TENTATIVE RULINGS

DEPT W15

JUDGE RICHARD Y. LEE

Date: April 17, 2025

Civil Court Reporters: The Court does not provide court reporters for law and motion hearings. Please see the Court's website for rules and procedures for court reporters obtained by the Parties.

Tentative Rulings: The Court will endeavor to post tentative rulings on the Court's website by 5 p.m. on Wednesday. Do NOT call the Department for a tentative ruling if none is posted. **The Court will NOT entertain a request for continuance or the filing of further documents once a tentative ruling has been posted.**

Submitting on the Tentative Ruling: If ALL counsel intend to submit on the tentative ruling and do not wish oral argument, please advise the Court's clerk or courtroom attendant by calling (657) 622-5915. 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 Ruling and prepare an Order for the Court's signature if appropriate under CRC 3.1312. **Please do not call the Department unless ALL parties submit on the tentative ruling.**

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 whether the tentative ruling shall become the final ruling.

Remote Appearances: Department W15 permits non-evidentiary proceedings, including law and motion, to be conducted remotely. *If you are appearing remotely*: (1) all counsel and self-represented parties appearing for such hearings **must,** prior to 1:30 p.m. on Thursday, check-in online via the Court's civil video appearance website at https://www.occourts.org/media-relations/civil.html; (2) participants will then be prompted to join the courtroom's Zoom hearing session; and (3) the calendar will be displayed and participants will then be instructed to rename their Zoom name to include their hearing's calendar number. Check-in instructions and an instructional video are available on the court's website. Attorneys **shall** comply with Local Rule 375(c) which governs "Decorum for In-Person and Remote Court Appearances." (https://www.occourts.org/system/files/hr/div3.pdf.)

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100	Foster vs. Leong 24-01405974	Defendants, Joy Marie Leong ("Joy") and Madeline Li Leong ("Madeline") ("Moving Defendants"), demur to the first through seventh causes of action of the Complaint of Plaintiff, Gerald Foster, as an individual and as Co-Trustee of the Foster Living Trust dated May 15, 2006 ("Plaintiff" or "Jerry").

Plaintiff's Complaint asserts seven causes of action. The first through fifth, and seventh causes of action are asserted against Joy. The fifth through seventh causes of action are asserted against Madeline.

As a threshold matter, the Court notes that the opposing points and authorities is 17 pages long, and is, thus, 2 pages over the 15-page limit. The Court disregards pages 20-21. (California Rules of Court, rule 3.1113(d), (g).)

Stay
Initially, Moving Defendants contend that this Court should exercise its broad discretion under Code of Civil Procedure section 128(8) and stay this action pending determination in the probate action as the pending conservatorship action will determine whether Jerry is competent to bring this lawsuit.

Plaintiff contends that a stay should be sought through a motion rather than a demurrer, as the latter is not designed to address issues requiring factual analysis or evidence beyond the pleadings, and that Moving Defendants improperly offer evidence of additional facts which should not be considered.

The Court has the power to control its process and orders so as to make them conform to law and justice. (Code Civ. Proc. § 128(a)(8).) " 'California courts have inherent power to "... control [their] proceedings." ' (*Vidrio v. Hernandez* (2009) 172 Cal.App.4th 1443, 1454, 92 Cal.Rptr.3d 178, *quoting Bauguess v. Paine* (1978) 22 Cal.3d 626, 637, 150 Cal.Rptr. 461, 586 P.2d 942.) "From their creation by article VI, section 1 of the California Constitution, California courts received broad inherent power 'not confined by or dependent on statute.' [Citations.] This inherent power includes 'fundamental inherent equity, supervisory, and administrative powers, as well as inherent power to control litigation.' [Citation.]" (*Stephen Slesinger, Inc. v. Walt Disney Co.* (2007) 155 Cal.App.4th 736, 758.)

It does not appear to the Court that an opposition to a demurrer is the proper procedural vehicle to seek a stay of this action

		pending resolution of the conservatorship action. The Complaint alleges that on or about January 3, 2024, Joy filed a Petition for Conservatorship of Person and Estate of Plaintiff. (Complaint, ¶ 50.) However, no evidence regarding the conservatorship proceeding that could be considered on a demurrer is submitted, including but not limited to the status of the conservatorship proceeding and the issues in that proceeding and the probate actions, to support Moving Defendants' assertions that the pending conservatorship proceeding will determine whether Plaintiff is competent to bring this lawsuit, and that the trust action will determine the proper allocation of the Trust estate. *First Cause of Action for Breach of Fiduciary Duty – Duty of Good Faith* Moving Defendants contend that the Complaint is entirely uncertain because (1) the Complaint is brought by Jerry in his individual capacity and as a co-trustee of the Foster Living Trust dated May 15, 2006 ("Trust"), but the Complaint does not indicate which causes of action Jerry is supposedly pursing individually and which are brought as co-trustee of the Trust, (2) no trust instruments are attached to the Complaint, (3) the Complaint does state in which capacity Joy is being sued, and (4) the cause of action references a power of attorney Jerry executed in 2020, but it is not attached to or described in the Complaint, and it is uncertain what powers Joy was provided. They also contend that a cause of action for breach of fiduciary duty is not stated as the Complaint fails to articulate a breach in light of the lack of clarity surrounding the power of attorney. Plaintiff contends that the cause of action is not uncertain because it is evident from the Complaint that: (1) any claims regarding the Trust property are brought in Plaintiff's capacity as trustee, and any claims otherwise are brought in his capacity as an individual; (2) Joy's acts committed between October 15, 2020 and September 7, 2023, were committed in her capacity as power of attorney, and that Joy's acts from September 7, 2023 and on, were done in either her capacity as power of attorney or trustee. (Complaint, ¶¶ 16, 19, 20, 30, 68.) With regards to what capacity Joy is

		being sued, Plaintiff contends that he may plead alternative or inconsistent allegations when there is uncertainty about the facts or legal theories, including pleading in different capacities, as long as the claims arise from the same general set of facts, and that Plaintiff does not know whether Joy purportedly acted as trustee or power of attorney when she committed the acts alleged in the Complaint. Plaintiff additionally contends that Plaintiff does not have to attach a copy of the trust documents pursuant to Probate Code section 18100.5 and that the Complaint alleges that Joy informed Plaintiff that she took a copy of the Trust so he has no copy of his own in his possession. (Complaint ¶ 46.) Plaintiff further contends that a copy of the Power of Attorney does not need to be attached to the Complaint, and Joy's powers under the Power of Attorney need not be set out in the Complaint because the Complaint alleges that under Probate Code section 39, an attorney-in-fact under a power of attorney is a fiduciary and thus owes fiduciary duties to her principal. Lastly, Plaintiff contends that this cause of action is thus, sufficiently pled. Here, the Complaint alleges that on or about May 16, 2006, Plaintiff and his wife established the Trust. (Complaint, ¶ 16.) It is alleged that on or about August 24, 2015, Plaintiff's wife passed away, and that thereafter, Plaintiff was the sole Trustor and Trustee of the Trust. (Complaint, ¶ 22.) The Trust's properly includes, Southern California Industries, Inc. ("SCI"), and monies that are and/or were held in the Trust's and SCI's bank accounts. (Complaint, ¶ 19.) It is alleged that on or about October 15, 2020, Plaintiff executed a Durable Power of Attorney designating Joy. (Complaint, ¶ 68.) It is alleged that in or around 2022, Joy took on the task of paying Plaintiff's bills using the funds in Plaintiff's Wells Fargo Trust, personal, and corporate bank accounts (collectively, "WF Accounts"), and that Joy would routinely have Plaintiff sign several blank checks, which she told him would be used to pay Plaintiff's bills, and that on or about May 17, 2023, Joy's access to the WF Accounts and online account access were frozen. (Complaint, ¶¶ 24, 25, 27.) Plaintiff's niece, Mona Busak ("Mona") took Plaintiff to a Wells Fargo branch location where a Wells

		Fargo bank informed them that the WF Accounts were froze due to suspicious activity where seven checks has been written to Joy, Lucille Ann Wang aka Lucille Ann Leong ("Lucille"), and Madeline, individual and/or in their capacities as trustees for various trusts, in an amount totaling approximately $136,000. (Complaint, ¶ 28.) On September 7, 2023, Joy used the Wells Fargo Bank's notary to notarize a Resignation of Trustee and Acceptance by Successor Trustee that removed Plaintiff as Trustee of the Trust and designated Joy as the Successor Trustee such that she became the purported Trustee of the Trust. (Complaint, ¶¶ 30, 69.) Although the Complaint does not clearly set forth in what capacity Plaintiff brings each cause of action, this does not render the Complaint so incomprehensible that Moving Defendants cannot reasonably respond. Similarly, while the Complaint does not specify in what capacity Joy is being sued as to each cause of action, the Complaint is not so incomprehensible that Moving Defendants cannot respond. " 'When a pleader is in doubt about what actually occurred or what can be established by the evidence, the modern practice allows that party to plead in the alternative and make inconsistent allegations.' [Citation.] This doubt can arise when plaintiffs are certain of their legal rights but unsure about some of the ultimate facts or when plaintiffs are reasonably certain of the fact but are unsure of their legal rights. [Citation.] To accommodate these uncertainties, plaintiffs can generally plead 'alternative factual allegations relying on alternative legal theories.' [Citation.]" (*Batta v. Hunt* (2024) 106 Cal.App.5th 295, 304.) In reply, Moving Defendants contend that this is not an issue of alternative or inconsistent theories but that there are distinct claims, i.e., claims brought by or against a trustee relating to trust property and claims brought by an individual relating to non-trust property, improperly combined into a single cause of action. This specific argument is not raised in the demurrer but appears related to the argument about the applicability of Probate Code section 17000 Moving Defendants contend that any matters concerning the Trust

		including claims by Plaintiff as trustee, or claims against Joy in her capacity as trustee, are subject to the exclusive jurisdiction of the probate court pursuant to Probate Code section 17000, and that this point is not disputed and therefore conceded by Plaintiff. Probate Code section 17000(a) states, "[t]he superior court having jurisdiction over the trust . . . has exclusive jurisdiction of proceedings concerning the internal affairs of the trust." Moving Defendants provide no explanation for the meaning of "internal affairs of the trust," and do not show that the claims here concern the internal affairs of the trust. Additionally, Probate Code section 17000(b)(3) states that the superior court having jurisdiction over the trust has concurrent jurisdiction of actions and proceedings involving trustees and third persons. The instant case involves claims by and against trustees and third persons such as Madeline and Lucille. As a result, Moving Defendants do not show that claims brought by or against a trustee relating to trust property in this case are entirely distinct and are subject to the exclusive jurisdiction of the probate court. Lastly, Moving Defendants cite to no authority providing that Plaintiff must attach a copy of the Trust documents or a copy of the Power of Attorney. The Complaint sufficiently alleges that Joy owed Plaintiff a fiduciary duty as Plaintiff's attorney in fact beginning on or about October 15, 2020, and as the purported Trustee of the Trust on or about September 7, 2023. (Complaint, ¶¶ 68-71.) Based on the foregoing, the demurrer to the first cause of action is OVERRULED. *Second Cause of Action for Breach of Fiduciary Duty – Duty of Loyalty* Moving Defendants contend that the second cause of action is essentially identical to the first cause of action and suffers from all the same deficiencies, as well as that the second cause of action is duplicative of the first cause of action. Plaintiff contends that the second cause of action is sufficiently pled and is not uncertain for all of the same reasons discussed above,

		and that it is pled in the alternative, which is permissible. The second cause of action is not uncertain, as discussed above. The Complaint alleges that Joy, as Plaintiff's attorney in fact, and as purported Trustee of the Trust, owed Plaintiff the duty of undivided loyalty. (Complaint, ¶¶ 76-79.) As the first cause of action is based on the duty of good faith, the Court finds that the second cause of which is based on the duty of loyalty is not duplicative of the first cause of action. As set forth above, Plaintiff may plead alternative legal theories. " 'Given that alternative legal theories may be pled, 'it is not proper for the judge to force upon the plaintiff an election between those causes which he has a right to plead.' [Citation.]" (Batta v. Hunt (2024) 106 Cal.App.5th 295, 304.) The demurrer to the second cause of action is OVERRULED. *Third Cause of Action for Fraud – Intentional Misrepresentation* Moving Defendants contend that the third cause of action is uncertain for the same reasons stated above. They also contend that the third cause of action is not pleaded with the requisite specificity because the Complaint does not plead facts showing how, when, where, to whom, and by what means the alleged representations were tendered, and makes only conclusory allegations, as well as that the Complaint fails to allege with specificity intent to defraud, justifiable reliance and/or damages since Joy had power of authority. Plaintiff contends that the third cause of action for fraud is not uncertain, as discussed above. Plaintiff also contends that the third cause of action is pled with the requisite specificity, and that paragraph 25 establishes the timeframe in which Joy repeatedly made the statement, and that the statement was made orally in person, as Plaintiff signed the checks that were then given over to Joy. Plaintiff also contends that regardless of what powers were enumerated in the Power of Attorney, Joy had a statutory duty to exercise authority subject to her fiduciary duties.

		" 'The elements of fraud that will give rise to a 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.' " (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 974.) To survive demurrer, plaintiff must plead facts that "show how, when, where, to whom, and by what means the representations were tendered." (*Hamilton v. Greenwich Investors XXVI, LLC* (2011) 195 Cal.App.4th 1602, 1614.) "Fraud must be pleaded with particularity. General and conclusory allegations are inadequate. [Citation.]" (*Laukhart v. El Macero Homeowners Assn.* (2023) 92 Cal. App. 5th 889, 903.) "Fraud must be specifically pleaded; a general pleading of the legal conclusion of fraud is insufficient. Every element of the cause of action must be alleged in full, factually and specifically. [Citation.]" (*Tindell v. Murphy* (2018) 22 Cal.App.5th 1239, 1249.) "This pleading requirement of specificity [for a fraud cause of action] applies not only to the alleged misrepresentation, but also to the elements of causation and damage." (*Moncada v. West Coast Quartz Corp.* (2013) 221 Cal.App.4th 768, 776.) Less specificity is "required of fraud claims 'when "it appears from the nature of the allegations that the defendant must necessarily possess full information concerning the facts of the controversy," [citation]; "[e]ven under the strict rules of common law pleading, one of the canons was that less particularity is required when the facts lie more in the knowledge of the opposite party . . . ." ' [Citation.]" (*Alfaro v. Community Housing Improvement System & Planning Assn., Inc.* (2009) 171 Cal.App.4th 1356, 1384.) The third cause of action is not uncertain, as discussed above. With regards to the sufficiency of the allegations, the Complaint alleges that "[s]ince 2022, Joy would routinely have Plaintiff sign several blank checks, which she told him would be used to pay Plaintiff's Bills," and that "[i]n or about May 2022 through December

		2023, Joy knowingly misrepresented to Plaintiff that the checks she was having him sign would be used to pay Plaintiff's bills," but that instead, Joy used some of the checks that she had Plaintiff sign for other purposes, (Complaint, ¶¶ 25, 84-85.) Plaintiff alleges that, "Joy knew that the representations were false when she made them, as the GST Calculations shows that Joy had a plan to gift certain amounts to herself and others since at least 2016," that "Joy intended that Plaintiff rely on her misrepresentations in order to have him sign the blank checks without question," and that "Plaintiff reasonably relied on Joy's representations, as Joy is his stepdaughter." (Complaint, ¶¶ 86-88.) Based on the allegations above, although less specificity is required as it appears from the nature of the allegations that Joy necessarily possesses information concerning the alleged fraudulent misrepresentations, Plaintiff does not allege the misrepresentations with sufficient specificity as to how, where, and by what means the alleged misrepresentations were tendered. While the opposition asserts that the misrepresentations were made orally in person, this is not alleged in the Complaint. With regards to the elements of intent to defraud, justifiable reliance, and/or damages since Joy had the power of attorney, these elements are sufficiently alleged. Taking the allegations as true, a reasonable inference is that Joy did not have the authority to take certain acts or make certain financial decisions on Plaintiff's behalf. Whether Joy, in fact, had authority to make financial decisions is properly before the Court on demurrer. "A demurrer tests only the sufficiency of the allegations. It does not test their truth, the plaintiff['s] ability to prove them or the possible difficulty in making such proof." (*Saunders v. Superior Court* (1994) 27 Cal.App.4th 832, 840.) The demurrer to the third cause of action is therefore SUSTAINED, with 20 days' leave to amend. *Fourth Cause of Action for Abduction* Moving Defendants contend that the fourth cause of action for abduction fails because the

		Complaint judicially admits Jerry was not restrained from returning to California during a trip to Texas, and that on its face, the Complaint demonstrates that Jerry was not restrained in any manner. Plaintiff contends that the fourth cause of action for abduction sets out that Plaintiff was restrained from returning to California, and that Plaintiff has, in fact, alleged that he was restrained from returning to California. Plaintiff contends that while the Complaint alleges that Mona traveled to Texas, picked Plaintiff up from HarborChase and returned to California with Plaintiff, Defendants are improperly interpreting that to mean that Plaintiff was not restrained from returning to California, but that Plaintiff's ability to return to California was methodically limited/prohibited/hindered by Joy and Lucille's actions. Welfare & Institutions Code section 15610.06 states: " 'Abduction' means the removal from this state and the restraint from returning to this state, or the restraint from returning to this state, of any elder or dependent adult who does not have the capacity to consent to the removal from this state and the restraint from returning to this state, or the restraint from returning to this state, as well as the removal from this state or the restraint from returning to this state, of any conservatee without the consent of the conservator or the court." Here, Plaintiff alleges Joy removed Plaintiff from his home in California under the pretense of a family reunion and put him in a senior assisted living facility in Texas. (Complaint, ¶¶ 32, 34, 93.) Plaintiff also alleges that his cell phone was taken away from him and he was given a different cell phone with only three contacts, Joy, Lucille, and Madeline. (Complaint, ¶¶ 35, 96.) Accepting the allegations as true, Joy picked up Plaintiff from California and transported him to a different state, did not disclose to him where he was, and took his cell phone away, removing his ability to contact others. Plaintiff, who was 94 years old when this action was filed in 2024, would have been around 93 years old when these events occurred in 2023 and would not have been able to drive himself

		home to California. (Complaint ¶ 17.) While it is alleged that residents at the senior assisted living center were allowed to leave, this does not mean that Plaintiff had any meaningful option to leave. (Complaint, ¶ 38.) Thus, the demurrer to the fourth cause of action is OVERRULED. *Fifth Cause of Action for Financial Abuse* Moving Defendants contend that the fifth cause of action for financial elder abuse is uncertain for the same reasons discussed above. They also contend that as to Madeline, there are no facts that she engaged in any improper behavior relating to Jerry's property, and that while Madeline is accused of having received payments resulting from Joy's alleged actions, there are no allegations that Madeline was aware of any supposed improprieties and/or that she obtained property for a wrongful use, with the intent to defraud and/or by undue influence. Plaintiff contends that the fifth cause of action for financial abuse is not uncertain, as set forth above, and sufficiently alleges financial impropriety by the Defendant. The fifth cause of action is not uncertain, as discussed above. Welfare & Institutions Code section 15610.07(a) defines elder abuse as "[p]hysical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering;" or "[t]he deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering." To establish a claim for financial elder abuse a plaintiff must establish the following: (1) defendant took, hid, appropriated, obtained or retained plaintiff's property or assisted in same; (2) plaintiff was 65 years of age or older at the time of the conduct; (3) defendant did so for a wrongful use or with the intent to defraud or by undue influence; (4) plaintiff was harmed; and (5) defendant's conduct was a substantial factor in causing plaintiff's harm. (California Civil Jury Instructions, CACI No. 3100.) Financial elder abuse occurs when a

		person takes, secretes, appropriates, obtains, or retains real or personal property of an elder for a wrongful use or with intent to defraud, or assists a person in doing the same. (Welf. & Inst. Code, § 15610.30(a)(1)-(2).) Here, the Complaint alleges that on or about December 21, 2023, Madeline had stuffed documents and/or items under her clothing, and that after she left, Plaintiff noticed that valuable items had been removed from his home, including the urn containing his wife's ashes and Chinese artifacts. (Complaint ¶¶ 46-47.) As a result, the Complaint sufficiently alleges that Madeline obtained Plaintiff's property for a wrongful use. The demurrer to the fifth cause of action is OVERRULED. *Sixth Cause of Action for Assault* Moving Defendants contend that the sixth cause of action for assault against Madeline is based on an incident in which she simply pulled Jerry into his home, and that the Complaint does not adequately allege Madeline acted with intent to cause a harmful or offensive contact, and/or that she threatened to touch Jerry in a harmful or offensive manner. Plaintiff contends that the sixth cause of action sufficiently establishes that Madeline intended to cause offensive contact, and that it is a reasonable inference that having been found out, Madeline was in agitated state and intended to touch Plaintiff in a harmful or offensive manner. "The essential elements of a cause of action for assault are: (1) defendant acted with intent to cause harmful or offensive contact, or threatened to touch plaintiff in a harmful or offensive manner; (2) plaintiff reasonably believed she was about to be touched in a harmful or offensive manner or it reasonably appeared to plaintiff that defendant was about to carry out the threat; (3) plaintiff did not consent to defendant's conduct; (4) plaintiff was harmed; and (5) defendant's conduct was a substantial factor in causing plaintiff's harm." (*So v. Shin* (2013) 212 Cal.App.4th 652, 668-669.)

		The Complaint alleges that Madeline pulled and dragged Plaintiff inside his home, and that when a Sheriff officer came, Madeline stopped and "acted intending to cause harmful or offensive contact to Plaintiff." (Complaint, ¶ 108.) Plaintiff also alleges that Madeline "did in fact aggressively pull and drag Plaintiff inside his home, offending his sense of personal dignity." (Complaint, ¶¶ 45, 109.) Accepting these allegations as true, the Complaint sufficiently alleges that Madeline acted with intent to cause harmful or offensive contact. The demurrer to the sixth cause of action is OVERRULED. *Seventh Cause of Action for Violation of Penal Code § 496* Moving Defendants contend that the seventh cause of action for violation of Penal Code § 496 is derivative of the other causes of action and is uncertain for the same reasons stated above. They also contend that the Complaint fails to adequately allege property was stolen or obtained by theft and/or that Joy or Madeline knew any property was stolen based on the failure to set forth the terms of the power of attorney. They further contend that even if the Complaint did adequately allege Joy knew she had stolen property or committed theft, there is no allegation at all that Madeline was aware of any alleged stolen property or theft. Plaintiff contends that the seventh cause of action is not uncertain, as set forth above. Plaintiff also contends that this cause of action is sufficiently alleged as the Complaint alleges that Defendant repeatedly accepted the fraudulently signed checks from Joy, not Plaintiff, and cashed them, and that Defendant was with Plaintiff during the time that several of the "gift" checks were made out and cashed, and knew that Plaintiff did not authorize the checks. Plaintiff additionally contends that he has sufficiently pled that the property in question was already stolen at the time that Madeline received it and that she knew it was stolen, or that she committed the "actual theft of the property." The seventh cause of action is not uncertain, as discussed above

		As to the sufficiency of the allegations to state a claim, pursuant to Penal Code section 496(a), any person who receives stolen property knowing the property to be stolen, or aids in concealing or withholding any property from the owner while knowing the property to be so stolen or obtained, shall be punished by imprisonment. Here, the Complaint alleges, as relevant here, that Joy and Madeline fraudulently converted Plaintiff's funds through the use of "gift" checks. (Complaint, ¶¶ 28, 55, 117.) The Complaint also alleges Joy used blank checks that she had Plaintiff sign under the guise of paying Plaintiff's bills but made numerous checks out to Lucille and Madeline between May 23, 2022 and December 13, 2023, and that several of these check were written and cashed during the 12-day period during which Joy and Lucille were in California and while Plaintiff was at HarborChase. (Complaint, ¶ 55.) It further alleges that gift checks for large amounts were not issued to Plaintiff's family members until Joy took over the paying of Plaintiff's bills, and that upon Plaintiff's requests for return of his funds and property, Joy and Madeline, along with other co-defendants, refused. (Complaint, ¶¶ 56, 118.) Accepting these allegations as true, the Complaint sufficiently alleges that Plaintiff's property was stolen or obtained by theft and/or that Joy or Madeline knew property was solen. A reasonable inference may be drawn from the allegations that Madeline was aware that Joy did not have the authority to make out the checks, especially those that were written and cashed while Plaintiff was not in the state. Thus, the demurrer to the seventh cause of action is OVERRULED. Plaintiff to file a first amended complaint within 20 days, as to the third cause of action for fraud consistent with the Court's ruling above. The Case Management Conference is continued to June 26, 2025 at 1:30 p.m. *Moving Defendants to give notice*.

101	City of Westminster vs. Morgan 24-01417499	Defendant demurs to the entire First Amended Complaint, asserting all claims arise from overpayment of workers' compensation benefits and, consequently, fall within the jurisdiction of the workers' compensation appeals board. Pursuant to Labor Code sections 5300, subdivision (a), a proceeding "[f]or the recovery of compensation, or concerning any right or liability arising out of or incidental thereto," shall be instituted before the appeals board and not elsewhere. (Lab. Code, § 5300, subd. (a).) Pursuant to Labor Code section 3207, "compensation" means "compensation under this division" including "every benefit or payment conferred by this division upon an injured employee…." (Lab. Code, § 3207.) Neither Defendant nor the Complaint identify a particular provision within the workers' compensation statutory scheme, from which the "Salary Continuation" payments received by Defendant arise. Instead, the Complaint alleges these payments were made pursuant to a policy of the City. "Pursuant to the City's policy ('Salary Continuation'), 'Non-sworn employees shall be entitled to a temporary disability at a maximum of six (6) months paid leave for job connected illness or injury, unless disability becomes permanent and stationary prior to the expiration of six (6) months, such time not to be charged against sick leave or vacation. If disability exceeds six (6) months, employee may elect to receive only workers' compensation benefits, or have sick leave or vacation charged for the difference between the workers' compensation and his/her regular salary and receive a full paycheck, not to exceed the maximum disability period allowed under Workers' Compensation Law.' Therefore, an employee can receive a total of 26 weeks of Salary Continuation at 75% of their salary." (¶6 of FAC.) Additionally, the Complaint distinguishes between "Salary Continuation" payments and workers' compensation, alleging Defendant

		received payments through both. (¶11 of FAC.) Pursuant to Labor Code section 3750, subdivision (d), the workers' compensation statutory scheme does not affect "[t]he right to provide by mutual or other insurance, or by arrangement with his employees, or otherwise, for the payment to such employees…of sick, accident, or death benefits, in addition to the compensation provided for by this division." Additionally, as noted by Plaintiff, "[p]ayment of workmen's compensation liability, as required by the state act, and payment of compensation benefits over and beyond the liability imposed by the state are…distinguishable." (*City etc. of San Francisco v. Workmen's Comp. App. Bd*. (1970) 2 Cal.3d 1001, 1010.) "[A] voluntary wage payment, or any other payment otherwise provided for outside of the workers' compensation law, is not a payment 'under' the workers' compensation law merely because the law prevents double recovery for the same injury." *(Department of Corrections and Rehabilitation v. Workers' Compensation Appeals Board* (2025) 17 Cal.5th 510, 563 P.3d 1099, 1109.) "In the construction of a pleading, for purposes of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties." (Civ. Proc., § 452.) Additionally, in reviewing a demurrer, the Court "treat[s] the demurrer as admitting all material facts properly pleaded" and "give[s] the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Based on the allegations within the complaint, the payments in dispute do not constitute "compensation" for purposes of workers' compensation, as the payments were made pursuant to City policy. (¶6 of FAC.) Based on the allegations, subject matter jurisdiction properly lies with the Court. Thereafter, Defendant challenges the sufficiency of the first cause of action for unjust enrichment; however, as Defendant demurred only to the complaint as a whole,

		the Court need not review this argument: "The general well settled rule is that if any count of a multicount complaint states a cause of action, it is error to sustain a demurrer to the complaint as a whole." (*Western Title Ins. & Guaranty Co. v. Bartolacelli* (1954) 124 Cal.App.2d 690, 694.) Additionally, while a split in authority exists as to whether "unjust enrichment" is the technically correct label, California authority has recognized that "[c]ommon law principles of restitution require a party to return a benefit when the retention of such benefit would unjustly enrich the recipient." (*Munoz v. MacMillan* (2011) 195 Cal.4th 648, 661.) " 'Whether termed unjust enrichment, quasi-contract, or quantum meruit, the equitable remedy of restitution when unjust enrichment has occurred "is an obligation (not a true contract [citation]) created by the law without regard to the intention of the parties, and is designed to restore the aggrieved party to his or her former position by return of the thing or its equivalent in money." ' " (*Ibid*.) Here, Plaintiff adequately alleges Defendant was overpaid funds and has unjustly retained the benefit thereof. (¶15-¶18 of FAC.) "If the complaint states a cause of action under any theory, regardless of the title under which the factual basis for relief is stated, that aspect of the complaint is good against a demurrer." (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 38.) Based on all the above the demurrer is OVERRULED. Defendant shall file and serve her Answer to the Complaint within 20 days. The Case Management Conference is continued to May 29, 2025 at 1:30 p.m. *Plaintiff to give notice.*

102	Nguyen vs. Botros 24-01400928	Defendant, Dina Moussa, D.D.S. moves for an order sustaining her demurrer to the second cause of action of Plaintiff, Michelle Nguyen's First Amended Complaint. Dr. Moussa also moves for an order striking Plaintiff Michelle Nguyen's First Amended Complaint in its entirety, or alternatively, striking the punitive damage claim at paragraph 14(a)(2). "If the complaint is amended, a copy of the amendments shall be filed, or the court may, in its discretion, require the complaint as amended to be filed, and a copy of the amendments or amended complaint must be served upon the defendants affected thereby. The defendant shall answer the amendments, or the complaint as amended, within 30 days after service thereof, or such other time as the court may direct, and judgment by default may be entered upon failure to answer, as in other cases . . . ." (Code Civ. Proc. § 471.5.) Here, while it appears that Plaintiff, Michelle Nguyen, served a First Amended Complaint, no First Amended Complaint appears to have been filed with the Court. Because it appears that Plaintiff has not filed the First Amended Complaint with the Court, the Court is unable to rule on a pleading that is not part of the court's record. It appears that a motion to amend the complaint was attempted to be filed and rejected in December 2024. Since there is no first amended complaint, the demurrer and motion to strike the first amended complaint are taken off-calendar. *Clerk to give notice.*
103	Brown vs. Flagship Post Acute, LLC 24-01413162	Defendant Flagship Post Acute, LLC dba Pelican Ridge Post Acute (erroneously named dba Sun Mar Health Care) ("Defendant" or "FLAGSHIP") seeks an order compelling Plaintiff Patricia Brown ("Plaintiff") to arbitrate the controversy alleged in the Complaint. Defendant contends that Plaintiff entered into a binding voluntary arbitration agreement with Defendant on August 6, 2021, but Plaintiff has refused to submit to arbitration. Plaintiff contends that there is no agreement to arbitrate because Plaintiff denies ever signing

		or authorizing anyone to sign the arbitration agreement on her behalf. *Whether the FAA Applies?* Defendant contends that the Federal Arbitration Act ("FAA") applies to this action because it is a Medicare participant. Defendant presents evidence that it is "a skilled nursing facility and participates in and receives funding from Medicare and Medi-Cal programs"; that it "uses U.S. mail, telephone lines, wireless networks, and internet connections to conduct business"; and "obtains supplies from out-of-state venders and engages in transactions with financial institutions outside of California. (See Talebi Decl., ¶¶ 3 and 4.) Plaintiff, in Opposition, does not address the applicability of the FAA. The Federal Arbitration Act ("FAA") applies to any "contract evidencing a transaction involving commerce" which contains an arbitration clause. (*See Erickson v. Aetna Health Plans of California, Inc*. (1999) 71 Cal.App.4th 646, 650 (citing 9 U.S.C. § 2).) The Court finds that the FAA applies to this action. *Whether An Agreement to Arbitrate Exists?* Both the Federal Arbitration Act ("FAA") and the California Arbitration Act ("CAA") require the existence of a valid Arbitration Agreement, before arbitration can be compelled. (See 9 U.S.C. section 2; C.C.P. section 1281.2). Regardless of whether the FAA applies, "we apply general California contract law to determine whether the parties formed a valid agreement to arbitrate their dispute." (*Avery v. Integrated Healthcare Holdings, Inc.* (2013) 218 Cal.App.4th 50, 59-60). "In California, 'general principles of contract law determine whether the parties have entered a binding agreement to arbitrate.' [Citations omitted.] Generally, an arbitration agreement must be memorialized in writing. [Citation omitted.] A party's acceptance of an agreement to arbitrate may be express, as where a party signs the agreement. A signed agreement is not necessary, however, and a

		party's acceptance may be implied in fact [citation omitted] or be effectuated by delegated consent [citation omitted.]" (*Pinnacle Museum Tower Assn. v. Pinnacle Mkt. Dev. (US), LLC* (2012) 55 Cal.4th 223, 236.) "Because the existence of an agreement is a statutory prerequisite to granting the petition, the petitioner bears the burden of proving its existence by a preponderance of the evidence." (*Rosenthal v. Great Western Fin. Securities Corp*. (1996) 14 Cal.4th 394, 413.) Once the petitioner has met that burden, the burden shifts to the party opposing the arbitration, to produce evidence to show by a preponderance "any fact necessary to the defense." (*Id*.) "The party seeking arbitration can meet its initial burden by attaching to the petition a copy of the arbitration agreement purporting to bear the respondent's signature. (*Bannister v. Marinidence Opco, LLC* (2021) 64 Cal.App.5th 541, 543-544). However, where "the respondent challenges the validity of the signature," "the petitioner must 'establish by a preponderance of the evidence that the signature was authentic." (*Id*. at 544). Here, to meet Defendant's initial burden of establishing an agreement to arbitrate exists between it and Plaintiff, Defendant presents the declaration of Lawrence Talebi who attests as follows: he is the Administrator for Defendant; Defendant's Mutual Agreement to Arbitrate Claims (the "Arbitration Agreement") "is one of the documents that is included in [its] new hire packet and provided to newly hired employees"; "It is standard practice for newly hired staff to receive a copy of the Arbitration Agreement in their new packet hire"; "When a new employee is hired, it is [Defendant's] procedure to have each new employee attend an orientation session" during which "each document in the new hire packet, including the Arbitration Agreement is, thoroughly reviewed"; "When the employees return the new hire paperwork, [Defendant] verifies that there are complete copies of the required documents, including the employee's Arbitration Agreement, in the new hire packet" and the "documents are also reviewed for

		employee information and signatures"; He is "aware that Plaintiff...was onboarded and hired by [Defendant] on or about August 6, 2021, and received [Defendant's] new hire packet, including the Arbitration Agreement"; Plaintiff did not ask any questions or voice any concerns about the Arbitration Agreement prior to her signing it or any time thereafter; "Plaintiff signed the Arbitration Agreement on August 6, 2021, which required Plaintiff to arbitrate all employment-related disputes arising from her employment with Defendant, including all claims included in this lawsuit"; He "reviewed the Plaintiff's Arbitration Agreement and also signed the Arbitration Agreement on August 6, 2021"; and "Attached hereto as Exhibit "A" is a true and correct copy of Plaintiff Dodson's Arbitration Agreement." (See Talebi Decl., ¶¶ 2, 4-10, Exh. A.) The moving party has the initial prima facie burden of proving the existence of an agreement by a preponderance of evidence (*Rosenthal v. Great Western Fin. Securities Corp* (1996) 14 Cal.4th 394, 413-414.) Here, Defendant has met that burden. If the moving party meets its initial prima facie burden and the opposing party disputes the agreement to arbitrate, the opposing party bears the burden of producing evidence to challenge the agreement. (*Condee v. Longwood Management Corp*. (2001) 88 Cal.App.4th 215, 219.) Plaintiff, in Opposition, disputes that she ever signed the Arbitration Agreement. Plaintiff attests that as follows: "I did not agree to arbitrate my disputes with Defendant nor was an arbitration agreement ever presented to me by Defendant at any time during my employment." (See Brown Decl., ¶ 6.) Plaintiff also attests: "The signature on the Arbitration Agreement is not my signature nor do I recall signing the Arbitration Agreement or authorizing any person to sign the Arbitration Agreement on my behalf either at the time I was employed in July 2021 or on August 6, 2021. I am informed and believe that Defendant fraudulently signed my name to the Arbitration Agreement after I began raising

		concerns with Human Resources and my supervisor and at about the time that Defendant intended terminate me." (See Brown Decl., ¶ 7.) Plaintiff states "the signature on the Arbitration Agreement is not my signature" (See Brown Decl., ¶ 9.) Plaintiff also submits evidence that when she requested a copy of her personnel file from Defendant on August 23, 2021, Defendant did not provide her with "Exhibit A" and was provide only a version of the Arbitration Agreement that was not signed by Defendant. (See Brown Decl., ¶ 8, Exhs. 1 and 2.) Plaintiff also submits evidence of how she normally signs her name which is not consistent with the signature on Exhibit A submitted by Defendant. (See Brown Decl., ¶ 9, Exh. 3.) Once the opposing party successfully challenges the signature, the burden then returns to the moving party to establish with admissible evidence and by a preponderance of the evidence that a valid arbitration agreement between the parties exists (*Gamboa v. Northeast Community Clinic* (2021) 72 Cal.App.5th 158.) Here, in the reply brief, Defendant contends it did authenticate Plaintiff's signature and that Mr. Talebi is the person who onboarded Plaintiff. Mr. Talebi submits a supplemental declaration attesting as follows: He is "Administrator at Flagship Post Acute, LLC dba Pelican Ridge Post Acute, erroneously named dba Sun Mar Health Care" ('Pelican Ridge Post Acute' or 'Defendant'); Defendant "acquired the skilled nursing facility, SSC Newport Beach Operating Company LP located at 466 Flagship Road, Newport Beach, CA 92663, on or about August 1, 2021"; "Plaintiff was initially hired and employed by SSC Newport Beach Operating Company LP. When Pelican Ridge Post Acquired SSB Newport Beach Operating Company LP, Pelican Ridge Post Acute offered employment to Plaintiff on or about August 1, 2021"; "[He] was present at Plaintiff's new hire orientation as an employee of Pelican Ridge Post Acute and was available and willing to explain any document in the new hire paperwork to Plaintiff."'; "Plaintiff did not ask

		me any questions or voice any concerns about the Arbitration Agreement prior to her signing, or at an any time thereafter"; "Plaintiff voluntarily signed the Arbitration Agreement on August 6, 2021"; "[W]hen the employees return the new hire paperwork, Pelican Ridge Post Acute verifies that there are complete copies of the required documents, including the employee's Arbitration Agreement, in the returned new hire paperwork"; "After receipt of an employee's returned new hire paperwork, including the Arbitration Agreement, copies of the returned new hire paperwork are created"; "A copy of Plaintiff's returned new hire paperwork was created upon receipt of Plaintiff's returned new hire paperwork on August 6, 2021"; "[He] reviewed Plaintiff's executed Arbitration Agreement and signed the Arbitration Agreement on August 6, 2021"; "A copy of the Arbitration Agreement containing only Plaintiff's signature was inadvertently produced to Plaintiff on or about October 6, 2021"; and "Attached as Exhibit A is a true and correct copy of Plaintiff Brown's fully executed Arbitration Agreement." (See Supp. Decl. of Talebi, ¶¶ 2-13, Exh. A.) Defendant also submits the Supplemental Declaration of Christie Yang, Esq., who attaches excerpts from Plaintiff's new hire paperwork which includes an "Employee Acknowledgement of the Medical Provider Network" signed by Plaintiff on August 2, 2021, an "Employee Acknowledgment and Consent Regarding Use of and Access to Company-Provided Electronic Resources Form" also signed by Plaintiff on August 2, 2021, and the signature page only of an agreement signed by Plaintiff on August 6, 2021. (See Yang Decl., ¶ 6, Exh. B.) Defendant meets its burden set forth by *Gamboa* by filing the Supplemental Declaration of Mr. Talebi and the Supplemental Declaration of Ms. Yang. In reviewing the signatures, they look sufficiently similar for the Court to find by a preponderance of the evidence that Defendant has met its burden of establishing an agreement to arbitrate exists. Therefore, the Motion is GRANTED. Plaintiff does not raise any other defense to the

		enforcement of the Arbitration Agreement in her Opposition, she only contended that she did not execute the Arbitration Agreement. The Court vacates the Case Management Conference and sets an ADR Review Hearing for 10/23/2025 at 1:30 p.m. *Moving Party is to give notice.*
104	Starbuzz Tobacco, Inc. vs. Abboud 23-01303979	Plaintiff/Cross-Defendant Starbuzz Tobacco, Inc. moves to compel Defendant/Cross-Complainant Repripe Trading, Inc. and Defendant Christopher Abboud to serve supplemental responses to Plaintiff's first set of Demands for Production of Documents. On 3/20/25, the Court denied Defendants' motion for relief from waiver of objections as to the Demands for Production of Documents, with the exception that tax records need not be produced. (ROA No. 221.) After the Court's ruling, Defendants served supplemental responses to the Demands on 4/4/25 and argue that the Motions should now be denied as moot. Defendants' supplemental responses to Nos. 4 and 26 do not include any objections. Further, Plaintiff represents that the supplemental response to No. 31 is sufficient. Thus, the Motions as to those demands are DENIED. However, in response to No. 32, Repripe continues to assert objections based on privacy. This demand does not seek any tax documents. It seeks "income statements, balance sheets, and a general ledger for Repripe. On March 20, 2025, the Court ordered that tax records do not need to be provided. The request does not seek "tax records." Therefore, the Court finds Repripe's continued assertion of objections to be unwarranted. Further, Repripe represents that responsive documents are believed to be in possession of its Certified Public Accountant. This representation of inability to comply because the documents are not within Repripe's possession is disingenuous. Even if Repripe does not have its own copies of the documents and those copies are in the possession of its CPA, Repripe has custody and control over those documents and can obtain them from its CPA for production.

		Therefore, the Court ORDERS Repripe to provide further supplemental response to No. 32 and produce further documents within 15 days. (Code Civ. Proc., § 2031.310(a).) Plaintiff's request for monetary sanctions against Repripe is GRANTED in the amount of $2,000.00. (Code Civ. Proc., § 2031.310(h).) Plaintiff's request for monetary sanctions against Abboud is DENIED, as the Court finds that Abboud's delay in providing supplemental responses until after a ruling on the motion for relief from waiver of objections was issued was substantially justified. *Plaintiff to give notice*.
105	Rodriguez vs. BP America, Inc 22-01292742	Defendants, BP America, Inc. and Ali Afghani ("Defendants"), move for an order compelling Plaintiff, Jesus Hiram Rodriguez, to provide further responses to Form Interrogatories, Set One; Special Interrogatories, Set One; and Request for Production of Documents, Set One. The notice of motion does not identify the discovery at issue by number. "A motion concerning interrogatories, inspection demands, or admission requests must identify the interrogatories, demands, or requests by set and number." (California Rules of Court, rule 3.1345(d).) However, Defendants have filed the requisite separate statement which indicates the discovery at issue is as follows: Form Interrogatories, Set One. Nos. 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, and 8.8; Special Interrogatories, Set One, Nos. 8, 9, 11, 26, and 29, and 32; and Request for Production of Documents, Nos. 2, 4, 5, 23, 24, 25, 26, 28, 29, 30, and 31. *Timeliness* With respect to the timing requirement, Code of Civil Procedure section 2030.300, subdivision (c), specifically provides: "Unless notice of this motion is given within 45 days of the service of the verified response, or any supplemental verified response, or on or before any specific later date to which the propounding party and the responding party have agreed in writing, the propounding party waives any right to compel a further response

		to the interrogatories." The 45-day time limit is extended for service by mail, overnight delivery, or fax, or electronic mail in accordance with Code of Civil Procedure sections 1010.6(a)(3), 1013. A motion to compel further responses for requests for production has the same requirement but is governed by Code of Civil Procedure section 2031.310(c). The 45-day deadline to bring a motion to compel further responses is mandatory and jurisdictional. (*Vidal Sassoon, Inc. v. Superior Court* (1983) 147 Cal.App.3d 681, 685 [the court acts in excess of its jurisdiction by considering an untimely motion to compel further response to interrogatories]; *Sexton v. Superior Court* (1997) 58 Cal.App.4th 1403, 1406-1410 [applying rule to motions to compel production of documents].) The deadline is jurisdictional insofar as it renders the court without authority to rule on motions to compel other than to deny them. (*Sexton v. Superior Court* (1997) 58 Cal.App.4th 1403, 1410.) Code of Civil Procedure section 2024.060 states: "Parties to an action may, with the consent of any party affected by it, enter into an agreement to extend the time for the completion of discovery proceedings or for the hearing of motions concerning discovery, or to reopen discovery after a new date for trial of the action has been set. This agreement may be informal, but it shall be confirmed in a writing that specifies the extended date. In no event shall this agreement require a court to grant a continuance or postponement of the trial of the action." Defendants submit evidence which provides as follows. Defendants' counsel received Plaintiff's responses to the discovery on October 23, 2023, suggesting the discovery responses were served on or about October 23, 2023. (Declaration of Scott H. Heitmann, ¶4.) Defendants sent Plaintiff's counsel a meet and confer letter dated November 21, 2023. (Id.., ¶ 5, Ex. A.) On November 21, 2023, Plaintiff's counsel requested a 30-day extension to respond, and stated, "We will also agree to an extension to file your motion to compel further, after receipt of our supplemental

		responses." (Id., ¶ 6, Ex. B.) Defendants next served a meet and confer letter regarding the outstanding supplemental responses on September 11, 2024, and September 18, 2024, but received no supplemental responses as of October 24, 2024. (Id., ¶¶ 7-9, Exs. C and D.) The instant motion was filed on October 24, 2024, nearly a year after Defendants' received Plaintiff's responses on October 23, 2023. The foregoing evidence indicates that Plaintiff requested a 30-day extension to respond, and agreed to an extension for Defendants to file a motion to compel after receipt of the supplemental responses, but Defendants provide no evidence showing that Defendants granted Plaintiffs' request. As a result, Defendants do not show an agreement in writing to extend the deadline to file any motion to compel further responses, let alone to a "specific later date." In addition, while Defendants' counsel provides that Plaintiff "agreed to an open extension for Defendants to file their motion to compel further responses, after receipt of Plaintiff's supplemental responses," Code of Civil Procedure sections 2030.300(c) and 2031.310(c) provides for an extension to file a motion to compel "on or before any specific later date." An open extension after receipt of Plaintiff's supplemental responses does not constitute a "specific later date." Based on the foregoing, Defendants fail to show that the instant motions to compel were timely. Thus, the motions are DENIED in their entirety. *Defendants to give notice*.
106	Moreno vs. James R. Glidewell, Dental Ceramics, Inc. 24-01380333	*Off-calendar.*
107	BRHE Group vs. Bates 24-01379502	Defendants Davide Bates CPA/AVA and Jeffrey Reiss CPA/MST move for an order deeming Bates and Reiss to be the prevailing parties as to the now-dismissed first and second causes of action in Plaintiff's Complaint and for an award of attorney fees and costs.

		The court held a hearing on this motion on 03/06/2025. After oral arguments, the court continued the haring on the motion to 04/17/2025 and granted leave for the parties to file supplemental briefs pursuant to the briefing schedule set forth in the order. After considering the supplemental briefing, the Court ADOPTS the tentative in its 03/06/2025 Minute Order as the final order. (ROA 262.) The Court agrees with Plaintiff that the Court did not make a finding on the merits of the allegations in the Complaint against Defendants Davide Bates CPA/AVA and Jeffrey Reiss CPA/MST. This does not, however, preclude an award of attorney fees pursuant to paragraph 16 of the Agreement for Sale of Assets. In its 10/31/2024 Minute Order, the Court relied on paragraph 16 of the Agreement for Sale of Assets to find that the parties needed to mediate their dispute before filing suit. Put another way, Defendants' demurrer was a motion to enforce the provision of paragraph 16 of the Agreement for Sale of Assets that required the parties to participate in mediation before a lawsuit could be filed. Paragraph 16 of the Agreement for Sale of Assets expressly states: "The provisions of this paragraph may be enforced by any Court of competent jurisdiction and the prevailing party shall be entitled to an award of all costs fees and expenses including attorneys fees to be paid by the non-prevailing party." This sentence, and paragraph 16 in general, does not require that the Court make a finding on the merits of the Complaint in order for a party to be awarded attorney fees. Rather, paragraph 16 expressly states that a party who prevails in moving to enforce the arbitration provision "shall be entitled to an award of all costs fees and expenses including attorneys fees to be paid by the non-prevailing party."

		Defendants state that they are not relying paragraph 13 in moving for attorney fees. The Court notes that Paragraph 13 supports a finding consistent with that of paragraph 16. Paragraph 13 states that "[i]n the event either party breaches any obligation under this Agreement the non-breaching party shall be entitled to all costs and expenses incurred including reasonable attorney fees as a result of the breach." Again, the court found in its ruling on the demurrer, that Plaintiff breached its obligation in paragraph 16 when it filed the Complaint before participating in mediation. Notably, Plaintiff spends much of the supplemental opposition discussing and distinguishing *Haidet v. Del Mar Woods Homeowners Association* (2024) 106 Cal.App.5th 530. As seen in the Court's tentative in its 03/06/2025 Minute Order, the Court did not rely on *Haidet v. Del Mar Woods Homeowners Association* (2024) 106 Cal.App.5th 530 in reaching its conclusion in the 03/06/2025 tentative. For these reasons, the Court is not persuaded by the supplemental briefing to change the tentative ruling in its 03/06/2025 Minute Order. The Court ADOPTS the tentative ruling in its 03/06/2025 Minute Order. (See ROA 262.) *Moving parties to give notice*.
108	IDYLLWILLOW LP vs. Berkadia Real Estate Advisors Inc. 20-01146587	<u>MOTION FOR ATTORNEY'S FEES</u> Plaintiff Idyllwillow LP ("Plaintiff") moves for an order granting it attorney fees incurred in proving that Defendants Berkadia Real Estate Advisors Inc. and Joe Leon ("Defendants") were Plaintiff's broker and agent pursuant to Code of Civil Procedure section 2033.420. "If a party fails to admit the genuineness of any document or the truth of any matter when requested to do so under this chapter, and if the party requesting that admission thereafter proves the genuineness of that document or the truth of that matter, the party requesting the admission may move the court for an order requiring the party to whom the request was directed to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees." (Code Civ. Proc. § 2033.420(a).)

		The court shall make this order unless it finds that an objection to the request was sustained or a response to it was waived, the admission was of no substantial importance, *the party failing to make the admission had reasonable ground to believe that that party would prevail on the matter*, or there was other good reason for the failure to admit. (Id. § 2033.420(b); emphasis added.) The party seeking to benefit from the exception, in this case, Defendants, "bears the burden to establish the exception." (*Spahn v. Richards* (2021) 72 Cal.App.5th 208, 216, quoting *Samsky v. State Farm Mutual Automobile Ins. Co.* (2019 37 Cal.App.5th 517, 523.) In evaluating whether a good reason exists for denying a request to admit, such that the party making the denial can avoid imposition of costs of proof, a party's reasonable belief that it would prevail on the issue at trial must be grounded in the evidence; it cannot be based merely on hope or a roll of the dice. Further, it is not enough for a party making the denial to hotly contest the issue. Instead, there must be some reasonable basis for contesting the issue in question before sanctions can be avoided. (*Spahn, supra*72 Cal.App.5th at pp. 216-217.) Plaintiff argues there were no reasonable grounds for Defendants to believe they would prevail on the agent/broker issue because the evidence provided by Defendants to support the denial is implausible, overwhelmingly contradicted, and comes from a sole unreliable source—Leon's own testimony. Defendants contend that they had a reasonable ground to believe they would prevail because there was no written agreement with Alan Dauger, Mr. Dauger paid no fees for the transaction, and Mr. Leon had signed a listing agreement with the seller which stated that Defendants only represented the seller and would only receive a commission from the seller. Defendants argue that Plaintiff's Motion is based on a unilateral, self-serving, circular conclusion that Defendants had no reasonable belief that they would

		prevail at trial simply because they did not prevail at trial. In addition, Defendants contend that because the RFAs were served early on in the litigation before extensive discovery and investigation had been conducted, the Motion should be denied. Plaintiff's Request for Admissions Nos. 1-4 asked Defendants to admit that they were the broker/agent for Plaintiff and Alan Dauger with respect to the purchase of the leasehold interest. In responses served on April 26, 2021, Defendants denied the requests. After trial, the Court issued its Statement of Decision, finding that Defendants acted as dual agents and represented both the seller and Mr. Dauger/Plaintiff in the transaction. The evidence showed that shortly before the ReNew transaction, Mr. Leon had agreed to act as Mr. Dauger's broker in the purchase of another property, had toured the ReNew property with Mr. Dauger multiple times and answered his numerous inquiries, and referred to Mr. Dauger as a "client" in his calendar entries. Additionally, Mr. Leon sent Mr. Dauger a draft of the first offer to review before submitting it to the sellers, provided Mr. Dauger with numerous pro formas during the course of negotiations, and provided Mr. Dauger with a draft of the PSA and offered to review and discuss it with Mr. Dauger. Even Defendants' own expert conceded on cross-examination that a dual agency relationship may have existed. Finally, the Court found Mr. Dauger's testimony more credible than Mr. Leon's and found that Mr. Leon believed Mr. Dauger to be his client. However, the Court's finding after receiving all the evidence and considering the arguments of counsel at trial is a different analysis than what is presented by way of the instant motion. Here, the question is whether Defendants had "reasonable ground" to believe that they would prevail on the matter at the time they made their denial. In evaluating the information available to Defendants at the time they made the denial, the Court determines that they have met their burden of establishing their belief that they would prevail on the issue of agency between Joe Leon and Berkadia on the one hand and Alan Dauger

		and Idyllwillow on the other. The discovery available to Defendants at the time do not conclusively prove that a dual agency relationship did not exist. Moreover, Defendants subsequent positions, in particular their retention of an expert on the issue, their cross-examination of Plaintiff's expert, the filing of a motion for summary judgment on the issue of agency, all support the conclusion that Defendants had reasonable ground to believe that they would prevail on the issue. It is a nuanced distinction that the Court draws, but an important one. The Court found Mr. Leon not credible when he testified that he always viewed himself as only Fowler's broker. The Court maintains that finding. However, after the lawsuit was filed, after Mr. Leon and Berkadia retained counsel, and when faced with having to answer these requests for admission, it was not unreasonable for Defendants to deny the requests for admission. With the benefit of the information available to them, the discovery available to them, and the advice of counsel, Defendants had reasonable ground to believe that as a matter of law, Berkadia and Mr. Leon were not in a dual agency relationship and were not Idyllwillow's broker – despite whatever subjective belief Mr. Leon may have had prior to and after the purchase transaction. That the Court at trial ultimately found against Defendants on the issue of agency is not determinative as to this motion. Plaintiff cites to two primary cases in its Motion: *Grace v. Mansourian* (2015) 240 Cal.App.4th 523 and *Spahn v. Richards* (2021) 72 Cal.App.5th 208. In *Grace*, the defendant in a motor vehicle accident denied requests for admission that he ran a red light and was the cause of the accident. At trial, he offered only his own testimony on the issue and stated that the light turned yellow when he got closer to the intersection. The court held that defendant's belief that he had entered the intersection on a yellow light was insufficient to support his denials in the face of substantial contrary evidence, including plaintiff's testimony, the police report, and the accident reconstruction expert. (240 Cal.App.4th at p. 530 ["In light of

		all of this evidence, defendant's belief, however firmly held, was not reasonable."].) In *Spahn*, the plaintiffs sued the defendant pursuant to an alleged oral contract to build a residence with a fixed price. The defendant served requests asking the plaintiffs to admit that there was no oral contract or meeting of the minds, which the plaintiffs denied. (72 Cal.App.5th at p. 212.) The defendant prevailed at trial and was awarded costs of proof. The trial court rejected the plaintiffs' argument that they had reasonable grounds for prevailing they would prevail on the oral contract issues because evidence established that they knew that no binding oral contract had been formed. The evidence showed that plaintiffs had not received a bid from the defendant after they allegedly entered into the oral contract, they were still soliciting and receiving bids from other contractors, and they believed they had to tread lightly until they had a signed contract. (*Id*. at p. 215.) Here, the Court finds the two cases relied upon by Plaintiff to be distinguishable. Defendants' denial was not reliant solely on Mr. Leon's testimony. Defendants introduced numerous documents to advance their theory that Mr. Leon was not Mr. Dauger's broker. In addition, Defendants retained and called an expert to testify on the issue of agency. That the expert under cross-examination by Plaintiff admitted that a dual agency relationship may have existed is not dispositive. Moreover, Defendants' denials of the RFAs do not rise to the level of egregiousness as those in *Spahn*, where the plaintiffs alleged an oral contract with the knowledge that they were still soliciting and receiving bids and that circumstances could change before a signed contract was in place. In light of the above, the Court finds that Defendants' denials were based on Defendants' reasonable belief that they would prevail at trial on the agent/broker issue. Therefore, the Motion is DENIED. *Plaintiff to give notice.* <u>MOTION TO TAX COSTS</u>

		Defendants Berkadia Real Estate Advisors, Inc. and Joe Leon ("Defendants") move to tax costs from the Memorandum of Costs filed by Plaintiff Idyllwillow LP ("Plaintiff"). Defendants contend recovery of $36,503.44 in "Court-ordered transcripts" sought under Item 9 must be stricken because there were no Court-ordered transcripts here and Plaintiff's claim of $51,793.42 under Item 16 for database hosting fees must be stricken as unrecoverable and not reasonably necessary. "An item not specifically allowable as costs under Code of Civil Procedure section 1033.5, subdivision (a), and not specifically prohibited under subdivision (b), may be allowed as costs at the discretion of the trial court if reasonably necessary to the conduct of the litigation. [Citation.]" (*Landwatch San Luis Obispo County v. Cambria Community Services District* (2018) 25 Cal.App.5th 638, 645-646.) As to Item 9, Plaintiff represents that $28,573.96 of the claimed $36,503.44 is for court reporter fees, recoverable under Code of Civil Procedure section 1033.5(a)(11) and Government Code sections 68086(c) and (d)(2) and erroneously included under transcript fees. Read together, those Code sections allow for the recovery of court reporter fees when a party arranges for a certified shorthand reporter to be present and serve as an official pro tempore reporter. That is what occurred here. Thus, the Court finds that $28,573.96 of the costs listed under Item 9 is proper. Plaintiff argues that the remaining costs are recoverable as Court-ordered transcripts because the Court directed the parties to "scour through the evidentiary record" to respond to the Court's tentative thoughts during closing argument. The Court disagrees that this constitutes an order to the parties to obtain the transcripts. Thus, the Motion to Tax as to $5,691.00 under Item 9 is GRANTED. As to Item 16, Plaintiff argues that its database charges are recoverable under the discretionary catchall provision of Section 1033.5(c)(4), in light of the fact that the parties produced over 54,000 pages of

		documents during this four-year litigation. Plaintiff contends that the third-party e-discovery database was necessary to efficiently process, organize, review, and present the documents at deposition and trial. In support of their Motion, Defendants cite *Science Applications Int'l Corp. v. Superior Court* (1995) 39 Cal.App.4th 1095. There, the court held that costs incurred in hiring an outside firm to assist with document control, storage, and accessing documents in discovery and at trial, were not recoverable. (*Id*. at p. 1104.) Here, Plaintiff used its third-party e-discovery database vendor to perform the same kinds of tasks—organizing, review, and presenting documents in discovery and at trial. (Declaration of Steven T. Graham ¶ 6.) The Court agrees that these costs are not recoverable. Thus, the Motion to Tax as to $51,793.42 under Item 16 is also GRANTED. *Defendants to give notice*.
109	Southwest Painting, Inc. vs. Newcastle Enterprises, Ltd 19-01099958	Defendant, Newcastle Enterprises, LTD. ("Newcastle") moves for an order striking and/or taxing Plaintiff, Southwest Painting, Inc.'s ("Southwest") Memorandum of Costs filed on February 13, 2025. Newcastle contends that the Court should strike Southwest's Memorandum of Costs in its entirety because it is unsupported by documentary evidence, although Page 4 of the Memorandum of Costs references invoices. Alternatively, Newcastle contends that Item Nos. 1, 5, 8, 11, 12, 14, and 15 sought in the Memorandum of Costs should be individually stricken or reduced in amount as excessive or not allowed as well as no supported by any invoice or similar documentary evidence. Newcastle contends that the instant motion is timely served and filed. Southwest contends that the attempted filing of this motion in Department C23 fails to meet the requirement of timeliness because Department C23 does not have current jurisdiction over the matter and rejected the filing, thus, that the motion should be rejected on the grounds of untimeliness alone. Southwest also contends that Defendant's reliance on the case *Jones v. Dumrichob* (1998) 63 Cal.App 4th 1258 for the

		proposition that Plaintiff must provide each and every invoice that might support each cost requested is misplaced, and that Newcastle does not provide any evidence to the Court that the entries provided by Plaintiff were not accurate and not for costs "necessarily incurred in this case." Southwest contends that Newcastle merely states that the entries are "suspicious" which is not evidence and that the Motion should fail on this basis alone. Southwest contends that if Court determines that the motion was timely filed and the cost items challenged were properly put in issue, Plaintiff has attached the invoices or other proof of payment for every cost sought, with the one exception of $550 in witness fees paid to the Buena Park official which were listed both for Item No. 5 and Item No. 8. Initially, the Court notes that Newcastle incorrectly refers to "Models enlargements and photocopies of exhibits" as Item No. 12. It is Item No. 13 on the Memorandum of Costs (Summary), and is referred as such accordingly. *Timeliness of Motion* Newcastle contends that the motion was timely served and filed because the Memorandum of Costs was filed February 13, 2025, and this Motion to Tax Costs was filed on February 21, 2025. Southwest contends the motion was not timely filed because Newcastle attempted to file the motion in Department C23, which rejected the filing. Any notice of motion to strike or to tax costs must be served and filed 15 days after service of the cost memorandum, and is extended as provided in Code of Civil Procedure section 1013 (mail), and in Code of Civil Procedure section 1010.6(a)(4) (electronic). (California Rules of Court, Rule 3.1700(b)(1).) Although Newcastle incorrectly noticed the hearing before the Honorable Derek W. Hunt (retired), the motion was filed on February 21, 2025, within 15 days of the Memorandum of Costs filed on February 14, 2025, and the motion was continued to the correct judicial officer and Department. Southwest cites to no authority which supports the proposition that an improperly noticed motion to tax and/or

		strike costs renders it untimely under the circumstances here. The Court finds the instant motion to tax and/or strike costs was timely filed. *Standard on Motion to Strike/Tax Costs* Newcastle contends that the entire Memorandum of Costs should be stricken because it was not supported by documentary evidence and no invoices were attached. Southwest contends that Newcastle has not properly put the Memorandum of Costs or challenged cost items at issue. "If items on their face appear to be proper charges, the verified memorandum of costs is prima facie evidence of their propriety, and the burden is on the party seeking to tax costs to show they were not reasonable or necessary." (*Jones v. Dumrichob* (1998) 63 Cal.App.4th 1258, 1266 ("*Jones*").) Statements in points and authorities and declaration of counsel are insufficient to rebut the prima facie showing. (*Jones, supra*, 63 Cal.App.4th at p. 1266.) For items that are properly objected to, the burden of proof is on the party claiming them as costs. (*Ibid*.) "There is no requirement that copies of bills, invoices, statements, or any such documents be attached to the memorandum. Only if the costs have been put in issue via a motion to tax costs must supporting documentation be submitted. [Citation.] Once this occurs, the issue becomes whether the required documentation must be of evidentiary quality." (*Jones, supra*, 63 Cal.App.4th at p. 1267.) " 'In ruling upon a motion to tax costs, the trial court's first determination is whether the statute expressly allows the particular item and whether it appears proper on its face. "If so, the burden is on the objecting party to show [the costs] to be unnecessary or unreasonable." [Citation.] Where costs are not expressly allowed by the statute, the burden is on the party claiming the costs to show that the charges were reasonable and necessary.' [Citation.]" (*Rozanova v. Uribe* (2021) 68 Cal.App.5th 392, 399.)

		Code of Civil Procedure section 1033.5(a) sets forth the items that are allowable as costs. Costs are allowable if incurred, whether or not paid, and allowable costs shall be reasonable in amount and "reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation." (Code Civ. Proc. § 1033.5(c)(1)-(3).) Here, Southwest filed a Memorandum of Costs (Summary), Judicial Council of California Form MC-010, signed by Southwest's counsel, and declaring that "the items of costs are correct and were necessarily incurred in this case." (See ROA 475.) This verified Memorandum of Costs is prima facie evidence of their propriety and there is no requirement that invoices be attached. Thus, the motion to strike the Memorandum of Costs on the grounds that documentary evidence was not provided and that Southwest failed to attach invoices is denied. The arguments of Newcastle's counsel in the opposing points and authorities is insufficient to rebut the prima showing, and the declaration of William Welden which generally asserts that his education, experience and training gives him the basis for his opinions of the reasonableness of the contents of the Memorandum of Costs, does not provide evidentiary support for each particular assertion as to the reasonableness of each cost item challenged. As Southwest made a prima facie showing of the propriety of the costs claimed, it is Newcastle's burden of showing that the challenged cost items were not reasonable or necessary. Newcastle's various assertions about the general costs of certain items is made without evidentiary support, and assertion that invoices are needed to determine reasonableness is insufficient to meet Newcastle's burden. Item Nos. 1, 11, 13, and 14 are expressly allowed by statute and appear proper on their face. (Code Civ. Proc. § 1033.5(a)(1) [filing and motion fees], (a)(4) [service of process], (a)(11) [court reporter fees as established by statute], (a)(13) [models, enlargements of exhibits and copies of exhibits], (a)(14) [fees for electronic filing or service of documents].) As Newcastle fails to meet its burden to show

		that these claimed costs are not reasonable or necessary, the motion to tax these cost items is DENIED on this basis. The amount claimed for Item No. 11 is amended as discussed below. Item Nos. 5, 8, and 15 appear to include costs that are not expressly allowed by the statute, and as to certain of these items, Southwest concedes or acknowledges arithmetic errors regarding certain cost items as discussed below. 5. Service of process - $1,853 Newcastle does not object to the claimed cost of $100 for service of process on "Newcastle/Carlin," leaving $1,753 at issue. Southwest acknowledges an arithmetic error of $10, as the Memorandum of Costs seek $1,050 for subpoenas for the June trial date, but the actual sum is $1,040. Thus, Court GRANTS the motion to tax $10 from Item No. 5. Costs in the amount of $1,843 is reasonable in amount and necessary to the conduct of the litigation. 8. Witness fees - $2,509.50 Southwest concedes that $550 for Mr. Alex Lester of the City of Buena Park was also included under Item No. 5, and that these costs are properly recoverable in Item No. 5 or Item No. 8, such that $550 should be deducted either from Item No. 5 or Item No. 8. The Court notes that the Memorandum of Costs states the cost was $572. Therefore, the Court GRANTS the motion to tax $572 from Item No. 8 which was claimed as costs for the "City of Buena Park/Building Dept." What remains is Southwest's claim for a court-ordered mediator in the amount of $1,937.50. Fees of expert witnesses ordered by the court are allowable as costs. (Code Civ. Proc. § 1033.5(a)(8).) However, mediator fees are not expressly allowed as a court-ordered expert fee under Item No. 8. While mediator fees might not be properly categorized as a court-ordered witness fee, it has been found reasonably necessary to the conduct of litigation. (Gibson v. Bobroff (1996) 49 Cal.App.4th 1202, 1209-1210.) The Court finds the claimed costs for mediator fees in the amount of $1,937.50 to be reasonable in

		amount and reasonably necessary to the conduct of the litigation. Thus, the motion to tax this aspect of costs claimed under Item No. 8, is DENIED. 11. Court Reporter fees - $4,677.12 Southwest contends that the claimed amount is less than what was actually charged and requests that the Court allow it to amend its cost request to take into account all of the court reporter fees Plaintiff was required to pay for court reporting services at trial which is $5,566.25, and not the $4,677.12 claimed in the Memorandum of Costs. The Declaration of Mailei Bennett and the invoices attached as Exhibit D, filed in support of the opposition, indicate that the actual total amount of court reporter fees at trial is $5,566.25. (Declaration of Mailei Bennett, ¶¶ 6, Ex. D.) The Court finds this cost reasonable and necessary and allows amendment of the Memorandum of Costs to reflect this amount. 15. Other - $11,218.97 Newcastle contends that this catchall provision cannot be easily analyzed without invoices and asserts that Southwest's bare bones references need invoices. Southwest contends that costs for the licensure fee to CSLB, cash charges for meals and parking are items in the accounting records but that it believes the charges are only for parking at court for trial and motions for which Southwest does not have receipts for cash payments for parking although Mr. Lobherr kept track of the charges and invoiced his client. Southwest also provides that Ms. Bennett has attaches invoices for all items claimed in Item No. 15 in the order that they are listed. As these claimed costs are "other" costs, they are not expressly allowed by statute, nor does Southwest contend that they are expressly allowed. As a result, Southwest has the burden to show that the claimed costs are reasonable and necessary. Items not mentioned in Code of Civil Procedure section 1033.5(a) and items assessed upon application may be allowed or

		denied in the court's discretion. (Code Civ. Proc. § 1033.5(c)(4).) "[A]ny award of costs – whether categorically recoverable under section 1033.5, subdivision (a) or allowable in the court's discretion under section 1033.5(c)(4) – must meet the requirements of subdivision (c)(2) and (3)." (*Segal v. Asics Am. Corp*. (2022) 12 Cal.5th 651, 667.) Allowable costs shall be reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation, and shall be reasonable in amount. (Code Civ. Proc. § 1033.5(c)(2)-(3).) Whether a cost item was reasonably necessary to the litigation presents a question of fact for the trial court. (*Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 774, internal citations omitted.) "[B]ecause the right to costs is governed strictly by statute a court has no discretion to award costs not statutorily authorized." (Ibid., internal citations omitted.) Here, Southwest claims costs for recording fees ($207), rush OC Recorder fees ($144), Court Call services ($376), deadlines on demand ($480), postage ($78.32), electronic production of original client documents ($131.19), Orange County Superior Court fees ($267.45), licensure fee (CSLB) ($134), attorney service court courtesy copies ($387.50), OCSC Parking fees (trial) ($177), OCSC meals (during trial) ($141.80), outside attorney service (motions) ($1,600), court reporter fees (motions) ($6,412), research $667.71, and OCSC fees ($15), totaling $11,218.97. The Declaration of Mailei Bennett submitted in support of the opposition provides that Ms. Bennett prepared payment for the two certificates of licensure to the Contractors State License Board, that she "reviewed the case files and located the additional recoverable costs associated with the 'other' category," and that these documents are attached as Exhibit G. (Declaration of Mailei Bennett, ¶ 9, Ex. G.) Exhibit G, however, only includes invoices and documentation for the licensure fee (CSLB) in the total amount of $134. The opposition does not otherwise provide evidence or citation to authority showing that

		the remaining claimed costs are reasonably necessary to the conduct of the litigation or reasonable in amount. Consequently, Southwest fails to meet its burden to show that the claimed "other" costs are necessary and reasonable. The Court GRANTS the motion to tax the costs claimed in Item No. 15, except for $134. In sum, Newcastle's motion to strike the entire Memorandum of Costs is DENIED. The Court DENIES the motion to tax as to Item Nos. 1, 11, 13, and 14. The claimed amount for Item No. 11 is amended to $5,566.25. The Court GRANTS the motion to tax as to Item Nos. 5, 8, and 15 in part, as stated above. *Southwest to give notice.*
110	Liu vs. Le 23-01319093	The hearing on Defendant Lucy Pham Le's ("Moving Party") Motion to Consolidate is CONTINUED to June 26, 2025 at 1:30 p.m. in Department W15. According to the proof of service, the moving papers were not served on Defendant Dylan Pham Le. Additionally, the Moving Party did not file a copy of the Notice in each case sought to be consolidated as required by CRC 3.350(a). Accordingly, the hearing is continued so that Moving Party may remedy these defects. *Moving party is to give notice of the continuance.*
111	National Funding, Inc. vs. Gil and Rivera L.L.C. 24-01403057	Plaintiff National Funding, Inc. ("Plaintiff") moves for summary judgment on its complaint, consisting of two causes of action for breach of contract against Defendant Gil and Rivera L.L.C. dba Big Jerry's Fencing and two causes of action for breach of guaranty against Defendant Daniel Gil. Plaintiff has provided evidence of the following: Plaintiff's wholly owned subsidiary, Quick Bridge Funding LLC ("Quick Bridge") and Gil and Rivera L.L.C. entered into a Business Loan Agreement on or about June 26, 2023 for a loan in the principal amount of $150,000 ("Loan Agreement No. 1"). (UMF 1.) Gil executed a personal guaranty on that loan.

		(UMF 3.) On or about June 29, 2023, Quick Bridge transferred and assigned all of its rights in Loan Agreement No. 1 to Plaintiff. (UMF 5.) On or about October 5, 2023, Gil and Rivera L.L.C. entered into a second Business Loan Agreement with Plaintiff for a loan principal amount of $50,000. (UF 13.) Gil executed a personal guaranty on this loan as well. (UF 16.) Plaintiff has fully performed its obligations under the loans and deposited all monies required into Gil and Rivera L.L.C.'s bank account. (UF 11-12; 22-23.) Gil and Rivera L.L.C. defaulted on Loan Agreement No. 1 on October 17, 2023 and defaulted on Loan Agreement No. 2 on November 6, 2023. (UF 6; 17.) Plaintiff exercised its rights under the agreements to declare a breach and make the entire outstanding balances of $139,500 for Loan Agreement No. 1 and $50,000 for Loan Agreement No. 2 due and payable. (UF 7; 18.) Despite Plaintiff's demands, Gil and Rivera L.L.C. and Gil have failed to pay the amounts due. (UF 8; 20.) Based on these facts, Plaintiff has shown that it is entitled to summary judgment as to its complaint. Defendants have not submitted any evidence to raise any triable issue of material fact. Thus, the unopposed Motion for Summary Judgment is GRANTED. *Plaintiff to give notice and prepare a proposed judgment*.