Superior Court of the State of California
County of Orange
TENTATIVE RULINGS FOR DEPARTMENT N16

HON. Donald F. Gaffney

Counsel and Parties Please Note:
Law and Motion in Department N16 is heard on Wednesdays at 9:00 a.m.

Date: July 2, 2025

Tentative Rulings will be posted on the Internet on the day before the hearing by 5:00 p.m. [or earlier] whenever possible. To submit on the tentative ruling, please contact the clerk at (657) 622-5616, after contacting opposing party/counsel. Prevailing party shall give notice of the Ruling and prepare the Order/Judgment for the Court's signature if required.

NOTE: After posting of tentative rulings, the Court will not take the motion off calendar and will grant a continuance of the motion only upon stipulation of all affected parties.

If no appearances are made on the calendared motion date, then oral argument will be deemed to have been waived and the tentative ruling will become the Court's final ruling.

#	Case Name	Tentative
1	Specter vs. Pilon	**OFF CALENDAR**
2	Chery vs. Larney	**OFF CALENDAR**
3	Myre vs. Riga Builders Inc.	**REASSIGNED TO CM02**
4	Thomas vs. Mercedes-Benz USA, LLC	**TENTATIVE RULING:** Defendant Mercedes-Benz USA, LLC moves to compel further responses from Plaintiff Rita Thomas to Special Interrogatories (Set One) and RFPs (Set One). For the following reasons, the motion is DENIED without prejudice. While these motions were pending, Plaintiff agreed to provide amended responses. (Serrano Decl., Ex. A.) Plaintiff opposed the motions on the ground amended responses would be forthcoming. (*See generally* Opps.) The court record shows Defendant MBUSA filed no reply brief, effectively conceding the motions are moot. (*See, e.g., DuPont Merck Pharmaceutical Co. v. Superior Court* (2000) 78 Cal.App.4th 562, 566 [holding that a party that fails to challenge a contention in a brief concedes that argument].)

		Even if the motions were not moot, the court denies the motions for Defendant MBUSA's failure to meet and confer prior to filing the motions. A motion to compel further responses must attach a meet and confer declaration "showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion." (Code Civ. Proc., §§ 2016.040, 2030.310(b), 2031.310(b)(2).) 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 . . . . This, in turn, will lessen the burden on the court and reduce the unnecessary expenditure of resources by litigants through promotion of informal, extrajudicial resolution of discovery disputes." (*Stewart v. Colonial Western Agency, Inc*. (2001) 87 Cal.App.4th 1006, 1016 [quoting *Townsend v. Superior Court* (1998) 61 Cal.App.4th 1431, 1435] [internal quotations and citations omitted].) There must be a serious effort at negotiation and informal resolution. (*Clement v. Alegre* (2009) 177 Cal.App.4th 1277, 1294.) Here, Defendant waited one month to begin the meet and confer process. (*See* Tingen Decl., Ex. 3.) Defendant sent its meet and confer letter on the eve of the Thanksgiving holiday and demanded Plaintiff provide further responses within two business days. (*See ibid.*) Although Defendant followed up once before filing the motions, the court finds Defendant's conduct does not constitute a good faith and meaningful effort to avoid motion practice and to resolve the parties' disputes. Given the court's ruling, Defendant's request for sanctions is denied. Plaintiff to give notice.
5	Activate Clean Energy, LLC vs. DMX Engineering, LLC	**TENTATIVE RULING:** **<u>Motion to Appear *Pro Hac Vice*</u>** Attorney Maggie L. Ebert moves to appear *pro hac vice*. For the following reasons, the motion is GRANTED. On May 14, 2025, this court continued the hearing on this motion for Moving Counsel to cure defects in service. Specifically, the court ordered Moving Counsel to serve by mail all moving papers on self-represented Defendant Gorovenko. Moving Counsel has done so. (*See* ROA # 199.)

		As noted in the court's previous ruling, court finds that Moving Counsel otherwise complied with the substantive requirements under CRC Rule 9.40, sufficiently supporting the application for *pro hac vice* admission. (*See* ROA # 191 [05/14/2025 Minute Order].) Moving Counsel to give notice.
6	Cardona vs. Volkswagen Group of America, Inc.	**TENTATIVE RULING:** For the reasons set forth below, Plaintiffs Monica A. Cardona and Gabriel E. Cardona's Motion for Leave to File First Amended Complaint is GRANTED. Plaintiffs are ordered to file and serve their First Amended Complaint within 30 calendar days of Plaintiffs providing notice to all parties of the Court's ruling **Statement of Law** "The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars; and may upon like terms allow an answer to be made after the time limited by this code." (Code Civ. Proc., § 473, subd. (a)(1); *Doskocz v. ALS Lien Services* (2024) 102 Cal.App.5th 107, 120.) " '[T]he trial court has wide discretion in allowing the amendment of any pleading [citations], [and] as a matter of policy the ruling of the trial court in such matters will be upheld unless a manifest or gross abuse of discretion is shown.' [Citation.] Statutes like section 473 are 'construed liberally so that cases might be tried upon their merits in one trial where no prejudice to the opposing party … is demonstrated.' [Citation.] Further, this liberal policy applies to amendments ' "at any stage of the proceedings, up to and including trial," ' absent prejudice to the adverse party. [Citation.]" (*Tung v. Chicago Title Company* (2021) 63 Cal.App.5th 734, 747; see *North Coast Village Condominium Association v. Phillips* (2023) 94 Cal.App.5th 866, 881 [trial court's "discretion extends to requests to amend both the causes of action and the parties"].)

		"[I]t is a rare case in which 'a court will be justified in refusing a party leave to amend his pleadings so that he may properly present his case.' [Citations.] If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend and where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion. [Citations.]" (*Morgan v. Superior Court of Los Angeles County* (1959) 172 Cal.App.2d 527, 530; see *Mac v. Minassian* (2022) 76 Cal.App.5th 510, 519 [" ' "California courts 'have a policy of great liberality in allowing amendments at any stage of the proceeding so as to dispose of cases upon their substantial merits where the authorization does not prejudice the substantial rights of others' " ' "]; see *Kauffman v. Bobo & Wood* (1950) 99 Cal.App.2d 322, 323 ["pleadings and amendments thereto should be allowed and construed liberally with the object of affording every litigant his day in court and to render substantial justice between the parties"].) " 'Such amendments have been allowed with great liberality "and no abuse of discretion is shown *unless by permitting the amendment new and substantially different issues are introduced in the case or the rights of the adverse party prejudiced* [citation]." [Citations.]' [Citation.]" (*Garcia v. Roberts* (2009) 173 Cal.App.4th 900, 909.) In determining whether to allow a party to amend its pleading, " 'trial courts should be guided by two general principles: (1) whether facts or legal theories are being changed and (2) whether the opposing party will be prejudiced by the proposed amendment. Frequently, each principle represents a different side of the same coin: If new facts are being alleged, prejudice may easily result because of the inability of the other party to investigate the validity of the factual allegations while engaged in trial or to call rebuttal witnesses. If the same set of facts supports merely a different theory—for example, an easement as opposed to a fee—no prejudice can result.' [Citation.] 'The basic rule applicable to amendments to conform to proof is that the amended pleading must be based upon the same general set of facts as those upon which the cause of action or defense as originally pleaded was grounded.' [Citation.]" (*Garcia v. Roberts* (2009) 173 Cal.App.4th 900, 910.) **<u>Merits of Motion</u>** Defendants make two arguments in opposition to the Motion. First, they argue Plaintiffs unjustifiably delayed in filing the Motion, because, in Defendants' view, Plaintiffs knew the purchase of a used vehicle may not fall within the protections of the Song-Beverly Act.

		Thus, Plaintiffs could have, and should have, included their Commercial Code, Consumers Legal Remedies Act, Negligent Repair, and their Civil Code section 1796.5 claims, at the time they filed their original Complaint. Plaintiffs also could have moved to amend after Defendants filed their Demurrer or Answer, or after Defendants served their discovery responses. Defendants contend the present Motion is in direct response to the holding in *Rodriguez v. FCA US LLC* (2024) 17 Cal.5th 189, wherein the California Supreme Court held that used vehicles do not qualify for the protections of the Song-Beverly Consumer Warranty Act. Regardless of whether Plaintiffs filed their Motion in response to *Rodriguez*, or whether they could have included the new claims at the time they filed their original Complaint, denial of the Motion would not be warranted, as a denial would result in Plaintiffs being deprived of their right to assert meritorious claims against Defendants. (*Morgan v. Superior Court of Los Angeles County* (1959) 172 Cal.App.2d 527, 530; *Kauffman v. Bobo & Wood* (1950) 99 Cal.App.2d 322, 323.) In their Opposition, Defendants cite to *Melican v. Regents of University of California* (2007) 151 Cal.App.4th 168 and *Champlin/GEI Wind Holdings, LLC v. Avery* (2023) 92 Cal.App.5th 218, both for the proposition that it would be unfair to allow Plaintiffs to amend their Complaint in order to defeat a motion for summary judgment. However, in both cases, the plaintiffs did not seek to add their new claims until they made an oral request during the summary judgment hearing. (*Champlin/GEI Wind Holdings, LLC v. Avery* (2023) 92 Cal.App.5th 218, 224; *Melican v. Regents of University of California* (2007) 151 Cal.App.4th 168, 176.) *Fisher v. Larsen* (1982) 138 Cal.App.3d 627, 649 is also distinguishable because, there, the self-represented plaintiff took no action to amend for five months, whereas, here, the Motion was filed less than three months after Defendants filed their Motion for Summary Judgment. Finally, *Green v. Rancho Santa Margarita Mortgage Co.* (1994) 28 Cal.App.4th 686, 693-694 is inapposite because the motion to amend was not filed until after the defendant had lost on a different defense at the first trial. Thus, the Court rejects Defendants' contention that the Motion should be denied because of Plaintiffs' unjustifiable delay.

		Defendants' second argument is that the Motion should be denied because permitting the amendment would unfairly prejudice them. However, as noted, [i]n determining whether to allow a party to amend its pleading, " '[i]f the same set of facts supports merely a different theory—for example, an easement as opposed to a fee—no prejudice can result.' [Citation.]" (*Garcia v. Roberts* (2009) 173 Cal.App.4th 900, 910.) In their proposed First Amended Complaint, Plaintiffs are alleging the same facts, namely, that their vehicle suffered from issues with the engine cooling system, electrical defects, electronics defects, and infotainment system defects. (Exhibits A-C to Oppenheim Declaration.) However, rather than bringing their claims pursuant to the Song-Beverly Consumer Warranty Act, Plaintiffs allege the same facts would support causes of action based on the Commercial Code, Consumers Legal Remedies Act, Negligent Repair, and Civil Code section 1796.5. The Court finds Defendants would not be unfairly prejudiced, as the same set of facts merely supports a different theory of liability. Plaintiffs' Motion is granted. Plaintiffs are ordered to provide written notice of the Court's ruling.
7	Moore vs. Seaworld Parks & Entertainment, Inc.	**TENTATIVE RULING:** Defendants Jim Lake and Seaworld Parks & Entertainment, Inc.'s Motion to Transfer Venue to the County of San Diego and for an Award of Sanctions is GRANTED. Plaintiff Devon Ray Moore is ordered to pay sanctions of $1,460.00 within 30 calendar days of Defendants providing written notice of this Court's ruling. Defendants' requests for judicial notice are GRANTED. **Statement of Law** Generally speaking, "the superior court in the county where the defendants or some of them reside at the commencement of the action is the proper court for the trial of the action. If the action is for injury to person or personal property or for death from wrongful act or negligence, the superior court in either the county where the injury

occurs or the injury causing death occurs or the county where the defendants, or some of them reside at the commencement of the action, is a proper court for the trial of the action." (Code Civ. Proc., § 395, subd. (a); see *Williams v. Superior Court for County of Contra Costa* (2021) 71 Cal.App.5th 101, 109 [for personal injury claims, venue is proper where the injury occurred, or where the defendant resides].)

However, the court may change the place of trial "[w] hen the court designated in the complaint is not the proper court," or "[w]hen the convenience of witnesses and the ends of justice would be promoted by the change." (Code Civ. Proc., § 397, subds. (a) & (c); see *Malloy v. Superior Court* (2022) 83 Cal.App.5th 543, 560 [transfer pursuant subdivision (c) is a matter within the sound discretion of the trial court].)

The moving party has the burden of proving " 'that both the convenience of witnesses and the ends of justice will be promoted thereby … It is primarily a question for the trial judge whether that burden has been successfully sustained.' [Citation.]" (*Corfee v. Southern California Edison Co.* (1962) 202 Cal.App.2d 473, 477, 479; *Minatta v. Crook* (1959) 166 Cal.App.2d 750, 755.)

" 'Convenience of witnesses is shown by the fact that the residence of all the witnesses is in the county to which the transfer of the cause is requested. [Citation.] A conclusion that the ends of justice are promoted can be drawn from the fact that by moving the trial closer to the residence of the witnesses, delay and expense in court proceedings are avoided and savings in the witnesses' time and expenses are effected.' [Citations.] 'A motion for a change of the place of trial on the ground that the convenience of witnesses and the ends of justice would be promoted by the change is committed to the sound discretion of the trial court and its determination will not be disturbed on appeal unless it clearly appears, as a matter of law, that there has been an abuse of such discretion.' [Citations.] 'Where there is a showing that the convenience of witnesses and the ends of justice will be promoted by the change and there is absolutely no showing whatever to the contrary, a denial of the motion to change venue is an abuse of discretion, there being no conflict of evidence to sustain the decision of the trial court.' [Citations.]" (*Rycz v. Superior Court of San Francisco County* (2022) 81 Cal.App.5th 824, 837.)

Merits of Motion

Defendants present evidence that the proper venue for this lawsuit is in San Diego County, and that the convenience of witnesses, and the

		ends of justice, would be promoted by a change in venue. This is because the incident occurred in San Diego, and each and every potential witness lives and works in San Diego County. (Ratay Declaration, ¶¶ 3-6.) The only connection to Orange County is Jim Lake, SeaWorld's *former* President, who had no involvement with the park's day-to-day maintenance, repair, or operations, and who has no knowledge of the events giving rise to the present lawsuit. (Lake Declaration, ¶¶ 2-5, 7.) In the Opposition, Plaintiff's counsel concedes he has agreed to transfer the case to San Diego County, and he has agreed to dismiss Lake without prejudice, in exchange for a waiver of costs. Given the foregoing, the Court finds that Orange County Superior Court is not the proper court for this lawsuit. (Code Civ. Proc., § 397, subd. (a).) The Court also finds the convenience of witnesses, and the ends of justice, would be promoted by transferring venue to San Diego County. (Code Civ. Proc., § 397, subd. (c).) **Sanctions** "In its discretion, the court may order the payment to the prevailing party of reasonable expenses and attorney's fees incurred in making or resisting the motion to transfer whether or not that party is otherwise entitled to recover his or her costs of action. In determining whether that order for expenses and fees shall be made, the court shall take into consideration (1) whether an offer to stipulate to change of venue was reasonably made and rejected, and (2) whether the motion or selection of venue was made in good faith given the facts and law the party making the motion or selecting the venue knew or should have known." (Code Civ. Proc., § 396b, subd. (b).) Defendants have presented evidence that, in September 2024, they attempted to meet and confer with Plaintiff regarding the change of venue, yet Plaintiff's counsel took the position that "we will not agree to stipulate to change venue and will oppose any motion to do so." (Ratay Declaration, ¶¶ 7-8; Exhibits B-C to Ratay Declaration.) Given the foregoing, along with the costs Defendants incurred to pursue this Motion, the Court is unpersuaded by Plaintiff's position that sanctions are unwarranted because the parties have now come to an agreement regarding venue.

		However, the Court finds Defendants' request for $6,920.00 in sanctions to be excessive. (Ratay Declaration, ¶ 9.) The sanction shall be reduced to $1,460.00, or four hours at $350.00 per hour, plus the $60.00 filing fee. Moving party to give notice.
8	Post vs. JP Cohen LLC	**OFF CALENDAR**
9	Watkins vs. General Motors LLC	**TENTATIVE RULING:** **Motion to Amend Complaint** Plaintiff Howard Watkins moves to amend the complaint. For the following reasons, the motion is CONTINUED to July 30, 2025, at 9:00 a.m. in this Department. Pursuant to California Rules of Court rule 3.1324(a), a motion to amend a pleading shall: (1) include a copy of the proposed amendment or amended pleading, which must be serially numbered to differentiate it from previous pleadings or amendments; (2) state what allegations in the previous pleading are proposed to be deleted, if any, and where, by page, paragraph and line number, the deleted allegations are located; and (3) state what allegations are proposed to be added to the previous pleading, if any, and where, by page, paragraph, and line number, the additional allegations are located. Here, the court record shows Plaintiff submitted no copy of the proposed amendment. The court finds the "redlined" copy properly reflects the changes, but the court requires a copy of the amended pleading that Plaintiff proposes to file. Presumably, Plaintiff does not intend to actually file the redlined version. No later than nine (9) court days before the continued hearing, Plaintiff shall file and serve an amended/supplemental declaration attaching a "clean" copy of the proposed first amended complaint. Court will advise the parties that, based on the merits, the court is tentatively inclined to grant the motion at the next hearing. Plaintiff is ordered to give notice.
10	Gallup vs. Superior Transportation Associates, Inc.	**TENTATIVE RULING:** For the reasons set forth below, Steven Gallup's motion for summary judgment, or, alternatively, summary adjudication is DENIED.

Background Facts

Petitioner filed a petition for writ of mandate to seek Respondent's documents as one of Respondent's shareholders. Petitioner contends that he requires these documents for appraisal and valuation purposes for potential sale. (Petition, ¶ 2). In his Petition, Petitioner contends that he is legally entitled to the following documents:

The following for the last three years and to date for the current year of 2024:
a. The Company's Articles as amended to date.
b. The Company's Bylaws as amended to date. Corporate Books and Records
c. Annual financial statements for the last three years [detailed balance sheets, detailed income statements and detailed statements of cash flows] in order of preference: audited, reviewed, compiled, and internal.
d. Latest available interim month-end financial statements [detailed balance sheets, detailed income statements, and detailed statements of cash flows].
e. Explanations of significant nonrecurring and/or nonrecurring items appearing on the financial statements in any fiscal year if not detailed in footnotes.
f. Accounts payable aging schedule as of interim financial statement date.
g. Accounts receivable aging schedule as of interim financial statement date.
h. Listing of Deposits and Suspense Account that matches the most recent balance sheet.
i. Fixed asset listing and financial statement depreciation schedule as of latest yearend date and interim financial statement date.
j. Detailed General Ledgers for the last three years.
k. Dates and amounts of PPP loans and government grants received in the last three years.
l. Detailed listing of Travel and Entertainment expenses for the last three years.
m. Copy of W-2s for any owners, officers, and managers employed by the company and their position with the company for the last three years.
n. Year-to-date Medicare wages for any owners, officers, and managers employed by the company and their position with the company.
o. List and amount of compensation or consultant income received by STA owners, officers, or management for the last three years.

		p. List of any insurance or other benefits provided to owners and officers, but not available to other employees for the past three years. q. Schedule of income and expenses to/from companies with related party ownership for the last three years. r. Copy of W-2s for any relatives of owners or officers employed by the company and their position with the company. s. Any leases with entities or individuals with ownership in the company. t. Financial projections, if any, for the current year and the next three years, including any prepared budgets and /or business plans. u. Description of terms of any contracts with personnel, such as noncompete agreements or employment contracts. v. Federal and State Corporate Income Tax Returns and supporting schedules for the last three years w. The record of shareholders, including a list of shareholders entitled to vote for the election of directors. x. Copies of any shareholder agreements relating to the Petitioner's stock in the Company. y. Copies of preferred stock agreements presently in effect. z. List and amount of distributions to shareholders for the last three years. aa. Copy of notes payable to stockholders and related amortization schedule. (Petition, ¶ 11, subds. (a)-(aa)). **Evidentiary Objections** As a preliminary matter, Respondent objected to the declaration of counsel, John O'Malley, Petitioner Steven Gallup, and Gary Capata. The objections to the declaration of Mr. O'Malley are SUSTAINED as to paragraph 5 for lack of foundation/hearsay, and as to Exhibit H, as it is an unpublished opinion in violation of Cal. R. Ct, rule 8.1115. The objections as to paragraphs 4, 8, 13, 14, and 17 to the declaration of Mr. O'Malley are OVERRULED. The objections to the declaration of Mr. Gallup are SUSTAINED as to paragraph 16 for lack of foundation. The objections as to paragraphs 6 and 17 are OVERRULED. The court sustains the objections to the entire Declaration of Mr. Capata and Exhibits 1 and 2, as Petitioner has not presented this declaration or exhibits with his motion.

Statement of Law

"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.)

Where plaintiff seeks summary judgment, the burden is to produce admissible evidence on each element of a "cause of action" entitling plaintiff to judgment. (Code Civ. Proc § 437c, subd. (p)(1); see also *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.). If the moving party carries this burden of production, the moving party causes a shift, and the opposing party is subject to a burden of production to make a prima facie showing of the existence of a triable issue of material fact. (*Aguilar, supra,* 25 Cal.4th at 850). Affidavits or declarations on a motion for summary judgment must be directed to the issues raised by the pleadings. (*Keniston v. American Nat. Ins. Co*. (1973) 31 Cal.App.3d 803, 812). Therefore, Plaintiff has to produce admissible evidence for each element of the causes of action for which summary adjudication is sought.

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.)

Claims for Relief (MSA Issues 1 and 2)

Gallup seeks two claims for relief in the Petition: 1. Ordinary mandamus: Shareholder inspection, and 2. Declaratory relief.

However, the memorandum of points and authorities only addresses the first claim, and does not address declaratory relief. Because Gallup failed to meet his burden as to the second claim for declaratory relief, the court denies summary judgment, and the court denies the motion for summary adjudication as to issue 2. (See Cal. R. Ct, rule 3.1113, subd. (a) [wavier of all grounds not supported in memorandum]). The court will address the first claim for ordinary mandamus.

Pursuant to Code Civ. Proc. § l085, subd. (a): “A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person to compel the performance of an act which the law specially enjoins … .” Generally, mandamus lies when (1) there is no plain, speedy, and adequate alternative remedy; (2) the respondent has a duty to perform; and (3) the petitioner has a clear and beneficial right to performance. (Code Civ. Proc. § 1086; see also *Pomona Police Officers’ Assn. v. City of Pomona* (1997) 58 Cal.App.4th 578, 583-584).

Gallup claims that he is entitled to inspect the records pursuant to Corp. Code § 1601. Corp. Code § 1601, subd. (a)(1) provides: “The accounting books, records, and minutes of proceedings of the shareholders and the board and committees of the board of any domestic corporation, and of any foreign corporation keeping any records in this state or having its principal office in California, or a true and accurate copy thereof if the original has been lost, destroyed, or is not normally physically located within this state shall be open to inspection at the corporation's principal office in California, or if none, at the physical location for the corporation's registered agent for service of process in this state, upon the written demand on the corporation of any shareholder or holder of a voting trust certificate at any reasonable time during usual business hours, for a purpose reasonably related to the holder's interests as a shareholder or as the holder of a voting trust certificate.”

However, “although shareholders have some rights to corporate information not available to the general public, shareholder status

		does not in and of itself entitle an individual to unfettered access to corporate confidences and secrets." (*Goldstein v. Lees* (1975) 46 Cal.App.3d 614, 621). In support of his claim under Corp. Code § 1601, Gallup has set forth the following facts: Petitioner is the holder of material outstanding shares of Respondent STA presently equal to 8.49 percent of Respondent's common stock. (Separate Statement of Undisputed Material Facts (SSUMF) 3). From mid-2023 through mid-2024, Petitioner's legal counsel wrote to STA seeking proper access to financial documents per his rights as a material shareholder that held in excess of five percent of STA stock. Petitioner's demands sought inspection and copying of records. (SSUMF 5). STA produced only a fraction of the financial documentation that Petitioner seeks and that he claims he is entitled to. (SSUMF 6). STA refused to produce its detailed accounting documentation and records including tax returns, detailed schedules, check registries, and other required back-up and substantive material that Petitioner contends would provide true insight into the fair value of Petitioner's shares plus his ability to sell same to a willing buyer. STA generally provided certain summary financial statements, plus records as to its corporate formalities. Respondent failed and refused to provide sufficient legitimate non-summary form financial documents. (SSUMF 6). For Petitioner to have his shares in STA professionally appraised and valued, he needs to receive the documents to which he is entitled. (SSUMF 7). Gary Capata, a certified public accountant ("CPA") for over thirty years, has denoted the key documents and files of any private company with unaudited financials that would comprise the "accounting books and records" necessary for review for legitimate purposes, including appraising or valuing stock in the entity. (SSUMF 11). Capata denoted that the accountants for a company would want to see and review the materials set forth in Petitioner's list as part of determining the financial health and stability of the entity plus undertaking any audit of the entity's financials. (SSUMF 12). The non-exclusive list of records denoted by CPA Capata as a bare minimum list of what STA was required to produce as its "accounting books and records" to comply with Petitioner's demands for same included: (1) STA Detailed Financial Statements [balance sheets, income statements and statements of cash flows] for 2021, 2022, 2023 and Year-To-Date 2024, (2) STA Detailed General Ledgers – 2021, 2022, 2023 and Year-To-Date 2024, (3) STA Federal and State Corporate Income Tax Returns – 2021, 2022 and 2023, (4) STA Owner/Officer/Management W-2s for 2021, 2022,

		2023, (5) STA Owner/Officer/Management Medicare Wages for Year-To-Date 2024, (6) List of entities providing revenues to STA that are fully or partially owned by STA owners, officers, employees or consultants including: (a) Detailed listing of revenues provided to STA by such entities for 2021, 2022, 2023 and Year-To-Date 2024, (b) List of entities providing products or services to STA that are fully or partially owned by STA's owners, officers, employees or consultants. (c) Detailed listing of products or services provided to STA by such entities for 2021, 2022, 2023 and Year-To-Date 2024, (7) List and amount of owner distributions, employee compensation or consultant income received by STA owners, officers or employees in 2021, 2022, 2023 and Year-To-Date 2024, (8) Aged Accounts Receivable listing that matches the 2024 balance sheet, (9) Aged Accounts Payable listing that matches the 2024 balance sheet, (10) Fixed Asset listing (description, acquisition date, acquisition cost) that matches the 2024 balance sheet, (11) Listing of Deposits and Suspense Account that matches the 2024 balance sheet, (12) Copy of the Notes Payable-Stockholders notes, (13) Copy of any compiled, reviewed or audited financial statement reports prepared by outside accountants in 2021, 2022, 2023 or 2024, (14) Detailed listing of Travel and Entertainment for 2021, 2022, 2023 and Year-To-Date 2024, (15) List of any insurance or other benefits provided to owners/officers not available to other employees in 2021, 2022, 2023 and 2024. (SSUMF 13). Capata has purportedly declared that a potential buyer will likely need a valuation backed by tax returns to obtain lending to finance a transaction. (SSUMF 18). After this lawsuit was filed in July 2024, STA stated it would supposedly produce additional records if Petitioner signed a non-disclosure agreement in the form drafted by STA's counsel. (SSUMF 48). Gallup contends that the 15-item list provided by Capata is the "bare minimum" of what STA is required to produce to comply with Petitioner's demands as of mid-August 2024. In support of his argument that he is entitled to all categories of documents set forth in his Petition, Petitioner cites to *Schnabel v. Superior Court* (1993) 5 Cal.4th 704. In *Schnabel*, the court held that the corporation's "accounting books and records" discoverable by shareholder's spouse in marriage dissolution action encompassed records reasonably related to strong public policy in favor of child and spousal support awards and fair division of community assets.

		These records included corporate tax returns and quarterly payroll tax returns. (*Id.* at 723). The court explained as follows: "We need not decide whether the shareholder's right of inspection extends generally to tax returns. Instead, we rely on the specific facts of this case and the nature of this proceeding to carve out an exception to the general rule of privilege. Here, the marital community and the corporation are closely related; the corporation has but two shareholders, one of whom is Terry, and the marital community owns 30 percent of the stock. This is not a public corporation whose shares have a readily ascertainable market value. These facts, combined with the legislatively declared public policy in favor of full disclosure in a marital dissolution proceeding, warrant an exception to the privilege in this case limited to those tax returns that are reasonably related to the purpose for which they are sought. The corporate tax returns are clearly related to Marilyn's interest in determining the value of the corporation. The uncontroverted declaration of her accountant explained in detail why these returns were necessary. Moreover, the quarterly payroll tax return information regarding Terry himself is related to Marilyn's interests in ascertaining the parties' financial status, and is thus discoverable. Marilyn is certainly entitled to information regarding the community's own taxes." (*Id.* at 722-723). First, the court notes that the Petition describes a list of documents (items (a) through (aa)), but Petitioner's motion does not detail which items were already received during the previous productions by STA, and which items remain. If any of these items have already been produced, then a writ mandating their production is not necessary as Petitioner has already received his "adequate remedy" as to those particular categories. Even if this court were to assume that Petitioner is seeking all of the documents listed in items (a)-(aa) in the Petition and that there is no alternative adequate remedy to obtain these documents, Petitioner bears the burden to prove that he is entitled to each category. Petitioner relies on the declaration of CPA Capata, who purportedly declared that each of these items are required to properly conduct a valuation of Petitioner's shares with STA. However, no declaration was attached to the motion. STA raised this issue in the Opposition and objected to the declaration in its entirety because it was never filed or served. Despite STA raising this point, Petitioner failed to address this in the reply, and never filed a notice of errata and/or

never filed the declaration in support of the reply. To date, Petitioner still has not presented the declaration and attached exhibits.

The numerous categories of records that Petitioner seeks are not supported by case law alone. For example, the case Petitioner relies on, *Schnabel*, specifically held that "shareholder status does not in and of itself entitle an individual to unfettered access to corporate confidences and secrets". (*Schnabel, supra,* 5 Cal.4th at 716).

With regards to the corporation's tax returns, *Schnabel* did not hold that such tax returns are always available to a shareholder. Rather, *Schnabel* expressly recognized that these tax returns are privileged, and that the wife in the dissolution proceeding had shown that an exception to the privilege was warranted because the uncontroverted declaration of her accountant explained in detail why these returns were necessary. (*Id.* at 717). Here, Petitioner has failed to provide any such "uncontroverted declaration.' Furthermore, Petitioner has failed to demonstrate the necessity for other items.

For example, Petitioner seeks items such as "n. Year-to-date Medicare wages for any owners, officers, and managers employed by the company and their position with the company", "s. Any leases with entities or individuals with ownership in the company", "r. Copy of W-2s for any relatives of owners or officers employed by the company and their position with the company", and "u. Description of terms of any contracts with personnel, such as noncompete agreements or employment contracts." Petitioner has not explained how any of these items could be relevant to his valuation. The only evidence Petitioner offers for its relevance-the declaration of Capata-was not included with the motion.

Corp. Code § 1601 only allows for "accounting books, records, and minutes of proceedings of the shareholders …for a purpose reasonably related to the holder's interests." Because Petitioner failed to show that each of the items he requests is reasonably related to his interests as a shareholder, the court denies the motion for summary judgment and adjudication.

Affirmative defenses (MSA Issues nos. 3-11).

The court also denies the motion for summary adjudication as to the affirmative defenses, and the two additional "defenses", in Petitioner's notice.

First affirmative defense of laches: "To establish a successful affirmative defense based on laches, a defendant must show that the

		plaintiff unreasonably delayed in filing suit, together with either the plaintiff's acquiescence in the conduct about which it complains *or* prejudice to the defendant because of the delay." (*City of Hesperia v. Lake Arrowhead Community Services Dist.* (2023) 93 Cal.App.5th 489, 511.) Here, Petitioner admitted in his own memorandum of points and authorities that STA "shut out Petitioner after Feb. 2016 by failing to provide him with any shareholder distributions from 2016-2023." (Memo., 8:24-25). If Petitioner wanted records as far back as 2016 but failed to act on his request for the records, that would present a triable issue as to laches. **Second and ninth affirmative defense of unclean hands**: "The defense of unclean hands arises from the maxim, 'He who comes into Equity must come with clean hands.'[Citation.] The doctrine demands that a plaintiff act fairly in the matter for which he seeks a remedy. He must come into court with clean hands, and keep them clean, or he will be denied relief, regardless of the merits of his claim." (*Mendoza v. Ruesga* (2008) 169 Cal.App.4th 270, 279.) Respondent has created a triable issue as to this affirmative defense by presenting evidence that Petitioner is a former disgruntled employee of Respondent, having been fired in 2015, who now owns a competing business. (Belcher Decl., ¶¶ 7, 8; Gallup Decl., ¶¶ 2, 4.). Petitioner has sought documents that he was unable to establish relate to the valuation of his shares, such as employee noncompete agreements. **Third affirmative defense of statute of limitations**: "An action upon liability created by statute, other than a penalty or forfeiture" must be brought within three years. (Code Civ. Proc., § 338, subd. (a).) Petitioner claimed that Respondent failed to comply with its obligations under Corp. Code § 1061 dating as far back as 2016. As Respondent notes, if Petitioner were seeking relief pursuant to a claim made back in 2016, it would create an issue as to the statute of limitations. **Fourth affirmative defense of Waiver, and fifth affirmative defense of estoppel**: "A waiver may occur (1) by an intentional relinquishment or (2) as 'the result of an act which, according to its natural import, is so inconsistent with an intent to enforce the right as to induce a reasonable belief that such right has been relinquished. [citation]" (*Crest Catering Co. v. Superior Court* (1965) 62 Cal.2d 274, 278.) The elements of an equitable estoppel affirmative defense are: "(1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the

party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury. [Citation]" (*D'Egidio v. City of Santa Clarita* (2016) 4 Cal.App.5th 515, 532.) "The essence of an estoppel...is that the party to be estopped has by false language or conduct led another to do that which he would not otherwise have done and as a result thereof that he has suffered injury." (*Hair v. State of California* (1991) 2 Cal.App.4th 321, 328-29 [internal citations omitted]). The court finds that Respondent has created a triable issue by noting that Petitioner has asserted that Respondent shut out Petitioner after Feb. 2016 by failing to provide him with any shareholder distributions from 2016-2023, yet presented no evidence of any formal demand for these records prior to 2023.

Seventh affirmative defense of failure to state a claim: Petitioner has not made any argument as to why this affirmative defense fails other than "[t]he inspection rights stand." (Memo., 19:25). This is insufficient, as Petitioner has failed to meet his burden of proving that he is entitled to inspect each category of document listed in his Petition.

Eighth affirmative defense of Good Faith: Petitioner contends that "Good faith" is not a valid affirmative defense to Petitioner's claim because Respondent's state of mind is irrelevant with regards to Corp. Code §1601. Petitioner makes no other argument as to why this affirmative defense fails. However, Petitioner acknowledges in his own memorandum that good faith is relevant for purposes of attorneys' fees.

Petitioner also moves for summary adjudication as to: "Defense of competition" and "Defense that it has produced all documents legally required." However, Petitioner has not shown that these were affirmative defenses asserted by Respondent. Accordingly, they are improper subject matter for a motion for summary adjudication. (See Code Civ. Proc. §437c, subd. (f)(1): "(f) (1) A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty … .").

Petitioner also briefly addresses the sixth affirmative defense of ratification in the memorandum of points and authorities. However, this affirmative defense was not raised as one of the issues in Petitioner's Notice. "It is elemental that a notice of motion must state in writing the 'grounds upon which it will be made.'" (*Gonzales v. Superior Court* (1987) 189 Cal. App. 3d 1542, 1545). "Only the grounds specified in the notice of motion may be considered by the

		trial court." (*Id.*) "This rule has been held to be especially true in the case of motions for summary adjudication of issues." (*Id.*) Accordingly, the motion for summary adjudication is denied. Respondent shall give notice.
11	Rincon vs. Ameriestate Legal Plan, Inc.	**TENTATIVE RULING:** **Motion for Summary Judgment** Plaintiff Sandra Rincon moves for summary judgment or, in the alternative, summary adjudication on Plaintiff's Complaint against Defendant AmeriEstate Legal Plan, Inc. For the following reasons, the motion for summary judgment is DENIED. The motion for summary adjudication is GRANTED as to Issue No. 3 and DENIED as to Issue Nos. 1 and 2. Plaintiff's evidentiary objection is OVERRULED. Defendant's evidentiary objection number 4 is SUSTAINED. The remainder of Defendant's objections are OVERRULED. Plaintiff and Defendant's requests for judicial notice are GRANTED. (Evid. Code § 452(b) and (d); (*Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375.) A plaintiff moving for summary judgment "bears the burden of persuasion that 'each element of' the 'cause of action' in question has been 'proved,' and hence that 'there is no defense' thereto. [Citation.]" (*Aguilar* v. *Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850; Code Civ. Proc. § 437c, subd. (p)(1).) "Once the plaintiff ... has met that burden, the burden shifts to the defendant ... to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. The defendant ... may not rely upon the mere allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto." (Code Civ. Proc. § 437c, subd. (p)(1).) The Complaint asserts causes of action for 1) professional negligence and 2) common counts. The facts of this matter are relatively straightforward. Defendant was hired to perform estate planning services for Mr. Jaime Alfaro ("Alfaro"), Plaintiff's brother. (UMF 1.) Defendant prepared a Transfer on Death Dead ("TODD") for Alfaro, naming Plaintiff as the beneficiary, and recorded the TODD

		with the Los Angeles County Recorder's Office in 2023. (UMF 2-4.) The TODD states that it transfers to Plaintiff the property at 15030 Watkins Drive, La Mirada, CA 90638 (the "Property"). (UMF 5.) The TODD prepared by Defendant does not contain any witness signatures or any space for a witness to sign. (UMF 6-7.) However, in 2022, the TODD statute was amended to require two witness signatures. (UMF 8-9; Cal. Probate Code §§ 5624; 5642.) Alfaro was the sole owner of the Property, and he passed away on May 4, 2023. (UMF 10-11.) Because the TODD did not contain witness signatures, Plaintiff did not receive any ownership interest in the Property. (UMF 12.) The elements of a professional negligence or legal malpractice claim are: " '(1) the duty of the attorney to use such skill, prudence, and diligence as members of his or her profession commonly possess and exercise; (2) a breach of that duty; (3) a proximate causal connection between the breach and the resulting injury; and (4) actual loss or damage resulting from the attorney's negligence.' " (*Akhlaghpour v. Orantes* (2022) 86 Cal.App.5th 232, 254-255.) Determining the existence and scope of a defendant's duty of care "is one of law to be decided by the court, not by a jury, and therefore it generally is 'amenable to resolution by summary judgment.'" (*Kahn v. East Side Union High School Dist*. (2003) 31 Cal.4th 990, 1004 (citation omitted).) In general, an attorney only owes a duty of care to the client. (*Paul v. Patton* (2015) 235 Cal.App.4th 1088, 1095.) "However, courts have extended an attorney's duty of care to nonclients—including will and trust beneficiaries—in limited circumstances." (Id. at pp. 1095-96.) Attorneys owe beneficiaries a duty of care under some circumstances because they are foreseeable plaintiffs who will suffer the real loss when a testamentary transfer fails. (Id. at p. 1096.) Defendant contends that it did not owe Plaintiff a duty of care because it was hired to perform estate planning services for Alfaro, not Plaintiff. The evidence, however, shows that Plaintiff was "directly involved" in the process of communicating with Defendant for purposes of creating and executing the TODD. Plaintiff is the one that spoke with Defendant on or about April 11, 2025, when, due to Alfaro's health, Defendant recommended the creation of a TODD rather than a trust. (Rincon Dec., ¶ 7.) Plaintiff paid Defendant to prepare and record the TODD and Plaintiff spoke with Defendant's employees. (Id. at ¶ 8.) Defendant sent the recorded TODD directly to Plaintiff's email. (Id. at ¶ 9.) And Defendant communicated with Plaintiff after Alfaro's death regarding the mistaken use of an outdated TODD form. (Id. at ¶ 11.)

At any rate, the determination of whether an entity owes a duty to a third person "involves the balance of various factors, among which are the extent to which the transaction was intended to affect the plaintiff, the foreseeability of harm to him, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, and the policy of preventing future harm." (*Biakanja v. Irving* (1958) 49 Cal.2d 647, 650.)

Almost 75 years ago, in *Biakanja v. Irving*, the Supreme Court held, notwithstanding the absence of privity, a notary public, engaging in the unauthorized practice of law, who drafted and supervised the execution of a will, owed a duty of care to the beneficiary who lost her inheritance due to his negligence. (*Biakanja, supra*, 49 Cal.2d at 651.) Three years later, in *Lucas v. Hamm* (1961) 56 Cal.2d 583, the Court held beneficiaries whose bequests arguably failed because the testator's lawyer did not adequately safeguard the will from challenge under the rule against perpetuities could assert a claim for professional negligence against the lawyer.

The analysis of duty under the *Biakanja* factors are not limited to lawyers. Indeed, the defendant in *Biakanja* was not an attorney. (*Biakanja, supra,* 49 Cal.2d at 648.) The first factor focuses on "the extent to which the transaction was intended to affect the plaintiff." (Id. at p. 650.) The transaction at issue in this matter was certainly intended to benefit Plaintiff. Plaintiff contacted and hired Defendant to perform estate planning services for Alfaro. (UMF 1.) Defendant recommended preparing a TODD that would transfer the Property to Plaintiff upon Alfaro's death. (UMF 5.) However, Defendant used an outdated form that was ineffective to convey the Property to Plaintiff. (UMF 6-12.)

The second *Biakanja* factor considers the foreseeability of harm to Plaintiff. It was readily foreseeable that using an ineffective version of a TODD form would cause harm to Plaintiff because she would not have received title to the Property as Alfaro had intended.

Third and fourth, the Court must consider the degree of certainty that Plaintiff suffered injury and the closeness of the connection between Defendant's conduct and the Plaintiff's injury. Defendant contends that Plaintiff might still obtain an interest in the Property because her mom has a 50% interest in the Property and her mom "may well leave her interest in the Property to Plaintiff." (Opp. at 4:20-21.) Defendant also contends that Alfaro's stepson, the other 50% owner

		of the Property, may be willing to sell his interest in the Property to Plaintiff. Such speculation does not alter the fact that, were it not for Defendant's mistake, Plaintiff would have obtained title to the Property upon Alfaro's death in 2023. (UMF 3-10.) Imposing a duty on Defendant to act reasonably and use forms that comply with updated statutes will protect clients and foreseeable third parties from future economic harm. Thus, the sixth *Biakanja* factor, which considers the policy of preventing future harm, also supports the imposition of such a duty. The Court finds that Defendant owed Plaintiff a duty of care. Plaintiff must also establish the actual loss or damage resulting from Defendant's negligence. Plaintiff contends that the Property was valued at $820,000 at the time of Alfaro's death. (UMF 13.) Alfaro passed away on May 4, 2023. (UMF 10.) In August of 2023, Plaintiff contends the property was valued at $820,000. (UMF 13.) This is based on Plaintiff's declaration, which states: > Between my personal involvement with the Property during Mr. Alfaro's lifetime, the information I received from Mr. Alfaro, and my work as administrator of his estate, I have developed an opinion of the value of the Property. My investigation into the value included research as to what other properties had sold for, and included consulting a full appraisal that had been performed on the Property in August of 2023, which was completed shortly after Mr. Alfaro's passing. For reference, a true and correct copy of that appraisal, and the information contained therein which assisted me in forming my opinion as to the value of the Property, is attached hereto as Exhibit "7". The Property appraised for $820,000. Separately and independently of the appraisal, that number is also my opinion as to the valuation of the Property at the time of Mr. Alfaro's passing. (Rincon Dec., ¶ 14.) An owner of property is qualified to express his or her opinion as to the value of his or her property. (Evid. Code, § 813(a)(2).) Plaintiff was not the owner of the Property and Plaintiff has not provided any basis for the Court to accept her own opinion on the value of the Property. For instance, Plaintiff does not provide evidence that she has any sort of expertise in valuing residential properties.

Further, the appraisal offered by Plaintiff constitutes inadmissible hearsay – an out of court statement that is offered to prove the truth of the matter stated therein, i.e., that the property was worth what the appraisal claims the property to be worth. (Evid. Code § 1200).

On summary judgment, Plaintiff has the burden to prove the amount of damages because damages are an element of Plaintiff's claim. (See, e.g., *Paramount Petroleum Corp. v. Superior Court* (2014) 227 Cal.App.4th 226, 243 ["A plaintiff can obtain summary adjudication of a cause of action only by proving each element of the cause of action entitling the party to judgment on that cause of action"].)

Plaintiff has not met her initial burden on the issue of damages. Accordingly, the motion for summary judgment is denied. Similarly, the motion for summary adjudication as to Issue No. 1 – the first cause of action for negligence – is also denied.

However, the motion for summary adjudication is granted as to Issue No. 3 - whether Defendant owed Plaintiff a duty of care in the preparation and recording of the transfer on death deed at issue in this litigation. As discussed previously, Defendant owed Plaintiff a duty of care with respect to the facts at issue in this lawsuit.

Issue No. 2 - whether Defendant breached its duty to Plaintiff in the preparation and recording of the transfer on death deed at issue in this litigation –is not an issue of duty, but an issue of breach. Code Civ. Proc. § provides that a party "may move for summary adjudication as to… one or more issues of duty."

Defendant's request for a continuance or a stay is denied. Code of Civil Procedure section 437c(h) provides:

> 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.

"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." (*Johnson v. Alameda County Medical Center* (2012) 205 Cal.App.4th 521, 532.) Defendant argues that an OSC Re: Petition for Final Distribution or Status Report scheduled in Alfaro's probate proceeding for August 14, 2025, may determine the identities of Alfaro's heirs who actually obtains title to the Property. Thus, Defendant is not seeking discovery but rather a stay of this matter. Further, Defendant's counsel did not provide any declaration to show how additional facts essential to opposing Plaintiff's motion "may exist but cannot, for reasons stated, be presented." Plaintiff shall give notice of this ruling.
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