**LAW & MOTION CALENDAR**
**TENTATIVE RULINGS**

**May 2, 2024**

**Judge R. Shawn Nelson**
**Department C19**

**Department C19 hears law and motion on Thursdays at 10:00 a.m. and 1:30 p.m.**

**Court reporters:** Official court reporters are not provided in this department for any proceedings. If the parties desire the services of a court reporter, the parties should follow the procedures set forth in the Privately Retained Court Reporter Policy on the court's website at www.occourts.org.

**Tentative rulings:** The court endeavors to post tentative rulings on the court's website by 9:00 a.m. the day of the hearing. Tentative rulings may not be posted in every case. Please do not call the department for tentative rulings if tentative rulings have not been posted. The court will not entertain a request to continue a hearing or the filing of further documents once a tentative ruling has been posted.

**Submitting on tentative rulings:** If all counsel intend to submit on the tentative ruling and do not desire oral argument, please advise the Courtroom Clerk or Courtroom Attendant by calling (657) 622-5219. Please do not call the department unless all parties submit on the tentative ruling. If all sides submit on the tentative ruling and so advise the court, the tentative ruling shall become the court's final ruling and the prevailing party shall give notice of the ruling and prepare an order for the court's signature if appropriate under Cal. R. Ct. 3.1312.

**Appearances and public access:** Appearances, whether in person or remote, must comply with Civil Procedure Code section 367.75, California Rule of Court 3.672, Orange County Superior Court Local Rule 375, and Orange County Superior Court Appearance Procedure and Information—Civil Unlimited and Complex (pub. 9/9/22).

Unless the court orders otherwise, remote appearances will be conducted via Zoom. All counsel and self-represented parties appearing via Zoom must check in through the court's civil remote appearance website before the hearing begins. Check-in instructions are available on the court's website.

The public may attend hearings by coming to court or via remote access as described above.

**Photographing, filming, recording, and/or broadcasting court proceedings are prohibited unless authorized pursuant to California Rule of Court 1.150 or Orange County Superior Court Local Rule 180.**

**Non-appearances:** If nobody appears for the hearing and the court has not been notified that all parties submit on the tentative ruling, the court shall determine whether the matter is taken off calendar or the tentative ruling becomes the final ruling.

| NO. | CASE NAME | MATTER |
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| **1:30 p.m.** | | |
| 1 | Arnold v. Bulk Hadling Systems | Defendants Midwest Recycling Service and Sales, Inc. and Emerging Acquisitions, LTD. dba Bulk Handling Systems move to strike the Complaint as to Plaintiff Estate of Richard Arnold.<br><br>Defendants served the motion on Plaintiff Lisa Arnold by email on February 6, 2024. (ROA 423.) California Rules of Court, Rule 2.251(c)(3)(B) provides that self-represented parties "are to be served by non-electronic methods unless they affirmatively consent to electronic service." Code of Civil Procedure section 1010.6 provides for electronic service of documents in cases filed on or after January 1, |

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| | | 2019, but section 1010.6 subdivision (d)(4) states that local rules requiring electronic filing and service must make unrepresented persons exempt from mandatory electronic filing and service. Here, there is no evidence Plaintiff consented to electronic service.<br><br>Thus, the motion is **denied without prejudice**.<br><br>Moving Defendants to give notice. |
| 2 | CopperPoint Insurance Company v. W.R. Berkley Corporation | **I. <u>Legal Standard</u>**<br><br>Forum non conveniens is an equitable doctrine under which a trial court has discretion to decline to exercise jurisdiction over a transitory cause of action that it believes may be more appropriately and justly tried elsewhere. (*Stangvik v. Shiley Inc.* (1991) 54 Cal.3d 744, 751 (*Stangvik*).) California has codified this principle in section 410.30, which provides: "When a court upon motion of a party or its own motion finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court shall stay or dismiss the action in whole or in part on any conditions that may be just." (Cal. Civ. Proc. Code § 410.30(a), see also § 418.10.)<br><br>In determining whether to grant a motion based on forum non conveniens, courts usually apply a two-step process. (*Stangvik, supra*, 54 Cal.3d at p. 751.) In the first step, the court must determine whether the alternate forum is a suitable place for trial. (*Ibid*.) If it is, the next step is to decide whether the private and public interests, on balance, favor retaining the action in California. (*Ibid*.; *Animal Film, LLC v. D.E.J. Productions, Inc.* (2011) 193 Cal.App.4th 466, 473 (*Animal Film*).) The motion is addressed to the trial court's discretion and the court retains a "'flexible power' to consider and weigh all the factors." (*Intershop Communications AG v. Superior Court* (2002) 104 Cal.App.4th 191, 198 (*Intershop*).) The moving party bears the burden of proof. (*Stangvik*, at p. 751.)<br><br>A motion based on a forum selection clause, however, is a special type of forum non conveniens motion. ((*Quanta Computer Inc. v. Japan Communications Inc.* (2018) 21 Cal.App.5th 438, 444 (*Quanta*); *Berg v. MTC Electronics Technologies Co.* (1998) 61 Cal.App.4th 349, 358 (*Berg*).) Consistent with the modern trend, California favors enforcement of a forum selection clause appearing in a contract entered into freely and voluntarily by parties negotiating at arm's length. (*Cal-State Business Products & Services, Inc. v. Ricoh* (1993) 12 Cal.App.4th 1666, 1679, 16 Cal.Rptr.2d 417 (*Cal-State Business Products*).<br><br>When a case involves a mandatory forum selection clause, the traditional forum non convenien analysis does not apply. (*Intershop, supra*, 104 Cal.App.4th at p. 198; *Cal-State Business Products, supra*, at pp. 1679, 1682-1683.) Instead, a mandatory forum selection clause ***is presumed valid*** and will be enforced unless enforcement of the clause would be unreasonable under the circumstances of the case. ((*Quanta Computer Inc. v. Japan Communications Inc.* (2018) 21 Cal.App.5th 438, 444.) *Smith, supra*, 17 Cal.3d at p. 496; *Intershop*, at p. 198, 127.)<br><br>In contrast to a motion on traditional grounds of forum non conveniens, the burden of proof is on the party challenging enforcement of the forum selection clause. (*Intershop*, at p. 198.) |

Thus, the threshold question in a case involving a forum selection clause is whether the clause is mandatory or permissive. (*Animal Film, supra*, 193 Cal.App.4th at p. 471.) If the clause is mandatory, it is presumed valid and will be enforced unless the party opposing the motion proves enforcement of the clause would be unreasonable. (Intershop, supra, 104 Cal.App.4th at p. 198, 127 Cal.Rptr.2d 847.) In contrast, if the clause is permissive, the traditional forum nonconveniens analysis applies and the existence of the clause is merely one factor to be considered in determining whether the action should be heard in a different forum. (*Animal Film*, at p. 471.)

**II. <u>Mandatory Forum Selection Clause</u>**

Generally, the first question that the court must decide, therefore, is whether or not the forum selection clause is mandatory or permissive. If it is mandatory, the clause is presumed valid and the only remaining question is whether or not enforcing the clause would be reasonable. If the clause is permissive, then the court must apply the traditional two-step forum non conveniens analysis of weighing various factors.

Here, the clause at issue is mandatory: "Any legal suit, action or proceeding brought by any party or any of its Affiliates arising out of or based upon this Agreement ***shall*** only be instituted in any federal or state court in the State of Delaware, and each party waives any objection which it may now or hereafter have to the laying of venue of any such proceeding and irrevocably submits to the jurisdiction of such courts in any such suit, action or proceeding." (Complaint, Ex. A § 9.5). The use of the word "shall" indicates that the parties intended the clause to be mandatory and not permissive.

***A. Scope of Forum Selection Clause***

Defendants argue that the scope of the forum selection clause encompasses this entire action. Plaintiff argues that the non-contractual claims against Defendants are not subject to the forum selection clause because those claims arise from stand alone statutory duties that do not require the interpretation of the Agreement.

Our Supreme Court has expressed its view of the expansiveness of the scope to be accorded a choice-of-law contractual clause, an issue "closely related" to choice-of-forum provisions. (*Nedlloyd Lines B.V. v. Superior Court* (1992) 3 Cal.4th 459, 464.) "When two sophisticated, commercial entities agree to a choice-of-law clause like the one in this case, the most reasonable interpretation of their actions is that they intended for the clause to apply to all causes of action arising from or related to their contract." (*Id.* at pp. 468) In Nedlloyd, the contract between the parties stated it was to be "governed by" Hong Kong law and did not provide for any exceptions. (*Id.* at pp. 468–469.) The court concluded this language meant Hong Kong law applied not only to construction of the contract but to any cause of action ***based on the relationship created by the contract***. (*Id.* at p. 469.)

Similarly, in *Cal-State Business Products & Services, Inc. v. Ricoh, the court of appeal agreed:* "Our conclusion in this regard comports with common sense and commercial reality." (*State Business Products & Services, Inc. v. Ricoh* (1993) 12 Cal.App.4th 1666, 1676.) "When a rational business person enters into an agreement establishing a transaction or relationship and provides that disputes arising from the

agreement shall be governed by the law of an identified jurisdiction, the logical conclusion is that he or she intended that law to apply to *all* disputes arising out of the transaction or relationship." (*Id*. at 1676-1677). "We seriously doubt that any rational businessperson, attempting to provide by contract for an efficient and business-like resolution of possible future disputes, would intend that the laws of multiple jurisdictions would apply to a single controversy having its origin in a single, contract-based relationship." (*Id*. at 1677.)

Any argument to the contrary "would require extensive litigation of the parties' supposed intentions regarding the choice-of-law clause ... [and] is more likely the product of postdispute litigation strategy, not predispute contractual intent." (*Id.* at 1677.) Thus, "a valid choice-of-law clause, which provides that a specified body of law 'governs' the 'agreement' between the parties, encompasses all causes of action *arising from or relating to* that agreement, regardless of how they are characterized, including tortious breaches of duties emanating from the agreement or the legal relationships it creates." (*Id*.)

The court finds that the forum selection clause at issue is broadly stated in nature. The clause extends not only to legal suits arising "out of" the agreement, but also "based on" the agreement. Further, the choice of law clause states that the agreement "shall be governed by the laws of the State of Delaware." (Complaint, Ex. A at § 9.6). CopperPoint and Jones are both sophisticated business people, entering into this contract (based on a merger worth $900,000,000) and the "most reasonable interpretation of their actions is that they intended for the clause to apply to all causes of action arising from or related to their contract." (*Nedlloyd*, supra, 3 Cal. 4th at 468.) Because the agreement specified that a specific body of law, Delaware, governs the agreement, it encompasses "all causes of action *arising from or relating to* that agreement, regardless of how they are characterized, including tortious breaches of duties emanating from the agreement or the legal relationships it creates." (*Cal-State Business Products & Services, Inc.,* supra, 12 Cal. App. 4th at 1677.)

Here, the relationship between CopperPoint and Jones arose from, and is based on, the Agreement (and the merger between CopperPoint and Alaska). Had CopperPoint not acquired Alaska, CopperPoint would not have acquired the trademarks and/or confidential and propriety assets of Alaska as part of the merger. CopperPoint's relationship with Jones, as an employee of Alaska, would not exist without CopperPoint's acquiring Alaska as its subsidiary. The duties to not disclose the confidential and proprietary information of Alaska stem from the Agreement. (See Complaint, Ex. A, § 3.) The statutory duties of loyalty and fiduciary duties, on which CopperPoint's causes of action are based, all stem from the legal relationship that the Agreement created between CopperPoint and Jones. Jones would not have owed any duties to CopperPoint, statutory or otherwise, without CopperPoint's acquisition of Alaska and the agreements that form that acquisition (the merger agreement and the Agreement, which incorporates the merger). As such, the court finds that each of CopperPoint's claims relates to, and/or is based on, a legal relationship that was formed by the Agreement, including the alleged tortious breaches of duties emanating from the agreement or the legal relationships it creates.
Indeed, the complaint, itself, alleges that much of the "Trade Secrets" on which Plaintiff's claims are based, arose from the merger and the Agreement.

- "10. As part of the acquisition and in exchange for their shares, the Alaska National shareholders, including Jones, agreed that "any and all proprietary or confidential information that pertains to [Alaska National] or ANIC ('Confidential Information') shall be kept confidential by each of the Stockholders and their Affiliates." (Complaint, ¶ 10.) Plaintiff, here, highlights that Jones' agreement to not disclose proprietary information stemmed from the acquisition of Alaska.

- "14. As President and as Vice Chairman, Jones had access to virtually every single Alaska National file, including Alaska National/CopperPoint's most confidential information concerning its price modeling tools and historical client data. In short, all Alaska National pricing went through Jones." (Complaint, ¶ 14.) Jones' access to the information was as President and Vice-Chairman of Alaska, which became CopperPoint's subsidiary after the acquisition.

- "16. CopperPoint has spent incalculable resources, time, and effort developing this Trade Secret Information. At the very least, it has expended millions of dollars and decades of work to collect and compile this non-public information. For example, in September 2019 it paid nearly *$1,000,000,000* to acquire Alaska National, in large part so it could acquire its pricing model and historical policy data." (Complaint, ¶ 16.) The Trade Secrets which serve as the basis of Plaintiff's claims were acquired through the merger with Alaska.

As for Berkley, all CopperPoint's causes of action against Berkley depend on, and are derivative of, the duties that Jones allegedly had with CopperPoint. Without the legal relationship that arose between CopperPoint and Jones, these claims would fail. In other words, to the extent that Jones did not breach any fiduciary and/or statutory duties in Jones' position as an employee of CopperPoint's subsidiary, Alaska, Berkley would have no liability for conspiring and/or aiding and abetting any alleged breach of those duties. As such, to the extent that the forum selection clause is enforceable against Berkley (see below), it would also encompass CopperPoint's causes of action against Berkley.

Plaintiff urges the court to follow *Bancomer, S.A. v. Superior Court* (1996) 44 Cal.App.4th 1450, 1461 and urges the court that the proper standard is whether or not causes of action depend on the interpretation of the contract. The forum selection clause in *Bancomer*, however, was much more narrow: "Any conflict which may arise regarding the interpretation or fulfillment of this contract, shall be submitted expressly to the courts of the City of Ensenada, B.C." (*Id*. at 1453.) That forum selection clause, therefore, was expressly limited to conflicts that arose regarding the "interpretation.." of the contract. (*Id*.) It would, therefore, make sense that torts that do no depend on the "interpretation" of the contract would not be covered in *Bancomer*. The forum selection clause here, however, encompasses any legal suit or action that "arises out of" or is "based upon" the Agreement and does not expressly limit it to claims regarding the interpretation of the Agreement.

Given the broad language of the forum selection clause, the court finds that the analysis in *Nedlloyd* and *Cal-State Business Products & Services, Inc.,* are more analogous to this case than *Bancomer.* As

such, the court finds that the forum selection clause encompasses each of Plaintiff's alleged claims.

***B. Enforceable Against Non-Signatory?***

Defendants argue that the agreement is enforceable by Berkley, as a non-signatory. Plaintiff argues that Berkley does not pass the third-party beneficiary test set forth in *Bancomer*.

A non-signatory may enforce a forum selection clause where the non-signatory is alleged to have conspired with signatories to carry out a fraudulent scheme related to the contract (*ibid.*), or when the non-signatory is "alleged to have participated in the fraudulent representations which induced plaintiffs to enter into the Agreement" (*Lu v. Dryclean-U.S.A. of California, Inc.* (1992) 11 Cal.App.4th 1490, 1494). Under such circumstances, a court may find the forum selection clause enforceable by a non-signatory because holding otherwise would "permit a plaintiff to sidestep a valid forum selection clause simply by naming a closely related party who did not sign the clause as a defendant." (*Ibid.*)

In *Lu v. Dryclean-U.S.A. of California, Inc*. (1992) 11 Cal.App.4th 1490, the dispute centered around a franchise agreement between plaintiff and one defendant. (*Id.* at 1492). That defendant and two other non-signatory defendants filed a motion to dismiss to enforce the forum selection clause in that agreement, which was granted. (*Id*.) The court of appeal found that the non-signatory defendants were closely related to the contractual relationship and could enforce the forum selection clause. (*Id*. at 1494).

> Here, the alleged conduct of Dryclean Franchise and Dryclean U.S.A. is closely related to the contractual relationship. They are alleged to have participated in the fraudulent representations which induced plaintiffs to enter into the Agreement. Indeed, plaintiffs go so far as to allege Dryclean Franchise and Dryclean U.S.A. are the "alter ego" of Dryclean California, which did sign the Agreement containing the forum selection clause. Under these circumstances, the fact that Dryclean Franchise and Dryclean U.S.A. did not sign the Agreement does not render the forum selection clause unenforceable.

(*Id*.)

*In Net2Phone, Inc. v. Sup. Ct*. (2003) 109 Cal.App.4th 583, the court found that a forum selection clause could be enforced against non-party plaintiff, who was trying to enforce certain rights under the contract in a representative capacity. (*Id*. at 589). The court held:

> Although Consumer Cause is not itself a party to the contract, it has sued in a representative capacity challenging certain contractual terms. By so doing, Consumer Cause purports to assert the rights of those who *are* parties to the contract. If it prevails, Consumer Cause will succeed in altering the terms of the contract, and reap the fruits of victory including attorney's fees. Consumer Cause is "closely related" to the contractual relationship because it stands in the shoes of those whom it purports to represent. Its argument to the contrary is inconsistent with its position as a representative plaintiff. Were

we to hold otherwise, a plaintiff could avoid a valid forum selection clause simply by having a representative nonparty file the action.

(*Ibid*.)

Here, CopperPoint is attempting to assert rights under the Agreement (particularly the confidentiality provision). Again, CopperPoint's claims against Berkley are all derivative of CopperPoint's claims against Jones. Without CopperPoint's claims against Jones, CopperPoint has no basis for holding Berkley liable as an aider and abettor and/or a co-conspirator. Without Jones, Berkley, as CopperPoint's competitor owed no independent duties to CopperPoint. CopperPoint's allegations against Berkley allege that Berkley co-conspired with Jones to misappropriate CopperPoint's trade secret to start its own company. The court finds that CopperPoint's claims against Berkley, which are all based on the legal relationship that arose between CopperPoint and Jones from the Agreement, is "closely related to the contractual transaction" at issue. Jones' duties and conduct and obligations to CopperPoint all arose from and were formed by the Agreement and merger. CopperPoint's claims against Berkley all relate to Jones' alleged breach of those duties. The court finds that *Lu* is instructive and persuasive.

Plaintiff urges the court to follow Bancomer. In so arguing, Plaintiff cites the test for third-party beneficiaries. (See Opposition at p. 9.) Berkley, however, is not arguing its status as a third-party beneficiary, but rather, as a party "closely related to the contractual transaction." Plaintiff, further, argues that under Bancomer, Berkley is not "closely related." (Opposition at p. 10.) In Bancomer, the court of appeal found that the independent bank was not "closely related to the contractual relationship" and could not assert the forum selection clause, in part because the offending conduct "preceded formation of the purchase agreement[s]" and the bank was "being held directly liable for its own conduct." (*Id.* at 1460-1461.) Unlike Bancomer, however, Berkley is not directly liable for its own conduct, but for the conduct of Jones. Further, the offending conduct alleged by CopperPoint occurred subsequent to the formation of the Agreement between CopperPoint and Jones. Bancomer is, therefore, distinguishable.
The court finds that, under Lu, because the crux of CopperPoint's claims against Berkley are derivative and are directly tied to Jones' conduct (rather than Berkley's direct conduct), the forum selection clause applies to Berkley.

***C. Unreasonableness/Substantial Justice***

"A mandatory clause will ordinarily be given effect without any analysis of convenience; the only question is whether enforcement of the clause would be unreasonable." (*Intershop* at p. 196.) A mandatory clause "is presumed valid; the party opposing its enforcement bears the "substantial" burden of proving why it should *not* be enforced. [Citations.]" (*Global Packaging, Inc. v. Superior Court* (2011) 196 Cal.App.4th 1623, 1633.) "Nonetheless, "California courts will refuse to defer to the selected forum if to do so would substantially diminish the rights of California residents in a way that violates our state's public policy." *(Verdugo* at pp.147-148). "[M]ere inconvenience or additional expense is not the test." (*Smith, supra at p.* 496.) Instead, a forum selection clause is unreasonable if "the forum selected would be unavailable or unable to accomplish substantial justice." (*CQL*, supra at

p. 1354.) In making this determination, the choice of forum "must have some rational basis in light of the facts underlying the transaction." (*Ibid.*) The party opposing enforcement of a forum selection clause ordinarily "bears the 'substantial' burden of proving why it should *not* be enforced." (*Verdugo* at pp.147-148.) "That burden, however, is reversed when the claims at issue are based on unwaivable rights created by California statutes." (*Ibid*.) "'[A] defendant can meet its burden only by showing the foreign forum provides the same or greater rights than California, or the foreign forum will apply California law on the claims at issue.' [Citation.]" (*Handoush v. Lease Finance Group, LLC* (2019) 41 Cal.App.5th 729, 736 (forum selection clause was unenforceable because statute under which Plaintiff was suing Defendant does not allow for jury trial waiver).

In general, enforcement of a forum selection clause has been considered unreasonable only when the forum has no logical nexus to the parties or their transaction, the forum is unavailable or unable to accomplish "substantial justice," deferring to the selected forum would substantially diminish the rights of California residents, or the clause itself was obtained by fraud. (*Cal-State Business Products, supra*, at pp. 1679-1680; *Verdugo*, supra at p. 147); *CQL, supra at* 1354).

Here, Plaintiff argues that enforcing the forum selection clause will be unreasonable because it waives Plaintiff's unwaivable statutory right to a jury trial. Plaintiff argues that the Agreement contains a jury waiver. (See Complaint, Ex. A at § 9.8) A predispute waiver of a jury trial is unenforceable in California. (*Rincon EV Realty LLC v. CP III Rincon Towers, Inc.* (2017) 8 Cal.App.5th 1, 12.) Plaintiff argues that Delaware does not have a similar provision such that Plaintiff's unwaivable rights to a jury trial will be compromised if Plaintiff is forced to litigate in Delaware.

Defendants argue that the test as to whether or not to enforce a forum selection agreement focusses on the substantial diminishing of rights of "California residents." Defendants contend that Plaintiff is an Arizona company, Jones is a Washington resident, and Berkley is a Delaware corporation. There are no rights of any California residents that will be diminished.

The court tends to agree with Defendants. The Agreement, at issue, which Plaintiff signed, was entered into by foreign entities/a foreign resident. Plaintiff, as an Arizona resident, did not have any expectation to be protected under the California constitution. While Plaintiff argues that BERS does business in California, Plaintiff does not name BERS as a defendant. The injuries about which Plaintiff complains were allegedly caused by non-California residents/entities. As the Verdugo court stated, the test for the enforcement of a mandatory forum selection clause is that mandatory forum selection clauses are presumed valid and California courts will refuse to defer to the selected forum if to do so would substantially diminish the rights ***of California residents*** in a way that violates our state's public policy. *(Verdugo* at pp.147-148).

In *Handoush v. Lease Fin. Grp., LLC*, 41 Cal. App. 5th 729, 741 (2019), on which Plaintiff relies, while not explicitly stated in the decision, involved an underlying plaintiff, Handoush, who sued a defendant under a lease—the contract of which was entered into and performed in California. (See Opening Brief by Zeaad HANDOUSH, Plaintiff and Appellant, v. LEASE FINANCE GROUP, LLC, Defendant and Respondent., 2018 WL 805950, at *4). The court of appeal's found that Handoush's

substantive rights to a jury trial would be diminished given that the lease contained a jury waiver, which is enforceable under New York Law, but unenforceable under California law. (*Handoush v. Lease Fin. Grp., LLC*, 41 Cal. App. 5th 729, 741). Here, there is no such allegation that the Agreement was formed and performed in California.

In *EpicentRx, Inc. v. Superior Court* (2023) 95 Cal.App.5th 890, on which Plaintiff also relied, one of the Defendants, EpicentRx is a Delaware biotechnology company headquartered in California. (*Id*. at 895.) There is no such allegations that Jones or Berkley are residents and/or headquarter in California. The only connection to California refers to the formation of a non-party.

Finally, Plaintiff relies on *Rincon EV Realty LLC v. CP III Rincon Towers, Inc.* (2017) 8 Cal.App.5th 1, for the following proposition:

> Nor does the out-of-state residency of some of the parties change the calculus when we shift our focus specifically to this case. Defendants insist that, because plaintiffs are New York residents, California has "no interest in protecting *them* from the consequences" of the contractual jury waivers at issue. Defendants also emphasize that some of the events giving rise to plaintiffs' claims (such as the negotiation and disbursement of the Loan) occurred in New York. Of course, the parties remain entitled to have their contract dispute adjudicated under New York law, and to that extent defendants overstate the importance of the jury waiver in securing the legitimate contractual expectations they and plaintiffs have. California's policy as to the permissibility of jury waivers, in any event, is not focused solely on the protection of California *residents* (or persons whose claims rest on events occurring entirely in California). Instead, as we have emphasized, it protects the rights of California *litigants*, and is a core aspect of how California has chosen to adjudicate cases within its civil justice system as a whole.

Id. at 16. Plaintiff, therefore, argues that the residency of any of the parties is not relevant—the unwaivable right to a jury applies to all litigants. But Rincon involved a choice-of-law provision—not a forum selection clause. The Rincon court, relied heavily and concluded that "California, ***as the forum for adjudication*** of this dispute, has the paramount interest here." (Id. at 15, citing *Grafton*, *supra*, 36 Cal.4th at p. 964, 32 Cal.Rptr.3d 5, 116 P.3d 479; *Grove Properties, supra,* 126 Cal.App.4th at pp. 217, 223, 23 Cal.Rptr.3d 803 [California, as forum state, had substantially greater interest than chosen state (New York) in determination of a "procedural issue," i.e., the reciprocity of contractual attorney fees under Civ. Code, § 1717].) In Rincon, therefore, California was already chosen as the forum to adjudicate claims. The issue was whether or not the California court would apply New York or California law.

The court finds that, interpreting the test for enforceability of a forum selection clause, the test requires a showing that the selected forum so would substantially diminish the rights ***of California residents*** in a way that violates our state's public policy. *(Verdugo* at pp.147-148). Defendant has met their burden of showing that the rights of any California residents would not be substantially diminished by enforcing a forum selection clause entered into by an Arizona company.

| | | **The motion is GRANTED**. |
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| 3 | Guevara v. KPRM Leasing | Defendant Enzo Real Estate LLC moves to strike portions of Plaintiff Mario Guevara Jr.'s First Amended Complaint ("FAC"). For the following reasons, Defendant's **motion to strike is granted**.<br><br>A court may strike out any irrelevant, false, or improper matter inserted in any pleading or strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule or an order of the court. (Code Civ. Proc., § 436.) "Irrelevant" matters include: allegations not essential to the claim, allegations neither pertinent to nor supported by an otherwise sufficient claim or a demand for judgment requesting relief not support by the allegations of the complaint. (Code Civ. Proc., § 431.10(b).) A motion to strike can also strike legal conclusions. (*Weil & Brown* (2022) Cal. Prac. Guide, Civil Proc. before Trial, ¶ 7:179.) Conclusory allegations are permitted, however, if they are supported by other factual allegations in the complaint. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.)<br><br>Motions to strike are disfavored. Pleadings are to be construed liberally with a view to substantial justice. (Code Civ. Proc., § 452; *Weil & Brown* (2022) Cal. Prac. Guide, *Civil Proc. before Trial*, ¶ 7:197.) The allegations of the complaint are presumed true; they are read as a whole and in context. (*Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255.) The same liberal policy regarding amendments that applies to the sustaining of demurrers applies for motions to strike. If a defect may be correctible, leave to amend should usually be given. (*Id*. at 168.)<br><br><u>Penal Code Section 789.3</u><br><br>Paragraphs 45 and 46 reference California Penal Code section 789.3. California's Penal Code does not appear to include a section identified as 789.3. The motion to strike the references to Penal Code section 789.3 in paragraphs 45 and 46 is granted.<br><br><u>Penal Code Sections 418 and 602.5</u><br><br>In connection with the second cause of action for forcible entry/forcible detainer, the FAC alleges that "California Penal Code § 418 makes it a misdemeanor to use, encourage,<br>or assist another to use 'any force or violence in entering upon or detaining any lands or other possessions of another' " and that "California Penal Code § 602.5 makes it a misdemeanor to enter or remain in a residence without the consent of 'the person in lawful possession.' " (FAC ¶¶ 57-58.)<br><br>The FAC alleges Defendants violated Penal Code sections 418 and 602.5. Plaintiff, however, has not demonstrated that these criminal statutes provide a private cause of action for civil enforcement. In contrast, courts have found that a defendant may be held civilly liable for the receipt of stolen property under Penal Code section 496. The motion to strike is granted as to paragraphs 57 and 58.<br><br><u>Attorney's Fees</u> |

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| | | Plaintiff seeks attorney fees pursuant to Code of Civil Procedure section 1717.<br><br>Pursuant to Civil Code section 1717, "[i]n any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs." (Civ. Code, § 1717, subd. (a).)<br><br>The rules pertaining to attorney fees under Civil Code section 1717 apply only to causes of action "on a contract." (Civ. Code, § 1717, subd. (a); see *Xuereb v. Marcus & Millichap, Inc.* (1992) 3 Cal.App.4th 1338, 1342, disapproved on other grounds by *Santisas v. Goodin* (1998) 17 Cal.4th 599, 614.) A party's entitlement to fees for tort causes of action—those not sounding in contract—is governed not by section 1717, but by the language of the attorney fee provision. (*Santisas,* 17 Cal.4th at pp. 617, 619; *Maynard v. BTI Group, Inc.* (2013) 216 Cal.App.4th 984, 993.)<br><br>The FAC does not allege any contract claims. Because Plaintiff's recovery is based on tort claims, attorney's fees are available only as authorized by statute or by agreement. The FAC does not plead sufficient facts to show that a contract between Plaintiff and Defendants provides for attorney's fees under the alleged circumstances. The motion to strike is granted as to Prayer 6.<br><br>Should Plaintiff desire to file an amended complaint that addresses the issues in this ruling, Plaintiff must file and serve it within 15 days of service of the notice of ruling.<br><br>Defendant Enzo Real Estate LLC to give notice. |
| 4 | Kendrick v. Anaheim Healthcare Center, LLC | Defendant Anaheim Healthcare Center, LLC moves to compel Plaintiff Bette Kendrick and Plaintiff David Kendrick to provide further responses to certain form interrogatories and Plaintiff Bette Kendrick to provide further responses to certain requests for production of documents. For the following reasons, the motions are **GRANTED IN PART and DENIED IN PART.**<br><br>Defendant seeks a further response from Plaintiff Bette Kendrick to form interrogatory no. 12.6 and further responses from Plaintiff David Kendrick to form interrogatory nos. 12.1 and 12.6.<br><br>Defendant takes issue with Plaintiff referencing Code Civ. Proc. § 2030.230. Section 2030.230 provides:<br>If the answer to an interrogatory would necessitate the preparation or the making of a compilation, abstract, audit, or summary of or from the documents of the party to whom the interrogatory is directed, and if the burden or expense of preparing or making it would be substantially the same for the party propounding the interrogatory as for the responding party, it is a sufficient answer to that interrogatory to refer to this section and to specify the writings from which the answer may be derived or ascertained. This specification shall be in sufficient detail to permit the propounding party to locate and to identify, |

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| | | as readily as the responding party can, the documents from which the answer may be ascertained. The responding party shall then afford to the propounding party a reasonable opportunity to examine, audit, or inspect these documents and to make copies, compilations, abstracts, or summaries of them.<br><br>In order to utilize this code section, the responding party must satisfy certain requirements. (Ibid.) The interrogatory must refer to Section 2030.230 and specify the writings from which the answer may be derived or ascertained. (Code Civ. Proc., § 2030.230.)<br><br>Plaintiff provides no evidence that the burden of preparing a "compilation, abstract, audit, or summary" of the documents Plaintiff references would be substantially the same for the party propounding the interrogatory as for the responding party. The only evidence provided by Plaintiff in opposing the motion is a declaration from Plaintiff's counsel. The declaration consists of 4 paragraphs, in which counsel purports to attach certain documents to the declaration. Yet no documents were attached to the declaration. The Court is unable to determine whether the burden of responding to the interrogatories is substantially the same for Defendant as it is for Plaintiff. Plaintiff has not met her burden and is thus ordered to remove the references to Section 2030.230 and respond to each subsection of the interrogatories, to the extent Plaintiff is able to do so. Plaintiff is ordered to provide further responses within 15 days.<br><br>Defendant also seeks a further response from Plaintiff Bette Kendrick to Defendant's request for production of documents (RFP), set one, nos. 5-8.<br><br>The motion is denied as to RFP No. 5. As to RFPs Nos. 6-8, the motion is granted. Plaintiff's response to these RFPs is too broad. Code Civ. Proc. § 2031.280(a) states that "Any documents or category of documents produced in response to a demand for inspection, copying, testing, or sampling shall be identified with the specific request number to which the documents respond." Plaintiff evidently directed Defendant to all of the documents produced by Defendant in discovery and other categories of documents. This is overly broad, and Plaintiff has not justified her objections. Plaintiff is ordered to provide further responses that comply with Code Civ. Proc. § 2031.280 within 15 days.<br><br>Plaintiff is ordered to pay sanctions of $600 for each of the three motions (1.5 hours at $400 per hour), for a total of $1,800, to Defendant by May 21, 2024. (Code Civ. Proc. §§ 2030.300 and 2031.310.)<br><br>Defendant to give notice. |
| 5 | Line 5, LLC v. Amazon Warranty, LLC | <u>**Motion to Strike**</u><br><br>Defendants Amazon Warranty, LLC ("AMAZON") and Marian Nasrati ("NASRATI") (collectively "Defendants") seek an order striking Plaintiff Line 5, LLC's ("Plaintiff") entire First Amended Complaint ("FAC") on the grounds it lacks standing to file this action in California because it is a Florida limited liability company, a foreign LLC, and is not registered to conduct business in California. Defendants also seek to strike the punitive damages allegations and the request for attorney's fees from the FAC. |

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| | | Corporations Code section 17708.07(a) states: "A foreign limited liability company **transacting intrastate business in this state** shall not maintain an action or proceeding in this state unless it has a certificate of registration to transact intrastate business in this state."<br><br>Corporations Code section 17708.03(a) states: "A foreign limited liability company that **enters into repeated and successive transactions of business in this state**, other than in interstate or foreign commerce, is **considered to be transacting intrastate business in this state** within the meaning of this article."<br><br>Corporations Code section 17708.03(b) explicitly states that "activities of a foreign limited liability company that **do not constitute transacting intrastate business in this state include** all of the following:<br>(1) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement of those, or the settlement of claims or disputes.<br>...<br>(7) Creating or acquiring indebtedness, evidences of indebtedness, mortgages, liens, or security interests in real or personal property.<br>(8) Securing or collecting debts or enforcing mortgages or other security interests in property securing the debts and holding, protecting, or maintaining property so acquired..."<br><br>The defendant bears the burden of proving: (1) the action arises out of the transaction of **intrastate business** by a foreign corporation; **and** (2) the action was commenced by the foreign corporation prior to qualifying to transact intrastate business." (*United Med. Mgmt. Ltd. v. Gatto* (1996) 49 Cal.App.4th 1732, 1740.)<br><br>Here, Defendants present no evidence whatsoever that Plaintiff transacts "intrastate business" in California and relies solely on one allegation in the FAC that Plaintiff does "business in, including but not limited to, Orange County, California." (*See* FAC, ¶ 1.) "Doing business" in Orange County does not equate to conducting "intrastate business" in California.<br><br>Defendants do not present evidence that Plaintiff "enters into repeated successive transactions of business" in California. And, although Defendants contend in the Reply that Plaintiff does conduct intrastate business in California, again, Defendants not prevent any "evidence" and merely contend that Plaintiff does have a significant presence in California because of the contractual process outlined in the complaint includes funding sales conducted through a call center and verifying customer consent.<br><br>Moreover, per the FAC, Plaintiff is a finance company which offers financing to consumers; Plaintiff does not enter into any contracts with consumers; and can act as lienholder on all automotive products sold using its financing. (*See* FAC, ¶¶ 8 and 13.) Creating or acquiring indebtedness or liens are activities which are specifically excluded from conduct constituting "intrastate business." (*See supra.*)<br><br>The Court finds that Defendants failed to establish that Corporations Code section 17708.07(a) applies to Plaintiff. The **Motion is DENIED on this ground.** |

Next, Defendants contend seek sanctions against Plaintiff for violation of California Rules of Court, Rule 1.201, pursuant to California Rules of Court, Rule 2.30. Defendants contend that Plaintiff included private information in their complaint, i.e., complete address, complete federal tax ID, complete bank account number, W-9 form, IRS document reflecting EIN, personal phone number and email, driver's license information of Defendants, without redacting this sensitive information as required.

Even assuming *arguendo* that Plaintiff violated Rule 1.201(a), a motion to strike is not the proper procedure to seek sanctions for violation of same. Rather, as set forth above, Defendants are required to file a noticed motion for sanctions. (*See* Rule 2.30.) **Request for sanctions is DENIED**.

The Motion as to the remaining issues, i.e., punitive damages and request for attorney's fees, is MOOT in light of the Court's ruling on Demurrer below.

**DEMURRER**

Defendants Amazon Warranty, LLC ("AMAZON") and Marian Nasrati ("NASRATI") (collectively "Defendants") demurs to Plaintiff Line 5, LLC's ("Plaintiff") entire First Amended Complaint ("FAC"), 1st through 5th causes of action. Defendants also contend that Plaintiff lacks standing to assert its claims and that Plaintiff should be sanctioned for violating California Rules of Court, Rule 1.201(a).

Lack of Standing and Sanctions Issues.

The Court addressed these issues in the Motion to Strike. (*See supra*.)

1st cause of action for breach of contract.

Defendants demur to the breach of contract on the grounds it is not sufficiently pled because a copy of the contract is not attached, the FAC does not address of the issue of enforceability and does not allege that Plaintiff was excused from its contractual obligations.

"To state a cause of action for breach of contract, a party must plead the existence of a contract, his or her performance of the contract **or** excuse for nonperformance, the defendant's breach and resulting damage." (*Harris v. Rudin, Richman & Appel* (1999) 74 Cal. App. 4th 299, 307.) "If the action is based on alleged breach of a written contract, the terms must be set out verbatim in the body of the complaint or a copy of the written agreement must be attached and incorporated by reference." (*Id.*)

Here, the FAC alleges that Plaintiff entered into a valid written contract with Defendants on September 8, 2022; that NASRATI signed a Personal Guaranty; that Plaintiff "has performed all acts, conditions, covenants, promises and other obligations required to be performed by" it; that Defendants breached the contract and that Plaintiff sustained damages as a result thereof. (*See* FAC, ¶¶ 34-40.)

Plaintiff concedes that a copy of the contract was not attached due to inadvertent error. However, as to the elements of a cause of action for breach of contract, the FAC is sufficiently pled in paragraphs

34-40.) Plaintiff is not required to plead "excuse for nonperformance" since Plaintiff has alleged that it has complied with all its contractual obligations. Accordingly, the demurrer is sustained, with 20-days leave to amend.

2nd cause of action for fraud.

Defendants demur to the fraud cause of action on the grounds it is not pled w/the requisite specificity.

The "elements of a cause of action for fraud are: (1) a misrepresentation, which includes a concealment or nondisclosure; (2) knowledge of the falsity of the misrepresentation i.e., scienter; (3) intent to reduce reliance on the misrepresentation; (4) justifiable reliance; and (5) resulting damages." (*Cadlo v. Ownes-Illinois, Inc.* (2005) 125 Cal.App.4th 513. Facts supporting each element must be pleaded with particularity sufficient to show ***how, when, where, to whom, and by what means*** the representations were tendered. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) General and conclusory allegations are not sufficient. (*Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 74.) Every element of fraud must be alleged both factually and specifically. (*Hall v. Department of Adoptions* (1975) 47 Cal.App.3d 898, 904.)

The FAC also alleges that the "Contract" was entered into on or about September 8, 2022 and that Plaintiff discovered the fraud of Defendants in or around March of 2023. (*See* FAC, ¶¶ 10, 11, 16-20.)

"'**Promissory fraud'** is a subspecies of the action for **fraud** and deceit. A promise to do something necessarily implies the intention to perform; hence, where a promise is made without such intention, there is an implied misrepresentation of fact that may be actionable **fraud.** [citations omitted.] An action for **promissory fraud** may lie where a defendant fraudulently induces the plaintiff to enter into a contract. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.)

Based on the allegations of the FAC, the demurrer to this cause of action is overruled.

3rd cause of action for unjust enrichment.

Defendants demur to the cause of action for unjust enrichment on the grounds it is not adequately pled because although Plaintiff alleges that the Defendants has unjustly enriched themselves by an amount totaling $104,231.29, the FAC fails to allege how this alleged enrichment transpired and why it would be considered unjust under the circumstance.

Here, the FAC alleges that Defendants failed to provide Plaintiff with the pro-rated refunds for six cancelled loans and failed to either activate or remit the money obtained from Plaintiff on 17 Installment contracts which had never been purchased or activated; that Defendants have been unjustly enriched in the amount of $104,231.09 as a result of their misrepresentations and fraud related to the Contract "and more specifically their failure to provide LINE 5, LLC with the pro-rated refunds for six (6) cancelled loans and otherwise return to LINE 5, LLC the money they obtained on seventeen (17) Installment Contracts for Automotive Products which had never been purchased or activated"; that it would be unjust for Defendants to retain these sums; and that

Plaintiff seeks restitution of such unjust funds received by Defendants. (*See* FAC, ¶¶ 53-56.)

The cause of action is sufficiently pled and there is no requirement that this claim be pled with specificity. The demurrer as to this cause of action is overruled.

4th cause of action for civil extortion.

Defendants demur to the cause of action for civil extortion on the grounds it is not sufficiently pled because the FAC lacks clear and specific allegations concerning a wrongful act or threat, the intent to instill fear, and the intent to compel another person to act against their will and is not pled w/the heightened specificity.

A cause of action for civil extortion exists for "the recovery of money obtained by the wrongful threat of criminal or civil prosecution." (*Fuhrman v. California Satellite Sys.* (1986) 53 Cal.2d 195, 203-204, disapproved of on other grounds by *Silberg v. Anderson* (1990) 50 Cal.3d 205.) "It is essentially a cause of action for moneys obtained by duress, a form of fraud." (*Id.* at 204.)

"The elements of the offense are: (1) A wrongful use of force or fear, (2) with the specific intent of inducing the victim to consent to the defendant's obtaining his or her property, (3) which does in fact induce such consent and results in the defendant's obtaining property from the victim." (*People v. Hesslink* (1985) 167 Cal.App.3d 781, 789.)

Here, the FAC alleges that on March 20, 2023, Defendants advised Plaintiff that it would not remit payment to Plaintiff for the 17 Installment Contracts for Automotive Products which had never been purchased or activated or provide Plaintiff with the pro-rated refunds for the 6 cancelled loans unless Plaintiff agreed to fund an additional 42 loans for Defendants. (*See* FAC, ¶¶ 62-64.) The FAC, however, does not allege the elements of a cause of action for extortion, i.e., wrongful use of force or fear, specific intent of inducing the victim to consent to the defendant's obtaining of his or her property, etc... (*See supra*.) The **demurrer is sustained**, with 20-days leave to amend, as to this cause of action.

5th cause of action for violation of Business and Professions Code section 17200.

Defendants contend the cause of action for violation of Bus. & Prof. Code section 17200 fails because the FAC "lacks the necessary factual particulars to illustrate how the plaintiff's claim falls within the purview of the UCL" and fails to specify any violations committed by Defendants leaving a gap in understanding how the alleged actions were unlawful, unfair, or fraudulent.

To "state a claim under the act one need not plead and prove the elements of a tort. Instead, one need only show that 'members of the public are likely to be deceived.'" (*Bank of the W. v. Superior Court* (1992) 2 Cal. 4th 1254, 1266-67.)

"The 'fraud' prong of the UCL requires that 'members of the public are likely to be deceived' by the challenged conduct." (*Bardin v. Daimlerchrysler Corp.* (2006) 136 Cal.App.4th 1255, 1261.)

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| | | "To state a cause of action under [section 17200] for injunctive relief, it is necessary only to show that **'members of the public are likely to be deceived.'**" (*Day v. AT & T Corp.* (1998) 63 Cal.App.4th 325, 332.)<br><br>Here, the FAC fails to allege how Defendants' conduct is injurious to consumers or how members of the public are likely to be deceived by Defendants' conduct. The demurrer is sustained, with 20-days leave to amend.<br><br>Moving Party is to give notice. |
| 6 | Nissen v. Keefe | Defendant Sean Keefe's Motion to Compel Responses to Form Interrogatories, Motion to Compel Responses to Special Interrogatories, and Motion to Compel Responses to Inspection Demand are **CONTINUED to June 6, 2024 at 1:30 p.m. in Department C19.**<br><br>According to the Proofs of Service filed with the instant motions, Defendant served the motions by U.S. mail, addressed as follows:<br><br>JAMES NISSEN<br>BEAR REPUBLIC LAW, APC<br>28202 CABOT ROAD, SUITE 300<br>LAGUNA BEACH, CA 92677<br><br>Although the mailing address is correct for Plaintiff's counsel, the motions were addressed to Plaintiff rather than his attorneys, Stanton T. Mathews and Andrew J. Nissen.<br><br>To ensure proper notice, Defendant is ORDERED to serve the motions on Plaintiff's counsel. Should Defendant opt to serve the motions by U.S. mail, Defendant shall address the mailing to Plaintiff's counsel rather than Plaintiff.<br><br>Defendant to give notice. |
| 7 | Third Laguna Hills Mutual v. Detsch | Plaintiff Third Laguna Hills Mutual's Motion for Preliminary Injunction is **DENIED** without prejudice.<br><br>The Court does not acquire jurisdiction over Defendants until they have been served with the Summons and Complaint. (*People v. Macken* (1939) 32 Cal.App.2d 31, 38.)<br><br>Further, "[n]o preliminary injunction shall be granted without notice to the opposing party." (Code Civ. Proc., § 527, subd. (a).) "Prior notice is *always* required before the court issues a preliminary injunction. [Citation.]" (*Pacific Decision Sciences Corp. v. Superior Court* (2004) 121 Cal.App.4th 1100, 1110.)<br><br>There is no evidence Plaintiff served Defendants with either the Summons and Complaint, or the subject Motion. Thus, the Court does not have jurisdiction over Defendants. More importantly, without prior notice to Defendants, no preliminary injunction can be issued. |
| 8 | THORODDSEN v. MAZDA MOTOR OF AMERICA, INC. | The court **DENIES Defendant's motion**<br><br>In general, the prevailing party is entitled as a matter of right to recover costs for suit in any action or proceeding. (Cal. Civ. Proc. Code §1032(b); *Santisas v. Goodin* (1998) 17 Cal.4th 599, 606; *Scott Co. Of* |

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| | | *Calif. v. Blount, Inc.* (1999) 20 Cal.4th 1103, 1108.) Allowable costs under Code of Civil Procedure section 1033.5 must be reasonably necessary to the conduct of the litigation, rather than merely convenient or beneficial to its preparation, and must be reasonable in amount. An item not specifically allowable under section 1033.5(a) nor prohibited under subdivision (b) may nevertheless be recoverable in the discretion of the court if they meet the above requirements (i.e., reasonably necessary and reasonable in amount). (*Ladas v. California State Automotive Assoc.* (1993) 19 Cal.App.4th 761, 773-774.) If the items appearing in a cost bill appear to be proper charges, the burden is on the party seeking to tax costs to show that they were not reasonable or necessary. (*Id.* at 773-774.) On the other hand, if the items are properly objected to, they are put in issue and the burden of proof is on the party claiming them as costs. *Id.*<br><br>Separate and apart from section 1033.5, Civil Code section 1794, subdivision (d), provides: "If the buyer prevails in an action under this section, the buyer shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action." (Cal. Civ. Code 1794(d); see also *Nightingale v. Hyundai Motor America* (1994) 31 Cal.App.4th 99, 103–104.)<br><br>"Section 1794, subdivision (d), permits the prevailing buyer to recover both 'costs' *and* "expenses." (*Jensen v. BMW of North America, Inc.* (1995) 35 Cal.App.4th 112, 137.) "Examining the language of the statute… (the Legislature intended the word 'expenses' to cover items not included in the detailed statutory definition of 'costs…' under Code of Civil Procedure section 1033.5. (Id.)<br><br>Specifically, the Legislature added the "costs and expenses" language to section 1794 in 1978. (Id. at 138.) An analysis by the Assembly Committee on Labor, Employment, and Consumer Affairs states: "Indigent consumers are often discouraged from seeking legal redress due to court costs. The addition of awards of 'costs and expenses' by the court to the consumer to cover such out-of-pocket expenses as filing fees, expert witness fees, marshall's fees, etc., should open the litigation process to everyone." (Id., citing Assem. Com. on Labor, Employment & Consumer Affairs, Analysis of Assem. Bill No. 3374 (May 24, 1978) p. 2.; see also *Warren v. Kia Motors America, Inc.* (2018) 30 Cal.App.5th 24, 42-43 (in enacting provision of the Song-Beverly Consumer Warranty Act governing award of costs, legislature intended the phrase costs and expenses to cover items not included in the detailed statutory definition of "costs.")<br><br>Defendant argues that the court should strike Plaintiff's total request for costs because Plaintiff did not file a memorandum of costs, which is required for costs recoverable under section 1033.5. However, **Defendant ignores that Plaintiff has a different avenue of recovering costs that are broader and more expansive than section 1033.5**. The court, therefore, denies Defendant's request to strike the entirety of Plaintiff's costs request for failure to file a memorandum of costs.<br><br>Alternatively, Defendant argues that the court should strike/tax the following costs:<br>• Delivery Fees - $107.45 |

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| | | • CourtCall Fees - $188.00<br>• Transcripts - $4,830.50<br>• Expense paid to Automotive Technology Services, Inc. for Vehicle Inspection and Related Expenses – $2,875.50<br>Defendant argues that these were not recoverable under 1033(a), not reasonably necessary for the conduct of litigation, and/or were not court-ordered. In so arguing, Defendant is arguing under the standard for Civil Code section 1033.5. Again, however, there is a broader basis for Plaintiff's recovering costs and expenses—that would be under civil code 1794, which contemplates a broader recovery for costs and expenses for consumers than those statutorily allowed.<br><br>The court has reviewed Plaintiff's costs and expenses. (See ROA # 190, Mvg. Shahian Decl., Ex. 16 at pp. 5-6.) Each of the costs and expenses listed are delivery fees, filing fees, court call fees, deposition and/or court hearing transcripts, and/or expenses for an inspection. The court finds that these are the type of costs and expenses that are contemplated for a consumer to recover under section 1794(d).<br><br>Plaintiff is entitled to costs and expenses in the amount of $9,061.53.<br><br>Defendant to give notice. |
| 9 | Topping v. Shemanski | Plaintiff Frederic Topping's Motion to Compel Further Responses to Plaintiff's Special Interrogatories, Set One is **GRANTED in part and DENIED in part**. Defendant James Shemanski is ordered to serve full, complete, and verified responses to Plaintiff's Special Interrogatories (Set One) Nos. 9, 11, 12, 13, 19, 29, and 30 within 15 days of service of the notice of ruling. The motion is denied as to Special Interrogatory No. 33.<br><br>A party may move for an order compelling further responses to interrogatories on the grounds that: (1) an answer to a particular interrogatory is evasive or incomplete; (2) an exercise of the option to produce documents under Section 2030.230 is unwarranted or the required specification of those documents is inadequate; or (3) an objection to an interrogatory is without merit or too general. (Code Civ. Proc., § 2030.300, subd. (a).)<br><br>Defendant failed to justify his objections to Special Interrogatories Nos. 9, 11, 12, 13, 19, 29, and 30. (*Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255 [upon the filing of a timely motion to compel further responses, the burden is on the responding party to justify any objection or failure to fully answer the discovery].) Additionally, these interrogatories are not vague, ambiguous, overbroad, or irrelevant.<br><br>Special Interrogatory No. 33 asks Defendant to identify any and all injuries he suffered following the incident at issue. Plaintiff has not demonstrated why Defendant's injuries, if any, are relevant to the matter. Plaintiff, not Defendant, is the party making a personal injury claim. The motion is denied as to Special Interrogatory No. 33.<br><br>Plaintiff's request for sanctions is granted. Defendant James Shemanski shall pay sanctions in the amount of $1,200.00 to Plaintiff Frederic Topping by June 06, 2024. (Code Civ. Proc., §§ 2023.010, subd. (d); 2023.030, subd. (a); 2030.300, subd. (d).) |

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| | | Plaintiff to give notice. |
| 10 | Yarn v. Ford Motor Company | Off calendar. |