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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

CLEAN BATTERY RECYCLING, INC., et al., Plaintiffs and Appellants, v. AKKUSER OY et al., Defendants and Respondents.	A148862 (Alameda County Super. Ct. No. RG12645044)

Akkuser Oy (Akkuser),[1] a Finnish battery recycling company, acting through its chief executive officer Jarmo Pudas, entered into shareholders and licensing agreements with Lawrence Landman to start a California-based company called Clean Battery Recycling, Inc. (Clean Battery). Clean Battery would exploit Akkuser's battery recycling technology in North America and parts of Europe. Four years later, Akkuser contended the parties' agreements were no longer enforceable. Landman sued Akkuser and Pudas (Defendants) in a California court to enforce the agreements. The court compelled arbitration of the claims. Defendants successfully petitioned the court to confirm the arbitration award. Landman and Clean Battery (Plaintiffs) appealed, but the appeal was dismissed because no judgment had been entered. On remand, the trial court entered

[1] Briefing on appeal capitalizes the "s" in the company's name (AkkuSer), but the name frequently appears in arbitration and trial court papers without internal capitalization. We adopt the convention used in a prior appeal and omit the internal capitalization. (See *Clean Battery Recycling, Inc. v. Akkuser Oy* (Oct. 6, 2015, A142458) [nonpub. opn.] (*Clean Battery I*).)

judgment in favor of Defendants and denied Plaintiffs' motion to vacate the judgment. Plaintiffs now appeal from the judgment and the order denying their motion to vacate.

Plaintiffs argue the trial court erred in confirming the arbitration award because the arbitrator exceeded his powers by deciding claims not encompassed within the order compelling arbitration and applying Finnish law (Code Civ. Proc., §§ 1286.2, subd. (a)(4), 1286.6, subd. (b)),[2] and the award was "procured by corruption, fraud or other undue means" (§ 1286.2, subd. (a)(1)), specifically discovery abuse and false statements by Defendants. We reject these arguments. Plaintiffs further argue the trial court erred in entering judgment in favor of Defendants because of pending claims against Pudas and Akkuser. We agree that judgment should have not been entered in favor of Pudas because the arbitrator did not resolve Plaintiffs' claims against him. We disagree, however, that judgment could not be entered in favor of Akkuser due to pending compensation claims by Landman given that Landman did not plead such claims in his original complaint or move to add those claims following the arbitration.

We affirm the judgment in Akkuser's favor and reverse the judgment for Pudas. We also impose monetary sanctions on Landman and Clean Battery's counsel for unreasonable violations of the California Rules of Court.

I. BACKGROUND

A. *The Agreements*

In December 2008, Landman (doing business as The Interagan Technology Group) and Pudas (acting on behalf of Akkuser) signed two agreements related to the establishment of Clean Battery, a California corporation. A shareholders agreement provided that Akkuser and Landman would each own one-half of the company, and Pudas and Landman would share board and management positions. A license agreement granted Clean Battery "an exclusive license to use the Intellectual Property relating to [Akkuser's] Battery Technology" (Technology) in exchange for an annual royalty payment to Akkuser. The license applied only to the "Territory," which initially included

[2] Undesignated statutory references are to the Code of Civil Procedure.

the United States, Canada and Mexico, and expanded in November 2009 to include Denmark, Germany, France, Belgium, Holland, Luxemburg, the United Kingdom and Ireland. Both the shareholders and license agreements (Agreements) contained the following choice-of-law and arbitration provisions: "This Agreement shall be construed in accordance with the laws of Finland. [¶] . . . Any disputes relating to this Agreement shall be settled by Arbitration. Such arbitration shall be held in Finland, in English, and conducted by the Arbitration Institute of the Central Chamber of Commerce of Finland."

B. *Landman's Complaint*

In August 2012, Landman filed a pro se lawsuit in the Alameda County Superior Court against Defendants for breach of fiduciary duty, constructive fraud, actual fraud, deceit, and usurpation of corporate opportunity. He purported to bring a derivative claim on behalf of Clean Battery.

Landman alleged the license agreement provided that only Clean Battery, not Akkuser, had the right to exploit the Technology in the designated Territory. With Pudas's knowledge, Landman worked about 30 hours a week for four years (2008 to 2012) without receiving a salary. Akkuser, however, breached the Agreements by contracting with companies in the Territory to use the Technology without Clean Battery's involvement.

Landman allegedly met with officials of the Rechargeable Battery Recycling Associations (RBRA) of the United States and Canada, which collected rechargeable batteries in those countries, and two associated companies, Inmetco and Wistron, which received batteries for recycling. Landman's efforts to persuade RBRA to adopt the Technology were about to bear fruit when Akkuser breached the Agreements by directly negotiating with RBRA, Inmetco and Wistron over use of the Technology. Between 2009 and 2011, Landman engaged in discussions about the Technology with Gemeinsames Rücknahme System (GRS), a German battery collection association. In October 2011, however, GRS entered into a direct contract with Akkuser to recycle GRS's lithium-ion batteries using the Technology (German Agreement). Landman carried on similar discussions with Belgian, French, Dutch, Danish, British battery

collection associations, and Akkuser was attempting to make similar direct agreements with those associations. Akkuser also attempted to transfer the Technology to a Finnish corporation, Rec Alkaline, for use in the Territory.

Landman complained about the German Agreement, and Pudas responded on June 4, 2012, that "we cannot use the earlier contracts." Pudas proposed that Akkuser compensate Landman for his work in securing the German Agreement, but Landman rejected the offer because the proposed compensation was far less than half the profits Landman felt he was entitled to receive under the Agreements. In a June 29, 2012 letter, Akkuser wrote to Landman: "The [Agreements] have never been put to [*sic*] force. None of the parties have conducted [*sic*] according to the agreements. [¶] The agreements are invalid and therefore we see that all the parties are free from any terms and conditions of the agreements which means that none of the parties may have any demands due to the agreements. [Akkuser] is convinced that all the agreements are invalid and none of the parties may plead to the terms and conditions of the agreements. Interagan Technology Group or its representatives may not represent [Akkuser] or conduct as its' [*sic*] representative or on behalf of [Akkuser]." In a July 2, 2012 e-mail, Landman insisted the Agreements were valid and enforceable. He made a royalty payment to Akkuser on behalf of Clean Battery pursuant to the license agreement "although Akkuser has never asked for this payment and the License Agreement does not say when the payment should be made." Landman filed suit after Pudas rejected the royalty payment.

C. *Motion to Compel Arbitration*

Defendants moved to compel arbitration of Landman's action pursuant to the arbitration provisions of the Agreements, and to stay the action pending arbitration. In December 2012, the court (Hon. John M. True III) granted Defendants' motion over Landman's objections.

D. *Arbitration Award*

Akkuser submitted its own claims directly to the arbitrator in November 2012. Akkuser sought declaratory relief that the Agreements were no longer valid and binding,

declaratory relief that Akkuser did not breach the Agreements, and recovery of its legal costs in arbitration and the California action.

Preliminarily, the arbitrator found Pudas was not a party to the Agreements and dismissed Landman's claims against Pudas "without prejudice to the merits." Landman was allowed to represent Clean Battery in the arbitration proceeding. As stated in the February 2014 "Final Award," the arbitrator ruled the Agreements' choice-of-law provisions required Finnish law to "govern inter alia issues such as the interpretation of the Agreements, the potential invalidity of the Agreements, whether there has been a breach of any or all of the Agreements and, if so, issues of causality and damages, if any, following from such a breach. [¶] . . . [However,] [Clean Battery] is a California corporation. California law will thus govern inter alia any duties owed by the shareholders of [Clean Battery] and the consequences of any breach of such duties, in addition to what follows from the Shareholders' Agreement and as a matter of California company law." (Italics omitted.)

On the merits, the arbitrator found the license agreement granted Clean Battery a license to use the Technology directly, but not to sublicense the Technology to other users. In order for Clean Battery to make use of its license, therefore, it needed to acquire funding to set up and conduct a battery recycling business. Clean Battery had no funds of its own and neither Landman nor Akkuser intended to provide the funds, so third-party investors had to be identified. That is, third-party funding was "an actual, underlying pre-condition for any substantial use of the rights granted by [the Agreements]."[3] A substantial focus of Landman's efforts under the Agreements was to solicit such funding, which was ultimately unsuccessful. Over time, Landman's efforts "appear to have largely shifted from attracting investors to [Clean Battery] to promoting Akkuser's

[3] The arbitrator found "plausible" Pudas's testimony that he signed the Agreements at Landman's insistence so Landman could convince investors that Clean Battery could legally use the Technology if it went into business. That is, "the principal purpose of the Agreements seems to have been to attract such funding to [Clean Battery]."

business directly vis-à-vis interested third parties." In effect, the parties shifted to a different business model outside the scope of the Agreements that involved promoting Akkuser's Finnish operations directly to interested third parties in other countries. Landman's efforts in that regard did not fall within the scope of the Agreements, and compensation for those efforts was not governed by the Agreements.

At the time of Akkuser's June 29, 2012 letter, Clean Battery had been essentially dormant for several years and "[no] evidence of substance indicat[ed] that investors could be expected to provide funding to [Clean Battery] within the near future." The Agreements had therefore become ineffective and unenforceable under Finnish contract law, and the June 29, 2012 letter, the German Agreement, and Akkuser's other actions were not breaches of the Agreements or breaches of Akkuser's fiduciary duty as a Clean Battery shareholder under "California company law." Accordingly, Akkuser was not liable for damages to Landman under the Agreements. The arbitrator declared Akkuser the prevailing party and ordered Plaintiffs to pay Akkuser 50,000 euros in arbitration-related legal costs with interest plus 15,000 euros in arbitration fees.

E. *Petitions to Confirm, Vacate or Correct the Arbitration Award*

In May 2014, Defendants petitioned to confirm the arbitration award and enter judgment in conformity with the award. Plaintiffs opposed the petition, arguing the arbitration award had been "procured by corruption, fraud or other undue means" within the meaning of section 1286.2, subdivision (a)(1) because Defendants withheld evidence that Wistron was interested in investing Clean Battery in 2013 (during the arbitration proceeding) and falsely told the arbitrator Clean Battery had no prospect of obtaining third-party financing. Plaintiffs' also contended Landman's compensation claims against Akkuser were still pending. In two motions to vacate or correct the arbitration award,[4] Plaintiffs argued the arbitrator exceeded his powers (§ 1286.2, subd. (a)(4)) by deciding

[4] Previous motions filed by Plaintiffs were denied without prejudice, on procedural grounds, by the court (Judge True) in May 2014. Those motions do not appear to be in the appellate record.

Akkuser's claims against Plaintiffs and applying Finnish law to certain issues. Plaintiffs further argued their claims against Pudas were still pending in the trial court.

In June 2014, the court (Judge True) granted Defendants' motion to confirm the award and denied Plaintiffs' motions. The court denied Defendants' request for sanctions against Plaintiffs.

F. *First Appeal*

In July 2014, Landman appealed from the December 2012 order compelling arbitration and all three June 2014 orders. In October 2015, this court dismissed the appeal because none of the orders were immediately appealable and no final judgment had been entered. (*Clean Battery I, supra,* A142458.)

G. *Proceedings on Remand*

In April 2016, the court entered judgment "for [Akkuser and Pudas] in conformity with the arbitration award. [Akkuser and Pudas] shall jointly and severally recover from [Plaintiffs] the sum of EUR 50,000.00 together with interest . . . ." The arbitration award was attached to the judgment.

In May 2016, Plaintiffs filed a motion to vacate the judgment.[5] They renewed arguments that Akkuser committed fraud during the arbitration by withholding discovery and making false statements, and further contended Defendants lied in earlier court filings about having done these things and deliberately filed responsive papers late in order to hide their falsehoods. Plaintiffs asked the court to hold an evidentiary hearing "requiring Akkuser to confirm that . . . it fully complied with the arbitrator's document production order." Plaintiffs also renewed their arguments that the arbitrator exceeded his authority by ruling on Akkuser's claims and applying Finnish law; claims against Pudas were still pending; and Landman's claim for compensation was still pending.

[5] Prior to entry of judgment, Plaintiffs filed two sets of three motions raising similar issues. After the motions were fully briefed, the trial court (Hon. Stephen Pulido) dismissed them as untimely motions for reconsideration of the order compelling arbitration and as a premature motion to vacate the judgment.

In June 2016, the court (Judge Pulido) denied Plaintiffs' motion, ruling it was essentially a motion to reconsider the June 2014 orders with no showing of new facts, circumstances or law. Plaintiffs appeal from the judgment and the postjudgment orders denying their motions to vacate the judgment.

II. DISCUSSION

A. *Preliminary Matters*

1. *Scope of Appeal*

Plaintiffs' appeal from the judgment allows them to challenge all prejudgment orders not otherwise immediately appealable. (§ 906.) These prejudgment orders include the 2014 orders confirming the arbitration award and denying Plaintiffs' motions to vacate or correct the award. (See § 1294; *Mid-Wilshire Associates v. O'Leary* (1992) 7 Cal.App.4th 1450, 1454.) Plaintiffs also appeal from the trial court's June 28, 2016 postjudgment order denying their motions to vacate the judgment. Whether the June 28, 2016 denial order was separately appealable is an issue currently under review in the California Supreme Court. (*Ryan v. Rosenfeld*, review granted Apr. 27, 2016, S232582.) Assuming the order was separately appealable, it was timely appealed. (Cal. Rules of Court, rule 8.104(a)(1)(B).)[6] If the order was not separately appealable, Plaintiffs' arguments may be considered as attacks on the judgment. (See § 906.)

2. *Clean Battery's Status as a Plaintiff and Appellant*

Landman's pro se complaint purported to raise claims on behalf of Clean Battery, even though a corporation must be represented by counsel in California courts. (*Vann v. Shilleh* (1975) 54 Cal.App.3d 192, 199.) Landman also filed a pro se brief, purportedly on behalf of himself and Clean Battery, opposing Defendants' motion to compel arbitration. The issue of Clean Battery's status as an unrepresented party apparently was not raised during the motion to compel proceedings, and the trial court impliedly ordered arbitration of both Landman's and Clean Battery's claims against Defendants. The

[6] All rule references are to the California Rules of Court.

arbitrator expressly ruled that Landman could represent Clean Battery during the arbitration proceeding.

Following arbitration, Plaintiffs' trial court papers listed an attorney (Neil Kripalani, Clean Battery's counsel on appeal) as Clean Battery's counsel and identified Landman as a pro se litigant, but only Landman signed the briefs.[7] Defendants noted that Kripalani had not signed Plaintiffs' papers and argued Plaintiffs should be denied relief because they violated court rules by purporting to have Landman represent Clean Battery. Plaintiffs responded that Defendants cited no court rule requiring each attorney or pro se litigant to sign court papers; argued section 128.7, subdivision (a) requires only *one* unrepresented party or attorney to sign court papers; claimed compliance with rule 2.111(1), which requires parties' attorneys to be identified on the cover page of trial court papers; and noted a substitution of attorney form was filed identifying Kripalani as Clean Battery's new counsel. The trial court apparently did not rule on the issue of whether Clean Battery was properly represented in the proceedings after arbitration.

Plaintiffs' notice of appeal was signed by both Landman and Kripalani. In Plaintiffs' opening and reply appellate briefs, Kripalani is listed as Clean Battery's counsel on the cover page, but his name is not included in the signature line at the conclusion of the briefs and the briefs are not signed. The rules of court, however, expressly provide that appellate briefs need not be signed. (Rule 8.204(b)(9).) We find no procedural bar to Clean Battery's participation in the appeal.

B. *Confirmation of the Arbitration Award*

We first consider Plaintiffs' challenges to the June 2014 orders confirming the arbitration award and denying their motions to vacate or correct the award. We review the orders based on the record before the trial court.

"It is well settled that the scope of judicial review of arbitration awards is extremely narrow. (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1 . . . ; *Advanced*

[7] As noted *ante*, Landman filed prior motions that are not in the appellate record, which the court denied in part because Landman purported to represent Clean Battery even though he was not a licensed attorney.

Micro Devices, Inc. v. Intel Corp. (1994) 9 Cal.4th 362.) Courts may not review either the merits of the controversy or the sufficiency of the evidence supporting the award. [Citation.] Furthermore, with limited exceptions, '. . . an arbitrator's decision is not generally reviewable for errors of fact or law, whether or not such error appears on the face of the award and causes substantial injustice to the parties.' ([*Moncharsh,* at p. 6]; see [*id.* at] pp. 25–28.) These rules 'vindicate[] the intentions of the parties that the award be final' (*id.* at p. 11) and support the ' "strong public policy in favor of arbitration as a speedy and relatively inexpensive means of dispute resolution." ' (*Id.* at p. 9, quoting *Ericksen, Arbuthnot, McCarthy, Kearney & Walsh, Inc. v. 100 Oak Street* (1983) 35 Cal.3d 312, 322.) [¶] Consistent with this policy, the Legislature has specifically set forth, in . . . section 1286.2, subdivisions [(a)(1) through (a)(6)], the *only* grounds which will justify vacating an arbitration award." (*California Faculty Assn. v. Superior Court* (1998) 63 Cal.App.4th 935, 943–944.)

As relevant here, permissible grounds for vacating an arbitration award include "The award was procured by corruption, fraud or other undue means. . . . [¶] . . . [¶] [and] The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted." (§ 1286.2, subd. (a)(1), (4).) If, however, "[t]he arbitrators exceeded their powers but the award may be corrected without affecting the merits of the decision upon the controversy submitted," the trial court must "correct the award and confirm it as corrected." (§ 1286.6, subd. (b).)

1. *Did the Arbitrator Exceed his Powers in Ruling on Akkuser's Claims?*

Plaintiffs argue the arbitrator exceeded his authority by deciding Akkuser's affirmative claims because the trial court never compelled arbitration of those claims. Defendants respond to only part of the argument on the merits. The trial court properly rejected Plaintiffs' argument.

"In determining whether private arbitrators have exceeded their powers, . . . this court conducts a de novo review, independently of the trial court, of the question whether the arbitrator exceeded the authority granted him by the parties' agreement to arbitrate.

[Citations.]' [Citations.] In undertaking our review, however, 'we must draw every reasonable inference to support the award.' " (*Ajida Technologies, Inc. v. Roos Instruments, Inc.* (2001) 87 Cal.App.4th 534, 541.) "[C]ourts must give 'substantial deference to the arbitrators' own assessments of their contractual authority . . . .' [Citation.] A deferential standard is in keeping with the general rule of arbitral finality and ensures that judicial intervention in the process is minimized." (*California Faculty Assn. v. Superior Court, supra*, 63 Cal.App.4th at p. 944.)

Plaintiffs' argument is premised on the erroneous assumption that a trial court order compelling arbitration is a prerequisite to an arbitration proceeding. In fact, such an order is necessary only if the parties do not voluntarily comply with the arbitration agreement. (Knight et al., Cal. Practice Guide: Alternative Dispute Resolution (The Rutter Group 2015) ¶ 5:290, p. 5-274 (Knight).) After Plaintiffs refused to voluntarily submit their claims to arbitration, Defendants properly responded by filing a motion to compel in Plaintiffs' court action. (Knight, *supra*, ¶ 5:292, p. 5-275; § 1281.2.) The only issue before the trial court on that motion was whether *Plaintiffs*' *claims* should be ordered to arbitration. Meanwhile, Akkuser presented its own claims directly to the arbitrator pursuant to what appear to have been appropriate procedures in the arbitral forum. (See Knight, *supra*, ¶¶ 5.379-5.380, pp. 5-337 to 5-338.) During arbitration, Plaintiffs unsuccessfully contested the arbitrator's jurisdiction over Akkuser's claims and then voluntarily participated in arbitration of those claims. Because Plaintiffs voluntarily complied with arbitration of Akkuser's claims, Akkuser had no reason to seek a court order compelling arbitration of its claims.

After issuance of the arbitration award, Plaintiffs moved to vacate the award on the ground the arbitrator exceeded his powers in resolving Akkuser's claims. While a proper method to challenge the arbitrator's jurisdiction over the claims (see Knight, *supra*, ¶ 5:467, p. 5-437; §§ 1286.2, subd. (a)(4), 1286.6, subd. (b) [court can vacate or correct arbitration award on ground that arbitrator exceeded his powers]; *National Union Fire Ins. Co. v. Stites Prof. Law Corp.* (1991) 235 Cal.App.3d 1718, 1724 [arbitrator

exceeds power if he decides claim that was not subject to arbitration]), the trial court correctly rejected Plaintiffs' argument on the merits.

Courts defer to an arbitrator's assessment of his contractual authority. (See Knight, *supra*, ¶ 5:473.2, p. 5-441; *California Faculty Assn. v. Superior Court, supra*, 63 Cal.App.4th at p. 944; *Greenspan v. LADT, LLC* (2010) 185 Cal.App.4th 1413, 1437.) Here, the parties had agreed to arbitrate "[a]ny disputes relating to" the Agreements. The issue of whether the parties were still bound by the Agreements obviously was an issue related to the Agreements. The issue of who had the right to use the Technology in the Territory, which Plaintiffs characterize as an issue of how to distribute Clean Battery's assets upon dissolution, was also an issue related to the Agreements. Once the arbitrator found third-party funding for Clean Battery was not available—and the Agreements were therefore no longer enforceable (a finding and legal conclusion not subject to judicial review)—Plaintiffs no longer had any claim to use of the Technology, which necessarily reverted to Akkuser. In short, Akkuser's claims involved enforceability of the Agreements, and the arbitrator acted well within his discretion in ruling the claims fell within the scope of the arbitration provisions. Even assuming the arbitrability of Akkuser's claims is an issue we must decide without deference to the arbitrator, as Plaintiffs argue (see *In re Van Dusen* (9th Cir. 2011) 654 F.3d 838, 843), we easily conclude the issues were subject to arbitration for the reasons just stated.

Plaintiffs argue the Corporations Code requires a court, rather than an arbitrator, to decide whether a corporation has abandoned its business and, if so, how to distribute the corporate assets. The argument assumes that the arbitrator *dissolved* Clean Battery and allocated its assets. He did not. The arbitrator determined that the only ostensible asset to which Clean Battery had any claim—the license agreement—was no longer valid and "no longer in force and effect." The award had no effect on the continued legal existence or any other operation of Clean Battery. And, contrary to Plaintiffs' suggestion, no statutory right is or was at issue here. (See *Board of Education v. Round Valley Teachers Assn.* (1996) 13 Cal.4th 269, 276 [arbitration award can be set aside under the "exceeds powers" provision only if "granting finality to an award would be inconsistent with a

party's *statutory rights*" (italics added)]; see also *id.* at pp. 287–288 [labor arbitrator exceeded his powers by deciding an issue statutorily defined as outside the scope of collective bargaining].)

The trial court did not err in rejecting Plaintiffs' argument that the arbitrator exceeded his powers by deciding Akkuser's claims.

2. *Did the Arbitrator Exceed his Powers in Applying Finnish Law?*

Plaintiffs argue the arbitrator erred by applying Finnish law to some issues in the arbitration. Defendants do not respond to this argument on the merits. We conclude the trial court did not err in rejecting this ground for vacating or correcting the arbitration award.

As a preliminary matter, Plaintiffs never specifically identify the issues on which the arbitrator allegedly misapplied Finnish law. The arbitrator ruled that Finnish law would govern certain issues and California law would govern others. Plaintiffs do not argue he drew that line incorrectly. For this reason alone, Plaintiffs' argument fails.

In any event, Plaintiffs' appellate arguments are unpersuasive. They erroneously argue the order compelling arbitration implicitly required the arbitrator to apply California rather than Finnish law on certain issues. In opposition to the motion to compel arbitration, Plaintiffs argued the Agreements' choice-of-law provisions were unenforceable because Finnish law conflicted with California law and public policy on the availability of punitive damages and tort liability. The trial court ruled: "Plaintiffs' argument that the Court should not compel arbitration because the arbitrator in Finland lacks authority to award punitive damages is rejected. Plaintiffs have not established that they will not be permitted to pray for an award of punitive damages in arbitration." Plaintiffs suggest this ruling "agreed" with their choice-of-law argument. However, a ruling that Plaintiffs failed to prove their point was hardly a ruling that their argument was correct.

Plaintiffs also argue the choice-of-law issue cannot be delegated to the arbitrator and must be decided by the trial court. Cases cited by Plaintiffs in support of this contention are inapposite; all deal with the issue of whether a choice-of-law provision

should be applied, pursuant to *Nedlloyd Lines B.V. v. Superior Court* (1992) 3 Cal.4th 459, to the *threshold question* of whether an arbitration provision is enforceable. (See, e.g., *Hoffman v. Citibank* (*South Dakota*), *N.A.* (9th Cir. 2008) 546 F.3d 1078, 1083–1085 [remanded for trial court reconsideration of whether South Dakota law should be applied to enforce an arbitration provision barring class actions in violation of California public policy]; *Klussman v. Cross Country Bank* (2005) 134 Cal.App.4th 1283, 1300 [applying *Nedlloyd* analysis to affirm application of California law to deny enforcement of waiver of right to class action arbitration].) Plaintiffs do not challenge application of the choice-of-law provisions to the issue of whether their claims or Akkuser's claims were subject to arbitration—they challenge the arbitrator's application of the choice-of-law provisions to issues we have already concluded *were* subject to arbitration. Plaintiffs cite no authority that the arbitrator's application of a choice-of-law provision to the merits of claims that were within his jurisdiction is subject to judicial review.

3. *Was the Arbitration Award Procured by Fraud?*

Plaintiffs argue the court should not have confirmed the arbitration award because it was obtained by "corruption, fraud or other undue means" (hereafter fraud). (§ 1286.2, subd. (a)(1).) Defendants do not respond to the argument on the merits. We are not persuaded by Plaintiffs' argument.

A party seeking to vacate an arbitration award pursuant to section 1286.2, subdivision (a)(1) must satisfy a three-part test: " 'First, the movant must establish the fraud by clear and convincing evidence. [Citations.] Second, the fraud must not have been discoverable upon the exercise of due diligence prior to or during the arbitration. [Citations.] Third, the person seeking to vacate the award must demonstrate that the fraud materially related to an issue in the arbitration.' " (*Pour Le Bebe, Inc. v. Guess? Inc.* (2003) 112 Cal.App.4th 810, 830 (*Pour Le Bebe*).) We review a trial court's resolution of factual issues such as these for substantial evidence. (*Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 632.)

In opposition to Defendants' petition to confirm the arbitration award, Plaintiffs made the following allegations of fraud: Akkuser falsely told the arbitrator Landman

never found companies interested in investing in Clean Battery, and Akkuser withheld evidence that Wistron expressed interest in investing. We separately consider Plaintiffs' allegations of false statements and discovery abuse.

a. *Alleged Discovery Abuse*

We assume for purposes of argument the discovery abuse alleged here (willful withholding of documents responsive to arbitrator-ordered discovery) is a form of fraud covered by section 1286.2, subdivision (a). (See *Pour Le Bebe*, *supra*, 112 Cal.App.4th at pp. 834, 837 [suggesting discovery abuse may constitute "undue means," but not vacating or correcting an arbitration award that was not clearly affected by the alleged discovery abuse].) Plaintiffs have not established such discovery abuse occurred.

Plaintiffs argued Akkuser withheld evidence that Wistron "was interested in using [Clean Battery's] intellectual property to build a battery recycling plant in Texas." They produced an e-mail Landman received in April 2014, which had forwarded an e-mail Wistron sent to Akkuser in June 2013. In the 2013 e-mail, Wistron wrote: "Attached is the latest estimated budget. I look forward to exact equipment pricing from you, as well as additional information/documentation regarding this technology. Also, please re-send the MOU . . . which has been updated to include our discussions over the past few months. . . . [¶] As far as the know-how fee and royalties are concerned, we are beyond maxed out. Between the initial investment on our side plus the know-how fee, the [return on investment] is not very promising. In fact, this project may not get approved from our Headquarters due to [the return on investment]. In addition to the above, I am not very comfortable with the lack of information, documentation, official approved patent, drawings, equipment pricing, etc. over the past year. We should be a lot further along and if Akkuser is really ready to sell this technology know-how it should be easy to supply such information." Attached to the e-mail was a budget for a "Li-ion battery Recycling Business" that included a "know how fee" of 200,000 euros and royalty payments to Akkuser. In the 2014 cover e-mail to Landman, Wistron wrote, "[N]eedless to say we never really got anywhere from here other than Akkuser disagreeing with every cost/expense."

In opposition to the petition to confirm the arbitration award, Plaintiffs conceded that the arbitrator did *not* order Defendants to produce "[d]ocuments regarding discussions concerning the possible construction of a rechargeable battery recycling plant which will recycle batteries [from] Mexico, the United States or Canada, including, but not limited to, discussions with Wistron," as Plaintiffs requested. Obviously, there was no discovery abuse if Defendants were never ordered to produce the disputed document. The trial court correctly rejected Plaintiffs' argument.

Even if the document was wrongfully withheld, Plaintiffs did not show that with due diligence they could not have obtained the June 2013 Wistron e-mail during the arbitration proceeding, as required under the three-part *Pour Le Bebe* test. (See *Pour Le Bebe, supra,* 112 Cal.App.4th at p. 830.) From the face of the e-mail, it appears Wistron was willing to provide the e-mail and Plaintiffs already suspected during the arbitration that Akkuser was negotiating with Wistron.

Finally, Plaintiffs have not shown that withholding the document materially affected the arbitration proceedings. (See *Pour Le Bebe, supra,* 112 Cal.App.4th at p. 830.) Plaintiffs argued in the trial court the document demonstrated that "with Wistron's funding and expertise—which Wistron had offered—[Clean Battery] could have operated a plant in Texas." In fact, the June 2013 e-mail did not mention Clean Battery; expressly doubted that the proposed recycling plant would be profitable or that parties would be able to make a deal; accompanied a 2014 e-mail that confirmed the parties were never able to make a deal; and was sent after Akkuser's 2012 letter contending Clean Battery abandoned the Agreements.

b. *Alleged False Statements*

Plaintiffs' second fraud argument in opposition to confirmation of the arbitration award was that Defendants made false statements to the arbitrator, which caused the arbitrator to rule there was no evidence Clean Battery could obtain third-party funding in the near future. Plaintiffs renew this argument on appeal.

Plaintiffs cite a sworn witness statement that Pudas submitted to the arbitrator stating, "[I]t became clear that [Clean Battery] would not get financing and starting the

business was totally impossible." Plaintiffs argue the June 2013 Wistron e-mail proves this statement was false. We disagree. For the reasons stated above, the e-mail does not establish that Wistron would have provided financing so that Clean Battery could start operations, or that it ever even offered to do so. In any event, Pudas's statement appears to be more of an opinion than a factual representation, reflecting his judgment about whether Clean Battery had a reasonable prospect of obtaining third-party funding at a particular point in time. In fact, when read in context, the quoted language appears to refer to Pudas's judgment about Clean Battery's prospects in 2011 to 2012, not one year later in 2013 when the Wistron e-mail was sent.

A second allegedly false statement was made by Akkuser's attorney. Plaintiffs write that the attorney told the arbitrator "in her sworn statement . . . that Akkuser had no documents relating to Wistron." Plaintiffs, however, cite an *unsworn* statement by the attorney responding to Plaintiffs' claim that Akkuser had not fully complied with discovery. The attorney wrote in May 2013, "Contrary to allegations, Akkuser has diligently provided the requested documents. [¶] The only agreements Akkuser has made are the [German Agreement] and the Purchase Agreement with Akkuser and Rec Alkaline Oy. Akkuser can't provide any other documents because they don't exist."

Preliminarily, we note Plaintiffs did not clearly make this argument in opposition to the petition to confirm. Although they wrote, "Akkuser . . . said it was not negotiating with anyone, and this included Wistron. It said such negotiations were not possible," they provided no record citation or evidence in support of the claim.

Even if we consider the argument on the merits, it fails. Akkuser's attorney clearly stated the "only agreements Akkuser has made" were with the German association and Rec Alkaline. She did not state that no other *negotiations* were underway. As noted *ante*, the arbitrator refused to order Akkuser to respond to Plaintiffs' separate request for documents relating to mere "*discussions* concerning the *possible* construction of a rechargeable battery recycling plant . . . [including] discussions with Wistron." (Italics added.) The attorney's statement at worst reflects a reasonable difference in opinion

about the scope of the discovery orders. Plaintiffs have not shown Akkuser's attorney made false statements to the arbitrator.

In sum, we affirm the trial court's order confirming the arbitration award.

C. *Motion to Vacate Judgment*

Plaintiffs renewed their fraud argument in the motion to vacate judgment, and further argued the trial court erred in entering judgment in favor of Pudas because his claims were not resolved in the arbitration proceeding, and erred in entering judgment in favor of Akkuser because the arbitrator expressly did not resolve Plaintiffs' claims for compensation for Landman's labor. Defendants respond on the merits only as to the question of the judgment for Pudas. We again find Plaintiffs' fraud claim meritless, but find at least some merit in their other two arguments.

1. *Fraud*

In support of their motion to vacate the judgment, Plaintiffs raised arguments relative to their fraud claims that did not appear in their opposition to Defendants' motion to confirm the arbitration award.

In opposition to the petition to confirm, Plaintiffs argued the arbitral forum provided them with insufficient discovery to demonstrate that Clean Battery could have operated a plant in Texas with Winstron's funding and expertise. In their motion to vacate the judgment, Plaintiffs argued the arbitrator ordered Akkuser to produce "[d]ocuments relating to the transfer of any intellectual property rights relating to the recycling of batteries in Germany, Belgium, France, Luxembourg, Holland, the United Kingdom, Ireland, Mexico, the United States or Canada from Akkuser to any other company or entity," and Defendants' failed to produce the Wistron e-mail, which would have been responsive to this order. This argument was forfeited because Plaintiffs did not raise it in their opposition to the petition to confirm and it was not based on new facts, circumstances or law. (See § 1008, subd. (a); *Mink v. Superior Court* (1992) 2 Cal.App.4th 1338, 1324 [" 'the party seeking reconsideration must provide not only new evidence but also a satisfactory explanation for the failure to produce that evidence at an earlier time' "].)

Plaintiffs argue section 1008 should not have barred the new argument in their motion to vacate because they did not have a fair opportunity to respond to Defendants' denials of discovery abuse in the earlier proceedings due to Defendants' deliberate tactic of filing responsive papers late. This contention also fails. Because Plaintiffs first raised the fraud argument in *opposition* to Defendants' petition to confirm, they would not have had an opportunity to respond to Defendants' reply brief regardless of when that reply was filed. That is, Plaintiffs' failure to identify that specific discovery order earlier was due to their own oversight, not any action on the part of Defendants. In any event, the new argument was unpersuasive. The order to produce documents "relating to the transfer of any intellectual property rights" was ambiguous regarding whether it covered documents relating to negotiations regarding a possible transfer of rights or only documents relating to actual deals to transfer those rights. Akkuser's failure to produce the Wistron e-mail in response to this order therefore was not the sort of " 'immoral if not illegal' " behavior encompassed by the fraud exception of section 1286.2, subdivision (a)(1). (*Pour Le Bebe, supra,* 112 Cal.App.4th at p. 831.)

In their motion to vacate, Plaintiffs also raised an argument that Defendants made false statements to the court in their responsive papers in the proceedings on whether to confirm, vacate or correct the arbitration award. Section 1286.2, subdivision (a)(1), however, only authorizes a court to vacate or correct an award when fraud "procure[s]" the award, which necessarily excludes post-award conduct. In any event, Plaintiffs' evidence of false statements was unpersuasive. Plaintiffs suggested Defendants falsely claimed they produced the Wistron e-mail during arbitration. As supporting evidence, they cited Defendants' statements that "Akkuser did not hide information from the arbitrator regarding negotiations with Wistron"; "Akkuser complied with the order to produce information in this regard"; Akkuser was ordered to produce documents "relating to the transfer of any intellectual property rights"; and Akkuser "was complicit [*sic*] with this request." Significantly, Plaintiffs fail to quote Defendants' statement from the same general passage that the Wistron e-mail "did not constitute an offer." The clear implication of Defendants' statements, when considered in their entirety, was that the

Wistron e-mail was not responsive to the "relating to the transfer" discovery request and that Akkuser otherwise fully complied with that discovery request. While Plaintiffs might well dispute whether the Wistron e-mail was, or was not, responsive, these statements were not demonstrably false representations of fact, and they certainly did not excuse Plaintiffs' failure to make their full argument in their original opposition to the petition to confirm.

The trial court did not err in rejecting Plaintiffs' renewed fraud argument in their motion to vacate the judgment.

2. *Judgment in Favor of Pudas*

Plaintiffs argue the claims against Pudas, which were dismissed by the arbitrator without prejudice, "must proceed in the normal court system." We interpret this as an argument that the court erred in denying their motion to vacate the judgment entered in favor of Pudas. Defendants provide a muddled response to the argument on the merits. We agree with Plaintiffs.

As noted *ante*, the arbitrator found that Pudas was not a party to the Agreements which were the subject of arbitration. In other words, although the claims were ordered to arbitration by the court, the arbitrator found claims against Pudas were not arbitrable and dismissed those claims "without prejudice to the merits." We reiterate that courts are required to give substantial deference to an arbitrator's own assessments of his or her contractual authority. (*California Faculty Assn. v. Superior Court, supra,* 63 Cal.App.4th at p. 944.)

In the proceedings on whether to confirm, vacate or correct the arbitration award, Plaintiffs argued the claims against Pudas remained pending. The court confirmed the award without entering judgment. On remand from dismissal of the prior appeal, Plaintiffs again argued the claims against Pudas remained pending in the trial court. The court denied Plaintiffs' first two sets of motions as premature motions to vacate or improper motions for reconsideration, and then entered judgment "for . . . Pudas in conformity with the arbitration award. . . . Pudas shall jointly and severally recover from [Plaintiffs] the sum of EUR 50,000.00 together with interest . . . ." Plaintiffs again

argued in their motion to vacate the judgment that the claims against Pudas remained pending. The court denied their motion.

Section 1287.4 provides: "If an award is confirmed, judgment shall be entered in conformity therewith." Here, the judgment *recited* that it was entered "in conformity with the arbitration award," but it was not *in fact* entered in conformity with the award. The judgment resolved Plaintiffs' claims against Pudas even though those claims had not been resolved in the arbitration award.

Defendants argue that "in signing the [Agreements] . . . , the parties agreed to comply with the findings of the [arbitration tribunal] by consenting to its exclusive subject matter jurisdiction to decide any disputes related to the [Agreements], including the dispute as to whether and to what extent an arbitration clause applied. [¶] [Plaintiffs] argue that since the arbitrator dismissed [Pudas] from the arbitration the case against Pudas must proceed through the trial court system. . . . [¶] . . . [¶] . . . [The arbitrator] found that Mr. Pudas was not a party to any of the relevant agreements. Consequently, the [arbitrator's] jurisdiction in this matter did not encompass any claims made against Mr. Pudas. . . . [¶] . . . [¶] . . . [Plaintiffs] cannot now challenge the exclusive jurisdiction of the tribunal and what was decided and ruled upon by the trial court upon such arbitration." Defendants seem to be arguing that because Landman agreed to arbitrate any disputes relating to the Agreements, the arbitrator had *exclusive* jurisdiction over *all* such disputes, leaving the superior court with no jurisdiction over *any* claims, even though the arbitrator dismissed the claims against Pudas as outside his jurisdiction. We reject this circular argument. If claims were not within the scope of the arbitration provision, the trial court's jurisdiction over those claims remained, assuming the court otherwise had subject matter and personal jurisdiction.

Plaintiffs do not appear to have brought the proper motion to correct the error in the judgment. Plaintiffs' "motion to vacate the judgment" was apparently based on

section 663,[8] which provides that a judgment "may, upon motion of the party aggrieved, be set aside and vacated by the same court, *and another and different judgment entered*" for specified reasons. (Italics added.) Plaintiffs did not ask the court to enter a new and different judgment; they asked the court to vacate the judgment and allow Plaintiffs to litigate their unresolved claims against Defendants in court.[9] We need not resolve this procedural issue, however, because Plaintiffs appealed directly from the judgment and we may correct the trial court's error by simply reversing the judgment as to Pudas rather than reversing the court's order denying Plaintiffs' motion to vacate.[10]

3. *Judgment in Favor of Akkuser*

As a preliminary matter, we note Plaintiffs argue the "currently entered 'judgment' is not final" in part because Landman's compensation claims remain unresolved. Defendants correctly note the April 2016 judgment *was* a final judgment by its express terms because it purported to finally resolve all of the claims in the action. Plaintiffs' true argument is that the trial court *erred* in entering a final judgment, not that a final

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[8] In their "motion to vacate judgment," Plaintiffs did not explicitly state the legal basis for their motion. In earlier motions to vacate (denied as premature), however, they cited sections 663 and 187. Defendants consistently interpreted Plaintiffs' motions to vacate the judgment as based on section 663, and Plaintiffs did not dispute that interpretation in their reply briefs.

[9] A heading on page 10 of Plaintiffs' motion to vacate stated: "New Judgment or—if Defendant's Attorney files a Declaration—an Evidentiary Hearing." In the text following the heading, however, Plaintiffs wrote that if defense counsel did not file a declaration (on the issue of fraud under § 1286.2, subd. (a)) "this court ***MUST*** conclude that Akkuser procured the arbitration award by means of 'corruption, fraud, or other undue means' in violation of . . . § 1286.2(a)(1)." Such a conclusion would cause the court to vacate the arbitration award, not enter a new and different judgment as suggested by the heading.

We also note that at oral argument both parties expressly disclaimed any challenge to the original order compelling arbitration as to both Akkuser and Pudas. Landman argues that Pudas, by seeking dismissal before the arbitrator, has forfeited any right to arbitrate. That issue was not raised in the briefs and is not properly before us.

[10] We express no opinion on the collateral effect, if any, of the portion of the judgment we affirm.

judgment has yet to be entered.[11] If final judgment had not been entered, we would have no jurisdiction over the appeal. (See *Rubin v. Western Mutual Ins. Co.* (1999) 71 Cal.App.4th 1539, 1544, 1548.) Because final judgment *has* been entered, we have jurisdiction to consider Plaintiffs' argument that the judgment was entered *erroneously*.

Plaintiffs correctly note the issue of Landman's compensation for certain work he performed for Akkuser was not resolved in the arbitration proceeding. The arbitrator ruled that the parties abandoned their plan to obtain financing for Clean Battery to carry out a battery recycling business (the plan that was governed by the Agreements), and "the efforts of Mr. Landman shifted . . . to promoting Akkuser's business directly vis-à-vis interested third parties"—a business model not governed by the Agreements and thus outside the scope of arbitration. The arbitrator commented: "The fact that the parties may have failed to regulate how Mr. Landman would be compensated for his efforts in promoting Akkuser's business in Finland does not make the Agreements applicable thereto. That compensation, if any (beyond what has already been paid), has thus been and remains a matter separate from the Agreements."

Entry of judgment for Akkuser would be precluded only if a claim for compensation was pending and unresolved in the trial court action. The original complaint did not state such a claim. Plaintiffs point to their fraud claims (constructive fraud, actual fraud, and deceit), but those claims alleged as relevant here: "If, as Akkuser alleges, it turns out that [the Agreements] never came into force, then, by first making Landman believe [they] would come into force, and then by waiting 3½ years to so inform Landman that [they] had not come into force, Akkuser lead Landman to believe that the Agreement[s] would come into force, had come into force, and remained in force. Akkuser did this to induce Landman to work with the belief that Landman would be

[11] Plaintiffs argued in opposition to Defendants' petition to confirm the arbitration award that the "court cannot now enter final judgment" because of Landman's unresolved compensation claims. Defendants did not respond to the argument in their reply brief on the petition to confirm. Defendants cannot now complain of unfair surprise by having to face the argument on appeal due to our characterization of Landman's appellate argument.

compensated pursuant to the Agreement[s]." As so pled, the claim is inconsistent with and thus precluded by the arbitration award. (See *Gordon v. G.R.O.U.P., Inc.* (1996) 49 Cal.App.4th 998, 1010 [arbitration awards have collateral estoppel effect].) The arbitrator ruled that Landman understood or ought to have understood when he signed the Agreements that he needed to find third-party financing in order to fulfill the Agreements' purpose and the Agreements would be unenforceable absent such financing. The arbitrator found the latter scenario came to pass: Landman failed to find third-party financing and the Agreements became unenforceable. These findings rule out Plaintiffs' allegations that Akkuser deceptively or fraudulently led Landman to believe the Agreements would come into force.

Landman made no attempt to amend his complaint following arbitration to add a claim seeking compensation for work performed for Akkuser outside the scope of the Agreements. Therefore, we affirm the judgment for Akkuser. Whether Landman can pursue a compensation claim against Akkuser in a separate proceeding is an issue beyond the scope of this appeal, and one we need not address.

D. *Sanctions*

On our own motion, we ordered Plaintiffs to show cause why they should not be sanctioned for unreasonable violations of court rules in their appellate briefs. (Rule 8.276(a)(4).) Having considered their response, we now sanction Landman and Clean Battery's counsel for the following reasons.

In our opinion in the prior appeal, we admonished Plaintiffs for court rule violations in their appellate appendix and briefs. (Rules 8.124(d)(1), 8.204.) Plaintiffs did not arrange the appendix contents in chronological order (rules 8.124(d)(1), 8.144(a)(1)(C)); the appendix did not include chronological and alphabetical indices (rule 8.144(b)(1)); pages of the appendix were not consecutively numbered (rule 8.144(a)(1)(D)); and their briefs did not support references to the record with appropriate citations (rule 8.204(a)(1)(C)). We described how the violations imposed an unreasonable burden on the court and noted the appendix and briefs could have been stricken as a sanction pursuant to rule 8.124(g). Although we declined to do so, we

advised Plaintiffs, "Should further appellate proceedings arise from the action below, however, we will insist on strict compliance with the appellate rules." (*Clean Battery I, supra*, A142458.)[12] Landman represented himself and Kripalani represented Clean Battery in the prior appeal, as here.

In the current appeal, Plaintiffs have corrected many, but not all, of their prior errors. The appendix is in chronological order and includes both chronological and alphabetical indices. The pages are consecutively numbered within each volume, although each volume is separately paginated (each beginning with page one). Plaintiffs' briefs include record citations with appendix volume and page numbers. Nevertheless, the current appellate briefs are poorly organized at best, and required the court itself to conduct a thorough independent review of the voluminous record to develop a coherent picture of the procedural posture of the case. Briefs must "[s]upport *any* reference to a matter in the record by a citation." (Rule 8.204(a)(1)(C), italics added.) Plaintiffs frequently failed to do so.[13] The briefs also fail to "[s]tate each point under a separate heading or subheading summarizing the point." (Rule 8.204(a)(1)(B).) Section III of the opening brief is entitled, "The court should have granted appellants' third motion to vacate," but the text that follows is more in the nature of an introductory overview of the

[12] During the trial court proceedings to confirm, vacate or correct the arbitration award, Defendants sought sanctions against Plaintiffs based on the excessive length of their papers. The court denied the sanctions. On remand from our dismissal of the prior appeal, Defendants asked the court to declare Landman a vexatious litigant, require him to post security in order to continue litigating this case, and seek prefiling permission before filing any new litigation. (See § 391 et seq.) The court denied the motion without prejudice because Defendants had not filed a proof of service, and Defendants did not renew the motion.

[13] For example, at the outset of their discussion of the issues, Plaintiffs write, "The court was wrong to suggest that [Plaintiffs] had moved for reconsideration," but they provide no citation to the relevant court order, even though several orders are in the record. Plaintiffs then argue, without supporting citations, that they "had not moved pursuant to § 1008," and "respondents had not argued that they had." In the very next paragraph, Plaintiffs write, "When it issued its three orders on June 26, 2014 the trial court had denied appellants their right to file reply papers"—again without a record citation.

entire brief, which does not appear to be limited to a challenge to the motion to vacate the judgment. Other headings (sections IV–X) list various supporting arguments to Plaintiffs' section 1286.2 fraud claim as if they were separate appellate arguments for our review. Similar repetitive headings discuss Plaintiffs' claim that the arbitrator lacked authority to decide Akkuser's claims (sections XII–XIV), that the arbitrator erred in applying Finnish law (sections XV–XVI), and that Landman's compensation claims remain pending (sections XVIII–XX) without clearly identifying the underlying issues this court needs to decide. Plaintiffs used virtually their entire word limit for both their opening and reply briefs (13,699 and 13,988 words, respectively; rule 8.204(c)(1)), but, unfortunately, verbosity entirely failed to produce clarity.

The effect of these rule violations was to impose a high burden on the appellate court to decide this case. Rather than obtaining clear guidance and direction from the appellants' briefs, the court had to sort through a seven-volume appendix to decipher the procedural history of the case and the parties' evolving arguments in order to place Plaintiffs' appellate arguments in context and resolve them on the merits. This task was unduly burdensome in part because of Plaintiffs' repetitive filings in the trial court, which were themselves replete with the same sort of errors committed on appeal: meandering discussions, a lack of clear headings and subheadings, and inconsistent citations to the record.

In light of Plaintiffs' continuing violation of court rules, particularly after our earlier warning, we find this an appropriate case to impose monetary sanctions payable directly to this court. (See *Huschke v. Slater* (2008) 168 Cal.App.4th 1153, 1161–1162.) Processing the instant appeal required far greater effort than the typical case due to the rule violations. Therefore, we shall impose monetary sanctions on Landman and Clean Battery's counsel in the amount of $950 each.

We further observe that Defendants' brief was itself woefully inadequate. The procedural history in the brief is not supported by citations to the record, and record citations in the brief's statement of facts cite to exhibit numbers rather than page numbers in the appendix. More frustrating, however, is that the substantive arguments in the brief

do not meet Plaintiffs' arguments on appeal. Defendants seem to have simply reworked arguments made in the prior appeal without acknowledging the different procedural posture of the instant appeal.[14] We recognize, however, that Defendants have had to deal with the burden of Plaintiffs' voluminous and disorganized filings over an extended period of time. While we could sanction Defendants and their counsel for these rule violations, we will instead admonish them, as we did Plaintiffs previously, that they may well face similar sanctions if they commit violations in a future appeal.

III. DISPOSITION

The judgment in favor of Akkuser is affirmed. The judgment in favor of Pudas is reversed. Landman and counsel for Clean Battery, Neil Kripalani, are each sanctioned in the amount of $950, payable to the clerk of this court within 45 days of the date of this order. Each side shall bear its own costs on appeal.

[14] For example, Defendants argue several of the orders discussed by Plaintiffs are not appealable, citing authority that some of those orders are not *immediately* appealable. However, they ignore authority that the orders are reviewable on appeal from the judgment.

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BRUINIERS, J.

WE CONCUR:

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JONES, P. J.

_____
SIMONS, J.

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