU USED:

AS AN EMPLOYEE, HAVE YOU EVER BEEN INVOLUNTARILY DISCHARGED OR ASKED TO RESIGN? ☐ YES ☒ NO

IF REQUIRED, WILL YOU UNDERGO A PRE-EMPLOYMENT BACKGROUND CHECK? ☒ YES ☐ NO

IF REQUIRED, WILL YOU UNDERGO A PRE-EMPLOYMENT PHYSICAL OR DRUG TEST? ☒ YES ☐ NO

ARE YOU ABLE TO SAFELY PERFORM THE ESSENTIAL FUNCTIONS OF THE JOB FOR WHICH YOU ARE APPLYING, EITHER WITH OR WITHOUT REASONABLE ACCOMMODATION? ☒ YES ☐ NO

IF NO, IF YOU REQUIRE REASONABLE ACCOMMODATION, PLEASE EXPLAIN:

(NOTE: WE COMPLY WITH THE ADA AND CONSIDER REASONABLE ACCOMODATION MEASURES THAT MAY BE NECESSARY FOR ELIGIBLE APPLICANTS / EMPLOYEES TO PERFORM THEIR ESSENTIAL JOB FUNCTIONS. AN APPLICANT'S HIRE MAY BE SUBJECT TO PASSING A MEDICAL EXAMINATION, SKILL AND AGILITY TESTS, ETC.)

EMPLOYMENT HISTORY *(COMPLETE THIS SECTION EVEN IF YOU HAVE PROVIDED A RESUME)*

LIST ALL EMPLOYMENT FOR THE PAST 10 YEARS, INCLUDING MILITARY SERVICE AND PERIODS OF UNEMPLOYMENT. FOR ADDITIONAL EMPLOYMENT HISTORY OR EXPLANATIONS, ATTACH A SUPPLEMENTAL APPLICATION FOR EMPLOYMENT. YOU MUST COMPLETE THIS SECTION EVEN IF YOU HAVE PROVIDED A RESUME.

[redacted]

IN THE SPACE BELOW, LIST THREE PEOPLE NOT RELATED TO YOU WHO HAVE KNOWLEDGE OF YOUR WORK PERFORMANCE WITHIN THE LAST THREE YEARS.

NAME	OCCUPATION / HOW DO YOU KNOW THIS PERSON?	TELEPHONE #	YEARS KNOWN
[redacted]			

INITIAL **AFFIDAVIT**

MN I certify that all information provided in this employment application and supplementary application are true and complete. I agree to have any of the statements checked by the Company unless indicated to the contrary. I understand that any false information or omission may disqualify me from further consideration for employment and may result in my dismissal if discovered at a later date.

MN I am aware that a more detailed investigation concerning background and credit may also be conducted upon a contingent offer of employment, I hereby authorize that investigation. I also understand that employment is contingent upon satisfactory completion of reference checks and the provision of satisfactory proof of an applicant's identity and legal authority to work in the United States.

MN I understand that if I am extended an offer of employment, it may be conditioned upon my successfully passing a pre-employment alcohol and drug screening examination. I understand that my job offer or my continuing employment, if hired, is contingent upon my being physically, mentally and medically able, with or without reasonable accommodation, to successfully perform the essential functions of my job. I consent to the release of any or all medical information as may be deemed necessary to judge my capability to do the work for which I am applying.

MN I understand that nothing in this application, conveyed during any interview, or subsequent employment creates a contract of employment between the Company or any subsidiary or affiliate and myself, nor guarantees employment for any definite period of time. If employed, I understand that I have been hired at the will of the employer and my employment may be terminated at any time, with or without cause or notice by either myself or the Company. I understand that the Company can change benefits, policies and conditions at any time.

MN I understand that any and all disputes regarding my employment with the Company, including any disputes relating to the termination of my employment, are subject to the Alternative Dispute Resolution process, which includes final and binding arbitration. I also understand and agree, as a condition of employment, to submit any such disputes for resolution under that process, and I further agree to abide by and accept the decision of the arbitration panel as the final binding decision and resolution of any such disputes I may have.

PLEASE READ EACH STATEMENT CAREFULLY BEFORE SIGNING. I have read, understand, and by my signature consent to these statements.

APPLICANT'S SIGNATURE: [signature] DATE: 3/1/19

EXHIBIT B

AGREEMENT TO BE BOUND BY ALTERNATIVE DISPUTE RESOLUTION POLICY

PLEASE NOTE: Nothing contained in this Agreement To Be Bound By Alternative Dispute Resolution Policy is intended to require arbitration of any matter or claim which the courts of this jurisdiction have expressly held are not subject to mandatory arbitration.

Unlike the provisions of the Company Employee Handbook, the terms of this Agreement To Be Bound By Alternative Dispute Resolution Policy are contractual in nature.

I agree that in the event employment disputes arise between Ideal Living, LLC and/or any of their respective employees or officers (herein collectively referred to as the "Company"), on the one hand, and me, on the other hand, I will be bound by the Company Alternative Dispute Resolution Policy (the "ADR Policy"), which provides for final and binding arbitration.

This ADR Policy is understood to apply to all disputes relating to my employment, the terms and conditions of my employment, including but not limited to my compensation, wages, claims alleging failure to compensate for all hours worked, failure to pay overtime, failure to pay minimum wage, failure to reimburse expenses, failure to pay wages upon termination, failure to provide accurate, itemized wage statements, failure to provide meal and/or rest breaks, entitlement to waiting time penalties and/or other claims involving employee wages, benefits, discipline, performance evaluations, promotions, transfers, and the termination of my employment, as defined in the ADR Policy materials. I agree this ADR Policy prohibits me from joining or participating in a class action or representative action, acting as representative of others, excluding a private attorney general claim, or otherwise consolidating a covered claim with the claims of others.

I also acknowledge and agree that employment disputes arising out of or related to my employment, the terms and conditions of my employment, and the termination of my employment, all of which are also subject to the ADR Policy, include, but are not limited to, the following: (a) alleged violations of federal, state and/or local constitutions, statutes or regulations, (including but not limited to claims under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act of 1967, the Equal Pay Act, and any other statutory scheme encompassing claims of discrimination and harassment on the basis of race, color, age, religious creed, national origin, ancestry, disability, sexual orientation, gender identity, sex or any other characteristic protected by law); (b) claims based on any purported breach of contractual obligation, including breach of the covenant of good faith and fair dealing including but not limited to claims of wrongful termination or constructive termination; (c) claims based on any purported breach of duty arising in tort, including violations of public policy, for emotional distress and defamation; and (d) claims related to the payment or non-payment of my wages, expenses and/or the provisions of breaks as required by law, including, but not limited to, alleged violations of the Fair Labor Standards Act and any other statutory scheme governing wages or working hours.

IN CONSIDERATION FOR AND AS A MATERIAL CONDITION OF EMPLOYMENT WITH Ideal Living, LLC, AND IN CONSIDERATION FOR THE COMPANY'S RETURN AGREEMENT TO BE BOUND BY THE COMPANY'S ADR PROGRAM AND HAVE ANY AND ALL CLAIMS ARISING OUT OF THE EMPLOYMENT RELATIONSHIP IT MAY ENJOY AGAINST ME RESOLVED IN THIS FORUM, AND PAY THE ARBITRATION FEES AS DESCRIBED THEREIN, IT IS AGREED THAT THE ALTERNATIVE DISPUTE RESOLUTION POLICY ATTACHED HERETO WHICH PROVIDES FOR FINAL AND BINDING ARBITRATION, IS THE EXCLUSIVE MEANS FOR RESOLVING COVERED DISPUTES; NO OTHER ACTION MAY BE BROUGHT IN COURT OR IN ANY OTHER FORUM. I UNDERSTAND THAT THIS AGREEMENT IS A WAIVER OF ALL RIGHTS TO A CIVIL COURT ACTION FOR ALL DISPUTES RELATING TO MY EMPLOYMENT, THE TERMS AND CONDITION OF MY EMPLOYMENT AND/OR THE TERMINATION OF MY EMPLOYMENT WHETHER BROUGHT BY ME OR THE COMPANY; ONLY AN ARBITRATOR, NOT A JUDGE OR JURY, WILL DECIDE THE DISPUTE. IN ADDITION, I UNDERSTAND I AM PROHIBITED FROM JOINING OR PARTCIPATING IN A CLASS ACTION OR REPRESENTATIVE

AGREEMENT TO BE BOUND BY ALTERNATIVE DISPUTE RESOLUTION POLICY

ACTION, ACTING AS A PRIVATE ATTORNEY GENERAL OR REPRESENTATIVE OF OTHERS, OR OTHERWISE CONSOLIDATING A COVERED CLAIM WITH THE CLAIM OF OTHERS.

The parties acknowledge that this Agreement evidences a transaction involving interstate commerce. Notwithstanding the provision in the preceding paragraph with respect to applicable substantive law, any arbitration conducted pursuant to the terms of this Agreement shall be governed by the Federal Arbitration Act (9 U.S.C., Secs. 1-16).

I also acknowledge and agree that the following types of disputes are expressly excluded and not covered by this policy: (a) disputes related to workers' compensation and unemployment insurance; and (b) disputes or claims that are expressly excluded by federal or state statute or are expressly required to be arbitrated under a different procedure pursuant to the terms of an employee benefit plan. I also agree that if I file a lawsuit in court involving both claims that are subject to arbitration in accordance with this Agreement as well as claims that are not subject to arbitration, the court should and will stay, or place on hold, any litigation of the claims in the case that are not subject to arbitration and require arbitration of the claims that are subject to arbitration proceed before any litigation in court of claims that are not subject to arbitration. I also agree that the arbitrator's decision as to the claims that are subject to arbitration, including any determinations as to disputed factual or legal issues, will be entitled to full force and effect, and be binding in any later court proceedings related to claims that are not subject to arbitration. I also acknowledge and agree that nothing in this Agreement or the attached ADR Policy shall be construed as precluding any employee from filing a charge with a state or federal administrative agency, such as the U.S. Equal Employment Opportunity Commission ("EEOC") or the National Labor Relations Board. A state or federal administrative agency would also be free to pursue any appropriate action. However, any claim that is not resolved administratively through such an agency shall be subject to this agreement to arbitrate and the ADR Policy.

I also acknowledge that I have been provided a copy of the ADR Policy for me to keep. I understand that I can obtain a copy of the Employment Arbitration Rules and Mediation Procedures at www.adr.org.

Myra Nishizaki — 3/5/19

Print Name — Date

Employee Signature

By: _____ — 3/6/19

Ideal Living, LLC — Date

EXHIBIT C

ALTERNATIVE DISPUTE RESOLUTION POLICY

In any organization, employment disputes will arise, sometimes requiring resolution through a formal proceeding. Traditionally, this proceeding has been conducted through our court system. However, our court system too often has proven to be an exceedingly costly and time-consuming process, thus failing to provide the parties involved with an acceptable resolution of the dispute.

With this in mind, Ideal Living, LLC has developed and implemented this Alternative Dispute Resolution Policy ("ADR Policy"). We believe that the procedures set forth in this ADR Policy will result in a fair and equitable means for resolving those types of employment disputes that all too often become unnecessarily protracted. These procedures ensure that all parties have an opportunity to meet and see if there is a mutually satisfactory basis for resolving their dispute. Failing to reach an amicable resolution, these procedures provide for a fair hearing before an impartial, objective individual who has been selected by both sides. The neutral arbitrator will have the full authority to resolve this matter protecting the rights of all parties.

We hope that you will never find the need to utilize these procedures and that your employment will be free of major disputes or issues. However, in the event a dispute should arise, these procedures are there to ensure that the dispute is handled fairly and efficiently.

WHO IS COVERED BY THE ADR POLICY

The ADR Policy will be mandatory for ALL DISPUTES ARISING BETWEEN EMPLOYEES, ON THE ONE HAND, AND Ideal Living, LLC AND/OR THEIR RESPECTIVE EMPLOYEES AND OFFICERS (HEREINAFTER COLLECTIVELY THE "COMPANY"), ON THE OTHER HAND. Any disputes which arise and which are covered by the ADR Policy must be submitted to final and binding resolution through the procedures of the Company's ADR Policy.

For parties covered by this Alternative Dispute Resolution Policy, alternative dispute resolution, including final and binding arbitration, is the exclusive means for resolving covered disputes (as defined below); no other action may be brought in court or in any other forum. This agreement is a waiver of all rights to a civil court action for a covered dispute; only an arbitrator, not a Judge or Jury, will decide the dispute.

Nothing in this ADR Policy precludes the parties from discussing a mutually acceptable resolution of the dispute without the necessity of formal arbitration proceedings. Additionally, the parties may agree to engage in mediation prior to arbitration.

COVERED DISPUTES

Nothing in this Alternative Dispute Resolution Policy is intended to require arbitration of any claim or dispute which the courts of this jurisdiction have expressly held are not subject to mandatory arbitration.

Nothing in this agreement is designed to compel arbitration of any claims or causes of action expressly excluded by the provisions of the 2010 Defense Appropriations Act (H.R. 3326).

Covered disputes include any dispute arising out of or related to your employment, the terms and conditions of your employment and/or the termination of your employment, including, but not limited to, the following:

- Alleged violations of federal, state and/or local constitutions, statutes or regulations;
- Claims of unlawful harassment, discrimination, retaliation or wrongful termination that cannot be resolved by the parties or during an investigation by an administrative agency (such as the Equal Employment Opportunity Commission); Covered claims include, but are not limited to, claims under Title VII of the Civil Rights Act of

1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Equal Pay Act, and any other statutory scheme covering claims of discrimination or harassment on the basis of race, color, age, religious creed, national origin, ancestry, disability, sexual orientation, gender identity, sex or any other characteristic protected by law;

- Claims based on any purported breach of contract (including breach of the covenant of good faith and fair dealing, claims of wrongful termination or constructive termination);
- Claims of unfair demotion, transfer, reduction in pay, or any other change in the terms and conditions of employment;
- Claims alleging failure to compensate for all hours worked, failure to pay overtime, failure to pay minimum wage, failure to reimburse expenses, failure to pay wages upon termination, failure to provide accurate, itemized wage statements, failure to provide meal and/or rest breaks, entitlement to waiting time penalties and/or other claims involving employee wages, including, but not limited to, claims brought under the Fair Labor Standards Act and any other statutory scheme related to wages or working hours;
- Claims based on any purported breach of duty arising in tort, including alleged violations of public policy and for emotional distress;
- Claims of defamation, pre and post-termination; and
- Any claim the Company may enjoy against employees, regardless of the nature, arising from the employment relationship.

The following types of disputes are expressly excluded and are not covered by this ADR Policy:

- Disputes related to workers' compensation and unemployment insurance;
- Disputes or claims that are expressly excluded by statute or are expressly required to be arbitrated under a different procedure pursuant to the terms of a team member benefit plan.

If you, or the Company, file a lawsuit in court involving both claims that are subject to arbitration in accordance with this ADR Policy as well as claims that are not subject to arbitration, the court will stay, or place on hold, any litigation of the claims in the case that are not subject to arbitration and require arbitration of the claims that are subject to arbitration proceed before any litigation in court of claims that are not subject to arbitration. In that event, the arbitrator's decision as to the claims that are subject to arbitration, including any determinations as to disputed factual or legal issues, will be entitled to full force and effect, and be binding, in any later court proceedings related to claims that are not subject to arbitration.

CLASS ACTION WAIVER

You understand and agree this ADR Program prohibits you from joining or participating in a class action or representative action, acting as a representative of others, excluding private attorney general claims, or otherwise consolidating a covered claim with the claim of others.

INITIATING THE ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

In the event a dispute should arise and you wish to initiate these procedures, deliver a written request for alternative dispute resolution to the Company within the time limits which would apply to the filing of a civil complaint in court. The Company will deliver a written request to you for any claim it may wish to assert. If a request for an alternative dispute resolution is not submitted timely, the claim will be deemed to have been waived and forever released.

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SHERMAN OAKS, CALIFORNIA 91403

VERIFICATION

I, Peter Spiegel, certify and declare that I have read the foregoing Petition for Order Compelling Arbitration and know its contents. I am the Co-CEO of Defendant Ideal Living Management, LLC, a party to this action. I am authorized to make this verification for and on its behalf, and I make this verification for that reason. The matters stated in the foregoing Petition are true of my own knowledge, except as to the matters, if any, which are therein stated upon information or belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Verification is executed on October 9, 2023, in Sherman Oaks, California.

DocuSigned by:
Peter Spiegel
A91FE1E60EB64BB...

Peter Spiegel

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant Ideal Living Management LLC dba Ideal Living ("Ideal Living") and Plaintiff Myra Nishizaki ("Nishizaki") entered into an Agreement to be Bound by Alternative Dispute Resolution Policy ("Arbitration Agreement"), pursuant to which Nishizaki agreed to be bound by Ideal Living's Company Alternative Dispute Resolution Policy ("ADR Policy"). Nishizaki also confirmed her intentions and agreement to be bound per the express terms of her employment application. Under the express terms of all three of these documents, Nishizaki agreed to the mandatory arbitration of all disputes arising from her employment with Ideal Living. Ideal Living has not waived its right arbitrate claims under the terms of the Arbitration Agreement and ADR Policy, or her acknowledgement of same under the employment application, and no grounds exist for the revocation of these agreements.

On September 1, 2023, Nishizaki filed her Complaint in this action against Defendant and others. [No other defendant has been served or is now appearing.] The Complaint alleges six causes of action for (1) Wrongful Termination; (2) Religious Discrimination; (3) Whistleblower Retaliation; (4) Failure to Prevent Discrimination and Retaliation in Violation of FEHA; (5) Defamation; (6) and Intentional Infliction of Emotional Distress. As alleged in the Complaint, each of these causes of action relates to or arises out of Nishizaki's employment with Ideal Living and are covered under the terms of the Arbitration Agreement, ADR Policy and employment application. In filing her Complaint, Nishizaki has refused to arbitrate her claims, ignored her agreements, and violated the terms of these agreements. Accordingly, Defendant respectfully requests that this Court order that this action be arbitrated and stayed pending completion of the arbitration.

II. CALIFORNIA LAW REQUIRES ARBITRATION OF NISHIZAKI'S CLAIMS

Arbitration is highly favored in California, and public policy encourages enforcement of agreements to arbitrate. (*Armendariz v. Foundation Health Psychcare Servs., Inc.* (2000) 24 Cal.4th 83, 97.) Predispute arbitration agreements are expressly authorized by the California Arbitration Act ("CAA"), which provides: "A written agreement to submit to arbitration an existing controversy or a controversy thereafter arising is valid, enforceable and irrevocable, save upon such grounds as exist

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for the revocation of any contract." (Code Civ. Proc., § 1281.)

"[C]ourts will 'indulge every intendment to give effect to such proceedings.' " (*Moncharsh v. Heily & Blasé* (1992) 3 Cal.4th 1, 9.) Any doubts as to whether an arbitration agreement applies must be resolved in favor of arbitration. (*Rowe v. Exline* (2007) 153 Cal.App.4th 1276, 1282.) Consequently, the burden is on the party opposing arbitration to demonstrate that an agreement cannot be interpreted to require arbitration of the dispute. (*Buckhorn v. St. Judge Heritage Med. Group* (2004) 121 Cal.App.4th 1401, 1406.)

When a petition to compel arbitration is brought alleging that (1) a written agreement to arbitrate exists, (2) the arbitration agreement encompasses the claims to be arbitrated, and (3) a party to that agreement refuses to arbitrate, "the court *shall* order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists" unless a narrow set of exceptions applies. (Code Civ. Proc., § 1281.2.) As set forth below, these conditions are satisfied and none of the narrow exceptions to enforcement apply here. Accordingly, this Court must issue an order compelling Nishizaki to submit to binding arbitration of her claims.

A. A Valid and Enforceable Arbitration Agreement Exists.

To obtain an order compelling arbitration, a party must prove, by a preponderance of the evidence, the existence of an agreement to arbitrate. The Court need only make a finding of the agreement's existence, not an evidentiary determination of its validity. (*See* Cal. R. of Ct., rule 3.1330 [permitting a petitioner to submit only the relevant provisions of the agreement and not the agreement itself]; *Condee v. Longwood Management Corp.* (2001) 88 Cal.App.4th 215, 219 ["what the rule does not say is significant"].) Once a party has alleged that the agreement exists, "the burden shift[s] to respondent[] to prove the falsity of the purported agreement." (*Condee*, *supra*, 88 Cal.App.4th at p. 219.) The evidence is overwhelming that such an agreement to arbitrate exists by Nishizaki's executed employment application, Arbitration Agreement, and ADR Policy. (Exhibits A-C.) The agreement to arbitrate is supported by consideration: namely, the mutual promise to arbitrate all employment-related disputes, Ideal Living's promise to pay the cost of arbitration fees, and Nishizaki's continued employment. (*See Diaz v. Sohnen Enters.*, 34 Cal. App. 5th 126, 130 (2019) ["California law in this area is settled: When an employee continues his or her employment after

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notification that an agreement to arbitration is a condition of continued employment, that employee has impliedly consented to the arbitration agreement."].) The agreements to arbitrate are written in plain English and the terms are sufficiently definite. For these reasons, a valid and enforceable agreement exists.

B. The Agreements Encompass Nishizaki's Claims.

In determining whether a dispute is covered by the terms of an arbitration agreement, "[a] heavy presumption weights the scales in favor of arbitrability; an order compelling arbitration should be granted unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." (*Cione v. Foresters Equity Servs., Inc.* (1997) 58 Cal.App.4th 625, 642, quoting *Pagett v. Hawaiian Ins. Co.* (1975) 45 Cal.App.3d 620, 624 [internal quotations omitted].)

Here, the causes of action asserted in Nishizaki's Complaint fall within the scope of the Arbitration Agreement and ADR Policy. These agreements broadly cover all matters relating to Nishizaki's employment with Ideal Living, *i.e.,* "any and all disputes regarding my employment with the Company, including any disputes relating to the termination of my employment," specifically including claims based on "wrongful termination," "discrimination," "retaliation," "defamation" and "emotional distress." The Arbitration Agreement and ADR Policy also cover "alleged violations of federal, state and/or local constitutions, statutes or regulations," which would include claims arising under FEHA. Each of Nishizaki's causes of action fall within the scope of these agreements.

C. Nishizaki Refused to Arbitrate This Controversy.

By filing her Complaint, Nishizaki refused to submit to binding arbitration, despite her agreement to do so under the terms of the Arbitration Agreement and ADR Policy. (See *Hyundai Amco America, Inc. v. S3H, Inc.* (2014) 232 Cal.App.4th [filing a complaint demonstrates a refusal to arbitrate].) Accordingly, an order compelling arbitration is warranted.

D. None of the Statutory Grounds for Denying Arbitration Apply Here.

Pursuant to Code of Civil Procedure section 1281.2, the Court may only deny a valid petition to compel arbitration if (1) the party seeking arbitration has waived its right to arbitration; (2) grounds exist for revoking the arbitration agreement; (3) one party is subject to ongoing litigation with a third

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party arising out of the same transaction or series of related transactions with a possibility of conflicting rulings; or (4) the party seeking to compel arbitration is a state or federally chartered depository institution that seeks to apply a written arbitration agreement against a consumer that is the victim of identity theft. None of these exceptions apply here.

Plaintiff may attempt to argue that that there is ongoing related litigation concerning her long-time partner, David Najar.[1] This would not be well-taken. As an initial matter, Najar is not an employee of Ideal Living and is not even referenced in Plaintiff's lawsuit. Further, the litigation involving Najar concerns conduct that entirely **post-date** Nishizaki's termination.[2] As such, it cannot be said that Nishizaki's complaint—which by its express terms alleges wrongdoing practiced on Nishizaki that **pre-date** her termination from Ideal Living in February, 2023—is under any stretch, litigation that "arise[s] out of the same transaction or series of related transactions."

Taking allegations from Nishizaki's Complaint, it is clear that Nishizaki contends that her employment was terminated during an in-person meeting on February 7, 2023, with Mr. Spiegel in which they discussed matters relating to Ideal Living's business. Paragraph 16 of the Complaint specifically alleges that during that meeting, Nishizaki expressed concerns she had regarding the company, to which she alleges Mr. Spiegel "responded by proposing a severance package to Plaintiff, thus *expressing his intent to terminate her employment effective immediately*." (Complaint, ¶ 16 [emphasis added in *italics*].) **After** this meeting, Nishizaki's boyfriend, David Najar, trespassed into Ideal Living's headquarters and confronted Mr. Spiegel with physical threats and extortionist demands. Notably, Nishizaki makes no mention of this conduct or Najar in her complaint.

Accordingly, the related litigation exception to arbitration does not apply to the instant lawsuit filed by Nishizaki because Nishizaki solely complains about conduct allegedly pre-dating the termination of her employment in early February 2023, and the later lawsuit filed by Ideal Living and its co-plaintiffs is comprised of extortion-type conduct by Najar (who is not a party to this action),

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[1] Mr. Najar is a defendant in pending litigations in this Court, as detailed in the verified Petition, (*Ideal Living, LLC, et al. v. David Najar, et al.*, Case No. 23VECV04262 and *Spiegel v. Najar,* Case No. 23VERO01608) (collectively, the "Najar Litigation").

[2] After Nishizaki's termination, Mr. Najar trespassed onto Ideal Living's headquarters and confronted Mr. Spiegel with physical threats and extortionist demands.

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after Nishizaki announced she would be leaving Ideal Living. A word search of the Complaint for Najar's name or anything Najar allegedly did or did not do, having any bearing on termination, turns up *nothing*. Moreover, *even if* defendant **did** commit some form of wrongful termination (which defendant denies), the Najar Litigation centers solely on the extortion or harassment engaged in by Najar afterwards. There is no possibility of a conflict in rulings as to wrongful termination versus extortion. Rather, what is present is a series of unrelated transactions between complaints in an instance where neither the time periods nor the actors match up.

E. The Agreement Is Not Unconscionable.

Ideal Living anticipates that Nishizaki may argue that the arbitration agreement is unconscionable and therefore unenforceable under California law. "[P]rocedural and substantive unconscionability must both be present in order for a court to exercise its discretion to refuse to enforce a contract or clause under the doctrine of unconscionability." (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 114 [emphasis omitted].) As the party challenging the agreement, Plaintiff bears the burden of establishing unconscionability. (*Pinnacle Museum Tower Ass'n v. Pinnacle Market Development* (2012) 55 Cal.4th 223, 247).

Procedural unconscionability concerns "the manner in which the contract was negotiated and the circumstances of the parties at that time." (*Kinney v. United HealthCare Servs., Inc.* (1999) 70 Cal.App.4th 1322, 1329 [internal quotations omitted].) "A bald assertion of inequality in bargaining power is an insufficient basis on which to find a contract provision unenforceable." (*Bradley v. Harris Research, Inc.* (9th Cir. 2001) 275 F.3d 884, 892.) Here, the ADR Policy requires both Nishizaki and Ideal Living to submit disputes arising from the employment relationship to arbitration. There is no evidence that Nishizaki attempted to negotiate changes to the ADR Policy, let alone that Ideal Living rebuffed any such attempt. Accordingly, Nishizaki will not be able to meet her burden of establishing procedural unconscionability.

Similarly, the arbitration agreement is not substantively unconscionable, either. To be enforceable, an arbitration agreement must provide for a neutral arbitrator, provide for more than minimal discovery, require a written award, provide for relief that would otherwise be available in court, and not require the employee to pay unreasonable costs or other arbitrator's fees as a condition

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of access to the arbitration forum. (*Armendariz, supra*, 24 Cal.4th at 115.) The ADR Policy satisfies each of these requirements.

III. CONCLUSION

For the foregoing reasons, Defendant respectfully requests that the Court grant its Petition and issue an Order compelling Nishizaki to submit her claims to arbitration, and to stay this action pending completion of arbitration.

Dated: October 9, 2023

STUBBS ALDERTON & MARKILES, LLP

By: _____

Michael A. Sherman
Alexander P. Manglinong
Attorneys for Defendant IDEAL LIVING MANAGEMENT LLC DBA IDEAL LIVING, LLC

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PROOF OF SERVICE

I declare as follows:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 15260 Ventura Blvd., 20th Floor, Sherman Oaks, California 91403. On October 9, 2023, I served the documents described as **NOTICE OF PETITION AND PETITION FOR ORDER COMPELLING ARBITRATION; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action as follows:

☐ **(BY U.S. MAIL)** I am personally and readily familiar with the business practice of Stubbs Alderton & Markiles, LLP for collection and processing of correspondence for mailing with the United States Parcel Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Los Angeles, California.

☐ **(BY OVERNIGHT DELIVERY)** I am personally and readily familiar with the business practice of Stubbs Alderton & Markiles, LLP for collection and processing of correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained by UPS for overnight delivery.

☐ **(BY PERSONAL DELIVERY)** By causing true copies of the document(s) listed above to be personally served at the address(es) set forth below on this date by First Legal Support Services.

☒ **(BY ELECTRONIC SERVICE)** By electronically mailing a true and correct copy through Stubbs Alderton & Markiles, LLP's electronic mail system to the email addresses set forth below.

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Attorneys for Plaintiff:
MYRA NISHIZAKI

Executed on October 9, 2023 at Los Angeles, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Ana Escamilla

Court Reservation Receipt

Reservation

Reservation ID: 786845417160	Status: RESERVED
Reservation Type: Motion re: (Petition for Order Compelling Arbitration)	Number of Motions: 1
Case Number: 23VECV03833	Case Title: MYRA NISHIZAKI vs IDEAL LIVING MANAGEMENT, LLC D/B/A IDEAL LIVING, et al.
Filing Party: Ideal Living Management, LLC d/b/a Ideal Living (Defendant)	Location: Van Nuys Courthouse East - Department W
Date/Time: December 12th 2023, 8:30AM	Confirmation Code: CR-XVKD2SWDTQZXRYPXD

Fees

Description	Fee	Qty	Amount
First Paper Fees (Unlimited Civil)	435.00	1	435.00
Credit Card Percentage Fee (2.75%)	11.96	1	11.96
TOTAL			**$446.96**

Payment

Amount: $446.96	Type: Visa
Account Number: XXXX3640	Authorization: 037643
Payment Date: 2023-09-29	

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