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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

TRI-CITY HEALTHCARE DISTRICT,

Plaintiff and Respondent,

v.

SCRIPPS HEALTH, INC., et al,

Defendants and Appellants.

D057878

(Super. Ct. No. 37-2009-00055376-
CU-NP-NC)

APPEAL from an order of the Superior Court of San Diego County, William S. Dato, Judge. Affirmed; request for judicial notice denied.

In this dispute between a hospital and another health care provider about patient referral practices, the trial court denied a defense motion to compel arbitration, based on an interpretation of dispute resolution clauses found in various forms of health care contracting arrangements among the parties and others. (Code Civ. Proc., § 1281.2.) Plaintiff and respondent Tri-City Healthcare District (Tri-City) brought this action against several defendants, including a physicians' group that formerly referred its patients to Tri-

City, defendant and appellant Sharp Mission Park Medical Group, Inc. (Sharp MP). After Sharp MP was purchased by defendant and appellant Scripps Health, Inc. (Scripps), and it merged with defendant and appellant Scripps Mercy Physician Partners, Inc. (SMPP; together, Defendants), those patient referrals went to Scripps facilities instead. Tri-City sued Defendants for injunctive and other relief, alleging that they all engaged in anti-competitive behavior and unfair business practices that adversely affected patients in the region, and caused financial harm to Tri-City, in violation of the Cartwright Act (Bus. & Prof. Code, § 16720 et seq.), and the Unfair Competition law (UCL; Bus. & Prof. Code, § 17200 et seq.; authorizing injunctive relief and restitutionary disgorgement of profits).

Tri-City's complaint further alleges that Defendants are preventing it from carrying out its statutory obligations under the Knox-Keene Health Care Service Plan Act of 1975 (Health & Saf. Code,¹ § 1340 et seq.; the Knox-Keene Act), to provide timely access to hospital care for residents of its health care district. (§ 1366.1 [providing for standards for extended geographic accessibility to health care providers]; § 1367.03 [authorizing regulations for ensuring regional and timely access to needed health care services].) Essentially, Tri-City claims that instead of directing Scripps patients to the readily available hospital facilities and specialists provided by Tri-City, Scripps is illegally

¹ All further statutory references are to the Health and Safety Code unless otherwise noted.

"patient steering" in favor of its own facilities and specialists, contrary to the rights and duties sought to be enforced by Tri-City under the applicable statutory schemes.²

The trial court denied Defendants' motion to compel arbitration of the disputes, determining that they fell outside the scope of the contractual arbitration or mediation clauses relied upon by Defendants. Those clauses variously appear in several contracts that include patient referral provisions: (1) a risk pool agreement (RPA) formerly in effect between Tri-City and Sharp MP, for determining payment of available health care policy proceeds; (2) different participating physician agreements between four medical insurance or health plans, and various Scripps-affiliated physician groups, for providing covered medical services to the respective plans' patient-enrollees; and/or (3) a hospital services agreement formerly in effect between Tri-City and an administrative entity of Scripps, nonparty Scripps Clinic Health Plan Services, Inc., to enable Scripps providers to send patients to Tri-City as a participating hospital in Scripps business.³

² The Knox-Keene Act, in the historical and statutory notes to section 1367.03, includes this statement of policy on this topic: "It is the intent of the Legislature to ensure that all enrollees of health care service plans and health insurers have timely access to health care. The Legislature finds and declares that timely access to health care is essential to safe and appropriate health care and that lack of timely access to health care may be an indicator of other systemic problems such as lack of adequate provider panels, fiscal distress of a health care service plan or a health care provider, or shifts in the health needs of a covered population. . . ." (Stats. 2002, ch. 797, § 1.)

³ Sharp MP and SMPP have joined in the briefs filed by Scripps and make no separate arguments on appeal. Nonparty Scripps Clinic Health Plan Services, Inc. apparently acted as an agent for Scripps and we need not separately address any issues about it.

On appeal, Defendants contend that the trial court applied erroneous legal standards and reached the wrong conclusions in denying their motions to compel arbitration, by focusing on the statutory nature of the claims and disregarding the basic underlying facts of the dispute, which included many different, relevant contractual arrangements. Tri-City responds that the trial court correctly determined that the disputes pled in the complaint were not so directly or closely related to the contractual relationships, as to justify the imposition of contractual arbitration or mediation.⁴

Our review of this record persuades us that Defendants have failed to demonstrate, as a matter of law, that the referenced arbitration or mediation clauses are sufficiently broad in scope to apply to the conduct or business practices giving rise to the complaint. To explain our reasoning, we first set forth the factual context giving rise to these statutory and declaratory relief claims. We then outline and apply recognized standards for evaluating rulings on motions to compel arbitration, with respect to the specified arbitration clauses. We do not reach the merits of any of Tri-City's claims, but decide only that the trial court correctly denied Defendants' motion to compel arbitration.

⁴ Tri-City brought a motion requesting judicial notice of certain administrative definitions of mediation, pertinent to its arguments that the RPA's dispute resolution clause providing for "binding mediation" does not amount to an enforceable arbitration clause. As explained in part IVA, *post*, this motion is denied as unnecessary to the resolution of these issues. (Evid. Code, § 459.)

BACKGROUND FACTS AND PROCEDURE

A. Identity of Parties; Tri-City's Causes of Action

Plaintiff Tri-City is a California legislative healthcare district serving the North San Diego County area with hospital and medical facilities. (See § 32000 et seq.) Pursuant to their long-standing professional relationship of referring patients among nearby facilities, Tri-City and Sharp MP entered into a series of joint institutional risk agreements from 1995 through 2008, the RPAs. These agreements specifically provided for distribution of excess pooled funds that originated from patient payments to their health plans, such as PacificCare or Secure Horizons, and that were remaining after the appropriate reimbursements to various provider organizations were made. Sharp MP also agreed in the RPAs to make its "best efforts" to utilize Tri-City facilities for hospital services, and a dispute resolution procedure is set forth for "binding mediation."

In 2008, SMPP merged with Sharp MP, and Scripps did not renew the RPAs, and Tri-City now alleges this interfered with local patients' rights to have timely access to inpatient health care and referrals to local specialists.

Other dispute resolution clauses relevant here are found in four agreements entered into between various health plans or health insurers, and their participating physician groups (Scripps entities), which provide for Scripps doctors to supply medical services to the enrollees or members of the health plans. These "health plan" contracts are still in force. In turn, the physician groups may enter into separate arrangements for referrals to participating hospitals or medical facilities.

Between 2004 and 2008, Tri-City and a Scripps administrative entity (nonparty Scripps Clinic Health Plan Services, Inc.) were parties to such a hospital services agreement (HSA), under which Tri-City provided hospital care to Scripps patients, in return for reimbursement by Scripps to Tri-City for amounts authorized by the patient's health plan contract. The HSA contained an arbitration clause for resolving disputes arising out of or related to the interpretation, performance or breach of the agreement. In 2008, when SMPP merged with Sharp MP, Scripps did not renew the Tri-City HSA, and instead utilized its own Encinitas hospital facilities.

In June 2009, Tri-City sued Defendants for injunctive and declaratory relief, as well as disgorgement of profits, on the basis that Defendants engaged in unlawful anti-competitive conduct and unfair business practices when they chose to refer or steer North County patients not to Tri-City but to Scripps facilities. Tri-City claimed this harmed the regional patient population, due to the effects of traffic and other delays in obtaining services.

After Tri-City filed its complaint, Defendants removed the action to federal court on the grounds that the claims of patient steering or anti-competitive conduct arose under federal law, as shown through Tri-City's reliance in its UCL allegations on federal anti-kickback statutes (the Stark Act (42 U.S.C. § 1395nn) [providing for criminal penalties in government actions for health care fraud; "limitation on certain physician referrals"]). Also, the complaint references federal anti-kickback statutes, which provide penalties for illegal remunerations received for patient referrals. (See e.g., 42 U.S.C. § 1320a-7b.)

Tri-City brought a motion to remand the case to state court, which was granted. The district court's order noted that Tri-City was now representing to the court that its pleading was making only passing references to federal law, which were accidental or incidental to the actual claims pled, which arose under state law. Apparently, Tri-City had previously prepared a federal pleading but was not pursuing it, in favor of this state action. The district court found no basis for federal jurisdiction to be asserted, and remanded the case.⁵

B. Motion to Compel Arbitration; Opposition and Reply

After remand, Defendants brought their motion to compel arbitration, based on three types of written agreements including arbitration or mediation clauses, as authenticated by Scripps corporate senior vice president, Marc Reynolds, who oversees provider contracting. We defer describing the clauses in detail until the discussion portion of this opinion. Here, it is enough to state that based on the above arbitration provisions, Defendants argued that all the disputes alleged by Tri-City in terms of unfair competition or unlawful business practices "touched upon" those various contractual obligations, and were therefore arbitrable. (See *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.* (1985) 473 U.S. 614, 624-625, fn. 13 (*Mitsubishi*) ["[I]nsofar as the allegations underlying the statutory claims *touch matters* covered by the [contract], the Court of Appeals properly resolved any doubts in favor of arbitrability"]; italics added.)

⁵ Tri-City's complaint and opening brief continue to reference federal anti-kickback statutes (e.g., the Stark Act [providing for criminal penalties in government actions for healthcare fraud]). We do not reach the merits of the complaint and need not consider whether those federal statutes remain as part of the current framework of claims.

In opposition to the motion to compel arbitration, Tri-City asserted that none of its allegations were sufficiently related to the terms of the RPAs or to the other contracts containing arbitration clauses, and Tri-City's injury did not flow from the RPAs or contractual provisions. Instead, the purpose and scope of the RPAs extended only to distributing pooled funds under a capitated risk program, not to patient steering. Further, the RPAs "binding mediation" clause was not the equivalent of an enforceable arbitration clause. (See *Lindsay v. Lewandowski* (2006) 139 Cal.App.4th 1618, 1622-1623 (*Lindsay*)).

Next, Tri-City contended that the health plan provisions did not provide any third party beneficiary basis to impose arbitration upon it. In Tri-City's declaration by its chief executive officer (CEO), Larry Anderson, he stated that Tri-City was not seeking to enforce the health plans in any way, such as obtaining contract benefits under them, that would operate to bring Tri-City under their obligation to arbitrate.

Moreover, Tri-City argued the HSA had expired (as had the RPAs) and in any case, their arbitration clauses were not broad enough to cover the kinds of disputes pled about patient steering that had allegedly been committed in violation of different statutory protections. Noncontract relief was sought in all the claims against Defendants (such as disgorgement of profits obtained by Scripps through unlawful and unfair business practices), and this further made arbitration inappropriate.

In reply, Defendants continued to rely on the public policy favoring arbitration, and argued the allegations of the complaint were so intertwined with contract rights and duties as to be arbitrable.

C. Ruling

The trial court denied the motion to compel arbitration, beginning its minute order by stating that as the moving parties, Defendants had to prove the existence of an arbitration agreement and coverage of the dispute by the agreement, under a preponderance of the evidence standard. (*Rosenthal v. Great Western Financial Securities Corp.* (1996) 14 Cal.4th 394, 413 (*Rosenthal*).

The ruling continues, "Critically, this is not a breach of contract lawsuit. Rather it is a suit by one competitor [Tri-City] against another [Defendants] alleging illegal and anti-competitive conduct . . . [citations]. Tri-City claims that Scripps is illegally directing patients to its own facilities and specialists rather than to those of Tri-City." The court ruled that none of the three contractual sources demonstrated that the parties ever agreed to arbitrate this type of dispute.

In particular, the court determined that the present dispute "does not arise out of the RPA or its alleged breach. Tri-City does not allege any breach of the RPA. It does not dispute [Scripps's] right not to renew the RPA. It simply contends that Scripps is conducting itself illegally in the post-RPA period. In other words, this dispute has nothing to do with the RPA. Even assuming the RPA's 'binding mediation' provision can be construed as a binding arbitration agreement, it does not apply to the dispute that this lawsuit seeks to resolve."

Next, the trial court ruled that the arbitration provisions in the health plans did not require Tri-City to arbitrate its claims, because part of the relief sought, disgorgement of the profits obtained by Scripps for covered services under contracts with the health plans,

did not represent contractual proceeds of or benefits from the health plans: "The fact that [Scripps's] profits may flow from those contracts is incidental. Those contracts -- like contracts with any customer -- do not bind a non-signatory to arbitrate merely because the non-signatory seeks disgorgement of profits as a measure of its damages."

Finally, the trial court rejected Scripps's argument that the subject disputes arose out of the HSA, such that its arbitration provision could apply to resolve them. Instead, the court explained that under the HSA, Tri-City was previously required to provide hospital care to Scripps patients, in return for reimbursement by Scripps, under the terms of the patient's health plan contract:

"The HSA thus governs the relationship between Tri-City and Scripps with regard to Scripps patients who are treated at Tri-City facilities. Scripps argues that although the HSA terminated two months after Sharp affiliated with Scripps, this dispute touches on the subject matter of the HSA and Tri-City is bound to arbitrate '[a]ny controversy, dispute or claim arising out of, in connection with, or related to . . . this Agreement.' As noted, however, the HSA addresses Scripps patients treated by Tri-City. In contrast, the crux of this dispute is patients who are *not* treated at Tri-City but, at least in Tri-City's view, should be."

Accordingly, this dispute was deemed not to arise out of the HSA, the motion to compel arbitration was denied, and Defendants appeal.

II

ARBITRATION STANDARDS AND REVIEW

In deciding whether to compel arbitration under Code of Civil Procedure section 1281.2, the court properly determined, first, whether the written agreements for arbitration or mediation existed between these parties, and second, if they covered this

dispute. "[W]hen a petition to compel arbitration is filed and accompanied by prima facie evidence of a written agreement to arbitrate the controversy, the court itself must determine whether the agreement exists and, if any defense to its enforcement is raised, whether it is enforceable. Because the existence of the agreement is a statutory prerequisite to granting the petition, the petitioner bears the burden of proving its existence by a preponderance of the evidence. If the party opposing the petition raises a defense to enforcement . . . that party bears the burden of producing evidence of, and proving by a preponderance of the evidence, any fact necessary to the defense."

(*Rosenthal, supra*, 14 Cal.4th 394, 413.)

The parties dispute the applicable legal standards. Defendants contend that the trial court had no basis in this record to apply a preponderance of the evidence standard, and that instead, a pure de novo approach was appropriate for construing the arbitration clauses. "When 'the language of an arbitration provision is not in dispute, the trial court's decision as to arbitrability is subject to de novo review.'" (*Molecular Analytical Systems v. CIPHERGEN Biosystems, Inc.* (2010) 186 Cal.App.4th 696, 707 (*Molecular*), see *Smith v. Microskills San Diego L.P.* (2007) 153 Cal.App.4th 892, 896, 900 (*Smith*) [A " ' "determination of standing to arbitrate as a party to the contractual arbitration agreement is a question of law for the trial court in the first instance. " ' "].)

In *Cruz v. PacifiCare Health Systems, Inc.* (2003) 30 Cal.4th 303 (*Cruz*), the court acknowledged that the FAA requires state courts to honor arbitration agreements, unless there is some unavoidable conflict between the underlying purposes of a statutory scheme that provides public benefits and protections, and the dispute resolution method of

arbitration. (*Id.* at pp. 312-315.) Defendants contend that under either federal or state law, health care disputes involving interstate commerce are arbitrable, if the subject arbitration clauses are susceptible to any interpretation covering those disputes. They argue for a broad construction of the arbitration clause, such as called for in *Mitsubishi, supra*, 473 U.S. 614, 624-525, footnote 13 ["[I]nsofar as the allegations underlying the statutory claims *touch matters* covered by the [contract], the Court of Appeals properly resolved any doubts in favor of arbitrability."]. In *Mitsubishi* at footnote 13, the high court was interpreting a contractual arbitration provision calling for arbitration of all " 'disputes, controversies or differences,' " which might arise out of or in relation to certain contract provisions. The Supreme Court decided that the clause applied also to federal and local antitrust claims touching on the same matters covered by those portions of the agreement. (*Id.* at pp. 624-628.)⁶

In reply, Tri-City argues that the trial court correctly determined that arbitration should not be ordered, and it resolved disputed factual and legal issues under an appropriate standard of proof. For example, Tri-City pointed to the declarations of its CEO Anderson about Tri-City never seeking to take advantage of the health plans' contractual benefits, and to the potential ambiguity of the "binding mediation" clause in the RPAs. Tri-City thus argued there were disputed facts about the existence of an applicable arbitration agreement. (*Engalla v. Permanente Medical Group, Inc.* (1997) 15

⁶ In *Mitsubishi, supra*, 473 U.S. at pages 624 to 628, the Supreme Court acknowledged that parties to an arbitration clause can agree to exclude statutory claims from the scope of the arbitration clause.

Cal.4th 951, 972; *NORCAL Mutual Ins. Co. v. Newton* (2000) 84 Cal.App.4th 64, 71 (*NORCAL*.) No preference for arbitration may come into play without a binding arbitration agreement, under either federal or state law. (See *Metalclad Corp. v. Ventana Environmental Organizational Partnership* (2003) 109 Cal.App.4th 1705, 1712 (*Metalclad*) [federal substantive law of arbitrability requires broad construction of arbitration clauses, but state law principles governing the formation of contracts nevertheless apply].)

We are mindful of the " 'strong public policy in favor of arbitration as a speedy and relatively inexpensive means of dispute resolution.' " (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 9; *Hall v. Superior Court* (1993) 18 Cal.App.4th 427, 432 (*Hall*.) However, it is essential to the proper operation of that policy that " ' "[t]he scope of arbitration is . . . a matter of agreement between the parties' [citation], and '[t]he powers of an arbitrator are limited and circumscribed by the agreement or stipulation of submission.' " ' [Citations.]" (*Ibid.*; see *Medical Staff of Doctors Medical Center in Modesto v. Kamil* (2005) 132 Cal.App.4th 679, 684 (*Kamil*) [no policy favors arbitration of disputes the parties have not agreed to arbitrate].)

The proper approach in this appeal, applying either federal or state arbitrability standards, is a de novo examination of the pleadings and the language of the subject arbitration clauses. Any peripheral factual disputes in this record were not essential to resolving the key legal issues presented by the allegations of the complaint and the terms of the relevant written instruments. "As case law recognizes, when 'the trial court's decision on arbitrability is based upon resolution of disputed facts, we review the

decision for substantial evidence.' [Citation.] *But that rule does not apply when issues presented 'as factual questions are actually legal ones.'* " (*Molecular, supra*, 186 Cal.App.4th 696, 708; italics added.)

Unlike in *Rosenthal, supra*, 14 Cal.4th 394, in which defenses such as fraudulent inducement of a contract were asserted to forestall arbitration, the trial court in this case did not have to consider significant extrinsic evidence in aid of the interpretation of the agreements to arbitrate. Defendants' contentions about any estoppel of Tri-City to deny arbitrability (arguably arising from its supposed assertion of benefits under the health plans, such as referrals), are also properly analyzed as questions of law. " 'Although equitable estoppel is generally a question of fact, it is a question of law when the facts are undisputed and only one reasonable conclusion can be drawn from them.' [Citation.] In this case, 'the parties do not dispute the facts but rather whether those facts constitute sufficient legal basis for equitable estoppel,' " so that only questions of law were presented. (*Molecular, supra*, 186 Cal.App.4th at p. 708, citing *Metalclad, supra*, 109 Cal.App.4th at p. 1716.) Under these principles, no reversible error occurred in the trial court's analysis regarding evidentiary standards.

"[T]he terms of the specific arbitration clause under consideration must reasonably cover the dispute as to which arbitration is requested." (*Bono v. David* (2007) 147 Cal.App.4th 1055, 1063.) On de novo review, we consider independently whether the purported arbitration agreements apply to the present circumstances shown in the record. (*Amalgamated Transit Union v. Los Angeles County MTA* (2003) 107 Cal.App.4th 673, 685.) The relevant documents cannot be read outside of the context of the entire dispute

placed before the trial court. The ruling appropriately represented an application of legal principles to undisputed facts, resolving issues of law about the identity of parties to an arbitration agreement, and whether the arbitration covered the claims asserted, and our review is conducted de novo.

III

OVERVIEW OF ARBITRABILITY ISSUES

A. Statutes Governing Healthcare Arrangements and Contracting

The parties do not discuss standing issues, but correctly assume Tri-City has the requisite private rights of action to pursue its theories of unlawful business practices or anti-competitive behavior. Tri-City pleads that the acts of Defendants are interfering with the public welfare, which would be promoted if Tri-City can perform, without interference, its duties and obligations under the Knox-Keene Act. Defendants respond that only contractual issues are at stake, so arbitration must be required. We think that Defendants' view is too narrow, when the allegations about contractual relationships are read in context of the statutory schemes under which relief is sought.

The Knox-Keene Act provides a comprehensive system of licensing and regulation, under the jurisdiction of the state Department of Managed Health Care (DMHC). (*California Medical Assn. v. Aetna U.S. Healthcare of California, Inc.* (2001) 94 Cal.App.4th 151, 155, fn. 3 (*Aetna*) ["'All aspects of the regulation of health plans are covered, including financial stability, organization, advertising and capability to provide

health services.' "]; *Bell v. Blue Cross of California* (2005) 131 Cal.App.4th 211, 215 (*Bell*).)⁷

The jurisdiction of the DMHC is not exclusive, and the Knox-Keene Act allows for private enforcement, such as private actions under, e.g., the UCL or common law. (*Bell, supra*, 131 Cal.App.4th at p. 215; *Coast Plaza Doctors Hospital v. UHP Healthcare* (2002) 105 Cal.App.4th 693, 706-707 (*Coast Plaza*).)

In *Coast Plaza, supra*, 105 Cal.App.4th 693, 701, the appellate court cites authority explaining "the typical contractual relationships under which patient care is provided and reimbursed under the Knox-Keene Act." These include agreements by health insurers or health plans with their enrollees, under which the plans will pay for services rendered by physicians to enrollees. In some cases, the health plans will enter into intermediary agreements with various entities, such as medical groups or physician practice associations, and "limited Knox-Keene license plans," to arrange for and pay providers of physician services, that supplied health services to plan enrollees. (*Ibid.* citing *Aetna, supra*, 94 Cal.App.4th at pp. 156-157.)

Defendants claim that without the existence of contractual patient referral arrangements, such as in the RPAs, "Tri-City would be suing based on a free-floating obligation to send patients to Tri-City untethered to any contract," and thus Tri-City is asserting only claims touching matters covered by the contract and originating from

⁷ Under section 1386, subdivision (b) health care service plans may be subject to disciplinary action by the DMHC for, among other things, its subdivision (7): "The plan has engaged in any conduct that constitutes fraud or dishonest dealing or unfair competition, as defined by Section 17200 of the Business and Professions Code."

them. However, taking into account the comprehensive structure of regulation outlined above, we reject Defendants' contention that because these parties previously entered into contracts, no other types of rights and duties have arisen between them or are potentially enforceable at law. "The Knox-Keene Act itself contemplates that a health care plan may be held liable under theories based on other law," such as a cause of action under Business and Professions Code section 17200. (*Coast Plaza, supra*, 105 Cal.App.4th at pp. 706-707; *Aetna, supra*, 94 Cal.App.4th at p. 169; see, e.g., section 1371.25 [providing that health plans and providers are each responsible for their own acts or omissions, but "nothing in this section shall preclude a finding of liability on the part of a plan, any entity contracting with a plan, or a provider, based on the doctrines of equitable indemnity, comparative negligence, contribution, or other statutory or common law bases for liability"].) There is no reason that a health care district cannot assert rights based on regional allocation of services, under these combined statutory theories, and arbitration of disputes is not necessarily invoked from related contracts.

We believe that for purposes of arbitrability determinations, Tri-City has sufficiently pled other types of relationships that arose before, during, and after the specific contractual agreements that include these disputed arbitration and mediation clauses. We should therefore examine the scope of the arbitration clauses against that statutory backdrop.

B. Relief and Arbitrability; Potential of Stays Imposed Pending Arbitration

Before addressing the applicability and scope of these three types of arbitration provisions relied upon by Scripps, we first outline the nature of the relief sought in the

Tri-City complaint, under its statutory and declaratory relief theories (e.g., injunctive, restitutionary, monetary, or declaratory relief). This affects the binding nature, if any, of the arbitration clauses, regarding the Cartwright Act claims, and the UCL claims that are premised upon the Knox-Keene Act policies and obligations. The trial court did not err at the outset of the ruling by characterizing the action as "not a breach of contract lawsuit," but rather it properly began the inquiry by analyzing the bases for the claims, as founded in statutory law. (See *Comer v. Micor, Inc.* (9th Cir. 2006) 436 F.3d 1098, 1099-1101 [duty to enforce arbitration agreement not diminished if the party bound by the agreement raises statutory claims].)

To the extent Tri-City is pleading that the public interest is involved, in terms of fulfilling its mission to provide local residents timely access to health care under the Knox-Keene Act, the injunctive relief claims under the UCL would not be arbitrable. In *Cruz, supra*, 30 Cal.4th 303, a majority opinion of our Supreme Court clarified several procedural topics pertinent to this dispute. In lawsuits seeking injunctive relief to benefit the public interest, arbitration has only restricted applicability. Such claims under the UCL for injunctions against harmful unfair or unlawful business practices are not subject to arbitration. (*Id.* at pp. 315-316.) However, the court in *Cruz*, declined to decide whether an individual injured business competitor can obtain arbitration of a request for injunctive relief under the UCL. (*Id.* at p. 315.) Because of Tri-City's reliance on the policies of the Knox-Keene Act, we assume that it is seeking public relief, not solely private relief, which means that arbitration would be unavailable for its injunction requests.

Nevertheless, when a plaintiff is seeking restitution under the UCL, such as disgorgement of allegedly unlawful profits, its monetary claim can be subject to arbitration (either an individual or class claim). (*Cruz, supra*, 30 Cal.4th at pp. 317-321.)⁸ Under Code of Civil Procedure section 1281.4, "when there is a severance of arbitrable from inarbitrable claims, the trial court has the discretion to stay proceedings on the inarbitrable claims pending resolution of the arbitration." (*Cruz, supra*, at p. 320.)

As to the Cartwright Act, a claim of violation of its provisions (Bus. & Prof. Code, § 16700 et seq.) can be subject to a contractual arbitration agreement, if the agreement is of an appropriately broad scope. (*Wolitarsky v. Blue Cross of California* (1997) 53 Cal.App.4th 338, 345; *Crown Homes, Inc. v. Landes* (1994) 22 Cal.App.4th 1273, 1283.) Here, Tri-City asserts it has suffered financial harm from Scripps's anti-competitive business practices, and Tri-City further seeks injunctive relief against them.

In deciding the arbitrability questions, we inquire whether there is any unavoidable conflict between the underlying purposes of Tri-City's cited statutory schemes, and the dispute resolution method of arbitration. (*Cruz, supra*, 30 Cal.4th at pp. 311-315.) Here, to the extent that Tri-City seeks injunctive relief under the UCL (and likewise, the Cartwright Act), those claims do not appear to be arbitrable, and would be subject to stay if contractual arbitration were ordered on the remaining claims for financial harm under the Cartwright Act, and the restitutionary disgorgement sought under the UCL. Such

⁸ In *Cruz, supra*, 30 Cal.4th 303, the Supreme Court did not decide whether the particular arbitration agreement before it was broad enough in scope to cover that plaintiff's monetary equitable relief claims. (*Id.* at pp. 317-321.)

arbitration would be appropriate if Defendants can show the required breadth of the particular arbitration clauses relied upon, as we next discuss.

IV

APPLICATION OF STANDARDS: SCOPE OF THE ARBITRATION CLAUSES

In deciding the arbitrability questions about these patient referral disputes, we inquire whether the claims are within the reach of the arbitration clauses, or if instead, there is any unavoidable conflict between the underlying purposes of Tri-City's cited statutory schemes and such dispute resolution methods. (*Cruz, supra*, 30 Cal.4th at pp. 311-315.)

A. 1995-2008 RPAs

As described by the trial court in its ruling, the RPAs required Sharp MP (now affiliated with Scripps) to make its "best efforts" for using Tri-City facilities for hospital services. The 2008 version of the RPA contained a "binding mediation" provision, requiring the use of a defined dispute resolution procedure "to settle any and all disputes or concerns that arise out of this Agreement, or the breach thereof."

Several issues about arbitrability arise. It is not dispositive that the RPAs expired and were not renewed, because a contractual arbitration clause can apply to later occurring claims, where they are "rooted" in the contractual relationship between the parties. (See *Buckhorn v. St. Jude Heritage Medical Group* (2004) 121 Cal.App.4th 1401, 1407-1408 (*Buckhorn*); *Bos Material Handling, Inc. v. Crown Controls Corp.* (1982) 137 Cal.App.3d 99, 106 [if a complaint "clearly has its genesis in the contractual relationship," arbitration can be ordered for noncontract claims, because "[t]o hold

otherwise would enable a party to frustrate any agreement to arbitrate simply by changing the manner or form in which it frames its claims"].) Where the dispute is over an obligation arguably created by the expired contractual agreement, the agreement's arbitration clause may remain enforceable. (*John Wiley & Sons Inc. v. Livingston* (1964) 376 U.S. 543, 545-555.)

However, the stated purpose of the RPAs was to determine a method for reimbursement between these parties of available health care policy proceeds, after services were provided, as a risk management mechanism. The parties were free not to renew these agreements, and they did not do so. Questions still remain about whether, within the universe of any available hospital facilities, Scripps has any noncontractual obligations not to engage in unfair business practices or unlawful anti-competitive conduct, in making its patient referrals in the postcontract time frame. Tri-City has provided a basis for a separately arising right that it seeks to have vindicated, by alleging it had a long-standing professional relationship with Scripps, that was for a period of time implemented by the RPAs, and that was originally based upon regional health care needs. That relationship has arguably been harmed, outside of any contractual basis, by unfair business practices. Tri-City thus claims injury from Scripps's unfair business practices, in making patient referrals that are not in compliance with the policies of the Knox-Keene Act, and it seeks disgorgement of such revenue. (See *Coast Plaza*, 105 Cal.App.4th at pp. 706-707; *Aetna*, *supra*, 94 Cal.App.4th at p. 169.)

To the extent it is seeking remedies for antitrust injury or financial harm, Tri-City's complaint must allege "facts from which injury to market-wide competition can be

inferred." (*Korshin v. Benedictine Hosp.* (N.D.N.Y. 1999) 34 F.Supp.2d 133, 138.) " 'An "antitrust injury" must be proved; that is, the type of injury the antitrust laws were intended to prevent, and which flows from the invidious conduct which renders defendants' acts unlawful. [Citations.]' " (*Morrison v. Viacom, Inc.* (1998) 66 Cal.App.4th 534, 548 (*Morrison*), citing *Kolling v. Dow Jones & Co.* (1982) 137 Cal.App.3d 709, 723.) This type of allegation is not necessarily based upon the terms of the previous or current contractual relationships, and does not fall within the scope of the RPAs' mediation clauses.

Even if Tri-City does ultimately prevail on its claim for financial harm under the Cartwright Act, or for restitutionary disgorgement sought under the UCL, such relief would not necessarily be measured by the terms of the former contractual arrangements. These claims do not necessarily touch matters covered by the contract duties or obligations. (*Mitsubishi, supra*, 473 U.S. at pp. 624-625, fn. 13.)

With respect to Tri-City's pending appellate motion requesting judicial notice of various administrative definitions of mediation, as found on the JAMS website, it argues that the RPAs' dispute resolution clause, for "binding mediation," does not amount to an enforceable arbitration clause. Defendants oppose the motion, arguing that this is new material that was not brought before the trial court, and if it is to be considered, remand would be necessary for further opposition and consideration of these issues. (See *Lindsay, supra*, 139 Cal.App.4th 1618, 1624; *id.* at pp. 1625-1626 (conc. opn. of Sills, J.) ["binding mediation" is a linguistically fuzzy concept]; Evid. Code, § 459.) As the merits panel, we deny the motion as unnecessary to the resolution of these issues. In any case,

that "binding mediation" clause has no application to the disputes actually framed by the complaint.

B. HSA

In the 2004-2008 HSA between Tri-City and an administrative entity of Scripps (Scripps Clinic Health Plan Services, Inc.), Tri-City agreed to provide hospital care to Scripps patients, in return for reimbursement under the terms of the patients' health plan contracts. This contractual arrangement enabled Scripps providers to send patients to Tri-City, as a participating hospital in Scripps's business. The HSA arbitration clause applies to "[a]ny controversy, dispute or claim arising out of, in connection with, or related to . . . this Agreement."

It is not dispositive that the HSA was no longer in effect after 2008, for purposes of arbitrability analysis, if these disputes were rooted in the agreement. (*Buckhorn, supra*, 121 Cal.App.4th at pp. 1407-1408.) However, Tri-City is not seeking to enforce the contract, but is claiming that it may have other types of enforceable rights to compete for participation in other economic arrangements for health care, toward the goal of providing timely access to hospital care for residents of its health care district. (§ 1366.1 [standards for ensuring extended geographic accessibility to health care providers]; § 1367.03 [regulations for ensuring regional access to needed health care services in timely manner].)

Even without reference to the particular contractual arrangements specified in the HSA, concerning how Scripps patients were previously referred to Tri-City and what reimbursement would be made, Tri-City may be able to demonstrate economic injury or

antitrust injury from the nature of the patient referral practices carried out by Scripps, allegedly interfering with Tri-City's legitimate expectations. (See *Coast Plaza, supra*, 105 Cal.App.4th at pp. 706-707; *Aetna, supra*, 94 Cal.App.4th at p. 169; *Morrison, supra*, 66 Cal.App.4th 534, 548.) For the same reasons as the RPAs' terms are not controlling, the HSA terms and arbitration clause do not apply to this set of disputes.

C. Participating Physician Agreements (Health Plans)

In the four participating provider health plans submitted with the motion for arbitration, four dispute resolution clauses are set forth, applicable to the plan and the physician, who agree to meet and confer in good faith to resolve any problems or disputes that may arise under the agreement. If no satisfactory resolution is reached, a binding agreement to arbitrate is imposed.

Two of these health plans, as excerpted, expressly state that no third party liability was intended to be created by their terms. The other two expressly state that the relationships of the contracting parties (health plans and physician groups) are independent contractors, not employees or agents of one another. All the health plans contain provisions for patient referrals and payments by the physician groups, for care by other participating providers.

Apparently, Scripps is not claiming that Tri-City is an intended or incidental third party beneficiary of the health plan contracts. (See *Kamil, supra*, 132 Cal.App.4th 679, 685-686; *Crowley Maritime Corp. v. Boston Old Colony Ins. Co.* (2008) 158 Cal.App.4th 1061, 1069.) Instead, the parties dispute whether Tri-City, as a nonsignatory to these health plans, should be bound by their terms. In some cases, arbitration of claims is

required from a nonsignatory to a subject agreement, where its "claims are inextricably bound up with the obligations arising out of the agreement containing the arbitration clause." (*Molecular, supra*, 186 Cal.App.4th 696, 701.)

" 'A nonsignatory to an agreement to arbitrate may be required to arbitrate, and may invoke arbitration against a party, if a preexisting confidential relationship, *such as an agency relationship between the nonsignatory and one of the parties to the arbitration agreement, makes it equitable to impose the duty to arbitrate upon the nonsignatory.* [Citation.]' " (*Smith, supra*, 153 Cal.App.4th 892, 896-897, italics added.)

The purpose of these different participating physician agreements, between health plans and Scripps-affiliated physician groups, was to provide covered medical services to the respective plans' patient-enrollees, possibly including hospital referrals (separately arranged, such as through the HSA). According to Scripps, it would be equitable to compel Tri-City to arbitrate these disputes, because Tri-City wants to receive compensation for patient referrals on an ongoing basis. (See *Smith, supra*, 153 Cal.App.4th 892, 896-897.)

However, the face of the complaint suggests there are other independent bases besides the existence of these health plans for Tri-City to seek to serve its regional patients, and to get paid for it, such as pursuing its statutory mission under the Knox-Keene Act to provide timely access to hospital care for residents of its health care district. (§ 1366.1 [geographic accessibility to health care providers]; § 1367.03 [regional access to needed health care services in timely manner].) The allegations of Tri-City's complaint do not seek benefits provided under the health plans, so as to estop Tri-City from disputing the applicability of those arbitration provisions. Rather, the scope of

those dispute resolution clauses does not reasonably apply to the current claims of unlawful anti-competitive conduct and unfair business practices, and they should not equitably be enforced against Tri-City.

The trial court's ruling represents a correct interpretation of the pleadings and the subject arbitration clauses, in light of applicable legal standards. We accordingly affirm the order denying the petition to compel arbitration.

DISPOSITION

Affirmed. The request for judicial notice is denied. Ordinary costs are awarded to Tri-City, with the exception of its costs associated with the request of judicial notice.

HUFFMAN, J.

WE CONCUR:

McCONNELL, P. J.

O'ROURKE, J.