TENTATIVE RULINGS

Judge Michael J. Strickroth

DEPT C15

Department C15 hears Law and Motion matters on Mondays at 1:45 pm

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

- **Civil Court Reporter Pooling; and**
- **For additional information, please see the court's website at Court Reporter Interpreter Services for additional information regarding the availability of court reporters.**

Tentative rulings: The court endeavors to post tentative rulings on the court's website by 10:00 am in the morning, prior to the afternoon hearing. However, ongoing proceedings such as jury trials may prevent posting by that time. Tentative rulings may not be posted in every case. <u>Please do not call the department for tentative rulings if tentative rulings have not been posted.</u> The court will not entertain a request to continue a hearing or the filing of further documents once a tentative ruling has been posted.

Submitting on tentative rulings: If all counsel intend to submit on the tentative ruling and do not desire oral argument, please advise the Courtroom Clerk or Courtroom Attendant by calling (657) 622-5215. Please do not call the department unless all parties submit on the tentative ruling. If all sides submit on the tentative ruling and so advise the court, the tentative ruling shall become the court's final ruling and the prevailing party shall give notice of the ruling and prepare an order for the court's signature if appropriate under Cal. R. Ct. 3.1312.

Non-appearances: If no one appears for the hearing and the court has not been notified that all parties submit on the tentative ruling, the court shall determine whether the matter is taken off calendar or the tentative ruling becomes the final ruling. The Court also might make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

APPEARANCES: Department C15 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/media-relations/aci.html. The Court's "Appearance Procedures and Information--Civil Unlimited and Complex" ("Appearance Procedures") and "Guidelines for Remote Appearances" ("Guidelines") also available at https://www.occourts.org/media-relations/aci.html will be strictly enforced. Parties preferring to appear in-person for law and motion hearings may do so by providing notice of in-person appearance to the court and all other parties five (5) days in advance of the hearing. (see Appearance Procedures, section 3(c)1.)

PUBLIC ACCESS: In those instances where proceedings will be conducted only by remote video and/or audio, access will be provided to interested parties by contacting the courtroom clerk, preferably 24 hours in advance. 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.

TENTATIVE RULINGS

Date: April 21, 2025

#	Case Name	Tentative
1	**Model Builders, Inc. vs. Pham** **2024-01382108**	**Demurrer to Amended Complaint** **Defendant Tony Dang's Demurrers to the First Amended Complaint are SUSTAINED as to the sixth, seventh, eighth and ninth causes of action.** Defendant Dang's Request for Judicial is GRANTED as to Nos. 1, 2, 3, 4, 6, 7, 9, and 10 and DENIED as to Nos. 5 and 8. The Court does not take judicial notice of the truth of factual matters asserted in the documents. "A court may take judicial notice of the [e]xistence of each document in a court file but can only take judicial notice of the truth of facts asserted in documents such as orders, findings of fact and conclusions of law, and judgments." *People v. Franklin* (2016) 63 Cal. 4th 261, 280. Plaintiffs allege they did not receive the Demurrer, but on reply Defendant Dang attached the proof of service on Plaintiffs' counsel and Defendant Loc Pham by One Legal. <u>Sixth Cause of Action – Fraud</u> The elements of a cause of action for fraud are: (1) misrepresentation, which includes a concealment or nondisclosure; (2) knowledge of the falsity of the misrepresentation, i.e., scienter; (3) intent to induce reliance on the misrepresentation; (4) justifiable reliance; and (5) resulting damages. (Small v. Fritz Companies, Inc. (2003) 30 Cal.4th 167, 173.) "In California, fraud must be pled specifically; general and conclusory allegations do not suffice." *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645. "This particularity requirement

		necessitates pleading facts which show how, when, where, to whom, and by what means the representations were tendered." *Ibid*. The FAC alleges that Defendant Dang misrepresented his official capacity within Model Builders, Inc. and that he was not a licensed general contractor. (FAC ¶ 95.) He made these misrepresentations without the consent or knowledge of Plaintiffs when he entered into an agreement with Phung Van Tong. (FAC ¶¶ 4, 5.) Such misrepresentations caused a judgment against Plaintiffs Model Builders and Nghia Dao. (FAC ¶ 93.) Plaintiffs were then forced to enter into a settlement agreement with Phung Van Tong when they were not involved in the transaction between Defendant Dang and Tong. (FAC ¶ 94.) In the underlying action, Case No. 30-2018-01036570 filed by Phung Van Tong against Nghia Dao d/b/a Model Builders and Tony Dang ("Previous Action"), the court found that current Plaintiff Dao was a signatory to the agreement with Tong – not Defendant Dang. Even though Defendant Dang was sued in the Previous Action, the court found no liability against him. (RJN, Ex. 6.) Therefore, without additional facts, Plaintiffs cannot state a claim for fraud against Defendant Dang. Moreover, the fraud claim is barred by the statute of limitations. A claim for fraud must be brought within three years. *Code of Civil Procedure* § 338(d). In paragraph 5 of the FAC, Plaintiffs allege Defendant Dang entered into an agreement with Tong without Plaintiffs' consent and authorization. A dispute arose between Tong and Dang and a lawsuit was filed which is has been designated as Previous Action. (FAC ¶¶ 7 and 8.) In the Previous Action the First Amended Complaint (RJN, Exhibit 1) was filed and it became the operative pleading on 4/3/19. Plaintiff Dao, dba as Model Builders, was served with the First Amended Complaint and appeared by filing an Answer on July 29, 2019. (RJN, Exhibit 2) As a result, Plaintiff Dao had knowledge of the fraud which he is now claiming no later than July 29, 2019, because the "fraudulent" agreement that Plaintiff Dao alleges in paragraph 5 of this FAC was attached to the First Amended Complaint in the Previous Action. This action was filed on February 26, 2024, which is more than three years when Plaintiff Dao would have discovered any alleged fraud committed by Defendant Dang.

Accordingly, the demurrer to the sixth cause of action is SUSTAINED.

Seventh Cause of Action – Indemnification

The seventh cause of action for indemnification relies on the viability of the sixth cause of action for fraud. Because the sixth cause of action is barred by the statute of limitations, the claim for indemnification also fails.

Accordingly, the demurrer to the seventh cause of action is SUSTAINED.

Eighth Cause of Action – Unfair Business Competition

The Unfair Competition Law (UCL), *Business and Professions Code* section 17200 et seq., prohibits unfair competition, including unlawful, unfair or fraudulent business acts. *Cel-Tech Comm., Inc. v. Los Angeles Cellular Tele. Co.* (1999) 20 Cal.4th 163, 180. There are three types of UCL claims, those based on the "unlawful" prong, those based on the "unfair" prong, and lastly, those based on the "fraud" prong. *Puentes v. Wells Fargo Home Mortgage Inc.* (2008) 160 Cal.App.4th 638, 643-644.

By proscribing "any unlawful" business practice, section 17200 "borrows" violations of other laws and treats them as unlawful practices that the UCL makes independently actionable. "Virtually any law or regulation - federal or state, statutory or common law - can serve as predicate for a § 17200 'unlawful' violation." *Paulus v. Bob Lynch Ford, Inc.* (2006) 139 Cal.App.4th 659, 681; *Hale v. Sharp Healthcare* (2010) 183 Cal. App. 4th 1373, 1382-1383.

"[A]n 'unfair' business practice occurs when it offends an established public policy or when the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers." [citations omitted.] In general, the 'unfairness' prong 'has been used to enjoin deceptive or sharp practices....'" *South Bay Chevrolet v. General Motors Acceptance Corp.* (1999) 72 Cal.App.4th 861, 886-887.

"The 'fraud' prong of the UCL requires that 'members of the public are likely to be deceived'" by the challenged conduct." *Bardin v.*

Daimlerchrysler Corp. (2006) 136 Cal.App.4th 1255, 1261.

Here, Plaintiffs allege Defendant Dang violated § 17200 when he misrepresented his capacity as a licensed general contractor and entered into a written agreement with Tong to perform acts requiring a license from the State of California. (FAC ¶ 120.) The FAC also alleges Defendant Pham assisted and conspired with Defendant Dang to conduct business without the required contractors license. But as determined above, the agreement was entered into between Plaintiff Dao and Tong – not Defendant Dang and Tong.

Moreover, the statute of limitations for violation of § 17200 is four years. *Business & Professions Code* § 17208. Plaintiffs should have been aware of the alleged fraud no later than July 29, 2019. This action was filed on February 26, 2024, which is more than four years later.

Accordingly, the demurrer to the eighth cause of action is SUSTAINED.

<u>Ninth Cause of Action – Declaratory Relief</u>

To qualify for declaratory relief, an action must present two essential elements: 1) a proper subject of declaratory relief, and 2) an actual controversy involving justiciable questions relating to the rights of obligations of a party. *Lee v. Silveira* (2016) 6 Cal.App.5th 527, 546; *Code of Civil Procedure* § 1060.

The "proper subjects" of declaratory relief are set forth in *Code of Civil Procedure* section 1060 and other statutes, and include contracts and written instruments and statutory interpretation. *Brownfield v. Daniel Freeman Marina Hospital* (1989) 208 Cal.App.3d 405, 410; *Doan v. State Farm General Insurance Co.* (2011) 195 Cal.App.4th 1082, 1095.

Plaintiffs have not pled what declaratory relief they seek. They have identified no contract or other written instrument in which they seek a declaration of their rights.

Moreover, because Plaintiffs have not stated a claim against Defendant Dang, this cause of action also fails.

		Accordingly, the demurrer to the ninth cause of action is SUSTAINED. Plaintiffs have 20 days leave to amend. Demurring party to give notice.
2	**Brown vs. Colony Crest De Ville Community Association** **2023-01324410**	**Demurrer to Amended Complaint** **Defendants Dave Brown and Linda Brown's (Defendants) Demurrers to the Third Amended Complaint (TAC) of Plaintiffs Leland Brown and Kathryn Brown (Plaintiffs) are OVERRULED.** At the pleading stage, the Court must liberally construe the complaint, drawing all reasonable inferences in favor of Plaintiffs' asserted claims. *Liapes v. Facebook, Inc.* (2023) 95 Cal.App.5th 910, 919. "Where, as here, the demurrer is based on a claim that the pleading does not state facts sufficient to constitute a cause of action, if it appears that the plaintiff is entitled to any relief at the hands of the court against the defendants, the complaint will be held good, although the facts may not be clearly stated, or may be intermingled with a statement of other facts irrelevant to the cause of action shown, or although the plaintiff may demand relief to which he is not entitled under the facts alleged. [. . .] In reviewing the legal sufficiency of a demurrer, we are not concerned with plaintiff's ability to prove the allegations of the complaint, or the possible difficulties in making such proof." *Berry v. Frazier* (2023) 90 Cal.App.5th 1258, 1268. <u>1st Cause of Action - Breach of Contract</u> In this cause of action, Plaintiffs allege they reached a settlement of the easement dispute with Defendants at mediation on 8/18/22. Defendants breached the settlement agreement by placing a structure in the easement area which is not able to be temporarily removed and blocks Plaintiffs' access the drainage system within the easement area. (TAC, ¶¶ 24-29.)

Defendants contend this claim is not viable because the element of damage has not been alleged. Specifically, they argue no additional flood damage has occurred since their alleged breach of the settlement agreement, which released all prior claims arising from flood damage.

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." *D'Arrigo Bros. of California v. United Farmworkers of America* (2014) 224 Cal.App.4th 790, 800.

Here, Plaintiffs have adequately alleged the existence of a settlement agreement and Defendants breach thereof by building a non-temporary structure on the easement.

Plaintiffs have also adequately alleged the element of damages, because the alleged obstruction of their alleged right to access the property pursuant to the easement and settlement agreement may satisfy the element of damage. Moreover, Plaintiffs allege they have been harmed by being unable to inspect, access, and maintain the drainage system which is necessary to prevent likely future harm.

Therefore, the demurrer is overruled as to this cause of action.

<u>4th Cause of Action – Nuisance</u>

In this cause of action, Plaintiffs allege Defendants have built structures and laid brick on the easement, which has affected the natural flow of water and precluded access to the drainage system which is necessary to prevent flooding.

Defendants contend this claim lacks merit because there is no allegation any damage has been caused since the August 2022 settlement agreement, which released all prior claims between the parties arising from water damage.

The elements of private nuisance are as follows:

"First, the plaintiff must prove an interference with its use and enjoyment of its property. Second, the invasion of the plaintiff's interest in the use and enjoyment of the land must be substantial, i.e., it caused the plaintiff to suffer substantial actual damage. Third, the interference with the protected interest must not only be substantial, it must also be unreasonable, i.e., it must be of such a nature, duration,

or amount as to constitute unreasonable interference with the use and enjoyment of the land." *Today's IV, Inc. v. Los Angeles County Metropolitan Transportation Authority* (2022) 83 Cal.App.5th 1137, 1176. "With respect to the substantial damage element, the degree of harm is to be measured by the effect the invasion would have on persons of normal health and sensibilities living in the same community. If normal persons in that locality would not be substantially annoyed or disturbed by the situation, then the invasion is not a significant one, even though the [idiosyncrasies] of the particular plaintiff may make it unendurable to him." *Ibid.*

Here, Plaintiffs have adequately alleged facts showing that a reasonable person would be substantially annoyed or disturbed by their inability to access the easement to inspect or maintain the drainage system in order to prevent future flooding. Therefore, the demurrer is overruled as to this cause of action.

6th Cause of Action - Promissory Fraud

In this cause of action, Plaintiffs allege Defendants falsely represented they intended to honor the August 2022 settlement agreement, when in fact Defendants had no intent to honor the settlement agreement and they promptly violated it by installing a non-temporary structure on the easement. Plaintiffs allege Defendants deliberately signed the settlement agreement and made false representations therein to prevent Plaintiffs from inspecting the drainage system, thereby forcing Plaintiffs to sell their home due to fear of flooding.

Defendants argue there are insufficient facts demonstrating their intent not to perform the August 2022 settlement, and damages have been inadequately alleged because no further flooding has occurred since the August of 2022 release of claims.

"Promissory fraud is a subspecies of the action for fraud and deceit. A promise to do something necessarily implies the intention to perform; hence, where a promise is made without such intention, there is an implied misrepresentation of fact that may be actionable fraud. In a promissory fraud action, to sufficiently alleg defendant made a misrepresentation, the complaint must allege (1) that defendant made a representation of intent to perform some future action, i.e., the defendant made a promise, and (2) the defendant did not really have that intent at the time that the promise was made, i.e.,

		the promise was false." *Beckwith v. Dahl* (2012) 205 Cal.App.4th 1039, 1060. "Something more than nonperformance is required to prove the defendant's intent not to perform his promise. If plaintiff adduces no further evidence of fraudulent intent than proof of nonperformance of a promise, he will never reach a jury." *Magpali v.Farmers Group, Inc.* (1996) 48 Cal.App.4th 471, 481. "It is insufficient to show an unkept but honest promise, or mere subsequent failure of performance." *Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Assn.* (2013) 55 Cal.4th 1169, 1183. In the TAC, Plaintiffs have adequately alleged, for purposes of the pleading stage, that Defendants did not intend to honor the agreement and entered the agreement as part of the scheme to force Plaintiffs to sell their property. (TAC, ¶ 107.) Therefore, the demurrer is overruled as to this cause of action. Plaintiffs to give notice. **Case Management Conference** Regardless whether the parties submit on the tentative or not, it appears the case is not at issue as there have been no answers filed to Plaintiff's third amended complaint by any defendant as of this time. Accordingly, the Case Management Conference is continued and an Order to Show Cause hearing re Sanctions for Failure to Enter Defaults as to Each Non-Answering Defendant, pursuant to CRC 3.100(g), is set for 05/12/2025 at 1:45 PM in Department C15.
3	**Griffin vs. Ken Grody Ford** **2023-01329848**	**Demurrer to Amended Complaint** **Defendant Ken Grody Ford's demurrer to the Verified First Amended Complaint ("FAC") filed by plaintiff Tanner Griffin is OVERRULED in part and SUSTAINED in part.** <u>First Cause of Action for Breach of Oral Contract</u> "The elements of a breach of oral contract cause are: '(1) existence of the contract; (2) plaintiff's performance or excuse for nonperformance; (3) defendant's breach; and (4) damages to plaintiff as a result of the

breach.'" *Aton Ctr., Inc. v. United Healthcare Insurance Co.* (2023) 93 Cal.App.5th 1214, 1230.

The FAC alleges two separate oral contracts. First, Plaintiff alleges he "took his vehicle, which was under warranty, to Defendant for repair and Defendant promised to fix the Vehicle and return the Vehicle to Plaintiff." (FAC, ¶ 33.) While the Vehicle was under the custody of Defendant, it was stolen. (FAC, ¶ 8.) Defendants admitted they were at fault for the loss of his Vehicle. (FAC, ¶ 16.) As a result, Plaintiff has been damaged since the Defendant has not returned the repaired Vehicle. (FAC, ¶ 37.)

Second, Plaintiff alleges after the Vehicle was stolen, Plaintiff and Defendant entered into an oral agreement to make Plaintiff whole. (FAC, ¶ 35.) Defendant agreed to provide another replacement vehicle as an option to mitigate the loss along with an extended warranty for this new vehicle. (FAC, ¶ 21.) However, Defendant failed to compensate Plaintiff for the loss of the Vehicle. (FAC, ¶ 37.) As a result, Plaintiff has suffered damages. (FAC, ¶ 42.)

These allegations are sufficient at the pleading stage to withstand demurrer.

Therefore, the demurrer to the first cause of action is OVERRULED.

Third Cause of Action for Fraud

Lazar v. Superior Court (1996) 12 Cal.4th 631, 638, states, "'The elements of fraud, which give rise to the tort action for deceit, are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage.' [Citations.]" "In California, fraud must be pled specifically; general and conclusory allegations do not suffice. [Citations.] 'Thus 'the policy of liberal construction of the pleadings . . . will not ordinarily be invoked to sustain a pleading defective in any material respect.'" [Citation.] [¶] This particularity requirement necessitates pleading *facts* which show how, when, where, to whom, and by what means the representations were tendered.' [Citation.] A plaintiff's burden in asserting a fraud claim against a corporate employer is even greater. In such a case, the plaintiff must 'allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what

		they said or wrote, and when it was said or written.' [Citation.]" *Id.*, at 645. The fraud cause of action is based on allegations that Defendant represented to Plaintiff they would make him whole. (FAC, ¶ 20, 21.) However, the FAC fails to satisfy the specificity requirement. The FAC does not allege who, how, when, where and by what means the representations were tendered. Therefore, the demurrer to the third cause of action is SUSTAINED. Fourth Cause of Action for Conversion: """Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion claim are: (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages ...."" [Citation.]" *Lee v. Hanley* (2015) 61 Cal.4th 1225, 1240. "To prove a cause of action for conversion, the plaintiff must show the defendant acted intentionally to wrongfully dispose of the property of another." *Duke v. Superior Court* (2017) 18 Cal.App.5th 490, 508. The FAC fails to sufficiently allege Defendant engaged in a wrongful act or disposition of property right. The FAC alleges "Vehicle was moved from the secure, locked service area to the unsecured area" and "[k]eys were left in the vehicle and the doors were left unlocked in the unsecured area even though the Service Department of the dealership closes at 3PM." (FAC, ¶¶ 9, 10.) Plaintiff also alleges "Defendants intentionally parked Plaintiff's Vehicle on the street with the keys inside at just the opportune time for an unidentified individual to pass by the Vehicle and steal it." (Complaint, ¶ 55.) Plaintiff's allegation that Defendant "intentionally parked" Plaintiff's Vehicle on the street with the key inside so that it would be stolen is a conclusionary allegation devoid of any factual support. *Ankeny v. Lockheed Missiles and Space Co.* (1979) 88 Cal.App.3d 531, 537 ["It is settled law that a pleading must allege facts and not conclusions."]. Accordingly, the FAC fails to sufficiently allege a wrongful act or disposition of property right. Therefore, the demurrer to the fourth cause of action is SUSTAINED. Plaintiff has 20 days leave to amend. Defendant to give notice.

Motion to Strike Amended Complaint

Defendant Ken Grody Ford's motion to strike portions of the Verified First Amended Complaint filed by plaintiff Tanner Griffin is GRANTED.

Punitive Damages

Civil Code Section 3294, subdivision (a) provides for punitive damages: "In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant."

Section 3294, subdivision (c) defines malice, oppression and fraud as follows: "(1) 'Malice' means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others. [¶] (2) 'Oppression' means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights. [¶] (3) 'Fraud' means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury."

Civil Code Section 3294, subdivision (b) states: "An employer shall not be liable for damages pursuant to subdivision (a), based upon acts of an employee of the employer, unless the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice. With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation."

Here, Plaintiff has not sufficiently alleged malice, oppression or fraud. Further, Plaintiff has not alleged the advance knowledge and conscious

		disregard, authorization, ratification or act of oppression, fraud, or malice on the part of an officer, director, or managing agent of Defendant. Therefore, the motion to strike punitive damages is GRANTED. Plaintiff has 20 days leave to amend. Defendant to give notice. **Case Management Conference** If the parties submit on the tentatives and/or the tentatives become the order of the Court, the Case Management Conference is continued to 11/24/2025 at 08:30 AM in Department C15. If the parties do not submit on the tentatives, the parties through counsel are required to attend the Case Management Conference, either remotely or in the courtroom.
4	**Valley Gardens Property Investments, L.P. vs. Pham** **2023-01355768**	**Motion for Leave to File Amended Complaint** **Plaintiff Valley Gardens Property Investments, L.P.'s Motion for Leave to File an Amended Complaint is GRANTED.** "The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars; and may upon like terms allow an answer to be made after the time limited by this code." *Code of Civil Procedure* § 473(a)(1). "Generally, leave to amend must be liberally granted [citations], provided there is no statute of limitations concern, nor any prejudice to the opposing party, such as delay in trial, loss of critical evidence, or added costs of preparation." *Solit v. Tokai Bank, Ltd. New York Branch* (1999) 68 Cal.App.4th 1435, 1448. Here, the Court granted Defendants' motion to strike punitive damages on 7/29/24, but the order did not specify whether Plaintiff could file an amended complaint. Plaintiff now seeks to file a

		proposed amended complaint which includes additional facts in the conversion claim at paragraphs 16-18 stating that Defendants' employee deliberately took property which legally belonged to Plaintiff. Defendants contend Plaintiff failed to file an opposition to the motion to strike punitive damages, and Defendant will be prejudiced if the amendment is allowed. However, failure to oppose the motion to strike punitive damages does not preclude Plaintiff from seeking leave to amend, and no trial date has been set, so there is sufficient time for the parties to litigate the merits of the punitive damages claim. Defendants further contend the punitive damages claim lacks merit because the alleged facts reflect breach of contract rather than tortious acts. It appears the amended complaint states facts which could support punitive damages at the pleading stage, but Defendants may raise such arguments in a motion to strike if necessary. Plaintiff shall file and serve the proposed amended complaint within 10 days. Plaintiff to give notice. **Case Management Conference** If the parties submit on the tentative and/or the tentative becomes the order of the Court, the Case Management Conference is continued to 11/24/2025 at 08:30 AM in Department C15. If the parties do not submit on the tentative, the parties through counsel are required to attend the Case Management Conference, either remotely or in the courtroom.
5	**Manighalam vs. Eidemiller** **2023-01342618**	**Motion to Be Relieved as Counsel of Record** **Motion to Be Relieved as Counsel of Record** **The motion of attorney Naveen Madala and Madala Law to withdraw as attorney of record for Plaintiffs Shahram Manighalam and Shirin Manighalam is GRANTED. *Code of Civil Procedure* § 284, *California Rules of Court,* rule 3.1362.** Plaintiffs oppose the motion, arguing they will be prejudiced by the withdrawal and there is no financial conflict or irreconcilable

		difference. The next hearing date is not until July 15th, 2025, and trial is set for October 27, 2025, so Plaintiffs have sufficient opportunity to seek new counsel. Moreover, the reply declaration of attorney Madala states there have been "irreconcilable and severe conflicts" between counsel and the clients and that "professional and ethical considerations require a mandatory withdrawal..." (Madala Decl., ¶ 2.) Counsel has already been relieved in the underlying case brought by the HOA, and the clients have filed a misconduct complaint with the State Bar. (Id. at ¶ 3.) Counsel's declaration describes sufficient grounds for granting the motion Attorney will be relieved as counsel of record for clients effective upon filing of a proof of service of the signed order on client. Counsel is to re-submit the Order Granting Attorneys Motion to be Relieved as Counsel to include the current/last known address and telephone number of the client. Moving attorney is to give notice.
6	**Guillermo Salanueva vs. General Motors, LLC** **2022-01287084**	**Motion to Compel Production** **Plaintiff Jose Luis Guillermo Salanueva's motion to compel further responses to Plaintiff's Request for Production of Documents, Set One, Nos. 7, 10, 16-19, 21, 34, 38, 41-42, 51. is CONTINUED to June 9, 2025, at 01:45 PM in Department C15.** **Further, an Order to Show Cause Hearing re: Why Sanctions Pursuant to *Code of Civil Procedure* section 177.5 Should Not Issue for Erskine Law's Failure to Meet and Confer in Compliance with the Court's February 3, 2025 Order is scheduled for June 9, 2025, at 01:45 PM in Department C15.** Counsel for the parties are to meet and confer as previously ordered no later than May 2, 2025. If after meeting and conferring further and in good faith, items remain in dispute, counsel for Plaintiff and counsel for Defendant are to file a Joint Statement describing the items in dispute and the parties' positions no later than 9 court days before the hearing. If the parties resolve all their disputes, Plaintiff is to promptly file a notice of withdrawal of the motion.

		If Defense counsel again fails to meet and confer as ordered, the Court will consider imposition of further sanctions, including but not limited to monetary sanctions. Plaintiff to give notice.
7	**Rise Solution, Inc. vs. Vyapay, Inc.** **2023-01345788**	**Motion to Compel Production** **Plaintiff Rise Solution, Inc.'s unopposed Motion to Compel Defendant Vyapay, Inc. to Provide Further Responses to Requests for Production of Documents (Set One) and Further Responses to Special Interrogatories (Set One); and for Monetary Sanctions is GRANTED. Plaintiff's request for sanctions is GRANTED in the reduced amount of $1,831.50.** On June 28, 2024, Plaintiff propounded the following discovery requests to Defendant: (1) Requests for Production of Documents to Vyapay (Set One); (2) Request for Special Interrogatories to Vyapay (Set One). (Marcus Decl. ¶¶ 4-6, Exs. A, B.) Plaintiff thereafter granted Defendant an extension to serve responses to August 9, 2024. On August 9, 2024, Defendant electronically served unverified responses consisting of objections only. (Id., ¶¶ 7-10, Exs. C, D.) On August 15, 2024, Plaintiff sent a meet and confer letter requesting further responses by August 25, 2024. (Id. ¶¶ 11-12, Ex. E.) Defendant failed to respond or to serve further responses. (Id., ¶ 13.) As an initial matter, Plaintiff complains Defendant's objection-only responses were unverified. Although the *Code of Civil Procedure* refers to verified responses (§§ 2030.300(c), 2031.310(c)), objection-only responses need not be verified (§§ 2030.250, 2031.250). <u>*Special Interrogatories*</u> A party may move to compel further responses to interrogatories where the party deems the responses are evasive or incomplete, an exercise of the option to produce documents is unwarranted or the required specification of those documents is inadequate, and/or an objection in the response is without merit or too general. *Code of Civil Procedure* § 2030.300(a); *Best Products, Inc. v. Superior Court*

(2004) 119 Cal.App.4th 1181, 1189-1190 [motion to compel proper to challenge "boilerplate" responses].) The motion must be accompanied by a separate statement. *California Rules of Court*, Rule 3.1345(a).

If a timely motion has been filed, the responding party bears the initial burden of justifying any objection or failure fully to answer the interrogatories. *Coy v. Superior Court* (1962) 58 Cal.2d 210, 220-221; *Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255.

The court finds the motion was timely filed on September 16, 2024. *Code Civ. Proc.*, §§ 2030.300(c), 1013, 1010.6(a)(3)(B), 2016.050.

The court also finds Defendant's responses are not in conformity with the Code in that they all contain the same boilerplate objections, without any substantive responses. Since Defendant failed to oppose the motion, it has not met its initial burden of justifying its objections and failure to fully respond to the interrogatories. Accordingly, Defendant's objections are OVERRULED.

Therefore, the motion as to the Special Interrogatories is GRANTED.

Request for Production of Documents

A party may move to compel further responses to a demand for inspection, copying, testing, or sampling on the grounds that ta statement of compliance with the demand is incomplete, a representation of inability to comply is inadequate, incomplete, or evasive, and/or an objection in the response is without merit or too general. *Code Civ. Proc.* § 2031.310(a).

A motion to compel further responses to a request for production and inspection of documents must (1) "set forth specific facts showing good cause justifying the discovery sought by the demand" and (2) "be accompanied by a meet and confer declaration" showing a reasonable and good faith attempt to resolve the issues informally. *Code Civ. Proc.* §§ 2031.310(b); 2016.040. To establish good cause, the moving party must show both relevance to the subject matter and specific facts justifying the discovery, e.g. why such information is necessary for trial preparation or to prevent surprise at trial. *Kirkland v. Superior Court* (2002) 95 Cal.App.4th 92, 98.) If good cause is shown, the burden shifts to the opposing party to justify any objections made to the disclosure. *Ibid.*

		Here, Plaintiff seeks 9 categories of documents which seek, respectively, the reports made by the Defendant that reflect the accumulated funds for Plaintiff's reserve account, and if there are any reports in Defendant's custody showing the consumers payments that were declined by the banks to justify the withholding of the reserve funds. Plaintiff's Motion and Separate Statement have established good cause for the discovery sought by setting forth specific facts showing the discovery is necessary for Plaintiff to evaluate Defendant's denials in its answer to the complaint, prepare for trial, and appropriately prosecute this case. Defendant's responses are not in conformity with the Code in that they all contain the same boilerplate objections, without any substantive responses. Since Defendant failed to oppose the motion, it has not met its initial burden of justifying its objections and failure to provide substantive responses. Accordingly, Defendant's objections are OVERRULED. Therefore, the motion is as to the Request for Production of Documents is GRANTED. <u>*Sanctions*</u> Plaintiff seeks sanctions against Defendant and/or its counsel in the amount of $2,079.00. This amount consists of 3.2 hours preparing the motion and meet and confer efforts, 1 hour anticipated to review the opposition, prepare a reply, and preparing for and attending the hearing (totaling 4.2 hours) @ $495 per hour. (Marcus Decl., ¶¶ 14-15.) Given the facts outlined in detail above, Plaintiff is entitled to the sanctions requested, less 0.5 hour/$247.50 to review an opposition and prepare a reply. Defendant Vyapay, Inc. is ORDERED to served further verified responses, without objections, to Plaintiff's Requests for Production of Documents (Set One) and Special Interrogatories (Set One) within 20 days. Defendant is ORDERED to pay monetary sanctions to Plaintiff in the amount of $1,831.50. Plaintiff to give notice to <u>both</u> Defendants (Vyapau, Inc. and Wain Swapp) AND Sutton & Murphy.

8	**Gomez vs. Harper's Pharmacy, Inc.** **2023-01354034**	**Motion to Compel Production** Off Calendar Request for Dismissal with Prejudice-Entire Action filed on 04/08/2025
9	**Brown vs. General Motors, LLC** **2024-01413627**	**Motion to Compel Production** **Plaintiff Jake Brown's Motion to Compel Further Responses by Defendant General Motors, LLC's to Request for Production of Documents, Set One, is CONTINUED to June 16, 2025 at 01:45 PM in Department C15.** Plaintiff moves pursuant to *Code of Civil Procedure* § 2031.310 for an order compelling Defendant to provide further responses to Request for Production of Documents Nos. 1-9, 13-21, 24, 25, 27, 33-38, 41-51, and 53-93. Before filing a motion to compel further responses to an inspection demand, the moving party must engage in a good faith effort to informally resolve the dispute and file a declaration documenting such efforts with the motion. *Code Civ. Proc.* §§ 2016.040, & 2031.310(b)(2). Here, the Declaration of Erik Whitman fails to demonstrate any meaningful meet and confer prior to filing the motion. Counsel for Plaintiff sent one meet and confer letter and failed to respond to Defendant's letter or address its concerns regarding the discovery. Plaintiff's counsel did not even bother to call opposing counsel. The parties/counsel have not engaged in sufficient attempts to meet and confer. *Code Civ. Proc.,* § 2016.040; *Clement v. Alegre* (2009) 177 Cal.App.4th 1277, 1293 [Discovery Act requires moving party to declare he or she has made a serious attempt to obtain an informal resolution of each issue; rule designed to encourage parties to work out their differences informally to avoid necessity for formal order, which lessens burden on court and reduces unnecessary expenditure of resources by litigants]; *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 402 [central precept of Discovery Act that discovery be self-executing].

		The parties/counsel are ORDERED to engage in additional attempts to meet and confer in person, telephonically, or over remote videoconferences (not email) no later than May 9, 2025. The parties/counsel are ORDERED to file a JOINT STATUS REPORT indicating whether court intervention remains the only option to resolve this discovery dispute, and if so, why, no later than 9 court days before the hearing. Failure to comply with this order may result in sanctions against the non-compliant party and/or their counsel pursuant to *Code of Civil Procedure* section 177.5. The parties are strongly encouraged to resolve their discovery dispute without the need for court intervention. Plaintiff to give notice.
10	**Biofire Diagnostics LLC vs. Pathlab Services Inc.** **2022-01262822**	**Motion for Sanctions for Failure to obey Court Order** **Plaintiff/Cross-Defendant BioFire Diagnostics' Motion for Sanctions is GRANTED in part and DENIED in part. Terminating sanctions are GRANTED against Defendant/Cross-Complainant PathLab Services, Inc. PathLab's Cross-Complaint is dismissed and its answer to BioFire's Complaint is stricken.** The court may impose monetary, issue, evidence, or terminating sanctions on a party who misuses the discovery process. *Code of Civil Procedure* § 2023.030(a)-(d).) Failing to respond to discovery and disobeying a court order are misuses of the discovery process. *Code Civ. Proc.* § 2023.010(d)(g). Here, PathLab has failed to provide responses and pay the sanction as ordered by this Court on 7/15/24. Thus, PathLab has failed to respond to discovery and disobeyed a court order. Therefore, PathLab's conduct is sanctionable. <u>Nonmonetary Sanctions</u> PathLab's conduct warrants nonmonetary sanctions. PathLab has not responded to either the Motion to Compel or this Motion. Monetary

		sanctions failed to compel any action from PathLab, thus, nonmonetary sanctions are appropriate. Terminating sanctions are appropriate when the "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." *Mileikowsky v. Tenet Healthsystem* (2005) 128 Cal.App.4th 262, 279. "[A]bsent unusual circumstances, such as repeated and egregious discovery abuses, two facts are generally prerequisite to the imposition of a nonmonetary sanction. There must be a failure to comply with a court order and the failure must be willful." *Lee v. Lee* (2009) 179 Cal.App.4th 1553, 1559. PathLab's counsel was present at hearing on 7/15/24 when the Court ordered PathLab to provide responses and pay sanctions. (ROA 135.) Counsel was also served with the ruling. (ROA 137.) Thus, PathLab knew of the order and failed to comply. Its failure to comply with this Court's order is willful. Additionally, PathLab has failed to communicate with Biolab's counsel since 2023. (Stockstill Decl., ¶¶ 11-12.) Further, PathLab has not opposed this Motion seeking terminating sanctions. If the threat of terminating sanctions being imposed did not compel PathLab to participate in this action, less severe sanctions would not compel compliance. Therefore, terminating sanctions are appropriate. Accordingly, the Court dismisses PathLab's Cross-Complaint and strikes its answer to the Complaint. <u>Monetary Sanctions</u> "[S]anctions may not be imposed solely to punish the offending party." *Kwan Software Engineering, Inc. v. Hennings* (2020) 58 Cal.App.5th 57, 75. Imposing additional monetary sanctions where the answer to the complaint is stricken and the cross-somplaint is dismissed would serve no useful purpose. Thus, Biolab's request for monetary sanctions is denied. Moving party to give notice.

11	**Chavos & Rau, APLC vs. USA National Title Company Inc.** **2019-01085921**	**Defendant/Appellant's Motion to Use a Settled Statement** **Defendant/Appellant USA National Title Company, Inc.'s (Defendant) Motion to Use a Settled Statement is DENIED.** Defendant moves for an Order permitting the use of a Settled Statement on appeal instead of a Reporter's Transcript, pertaining to the oral proceedings which comprised pre-trial motions, trial proceedings, and post-trial motions. Defendant also moves the Court for a deadline for submitting the proposed Settled Statement. Under California law, "[a] settled statement operates to make up for the absence of a reporter's transcript of oral proceedings, and not to supply what was omitted from those proceedings." *Quintero v. Tilton* (C.D. Cal. 2008) 588 F.Supp.2d 1121, 1128 fn. 5 [citing *People v. Griffin*, 33 Cal.4th 536 (2004) 554 n. 4 (citations omitted)]. "[T]he purpose of a settled statement is to provide the appellate court with a record of trial court proceedings for which there is no formal contemporary record, commonly because the court reporter's notes have been lost … or because a court reporter was not present to record the proceedings…. In other words, the settled statement is used for filling 'gaps in the [appellate] record…. Consistent with this limited purpose, the settled statement is 'intended to ensure that the record transmitted to the reviewing court preserves and conforms to the proceedings actually undertaken in the trial court,' not to 'allow parties to create proceedings, make records, or litigate issues which they neglected to pursue earlier.'" *People v. Anderson* (2006) 141 Cal.App.4th 430, 440. This motion to use Settled Statement is brought under *California Rules of Court*, Rule 8.137. Defendant seeks to use a Settled Statement as the designated oral proceedings were not reported by a court reporter. Under *CRC* Rule 8.137, Defendant did not need to file the instant Motion. Pursuant to Rule 8.137(a)(1), Defendant simply needed to indicate in the notice designating the record on appeal that it wanted to use a settled statement as the record of the oral proceedings, which Defendant did. (ROA 846).

		However, once Defendant elected in its notice designating the record on appeal under *CRC* Rule 8.121 to use a Settled Statement, *CRC* Rule 8.137(c) requires the Defendant to serve and file a proposed statement in the superior court within 30 days after filing its notice.; i.e., Defendant was required to file its proposed settled Statement within 30 days of 12/4/24—or by 1/3/2025. It did not. Plaintiff contends the motion is untimely. Therefore, Plaintiff concludes Defendant has forfeited its right to proceed on appeal by way of a Settled Statement. Defendant argues it timely filed the instant Motion. On January 9, 2025, the Appellate Court filed its Amended Notice of Default, the instant Motion was required to be filed within 15 days of that issuance. Defendant contends it timely filed the Motion to Use Settled Statement 14 days later, on January 23, 2025. Defendant provides no legal authority for these purported deadlines. Regardless, after failing to timely serve and file the proposed Settled statement with the superior court, Defendant now seeks a second bite at the apple under *CRC* Rule 8.137(b)(2). *CRC* Rule 8.137(b)(2) provides no relief. First, 8.137(b)(2) states a motion to use a settled statement instead of a reporter's transcript may be filed "for reasons <u>other than</u> those listed in (1)" (emphasis added). 8.137(a)(1)(A) lists "[t]he designated oral proceedings in the superior court were not reported by a court reporter"—the specific reason claimed by Defendant for seeking a settled statement. Therefore, there is no <u>other than</u> reason. Second, a motion filed under 8.137(b)(2): "(A)…must be supported by a showing that: (i) A substantial cost saving will result and the statement can be settled without significantly burdening opposing parties or the court…" Defendant seeks to NOW create a settled statement for what appears to be at least 27 different days from April 3, 2024, to November 12, 2024—to include 15 days of trial between May 28, 2024 through July 3, 2024. Some of these dates are more than one year ago. Such a request would greatly burden the opposing party and the Court. Accordingly, the motion is DENIED.

		Responding party Plaintiff to give notice.
12	**Kaneshiro vs. City of Fullerton** **2024-01372395**	**Motion for Determination of Good Faith Settlement** **Cross-Defendant Louise Jenkins' Motion for Determination of Good Faith Settlement is CONTINUED to 06/02/2025 at 01:45 PM in Department C15.** This Motion has previously been continued twice and a prior motion for determination of good faith settlement was denied due to Cross-Defendant failing to provide sufficient evidence of the proportion of liability and her financial condition. Most recently on 2/3/25, the Court continued the Motion to allow the City to conduct discovery regarding Cross-Defendant's financial condition, specifically related to her rental income and equity in a Pomona house. Cross-Defendant has not filed any new papers since the last hearing. The City filed an opposition and declaration. Cross-Defendant's deposition was noticed for 4/22/25 including requests for discovery regarding her financial condition. (Gridley Decl., Ex. 5.) Neither party has submitted any expert testimony regarding each parties' proportionate liability. The City submitted the police report as part of Gridley's declaration; however, the police report is not sufficient evidence on which to base a determination of liability. Moving party may submit any additional evidence including evidence regarding her claims of each parties' proportionate liability by 5/12/25. Any opposition including evidence regarding financial condition and claimed proportionate liability is due by 5/19/25. Moving party to give notice.

13	**Carrillo vs. Regents of The University of California** **2024-01378003**	**Motion for Summary Judgment and/or Adjudication** **Defendant The Regents of the University of California' Motion for Summary Judgment or, in the Alternative, Motion for Summary Adjudication of Issues is CONTINUED to 10/20/2025 at 01:45 PM in Department C15.** If the opposing party does not make the requisite showing for a continuance pursuant to *Code of Civil Procedure* section 437c(h), the court may still grant a continuance in its discretion where good cause is shown. *Lerma v. County of Orange* (2004) 120 Cal.App.4th 709, 716; *Johnson v. Alameda County Med. Ctr.* (2012) 205 Cal.App.4th 521, 533. Instead of filing an opposition, Plaintiff's counsel filed a request for a continuance. The reason for the request is that there has been a breakdown in the attorney-client relationship due to Plaintiff's counsel's inability to communicate with Plaintiff and, as a result, counsel filed a Motion to be Relieved as Counsel on 2/18/25, which is scheduled to be heard on 8/11/25. Plaintiff's counsel therefore requests the Court continue the hearing date on Defendant's Motion for Summary Judgment to 11/21/25, or a date thereafter, so that Plaintiff may be afforded time to retain new counsel and enable new counsel to come up to speed with the facts of this case and meaningfully oppose Defendant's Motion for Summary Judgment. In response, Defendant filed an objection to the request arguing Plaintiff's counsel has shown no activity or intent to have the Motion to Be Relieved heard on an earlier date by filing an *ex parte* application to advance the hearing on the Motion to be Relieved to an earlier date and has improperly waited until just before Plaintiff's Opposition papers are due to instant motion to file this requested continuance. Defendant also argues the notice is improper because it was filed without giving adequate notice to the defense. Defendant also complains Plaintiff's counsel did not provide appropriate facts to support the requested continuance. The timeline of relevant events is as follows: --08/22/24 Plaintiff deposed and represented by counsel --01/28/25 MSJ filed --02/18/25 Motion to be Relieved filed --04/01/25 Continuance request filed

		--04/21/25 MSJ hearing --08/11/25 Scheduled Motion to be Relieved hearing --09/29/25 Jury Trial --11/21/25 Requested continued MSJ hearing date While it is concerning Plaintiff's counsel has not done anything to bring this issue to the court's attention prior to filing the instant request, it is not a reason to deny the request. For instance, had Plaintiff sought a continuance under *Code of Civil Procedure* section 473c(h) to conduct additional discovery, the request could have been made on or before the date the opposition was due. The instant request was when the opposition was due. Also, it is also unclear if counsel's inability to communicate with Plaintiff possibly interfered with counsel's ability to oppose the motion. Additional information is needed. Therefore, the hearing on Defendant's motion is continued to 10/20/2025 at 01:45 PM in Department C15. On the Court's own motion, the Jury Trial set for 09/29/2025 is continued to 03/16/2026 at 09:00 AM in Department C15. The parties are to take note of Orange County Local Rule 317 and the policies and procedures in effect for Department C15. All dates to work off the new trial date. Defendant to give notice.