LAW & MOTION CALENDAR
TENTATIVE RULINGS

July 10, 2025

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
1:30 p.m.		
1	Nguyen v. Bautista	Demurrer to SAC Defendant Augusto Bautista demurs to the Second Amended Complaint (SAC) of Plaintiff Tu A Winn Nguyen. For the following reasons, the demurrer is **SUSTAINED with leave to amend**. The court exercises its discretion to consider this demurrer despite Defendant Bautista's failure to comply with the meet and confer

requirement of Code of Civil Procedure Section 430.41(a). The court admonishes Defendant Bautista to comply with all relevant procedural requirements prior to filing further motions.

Demurrers

In ruling on a demurrer, a court must accept as true all allegations of fact contained in the complaint. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) A demurrer challenges only the legal sufficiency of the affected pleading, not the truth of the factual allegations in the pleading or the pleader's ability to prove those allegations. (*Cundiff v. GTE Cal., Inc.* (2002) 101 Cal.App.4th 1395, 1404-1405.) Questions of fact cannot be decided on demurrer. (*Berryman v. Merit Prop. Mgmt., Inc.* (2007) 152 Cal.App.4th 1544, 1556.) A demurrer tests only the sufficiency of the complaint; a court will not consider facts that have not been alleged in the complaint unless they may be reasonably inferred from the matters alleged or are proper subjects of judicial notice. (*Hall v. Great W. Bank* (1991) 231 Cal.App.3d 713, 718 n.7.)

Although courts should take a liberal view of inartfully drawn complaints (*see* Code Civ. Proc., § 452), it remains essential that a complaint set forth the actionable facts relied upon with sufficient precision to inform the defendant of what plaintiff is complaining, and what remedies are being sought. (*Leek v. Cooper* (2011) 194 Cal.App.4th 399, 413.) Bare conclusions of law devoid of any facts are insufficient to withstand demurrer. (*Schmid v. City and County of San Francisco* (2021) 60 Cal.App.5th 470, 481; *see* Code Civ. Proc., § 425.10(a).)

First Cause of Action (Breach of Contract)

The SAC alleges a promissory note issued by "the newly established company," on which Defendant made only one payment. (SAC at 1:25-2:15.)

The elements of a cause of action for breach of contract are: (i) existence of the contract; (ii) Plaintiff's performance or excuse for nonperformance; (iii) Defendant's breach; and (iv) damage to plaintiff resulting therefrom. (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811.)

Here, the SAC does not allege the existence of any contract between Plaintiff and Defendant Bautista. The alleged corporate promissory note was issued by "the newly established company," not Defendant Bautista. In addition, the SAC does not allege the repayment terms of the alleged promissory note, such that there is a "meeting of the minds on all material points." (*Bustamante v. Intuit, Inc.* (2006) 141 Cal.App.4th 199, 215, quoting *Banner Entertainment, Inc. v. Superior Court* (1998) 62 Cal.App.4th 348, 359; *Fair v. Bakhtiari* (2006) 40 Cal.4th 189, 203.) It is not enough that the parties agree on "some of the terms." (*Bustamante v. Intuit, supra,* 141 Cal.App.4th 199, 215.) Nor is it sufficient if the "essential terms [are] only sketched out, with their final form to be agreed upon in the future." (*Id.* at p. 213.) A contract exists only if the agreed-upon terms "provide a basis for determining the existence of a breach and for giving an appropriate remedy." (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 811;

Bowers v. Raymond J. Lucia Companies, Inc. (2012) 206 Cal.App.4th 724, 734 [same].)

Second Cause of Action ("Misunderstanding")

The second cause of action alleges Defendant breached an agreement with Plaintiff to allow Plaintiff's wife, Kieu Loan Nguyen, to use one room of the offices for her business. (*See* SAC at 2:22-25.)

The elements of a cause of action for breach of contract are: (i) existence of the contract; (ii) Plaintiff's performance or excuse for nonperformance; (iii) Defendant's breach; and (iv) damage to plaintiff resulting therefrom. (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811.)

Here, the SAC alleges an agreement between Plaintiff and Defendant Bautista to permit Ms. Nguyen to use office space, Plaintiff's performance in acting as Broker on Record, and Defendant's breach in not permitting Ms. Nguyen to use that space. (SAC at 2:21-25.) The SAC, however, does not allege any damages to Plaintiff resulting from the alleged breach.

Third and Fourth Causes of Action ("Mortgage and Loans," and "Escrow")

The third cause of action alleges Plaintiff as Broker on Record should have received a monthly compensation of $800 from Fortune Diversified Investment Corporation d.b.a. FORTUNE 1 REALTY AND AFFORDABLE HOME MORTGAGE & LOANS but received that compensation only once. (SAC at 2:26-3:3.) The fourth cause of action alleges after further discussions, Plaintiff should have received a monthly compensation of $1200 but received that compensation only once. (SAC at 3:5-9.)

To the extent Plaintiff's claim is based on an alleged oral or written agreement, the allegations show any agreement for compensation is between Plaintiff and employer Fortune Diversified Investment Corporation, not Defendant Bautista.

Fifth Cause of Action ("Funeral Promise")

The fifth cause of action alleges that during the funeral of Decedent Mohammad Hassan, Decedent's wife stated she would pay a Plaintiff in full, but Plaintiff was never informed of when the debt would be repaid. (SAC at 3:10-17.)

"'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." (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638 [finding allegations established the elements of promissory fraud based on promises related to future employment].) The elements of a cause of action for promissory fraud are: (i) the defendant made a false promise; (ii) with intent not to perform; (iii) intent to induce reliance; (iv) justifiable

		reliance by the plaintiff; and (v) resulting damages. (*Ibid*; *Beckwith v. Dahl* (2012) 205 Cal.App.4th 1039, 1061.) The SAC does not allege any promise by Defendant Bautista—only by Decedent Mohammad Hassan's wife, who is not a party to this action. <u>Sixth Cause of Action ("Fired Broker")</u> The sixth cause of action alleges the new company, under Defendants Bautista's leadership, requested Plaintiff resign or be fired. (SAC at 3:19-21.) The balance sheet presented to Plaintiff reflected $32,500 owed pursuant to the contract, but did not include the new salary or commission for each loan transaction. (SAC at 3:24-26.) The SAC does not plead any claim based on these alleged facts. To the extent Plaintiff alleges the balance sheet presented to Plaintiff reflected the incorrect amount, Plaintiff does not allege the basis of that allegation. In addition, to the extent Plaintiff alleges the new company owes Plaintiff any amount of money, Plaintiff's claim appears to be against the company, not Defendant Bautista. <u>Seventh Cause of Action ("Dog Case")</u> The seventh cause of action alleges Defendant Bautista, after dismissing Plaintiff from employment, requested that Plaintiff go to court on a dog bite case and agreed to pay Plaintiff. (SAC at 4:2-6.) Thereafter, Defendant did not mention the agreed payment or the outstanding debt. (SAC at 4:7-9.) To the extent Plaintiff intends to plead a breach of contract claim, the SAC does not allege facts to show a "meeting of the minds" on the material terms. To the extent Plaintiff intends to plead a claim for quantum meruit, the elements of quantum meruit claim are: (i) that Defendant requested, by words or conduct, that Plaintiff deliver goods or perform services for the benefit of Defendant; (ii) that Plaintiff delivered the goods or performed the services as requested; (iii) that Defendant has not paid Plaintiff for the goods or services; and (iv) the reasonable value of the services and goods that were provided. (CACI 371; *see also E.J. Franks Const., Inc. v. Sahota* (2014) 226 Cal.App.4th 1123, 1127; *Ochs v. PacifiCare of California* (2004) 115 Cal.App.4th 782, 794 [plaintiff entitled to recover the reasonable value of services].) The requesting party need not be the same as the recipient of the benefit. (*See Day v. Alta Bates Medical Center* (2002) 98 Cal.App.4th 243, 249; *Maglica v. Maglica* (1998) 66 Cal.App.4th 442, 449–450.) Here, the SAC alleges Defendant Bautista requested Plaintiff attend court on a dog bite case on behalf of Plaintiff's former employer (SAC at 4:6-7), that Plaintiff did so for a trial lasting more than a month (*id.* at 4:6-8), and that Defendant did not pay (*see id.* at 4:8). Plaintiff, however, does not allege the reasonable value of his services.

		Should Plaintiff desire to file an amended complaint that addresses the issues in this ruling, Plaintiff shall file and serve the amended complaint no later than August 15, 2025. Defendant is ordered to give notice. <u>Case Management Conference</u> The Case Management Conference is continued to August 28, 2025 at 9:00 a.m. in this department. Plaintiff to give notice.
2	Mirjafarifiroozabadi v. Man	Plaintiff Seyedjalil Mirjafarifiroozabadi aka Omid Jafari moves to consolidate this case with Orange County Superior Court Case No. 2025-01468455. For the following reasons, the motion is **DENIED**. Plaintiff has not established shown proper service of the motion. Code of Civil Procedure section 1005(d) requires that all moving papers must be served at least 16 court days before the hearing, which is extended per method of service. "Proof of service of the moving papers must be filed no later than five court days before the time appointed for the hearing." (Cal. Rules of Court, rule 3.1300(c).) 16 court days before the scheduled hearing of July 10, 2025 is June 16, 2025, and 5 court days (when the proof of service is due) before the hearing is July 2, 2025. As of July 3, 2025, Defendant had not filed any proof of service of the motion. Thus, the motion is denied for lack of proper service. Further, on the merits, the motion is denied because it does not comply with California Rules of Court Rule 3.350(a). The notice of motion does not list all named parties to each case, it does not contain the captions of both cases, and it was not filed in each case. Plaintiff shall give notice of this ruling.
3	Huffman v. The Raymond Corporation, A New York Corporation	The Raymond Corporation's Motion for Summary Judgment, or, alternatively, Motion for Summary Adjudication, is **DENIED**. A. Motions for Summary Judgment and/or Adjudication standard "Summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) A "party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact . . . ." (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 850.) "A prima facie showing is one that is sufficient to support the position of the party in question." (*Id.* at 851.) A defendant moving for summary judgment satisfies the initial burden by submitting undisputed evidence "showing that a cause of action has no merit [because] one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a

complete defense to the cause of action." (Code Civ. Proc. § 437c, subd. (p)(2); *Aguilar v. Atlantic Richfield Co., supra*, 25 Cal.4th at 850-51.) However, "[t]he defendant *must* indeed present evidence." (*Aguilar, supra*, 25 Cal.4th at 855, italics original.)

In addition, if a plaintiff has pleaded several theories, the defendant has the burden of demonstrating there are no material facts requiring trial on any of them. (*Carlsen v. Koivumaki* (2014) 227 Cal.App.4th 879, 889.) If a defendant fails to meet this initial burden, the plaintiff need not oppose the motion and the motion must be denied. (*Binder v. Aetna Life Ins. Co*. (1999) 75 Cal.App.4th 832, 840.)

If the moving party meets its burden, the burden then shifts to the party opposing summary judgment to show, by reference to specific facts, the existence of a triable, material issue as to a cause of action or an affirmative defense. (*Aguilar, supra*, 25 Cal.4th at 855; *Villacres v. ABM Industries, Inc*. (2010) 189 Cal.App.4th 562, 575.)

The nonmoving party must present substantial evidence in order to avoid summary judgment. (*Sangster v. Paetkau* (1998) 68 Cal.App.4th 151, 163.) "In some instances . . ., 'evidence may be so lacking in probative value that it fails to raise any triable issue.'" (*Whitmire v. Ingersoll-Rand Co*. (2010) 184 Cal.App.4th 1078, 1083-1084, *quoting Advanced Micro Devices, Inc. v. Great American Surplus Lines Ins. Co*. (1988) 199 Cal.App.3d 791, 795.) "'If the plaintiff is unable to meet her burden of proof regarding an essential element of her case, all other facts are rendered immaterial.'" (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 780, *quoting Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472, 482.)

In ruling on a motion for summary judgment, "the court must 'consider all of the evidence' and 'all' of the 'inferences' reasonably drawn therefrom, and must view such evidence and such inferences in the light most favorable to the opposing party." (*Aguilar, supra*, 25 Cal.4th at 843, citations omitted.) Courts "'construe the moving party's affidavits strictly, construe the opponent's affidavits liberally, and resolve doubts about the propriety of granting the motion in favor of the party opposing it.'" (*Unilab Corp. v. Angeles-IPA* (2016) 244 Cal.App.4th 622, 636, *quoting Seo v. All–Makes Overhead Doors* (2002) 97 Cal.App.4th 1193, 1201–1202.) A court may not make credibility determinations or weigh the evidence on a motion for summary judgment, and all evidentiary conflicts are to be resolved against the moving party. (*McCabe v. American Honda Motor Corp*. (2002) 100 Cal.App.4th 1111, 1119.) "The court . . . does not resolve issues of fact. The court seeks to find contradictions in the evidence, or inferences reasonably deducible from the evidence, which raise a triable issue of material fact." (*Johnson v. United Cerebral Palsy, etc*. (2009) 173 Cal.App.4th 740, 754, citation omitted.) "[S]ummary judgment cannot be granted when the facts are susceptible [of] more than one reasonable inference . . ." (*Rosas v. BASF Corp*. (2015) 236 Cal.App.4th 1378, 1392.)

Finally, with regards to expert declarations, "[t]he court must not weigh an opinion's probative value or substitute its own opinion for the expert's opinion. Rather, the court must simply determine whether the matter relied on can provide a reasonable basis for the opinion or

whether that opinion is based on a leap of logic or conjecture. The court does not resolve scientific controversies." (*Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 772).

B. Objections

Defendant asserted objections to the declaration of Plaintiff's expert, Jay W. Preston, paragraphs 10-17.

The court sustains objection no. 1 on the basis of lack of knowledge/foundation.

The court sustains objection no. 2 as to the following, as it misstates the operative complaint and presents an inadmissible legal conclusion: "Plaintiff has alleged in the operative complaint that the subject truck is defective in two main ways: 1) that there should have been a of finger/hand guard to prevent these types of foreseeable finger/hand injuries that could sever fingers; 2) that there should have been an emergency stop mechanism on the subject truck to prevent collisions; and 3) the protective skirt (or apron) should fully surround the steering axle to prevent it from running over debris and causing wide swings of the steering/tiller handle to cause injury to the exposed finger/hand of the steering hand of an operator."

The court sustains objection no. 7 as to "proximate cause of Plaintiff's damages" and that Raymond "breach[ed] [ ] known duties as a designer/manufacturer" as they are improper legal conclusions, and overrules the remainder.

The court overrules objections nos. 3, 4, 5, and 6.

C. Issue 1: claim for defective design

The Complaint alleges that The Raymond Corporation's motorized pallet jack, model 8410, Serial Number 841-20-569991 was defective, causing it to be unreasonably dangerous and defective. (Compl., ¶ 4). Plaintiff alleges that the motorized pallet jack was defective because The Raymond Corporation failed to design handrails and lacked stabilization when the motorized pallet jack ran over an object. (Compl., ¶¶ 5, 12). In this case, the motorized pallet jack ran over an object on the floor, swerved into the wall, crushing Plaintiff's right hand pinky finger. (Compl., ¶ 4).

"Strict liability has been invoked for three types of defects—manufacturing defects, design defects, and 'warning defects,' i.e., inadequate warnings or failures to warn." (*Anderson v. Owens-Corning Fiberglas Corp*. (1991) 53 Cal.3d 987, 995, 281 Cal.Rptr. 528.) "[T]he term defect as utilized in the strict liability context is neither self-defining nor susceptible to a single definition applicable in all contexts." (*Barker v. Lull Engineering Co*. (1978) 20 Cal.3d 413, 427.) A product has a manufacturing defect if it "differs from the manufacturer's intended result or from other ostensibly identical units of the same product line." (*Id*. at 429.) A warning defect exists if the manufacturer does not adequately warn the customer "of a particular risk that was

		known or knowable in light of the generally recognized and prevailing scientific and medical knowledge available at the time of the manufacture and distribution." (*Anderson, supra*, 53 Cal.3d at 1002.) A product has a design defect if it "fails to meet ordinary consumer expectations as to safety" or "the design is not as safe as it should be". (*Barker*, *supra*, 20 Cal.3d at 432.) Plaintiff appears to allege in the Complaint that the motorized pallet jack had a design defect. Defendant provides evidence that the motorized pallet jack was not defective. Defendant submitted the declaration of Robert Kerila, a Professional Engineer and Director of Automation Engineering at The Raymond Corporation for over 30 years. (Decl. of Kerila, ¶ 1). Mr. Kerila stated that the subject pallet jack was designed and manufactured in compliance with all applicable safety and industry standards. The applicable design standard for the subject pallet jack is ANSI/ITSDF B56.1-2018 – Safety Standard for Low Lift and High Lift Trucks (the "B56.1 Standard"), based on the 2020 year of manufacture of the subject pallet jack. Pallet jack manufacturers are required to ensure a pallet jack's design complies with the B56.1 Standard in effect at the time a pallet jack is manufactured. (Separate Statement of Undisputed Material Facts [SSUMF] no. 23; Decl. of Kerila, ¶ 5). Mr. Kerila stated that: "Although the Raymond 8410 control handle is designed to protect the operator's hand, to my knowledge, no pallet jack sold by any known manufacturer in the United States is equipped with a "finger guard" covering the control handle. To my knowledge, no pallet jack sold by any known manufacturer in the United States is equipped with a mechanism to "shut off or freeze the pallet jack in the event it runs over or strikes debris." (SSUMF no. 22; Decl. of Kerila, ¶¶ 7, 8). Mr. Kerila also opined that the features Plaintiff suggests the motorized pallet jack should have had, such as a "finger guard" or a "mechanism to 'shut off or freeze' an end-rider pallet jack" would be both impractical and likely dangerous. (SSUMF no. 30; Decl. of Kerila, ¶ 9). In his Opposition, Plaintiff did not dispute that the applicable design standard for the subject pallet jack is ANSI/ITSDF B56.1-2018 – Safety Standard for Low Lift and High Lift Trucks (the "B56.1 Standard"), based on the 2020 year of manufacture of the subject pallet jack. (See Response to SSUMF no. 24). However, Plaintiff disputed that the motorized pallet jack complied with these standards. Specifically, Plaintiff highlighted Section 7.15 "Steering Requirements," which states that: "7.15.2 Steering handles on motorized hand and motorized hand/rider trucks employing a steering tongue shall have means to provide protection for the operator's hands against injury from items such as doors, wall, columns, and racks." (SSUMF 18; Decl. of Preston, Ex. E). Plaintiff's expert, Mr. Preston, opined that finger/hand protection is required under Section 7.15.2. He stated: "One would expect that a guard of some sort would be designed to protect the wheels from encountering debris, either by way of a sweep shield in front of the wheels, or an emergency brake system in the event that the motorized rider pallet truck runs over debris which

skews the travel direction of the truck. Neither one of these features was in place on the subject truck, which evidences to me, based on my training, experience, and practice, a deviation from the safety standards necessary for this type of equipment and, as such, a defective design." (Decl. of Preston, ¶ 13).

He also opined: "The evidence thus shows in this case that the design of the subject truck used by Plaintiff failed to conform to applicable safety standards and, at minimum, violated the very ANSI/ITSDF B.56.1-2018 safety standards which Defendant Raymond relies upon in its moving papers, creating a dangerous and/or defective condition that caused or contributed to Plaintiff's injuries in this case. Had the design/manufacture of the subject truck included the proper finger/hand protection that was required, or had an apron to sweep debris away from the wheels and/or stop the truck when it runs over debris on the floor which deviates its travel pattern as detailed above, it is highly likely that Plaintiff's incident would not have occurred to this severity." (Decl. of Preston, ¶ 15).

Defendant contends that Mr. Preston's conclusion that alternative designs would have impacted the outcome of the incident is based on speculation, conjecture and conclusion. However, Mr. Preston has discussed specific designs that he believes, if implemented, could have prevented the hand injury that Plaintiff sustained, explained why these designs would have been effective, and opined that it is "highly likely" Plaintiff would not have sustained that injury. The court does not find this to be improper speculation, conjecture or conclusion.

Defendant also contends that Mr. Preston has rewritten the applicable standard to argue that finger/hand protection is required. However, Mr. Preston based his opinion on the quoted language of section 7.15.2, which <u>requires</u> a "means to provide <u>protection for the operator's hands</u> against injury from items such as doors, wall, columns, and racks." Furthermore, his opinion was not based solely on the lack of hand guard, but also on the lack of other possible alternative, such as an emergency brake system. (Decl. of Preston, ¶ 13).

Accordingly, the court finds that Plaintiff has created a triable issue of material fact as to the issues of design defect and causation with his expert's opinion.

D. Issue 2: negligence

"The elements of a cause of action for negligence are: the defendant had a duty to use due care, that he [or she] breached that duty, and that the breach was the proximate or legal cause of the resulting injury. [Citations.]" (*Vasquez v. Residential Investments, Inc.* (2004) 118 Cal.App.4th 269, 278 (internal quotation marks omitted).)

"Where liability depends on the proof of a design defect, no practical difference exists between negligence and strict liability; the claims merge." (*Lambert v. General Motors* (1998) 67 Cal.App.4th 1179, 1185).

		In this matter, Plaintiff's negligence claim is based on the alleged design defect. Defendant argues that this cause of action fails because the design of the subject pallet jack is not defective and because Plaintiff is unable to prove causation. However, as discussed, *supra*, Plaintiff has created a triable issue with regards to both these elements. E. Issue 3: breach of implied warranty "An implied warranty that goods are fit for the ordinary purposes for which such goods are used arises from a contract of sale (Cal.U.Com.Code, § 2314, subd. (2)(c)); such a warranty does not require an express promise by the seller [citation[)." (*Brown v. Superior Court* (1998) 44 Cal.3d 1049, 1071). Defendant argues that Plaintiff's claim for breach of implied warranty fails because Plaintiff is unable to prove that there was a defect in the product at issue. Defendant also contends that Plaintiff's claim fails because Defendant propounded an interrogatory in 2023 asking whether Plaintiff contends that Defendant breached a warranty, and Plaintiff responded in August of 2023: "Not at this time, Investigation and discovery are continuing." Plaintiff contends that this is not a binding judicial admission, as he has now offered evidence controverting this discovery response and proving breach of implied warranty. "*Thoren* provides authority for excluding evidence based on a willfully false discovery response. It does not stand for the proposition that evidence may be excluded based on the mere failure to supplement or amend an interrogatory answer that was truthful when originally served. On the contrary, in *Rangel v. Graybar Electric Co*. (1977) 70 Cal.App.3d 943, 139 Cal.Rptr. 191 (*Rangel*), the very same panel that wrote *Thoren* distinguished its earlier holding on precisely the basis that there was no showing that the responding party had willfully concealed a witness's name. The court cautioned in *Rangel* that 'i]n the absence of stronger evidence of wilful omission, to uphold the trial court's action barring plaintiff's rebuttal witness would permit the use of interrogatories as a trap, *pinning a party for all time to an answer intended to reflect only that party's knowledge as of the date of answer*. [Citation.]'" (*Biles v. Exxon Mobil Corp*. (2004) 124 Cal.App.4th 1315, 1325 [emphasis added]). Notwithstanding Plaintiff's previous interrogatory response (which does not state "no", but rather: "Not *at this time. Investigation and discovery are continuing* [emphasis added]), Plaintiff has now provided evidence creating a triable issue as to whether there was a design defect, which is the basis for his breach of implied warranty cause of action. F. Issue 4: Albertsons Companies' claim for subrogation. As a preliminary matter, Defendant's separate statement as to the fourth issue for subrogation fails to comply with Cal. R. Ct., rule 3.1350, subd. (d) which provides: "(1) The Separate Statement of Undisputed Material Facts in support of a motion must separately identify: (A) Each cause of action, claim for damages, issue of duty, or affirmative defense that is the subject of the motion; and (B) Each supporting material fact

		claimed to be without dispute with respect to the cause of action, claim for damages, issue of duty, or affirmative defense that is the subject of the motion." (See SSUMF no. 36). However, the court will address the merits. As the employer of Plaintiff at the time of his injury, Albertsons administered by Sedgwick Claims Management stands in the shoes of the employee. (See *Fremont Comp. Ins. Co. v. Sierra Pine* (2004) 121 Cal.App.4th 389, 394 [The employer is "subrogated to the personal injury claim of the employee against the third party. Therefore, the employer's insurer is also so subrogated when it stands in the shoes of the employer."]). Defendant's sole argument is that because Plaintiff has no evidence to support his strict liability and negligence causes of action, and Plaintiff's causes of action lack merit and should be dismissed, summary adjudication as to Plaintiff-In-Intervention's subrogation cause of action is warranted. (See Memo. Ps. And As., Section IV.D). However, because Plaintiff has introduced evidence creating a triable issue of material fact as to his causes of action, summary adjudication is not warranted. Accordingly, the motion is denied. Defendant shall give notice.
4	Donovan v. Acco Engineered Systems, Inc.	Defendant Bernards Bros., Inc.'s Motion for Summary Judgment is **CONTINUED** to August 14, 2025 at 1:30 p.m. in this department. The Court finds that Plaintiff David Donovan is entitled to a continuance to engage in additional discovery, particularly pertaining to, although not necessarily limited to, Bernards' Safety Engineer, Amanda Shubin, because "facts essential to justify opposition may exist but cannot, for reasons stated, be presented." (Code Civ. Proc., §437c, subd. (h).) <u>The Motion for Summary Judgment is Denied and Continued for Further Discovery</u> "If it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication, or both, that facts essential to justify opposition may exist but cannot, for reasons stated, be presented, the court shall deny the motion, order a continuance to permit affidavits to be obtained or discovery to be had, or make any other order as may be just. The application to continue the motion to obtain necessary discovery may also be made by ex parte motion at any time on or before the date the opposition response to the motion is due." (Code Civ. Proc., §437c, subd. (h).) " 'When a party makes a good faith showing by affidavit demonstrating that a continuance is necessary to obtain essential facts to oppose a motion for summary judgment, the trial court must grant the continuance request. [Citation.]' " (*Johnson v. Alameda County Medical Center* (2012) 205 Cal.App.4th 521, 532.) " 'Notwithstanding the court's discretion in addressing such continuance requests, "the interests at stake are too high to sanction the denial of a continuance without good reason." [Citation.] Thus, "[t]o mitigate summary judgment's harshness, the statute's drafters included a provision making

		continuances--which are normally a matter within the broad discretion of trial courts--virtually mandated ' "upon a good faith showing by affidavit that a continuance is needed to obtain facts essential to justify opposition to the motion." ' " ' [Citation.]" (*Chavez v. 24 Hour Fitness USA, Inc.* (2015) 238 Cal.App.4th 632, 643.) "To make the requisite good faith showing, an opposing party's declaration must show (1) the facts to be obtained are essential to opposing the motion, (2) there is reason to believe such facts may exist, and (3) the reasons why additional time is needed to obtain these facts. [Citation.] The reason for this 'exacting requirement' [citation] is to prevent 'every unprepared party who simply files a declaration stating that unspecified essential facts may exist' [citation] from using the statute 'as a device to get an automatic continuance.' [Citation.] 'The party seeking the continuance must justify the need, by detailing both the particular essential facts that may exist and the specific reasons why they cannot then be presented.' [Citation.]" (*Chavez, supra,* 238 Cal.App.4th at p. 643.) However, "[e]ven absent a sufficient declaration, 'the court must determine whether the party requesting the continuance has nonetheless established good cause therefor.' [Citation.]" (*Id.*) "[I]n deciding whether to continue a summary judgment to permit additional discovery courts consider various factors, including (1) how long the case has been pending; (2) how long the requesting party had to oppose the motion; (3) whether the continuance motion could have been made earlier; (4) the proximity of the trial date or the 30-day discovery cutoff before trial; (5) any prior continuances for the same reason; and (6) the question whether the evidence sought is truly essential to the motion. [Citation.]" (*Chavez, supra,* 238 Cal.App.4th at p. 644; accord, *Hamilton v. Orange County Sheriff's Dept.* (2017) 8 Cal.App.5th 759, 765.). Even if the party opposing the MSJ was not initially diligent in obtaining evidence to oppose the MSJ, that party's lack of diligence does not justify the substantial injustice that would result if that party was deprived of the opportunity to conduct discovery, as doing so would allow the defendant to obtain a judgment that was not on the merits of the case. (*Hamilton, supra,* 8 Cal.App.5th at p. 766; *Chavez, supra,* 238 Cal.App.4th at p. 644; *Insalaco v. Hope Lutheran Church of West Contra Costa County* (2020) 49 Cal.App.5th 506, 519-520.) This is particularly true where no prior continuances had been sought or granted and discovery remained open. (*Insalaco, supra,* 49 Cal.App.5th at p. 520.) The Court finds Plaintiff is entitled to a continuance to conduct additional discovery, particularly as to Defendant's on-site safety engineer, Amanda Shubin, who Defendant did not identify in written discovery, and whose full name was not made known until the May 9, 2025 deposition of Defendant's PMQ. In its Reply, as well as in its counsel's concurrently filed declaration, Defendant takes the position that the Motion for Summary Judgment should not be denied, or continued, because "Amanda's" name was raised at the December 4, 2024 deposition of Farwest Insulation Contracting's PMQ, yet Plaintiff failed to diligently conduct discovery regarding "Amanda."

		The Court rejects Defendant's claim that section 437c, subdivision (h) should not be invoked due to Plaintiff's delay in pursuing discovery regarding Amanda. In his deposition, Farwest's PMQ made a passing mention that Amanda, Defendant's safety rep, "walked" the job site between 7:00 a.m. and 8:00 a.m., and she advised Farwest's PMQ that "using the scissor lift was fine but to ensure they were safe." (Exhibit C to Meisner Declaration re: Continuance.) This passing reference to "Amanda," on its own, does not warrant a finding that Plaintiff was not diligent in pursuing discovery, particularly where Defendant did not identify Amanda Shubin in any of its prior discovery responses, and where it admits it did not produce an e-mail meeting summary, authored by Shubin, until June 9, 2025. (Meisner Declaration re: Continuance, ¶ 7.) Further, the fact Plaintiff may have previously refused to stipulate to a continuance on the hearing on the Motion for Summary Judgment is also not a sufficient ground to deny the request for a continuance, and Defendant has not cited to any law that would support this position. Defendant also argues that "soaking wet, Plaintiff's Opposition alleges that Defendant's employee, Amanda Shubin allowed someone to use the scissors lift with knowledge of the condition of the ground. There is no contention, nor evidence that Bernard Bros. Inc.'s employees directed him to use the scissors lift or how to use it. This does not remotely approach the heightened requirement of 'retained control' set forth in Sandoval v. Qualcomm Incorporated (2021) 12 Cal.5th 256, 264 (*Sandoval*)." (Reply, 10:15-10:21.) "In other words, … obtaining the deposition testimony of Amanda Shubin will not make any difference to the outcome of this Motion…." (Reply, 10:22-11:1.) The Court finds this argument lacks merit, as Plaintiff and the Court should not simply take Defendant's word that there is no evidence that it, or Shubin, retained control of the worksite, or that Defendant, through Shubin, affirmatively contributed to the accident. Plaintiff to give notice.
5	Ten-X, LLC v. Lutsch	To recover attorneys' fees, a prevailing party bears the burden of demonstrating that the fees were: (1) allowable; (2) reasonably necessary to the conduct of the litigation; and (3) reasonable in amount. [*Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 998] An experienced trial judge is the best judge of the value of professional services rendered in his or her court. (Id. at p. 997.) The court's analysis begins with the lodestar figure, based on the "careful compilation of the time spent and reasonable hourly compensation of each attorney . . . involved in the presentation of the case." *Serrano v. Priest* (1977) 20 Cal.3d 25, 48] "The reasonable hourly rate is that prevailing in the community for similar work." [*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095 [internal citation omitted] A reasonable hourly rate reflects the skill and experience of the lawyer, including any relevant areas of particular expertise, and the nature of the work performed. [*Hensley v. Eckerhart* (1983) 461 U.S. 424, 433-434] The reasonable market value of the attorney's services is the

measure of a reasonable hourly rate. This standard applies regardless of whether the attorneys claiming fees charge nothing for their services, charge at below-market or discounted rates, represented the client on a straight contingent fee basis, or are in house counsel] *PLCM Group v. Drexler*, supra, at p. 1094] To determine reasonable attorneys' fees, the court should consider the nature of the litigation, its difficulty, the amount involved, the skill required and employed in handling the matter, the attention given, the success of the attorney's efforts, the intricacies and importance of the litigation, the labor and necessity for skilled legal training and ability in trying the cause, and the time consumed. [*Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 659]

As to the reasonableness of the hours, "trial courts must carefully review attorney documentation of hours expended; 'padding' in the form of inefficient or duplicative efforts is not subject to compensation." [*Ketchum v. Moses* (2001) 24 Cal.4th 1122,1132] "[A]ny failure to maintain appropriate time records sufficient to provide a basis for determining how much time was spent on particular claims" properly permits reduction of the award. [*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1320, overruled on other grounds in *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 68, fn. 5; "In determining a fee's reasonableness, the court may also consider whether the motion itself is reasonable, both in terms of (1) the amount of fees requested and (2) the credibility of the supporting evidence." [*Guillory v. Hill* (2019) 36 Cal.App.5th 802, 81]) The court may make a downward adjustment if the billing entries are vague, "blockbilled," or unnecessary. [*569 East County Boulevard LLC v. Backcountry Against the Dump, Inc.* (2016) 6 Cal.App.5th 426, 441 The court considers the risk arising from contingency and risk/expense arising from delay in payment in determining the reasonable rates.

The Court has carefully considered the above authority. It carefully reviewed the entirety the record submitted to it by both parties and all papers filed in connection with this Motion. Based upon its review of all papers, its own files, and the authorities cited above, the Court has the following conclusions:

The Court's review of evidence submitted by Ten-X, particularly Ex. 27, shows significant padding of bills. The vague, non-descriptive words "strategy", "strategized", "communications", "analysis", "prepare strategy" are used liberally throughout the 1135 lines of billing entries. They don't describe any substantive work. The entries are mostly in .1 and .2 hour increments, less than the amount of time needed to do any meaningful work.

Further, there is no evidence explaining why it was necessary to have two, then three, attorneys working on the case. The foundational claim for breach of contract was straightforward. **It was the only claim for which attorney fees were recoverable**. There is no evidence supporting the necessity of bringing attorney Sudgen in to try the case. This resulted in the recreation of work already done. What evidence there is supports the Court's conclusion that the case was overstaffed and overworked.

		In addition to the preceding issues, and most important to the Court's decision here, is the failure to keep appropriate time records. In this case, the Court has not located any testimony about how time records were kept in the regular course of business in this case. As already stated, most of the records are non-descriptive. Attorney Renfro admits that Ex. 27 was not based on records contemporaneous to the accrual of the charges, but in some number of known instances review and recollection. [Renfro Supplemental Declaration, ¶4] Time records were rewritten. [Id., at ¶5] As stated in *Chavez v. City of Los Angeles* (2010) 47 Cal.4th 970, 990, "'[a] fee request that appears unreasonably inflated is a special circumstance permitting the Court to reduce the award or deny one altogether."' It cannot be said that no work was done on the contract claim. Ten-X's refusal to properly allocate does not change that fact. Despite having been given more than one opportunity to address the state of its record keeping, particularly with regard to making a serious and realistic good faith effort to apportion contract and tort fees in a supportable manner, the Court is led to conclude that is a special circumstance under *Chavez* and *Christian Research*. Based upon the current state of information provided, the court has no clear method to allocate fees and has been provided no assistance by the prevailing party to do so despite repeated pleas for same. Therefore, plaintiff Ten-X, LLC's Motion for Attorney's Fees is **DENIED IN ITS ENTIRETY**. Moving party shall give notice.
6	Alkhasib v. Velasco	Defendant Iris Apele Velasco's three motions to compel self-represented Plaintiff Leen Alkhasib to provide responses to her first set of Form Interrogatories, Special Interrogatories, and Request for Production of Documents and Inspection of Documents and Other Tangible Things are **GRANTED**. Plaintiff Leen Alkhasib is ORDERED to serve verified, and objection-free, responses to the subject discovery within 30 calendar days of Defendant providing notice of the Court's ruling. <u>Statement of Law</u> A party has 30 days from the date of service to respond to written discovery, plus an additional five days if the discovery requests were served by mail. (Code Civ. Proc., §§ 2016.050, 2030.260, subd. (a), 2031.260, subd. (a).) If a party fails to serve timely responses to interrogatories or requests for production of documents, the propounding party may move for an order compelling responses. (Code Civ. Proc., §§ 2030.290, subd. (b), 2031.300, subd. (b).) "If a party provides an untimely interrogatory response that does not contain objections and that sets forth legally valid responses to each interrogatory, the untimely response might completely or substantially resolve the issues raised by a motion to compel responses under section 2030.290," although the court still retains authority to hear the motion. (*Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants*

		(2007) 148 Cal.App.4th 390, 407-409; *Castro v. Superior Court* (2004) 116 Cal.App.4th 1010, 1023, fn. 13; Cal. Rules of Court, rule 3.1348(a).) Merits of Motions Defendant has presented evidence that, on August 20, 2024, she served Plaintiff's former counsel with her first sets of Form Interrogatories, Special Interrogatories, and Demand for Production and Inspection of Documents and Other Tangible Things. (Dwyer Declarations, ¶ 2; Exhibits A to Dwyer Declarations.) However, Plaintiff has not served any responses to the subject discovery. (Dwyer Declarations, ¶¶ 3-4.) She also did not serve untimely responses after Defendant filed her Motions. Thus, Defendant's Motions are granted. Moving party to give notice.
7	Betancourt v. Airstream, Inc.	The motions by Plaintiffs Mark A. Betancourt and Gail Ann Ortiz to compel Defendants Airstream, Inc. and Lin Consulting, LLC, d/b/a Airstream Orange County is **CONTINUED** to September 11, 2025 at 1:30 p.m. in this department. Plaintiffs contend that Plaintiffs did not receive Defendants' opposition paper because Defendants' served the opposition papers through DropBox. As such, the hearings are continued to give Plaintiffs an opportunity to respond to Defendants' opposition papers. Defendants are ordered to serve Plaintiffs with opposition papers within 5 days of this hearing by U.S. mail. In the meantime, the parties are ordered to engage in a meaningful meet and confer before the continued hearing. The court notes that at the prior November 7, 2024 hearing on Plaintiff's motion to compel Airstream to serve further responses to form interrogatories, set one, the court ruled: The court orders the parties to further meaningfully meet and confer on all of the pending discovery motions within the next 10 days. The parties are ordered to make a good faith effort to narrow down the discovery issues, narrow the scope of discovery, and attempt to resolve as many objections as possible. The parties are ordered to file supplemental separate statements within 9 court days prior to the pending discovery motions related to only the relevant pending discovery at issue. The court admonishes Plaintiff to not simply copy and paste generalized reasons, but take a specific and considered analysis of the actual information is seeking. The court admonishes the parties that the court is inclined to impose monetary sanctions against the party who refuses to meaningfully engage in this meet and confer process by stonewalling the other party with their position without any negotiation or compromise.

		Since then, Plaintiffs have not served any supplemental separate statements and there is no evidence that Plaintiffs made any attempt to narrow down the discovery questions at issue. For example, many of the issues the court raised with the overbroad and nonsensical form interrogatories propounded on Airstream remain in tact as it relates to Lin Consulting. There is no evidence that Plaintiffs have served amended questions that narrowed down the scope of discovery or addressed objections and, indeed, there is no evidence that Plaintiffs have withdrawn any discovery questions. For example, to provide guidance, in RFP No. 2 to Airstream, Plaintiffs ask for "any and all documents concerning express or implied warranty repairs performed on the Vehicle." The court finds that the phrase "any and all documents" is overbroad in time, scope, and necessarily seeks communications that are privileged. Instead, the request would be appropriate if it requested any repairs performed on the vehicle under any express or implied warranty. The court finds that Defendant's supplemental response to this request to be sufficient as it promised to produce all repair orders. Further, for example, in special interrogatory 2 to Airstream, the court finds that interrogatory to be overbroad, compound, and to contain an overbroad definition of Documents or Records. Plaintiffs should review each of their discovery questions and identify similar issues, amend discovery questions to ask only the relevant information Plaintiffs require, and analyze Defendants' supplemental responses to determine whether or not Defendants have provided Plaintiffs with the crux of the information that Plaintiffs require. Plaintiffs should remove overbroad definitions from their discovery questions and only ask the specific information needed. To the extent that any specific or nuanced information is not provided after reviewing the information and documents produced, Plaintiffs may then ask for that specific question. The court also takes issue with Defendants' categorical objections and evasive responses. For example, in special interrogatory 3 to to Airstream, Plaintiffs ask for the number of consumer complaints concerning the air conditional system for a 2022 Airstream Atlas Murp Travel Van. The court finds that Plaintiffs are entitled to this information. Rather than providing the number of complaints, however, Defendant refuses to answer and raises only objections. The court orders the parties to further meaningfully meet and confer on all of the pending discovery motions within the next 10 days. The parties are ordered to make a good faith effort to narrow down the discovery issues, narrow the scope of discovery, and attempt to resolve as many objections as possible. The parties are ordered to file supplemental separate statements within 9 court days prior to the pending discovery motions related to only the relevant pending discovery at issue. The court admonishes Plaintiff to not simply copy and paste generalized reasons, but take a specific and considered analysis of the actual information is seeking. The court admonishes the parties that the court is inclined to impose monetary sanctions against the party who

refuses to meaningfully engage in this meet and confer process by stonewalling the other party with their position without any negotiation or compromise. (Minute Order November 7, 2024).

The meet and confer requirement is designed to encourage the parties to work out their differences informally so as to avoid the necessity for a formal order. (*Stewart v. Colonial W. Agency, Inc*. (2001) 87 Cal.App.4th 1006, 1016.) There must be a serious effort at negotiation and informal resolution. (*Clement v. Alegre* (2009) 177 Cal.App.4th 1277, 1294.) "[A] reasonable and good faith attempt at informal resolution entails something more than bickering with [opposing] counsel . . . Rather, the law requires that counsel attempt to talk the matter over, compare their views, consult, and deliberate." (*Id*. at 1294.)

The court requires the parties to engage in a meet and confer that actually results in compromise and narrows down the number of discovery questions in dispute. Plaintiffs should take considerable time and effort to ensure any further discovery disputes only revolve around relevant information that Plaintiffs need for their prosecution of this action.

The meet and confer requires Plaintiffs to serve amended discovery questions that eliminates broad definitions or compound subparts, withdraws unnecessary questions, and eliminate duplicate discovery. Defendants are then required to serve further responses that eliminate generalized objections and answer the remaining questions as straight forward and completely as possible. The parties should then meet in person and "talk the matter over, compare their views, consult, and deliberate" all the specific questions that still remain at issue.

The parties are ordered again to file supplemental separate statements within 9 court days prior to the pending discovery motions related to only the relevant pending discovery at issue. The parties are also ordered to file a supplemental declaration that details the meet and confer efforts after this hearing. To the extent that no supplemental separate statements are filed and/or the discovery disputes have not dramatically been reduced and resolved and/or there is a lack of evidence that any meaningful meet and confer took place, the court is inclined to categorically deny these motions for failure to meet and confer and/or to impose sanctions against the party that is stonewalling the meet and confer process.

Plaintiffs may also, but are not required to, file a supplemental reply that addresses the opposition papers pursuant to the code.

Plaintiffs should be guided by the following during the meet and confer: Case law provides the burden is on a moving party to show good cause. (*See*, *e.g.*, *Digital Music News, LLC v. Superior Court* (2014) 226 Cal.App.4th 216, 224 [disapproved on other grounds by *Williams v. Superior Court* (2017) 3 Cal.5th 531]; *Kirkland v. Super. Ct.* (2002) 95 Cal.App.4th 92, 98.) To establish "good cause," the burden is on the moving party to demonstrate both: (1) relevance to the subject matter

		(e.g., how the information in the documents would tend to prove or disprove some issue in the case), and (2) specific facts justifying discovery (e.g., why such information is necessary for trial preparation or to prevent surprise at trial). (*Glenfed Develop. Corp. v. Superior Court* (1997) 53 Cal.App.4th 1113, 1117.) Plaintiffs should be prepared to defend the relevance to the subject matter and the specific facts justifying discovery for each discovery question at the meet and confer. Plaintiffs to give notice.