Superior Court of the State of California
County of Orange

TENTATIVE RULINGS FOR DEPARTMENT C32
JUDGE LEE L. GABRIEL, Dept. C32

Date: April 16, 2024

APPEARANCES: Department C32 conducts non-evidentiary proceedings, such as law and motion, remotely, by Zoom videoconference. All counsel and self-represented parties appearing for such hearings must check-in online through the Court's civil video appearance website at https://www.occourts.org/media-relations/civil.html prior to the commencement of their hearing. Once the online check-in is completed, participants will be prompted to join the courtroom's Zoom hearing session. Check-in instructions and instructional video are available at https://www.occourts.org/mediarelations/aci.html. The Court's "Appearance Procedures and Information--Civil Unlimited and Complex" ("Appearance Procedures") and "Guidelines for Remote Appearances" ("Guidelines") are also available at https://www.occourts.org/mediarelations/aci.html.

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These are the Court's tentative rulings. They may become an order if the parties do not appear at the hearing. 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.)

If the parties agree to submit on the Court's tentative rulings, please call the Court Clerk to inform the court that all parties submit on the Court's tentative ruling. The tentative ruling will then become the order of the Court upon a party or parties informing the Court that all parties submit to the Court's tentative ruling.

No filming, broadcasting, photography, or electronic recording is permitted of the video session pursuant to California Rules of Court, rule 1.150 and Orange County Superior Court rule 180.

#	Case Name	Tentative
2	30-2023-01338219 Quezada vs. Sterling Motors, Ltd.	**Motion to Compel Response to Requests for Admissions** Defendant Sterling Motors, LTD's Motion to Compel Further Responses to Requests for Admissions, Set One, is MOOT in light of Plaintiff's counsel's declaration that further responses were served on 4/1/24. Defendant's request for sanctions is granted in the amount of $2,263.00 against Plaintiff only, payable within 30 days of this order. (Code Civ. Proc. §2033.290(d). *See also* Code Civ. Proc. §2023.040; *Blumenthal v. Sup.Ct. (Corey)* (1980) 103 Cal.App.3d 317, 320 [when sanctions are sought against a party's attorney, the notice of motion must identify the attorney and state that sanctions are being sought against the attorney personally].)
4	30-2023-01357426 Nishihama vs. General Motors LLC.	1. **Motion to Compel Further Responses to Special Interrogatories** 2. **Motion to Compel Production** Plaintiff's Motion to Compel Further Responses to Special Interrogatories, Set One, and Motion to Compel Further Responses to Requests for Production, Set One, are CONTINUED to 5/28/24 at 9:00 a.m. in this Department. As an initial matter, Plaintiff incorrectly contends Defendant served an opposition brief that included a Memorandum of Points and Authorities (MPA) from a different case in Department N15 (*Anthony J. Ortiz v. General Motors*, Case No. 30-2022-01290082). Upon review of Defendant's entire opposition, the Court finds only the caption page is directed to the *Ortiz* matter. Defendant's opposing MPA identifies factual details and discovery disputes specific to this case, *Nishihama v. GM*, including, but not limited to, the subject vehicle, service of Plaintiff's discovery requests and Defendant's responses, and the parties meet and confer efforts. Defendant apparently made a glaring cut and paste error, which Plaintiff seems to acknowledge by filing a substantive reply. Nevertheless, the parties, in particular Defendant, have not made good faith attempts to meet and confer to resolve or narrow the issues regarding these disputes. Plaintiff's counsel sent an initial meet and confer letter. A few days later, Defendant sent a letter in response. In its letter, Defendant expressed its willingness to resolve the disputes informally and offered to participate in an Informal Discovery Conference (IDC). However, Defendant never responded to Plaintiff's repeated follow up emails and

		letter requesting a telephonic conference to meet and confer further, even after Plaintiff informed Defendant that Court staff said that this department does not offer IDCs. Further, Defendant contends that it offered in its responsive meet and confer letter to produce additional documents pursuant to the entry of a protective order. However, upon review of Defendant's letter, the Court finds no such offer. Nevertheless, Plaintiff indicates that she signed a stipulated protective order and sent it to Defendant. The Court's e-filing system does not reflect a stipulated protective order having been filed as of 4/11/24. Therefore, the parties shall promptly file a stipulated protective order for the Court's signature. The parties shall engage in additional meet and confer efforts, including an in-person, telephonic, or videoconference meeting of counsel no later than 4/19/24. If Defendant agrees to serve supplemental responses and/or additional documents, Defendant shall serve supplemental verified responses and produce additional documents no later than 5/3/24. No later than 5/10/24, Plaintiff's counsel shall file and serve a supplemental declaration, not to exceed five pages, including (1) a description of the parties' additional attempts to meet and confer, (2) attaching a copy of Defendant's supplemental responses, if any, and (3) a concise description of any remaining dispute including identification of the specific discovery requests which remain in dispute. Defendant's counsel may file a responsive supplemental declaration, not to exceed three pages, no later than 5/14/24.
6	30-2022-01289850 Sahel vs Palladium Auto Leasing, LLC	**1. Motion to be Relieved as Counsel of Record for Defendant Javier Dominguez** **2. Motion to be Relieved as Counsel of Record for Defendant Rad Motorworks LLC** **3. Motion to be Relieved as Counsel of Record for Defendant Anthony Rumeo** **4. Motion to be Relieved as Counsel of Record for Defendant Victor Bonilla**
8	30-2022-01266725 AIC Owner, LLC vs. Organic Energy, LLC.	**1. Motion for Determination of Good Faith Settlement** Defendants Maheep Virdi, M.D. and Rasham Sandhu, M.D.'s Motion for Determination of Good Faith Settlement is GRANTED. When determining whether a settlement is made in good faith, the court must determine whether "the amount of the settlement is

within the reasonable range of the settling tortfeasor's proportional share of comparative liability for the plaintiff's injuries." (*Tech-Bilt, Inc. v. Woodward-Clyde & Assocs.* (1984) 38 Cal.3d 488, 499.) In making such a determination, the court considers the following factors: (1) a rough approximation of plaintiffs' total recovery and the settlor's proportionate liability; (2) the amount paid in settlement; (3) the allocation of settlement proceeds among plaintiffs; (4) the recognition that a settlor should pay less in settlement than he would if he were found liable after a trial; (5) the financial conditions and insurance policy limits of settling defendants; (6) the existence of collusion, fraud or tortious conduct aimed to injure the interests of nonsettling defendants. (*Id.* at 499-500.)

Pursuant to Code of Civil Procedure Section 877.6, subdivision (d), the party asserting the lack of good faith, bears the burden of proof on that issue. Where the non-settling defendants do not oppose the motion on the good faith issue, a "barebones motion which sets forth the ground of good faith, accompanied by a declaration which sets forth a brief background of the case, is sufficient." (*City of Grand Terrace v. Sup.Ct. (Boyter)* (1987) 192 Cal.App.3d 1251, 1261.)

The Motion is unopposed. Plaintiff and defendants Maheep Virdi, M.D. and Rasham Sandhu, M.D. ("Settling Defendants") entered into a settlement agreement on December 15, 2022. (Villar Decl., ¶ 2.) The material terms of the settlement agreement are as follows: "(1) the Settling Defendants agreed to pay Plaintiff $25,000 within five (5) business days if and after the Court grants this Motion; (2) all parties to the Settlement agreed to a mutual release of all claims against each other; (3) a waiver of unknown claims pursuant to Code of Civil Procedure section 1542; (4) a dismissal with prejudice of Plaintiff's Complaint as to Virdi and Sandhu; and (5) the parties' agreement to bear their own attorneys' fees and costs." (Villar Decl., ¶ 2.)

Further, the declarations of Defendants' counsel (Villar Decl., ¶¶ 2, 3, and 4), defendant Rasham Sandhu, M.D. (Sandhu Decl., ¶¶ 2-8), and defendant Maheep Virdi, M.D. (Virdi Decl., ¶¶ 2-8) sufficiently sets forth the background of the case that supports the good faith settlement.

Based on the foregoing, the Court GRANTS the Motion and finds that the settlement was made in good faith within the meaning of Code of Civil Procedure section 877.6, subdivision (a). Pursuant to Code of Civil Procedure section 877.6, subdivision (c), the

		court's finding that the settlement was in good faith ". . . "shall bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault." Moving Defendants to give notice.
9	30-2022-01257590 Dascanio vs. Arsenian	**Motion to Strike – Anti SLAPP** The Special Motion to Strike the Cross-Complaint Pursuant to Code of Civil Procedure section 425.16 by Cross-Defendants Erin Joyce and Erin Joyce Law, PC (Movants) is MOOT. Cross-Complainants Benjamin Arsenian and Law Offices of Benjamin Arsenian, PC filed a notice of non-opposition regarding this motion on 4/3/24. They subsequently filed a request for dismissal without prejudice of the Cross-Complaint against Movants, which was entered by the Court on 4/5/24. The Court finds the motion is moot in light of the dismissal. Code of Civil Procedure section 425.16(c)(1) provides that a prevailing defendant on an anti-SLAPP motion may recover its attorney fees: "[A] prevailing defendant on a special motion to strike shall be entitled to recover that defendant's attorney's fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion, pursuant to Section 128.5." *Liu v. Moore* (1999) 69 Cal.App.4th 745, 752, holds: "Persons who threaten the exercise of another's constitutional rights to speak freely and petition for the redress of grievances should be adjudicated to have done so, not permitted to avoid the consequences of their actions by dismissal of the SLAPP suit when a defendant challenges it. An adjudication in favor of the defendant on the merits of the defendant's motion to strike provides both financial relief in the form of fees and costs, as well as a vindication of society's constitutional interests." (See also *Kyle v. Carmon* (1999) 71 Cal.App.4th 901 [affirming fee award after voluntary dismissal while anti-SLAPP motion under submission]; *Coltrain v. Shewalter* (1998) 66 Cal.App.4th 94 [affirming fee award after voluntary dismissal without

		prejudice]; *Pfeiffer Venice Properties v. Bernard* (2002) 101 Cal.App.4th 211, 219.) Here, the motion does not include a request for attorney fees under section 425.16(c)(1). *Catlin Ins. Co., Inc. v. Danko Meredith Law Firm, Inc.* (2022) 73 Cal.App.5th 764, 774, holds: "[B]ecause there was no pending fee request, the trial court only had jurisdiction to entertain a subsequent motion for fees, not to decide the merits of the anti-SLAPP motion. The sole request in the Danko Appellants' anti-SLAPP motions was for an order striking the complaint and each of its causes of action. After Catlin's voluntary dismissal, the request to decide the anti-SLAPP motion was moot; the trial court could not strike a complaint that Catlin had already voluntarily dismissed. (*Yang, supra*, 178 Cal.App.4th at pp. 879, 881, 100 Cal.Rptr.3d 771.) The trial court was also justified in declining to rule on the Danko Appellants' anti-SLAPP motion for the purposes of establishing entitlement to a request for fees, as no such request had yet been made." *Catlin, supra*, 73 Cal.App.5th at 783-784 further provides that a party may file a separate motion for attorney fees if the claim is dismissed after the SLAPP motion is filed: "Summing everything up, we conclude as follows. An Anti-SLAPP movant need not file a fee request along with its motion, but if it chooses to defer such a request there is no guarantee it will receive a ruling on fee entitlement in advance of the filing of a later fees motion or request for fees by cost memorandum…In the final analysis, *Sanabria, supra,* 92 Cal. App. 4th 422, is controlling. Under the holding in that case, the Canko Appellants, having elected not to file section 425.16, subdivision (c)(1) motions along with their anti-SLAPP motions, were entitled to seek recovery of their attorney fees by (1) filing cost memoranda …(15 days after service of notice of entry of Catlin's voluntary dismissal) (*Sanabria,* at pp 425-426); or (2) filing motions for attorney fees no later than…(60 days after service of notice of the entry of Catlin's voluntary dismissal)…" Movants may promptly file a motion for attorney fees pursuant to Code of Civil Procedure section 425.16(c)(1) as stated under *Caitlin.*

10	30-2020-01124778 Nguyen vs. United Lender, LLC	**Motion for Summary Judgment and/or Adjudication** Defendants Shawn Ahdoot and Albert A. Ahdoot's (Movants) Motion for Summary Judgment is GRANTED. Movants' request for judicial notice (ROA 1059) of prior filings and orders in this litigation is granted. Plaintiff's request for judicial notice (ROA 1106) of official records of the Secretary of State, Department of Real Estate, and County Recorder is granted. The Court declines to rule on Movant's objections (ROA 1122) as immaterial to the Court's ruling but the objections are preserved for purposes of appeal. (See *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 526 ["the trial court's failure to rule expressly on any of Google's evidentiary objections did not waive them on appeal"]) On 12/6/22, the Court sustained Movants' demurrer to the fourth, fifth, and sixth causes of action against Movants in the TAC. Movants seek summary judgment as to the remaining claims against them in the TAC – the first cause of action for fraud and the seventh cause of action for violation of Bus. & Prof. Code section 17200. The motion is granted as to both remaining causes of action against Movants. **Legal Standard** Code of Civil Procedure section 437c(c) states, "(c) The motion for 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. In determining if the papers show that there is no triable issue as to any material fact, the court shall consider all of the evidence set forth in the papers, except the evidence to which objections have been made and sustained by the court, and all inferences reasonably deducible from the evidence, except summary judgment shall not be granted by the court based on inferences reasonably deducible from the evidence if

		contradicted by other inferences or evidence that raise a triable issue as to any material fact." Section 437c(f)(1) provides, "(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, if the party contends that the cause of action has no merit, that there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action, that there is no merit to a claim for damages, as specified in Section 3294 of the Civil Code, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs. A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." Section 437c(o)-(p) states: "(o) A cause of action has no merit if either of the following exists: (1) One or more of the elements of the cause of action cannot be separately established, even if that element is separately pleaded. (2) A defendant establishes an affirmative defense to that cause of action. (p) For purposes of motions for summary judgment and summary adjudication: (1) A plaintiff or cross-complainant has met his or her burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on the cause of action. Once the plaintiff or cross-complainant has met that burden, the burden shifts to the defendant or cross-defendant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The defendant or cross-defendant shall not rely upon the 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 the cause of action or a defense thereto. (2) A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action. Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one

or more material facts exists as to the cause of action or a defense thereto. The plaintiff or cross-complainant shall not rely upon the 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 the cause of action or a defense thereto."

Merits

First Cause of Action: Fraud and Deceit – Intentional Misrepresentation

"To establish a claim for deceit based on intentional misrepresentation, the plaintiff must prove seven essential elements: (1) the defendant represented to the plaintiff that an important fact was true; (2) that representation was false; (3) the defendant knew that the representation was false when the defendant made it, or the defendant made the representation recklessly and without regard for its truth; (4) the defendant intended that the plaintiff rely on the representation; (5) the plaintiff reasonably relied on the representation; (6) the plaintiff was harmed; and (7) the plaintiff's reliance on the defendant's representation was a substantial factor in causing that harm to the plaintiff. [Citations]" (*Manderville v. PCG&S Group, Inc.* (2007) 146 Cal.App.4th 1486, 1498, citing CACI No. 1900.)

Plaintiff alleges Movants were the President and Managing Member of Defendant United Lender, LLC and that Movants are alter egos of United Lender. (TAC, ¶¶ 2-4, 69.)

The Court granted summary judgment as to the first cause of action against United Lender on 3/12/24. Movants' contentions in this motion are similar to the arguments raised by United Lender, including lack of evidence regarding an agency relationship between Movants and Zucaro. Plaintiff presents substantially similar arguments and evidence in opposition to the United Lender motion and this motion. Therefore, this motion is granted as to Movants for substantially the same reasons as set out below.

In the first cause of action, Plaintiff alleges United Lender and Movants had a principal/agent relationship with Defendant Zucaro based on prior real estate transactions and loyalty. (TAC, ¶ 68.) (For purposes of this motion, the Court will refer to Defendant Megan Zucaro and the entity which Zucaro is the alleged principal of, Helping Others International, LLC,

		collectively as "Zucaro".) Zucaro allegedly told Plaintiff that United Lender and Movants were licensed to make residential real estate loans in California, Zucaro had a working relationship with Movant, and Zucaro had never defaulted on loans from United Lender and Movants. (Id. at ¶¶ 69-71.) Zucaro told Plaintiff she contacted Movants to obtain a loan to purchase Plaintiff's property and Movants ordered an appraisal of the property in April 2019, resulting in an appraised value of $3 million. (Id. at ¶¶ 72-73.) United Lender and Movants agreed to loan $1.9 million to Zucaro's entity for purchase of the property, with United Lender to obtain a first priority deed of trust on the property, if Plaintiff would complete the financing for the purchase by carrying back a loan and obtaining a second priority deed of trust in the amount of $1.2 million. (Id. at ¶¶ 74-78.) The purchase transaction was completed in May 2019. (Id. at ¶¶ 79-80.) Plaintiff alleges that by its actions and through its agent Zucaro, United Lender was licensed to make residential loans in California and approved the loan to Zucaro's entity based on Zucaro having good payment history for past loans. (TAC at ¶¶ 81-87.) In reliance on these representations, Plaintiff carried back the loan and second deed of trust. (Id. at ¶ 87.) Plaintiff alleges Movants' representations were false, including that (1) Movant was licensed to make residential real estate loans in California, (2) that Zucaro was qualified for the loan based on her history, and (3) that Zucaro and Movants actually intended that Zucaro would pay off the loan to Movants. (Id. at ¶¶ 88-97.) Rather, Plaintiff alleges there was a scheme between Zucaro and Movants to obtain a first deed of trust, profit off the sale commission, and steal Plaintiff's equity in the subject property by a pre-arranged foreclosure sale in which Movants would obtain a $250,000 profit. (Id. at ¶¶ 98-101.) Plaintiff alleges Movants and Zucaro had a history of similar schemes involving other properties. (Id. at ¶ 42.) Movants deny the existence of an agency relationship with Zucaro or a duty to Plaintiff. Movants contend Zucaro negotiated the carryback loan with Plaintiff on her own behalf and Movants are not liable for Zucaro's alleged misrepresentations. Movants deny making representations to Plaintiff about Zucaro's creditworthiness. Movants argue they merely engaged in a lawful loan transaction. Movants contend Plaintiff, a licensed real estate broker, did not justifiably or detrimentally rely on any misrepresentations by Movants, but rather Plaintiff was aware of

		the risk and contracted for the possibility of Zucaro's default by obtaining a second deed of trust. Movants also contend there is no basis for liability based on United Lender's alleged lack of licensure because it was exempt from licensure requirements, it is the commissioner who has the authority to address a lack of licensure, and there is no legal authority to cancel a loan based on lack of licensure. Plaintiff has not presented applicable legal authority showing that Movant's lack of licensure to provide residential real estate loans in California creates a triable issue as to fraud or causation of her damages. *Valentine v. Plum Healthcare Group, LLC* (2019) 37 Cal.App.5th 1076, 1086, holds: " 'An agent is one who represents another, called the principal, in dealings with third persons.' (Civ. Code, § 2295.) In California, an agency is 'either actual or ostensible.' (Civ. Code, § 2298.) An agency is actual 'when the agent is really employed by the principal.' (Civ. Code, § 2299.) Actual authority 'is such as a principal intentionally confers upon the agent, or intentionally, or by want of ordinary care, allows the agent to believe himself to possess.' (Civ. Code, § 2316.) An agency is ostensible 'when the principal intentionally, or by want of ordinary care, causes a third person to believe another to be his agent who is not really employed by him.' (Civ. Code, § 2300.) 'Ostensible authority is such as a principal, intentionally or by want of ordinary care, causes or allows a third person to believe the agent to possess.' (Civ. Code, § 2317.)" "The existence of an agency is a factual question within the province of the trier of fact whose determination may not be disturbed on appeal if supported by substantial evidence. Inferences drawn from conflicting evidence by the trier of fact are generally upheld. Only when the essential facts are not in conflict will an agency determination be made as a matter of law." (*Secci v. United Independant Taxi Drivers, Inc.* (2017) 8 Cal.App.5th 846, 854 [cleaned up].) Movants contend, "Plaintiff cannot prevail on the First Cause of Action for Fraud as to the Third Amended Complaint because Plaintiff cannot show that she reasonably and justifiably relied on ZUCARO's statements (a) of agency or (b) that ALBERT and SHAWN had implicitly or explicitly participated in vetting Plaintiff's carryback loan." (Motion, 3:23-26.)

		Plaintiff identifies eight allegedly fraudulent communications made on behalf of or by Movant, largely without pinpoint citations to evidence. (Opposition, pp. 12-13.) Plaintiff contends there was an agency relationship between Movants and Zucaro based on their prior transactions involving six other properties in which Zucaro would obtain a loan from Movants to purchase a property and obtain a commission, fail to make mortgage payments, then Movants would profit off the foreclosure sale. Plaintiff argues Movants "had significant dealings with Plaintiff to include (1) funding of the FTD that was recorded against the Property, Ex. 9, (2) Directing Zucaro to obtain an appraisal of the Property which required coordination with the Plaintiff, (3) Directing Zucaro to obtain a carryback loan from Plaintiff as a condition of United funding the FTD, Plaintiff Decl., (4) Falsely vouching for the credit worthiness of Zucaro to obtain $30,000 that Zucaro was "up to date with her 2 mortgages…." (Opposition, 9:4-10.) Construed in the light most favorable to Plaintiff, Plaintiff's allegations of fraud are based on evidence that (1) Zucaro had previously obtained loans for purchase of real property from Movants' entity, United Lender, under similar circumstances and had fallen behind on payments to Movants at the time of the subject transaction, (2) Zucaro made false representations to Plaintiff regarding her own creditworthiness and payment history, and (3) after requesting an appraisal of the subject property, Movants agreed to fund the loan to Zucaro and obtain a first priority deed of trust. Movants cite Plaintiff's testimony that she relied on her own opinion of the subject property's value and her determination regarding sufficiency of the equity to secure the loan, and that she was aware of the risk of a second subordinate loan. Movants further contend Plaintiff has not shown they impaired Plaintiff's ability to foreclose and that Plaintiff is not entitled to pursue a deficiency judgment under Code of Civil Procedure section 580. However, the Court declines to reach these issues as unnecessary to since there is no triable issue regarding an agency relationship between Movants and Zucaro. Plaintiff has failed to demonstrate the existence of a triable issue as to the existence of an actual or ostensible agency relationship between Movants and Zucaro that could support Movants' liability for Zucaro's misrepresentations to Plaintiff. Plaintiff has also failed to present admissible evidence that Movants made

		material misrepresentations to Plaintiff regarding the subject transaction. The evidence of past business dealings between Zucaro and Movants is insufficient to demonstrate an agency relationship or a fraudulent scheme. At most, Plaintiff has shown Movants previously issued risky loans to Zucaro and Zucaro fell behind on payments. However, there is no evidence Movants intended Zucaro to act as its agent for purposes of the transaction involving Plaintiff or that Plaintiff reasonably believed Zucaro was Movants' agent. Rather, Plaintiff chose to rely on Zucaro's representations regarding her creditworthiness and loan history rather than conducting due diligence before entering into the transaction with Zucaro. Plaintiff has not shown that Movants took any action that reasonably caused her to rely on Zucaro's misrepresentations or that such reliance caused her damages. Therefore, the motion is granted as to Plaintiff's first cause of action in the TAC. ***Seventh Cause of Action: Unfair Business Practices – Violation of Bus. & Prof. Code § 17200*** Business and Professions Code section 17200 (UCL) states, "unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising…" Here, Plaintiff's seventh cause of action is based on Movant's alleged fraudulent actions involving the subject transaction described above. For the reasons stated above regarding the first cause off action, Plaintiff has not demonstrated a triable issue as to whether Movants have engaged in fraudulent, unfair, or deceptive conduct involving the subject transaction. Therefore, the motion is granted as to the seventh cause of action.
11	30-2022-01279372 Rucker vs. Harbor View Hills Community Association	**Motion for Summary Judgment and/or Adjudication** Plaintiff's Motion for Summary Judgment is DENIED. <u>Evidentiary Objections</u> Defendant's evidentiary objections are OVERRULED as the evidence contained within are not material to the disposition of the motion. (See Code Civ. Proc., § 437c(q).)

		Requests for Judicial Notice Plaintiff's requests for judicial notice Nos. 1 and 2 are GRANTED. (See Evidence Code § 451(d).) Legal Standard Code of Civil Procedure section 437c(c) states, "(c) The motion for 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. In determining if the papers show that there is no triable issue as to any material fact, the court shall consider all of the evidence set forth in the papers, except the evidence to which objections have been made and sustained by the court, and all inferences reasonably deducible from the evidence, except summary judgment shall not be granted by the court based on inferences reasonably deducible from the evidence if contradicted by other inferences or evidence that raise a triable issue as to any material fact." Section 437c(f)(1) provides, "(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, if the party contends that the cause of action has no merit, that there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action, that there is no merit to a claim for damages, as specified in Section 3294 of the Civil Code, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs. A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." Section 437c(o)-(p) states: "(o) A cause of action has no merit if either of the following exists: (1) One or more of the elements of the cause of action cannot be separately established, even if that element is separately pleaded. (2) A defendant establishes an affirmative defense to that cause of action. (p) For purposes of motions for summary judgment and summary adjudication:

		(1) A plaintiff or cross-complainant has met his or her burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on the cause of action. Once the plaintiff or cross-complainant has met that burden, the burden shifts to the defendant or cross-defendant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The defendant or cross-defendant shall not rely upon the 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 the cause of action or a defense thereto. (2) A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action. Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The plaintiff or cross-complainant shall not rely upon the 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 the cause of action or a defense thereto." <u>Merits</u> The elements of a breach of the CC&Rs are often viewed as the same as the elements for breach of contract. The elements of breach of contract are "(1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the plaintiff." (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 820 (citation omitted).) Plaintiff has satisfied his burden of proving each element of the cause of action. The parties do not dispute that the CC&Rs are a contract, and that Plaintiff was harmed. Plaintiff establishes that Defendant breached the CC&Rs because it acted in an arbitrary manner by denying Plaintiff's architectural improvement for obstructing the view of other residences. Plaintiff has proved that the CC&R does not provide an unobstructed view right in regard to construction of structures.

		Under California law a landowner has no right to an unobstructed view over adjoining property, and " 'the law is reluctant to imply such a right.' " (*Boxer v. City of Beverly Hills* (2016) 246 Cal.App.4th 1212, 1219.) "It is a general rule that restrictive covenants are construed strictly against the person seeking to enforce them, and any doubt will be resolved in favor of the free use of land." (*White v. Dorfman* (1981) 116 Cal.App.3d 892, 897.) Here, the CC&Rs provide architectural improvements are to be in "harmony of external design and location in relation to surrounding structures and topography." (Rucker Decl., Ex. A, p. 6.) Further, in the following section, the CC&Rs provide that landscaping improvements must be approved if they exceed the height of the dwelling "as to the preservation of the natural view and esthetic beauty which each lot is intended to enjoy." (Rucker Decl., Ex. A.) Thus, the CC&Rs specifically provide for a protected view right in the context of landscaping improvements, however, they do not expressly provide for the same right in the context of architectural improvements. Therefore, when construing the CC&Rs against Defendant, who seeks to enforce them, and in favor of the free use of land, there is no unobstructed view right as to architectural improvements in the CC&Rs. Accordingly, Plaintiff has proved that Defendant violated the CC&Rs by acting in an arbitrary manner because it denied his architectural improvement for obstructing the view of other residences. Thus, Plaintiff has satisfied his burden of proving each element of his breach of CC&R cause of action. The burden now shifts to Defendant to show there is a triable issue of material fact as to whether it violated the CC&Rs. Defendant has satisfied its burden of showing that there is a dispute of material fact as to whether it acted arbitrarily. Defendant has submitted numerous exhibits which show that Plaintiff's architectural improvements were denied for additional reasons beyond the obstruction of views. The first set of plans were denied because the strawberry trees exceeded the allowed height, and the stucco color did not coordinate with the stone color. (See Sodden Decl., ¶ 29; Ex. I; and Ex. J.) The second building plans were denied because some of Plaintiff's stakes were obstructed by plants and the stucco did not coordinate with the stone color. (See Sodden Decl., ¶ 32; Ex. K; and Ex. L.) Finally, Plaintiff's appeal was denied because the stucco did not match the "color tones of the stone", "the height and shape alongside Goldenrod reduced the setback and presents a structure looming over the street," and "staking of the back of the house is obscured by trees and foliage." (Ex. O; see Sodden Decl. ¶ 36;

		and Ex. N.) Thus, Defendant has shown that the plans were not denied solely on the basis that the plans obstructed the view of other residences. Therefore, there is a question of material fact as to whether Defendant acted arbitrarily by denying Plaintiff's architectural improvements for reasons other than obscuring the view of other residences. Defendant to give notice.
12	30-2020-01162978 Meridian PO Finance LLC vs. Vaezi	**Motion for Summary Judgment and/or Adjudication** Defendants Farzad Hoorizadeh and White Ridge Consulting, Inc. dba White Ridge Capital's Motion for Summary Judgment is DENIED. Plaintiffs' Objection to the Declaration of Michelle A. Campbell is OVERRULED. Moving Defendants' Request for Judicial Notice is GRANTED. The Court declines to rule on Moving Defendants' Evidentiary Objections to Plaintiffs' Evidence as immaterial to this motion. Such objections are preserved for appeal. In the operative Third Amended Complaint, Breakaway asserts causes of action against Hoorizadeh and White Ridge for fraud (second cause of action), negligent misrepresentation (fourth cause of action) and aiding and abetting fraud (seventh cause of action). Meridian asserts causes of action against Hoorizadeh and White Ridge for fraud (first cause of action), negligent misrepresentation (third cause of action), aiding and abetting fraud (seventh cause of action). "The burden on a defendant moving for summary judgment based upon the assertion of an affirmative defense is [different] than the burden to show [that] one or more elements of the plaintiff's cause of action cannot be established. Instead of merely submitting evidence to negate a single element of the plaintiff's cause of action, or offering evidence such as vague or insufficient discovery responses that the plaintiff does not have evidence to create an issue of fact as to one or more elements of his or her case ... 'the defendant has the initial burden to show that undisputed facts support each element of the affirmative defense'.... If the defendant does not meet this burden, the motion must be denied." (*Consumer Cause, Inc. v. SmileCare* (2001) 91 Cal.App.4th 454, 467-468 (cleaned-up).)

		" [T]here is no obligation on the opposing party (plaintiffs here) to establish anything by affidavit unless and until the moving party has by affidavit stated 'facts establishing *every element* [of the affirmative defense] necessary to sustain a judgment in his favor…'" (Id. at 468 (cleaned-up).) Here, Moving Defendants do not seek to negate an element of Plaintiffs' claims. Rather, the motion is based on two affirmative defenses, i.e., "economic loss rule" and statute of limitations. **Economic Loss Rule** "The economic loss rule is a legal principal that typically inhibits recovery in tort for purely economic losses inflicted negligently, which means financial loss that occurs without physical or property damage. By deferring to the contract between parties, the economic loss rule prevents the law of contract and the law of tort from dissolving one into the other." (*M&L Financial, Inc. v. Sotheby's, Inc.* (2022) 81 Cal.App.5th 173, 179 (cleaned-up).) The economic loss rule, however, does not bar a plaintiff's fraud and intentional misrepresentation claim that are independent of the defendant's breach of contract. (See *Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, 991.) Moving Defendants argue Plaintiffs' tort claims against them are barred because their only damages are failure of non-party Wave Technology Solutions Group to repay loans to Plaintiffs pursuant to several loan agreements which are purely contractual in nature. There are no tort damages, only Wave's default. Moving Defendants assert the fact that Wave is not a party to this case (because Breakaway now owns Wave) and no party sued on the underlying agreements is of no legal consequence because a viable contract claim is not necessary for the economic loss rule to apply citing *Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal.5th 905, 933-934.) In *Sheen*, the plaintiff alleged the defendant Wells Fargo had a duty to review and respond to the plaintiff's loan modification application as a precondition to foreclosure. The plaintiff argued that recognition of a tort claim would not infringe on the parties' bargain and so would not implicate the economic loss rule. The *Sheen* court, however, found that allowing the plaintiff to bring a tort claim would impede the defendant's contractual right to foreclose by rendering foreclosure permissible only after Wells Fargo has

		discharged a tort duty to review, process, and respond to plaintiff's modification application(s). Because the imposition of such a duty would impede the bank's contractual right to foreclose, plaintiff's claim arises from the original mortgage contract, and the economic loss rule applies. But Moving Defendants misapply the holding in *Sheen*. As stated above, it does not stand for the position that the economic loss rule applies even if the plaintiff does not have a contractual relationship with the defendant. There must be a governing contract between the parties. Indeed, the opinion in *Sheen* expressly distinguishes cases where "the parties to a proceeding are contractual strangers." (Id. at 941.) In this case, Moving Defendants violated the "golden rule" of summary judgment, which is this: "If it is not set forth in the separate statement, it does not exist." (*California-American Water Co. v. Marina Coast Water Dist.*. (2022) 86 Cal.App.5th 1272, 1296.) The separate statement and motion are devoid of any facts or evidence regarding Moving Defendants' contractual relationship to the Plaintiffs, nor are there any facts or evidence establishing how Moving Defendants are in privity to the contracts between Plaintiffs and Wave. Because the economic loss rule presupposes the existence of a contractual relationship between the parties, Moving Defendants have failed to meet their burden of proof that the economic loss rule applies. Accordingly, summary judgment based on the affirmative defense of the economic loss rule is DENIED. **Statute of Limitations** Moving Defendants assert Plaintiffs' claims for fraud are barred by the three year statute of limitations under Code of Civil Procedure § 338(d). The statute of limitations for aiding and abetting is generally the "same as the underlying tort," therefore, all of Plaintiffs' claims against Moving Defendants are subject to the three year statute of limitations. (*American Master Lease LLC v. Idanta Partners, Ltd.* (2014) 225 Cal.App.4th 1451, 1478.) The cause of action in that case is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake." In this context, discovery is

		interpreted to mean "not when the plaintiff became aware of the specific wrong alleged, but when the plaintiff suspected or should have suspected that an injury was caused by the wrongdoing." (*Vera v. REL-BC, LLC*, (2021) 66 Cal. App. 5th 57, 69.) In other words, "when the plaintiff has information which would put a reasonable person on inquiry," the statute of limitation begins to run. (Id.) "While resolution of the statute of limitations issue is normally a question of fact, where the uncontradicted facts established through discovery are susceptible of only one legitimate inference, summary judgment is proper." Here, both plaintiff Meridian and Breakaway brought claims against Moving Defendants for fraud, negligent misrepresentation, and aiding and abetting fraud. Although the motion purports to seek summary judgment against both Meridian and Breakaway on the statute of limitations argument, the separate statement and motion are devoid of any facts or evidence with respect to Meridian's claims, and mention only Breakaway. Therefore, summary judgment cannot be entered against Meridian on the statute of limitations ground. As to Breakaway, again, Moving Defendants' separate statement and motion are devoid of any fact necessary to establish the elements of the affirmative defense, namely, 1) the alleged fraud committed by Moving Defendants and 2) when the alleged fraud occurred. Instead, Moving Defendants merely conclude Breakaway should have been aware of the alleged fraud because of the breach of the Credit Agreement. However, Moving Defendants have cited to no authority that a mere breach of contract is sufficient to place a plaintiff on inquiry notice of potential fraud. Breakaway's assertion in the Second Amended Complaint that Wave sent falsified financial statements starting in May 2015 does not prove it had knowledge of the falsity at that time. First, the SAC is not the operative complaint. Plaintiffs filed a Third Amended Complaint on 12-21-23. Second, other than concluding Breakaway should have been aware of the fraud, Moving Defendants have not produced any evidence regarding when Breakaway either knew or should have suspected the financial statements were false. Without such facts established, Moving Defendants cannot meet their burden of proof that Breakaway is barred from pursuing its claims against Moving Defendants based on the statute of limitations.

		Accordingly, summary judgment on statute of limitations is DENIED.
14	2018-01002061 Law Offices of Mark B. Plummer, PC vs. Alai	**1. Motion for Summary Judgment and/or Adjudication** The Court rules as follows on the Motion for Summary Adjudication by Plaintiff/Cross-Defendant Law Offices of Mark B. Plummer, PC (Law Firm) and Cross-Defendants Mark B. Plummer (Mr. Plummer) and Jocelyn Plummer (sometimes collectively "Movants"): The motion requests summary adjudication of the first through seventh causes of action against all Movants in the First Amended Cross-Complaint (FACC). The motion also requests summary adjudication of the first cause of action for common counts in the Law Firm's complaint. The motion is MOOT as to Jocelyn Plummer because the Court entered judgment on the FACC in favor of Jocelyn Plummer on 4/4/24 after sustaining her demurrer without leave to amend. As to the remaining Movants, the motion is DENIED in its entirety. Movants' request for judicial notice (ROA 1356) is granted as to the court records identified therein. (Code Civ. Proc. § 452(d).) Movants failed to number the undisputed facts in the separate statement consecutively, instead re-starting at fact no. 1 for each issue. The Court therefore refers to the undisputed facts as numbered by Movants under each issue in the separate statement. **Legal Standard** Code of Civil Procedure section 437c(c) states, "(c) The motion for 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. In determining if the papers show that there is no triable issue as to any material fact, the court shall consider all of the evidence set forth in the papers, except the evidence to which objections have been made and sustained by the court, and all inferences reasonably deducible from the evidence, except summary judgment shall not be granted by the court based on

		inferences reasonably deducible from the evidence if contradicted by other inferences or evidence that raise a triable issue as to any material fact. Section 437c(f)(1) provides, "(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, if the party contends that the cause of action has no merit, that there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action, that there is no merit to a claim for damages, as specified in Section 3294 of the Civil Code, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs. A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." Section 437c(o)-(p) states: "(o) A cause of action has no merit if either of the following exists: (1) One or more of the elements of the cause of action cannot be separately established, even if that element is separately pleaded. (2) A defendant establishes an affirmative defense to that cause of action. (p) For purposes of motions for summary judgment and summary adjudication: (1) A plaintiff or cross-complainant has met his or her burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on the cause of action. Once the plaintiff or cross-complainant has met that burden, the burden shifts to the defendant or cross-defendant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The defendant or cross-defendant shall not rely upon the 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 the cause of action or a defense thereto. (2) A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action. Once the defendant or cross-defendant has met that burden, the burden shifts to the

plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The plaintiff or cross-complainant shall not rely upon the 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 the cause of action or a defense thereto."

Summary Adjudication as to First Amended Cross-Complaint

Movants seek summary adjudication as to each of the seven causes of action in the First Amended Cross-Complaint (FACC), addressed below.

1st Cause of Action - Breach of Contract

"To prevail on a cause of action for breach of contract, the plaintiff must prove (1) the contract, (2) the plaintiff's performance of the contract or excuse for nonperformance, (3) the defendant's breach, and (4) the resulting damage to the plaintiff." (*Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1186.)

Here, the first cause of action is based on Movants' provision of legal services to Cross-Complainants pursuant to the parties' written agreements. (Motion, Exs. A and D; Opposition, Exs. B, C, D.)

The FACC alleges Movants breached the legal services contracts by "(1) failing to accurately, honestly and fairly represent to [Cross-Complainants] regarding matters relating to [Movants] representation of [Cross-Complainants] and the status of the representation; (2) failing to abide by [Cross-Complainants] decisions concerning the objectives of [Movants] representation and Defendants failed to consult with [Cross-Complainants] as to the means by those objectives were to be pursued; and (3) failing to adequately communicate to [Cross-Complainants], preferably in writing, before or within a reasonable time after commencing the representation including but not limited to the scope of the representation and the basis or rate of the fee, discovery plan, potential cost bill, and expenses for which [Cross-Complainants] would be responsible."

Mr. Plummer's Individual Liability for Breach of Contract

Mr. Plummer contends he was not a party to any of the alleged agreements and cannot be liable for breach thereof. (Fact 35; Motion, Exs. A and D; Opposition, Exs. B, C, D.) Cross-Complainants allege Mr. Plummer is an officer and alter ego of the Law Firm. (FACC, ¶¶ 9-10; see *Leek v. Cooper* (2011) 194 Cal.App.4th 399, 415 [alter ego theory must be pleaded in complaint to create triable issue of personal liability].)

Movants' Fact 35 states Mr. Plummer was never a party to a contract with Cross-Complainants. In response to this fact, Cross-Complainants cite a contract Mr. Plummer signed on behalf of the Law Firm. (Cross-Complainants' Ex. C.) While this contract identifies the Law Firm, not Mr. Plummer, as the contracting party, the Court finds that at this stage, Movants have not met their burden to show that Mr. Plummer cannot be held personally liable for breach of contract under an alter ego theory or based on other oral agreements which are described in the Alai declarations but not reflected in the parties' written contract such as the alleged agreement to appear for an MSC. (See Alai Decl., ¶ 7, 10.)

<u>There are Triable Issues as to Law Firm's Liability for Breach of Contract</u>

The Law Firm was undisputedly a party to contracts with Cross-Complainants for provision of legal services which form the basis of the first cause of action in the FACC. There are several triable issues as to whether the Law Firm breached such contracts, whether performance was excused, and whether Cross-Complainants sustained any damages due to the Law Firm's breach. (See Cross-Complainants' Responses to Facts 5-48.)

Therefore, the motion is denied as to this cause of action.

2nd Cause of Action - Breach of Fiduciary Duty

The elements of a claim for breach of fiduciary duty are (1) the existence of a fiduciary relationship, (2) its breach, and (3) damage. (*Mendoza v. Continental Sales Co.* (2006) 140 Cal.App.4th 1395, 1405.) "The relationship between an attorney and client is a fiduciary relationship of the very highest character, and attorneys have a duty of loyalty to their clients." (*Kotlar v. Hartford Fire Ins. Co.* (2000) 83 Cal.App.4th 1116, 1123.)

There are Triable Issues as to Elements of Fiduciary Duty Claim

Here, Cross-Complainants have presented sufficient evidence of a fiduciary attorney/client relationship between Mr. Plummer and the Law Firm and Cross-Complainants. Cross-Complainants have also demonstrated numerous triable issues of fact as to whether Mr. Plummer and the Law Firm breached such fiduciary duties with regard to their representation of Cross-Complainants under the subject contracts, thereby causing damages to Cross-Complainants. (Cross-Complainants' Responses to Facts 1-21.)

Statute of Limitations

Movants contend this claim is untimely under Code of Civil Procedure section 340.6, which states in part:

"(a) An action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services shall be commenced within one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or four years from the date of the wrongful act or omission, whichever occurs first. If the plaintiff is required to establish the plaintiff's factual innocence for an underlying criminal charge as an element of the plaintiff's claim, the action shall be commenced within two years after the plaintiff achieves postconviction exoneration in the form of a final judicial disposition of the criminal case. Except for a claim for which the plaintiff is required to establish the plaintiff's factual innocence, the time for commencement of legal action shall not exceed four years except that the period shall be tolled during the time that any of the following exist:
(1) The plaintiff has not sustained actual injury. [¶]…[¶]"

"Although the application of section 340.6 often turns on the resolution of factual disputes, courts should sustain demurrers based on section 340.6 in appropriate circumstances." (*Croucier v. Chavos* (2012) 207 Cal.App.4th 1138, 1145.)
"[T]he limitations period is one year from actual or imputed discovery, or four years (whichever is sooner), unless tolling applies. Although the language of the statute is ambiguous on the point, the tolling provisions of section 340.6 apply to both the one-year and the four-year provisions." (*Id.* at 1145–1146 (cleaned up).) "If the allegedly negligent conduct does not cause damage, it generates no cause of action in tort. The mere breach

		of a professional duty, causing only nominal damages, speculative harm, or the threat of future harm—not yet realized—does not suffice to create a cause of action for negligence. Determining when actual injury occurred is predominantly a factual inquiry. When the material facts are undisputed, the trial court can resolve the matter as a question of law. [¶] The test for actual injury under section 340.6 is whether the plaintiff has sustained any damages compensable in an action against an attorney for a wrongful act or omission arising in the performance of professional services. Ordinarily, the client already has suffered damage when it discovers the attorney's error. Once the plaintiff suffers actual harm, neither difficulty in proving damages nor uncertainty as to their amount tolls the limitations period." (*Id*. at 1147 (cleaned up).) "[T]he statute of limitations will not run during the time the plaintiff cannot bring a cause of action for damages from professional negligence because the plaintiff cannot allege actual injury resulted from an attorney's malpractice. (*Id*. at 1148.) Here, Cross-Complainants' claim for breach of fiduciary duty is based on Movants' provision of legal services, so section 340.6 applies. Movants contend the Complaint and FACC were filed over a year after Cross-Complainants terminated their representation of Movants. Movants differentiate between the "Santa Clara Medical Malpractice Case" and the "Parker Case" for purposes of determining whether the FACC is timely. It is undisputed that Movants disassociated in the Medical Malpractice Case on March 2 or 3, 2017 and substituted out of the Parker Case on 7/6/17. (Facts 12, 13.) The Complaint was filed on 6/27/18 and the Cross-Complaint was filed on 11/14/18. The Complaint seeks damages related to Cross-Complainants' nonpayment of attorney fees in the Medical Malpractice Case. The FACC seeks damages arising from the same "series of transactions," if not the exact same transaction. (See *ZF Micro Devices, Inc. v. TAT Capital Partners, Ltd.* (2016) 5 Cal.App.5th 69, 84, 91-92.) Therefore, for purposes of the statute of limitations, the FACC relates back to the filing of the original complaint on 6/27/18. There is a triable issue as to whether the second cause of action was timely filed within one year under section 340.6, so the motion is denied as to the second cause of action. ***3rd Cause of Action - Fraud/Fraudulent Concealment***

		The elements of fraud by concealment are (1) concealment or suppression of a material fact; (2) by a defendant with a duty to disclose the fact to the plaintiff; (3) the defendant intended to defraud the plaintiff by intentionally concealing or suppressing the fact; (4) the plaintiff was unaware of the fact and would not have acted as he or she did if he or she had known of the concealed or suppressed fact; and (5) plaintiff sustained damage as a result of the concealment or suppression of the fact. (*Hambrick v. Healthcare Partners Medical Group, Inc.* (2015) 238 Cal.App.4th 124, 162.) Here, Cross-Complainants' fraud claim is based on Movants' alleged conduct including (1) concealing information from Cross-Complainants, (2) filing a notice of disassociation while misrepresenting to Cross-Complainants they remained as counsel between 3/2/17 and 3/6/17 two weeks prior to trial, (3) surreptitiously filing a lien, and (4) sabotaging their reputation. (FACC, ¶¶ 75-102.) Cross-Complainants have demonstrated the existence of a triable issue as to this claim, including presenting evidence that Cross-Defendants continued to bill for services after they disassociated and ceased performing legal services for Cross-Complainants. (Alai Decl., ¶ 6.) This evidence creates a triable issue as to whether Cross-Defendants misrepresented whether they were continuing to perform work for Cross-Complainants, whether Cross-Complainants relied on such misrepresentation or omission, and whether they incurred damages including attorney fees as a result. Therefore, the motion is denied as to this cause of action. ***4th Cause of Action - Conversion*** "Conversion is generally described as the wrongful exercise of dominion over the personal property of another. [Citation.] The basic elements of the tort are (1) the plaintiff's ownership or right to possession of personal property; (2) the defendant's disposition of the property in a manner that is inconsistent with the plaintiff's property rights; and (3) resulting damages. [Citation.]" (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 119.) Cross-Complainants allege Movants engaged in conversion of funds awarded to them as discovery sanctions in "Case 1" in 2017. (FACC, ¶¶ 105-106.) The FACC also alleges Movants

		failed to return their client files. (Id. at ¶ 107.) Movants also allegedly failed to return Cross-Complainant Alai's State Bar application documents. (Id. at ¶ 108.) As for the discovery sanctions, Movants state the amounts in the 2/17/17 sanctions were credited to Cross-Complainants in the 4/11/17 invoice, and they never received the 6/15/17 sanctions because they substituted out before the sanctions were paid. (Facts 2-3.) In response, Cross-Complainants cite paragraph 10, Exhibit B, and Exhibit KK of the Juarez declaration, but Exhibit KK reflects a $960 credit, and Cross-Complainants fail to cite any evidence demonstrating a triable issue as to nonpayment of discovery sanctions. As for the failure to return client files, Movants state they never had any original client files, which were in possession of Cross-Complainants' other counsel. (Fact 4.) Cross-Complainants cite paragraphs 14, 19, and 21 and exhibits D, K, and M of the Juarez declaration to dispute this fact based on Movants acting as their counsel. However, they fail to cite any evidence showing that Movant was in possession of client files or failed to return them. Movants also contend they never had Alai's State Bar Application. (Fact 5.) Plummer declares he merely received a single page from Alai by email. (Plummer decl., ¶ 18.) Cross-Complainants respond to Fact 5 by citing paragraph 44 of the Juarez declaration, which cites Exhibit JJ, an email exchange in which Alai and Plummer discuss Alai's interest in law school. Cross-Complainants fail to cite any admissible evidence showing Movants had Alai's State Bar Application documents in their possession or failed to return them. However, Alai presents evidence that Plummer did not release certain materials to Alai in the case files, including Plummer's correspondence to the insurance carrier. This evidence is sufficient to demonstrate a triable issue as to whether Cross-Defendants engaged in conversion as to some portion of Cross-Complainants' case files. Therefore, the motion is denied as to this cause of action. ***5th Cause of Action - Defamation/Slander*** The elements of defamation are (1) a publication that is (2) false, (3) defamatory, and (4) unprivileged, and that (5) has a natural tendency to injure or that causes special damage. (*Price v.*

		Operating Engineers Local Union No. 3 (2011) 195 Cal.App.4th 962, 970.) Here, Cross-Complainants' claim is based on Mr. Plummer's communications regarding concerns about Cross-Complainants' credibility in the underlying litigation, including a June 2017 email to Cross-Complainants' insurer and a July 2017 letter to subsequent counsel. (FACC, ¶¶ 113, 118.) In the correspondence to the insurer, Movants' insurer in the underlying suit, Plummer stated Alai and her husband have a history of lying and fraud and stood a risk of being impeached if the case went to trial. In the letter to subsequent counsel, Plummer states Alai has demanded her attorney engage in unethical practices and he wondered whether it was ethical to call Alai as a witness at trial. Plummer contends the statements to Cross-Complainants' insurance carrier and subsequent counsel were privileged under Civil Code section 47(b), which provides a litigation privilege for communications in the course of judicial proceedings. "The principal purpose of the privilege is to afford the utmost freedom of access to the courts without fear of being subsequently harassed by derivative tort actions." (*Rothman v. Jackson* (1996) 49 Cal.App.4th 1134, 1146.) "The usual formulation of the litigation privilege is that it applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action. The principal purpose of the litigation privilege "is to afford litigants and witnesses the utmost freedom of access to the courts without fear of being harassed subsequently by derivative tort actions. The litigation privilege "promotes the effectiveness of judicial proceedings by encouraging 'open channels of communication and the presentation of evidence' in judicial proceedings. However, republications to nonparticipants in the action are generally not privileged under the litigation privilege, and are thus actionable unless privileged on some other basis." (*GetFugu, Inc. v. Patton Boggs LLP* (2013) 220 Cal.App.4th 141, 152 [cleaned up].) However, case law has "expanded the scope of [the litigation privilege to include publication to nonparties with a substantial interest in the proceeding." (*Ibid*.) While the privilege protects communications to persons with a substantial interest in the litigation, it generally does not

encompass statements about litigation to the press or general public. (See *Argentieri v. Zuckerberg* (2017) 8 Cal.App.5th 768, 783-784.)

Here, there is a triable issue as to whether the statements regarding Cross-Complainants had a logical relation to the proceedings and were intended to achieve the objects of the litigation. The Court declines to determine the intent of the communication based on the face of the communication without evaluating the testimony and credibility of the parties regarding the alleged statement. The finder of fact should determine whether the statements were intended to achieve the objects of the litigation, for example by ensuring that Cross-Complainants' insurance carrier and subsequent counsel were prepared for the possibility Cross-Complainants' credibility would be impeached if the case proceeded to trial, or whether the statements were primarily intended for another purpose such as to harm Cross-Complainants' reputation or chances of success in the underlying lawsuit.

Therefore, the motion is denied as to this cause of action.

6th Cause of Action - Accounting and Unconscionable Fees

"[T]he right to an accounting is derivative and depends on the validity of a plaintiff's underlying claims." (*Duggall v. G.E. Capital Communications Services, Inc.* (2000) 81 Cal.App.4th 81, 95; see also *Janis v. California State Lottery Com.* (1998) 68 Cal.App.4th 824, 833–834.) If alleged as a claim, "[a] cause of action for an accounting requires a showing that a relationship exists between the plaintiff and defendant that requires an accounting, and that some balance is due the plaintiff that can only be ascertained by an accounting. [Citations.] [¶] An action for accounting is not available where the plaintiff alleges the right to recover a sum certain or a sum that can be made certain by calculation. [Citations.]" (*Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 179.)

Here, the sixth cause of action is based on the parties' dispute over the amount owed, if any, for provision of legal services. Cross-Complainants have demonstrated a factual dispute as to the amount owed for Movants' legal services, including whether Movants are entitled to the hourly rate in the contract or a higher noncontractual rate. (Non-numbered Facts at pp. 70-73 of Responsive Separate Statement.)

Therefore, the motion is denied as to this cause of action.

7th Cause of Action – False and Misleading Advertising/Unfair Business Practices

"To bring a UCL claim, a plaintiff must show either an (1) unlawful, unfair, or fraudulent business act or practice, or (2) unfair, deceptive, untrue or misleading advertising. Because the UCL is written in the disjunctive, it establishes three varieties of unfair competition—acts or practices which are unlawful, or unfair, or fraudulent." (*Adhav v. Midway Rent A Car, Inc.* (2019) 37 Cal.App.5th 954, 970 [cleaned up].)

Here, Cross-Complainants allege Movants engaged in false advertising, including advertising regarding (1) Jocelyn Plummer's qualifications and involvement in the Law Firm, (2) client reviews, (3) use of email aliases, (4) and misstatements about the quality of legal services provided. (FACC, ¶¶ 134-146.)

Movants' motion and separate statement are limited to addressing misleading advertising by Jocelyn Plummer, although the FACC alleges this claim against all Cross-Defendants. As noted above, the motion is moot as to Jocelyn Plummer. Because the motion does not address this claim insofar as it is alleged against other Movants, the motion is moot as to Jocelyn Plummer and denied as to the remaining Movants as to this cause of action.

Summary Adjudication as to Plaintiff's Complaint

Movant seeks summary adjudication as to the first cause of action for common counts only. The motion is denied as to this cause of action.

1st Cause of Action – Common Counts

The elements of a claim for common counts based on services rendered, sometimes referred to as quantum meruit, include:

1. That defendant requested, by words or conduct, that plaintiff perform services for the benefit of defendant;
2. That plaintiff performed the services as requested;
3. That defendant has not paid plaintiff for the services; and
4. The reasonable value of the services that were provided.

(CACI No. 371.)

		"Quantum meruit refers to the well-established principle that the law implies a promise to pay for services performed under circumstances disclosing that they were not gratuitously rendered. To recover in quantum meruit, a party need not prove the existence of a contract, but it must show the circumstances were such that "the services were rendered under some understanding or expectation of both parties that compensation therefor was to be made. The underlying idea behind quantum meruit is the law's distaste for unjust enrichment. If one has received a benefit which one may not justly retain, one should restore the aggrieved party to his or her former position by return of the thing or its equivalent in money. The measure of recovery in quantum meruit is the reasonable value of the services rendered provided they were of direct benefit to the defendant. In other words, quantum meruit is equitable payment for services already rendered." (*E.J. Franks Construction, Inc. v. Sahota* (2014) 226 Cal.App.4th 1123, 1128 [cleaned up].) The entirety of Plaintiff's argument in the motion as to this cause of action is that, "LAW OFFICES OF MARK B. PLUMMER, PC provided legal services and the request of and for the benefit of NILI N. ALAI and SIAMACK NABILI. [Exhibits C and G] Payment had been demanded but NILI N. ALAI and SIAMACK NABILI have refused to pay. [Declaration of Plummer. ¶20] Accordingly, LAW OFFICES OF MARK B. PLUMMER, PC is entitled to the reasonable value of its services." (Motion, 18:15-19.) Plaintiff has not shown summary adjudication is proper as to the fourth element of the common counts claim because Plaintiff has not demonstrated the "reasonable value of the services that were provided" is undisputed. Plaintiff seeks compensation at the rate of $550/hour, an hourly rate greater than the $200 per hour rate set out in the February 2017 addendum. (Complaint, ¶¶ 14-15; Motion, Exhibit D.) Plaintiff has not presented undisputed evidence of entitlement to hourly fees greater than that set out in the parties' contract. Because Plaintiff has not met its burden of proving the fourth element of its common counts claim, the Court declines to address the other elements of Plaintiff's claim. (See Code Civ. Proc. § 437c(p)(1).) Therefore, the motion is denied as to Plaintiff's complaint.

2. Motion for Summary Judgment and/or Adjudication

Cross-Complainants Nili Alai and Sam Nabili's (collectively "Movants") Motion for Summary Judgment or Adjudication as to their First Amended Cross-Complaint against Cross-Defendants Law Offices of Mark B. Plummer (Law Firm), Mark Plummer (Mr. Plummer), and Jocelyn Plummer (collectively "Cross-Defendants") is DENIED.

The motion is moot as to Jocelyn Plummer because the Court sustained Jocelyn Plummer's demurrer to the FACC without leave to amend on 2/13/24 and entered judgment in her favor on 4/4/24.

Legal Standard

Code of Civil Procedure section 437c(c) states, "(c) The motion for 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. In determining if the papers show that there is no triable issue as to any material fact, the court shall consider all of the evidence set forth in the papers, except the evidence to which objections have been made and sustained by the court, and all inferences reasonably deducible from the evidence, except summary judgment shall not be granted by the court based on inferences reasonably deducible from the evidence if contradicted by other inferences or evidence that raise a triable issue as to any material fact.

Section 437c(f)(1) provides, "(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, if the party contends that the cause of action has no merit, that there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action, that there is no merit to a claim for damages, as specified in Section 3294 of the Civil Code, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs. A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty."

Section 437c(o)-(p) states:

		"(o) A cause of action has no merit if either of the following exists: (1) One or more of the elements of the cause of action cannot be separately established, even if that element is separately pleaded. (2) A defendant establishes an affirmative defense to that cause of action. (p) For purposes of motions for summary judgment and summary adjudication: (1) A plaintiff or cross-complainant has met his or her burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on the cause of action. Once the plaintiff or cross-complainant has met that burden, the burden shifts to the defendant or cross-defendant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The defendant or cross-defendant shall not rely upon the 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 the cause of action or a defense thereto. (2) A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action. Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The plaintiff or cross-complainant shall not rely upon the 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 the cause of action or a defense thereto." **<u>Timeliness of Briefs</u>** In reply, Movants contend the opposition brief was untimely. Opposing parties filed their opposition brief on 1/23/24. The Court's 11/28/23 minute order stated the matter was stayed due to filing of a vexatious litigant motion, and the Court did not rule on the vexatious litigant motion until 2/13/24. Opposing parties had a reasonable basis to believe their opposition was timely in light of the stay. Moreover, even assuming the opposition was untimely, there has been no prejudice to Movants because on 2/27/24, the Court continued the hearing on this matter to the present date to allow Movants to file a reply, and Cross-

Complainant Nabili filed a reply brief on 3/19/24 which the Court has considered.

Merits

Movants seek summary adjudication as to each of the seven causes of action in their First Amended Cross-Complaint (FACC).

1st Cause of Action - Breach of Contract

"To prevail on a cause of action for breach of contract, the plaintiff must prove (1) the contract, (2) the plaintiff's performance of the contract or excuse for nonperformance, (3) the defendant's breach, and (4) the resulting damage to the plaintiff." (*Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1186.)

Movants' first cause of action is based on Cross-Defendants' provision of legal services pursuant to the parties' written agreements. (Motion, Exs. A and D; Opposition, Exs. B, C, and D.)

The FACC alleges Movants breached the legal services contract by "(1) failing to accurately, honestly and fairly represent to [Cross-Complainants] regarding matters relating to [Movants] representation of [Cross-Complainants] and the status of the representation; (2) failing to abide by [Cross-Complainants] decisions concerning the objectives of [Movants] representation and Defendants failed to consult with [Cross-Complainants] as to the means by those objectives were to be pursued; and (3) failing to adequately communicate to [Cross-Complainants], preferably in writing, before or within a reasonable time after commencing the representation including but not limited to the scope of the representation and the basis or rate of the fee, discovery plan, potential cost bill, and expenses for which [Cross-Complainants] would be responsible." (¶ 26.)

Section 437c(f)(1) does not permit a plaintiff or cross-complainant to move for summary adjudication as to the issue of the defendant or cross-defendant's liability only, while leaving damages to be determined at a later date. (*Paramount Petroleum Corp. v. Superior Court* (2014) 227 Cal.App.4th 226, 238-242.) "May a plaintiff seek summary adjudication of liability only, leaving the resolution of damages to a later trial? The statutory language mandates the question be answered in the negative. 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.' As damages are an element of a breach of contract cause of action [Citation], a plaintiff cannot obtain judgment on a breach of contract cause of action in an amount of damages to be determined later." (*Id*. at 241.) Here, damages are an element of the first cause of action for breach of contract. The motion does not show the element of damages is undisputed. Cross-Complainants contend they are entitled to damages for harm to Nabili's professional reputation and costs of trial experts, as well as the amount of the settlement offer in the underlying case. Cross-Complainants fail to show that it is undisputed Cross-Defendants caused such damages or that the amount of such damages is undisputed. Moreover, Cross-Defendants have presented evidence that show a dispute as to whether Movants sustained damages because the underlying litigation lacked merit due to lack of supporting expert testimony. Therefore, Movants have not met their burden of demonstrating there is no triable issue as to the fourth element of their claim for breach of contract. In reply, Cross-Complainant Nabili argues the Court may summarily adjudicate liability only and bifurcate the issue of damages for trial under *Orpheum Bldg. Co. v. San Francisco Bay Area Rapid Transit Dist.* (1978) 80 Cal.App.3d 863. However, *Orpheum* only holds the Court can bifurcate liability and damages and does not undermine the rule stated in *Paramount Petroleum Corp. v. Superior Court*, *supra*, 227 Cal.App.4th at 238-242 that the Court may not summarily adjudicate the issue of liability if damages remain in dispute as an element of the claim. Because Cross-Complainants have not met their burden of proving the fourth element of this claim, the motion is denied as to this cause of action and the Court does not need to address the other elements of the claim. (See Code Civ. Proc. § 437c(p)(1).) ***2nd Cause of Action - Breach of Fiduciary Duty*** The elements of a claim for breach of fiduciary duty are (1) the existence of a fiduciary relationship, (2) its breach, and (3) damage. (*Mendoza v. Continental Sales Co.* (2006) 140 Cal.App.4th 1395, 1405.) "The relationship between an attorney and client is a fiduciary relationship of the very highest character,

		and attorneys have a duty of loyalty to their clients." (*Kotlar v. Hartford Fire Ins. Co.* (2000) 83 Cal.App.4th 1116, 1123.) Like the first cause of action, Movants have not established the element of damages as to this cause of action. Cross-Complainants assert, "The undisputed facts establish that the Plummers had a fiduciary duty to CCS, they breached that duty, and [Cross-Complainants] suffered damages due to this breach." (Motion, 10:27-11:1.) Movants do not cite any evidence of causation of damages or the amount of damages. Moreover, Cross-Defendants have presented evidence which could show the underlying litigation lacked merit, which would undermine Movants' damages claim. Therefore, Cross-Complainants have failed to meet their burden to establish there is no triable issue of material fact as to the fourth element of this cause of action and the motion is denied under *Paramount Petroleum Corp. v. Superior Court* (2014) 227 Cal.App.4th 226, 238-242. ***3rd Cause of Action - Fraud/Fraudulent Concealment*** The elements of fraud by concealment are (1) concealment or suppression of a material fact; (2) by a defendant with a duty to disclose the fact to the plaintiff; (3) the defendant intended to defraud the plaintiff by intentionally concealing or suppressing the fact; (4) the plaintiff was unaware of the fact and would not have acted as he or she did if he or she had known of the concealed or suppressed fact; and (5) plaintiff sustained damage as a result of the concealment or suppression of the fact. (*Hambrick v. Healthcare Partners Medical Group, Inc.* (2015) 238 Cal.App.4th 124, 162.) Here, Cross-Complainants contend they have "sustained damage as a result of this concealment, as evidenced by the cancellation of their insurance policy and ensuing legal disputes." (Motion, 12:2-3.) Cross-Complainants fail to cite undisputed facts or evidence in support of this contention, and they do not argue they suffered any other damages as to the third cause of action. Cross-Complainants have failed to show there is no triable issue of material fact as to the element of damages in support of their third cause of action. Therefore, the motion is denied as to this cause of action under *Paramount Petroleum Corp. v. Superior Court* (2014) 227 Cal.App.4th 226, 238-242. ***4th Cause of Action - Conversion***

		"Conversion is generally described as the wrongful exercise of dominion over the personal property of another. [Citation.] The basic elements of the tort are (1) the plaintiff's ownership or right to possession of personal property; (2) the defendant's disposition of the property in a manner that is inconsistent with the plaintiff's property rights; and (3) resulting damages. [Citation.]" (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 119.) Here, Cross-Complainants contend Cross-Defendants wrongfully converted $960 in sanctions which were awarded to them in the underlying litigation. However, Plummer declares that he credited $960 to Cross-Complainants' account as reflected in the 4/11/17 invoice. (Plummer Decl., ¶ 16 and Ex. H.) Therefore, there is a triable issue of material fact as to whether Cross-Defendants converted the funds and the motion is denied as to this claim. ***5th Cause of Action - Defamation/Slander*** The elements of defamation are (1) a publication that is (2) false, (3) defamatory, and (4) unprivileged, and that (5) has a natural tendency to injure or that causes special damage. (*Price v. Operating Engineers Local Union No. 3* (2011) 195 Cal.App.4th 962, 970.) Here, Cross-Complainants' claim is based on Plummer's communications regarding their credibility in the underlying litigation, including a 7/1/17 email to State Farm and a 7/6/17 letter to attorney Michael Sayer. (Motion, Exs. DD and FF.) In the correspondence to State Farm, Movants' insurer in the underlying suit, Plummer stated Alai and her husband have a history of lying and fraud and stood a risk of being impeached if the case went to trial. In the letter to Mr. Sayer, Plummer states Alai has demanded her attorney engage in unethical practices and he wondered whether it was ethical to call Alai as a witness at trial. Cross-Complainants have not shown it is undisputed that the subject communications were false, defamatory, and unprivileged. Plummer contends the statements to Cross-Complainants' insurance carrier and subsequent counsel were privileged under

		Civil Code section 47(b), which provides a litigation privilege for communications in the course of judicial proceedings. "The principal purpose of the privilege is to afford the utmost freedom of access to the courts without fear of being subsequently harassed by derivative tort actions." (*Rothman v. Jackson* (1996) 49 Cal.App.4th 1134, 1146.) "The usual formulation of the litigation privilege is that it applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action. The principal purpose of the litigation privilege "is to afford litigants and witnesses the utmost freedom of access to the courts without fear of being harassed subsequently by derivative tort actions. The litigation privilege "promotes the effectiveness of judicial proceedings by encouraging 'open channels of communication and the presentation of evidence' in judicial proceedings. However, republications to nonparticipants in the action are generally not privileged under the litigation privilege, and are thus actionable unless privileged on some other basis." (*GetFugu, Inc. v. Patton Boggs LLP* (2013) 220 Cal.App.4th 141, 152 [cleaned up].) However, case law has "expanded the scope of [the litigation privilege to include publication to nonparties with a substantial interest in the proceeding." (*Ibid*.) While the privilege protects communications to persons with a substantial interest in the litigation, it generally does not encompass statements about litigation to the press or general public. (See *Argentieri v. Zuckerberg* (2017) 8 Cal.App.5th 768, 783-784.) Plummer has shown his communications reflecting his concerns about the credibility of Cross-Complainants were made in the context of his representation of them in judicial proceedings, to others with an interest in the litigation including Cross-Complainants' insurance carrier and subsequent counsel. Plummer's statements about Cross-Complainants' credibility had a logical relation to the proceedings and were intended to achieve the objects of the litigation including ensuring that Cross-Complainants' insurance carrier and subsequent counsel could be prepared for the possibility that Cross-Complainants' credibility would be attacked if the case proceeded to trial. Therefore, Movants have not shown there is no triable issue as to whether the subject statements were privileged.

Moreover, Cross-Complainants have not presented undisputed evidence that Plummer's alleged statements were false and defamatory.

Therefore, the motion is denied as to this cause of action.

6th Cause of Action - Accounting and Unconscionable Fees

"[T]he right to an accounting is derivative and depends on the validity of a plaintiff's underlying claims." (*Duggall v. G.E. Capital Communications Services, Inc.* (2000) 81 Cal.App.4th 81, 95; see also *Janis v. California State Lottery Com.* (1998) 68 Cal.App.4th 824, 833–834.) If alleged as a claim, "[a] cause of action for an accounting requires a showing that a relationship exists between the plaintiff and defendant that requires an accounting, and that some balance is due the plaintiff that can only be ascertained by an accounting. [Citations.] [¶] An action for accounting is not available where the plaintiff alleges the right to recover a sum certain or a sum that can be made certain by calculation. [Citations.]" (*Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 179.)

Here, the sixth cause of action is based on the parties' dispute over the amount owed, if any, by Movants to Cross-Defendants for provision of legal services. Movants contend there are "substantial inconsistencies in the Plummers' billing, including the absence of detailed breakdowns, mismatched total amounts, and charges for post-withdrawal services…" (Motion, 20:5-7.)

Cross-Complainants have not shown it is undisputed they are entitled to an accounting, as it is Cross-Defendants, not Cross-Complainants, who claim there is a balance due based on the legal services contract. Moreover, because this cause of action is derivative and Cross-Complainants have not shown their underlying causes of action are undisputed, they cannot show there is no dispute as to the derivative cause of action for accounting.

7th Cause of Action - Unfair Business Practices

"To bring a UCL claim, a plaintiff must show either an (1) unlawful, unfair, or fraudulent business act or practice, or (2) unfair, deceptive, untrue or misleading advertising. Because the UCL is written in the disjunctive, it establishes three varieties of unfair competition—acts or practices which are unlawful, or

		unfair, or fraudulent." (*Adhav v. Midway Rent A Car, Inc.* (2019) 37 Cal.App.5th 954, 970 [cleaned up].) Here, Cross-Complainants allege Cross-Defendants have engaged in false advertising, including advertising regarding (1) Jocelyn Plummer's qualifications and involvement in the Law Firm, (2) client reviews, (3) use of email aliases, (4) and misstatements about the quality of legal services provided. (FACC, ¶¶ 134-146.) In the Motion, Movants cite only Undisputed Fact 2 in support of this claim, which states the following: "Law Offices of Mark B. Plummer, PC, a professional law corporation was engaged by Alai for specific legal services in 2015 employment underlying matter as Cumis counsel. ¶9 of his Retainer Agreement represented "attorney does not carry errors and omissions insurance.." However, Plummer did carry E&O insurance which he concealed from Cross-Complainants ¶4 specified his rate of compensation at $250 hourly." Therefore, the motion is apparently limited to the contention that Cross-Defendants misrepresented whether they carried errors and omissions insurance. However, Plummer declares he did not carry any errors and omissions insurance at the time the parties signed the retainer agreement in the underlying litigation, so there was no misstatement. (Plummer Decl., ¶ 2.) Therefore, Cross-Complainants have not shown there is no triable issue of material fact as to this claim.
15	30-2020-01175549 Chang vs Chang	**1. Motion For Terminating Sanctions** Dean Chang's Motion for Terminating, Monetary, and/or Issue/Evidentiary Sanctions is GRANTED in part as set out below. **<u>Legal Standard</u>** *Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 991–992 (*Doppes*), describes sanctions that may be imposed for misuse of the discovery process: "California discovery law authorizes a range of penalties for conduct amounting to "misuse of the discovery process." (Code Civ. Proc., § 2023.030; *Cedars–Sinai Medical Center v. Superior*

		Court (1998) 18 Cal.4th 1, 12, 74 Cal.Rptr.2d 248, 954 P.2d 511.) As relevant here, misuses of the discovery process include "[f]ailing to respond or to submit to an authorized method of discovery" (Code Civ. Proc., § 2023.010, subd. (d)); "[m]aking, without substantial justification, an unmeritorious objection to discovery" (id., § 2023.010, subd. (e)); "[m]aking an evasive response to discovery" (id., § 2023.010, subd. (f)); and "[d]isobeying a court order to provide discovery" (id., § 2023.010, subd. (g)). Code of Civil Procedure section 2025.450, subdivision (d) authorizes a trial court to impose an issue, evidence, or terminating sanction under Code of Civil Procedure section 2023.030 if a party or party-affiliated deponent "fails to obey an order compelling attendance, testimony, and production." Section 2023.030 authorizes a trial court to impose monetary sanctions, issue sanctions, evidence sanctions, or terminating sanctions against "anyone engaging in conduct that is a misuse of the discovery process." As to issue sanctions, subdivision (b) of Code of Civil Procedure section 2023.030 provides: "The court may impose an issue sanction ordering that designated facts shall be taken as established in the action in accordance with the claim of the party adversely affected by the misuse of the discovery process. The court may also impose an issue sanction by an order prohibiting any party engaging in the misuse of the discovery process from supporting or opposing designated claims or defenses." As to evidence sanctions, subdivision (c) of Code of Civil Procedure section 2023.030 provides: "The court may impose an evidence sanction by an order prohibiting any party engaging in the misuse of the discovery process from introducing designated matters in evidence." As to terminating sanctions, Code of Civil Procedure section 2023.030, subdivision (d) provides: "The court may impose a terminating sanction by one of the following orders: [¶] (1) An order striking out the pleadings or parts of the pleadings of any party engaging in the misuse of the discovery process. [¶] (2) An order staying further proceedings by that party until an order for discovery is obeyed. [¶] (3) An order dismissing the action, or any part of the action, of that party. [¶] (4) An order rendering a judgment by default against that party."" *Doppes*, *supra*, 174 Cal.App.4th at 992 (footnote 5 omitted), describes the "incremental approach" to discovery sanctions that should be followed by trial courts:

		"The discovery statutes evince an incremental approach to discovery sanctions, starting with monetary sanctions and ending with the ultimate sanction of termination. "Discovery sanctions 'should be appropriate to the dereliction, and should not exceed that which is required to protect the interests of the party entitled to but denied discovery.' " (*Laguna Auto Body v. Farmers Ins. Exchange*, *supra*, 231 Cal.App.3d at p. 487, 282 Cal.Rptr. 530.) If a lesser sanction fails to curb misuse, a greater sanction is warranted: continuing misuses of the discovery process warrant incrementally harsher sanctions until the sanction is reached that will curb the abuse. "A decision to order terminating sanctions should not be made lightly. But where a violation is willful, preceded by a history of abuse, and the evidence shows that less severe sanctions would not produce compliance with the discovery rules, the trial court is justified in imposing the ultimate sanction." (*Mileikowsky v. Tenet Healthsystem* (2005) 128 Cal.App.4th 262, 279–280, 26 Cal.Rptr.3d 831)" In *Liberty Mutual Fire Ins. Co. v. LcL Administrators, Inc.* (2008) 163 Cal.App.4th 1093, 1095 (*Liberty Mutual*), "Liberty propounded simple, straightforward interrogatories, asking for witnesses, documents and evidence to support LCL's affirmative defenses and cross-claims. Each time, LCL gave vacuous, meaningless responses. Frustrated with LCL's continued stonewalling, the trial court granted Liberty's motion for terminating sanctions, striking both the answer and the cross-complaint." In *Liberty Mutual*, *supra*, 163 Cal.App.4th at 1105-1106, the appellate court concluded that terminating sanctions were not an abuse of discretion for repeated failure to comply with discovery requests: "The trial court was not being punitive—it was exercising its broad authority to levy the ultimate sanction when prior efforts yielded no results. The question before us " 'is not whether the trial court should have imposed a lesser sanction; rather, the question is whether the trial court abused its discretion by imposing the sanction it chose.' " [Citations] Here, LCL persisted in its pattern of failure or refusal to give meaningful responses to discovery. The trial court was not required to allow LCL to continue its stalling tactics indefinitely. (*Mileikowsky v. Tenet Healthsystem* (2005) 128 Cal.App.4th 262, 280, 26 Cal.Rptr.3d 831 (*Mileikowsky*).) No abuse of discretion is shown."

In *Doppes, supra*, 174 Cal.App.4th at 993-994, the appellate court held the trial court erred by failing to impose terminating sanctions after the defendant violated multiple discovery orders:

"At that point, once it was learned during trial that Bentley still had failed miserably to comply with discovery orders and directives, we hold the trial court had to impose terminating sanctions. Each degree of sanctions had failed. The trial court and discovery referee had been remarkably moderate in dealing with Bentley, ultimately imposing only a form of issue sanction after repeated violations of discovery orders that would have justified terminating sanctions. Yet, during the middle of trial, it was learned that Bentley still had not complied with discovery orders and directives, had been irresponsible at best in preventing destruction of e-mails, had not fully permitted data mining of e-mails as previously ordered, and had failed to produce documents it should have produced months earlier. Bentley's discovery abuses were "willful, preceded by a history of abuse, and the evidence shows that less severe sanctions would not produce compliance with the discovery rules." (*Mileikowsky v. Tenet Healthsystem, supra*, 128 Cal.App.4th at pp. 279–280, 26 Cal.Rptr.3d 831.) Terminating sanctions against Bentley were imperative."

Application

Deposition of Lucille Chang

With regard to Lucille Chang's deposition, the Court intends to continue trial in order to allow the deposition of Lucille Chang to be completed based on the declaration of Lucille Chang's physician stating she will be able to testify at deposition in July 2024. This order does not preclude the parties from completing the deposition earlier, if possible, or from engaging in an attempt to complete the deposition by written questions earlier pursuant to Code of Civil Procedure section 2028.010 et seq. without prejudice to their ability to obtain Lucille Chang's live testimony once she is able to testify.

Document Production

Dean Chang's notice of deposition served on May 9, 2023 contained 80 requests for production, which supplemented earlier requests for production to Lucille Chang in this case.

		The Second Supplemental Brief of TCT Industries filed on 4/12/24 states that on 4/11/24, nearly a year after these documents requests were served, Lucille Chang sent a Dropbox link to 52,403 pages of documents. Lucille Chang's large document production occurred eight days before trial was to begin on 4/19/24, effectively precluding the other parties from reviewing the documents and use them at trial. Code of Civil Procedure section 2025.280(a) states, "(a) The service of a deposition notice under Section 2025.240 is effective to require any deponent who is a party to the action or an officer, director, managing agent, or employee of a party to attend and to testify, as well as to produce any document, electronically stored information, or tangible thing for inspection and copying." Code of Civil Procedure section 2031.280(a) states, "(a) Any documents or category of documents produced in response to a demand for inspection, copying, testing, or sampling shall be identified with the specific request number to which the documents respond." It is unclear to the Court at this time whether Lucille Chang's document production complies with Code of Civil Procedure section 2031.280(a). Lucille Chang is ordered to comply with section 2031.280(a) by identifying the documents responsive to each of Dean Chang's requests within ten days. Failure to comply with this order may result in additional sanctions against Lucille Chang or her counsel. In the ex parte application to set this motion filed on 3/4/24, Dean Chang requests monetary sanctions of $8,237.32. The Court grants the request for monetary sanctions against Lucille Chang based on Lucille Chang's failure to comply with the production requests until eight days before trial. Based on Lucille Chang's failure to promptly comply with Dean Chang's requests for production and large document production eight days before trial, the Court will also consider imposing evidentiary sanctions with regard to the documents produced by Lucille Chang. However, at this time the parties have not had the opportunity to review the recent, large document production or tailor their request for appropriate sanctions based on the documents included therein. Therefore, the Court declines to impose evidentiary sanctions as premature at this time. However, the Court will consider a renewed motion for sanctions or motion in limine to preclude Lucille Chang from presenting or relying on the new evidence that was produced on 4/11/23 once the other

		parties have had the opportunity to review the documents and tailor their request accordingly.