**TENTATIVE RULINGS**
**DEPARTMENT C13 - LAW AND MOTION CALENDAR**

**Judge Jonathan Fish**

**April 22, 2024**

**LAW AND MOTION IS HEARD ON MONDAYS AT 1:30 P.M.**

**Court Reporters:** Official court reporters (i.e., court reporters employed by the Court) are **NOT** typically provided for law and motion matters in this Department. If a party desires a record of a law and motion proceeding, it must provide a court reporter. Parties must comply with the Court's policy on the use of privately-retained court reporters, which can be found at:

- Civil Court Reporter Pooling;
- Please see the Court's website at Court Reporter Interpreter Services for additional information regarding the availability of court reporters.

**Tentative Rulings**: The Court endeavors to post tentative rulings on the Court's website by 5 p.m. on the preceding Friday. Do NOT call the Department for a tentative ruling if none is posted. Tentative rulings may not be posted on every case – or may be posted the morning of the hearing – due to the Court's other commitments or the nature of a particular motion. **The Court will NOT entertain a request for continuance 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) 622-5213. 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.

**Non-appearances:** If no one 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. The Court also might make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

**Appearances: Remote and In-Person Proceedings.** Parties are referred to the Court's "Appearance Procedures and Information – Civil Unlimited and Complex" and "Guidelines for Remote Appearances" available on the Public Website.

| # | Case Name | |
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| **1** | **23-01325237**<br><br>**Balboa Capital Corporation v. Riding With The Law LLC** | **Motion to Strike Answer**<br><br>Plaintiff Balboa Capital Corporation's Motion to Strike Answer is GRANTED, with 20-days leave to amend, as follows.<br><br>The Court STRIKES the Answer of Defendant Riding With The Law LLC because the Answer was filed by Defendant Travis Donnell Law in pro per. This was improper as an artificial entity cannot appear in pro per but must be represented by licensed counsel. (*Himmel v. City Council of Burlingame* (1959) 169 Cal.App.2d 97, 100; *CLD Const., Inc. v. City of San Ramon* (2004) 120 Cal.App.4th 1141, 1145.)<br><br>Moving Party is to give notice. |
| **2** | **23-01310632**<br><br>**Bayer v. Morey** | **Demurrer to Cross-Complaint**<br><br>Plaintiffs and Cross-Defendants Craig Bayer and Gloria Bayer generally demur to the fifth cause of action for declaratory relief in the cross-complaint of defendants and cross-complainants Andrew and Heather Morey is overruled. Cross-defendants are ordered to answer within 15 days.<br><br>A demurrer can be used only to challenge defects that appear within the "four corners" of the pleading – which includes the pleading, any exhibits attached, and matters of which the court is permitted to take judicial notice. *Blank v. Kirwan* (1985) 39 Cal. 3d 311, 318; *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal. App. 4th 968, 994. Limited to the "four corners" as such, a pleading is adequate if it contains a reasonably precise statement of the ultimate facts, in ordinary and concise language, and with sufficient detail to acquaint a defendant with the nature, source and extent of the claim. *Leek v. Cooper* (2011) 194 Cal. App. 4th 399, 413.<br><br>On demurrer, a complaint must be liberally construed. Code Civ. Proc. § 452; *Stevens v. Superior Court* (1999) 75 Cal. App. 4th 594, 601. All material facts properly pleaded, and reasonable inferences, must be accepted as true. *Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal. 4th 962, 966-67.<br><br>A pleading is adequate if it contains a reasonably precise statement of the ultimate facts, in ordinary and concise language, and with sufficient detail to acquaint a defendant with the nature, source and extent of the claim. The degree of detail required depends on the extent to which the defendant in fairness needs such detail |

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| | | which can be conveniently provided by the plaintiff. Less particularity is required when the defendant ought to have co-extensive or superior knowledge of the facts. Under normal circumstances, there is no need for specificity in pleading evidentiary facts. However, bare conclusions of law are insufficient. Code Civ. Proc. §§ 425.10(a), 459; *Doe v. City of Los Angeles* (2007) 42 Cal. 4th 531, 549-50; *Zelig v. County of Los Angeles* (2002) 27 Cal. 4th 1112, 1126; *Doheny Park Terrace HOA v. Truck Ins. Exchange* (2005) 132 Cal. App. 4th 1076, 1098-99; *Berger v. California Insurance Guarantee Assn* (2005) 128 Cal. App. 4th 989, 1006.<br><br>For their fifth cause of action for declaratory relief, Cross-Complainants allege the existence of a controversy concerning the parties' rights under the easements and use of the shared driveway. On that basis, they seek declaratory relief as to their right, under a prescriptive easement or equitable easement, to park their cars within the easements or otherwise on the shared driveway.<br><br>The essential elements of a declaratory-relief cause of action are (i) an actual controversy between the parties regarding contractual or property rights (ii) involving continuing acts/omissions or future consequences, (iii) which has sufficiently ripened to permit judicial intervention and resolution, but (iv) which has not yet blossomed into an actual cause of action. *See Osseous Technologies of America, Inc. v. Discoveryortho Partners LLC* (2010) 191 Cal. App. 4th 357, 366-69.<br><br>Cross-Complainants have alleged the elements for declaratory relief.<br><br>Whether, on the merits, they are entitled to a prescriptive easement or an equitable easement is a matter to be decided on a fuller factual record rather than on a pleading motion. |
| **3** | **22-01262460**<br><br>**Charles v. Ford Motor Company** | **1) Motion for Reconsideration**<br><br>Plaintiffs Gerard Francis Charles' and Kathy Charles' motion for reconsideration of the Court's order dated 2/28/23 from well over a year ago is denied.<br><br>Code Civ. Proc., § 1008 states in part: |

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| | | (a) When an application for an order has been made to a judge, or to a court, and refused in whole or in part, or granted, or granted conditionally, or on terms, any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and based upon new or different facts, circumstances, or law, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order. The party making the application shall state by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown.<br>(b) A party who originally made an application for an order which was refused in whole or part, or granted conditionally or on terms, may make a subsequent application for the same order upon new or different facts, circumstances, or law, in which case it shall be shown by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown. For a failure to comply with this subdivision, any order made on a subsequent application may be revoked or set aside on ex parte motion.<br>(c) If a court at any time determines that there has been a change of law that warrants it to reconsider a prior order it entered, it may do so on its own motion and enter a different order.<br><br>Plaintiffs bring this motion under subdivision (c). In *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1108, the Court held that a party could suggest to the court that it reconsider a ruling on its own motion pursuant to subd. (c), so long as the general requirements of Code Civ. Proc., § 1008 were fulfilled.<br><br>Over a year ago, the Court granted Defendant's motion to compel arbitration based on the Court of Appeal decision, *Felisilda v. FCA US LLC* (2020) 53 Cal.App.5th 486.<br><br>The court in *Felisilda* held that a manufacturer could enforce an arbitration clause in a standard Retail Installment Sales Contract between the car purchaser and dealership, even though it was not a party to the contract, based in part on equitable estoppel. (*Id*. at 493.)<br><br>At the time the motion to compel arbitration was decided in this manner, back in February 2023, *Felisilda* is the only appellate decision in California state court on this issue. |

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| | | In April of 2023, the Court of Appeal issued a ruling contrary to Felisilda in *Ford Motor Warranty Cases* (2023) 89 Cal.App.5th 1324 ("*Ochoa*"), where the court held that a manufacturer who was not a party to an arbitration agreement could not compel arbitration as a third-party beneficiary or based on equitable estoppel. (See also *Montemayor v. Ford Motor Company* (2023) 92 Cal.App.5th 958 and *Kielar v. Superior Court of Placer County* (2023) 94 Cal.App.5th 614 (similar outcomes subsequent to *Ochoa*).)<br><br>The rulings in these cases do not create new law or overrule *Felisilda*. The result is that there is now a split in authority amongst the California Court of Appeals, and the trial courts are not bound by one or the other, at this time.<br><br>Based on recent filings, it appears that the parties have initiated arbitration proceedings, agreeing to arbitrate this matter with ADR services with Honorable Rita "Sunny" Miller, and are awaiting an arbitration date from the case manager. (ROA 58.)<br><br>Because the Court does not find that there has been a change in the law that warrants reconsideration of its February 28, 2023 order; and moreover, such would not be in the interests of judicial economy, Plaintiffs' motion is denied.<br><br>Defendant shall give notice.<br><br>**2) ADR Review Hearing** |
| **5** | **21-01188818**<br><br>**Foote v. Fay Servicing, LLC** | **Motion for Attorney Fees**<br><br>Defendant Cam Xi Trust's Motion for Attorneys' Fees is OFF CALENDAR.<br><br>Judgment was entered in this case on September 01, 2023, by the Honorable Martha Gooding. Judgment was entered in favor of three defendants, Cam Xi Trust, Fay Servicing, LLC and Entra Default Solutions, LLC.[ROA 700] A Memorandum of Costs (Summary) was filed by all three defendants, although attorneys' fees as costs were not specifically identified. [ROA 712]<br><br>This Motion has been brought by Cam X*i Trust only. Defendants Fay Servicing, LLC and Entra Default Solutions, LLC are also entitled attorneys' fees. Is the amount requested only for work performed of Cam Xi Trust or for all defendants? If for all defendants, what work was done for whom? As it stands, each* |

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| | | *defendant has a separate claim for fees that must be identified and supported.*<br><br>*On the issue of providing support for the fee request, the Court's records reflect that the entire Motion was rejected for filing by the clerk on October 26, 2023, with instructions [ROA 726, Notice of Rejection of Electronic Filing] A refiled Motion is not located in the Court's files.*<br><br>*Since the motion was not properly filed, it will need to be so. When the new motion is filed, the issues identified above must be addressed.* |
| **8** | **21-01237839**<br><br>**Ibrahim v. Target Corporation** | **1) Motion to Compel Production**<br><br>Plaintiff Ahmed Ibrahim's motion to compel Defendant Target Corporation's further responses to his requests for production of documents, set three, is granted in part and denied in part as set forth below.<br><br>Pursuant to Code Civ. Proc., § 2031.310(b)(1), when moving to compel responses to requests for production of documents, the moving papers must set forth specific facts showing good cause justifying the discovery sought by the inspection demand. To establish "good cause," the burden is on the moving party to show both: (1) relevance to the subject matter (e.g., how the information in the document 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 (National Union Fire Ins. Co. of Pittsburgh, Pa.)* (1997) 53 Cal.App.4th 1113, 1117; Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2016) ¶ 8:1495.6.<br><br>Request No. 136 asks for documents and electronically stored information identified in Defendant's responses to form interrogatories, set three.<br><br>In its further response, Defendant stated that "[a]fter a diligent search and reasonable inquiry, Responding Party has fully complied with this request by producing all responsive documents which are now equally available to the Propounding Party with the exception |

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| | | of documents protected by attorney-client privilege and attorney work product as provided in the Privilege Log served concurrently herewith."<br><br>This response is sufficient pursuant to Code Civ. Proc., § 2031.220 as it states that Defendant has fully complied, producing responsive documents. Therefore, the motion is denied as to No. 136.<br><br>No. 141 requests all sub rosa video recordings of Plaintiff.<br><br>Defendant objected and in its further response, refused to comply stating that the recordings are protected by attorney work product.<br><br>Defendant in its opposition states that after the motion was filed, on 10/12/23, it served Amended Further Responses including another Privilege Log pursuant to Code of Civil Procedure section 2031.240. But counsel's declaration filed with Defendant's opposition to this motion failed to include the referenced exhibits. (ROA 420.) The Court is thus not able to evaluate if the further responses are sufficient.<br><br>Defendant also states that on December 27, 2023, pursuant to this Court's orders, Target produced the sub rosa video from October 15, 2022, to Plaintiff's counsel. (Mandalia Decl. ¶12.)<br><br>A further response is warranted here. As it stands, Defendant's response that it will not comply with the request is no longer accurate given Defendant's representation that it has, in fact, now complied with the request by producing the video.<br><br>Defendant is therefore ordered to serve a further verified response to No. 141 within 15 days of the notice of ruling.<br><br>The Court denies both parties' requests for sanctions.<br><br>**2) Motion to Compel Further Responses to RFAs**<br><br>Plaintiff Ahmed Ibrahim's motion to compel Defendant Target Corporation's further responses to his requests for admission, set three, is granted in part and denied in part as set forth below.<br><br>Request Nos. 56 and 68 ask Defendant to admit it has no facts or documents that Plaintiff or any other individual planned the incident. |

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| | | In response to both of these, Defendant states that "[a]fter a diligent search and reasonable inquiry based on the information known or readily obtainable, Responding Party party's information and knowledge is insufficient to admit or deny this matter. Discovery is ongoing and Responding Party reserves the right to supplement this response at a later date."<br><br>In responding to RFAs, a party has a duty to answer as completely and straightforwardly as the information reasonably available to him permits. Code Civ. Proc. §2033.220(a). A party may either (1) Admit so much of the matter as is true, (2) Deny so much of the matter as is untrue, or (3) Specify so much of the matter as to the truth of which the responding party lacks sufficient information or knowledge. "If a responding party gives lack of information or knowledge as a reason for a failure to admit all or part of a request for admission, that party shall state in the answer that a reasonable inquiry concerning the matter in the particular request has been made, and that the information known or readily obtainable is insufficient to enable that party to admit the matter." (Code Civ. Proc. §2033.220.)<br><br>The Court finds that pursuant to the above, Defendant's responses are code-compliant, and therefore declines to order further responses.<br><br>Request No. 68 asks Defendant to admit that it knows of no witnesses that will testify that Plaintiff was contributorily negligent at the time of the incident.<br><br>Defendant's response is technically insufficient. Defendant does not indicate that it made a reasonable inquiry. The topic of this request is proper; pursuant to Code Civ. Proc. § 2017.010, "[d]iscovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition, and location of any document, electronically stored information, tangible thing, or land or other property."<br><br>As a result, Defendant is ordered to serve a further, verified response with 15 days of the notice of ruling.<br><br>Both parties' requests for sanctions are denied.<br><br>Plaintiff shall give notice of both rulings. |

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| **9** | **21-01223241**<br><br>**Leon v. Panda Motors Inc.** | **1) Demurrer to Cross-Complaint and 2) Motion to Strike Cross-Complaint**<br><br>Before the Court is Cross-Defendants Siara and Gustavo Duarte demur and motion strike portions of Old Republic Surety Company's Cross-Complaint in Interpleader.<br><br>After further briefing on several issues, the Court now overrules the Demurrer and denies the Motion to Strike. The Duartes are ordered to answer the Cross-Complaint within 15 days.<br><br>**A. Facts**<br><br>Cross-Complainant Old Republic Surety Complaint is a motor vehicle surety company. (Cross-Complaint ("X-Comp."), ¶¶ 1 & 5.) Old Republic issued a motion vehicle surety bond to Cross-Defendant Panda Motors, Inc., under Chapter 4, Division 5 of the Vehicle Code (X-Comp., ¶ 5.)<br><br>Panda Motors is a motor vehicle dealer, which obtained a motor vehicle bond from Old Republic. (RJN, ¶ 1.) A number of persons have made claims or will make claims to Old Republic on the bond issued for Panda Motors. (X-Comp., ¶¶ 7-9.) Old Republic brought an interpleader action against these persons, which includes Cross-Defendants Siara and Gustavo Duarte.<br><br>The Cross-Complaint alleges as follows: "cross-complainant has no interest in any part of any claim heretofore tendered save and except that if the total amount of all adjudicated claims be less than the maximum penal sum of the bond, then cross-complainant is liable only for such aggregate sum and no more." (X-Complaint ¶12.)<br><br>Further, in the required Declaration accompanying the Motion, Counsel for Old Republic, Ms. Carlos E. Sosa testifies that "OLD REPUBLIC has no interest in the proceeds of Bond No. W150383570 and is a mere stakeholder with respect thereto pursuant to CCP $386.5. OLD REPUBLIC denies liability to any and all claimants". (Sosa Decl., ¶8.) |

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| | | Finally, Old Republic also admits in opposition to the Demurrer that "[it] has no interest in the Bond find, and simply wants to "walk away" from this litigation". (Opp., p. 3:1-2.)<br><br>**B. Merits**<br><br>In the Cross-Complaint, Panda Motors is alleged to be a claimant to the surety bond. The Duartes demur on the grounds that it is not a claimant and not entitled to keep any of the funds. They also seek paragraph Panda Motors as a party to the Cross-Complaint and "PANDA MOTORS, INC. d/b/a CALIFORNIA MOTORS DIRECT;" from Paragraph 10.A., line 24 of the Cross-Complaint, which identifies Panda Motors as a claimant to the funds.<br><br>Panda Motors is not a claimant and does not have a right to the penal sum here as a matter of law. Paragraphs 5 and 6 of the Cross-Complaint admit Panda Motors made an application for a surety bond to Old Republic and Old Republic issued the bond on Panda Motors' behalf. Old Republic admits the claims or lawsuits mentioned in Paragraph 10 are "made pursuant to Surety Bond of Dealer Or lessor/Retailer of Chapter 3.5 or 4, Division 5, of the Vehicle Code of the State of California," and that these "claimants must establish a violation of the Vehicle Code of the State of California in order to establish liability and damages recoverable from the subject bond." (X-Comp., ¶ 11.)<br><br>Vehicle Code section 11711(a) only permits persons to bring a claim against a motor vehicle dealer when a dealer makes a fraudulent representation to them, fails to register or title a vehicle sold to them, or fails to pay them for a vehicle sold to the motor vehicle dealer. The bond amount is set by statute, and has nothing to do with Old Republic. (Veh. Code §§11710-11711.) The purpose of the motor vehicle bond is to protect consumers from bad dealers, "The 'dominant purpose' of California's statutory car dealer licensing scheme is ... the protection of car buyers from irresponsible or unscrupulous dealers." (*Wald v. TruSpeed Motorcars, LLC* (2010) 184 Cal.App.4th 378, 381.)<br><br>Panda Motors cannot make a claim against the bond because it is impossible for Panda Motors to claim it made a fraudulent representation to itself. Old Republic acknowledges this in the supplemental briefing. |

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| | | There are a host of other potential claimants named and being served by Old Republic; thus the improper inclusion of Panda Motors as a "claimant" does not render the Cross-Complaint improper.<br><br>Finally, the Court ordered briefing on the issue of whether interpleader is proper if it does not disavow interest in the bond amount. Old Republic denies liability on the bond, which does not defeat interpleader. "The applicant or interpleading party may deny liability in whole or in part to any or all of the claimants." (CCP §386 (b).)<br><br>The Cross-Complaint alleges as follows in relevant part: "cross-complainant has no interest in any part of any claim heretofore tendered save and except that if the total amount of all adjudicated claims be less than the maximum penal sum of the bond, then cross-complainant is liable only for such aggregate sum and no more." (X-Complaint ¶12.)<br><br>In the required Declaration accompanying the Motion, Counsel for Old Republic, Ms. Carlos E. Sosa testifies that "OLD REPUBLIC has no interest in the proceeds of Bond No. W150383570 and is a mere stakeholder with respect thereto pursuant to CCP $386.5. OLD REPUBLIC denies liability to any and all claimants". (Sosa Decl., ¶8.)<br><br>Moreover, Old Republic admits in opposition to the Demurrer that "[it] has no interest in the Bond find, and simply wants to "walk away" from this litigation". (Opp., p. 3:1-2.)<br><br>Thus, the cross-Complaint states a claim that is not disturbed by the erroneous inclusion of Panda Motors as a "claimant".<br><br>The Court therefore overrules the Demurrer and denies the Motion to Strike.<br><br>The Duartes are ordered to serve notice of this Order. |
| **10** | **23-01346686**<br><br>**Moniz v. Cardenas** | **Motion to Compel Answers to Special Interrogatories**<br><br>Plaintiff Dan Gregory Moniz's motion for an order compelling Defendant Jose Cardenas ("Defendant") to serve verified answers, without objections, to Plaintiff's special interrogatories, set one, is moot. Defendant served verified, supplemental responses without objection on 4/8/2024. (Panossian-Bassler Decl., ¶¶ 1 and 2, Exhibit |

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| | | A.) Defendant shall pay monetary sanctions in the amount of $1,060 to Law Offices of Bennet A. Spector within 30 days.<br><br>Plaintiff shall give notice. |
| **11** | **20-01174475**<br><br>**Quintero v. Covington Manor Health and Rehabilitation** | **Motion to Strike or Tax Costs**<br><br>Plaintiffs Deborah Quintero and Edward Quintero (collectively, "Plaintiffs') seek an order taxing the following costs from Defendant Kenneth Lynn, M.D.'s ("Dr. Lynn") Memorandum of Costs:<br><br>1) Item 4b – Deposition costs – (8) Subpoena Duces Tecum<br>2) Item 5a – Service of Process<br>3) Item 11 – Models, enlargements, photocopies of exhibits – photocopies<br>4) Item 12 – Court reporter fees<br>5) Item 16 - Other<br><br>There is no dispute that Plaintiffs' motion is timely or that Dr. Lynn is entitled to recover costs. It appears Plaintiffs are no longer seeking to tax the deposition costs.<br><br>Plaintiffs' motion is granted in part. Dr. Lynn's requested costs for service of process, photocopying, and court document retrieval in the total amount of $517.04 is taxed. Dr. Lynn did not show these are recoverable costs, reasonable, and/or necessary.<br><br>Plaintiff shall give notice. |
| **13** | **23-01344231**<br><br>**Soilscape Solutions v. Nanofarms Group, Inc.** | **Demurrer to Complaint**<br><br>Defendants Feng Sheng Investments, Inc., John Wei Zhen, and Chunzhi Liu's demurrer to plaintiff Soilscape Solutions complaint is overruled. Defendants are to file their answers within ___ days.<br><br>A demurrer can be used only to challenge defects that appear within the "four corners" of the pleading – which includes the pleading, any exhibits attached, and matters of which the court is permitted to take judicial notice. *Blank v. Kirwan* (1985) 39 Cal. 3d 311, 318; *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal. App. 4th 968, 994. Limited to the "four corners" as such, a pleading is adequate if it contains a reasonably precise statement of the ultimate facts, in ordinary and concise language, and with sufficient detail to acquaint a defendant with the nature, source and extent of the claim. *Leek v. Cooper* (2011) 194 Cal. App. 4th 399, 413. |

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| | | On demurrer, a complaint must be liberally construed. Code Civ. Proc. § 452; *Stevens v. Superior Court* (1999) 75 Cal. App. 4th 594, 601. All material facts properly pleaded, and reasonable inferences, must be accepted as true. *Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal. 4th 962, 966-67.<br><br>A pleading is adequate if it contains a reasonably precise statement of the ultimate facts, in ordinary and concise language, and with sufficient detail to acquaint a defendant with the nature, source and extent of the claim. The degree of detail required depends on the extent to which the defendant in fairness needs such detail which can be conveniently provided by the plaintiff. Less particularity is required when the defendant ought to have co-extensive or superior knowledge of the facts. Under normal circumstances, there is no need for specificity in pleading evidentiary facts. However, bare conclusions of law are insufficient. Code Civ. Proc. §§ 425.10(a), 459; *Doe v. City of Los Angeles* (2007) 42 Cal. 4th 531, 549-50; *Zelig v. County of Los Angeles* (2002) 27 Cal. 4th 1112, 1126; *Doheny Park Terrace HOA v. Truck Ins. Exchange* (2005) 132 Cal. App. 4th 1076, 1098-99; *Berger v. California Insurance Guarantee Assn* (2005) 128 Cal. App. 4th 989, 1006.<br><br>A demurrer for uncertainty **is not intended to reach the failure to incorporate sufficient facts in the pleading, but is directed at the uncertainty existing in the allegations actually made**. *People v. Lim* (1941) 18 Cal. 2d 872, 883. "A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures." *Khoury v. Maly's of California, Inc.* (1993) 14 Cal. App. 4th 612, 616. Errors and confusion created by "the inept pleader" are to be forgiven if the pleading contains sufficient facts entitling plaintiff to relief. *Saunders v. Cariss* (1990) 224 Cal. App. 3d 905, 908. A party attacking a pleading on "uncertainty" grounds must specify how and why the pleading is uncertain, and where that uncertainty can be found in the challenged pleading. *Fenton v. Groveland Community Services Dept.* (1982) 135 Cal.App.3d 797, 809 (disapproved on other grounds in *Katzberg v. Regents of the University of California* (2002) 29 Cal.4th 300).<br><br>Further, uncertainty is a disfavored ground on a demurrer. *See*, Rutter, *Civil Procedure Before Trial*, Section 7:85. A demurrer for uncertainty will only be sustained where the complaint is so poorly |

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| | | pled that a defendant cannot reasonably determine what issues must be admitted or denied, or what counts or claims are directed against him or her. *See*, *Khoury v. Maly's of California, Inc.* (1993) 14 Cal. App. 4th 612, 616.<br><br>Defendants' arguments for uncertainty are based on what is *not* in the complaint rather than what is. Defendants object that the allegations of the complaint do not explain the connections among the parties. But this is all information that can be obtained through discovery. As long as Plaintiff has alleged the elements of the claims, it need not allege more.<br><br>The demurrer for uncertainty is therefore overruled.<br><br>***Breach of Contract***<br>*Second Cause of Action against Feng Sheng Investments (breach of written agreement to pay for services)*<br>*Third Cause of Action against John Wei Zheng (breach of written guaranty)*<br>*Fourth Cause of Action against Chunzhi Liu (breach of written guaranty)*<br><br>The elements of breach of contract are (1) existence of a contract, (2) plaintiff's performance or excuse from non-performance, (3) breach by defendant, and (4) damages. *First Commercial Mortgage Co. v. Reece*, 89 Cal. App. 4th 731, 745 (2001).<br><br>A written contract may be pleaded either by its terms—set out verbatim in the complaint or a copy of the contract attached to the complaint and incorporated therein by reference—or by its legal effect. *Holcomb v. Wells Fargo Bank, NA* (2007) 155 Cal. App. 4th 490, 501.<br><br>*Second Cause of Action*<br>For the agreement for services (second cause of action), Plaintiff alleges a written agreement and attaches a copy signed only by John Zheng, apparently on behalf of Feng Sheng Investments, there is a place for a signature by Waleed Mona, but it is blank. [Complaint, Ex. B.]<br><br>Defendants demur on to the second cause of action on several grounds. They argue that "$75,201.96 for fertilizers and nutrients" is (i) a new term for which acceptance is not shown and (ii) not |

reflected in the written agreement but also not alleged to be an oral agreement. The first point is an argument on the merits, not on the allegations – which must be accepted as true. Both points, in any event, only go to a portion of the cause of action. Even if correct, a cause of action is stated as to the written agreement for $582,645.00 (Ex. B). " 'Ordinarily, a general demurrer does not lie as to a portion of a cause of action and if any part of a cause of action, is properly pleaded, the demurrer will be overruled.' (*Elder v. Pacific Bell Telephone Co.* (2012) 205 Cal.App.4th 841, 856, fn. 14, 141 Cal.Rptr.3d 48.)" *Munoz v. Patel* (2022) 81 Cal.App.5th 761, 780 fn. 9.

Defendant also objects that the written agreement shows Waleed Mona as a potential signatory but he did not sign, nor is he joined as a party. Defendant asserts Mona is an indispensable party.

But the allegations of the complaint do not show Mona to be indispensable. Defendant argues facts outside the complaint, or from its own interpretation of the documents attached, as to the importance of Mona But it is too soon to say Mona is an indispensable party.

***Indispensable Party***

Demurrers for nonjoinder of parties lie only where it appears from the face of the complaint or matters judicially noticed that some third person is a necessary or indispensable party to the action, and hence, must be joined before the action may proceed. Code Civ. Proc. §430.10(d). When this is the case, in conjunction with the demurrer the defendant may move to dismiss on the ground that "justice requires that the action not proceed" in the indispensable party's absence. *Union Carbide Corp. v. Superior Court* (1984) 36 Cal. 3d 15, 22.

But,

> [t]he fact that petitioners have raised their objections to nonjoinder of parties by demurrer (§§ 430.10, subd. (d), 430.30, subd. (a)) coupled with a motion to dismiss (§ 389) does not necessarily require that the trial court make an immediate determination of what parties, if any, must ultimately be joined. . . . A joinder question should be decided with reasonable promptness, but decision may properly be deferred if adequate information is not available at the time. Thus the

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| | | relationship of an absent person to the action, and the practical effects of an adjudication upon him and others, may not be sufficiently revealed at the pleading stage; in such a case it would be appropriate to defer decision until the action was further advanced...."<br><br>*Union Carbide Corp. v. Superior Court* (1984) 36 Cal.3d 15, 22.<br><br>A demurrer is particularly unsuited to resolving questions of fact regarding the misjoinder of parties because "a demurrer lies only for defects appearing on the face of the pleadings [and] a defendant may not make allegations of defect or misjoinder of parties in the demurrer if the pleadings do not disclose the existence of the matter relied on; such objection must be taken by plea or answer." (*Harboring Villas Homeowners Assn. v. Superior Court* (1998) 63 Cal.App.4th 426, 429, 73 Cal.Rptr.2d 646.)<br><br>*Verizon California Inc. v. Board of Equalization* (2014) 230 Cal. App. 4th 666, 680.<br><br>A party is indispensable where the plaintiff seeks a type of affirmative relief that, if granted would affect the interest of a third person not joined. *Sierra Club, Inc. v. California Coastal Comm.* (1979) 95 Cal. App. 3d 495, 501; Code Civ. Proc. § 398(a).<br><br>In other words, Plaintiff is required to join as parties to the action any person whose interest is such that any judgment rendered in his or her absence might either: (a) prejudice his or her ability to protect his or her interest in later litigation; or (b) leave any of the parties before the court exposed to a risk of additional liability or inconsistent obligations. Code Civ. Proc. §389(a). See *Countrywide Home Loans, Inc. v. Sup.Ct.* (1999) 69 Cal. App. 4th 785, 796 (where nonjoinder may expose an existing party to multiple liability). If any such persons are not named as parties to the lawsuit, the complaint must state their names (if known), and the reasons why they have not been joined. Code Civ. Proc. §389(c).<br><br>Here, the current state of the pleadings does not establish that Mona is an indispensable party.<br><br>The demurrer to the second cause of action is overruled. |

*Third and Fourth Causes of Action*

For the guarantees (third and fourth causes of action), Plaintiff alleges written agreements and attached "client credit application[s]/agreement[s]" signed by each of John Zheng and Chunzhi Liu. [Complaint, Exs. C and D.]

Pointing to the contents of the documents, Defendants argue that the attached client credit applications/agreements are not guarantees of another's debt. But Defendants are relying on their interpretation of the documents. Plaintiff has alleged that the applications *are* guarantees of the agreement for services.

On demurrer, a plaintiff's alleged interpretation must be accepted.

> Where a complaint is based on a written contract which it sets out in full, **a general demurrer to the complaint admits not only the contents of the instrument but also any pleaded meaning to which the instrument is reasonably susceptible.** (*Martinez v. Socoma Companies, Inc.* (1974) 11 Cal.3d 394, 400, 113 Cal.Rptr. 585, 521 P.2d 841.)
>
> While plaintiff's interpretation of the contract ultimately may prove invalid, it was improper to resolve the issue against her solely on her own pleading. "In ruling on a demurrer, the likelihood that the pleader will be able to prove his allegations is not the question." (*Shaw v. Metro–Goldwyn–Mayer, Inc.* (1974) 37 Cal.App.3d 587, 599, 113 Cal.Rptr. 617.)

*Aragon-Haas v. Family Security Ins. Services, Inc.* (1991) 231 Cal.App.3d 232, 239 (emphasis added).

Accordingly, the demurrers to the third and fourth causes of action are overruled.

> ***Common Counts – for Labor Requested***
> *Sixth Cause of Action against Feng Sheng Investments*
> *Seventh Cause of Action against John Wei Zheng*
> *Eighth Cause of Action against Chunzhi Liu*
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> A common count alleges in substance that the defendant became indebted to the plaintiff in a certain

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| | | stated sum, for some consideration such as "money had and received by the defendant for the use of the plaintiff," or "for goods, wares and merchandise sold and delivered by plaintiff to defendant," or "for work and labor performed by plaintiff"; and that no part of the sum has been paid. (For illustrations of form, see Pike v. Zadig (1915) 171 C. 273, 275, 152 P. 923; Lehner v. McLennan (1921) 54 C.A. 491, 493, 202 P. 41; infra, § 567 et seq.)<br><br>4 Witkin, Cal. Proc. 6th Plead § 565 (2024).<br><br>To state common counts, a plaintiff needs to allege (1) indebtedness, (2) consideration (*e.g.*, money had and received, work done, good sold), and (3) nonpayment. *Farmers Ins. Exch. v. Zerin* (1997) 53 Cal. App. 4th 445, 460.<br><br>The count for services states that the defendant is indebted to the plaintiff in a certain sum for (or on account of) "work and labor done" or "services performed" for the defendant (or at the defendant's request). (See Lucy v. Lucy (1937) 22 C.A.2d 629, 631, 71 P.2d 949; Haggerty v. Warner (1953) 115 C.A.2d 468, 475, 252 P.2d 373.)<br><br>4 Witkin, Cal. Proc. 6th Plead § 568 (2024).<br><br>As to each Defendant, in each cause of action, Plaintiff alleges an open book account for money due for labor provided at Defendant's special request and for which Defendants each promised to pay $289, 371.71.<br><br>And today in nearly all code states and in the federal practice, the common counts are permissible and widely used. In California, it is settled that they are good against special as well as general demurrers.<br><br>4 Witkin, Cal. Proc. 6th Plead § 561 (2024).<br><br>If the common count appears to be based on the same cause of action as the specific count, and the specific |

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| | | count is defective, the entire complaint is demurrable. This rule, although questionable on principle, is supported by many decisions. (Hays v. Temple (1937) 23 C.A.2d 690, 695, 73 P.2d 1248; see Orloff v. Metropolitan Trust Co. (1941) 17 C.2d 484, 489, 110 P.2d 396; Harris v. Kessler (1932) 124 C.A. 299, 303, 12 P.2d 467; Steffen v. Refrigeration Discount Corp. (1949) 91 C.A.2d 494, 500, 205 P.2d 727; Straughter v. Safety Savings & Loan Assn. (1966) 244 C.A.2d 159, 164, 52 C.R. 871, citing the text; Zumbrun v. University of Southern Calif. (1972) 25 C.A.3d 1, 14, 101 C.R. 499; Jones v. Daly (1981) 122 C.A.3d 500, 510, 176 C.R. 130; McBride v. Boughton (2004) 123 C.A.4th 379, 394, 20 C.R.3d 115, citing the text.)<br><br>4 Witkin, Cal. Proc. 6th Plead § 574 (2024).<br><br>Defendant argues that there was no consideration as to Zheng and Lui because the invoice attached to the complaint shows delivery to Feng Sheng, not the individuals. Again, though, Defendants are arguing their interpretation of the documents rather than the allegations of the complaint.<br><br>The bottom line is that Plaintiff has alleged the elements required for common counts. The demurrer to these causes of action are therefore overruled and the defendants are ordered to answer the complaint within 15 days. |
| **14** | **21-01233091**<br><br>**Gonzalez v. Tilly's Inc.** | **1) Motion to Enforce Settlement**<br><br>**No tentative. Court to hear from parties.**<br><br>**2) Order to Show Cause re: Dismissal on Settled Case** |
| **15** | **22-01287749**<br><br>**Pacific Airshow, LLC v. City of Huntington Beach** | **1) Demurrer to Amended Complaint**<br><br>**2) Motion to Strike**<br><br>**Continued** |