TENTATIVE RULINGS

DEPARTMENT C33

Judge Sandy N. Leal

April 17, 2025 at 10:00 a.m.

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 endeavors to post tentative rulings on the Court's website in the morning, prior to the hearing. However, ongoing proceedings such as jury trials may prevent posting by that time. Tentative rulings may not be posted in every case. Please do not call the Department for tentative rulings if tentative rulings have not been posted. 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) 622-5233. 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 nobody 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.*, 205 Cal.App.4th 436, 442, fn. 1 (2012.))

Appearances: Department C33 conducts non-evidentiary proceedings, such as law and motion hearings, remotely by Zoom videoconference pursuant to Code of Civil Procedure section 367.75 and Orange County Local Rule 375. Any party or attorney, however, may appear in person by coming to Department C33 at the Central Justice Center, located at 700 Civic Center Drive West in Santa Ana, California.

All counsel and self-represented parties appearing in-person must check in with the courtroom clerk or courtroom attendant before the designated hearing time. All counsel and self-represented parties appearing remotely must check-in online through the court's civil video appearance website at https://www.occourts.org/media-relations/civil.html before the designated hearing time. Once the online check-in is completed, participants will be prompted to join the courtroom's Zoom hearing session. Participants will initially be directed to a virtual waiting room pending the start of their specific video hearing. 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" and "Guidelines for Remote Appearances" also are available at https://www.occourts.org/media-relations.aci.html. Those procedures and guidelines will be strictly enforced.

Public Access: The courtroom remains open for all evidentiary and non-evidentiary proceedings. Members of the media or public may obtain access to law and motion hearings in this Department by either coming to the Department at the designated hearing time or contacting the Courtroom Clerk at (657) 622-5233 to obtain login information. For remote appearances by the media or public, please contact the Courtroom Clerk 24 hours in advance so as not to interrupt the hearings.

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

#	Case Name	Tentative
3	***24-01438417*** ***Dinh vs. Pham***	**Demurrer to Complaint** Defendants Tuan Pham and Nga Pham's Demurrer to the Complaint is SUSTAINED without leave to amend. Plaintiff has not properly demonstrated standing pursuant to Code Civil Procedure, section 377.30. "A cause of action that survives the death of the person entitled to commence an action or proceeding passes to the decedent's successor in interest, subject to Chapter 1 (commencing with Section 7000) of Part 1 of Division 7 of the Probate Code, and an action may be commenced by the decedent's personal representative or, if none, by the decedent's successor in interest." (§ 377.30.) "Successor in interest" is defined as "the beneficiary of the decedent's estate or other successor in interest who succeeds to a cause of action or to a particular item of the property that is the subject of a cause of action." Here, both causes of action allege Thuy Bich Hong Dinh is the interested party. Paragraph 13 alleges title should "vest entirely in Thuy Bich Hong Dinh against the adverse claims of Fr. Tue's heirs." (Compl., ¶ 13.) Paragraph 17 also alleges Thuy is the sole owner. (Compl., ¶ 17.) Thus, Plaintiff is not the successor in interest under Section 377.30. Therefore, she does not have standing. Additionally, Plaintiff may maintain an action as a personal representative under the Probate Code. "The personal representative has the right to, and shall take possession or control of, all the property of the decedent to be administered in the decedent's estate and shall collect all debts due to the decedent or the estate. The personal representative is not accountable for any debts that remain uncollected without his or her fault." (Prob. Code, § 9650(a)(1).) Further the representative is authorized to sue without joining the beneficiaries of the estate. (Code Civ. Proc., § 369(a)(1).) A "personal representative" includes an executor. (Prob. Code, § 58(a).) The representative must file a proceeding for the administration of the estate. (Prod. Code, § 8000(a).) Here, Plaintiff has not filed a proceeding. Thus, she is not the personal representative. Therefore, Plaintiff does not have standing. Leave to amend should be granted. Leave to amend should be liberally granted unless the complaint shows on its face that it is unable to be amended. (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 747.) Plaintiff has not shown how she can amend her Complaint to adequately allege standing.
4	***24-01397104*** ***Doyle vs. Waldorf Astoria Monarch Beach & Resort Club***	**Motion for Leave to File Cross Complaint** Defendant L.A. Specialty Produce Co., Inc. dba Vesta Foodservice moves for leave to file a cross-complaint against Times Produce, Inc. The unopposed motion is granted. A party shall obtain leave of court to file any cross-complaint except one filed within the time specified in subdivision (a) or (b). (Code Civ. Proc. § 428.50, subd. (c).) If the proposed cross-complaint is permissive, leave of court may be granted "in the interests of justice" at any time during the course of the action. (Id.) There is a liberal policy regarding the

		filing of cross-complaints. (Weil & Brown, Cal. Prac. Guide, Civ. Proc. Before Trial (Rutter 2024) § 6:557.) Code of Civil Procedure section 428.10 governs permissive cross-complaints. It provides in relevant part: "A party against whom a cause of action has been asserted ... may file a cross-complaint setting forth [¶] ... [¶] (b) Any cause of action he has against a person alleged to be liable thereon, whether or not such person is already a party to the action, if the cause of action asserted in his cross-complaint (1) arises out of the same transaction, occurrence, or series of transactions or occurrences as the cause brought against him." (Code Civ. Proc., § 428.10, subd. (b).) Vesta Foodservice proposed Cross-Complaint asserts causes of action for equitable indemnity, apportionment of fault/contribution, and declaratory relief. (ROA 73, Rystad Decl. ¶ 12, Exh. A [Proposed Cross-Complaint].) These claims arise out of the transaction, occurrence, or series of transactions or occurrences as those alleged in Plaintiffs' Complaint, but will not accrue until Vesta Foodservice suffer actual loss through payment. (E.L. White, Inc. v. City of Huntington Beach (1978) 21 Cal.3d 497, 506.) Accordingly, Vesta Foodservice's proposed Cross-Complaint is permissive. Vesta Foodservice has not unreasonably delayed in seeking leave to file its proposed Cross-Complaint against Times Produce, Inc. and no prejudice to any party has been identified. The motion is granted. Defendant L.A. Specialty Produce Co., Inc. dba Vesta Foodservice shall give notice and file and serve the Cross-Complaint attached to the Declaration of Ryan L. Rystad as Exhibit A by April 25, 2025.
5	***23-01310202*** ***Er vs. Chow***	**1) Motion to Compel Production** **2) Motion to Compel Production** **3) Motion to Quash Subpoena** **<u>Plaintiff's Motion to Quash</u>** Plaintiff/Cross Defendant Piper Er's Motion to Quash is GRANTED in part, by modifying categories 3-8 to exclude documents or communications which relate to Kent's representation of Er in her individual capacity and DENIED in part as to categories 1-2 and 9-10. The court "may make an order quashing the subpoena entirely, modifying it, or directing compliance with it upon those terms or conditions as the court shall declare, including protective orders." (Code Civ. Proc., § 1987.1(a).) Categories 1-2 and 9-10 do not seek documents related to Plaintiff. They solely seek documents regarding Caesar Global. Categories 3-8 similarly seek documents regarding Caesar Global, however, they are overbroad and Er's privileged documents may also be included. Thus, the Court modifies categories 3-8 to exclude documents or communications which relate to Kent's representation of Er in her individual capacity.

Defendant's Motion to Compel, Set Two

Defendant Jun Chow's Motion to Compel Further Responses to Requests for Production, set two, is GRANTED. Plaintiff is ORDERED to provide further responses within 20 days of this order. Plaintiff and her counsel, jointly and severally, are ORDERED to pay $6,060 in sanctions within 20 days of this order.

Plaintiff's general objections are improper. Objections must be made to each particular response. (See Code Civ. Proc., § 2031.210(a)(3).)

Plaintiff's responses to no. 62-63, 67-69, 76-78, 80, 90-96 are improper as they indicate that a diligent search had not been completed prior to responding to the request. Further, Plaintiff is instructed to provide a privilege log for requests no. 90-96.

No. 64-65 seek all communications between Plaintiff and any person regarding Caesar Global's property or loans. Plaintiff's attorney-client privilege and work-product objections to no. 64-65 are sustained. Plaintiff's overbroad and unduly burdensome objections are overruled. Similarly, no. 75 seeks all communications between Plaintiff and Caesar Global's counsel. Plaintiff's attorney-client privilege and work-product objections are sustained, however, her overbroad and unduly burdensome objections are overruled. Plaintiff is to provide a further response as to all non-privileged documents as only part of the request is objectionable.

No 65-66 and 69-73 seek all communications between Plaintiff and Defendant; Lili Chen, one of Caesar Global's forming members; Plaintiff mother, Xy Ying Liu; or Johnny Cajas. Plaintiff's attorney-client privilege, work-product, overbroad and unduly burdensome objections are overruled because none of the parties listed are Plaintiff's counsel. To the extent Plaintiff did not produce documents she claims are subject to the attorney-client privilege or attorney work-product doctrine and claims there are in fact privileged documents responsive to the categories, Plaintiff must serve a privilege log to allow Defendant and the Court to evaluate the claimed privilege.

No. 79 and 81 seeks all corporate and employment records of JP Global. Plaintiff's attorney-client privilege, work-product, overbroad and unduly burdensome objections are overruled. To the extent Plaintiff did not produce documents she claims are subject to the attorney-client privilege or attorney work-product doctrine and claims there are in fact privileged documents responsive to the categories, Plaintiff must serve a privilege log to allow Defendant and the Court to evaluate the claimed privilege.

No. 82-89 seek the corporate records of Louver, Louver Enterprise, Louver Enterprise Inc., Louver Enterprise Global, La Fleur, Louver Inc., La Seule. Plaintiff's attorney-client privilege, work-product, overbroad and unduly burdensome objections are overruled. To the extent Plaintiff did not produce documents she claims are subject to the attorney-client privilege or attorney work-product doctrine and claims there are in fact privileged documents responsive to the categories, Plaintiff must serve a

		privilege log to allow Defendant and the Court to evaluate the claimed privilege. Thus, further responses are required as to no 62-96. **Defendant's Motion to Compel, Set Three** Defendant Jun Chow's Motion to Compel Further Responses to Requests for Production, set three, is GRANTED. Plaintiff is ORDERED to provide further responses within 20 days of this order. Plaintiff and her counsel, jointly and severally, are ORDERED to pay $1,260 in sanctions within 20 days of this order. Defendant's reply is not considered because it is untimely. (Cal. Rules of Court, rule 3.1300(d).) Plaintiff's responses to no. 97-103 are improper as they indicate that a diligent search had not been completed prior to responding to the request. Further, Plaintiff is instructed to provide a privilege log for requests no. 101-103. Thus, further responses are required for no. 97-103.
6	***22-01244666*** ***Integritox Laboratories, LLC vs. Chan***	**Motion for Leave to File Amended Cross-Complaint** Cross-Complainant Daniel Y.K. Chan's Motion for Leave to Amend the Cross-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 Civ Proc. § 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, Cross-Complainant seeks leave to file the proposed amended cross-complaint which adds several Cross-Defendants who are allegedly alter egos of Cross-Defendant Integritox. Cross-Complainant contends the identities of the new Cross-Defendants were discovered at the 4/17/24 deposition of Integritox's payroll processor, who testified Integritox employees had moved to Laboratory Services MSO and that Integritox's revenues had also been moved to Laboratory Services MSO by Sarah Cox, an owner of Integritox. Therefore, Cross-Complainant seeks to add Sarah Cox, SCBC Holdings, LLC (another LLC owned by Cox), and Laboratory Services MSO, LLC as Cross-Defendants.

		Integritox opposes the motion on the grounds that the motion does not comply with the Rules of Court because it fails to specify the page and line number of each revision. Integritox also argues the motion was filed belatedly based on facts which were already known to Cross-Complainant, and the payroll processor's testimony was biased against Integritox. The motion adequately complies with the Rules of Court, Rule 3.1324 because Exhibit 4 to the motion includes a redlined copy showing each revision to the proposed amended Cross-Complaint. Integritox's arguments regarding the merits of the Cross-Complaint may be raised at a later stage of proceedings, but at this stage the Court must liberally allow the amendment so that Cross-Complainant can litigate their claims on the merits against any entity that may be liable arising from the same set of facts. A trial date has not been set and Integritox fails to show undue prejudice resulting from any delay and resulting additional discovery that may be required by the amendment. Cross-Complainant shall file and serve the proposed amended Cross-Complaint within 20 days.
7	***21-01185998*** ***Jackson vs. Collectors Universe, Inc.***	**Motion to Appear Pro Hac Vice** The application of attorney Amanda Waide, Esq. to appear pro hac vice as counsel for Defendant Collectors Universe, Inc. (also sued as Professional Sports Authenticator a/k/a PSA) in this matter is hereby CONTINUED to _____. Moving attorney has not met the requirements of California Rules of Court, Rule 9.40. While the supporting declaration of John P. Ward states Attlesey Ward, LLP paid the fees for the Application to the State Bar, proof of that payment was not submitted. (See Ward Decl., ¶ 5.) attorney Amanda Waide, Esq. is to submit proof of payment no later than 5 days before the continued hearing.
8	***24-01382178*** ***Kim vs. Kkanbu Restaurant, Inc.***	**Motion for Leave to File Cross Complaint** The Motion for Leave to file a Cross-Complaint brought by Defendants Kkanbu Restaurant, Inc. and Ai Ran Yang is GRANTED, pursuant to Code of Civil Procedure section 428.50, subdivision (c). Defendants shall separately file and serve the proposed Cross-Complaint, attached as Exhibit A to the Declaration of John Heath, within 10-days. A review of the proposed Cross-Complaint confirms the claims therein arise out of the same transaction or occurrence, as the Complaint: Moving Defendants allege Defendant Hyun Mi Kim breached a written agreement by, among other things, "failing to operate Kkanbu Restaurant in a reasonable and responsible manner" and "failing to take responsibility for all matters regarding staffing of employees…." (¶2 of Heath Declaration and Exhibit A thereto, at ¶11.) The Cross-Complaint additionally alleges Defendant Hyun Mi Kim breached a duty "to reasonably operate Kkanbu Restaurant," by failing to follow proper labor practices and failing to pay expenses. (*Id.* at ¶15-¶16.)

		In addition to the above, the Cross-Complaint alleges Defendant Hyun Mi Kim hired family members, including the Plaintiffs herein, "in an attempt to avoid labor laws" and to allow her to retain a greater amount of proceeds for herself. (¶2 of Heath Declaration and Exhibit A thereto, at ¶21.) Based on the alleged Labor Code violations, moving Defendants allege Defendant Hyun Mi Kim engaged in unfair competition. (*Id.* at ¶35.) Finally, the Cross-Complaint seeks indemnity for Plaintiffs' claims. (*Id.* at ¶27-¶31.) "Cross-complaints for comparative equitable indemnity would appear virtually always transactionally related to the main action." (*Time for Living, Inc. v. Guy Hatfield Homes/ All American Development Co.* (1991) 230 Cal.App.3d 30, 38.) Courts "have repeatedly recognized that cross-complaints for comparative equitable indemnity are specifically allowed under section 428.10, subdivision (b) because of their transactional relationship to the complaint." (*Ibid.*) "An indemnity claim effectively seeks to apportion among the parties to the indemnity action the precise liability claimed by the plaintiff in the main action; therefore the indemnity claim of necessity arises out of the same occurrence or series of occurrences as asserted by the plaintiff." (*Id.* at p. 39.) Based on the above, the proposed Cross-Complaint similarly involves the operations of Kkanbu Restaurant, Inc. and the Labor Code violations alleged by Plaintiffs. Consequently, permitting the proposed Cross-Complaint will serve the interests of justice and judicial efficiency. (Code Civ. Proc., § 428.50, subd. (c).)
10	***23-01331676*** ***Le vs. Southern California Edison Company***	**1) Motion to Be Relieved as Counsel of Record** **2) Motion to Be Relieved as Counsel of Record** **MOTION NO. 1:** The motion filed by attorney David M. Frieman from Wilshire Law Firm to be relieved as counsel of record for plaintiff Bentley Le, a minor, by and through his Guardian Ad Litem, Isaac Martinez is CONTINUED to _____. Moving attorney has not filed a Proof of Service showing the moving papers were served on Plaintiff or the other parties who have appeared in the case. (Cal. Rules of Ct., Rule 3.1362(d) ["The notice of motion and motion, the declaration, and the proposed order must be served on the client and on all other parties who have appeared in the case."] Based on the foregoing, the hearing on the Motion is CONTINUED to _____. Moving attorney is to give notice and to serve the Notice of Motion, Declaration and a Proposed Order with the new hearing date on the client and all other parties who have appeared in the case. Moving attorney is to file a proof of service no later than 5 court days prior to the CONTINUED hearing. Moving attorney to give notice. **MOTION NO. 2:**

		The motion filed by attorney David M. Frieman from Wilshire Law Firm to be relieved as counsel of record for plaintiff Trish Le is CONTINUED to _____. The Proof of Service filed by moving attorney shows Plaintiff was served with the moving papers via personal service but fails to show the moving papers were served on the other parties who have appeared in the case. (Cal. Rules of Ct., Rule 3.1362(d) ["The notice of motion and motion, the declaration, and the proposed order must be served on the client and on all other parties who have appeared in the case."] Based on the foregoing, the hearing on the Motion is CONTINUED to _____. Moving attorney is to give notice and to serve the Notice of Motion, Declaration and a Proposed Order with the new hearing date on the client and all other parties who have appeared in the case. Moving attorney is to file a proof of service no later than 5 court days prior to the CONTINUED hearing. Moving attorney to give notice.
11	***22-01297276*** ***Miller vs. Agriforce Growing Systems, LTD***	**Motion to Compel Production** **MOTION WITHDRAWN**
12	***23-01302857*** ***Providence Capital Funding, Inc. vs. Team MMJ Trucking LLC***	**1) Demurrer to Amended Complaint** **2) Motion to Strike Portions Of Complaint** **<u>Demurrer to Second Amended Cross-Complaint</u>** The demurrer filed by Plaintiff/Cross-Defendant Providence Capital Funding, Inc., and Cross-Defendants Aaron Kubasek and Max Sarango (collectively, "Cross-Defendants") is SUSTAINED with 20 days leave to amend. Cross-Defendants' motion to strike is therefore MOOT. The court finds Cross-Defendants meet and conferred as required pursuant to Code of Civil Procedure sections 430.41 (demurrer) and 435.5 (strike) prior to filing this motions. Cross-Defendants seek an order sustaining their demurrer to each cause of action of the SAXC on the grounds that they each fail to state facts sufficient to constitute a cause of action and are uncertain, pursuant to Code of Civil Procedure § 430.10(e)-(f). The operative second amended cross-complaint ("SAXC"), filed on 11/26/24, by Defendants/Cross-Complainants Team MMJ Trucking LLC ("MMJ"), Mike and Tonya Springer (the "Springers"), (collectively, "Cross-Complainants"), alleges the following causes of action against Plaintiff/Cross-Defendant Providence Capital Funding, Inc. ("Providence"), and Cross-Defendants: (1) breach of contract, (2) interference with contractual relations, (3) intentional interference with prospective economic relations, (4) negligent interference with prospective economic relations, (5) fraud, (6) negligent misrepresentation, (7) false promise, (8) conversion, (9) intentional

		infliction of emotional distress, (10) violation of Business & Professions Code §§ 17200 et seq., (11) open book account, and (12) money had and received. The 1st, 7th, and 10th – 12th causes of action are alleged against Providence only. The remaining causes of action are alleged against all Cross-Defendants. 2nd – 6th, 8th and 9th In the SAXC, Cross-Complainants allege MMJ entered into a lease ("Lease") with Providence on 8/7/20, under which Providence was to acquire a 2013 Freightliner Cascadia, Serial No. 1FUJGLDR2DSBR1477 ("Freightliner") and lease it to MMJ for 24 months. (SAXC, ¶ 10, Ex. A.) The Springers were guarantors of the Lease. (Id., ¶ 11.) Under the Lease, Providence represented that it was the owner of the Freightliner. (Id., ¶ 12.) However, Providence was not, and did not become, the owner of the Freightliner at any time thereby making it impossible to register title to the Freightliner with the Georgia Department of Motor Vehicles ("Georgia DMV"). (Id., ¶¶ 13-14.) The failure of Providence to provide a title to the Freightliner made it unlawful for MMJ to operate the Freightliner on public motorways. (Id., ¶ 15.) The rightful title holder and owner of the Freightliner was Financial Pacific Leasing ("Financial Pacific"). (Id., ¶ 18.) MMJ entered into an equipment lease with Financial Pacific to the Freightliner. (Id., ¶ 19.) Cross-Defendants knew of the lease between MMJ and Financial Pacific. (Id., ¶ 20.) Cross-Defendants intended to cause Financial Pacific to breach the lease by preventing the registration of the Freightliner with the Georgia DMV and by having Financial Pacific refusing to deliver title to MMJ. (Id., ¶ 21.) Providence falsely promised that it would purchase the Freightliner and lease it to MMJ. (Id., ¶ 64.) MMJ timely paid each of the payments under the Lease. At the end of the Lease, MMJ paid the purchase price and purchased the Freightliner from Financial Pacific. (Id., ¶ 73.) 1. Legal Standard "A demurrer tests the pleading alone, and not the evidence or the facts alleged. . . . To the extent there are factual issues in dispute, however, this court must assume the truth not only of all facts properly pled, but also of those facts that may be implied or inferred from those expressly alleged in the complaint." (City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc. (1998) 68 Cal.App.4th 445, 459.) Under the rule of liberal construction, all inferences are to be drawn in favor of the plaintiff. (Perez v. Golden Empire Transportation Transit District (2012) 209 Cal.App.4th 1228, 1238; Code Civ. Proc. § 452.) "To survive a demurrer, the complaint need only allege facts sufficient to state a cause of action; each evidentiary fact that might eventually form part of the plaintiff's proof need not be alleged." (C.A. v. William S. Hart Union High School District (2012) 53 Cal.4th 861, 872.) 2. Uncertainty Cross-Defendants argue the SAXC is uncertain because it lumps all or several defendants together and the conclusory allegations that Providence, Kubasek, and Sarango collectively "did not become, the

owner of the [Vehicle]" is insufficient to demonstrate any liability on the part of Providence, Kubasek, or Sarango. (SAXC, ¶¶ 13-14.) Cross-Complainants' opposition is silent on this issue.

"Demurrers for uncertainty are disfavored, and are granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond. A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures. Under our liberal pleading rules, where the complaint contains substantive factual allegations sufficiently apprising defendant of the issues it is being asked to meet, a demurrer for uncertainty should be overruled or plaintiff given leave to amend." (A.J. Fistes Corp. v. GDL Best Contractors, Inc. (2019) 38 Cal.App.5th 677, 695 [cleaned up]; but see Hawley Bros. Hardware Co. v. Brownstone (1899) 123 Cal. 643, 646-47 [holding a complaint is subject to a demurrer for ambiguity in an action upon notes executed in a firm name, where the members of the firm are described as defendants in the caption of the complaint, but the body of the complaint throughout uses the term "defendant" in the singular number, and alleges that the "defendant" has not paid the notes].)

Here, the labels for the 2nd – 6th, 8th and 9th state that they are alleged against Providence, Kubasek, and Sarango. Each of these causes of action contain substantive factual allegations committed by "Cross-defendants" sufficiently to apprise them of the issues they are being asked to meet. For example, the 3rd and 4th causes of action allege "Cross-defendants, and each of them, conspired with each other, to prevent Team MMJ and Financial Pacific to be able to register the title to the Freightliner with the Georgia DMV and having Financial Pacific refusing to deliver title to Team MMJ." (SAXC, ¶¶ 30, 40.) Therefore, the demurrer for uncertainty is OVERRULED.

3. Standing

Cross-Defendants argue the Springers do not have standing to bring these claims, which are based on an alleged breach of the Lease, and are not the real parties in interest. Cross-Defendants are correct. The SAXC fails to allege facts showing the Springers have standing to bring a breach of contract claim against Providence. The only parties to the Lease were MMJ and Providence. The Springers were only guarantors. (SAXC ¶ 11, Ex. A.)

Cross-Complainants do not address this point in their opposition. By failing to address the issue in their opposition, Cross-Complainants concede the argument is meritorious. (See Rules of Court, Rule 3.1342(b) ["The failure to serve and file a written opposition may be construed by the court as an admission that the motion is meritorious, and the court may grant the motion without a hearing on the merits."]; see also DuPont Merck Pharmaceutical Co. v. Sup. Ct. (2000) 78 Cal.App.4th 562, 566 ["By failing to argue the contrary, plaintiffs concede this issue"].)

		Thus, Cross-Defendants' demurrer to the 1st – 12th causes of action brought by the Springers are SUSTAINED with leave to amend. 4. Economic Loss Rule Cross-Defendants argue the 2nd through 9th causes of action are barred by the economic loss rule ("ELR") because they each seek tort damages for Providence's alleged breach of the Lease. Cross-Complainants argue the ELR does not apply to intentional torts. In general, the economic loss rules bars tort recovery "for negligently inflicted 'purely economic losses,' in the absence of personal injury or physical damage to other property." (Sheen v. Wells Fargo Bank, N.A. (2022) 12 Cal.5th 905, 922.) "Not all tort claims for monetary losses between contractual parties are barred by the economic loss rule . . . [S]uch claims are barred when they arise from—or are not independent of— the parties' underlying contracts." (Id. at 923-924, citing Robinson Helicopter Co., Inc. v. Dana Corp. (2004) 34 Cal. 4th 979, 991; Erlich v. Menezes (1999) 21 Cal. 4th 543, 551.) The California Supreme Court recently reaffirmed that the economic loss rule "does not apply if defendant's breach caused physical damage or personal injury beyond the economic losses caused by the contractual breach and defendant violated a duty flowing, not from the contract, but from a separate, legally recognized tort obligation." (Rattagan, supra, 17 Cal.5th at 44. In so ruling, the Supreme Court explained the economic loss rule does not apply to limit recovery for intentional tort claims like fraud. The doctrine only applies to bar tort recovery for negligently inflicted economic losses unaccompanied by physical or property damage under the limits recognized in Sheen." (Id. at 38.) Accordingly, since the ELR does not apply to intentional torts, Cross-Defendants demurrer to the 2nd, 3rd, 5th, 7th- 9th causes of action (all alleging intentional torts) on this ground are OVERRULED. With respect to the 4th and 6th causes of action for negligent interference with prospective economic relations and negligent misrepresentation, Cross-Defendant's motion is devoid of analysis regarding the ELR's applicability to each of these causes of action. Instead, Cross-Defendants state the 2nd through 9th causes of action seek tort damages for Providence's alleged breach of Lease, then cite legal authority for the ELR, and conclude the 2nd through 9th causes of action are barred by the ELR. The "court is not required to examine undeveloped claims, nor to make arguments for parties."(Maral v. City of Live Oak (2013) 221 Cal.App.4th 975, 984; see also Mansell v. Board of Administration (1994) 30 Cal.App.4th 539, 546 ["court may treat [unsupported legal arguments] as waived, and pass it without consideration."].) Accordingly, Cross-Defendants have failed to establish the ELR applies to the 4th and 6th causes of action. Thus, the demurrer to the 4th and 6th causes of action on this ground are OVERRULED. 5. 1st Cause of Action: Breach of Contract To state a breach of contract claim, the plaintiff must plead (1) a contract, (2) plaintiff's performance or excuse for nonperformance; (3) defendant's breach; and (4) resulting damages. (Otworth v. Southern

Pac. Transportation Co. (1985) 166 Cal.App.3d 452, 458.) The complaint must also plead whether the contract is written, oral, or implied by conduct. (Ibid.)

The breach of contract claim alleges Providence and MMJ entered into the Lease for the Freightliner, under which Providence represented that it owned the Freightliner (SAXC, ¶¶ 10, 12); Providence breached the Lease by failing to have ownership of the Freightliner (SAXC, ¶ 13); as a result, it was impossible to register title to the Freightliner with the Georgia DMV and unlawful for MMJ to operate it on public mtotorways (SAXC ¶¶ 14-15); and the breach caused MMJ to suffer financial loss (SAXC, ¶ 16).

Cross-Defendants argue the claim fails because the Lease does not contain any provision obligating Providence to provide license plates and, on the contrary, expressly states that MMJ is responsible for registering the vehicle, expressly disclaims any warranty of fitness for a particular purpose, and disclaims any claim for lost profit damages. (SAXC, Ex. A, §§ 4, 10.)

Cross-Complainants argue they have alleged each element of the breach of contract claim including that Providence breached the Lease by not owning Freightliner. However, as Cross-Defendants point out in their reply, Cross-Complainants do not address Cross-Defendants' argument that the Lease expressly disclaims any fitness for a particular purpose, which is the premise the breach of contract claim. Accordingly, Cross-Complainants concede the argument is meritorious. (See Rules of Court, Rule 3.1342(b); see also DuPont Merck Pharmaceutical Co., supra, 78 Cal.App.4th at 566.)

Thus, the demurrer to the 1st cause of action is SUSTAINED with leave to amend.

6. 2nd Cause of Action: Intentional Interference with Contractual Relations
Statute of Limitations
Cross-Defendants argue this claim is barred by the two-year statue of limitations set forth in Code of Civil Procedure section 339(1) because the Lease was entered into on August 7, 2020. (SAXC, ¶ 10.) The initial cross-complaint was filed on April 3, 2023.

The SAXC was filed on November 26, 2024.

Cross-Complainants argue a four year statute of limitations applies to the interference with contract causes of action pursuant to sections 337 and 343.

In response, Cross-Defendants argues sections 337 and 343 do not apply to this claim because they concern an action upon a contract in writing. They further argue the claims began to accrue when the Lease was entered into on August 7, 2020.

		"A demurrer based on a statute of limitations will not lie where the action may be, but is not necessarily, barred. In order for the bar… to be raised by demurrer, the defect must clearly and affirmatively appear on the face of the complaint; it is not enough that the complaint shows that the action may be barred." (Committee for Green Foothills v. Santa Clara County Bd. of Supervisors (2010) 48 Cal.4th 32, 42 [cleaned up].) Code of Civil Procedure section 339(1) provides: "An action upon a contract, obligation or liability not founded upon an instrument of writing" must be brought "[w]ithin two years". Section 339(1) has been held to cover tortious inference with contract, trade, or business. (Edwards v. Fresno Community Hosp. (1974) 38 Cal.App.3d 702, 706 [listing cases].) While Cross-Defendants are correct that section 339(1) applies to this action, they do not site any legal authority regarding when a tortious interference claim begins to accrue. Accordingly, Cross-Defendants have only established the claim may be barred by the statute of limitation, not that the defense appears clearly on the face of the SAXC. Failure to state a claim To establish interference with contractual relations, Cross-Complainants must show that: (1) a valid contract exists between plaintiff and a third party; (2) defendant knew of the existence of this contract; (3) defendant took intentional steps to interrupt the contractual relation; (4) defendant's actions breached the contractual relation; and (5) damages as a result of the breached contract. (Pacific Gas & Electric Co. v. BearStearns & Co. (1990) 50 Cal.3d 1118, 1126.) "[T]o state a claim for interference with an at-will contract by a third party, the plaintiff must allege that the defendant engaged in an independently wrongful act." (Ixchel Pharma, LLC v. Biogen, Inc. (2020) 9 Cal.5th 1130, 1148, internal citation omitted.) Cross-Complainants have not alleged the first element. Cross-Complainants allege that because Financial Pacific allegedly owned the Vehicle, MMJ was actually in a lease agreement with Financial Pacific and that Providence caused Financial Pacific to breach the Lease by "preventing the registration of the [Vehicle] with the Georgia DMV." (SAXC, ¶ 21.) However, the Lease attached to the SAXC is expressly between Providence and MMJ. Cross-Complainants make contradictory allegations, stating both that the Lease is between MMJ and Providence, but also that the Lease is between MMJ and Financial Pacific. (SAXC, ¶¶ 10, 19.) Further, the SAXC fails to allege an independently wrongful act. Thus, the demurrer to the 2nd cause of action is SUSTAINED with leave to amend. 7. 3rd and 4th Causes of Action: Intentional and Negligent Interference with Prospective Economic Relations Statute of Limitations Cross-Defendants argue these claims are also barred by the two-year statute of limitations pursuant to section 339(1). For the reasons

		discussed above, Cross-Defendants have failed to establish these claims are time-barred. Failure to state a claim "The elements which a plaintiff must plead to state the cause of action for intentional interference with contractual relations are (1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage." (Pacific Gas & Electric Co. v. Bear Stearns & Co. (1990) 50 Cal.3d 1118, 1126.) "The tort duty not to interfere with [a] contract falls only on strangers—interlopers who have no legitimate interest in the scope or course of the contract's performance." (Applied Equipment Corp. v. Litton Saudi Arabia Ltd. (1994) 7 Cal.4th 503, 514.) "The elements of negligent interference with prospective economic advantage are(1) the existence of an economic relationship between the plaintiff and a third party containing the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) the defendant's knowledge(actual or construed) that the relationship would be disrupted if the defendant failed to act with reasonable care; (4) the defendant's failure to act with reasonable care; (5) actual disruption of the relationship; (6) and economic harm proximately caused by the defendant's negligence." (Redfearn v. Trader Joe's Co. (2018) 20 Cal.App.5th 989, 1005.) Furthermore, " '[t]he tort of negligent interference with economic relationship arises only when the defendant owes the plaintiff a duty of care.' " (LiMandri v. Judkins (1997) 52 Cal.App.4th 326, 348, original italics, internal citation omitted.) "[A] plaintiff seeking to recover for an alleged interference with prospective contractual or economic relations must plead and prove as part of its case-in-chief that the defendant not only knowingly interfered with the plaintiff's expectancy, but engaged in conduct that was wrongful by some legal measure other than the fact of interference itself." (Della Penna v. Toyota MotorSales, U.S.A., Inc. (1995) 11 Cal.4th 376, 393.) " '[A]n act is independently wrongful if it is unlawful, that is, if it is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard.' '[A]n act must be wrongful by some legal measure, rather than merely a product of an improper, but lawful, purpose or motive.' " (San Jose Construction, Inc. v. S.B.C.C., Inc. (2007) 155 Cal.App.4th 1528, 1544-1545.) Here, Cross-Complainants fail to allege that the Lease is a relationship between MMJ and a third party, since Providence is a party to the Lease. While the SAXC alleges the existence of contract between Financial Pacific and MMJ (SAXC ¶¶ 28, 38), these allegations conflict with the prior allegations of the cross-complaint and amended complaint. Cross-Complainants cannot attempt to breathe life into the cross-complaint by omitting relevant facts from an amended complaint that made a Cross-

		Complainants previous complaint defective. If a party amends a pleading to omit or alter facts that rendered the pleading vulnerable to attack, the court may disregard the omission or alteration unless the plaintiff has a valid explanation for the change. (Hardy v. Admiral Oil Co. (1961) 56 Cal.2d 836.) Namely, in the SAXC, MMJ acknowledged that Providence is the owner of the Vehicle and could "sell; assign or transfer the Lease, or any part of it, and MMJ agreed that such an assignment would not relieve it of its obligations under the Lease." (SAXC, ¶ 10, Ex. A §§ 7-8.) An attachment to the amended cross-complaint shows that it was clear that the Freightliner would be titled in Financial Pacific's name. (Amended Cross-Complaint, pp. 40-41, Ex. 2g.) Cross-Complainants also attached to the amended cross-complaint what they alleged to be the contract with Financial Pacific. (Amended Complaint, pp.33-39, Ex. 2f.) However, on its face, the document is not a contract between Financial Pacific and MMJ but an invoice between the dealer of the Freightliner and Financial Pacific. (Id.) MMJ is not a party to the invoice, who is only listed as the ship to location, and there are no terms or obligations by and between MMJ and Financial Pacific. Providence cannot have interfered with a contractual duty that did not exist. Cross-Complainants do not explain their contradictory allegations. Lastly, the SAXC does not allege Providence engaged in an intentionally wrongful act. Thus, the demurrer to the 3rd and 4th causes of action is SUSTAINED with leave to amend. 8. 5th Cause of Action: Fraud Statute of Limitations Common law fraud causes of action must be asserted within three years. (Civ. Proc. Code, § 338(d); Sun'n Sand, Inc. v. United California Bank (1978) 21 Cal.3d 671, 701.) Cross-Defendants argue in conclusory fashion without providing any analysis that this claim is barred by the three-year statute of limitations. The "court is not required to examine undeveloped claims, nor to make arguments for parties." (Maral v. City of Live Oak (2013) 221 Cal.App.4th 975, 984; see also Mansell v. Board of Administration (1994) 30 Cal.App.4th 539, 546 ["court may treat [unsupported legal arguments] as waived, and pass it without consideration."].) Accordingly, Cross-Defendants have failed to establish this claim is time-barred. Failure to state a claim A claim for fraud must allege: (1) misrepresentation (false representation, concealment, or nondisclosure); (2) knowledge of falsity (or 'scienter'); (3) intent to defraud, i.e., to induce reliance; (4) justifiable reliance; and (5) resulting damage. (Engalla v. Permanente Medical Group, Inc. (1997) 15 Cal.4th 951, 974.) Further, "[i]n California, fraud must be pled specifically; general and conclusory

		allegations do not suffice." (Lazar v. Superior Court (1996) 12 Cal.4th 631, 645.) The pleading should be sufficient " 'to enable the court to determine whether, on the facts pleaded, there is any foundation, prima facie at least, for the charge of fraud.'" (Committee on Children's Television, Inc. v. General Foods Corp. (1983) 35 Cal.3d 197, 216-217.) Facts must be pled which show how, when, where, to whom, and by what means the representations were made. (Lazar v. Superior Court, supra, 12 Cal.4th at p. 645.) When the defendant is a corporate defendant, the plaintiff must further allege the names of the persons who made the representations, their authority to speak, to whom they spoke, what they said or and when it was said. (Ibid.) Here, Cross-Complainants' allegations fail to provide the specificity necessary to support this claim. Particularly as to Kubasek and Sarango, there are no allegations as to what representation either of them made or when, to support this individualized claim. Nor are there allegations regarding any misrepresentations made by Providence, the names of the persons who made the representations on Providence's behalf, their authority to speak, to whom they spoke, what they said or and when it was said. Thus, the demurrer to the 5th cause of action is SUSTAINED with leave to amend. 9. 6th Cause of Action: Negligent Misrepresentation Statute of Limitations Cross-Defendants argue in conclusory fashion without providing any analysis that this claim is barred by the two-year statute of limitations pursuant to Code of Civil Procedure section 339. The "court is not required to examine undeveloped claims, nor to make arguments for parties." (Maral v. City of Live Oak (2013) 221 Cal.App.4th 975, 984; see also Mansell v. Board of Administration (1994) 30 Cal.App.4th 539, 546 ["court may treat [unsupported legal arguments] as waived, and pass it without consideration."].) Accordingly, Cross-Defendants have failed to establish this claim is time-barred. Failure to state a claim "Negligent misrepresentation requires an assertion of fact, falsity of that assertion, … lack of reasonable grounds for believing the assertion to be true … intent to induce reliance, justifiable reliance by the person to whom the false assertion of fact was made, and damages [.]" (SI 59 LLC v. Variel Warner Ventures, LLC (2018) 29 Cal.App.5th 146, 154.) However, if the defendants' beliefs are honest and reasonable, then the misrepresentation is innocent, and there is no tort liability. (Diediker v. Peelle Financial Corp. (1997) 60 Cal.App.4th 288, 297.) Here, Cross-Complainants fail to allege that Cross-Defendants lacked reasonable grounds for believing its alleged representation to be true. Thus, the demurrer to the 6th cause of action is SUSTAINED with leave to amend. 10. 7th Cause of Action: False Promise

		False promise is a subspecies of fraud. (Engalla v. Permanente Medical Group, Inc. (1997) 15 Cal.4th 951, 973-974.) To sufficiently allege a claim for false promise, Cross-Complainants "must allege (1) the 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.) "Each element must be alleged with particularity." (Beckwith v. Dahl (2012) 205 Cal.App.4th 1039, 1059-1060.) Cross-Defendants argue the SAXC fails to sufficiently allege Providence's lack of intent to obtain the Freightliner. However, the SAXC alleges Providence falsely promised that it would purchase the Freightliner and lease it to MMJ, but Providence did not intend to perform this promise when made. (SAXC, ¶¶ 64-65.) Accordingly, the SAXC properly alleges intent. Nevertheless, Cross-Defendants are correct that the SAXC fails to plead this claim with the specificity required of a fraud claim. Thus, the demurrer to the 7th cause of action is SUSTAINED with leave to amend. 11. 8th Cause of Action: Conversion "Conversion is the wrongful exercise of dominion over the property of another. The elem ments 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." (Lee v. Hanley (2015) 61 Cal.4th 1225, 1240.) "In order to establish a conversion, the plaintiff 'must show an intention or purpose to convert the goods and to exercise ownership over them, or to prevent the owner from taking possession of his property.'" (Collin v. American Empire Insurance Co. (1994) 21 Cal.App.4th 787, 812, internal citations omitted.) This claim is contradictory. Cross-Complainants allege MMJ purchased the Freightliner from Financial Pacific. Cross-Complainants do not explain how Providence interfered with MMJ's title of the Freightliner when they also claim that Providence does not have title and is not the owner of the Freightliner. In other words, the claim does not Cross-Defendant's conversion by a wrongful act. Thus, Plaintiff's cause of action for conversion is insufficiently pled. Thus, the demurrer to the 8th cause of action is SUSTAINED with leave to amend. 12. 9th Cause of Action: Intentional Infliction of Emotional Distress Statute of Limitations Cross-Defendants argue in conclusory fashion without providing any analysis that this claim is barred by the two-year statute of limitations pursuant to Code of Civil Procedure section 335.1. The "court is not required to examine undeveloped claims, nor to make arguments for parties." (Maral v. City of Live Oak (2013) 221 Cal.App.4th 975, 984; see also Mansell v. Board of Administration (1994) 30 Cal.App.4th 539,

		ss it without consideration."].) Accordingly, Cross-Defendants have failed to establish this claim is time-barred. Failure to state a claim "A cause of action for intentional infliction of emotional distress exists when there is '(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress;(2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct.' A defendant's conduct is 'outrageous' when it is so 'extreme as to exceed all bounds of that usually tolerated in a civilized community.' And the defendant's conduct must be 'intended to inflict injury or engaged in with the realization that injury will result.' " (Hughes v. Pair (2009) 46 Cal.4th 1035, 1050-1051.) "Severe emotional distress [is] emotional distress of such substantial quantity or enduring quality that no reasonable man in a civilized society should be expected to endure it." (Fletcher v. Western Life Insurance Co. (1970) 10 Cal.App.3d 376, 397.) As an initial matter, a business entity like MMJ lacks standing to pursue a claim for intentional infliction of emotional distress. (Huntington Life Sciences v. Stop Huntington Animal Cruelty, USA (2005) 129 Cal.App.4th 1228, 1260.) In addition, the conduct alleged, does not rises to the level of conduct which a civilized society cannot endure. Further, assuming that the false representation alleged is that Providence did not actually own the Freightliner (this claim fails to actually state the false representation (see SAXC, ¶ 82), this allegation does not rise to the level of distress and intentional wrongdoing necessary to satisfy an IIED claim. Specifically, terms of the Lease clearly states that MMJ was responsible for the registration of the Vehicles. (SAXC, Ex. A, § 10.) MMJ also expressly disclaimed warranties for fitness of the Vehicle for use for a particular purpose. (SAXC, Ex. A, § 4.) Thus, the demurrer to the 9th cause of action is SUSTAINED with leave to amend. 13. 10th Cause of Action: Violation of Business and Professions Code § 17200 ("UCL") Unfair business practices, "shall mean and include any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising." (Bus. & Prof. Code, § 17200.) Courts have made it clear that the UCL cannot be used as an end-run around the requirements of other statutes. (See Glenn K. Jackson Inc. v. Roe (9th Cir. 2001) 273 F.3d 1192, 1203; see also Krantz v. BT Visual Images, L.L.C. (2001) 89 Cal.App.4th 164, 178 [the viability of a UCL claim stands or falls with the antecedent substantive causes of action].) "A court may not allow plaintiff to plead around an absolute bar to relief simply by recasting the cause of action as one for unfair competition."

		(Chamber v. United of Omaha Life Ins. Co. (9th Cir. 2000) 225 F.3d 1042, 1048.) Likewise, a defense to the predicate claim is a defense to the alleged violation of the UCL. (Krantz, 89 Cal.App.4th at 178.) The claim for violation of UCL is based on a claim that Cross-Defendants committed fraud against Cross-Complainants. (SAXC, ¶ 91.) Accordingly, because Cross-Complainants fraud claims fail, the UCL claim also fails. Thus, the demurrer to the 10th cause of action is SUSTAINED with leave to amend. 14. 11th and 12th Causes of Action: Open Book Account and Money Had and Received The only essential allegations of a common count are '(1) the statement of indebtedness in a certain sum, (2) the consideration, i.e., goods sold, work done, etc., and (3) nonpayment.'" (Farmers Ins. Exchange v. Zerin (1997) 53 Cal.App.4th 445, 460, internal citations omitted.) However, when a common count is used as an alternative way of seeking the same recovery demanded in a specific cause of action, and is based on the same facts, the common count is demurrable if the cause of action is demurrable." (McBride v. Boughton (2004) 123 Cal.App.4th379, 394, internal citations omitted.) Here, Cross-Complainants allege in their conversion claim that MMJ paid money to Providence under the Lease. (SAXC, ¶ 73.) In their common counts, they allege they into financial transactions with Providence and that "Cross-Defendants owe money to Cross-Complainants on the account of such transactions." (SAXC, ¶¶ 98, 102.) Accordingly, Cross-Complainants seek to recover the same money they seek in their breach of contract claim and conversion, which is based on the same facts. Therefore, the common counts fail for the same reason the conversion claim fails. Thus, the demurrer to the 11th and 12th causes of action is SUSTAINED with leave to amend. **<u>Motion to Strike</u>** Based on the recommendation on the Demurrer. The motion to strike it moot.
14	***24-01375927*** ***Realpage, Inc. vs. County of Orange***	**Demurrer to Amended Complaint** The Demurrer to Plaintiff's First Amended Complaint (FAC) by Defendant State of California, by and through California Department of Food and Agriculture (State) is OVERRULED as to the first, second, and sixth causes of action. and SUSTAINED with leave to amend as to the third, fourth, and fifth causes of action. <u>Legal Standard:</u>

		"The rules by which the sufficiency of a complaint is tested against a general demurrer are well settled. We not only treat the demurrer as admitting all material facts properly pleaded, but also give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. 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. [¶] The courts of this State have long since departed from holding a Plaintiff strictly to the form of action that has been pleaded and instead have adopted the more flexible approach of examining the facts alleged to determine if a demurrer should be sustained. 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 [cleaned up].) 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.) <u>First Cause of Action – Injunctive Relief and Second Cause of Action – Declaratory Relief:</u> In the First Amended Complaint (FAC), Plaintiff alleges six claims against the State and County arising from the County's inspection and testing of 720 water meters, which Plaintiff alleges damaged the water meters it had purchased from a third party. Plaintiff alleges the County's Weights and Measures Department is a division of the State's Department of Food and Agriculture. (¶ 11.) Plaintiff alleges the State and Karen Ross, its Secretary of Agriculture, are liable because they are "responsible for issuing instructions and making recommendations to County Sealers in California regarding the inspections of water meters required to be completed." (¶ 21.) The alleged testing required by the State and County "involves breaking the manufacturer seal and results in the voiding of the warranty of each and every water meter inspected, preventing the purchaser from seeking any repair under warranty." (¶ 25.) The State contends injunctive relief is a remedy, not a cause of action. It further contends that there is no alleged conduct by the State giving rise to a claim for declaratory relief in the FAC. Rather, the County sealer's conduct is at issue. In opposition, Plaintiff states, "Although Plaintiff does not yet know exactly how the inspection breaks the seal, thus voiding the warranty,

		nor does it know the role of each party in creating the law requiring the inspection and determining the procedure to be used, the fact is that it does, and this Court must accept those allegations as true. (*Del. E. Webb Corp.*, 123 Cal.App.3d at 604.)" (Opp. at p. 4.) At this stage, Plaintiff has adequately pled claims for equitable relief against the State arising from the alleged requirement that inspections must occur which break the seal and void the manufacturer warranty. Plaintiff may plead the request for injunctive relief as a separate claim for clarity. Therefore, the demurrer is overruled as to the 1st and 2nd causes of action. <u>Third Cause of Action – Negligence Per Se:</u> The State contends Plaintiff has not alleged facts that could show a State employee, acting within the scope of their employment, committed a negligent act or omission giving rise to a negligence claim against the State. (Gov. Code § 815.2.) Rather, the State issued instructions and made recommendations which govern the County's procedures under Bus. & Prof. Code § 12104, which are enforced by County employees under § 12103.5. At paragraph 40, Plaintiff alleges, "Defendants The STATE OF CALIFORNIA, KAREN ROSS, and Does 4 through 6 were negligent in issuing instructions and making recommendations to County Sealers in California requiring the inspection of the meters to be completed in such a way as to allow the warranty to be voided on all the water meters and causing damage to the water meters." The State contends it cannot be liable for discretionary acts of its employees, even if such acts are an abuse of discretion under Government Code section 820.2, which states: "Except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused." Here, Plaintiff alleges the State is vicariously liable for issuance of instructions and recommendations under Business and Professions Code section 12104(a), which required the State to "issue instructions and make recommendations to the County sealers, and the instructions and recommendations shall govern the procedure to be followed by these officers in the discharge of their duties." Although it is mandatory for the State to issue instructions and recommendations, the statutory scheme appears to vest discretion in the State's employees with regard to the substance of such instructions and recommendations. (Bus. & Prof. Code § 12100 et seq.) Plaintiff has not responded to the State's argument regarding section 820.2 or shown there was non-discretionary conduct involved. Therefore, the demurrer is sustained as to this cause of action.

		Fourth Cause of Action – Conversion: Conversion comprises three elements: (1) Plaintiff's ownership or right to possession of personal property, (2) defendant's disposition of property in a manner inconsistent with Plaintiff's property rights, and (3) resulting damages. (*Voris v. Lampert* (2019) 7 Cal. 5th 1141, 1150.) The State contends there is no allegation it dispossessed Plaintiff of property or interfered with Plaintiff's property and that it is immune under Government Code section 820.2. The demurrer to this cause of action is sustained because it arises from allegations of discretionary conduct, i.e. issuance of instructions and recommendations, for which the State is immune under government code section 820.2. Fifth Cause of Action – Trespass to Chattels: This claim is similarly based on the State's wrongful possession/damage to the water meters purchased by Plaintiff. The State contends Plaintiff has not pled conduct by a State employee sufficient to support this claim and that discretionary immunity applies. The demurrer to this cause of action is sustained because it arises from allegations of discretionary conduct for which the State is immune under government code section 820.2. Sixth Cause of Action – Inverse Condemnation: Plaintiff alleges the water meters were taken for public use/inspection by the County pursuant to the State's instructions, and as a result of the taking, Plaintiff was deprived of its use of the water meters. The State contends there was no alleged public project or improvement that gave rise to the alleged taking and that, " 'A party who does nothing more than establish property damage as the result of negligent conduct of public employees or a public entity has not established a right to recover under a claim of inverse condemnation.' (City of Los Angeles v. Superior Court (2011) 194 Cal.App.4th 210, 221, citing Customer Co. v. City of Sacramento (1995) 10 Cal.4th 368, 381.)" (Demurrer, p. 9.) The County does not contend discretionary immunity applies to an inverse condemnation claim which involves direct, not vicarious, liability. At this stage, Plaintiff has adequately pled a claim for inverse condemnation including that the inspection of the water meters constituted a taking of property for public use or benefit. (*Wildensten v. East Bay Regional Park Dist.* (1991) 231 Cal.App.3d 976, 980.)

15	***24-01417629*** ***Sullivan vs. Kazerooni***	**Motion to Set Aside/Vacate Default and Judgment** Defendant Sima Kazerooni's Motion to Vacate Default Judgment is GRANTED in part and DENIED in part. Defendant Sima Kazerooni, in pro per, moves for an order vacating and setting aside the default and default judgment entered in this action on January 30, 2025, pursuant to Code of Civil Procedure section 473(b). Defendant also seeks a stay pending resolution of the Fee Arbitration. If an action is dismissed as the result of "mistake, inadvertence, surprise or excusable neglect," plaintiff can move to set aside the dismissal under Code of Civil Procedure (CCP) section 473(b). Discretionary relief under section 473(b) is available to "relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." (CCP, § 473(b).) Because the law favors disposing of cases on their merits, any doubts in applying section 473 must be resolved in favor of the party seeking relief from default." (Austin v. Los Angeles Unified School Dist. (2016) 244 Cal.App.4th 918, 929 [cleaned up].) A motion for relief under section 473(b) "shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted . . . ." (CCP § 473(b).) However, this requirement is not jurisdictional; substantial compliance may suffice. (Carmel, Ltd. v. Tavoussi (2009) 175 Cal.App.4th 393, 403 [finding substantial compliance where counsel offered proposed answer at motion hearing rather than serving it with moving papers].) A motion for discretionary relief must be made "within a reasonable time but in no instance exceeding six months after the judgment, dismissal, order, or proceeding was taken." (CCP § 473(b).) The motion is timely. The Court entered Defendant's default and default judgment on 1/30/25. Defendant filed the instant motion within 6 months on 2/13/25. Defendant also submitted a copy of her proposed Answer. (Kazerooni Decl., Ex. B.) Defendant argues her failure to appear in the action within the period prescribed by law was due to a bona fide misunderstanding of the procedural requirements. Within the context of section 473(b) excusable neglect has been found when the party is unaware of the duty to appear or respond. (See, e.g., Elston v. City of Turlock (1985) 38 Cal.3d 227, 234, superseded by statute on other grounds ["an attorney states that he was unaware of his duty to appear or answer because his employees' misplaced papers or misinformed him as to the relevant date, relief is routinely granted."].) Relief under section 473(b) may be granted for a mistake of law. (See Waite v. Southern Pac. Co. (1923) 192 Cal. 467, 471.) "The issue of which mistakes of law constitute excusable neglect presents a fact question; the determining factors are the reasonableness of the

		misconception and the justifiability of lack of determination of the correct law . . . . Although an honest mistake of law is a valid ground for relief where a problem is complex and debatable, ignorance of the law coupled with negligence in ascertaining it will certainly sustain a finding denying relief." (A & S Air Conditioning v. John J. Moore Co. (1960) 184 Cal.App.2d 617, 620.) Here, Defendant states in her supporting declaration that on or about October 18, 2024, she filed a Notice of Stay in connection with pending Fee Arbitration proceedings. (Kazerooni Decl., ¶ 4, Ex. A.) Defendant, representing herself in this matter, did not file an Answer because she mistakenly believed that the Notice of Stay eliminated the need for an Answer. (Kazerooni Decl., ¶ 4.) On January 30, 2025, Defendant looked at the Docket and realized that on or about January 22, 2025, Plaintiff filed an Application for Default Judgment. (Kazerooni Decl., ¶ 5.) Thus, Defendant did not learn of the requirement to file an Answer until January 30, 2025, when she became aware that the default judgment had been entered. (Kazerooni Decl., ¶ 6.) Upon learning of the error, Defendant promptly filed an Answer on January 30, 2025, but it was rejected by the Court since a default judgment had already been entered against Defendant. (Kazerooni Decl., ¶ 7, Ex. B.) These facts adequately establish excusable neglect and mistake of law, as well as Defendant's diligent conduct upon learning of her error. Plaintiff has not filed an opposition. "The failure to serve and file a written opposition may be construed by the court as an admission that the motion is meritorious, and the court may grant the motion without a hearing on the merits." (Rules of Court, Rule 3.1342(b); see also DuPont Merck Pharmaceutical Co. v. Sup. Ct. (2000) 78 Cal.App.4th 562, 566 ["By failing to argue the contrary, plaintiffs concede this issue"].) With respect to the requested stay, Defendant provides no legal authority or analysis to support the requested stay. The motion is GRANTED in part as to the request to vacate the default and default judgment and DENIED in part as to the requested stay.
16	***22-01276965*** ***T-Mobile West, LLC vs. Newport Towers Homeowners Association***	**1) Joinder** **2) Motion for Bifurcation**
17	***21-01183751*** ***Vrooman vs. Macy's Inc.***	**Motion for Summary Judgment and/or Adjudication** Defendants Macy's Inc. and Benefit Cosmetics' Motion for Summary Judgment is GRANTED. Negligence requires duty, breach of the duty, causation, and damages. (*County of Santa Clara v. Atlantic Richfield Co.* (2006) 137 Cal.App.4th 292, 318.) "The defendant has shown that the plaintiff cannot establish at least one element of the cause of action by showing that the plaintiff

		does not possess, and cannot reasonably obtain, needed evidence ….” (*Id*. at 854.) Defendant has satisfied its burden of proving Plaintiffs cannot establish causation. Plaintiff’s prior medical records reveal voluminous preexisting complaint including mental and mobility issues. (Galvin Decl., Ex. E.) She needed a walker and is noted to be forgetful and have unsteady gait and generalized weakness. (Galvin Decl., Ex. E.) Plaintiff is noted to have significant dementia the less than 3 weeks after the fall and stated she is extraordinarily active. (Galvin Decl., Ex. G.) Plaintiff fell again in April 2019 attempting to stand from her toilet injuring her left ankle and hitting her head. (Galvin Decl., Ex. F.) Finally, the death certificate lists only cardiopulmonary arrest and senile degeneration of the brain as the causes of death. (Galvin Decl., Ex. H.) “The law is well settled that in a personal injury action causation must be proven within a reasonable medical probability based upon competent expert testimony.” (*Jones v. Ortho Pharmaceutical Corp.* (1985) 163 Cal.App.3d 396, 402 (cleaned up).) Plaintiffs have failed to provide sufficient evidence to support causation. Dr. Csuka’s statement that the fall and death are timely connected is insufficient to show there is a reasonable medical probability the events are causally linked. Thus, the burden shifts to Plaintiffs to prove there is an issue of material fact. However, Plaintiffs have not opposed the motion and, thus, have not met their burden. Accordingly, Defendants’ Motion for Summary Judgment is granted.
18	***24-01416662*** ***Fallor vs. Capistrano Beach Care Center, LLC***	**Motion to Appear Pro Hac Vice** The application of attorney Thomas W. Arbon to appear pro hac vice as counsel for Plaintiff Beulah Fallor in this matter is hereby **GRANTED** pursuant to California Rules of Court, rule 9.40.