TENTATIVE RULINGS

DEPARTMENT C33

Judge Sandy N. Leal

June 26, 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
1	***22-01252985*** ***Beach Orangethorpe Hotel, LLC vs. Evertrust Bank***	**Motion to Appear Pro Hac Vice** The application of attorney June H. Park to appear pro hac vice as counsel for Plaintiff Beach Orangethorpe Hotel, LLC in this matter is CONTINUED to allow the moving attorney to amend her declaration to include her residence address and proof of payment to the State Bar of California pursuant to California Rules of Court, Rule 9.40. The hearing is CONTINUED to in this courtroom.
2	***23-01345026*** ***Calmenson vs. Rusli***	**1) Motion to Compel Further Responses to Form Interrogatories** **2) Motion to Compel Further Responses to Special Interrogatories** **3) Motion to Compel Production** **4) Motion to Compel Response to Requests for Admissions** **CONTINUED**
5	***20-01166907*** ***Daimler1 SA LLC vs. Hann***	**Motion – Other** Plaintiff Daimler1 SA, LLC's Motion to Strike Portions of the Trial Briefs is DENIED. Plaintiff provides no authority to strike portions of a trial brief. Code of Civil Procedure section 436 provides authority to strike portions of a pleading and the trial brief is not a pleading. Thus, Plaintiff has not provided a concise statement of the law authorizing the relief sought. (See Cal. Rules of Court, rule 3.1113(b).) Therefore, the Court cannot grant the relief sought.
6	***22-01271748*** ***Daniss-Unger vs. Hudson Insurance Company***	**Motion to Strike Answer** Plaintiff Chloe Danis-Unger's motion to strike defendant Laguna Motors, Inc.'s answer is GRANTED. "As a general rule, it is well established in California that a corporation cannot represent itself in a court of record either in propria persona or through an officer or agent who is not an attorney." (*Caressa Camille, Inc. v. Alcoholic Beverage Control Appeals Bd.* (2002) 99 Cal.App.4th 1094, 1101; *CLD Const., Inc. v. City of San Ramon* (2004) 120 Cal.App.4th 1141, 1145 (*CLD*).) The Court granted defendant Laguna Motors, Inc.'s counsel's Motion to be Relieved as Counsel of Record on 5-9-24. (ROA No. 105; Savage Decl., ¶ 4.) On 1-28-25, Plaintiff sent a letter to the Custodian of Records for Laguna Motors, Inc. explaining California's prohibition on self-representation by corporations. Yet Laguna Motors, Inc. has failed to date to obtain counsel. Accordingly, the Motion is GRANTED and Laguna Motors, Inc.'s Answer is stricken.

7	***25-01453909*** ***Echelon Industries LLC vs. Gonzales***	**Demurrer to Complaint** Defendants Marcella Gonzalez, Shaun Detloff, and Kickin Addiction, LLC's Demurrer to the Complaint is OVERRULED as moot. "The filing of the first amended complaint rendered the defendant's demurrer moot since an amendatory pleading supersedes the original one, which ceases to perform any function as a pleading." (*Sylmar Air Conditioning v. Pueblo Contracting Services, Inc.* (2004) 122 Cal.App.4th 1049, 1054, (cleaned up).) "A party may amend its pleading once without leave of the court at any time before the answer, demurrer, or motion to strike is filed, or after a demurrer or motion to strike is filed but before the demurrer or motion to strike is heard if the amended pleading is filed and served no later than the date for filing an opposition to the demurrer or motion to strike." (Code Civ. Proc., § 472(a).) Plaintiffs filed an Amended Complaint on 4/22/25, thus, the Complaint ceased to function as a pleading. Therefore, the Demurrer to the Complaint is moot.
8	***21-01236442*** ***Goldberg vs. Nadley***	**Motion for Preliminary Injunction** Plaintiff/Cross-Defendant Jason Goldberg's Motion for Preliminary Injunction is GRANTED. Plaintiff/Cross-Defendant Jason Goldberg ("Jason") moves for a preliminary injunction restraining Defendant Jill Goldberg Nadley ("Jill") from transferring, selling, or otherwise liquidating any real property previously held by the Herbert Goldberg Trust ("Trust") and transferred into her name or any entity under her control; dissipating or transferring any proceeds from the sale of Trust assets; and further transferring any other Trust assets to herself or any third party. <u>Request for Judicial Notice:</u> Jill's Request for Judicial Notice of Fact Nos. 1 and 2 is DENIED as immaterial to the disposition of this Motion. <u>Evidentiary Objections:</u> Jill's Objections to the Declaration of Jason Goldberg is SUSTAINED as to Objection No. 3 and OVERRULED as to remaining objections. The Court declines to rule on Jill's objections to the Declaration of Lauren Grochow on the grounds they not material to the disposition of this Motion. Jill's Objections to the Declaration of Daniel Kalinowski in support of Jason's reply are OVERRULED. <u>Legal Standard</u> Code of Civil Procedure section 526(a) provides: An injunction may be granted in the following cases: (1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in

restraining the commission or continuance of the act complained of, either for a limited period or perpetually.
(2) When it appears by the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action.
(3) When it appears, during the litigation, that a party to the action is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual.
(4) When pecuniary compensation would not afford adequate relief.
(5) Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief.
(6) Where the restraint is necessary to prevent a multiplicity of judicial proceedings.
(7) Where the obligation arises from a trust.

"A preliminary injunction may be granted at any time before judgment upon a verified complaint, or upon affidavits if the complaint in the one case, or the affidavits in the other, show satisfactorily that sufficient grounds exist therefor. No preliminary injunction shall be granted without notice to the opposing party." (Code Civ. Proc., §527(a).)

"In determining whether to issue a preliminary injunction, the trial court considers two related factors: (1) the likelihood that the plaintiff will prevail on the merits of its case at trial, and (2) the interim harm that the plaintiff is likely to sustain if the injunction is denied as compared to the harm that the defendant is likely to suffer if the court grants a preliminary injunction." (Take Me Home Rescue v. Luri (2012) 208 Cal.App.4th 1342, 1350.) The burden is on the moving party to show all elements necessary to support the issuance of a preliminary injunction. (See O'Connell v. Sup.Ct. (Valenzuela) (2006) 141 Cal.App.4th 1452, 1481.)

Preliminary injunctions are appropriately issued to prevent interim transfers of real and personal property pending trial on the merits of plaintiff's right to obtain such property by specific performance of contractual rights. (Forde v. Bank of Finance (1982) 136 Cal.App.3d 38, 40-41.)

Merits
Probable Success on Merits:

A preliminary injunction must not issue unless it is "reasonably probable that the moving party will prevail on the merits." (San Francisco Newspaper Printing Co., Inc. v. Sup.Ct. (1985) 170 Cal.App.3d 438, 442; Costa Mesa City Employees' Ass'n v. City of Costa Mesa (2012) 209 Cal.App.4th 298, 309 [no injunction may issue unless there is at least "some possibility" of success].) A trial court must deny a motion for a preliminary injunction if there is no reasonable likelihood the moving party will prevail on the merits. (SB Liberty, LLC v. Isla Verde Assn., Inc. (2013) 217 Cal. App. 4th 272, 280-85.)

The operative verified fifth amended complaint ("5AC") alleges two causes of action against Jill: (1) Breach of Express Oral Contract and (2) Fraud/ Misrepresentation.

First Cause of Action: Breach of Express Oral Contract

"A cause of action for breach of contract requires proof of the following elements: (1) existence of the contract; (2) plaintiff's performance or excuse for non-performance; (3) defendant's breach; and (4) damages to plaintiff as a result of the breach." (CDF Firefighters v. Maldonado (2008) 158 Cal. App. 4th 1226, 1239.) "A party complaining of the breach of a contract is not entitled to recover therefor unless he has fulfilled his obligations.… He who seeks to enforce a contract must show that he has complied with the conditions and agreements of the contract on his part to be performed." (Pry Corp. of America v. Leach (1960) 177 Cal.App.2d 632, 639.)

As to the breach of oral contract, the 5AC alleges: "[I]n or around February 2018, Jeff, Jason, and Jill made it official on a call together, confirming that they entered into an express oral agreement (and subsequently memorialized it in e-mails and texts between them) that, notwithstanding the provisions of the Trust, the entire residue of the Trust after Herbert's death would be distributed equally to Jeff, Jason, and Jill ("Distribution Agreement"). As part of the Distribution Agreement, Jason promised not to speak with Herbert about changing the Trust to reflect their reconciliation at Jill's request." (5AC, ¶ 26.) The 5AC further alleges: "In or about February 2018, Jill agreed with Jeff and Jason that, notwithstanding the terms of the Trust, the three siblings would share equally all the property of the Trust. As consideration therefor, Jason agreed that he would not speak with Herbert about changing the terms of the Trust, and would not challenge the Trust after Herbert's death. In so doing, the three siblings entered into a valid and enforceable express oral agreement for the division of the Trust's assets after Herbert's death." (5AC, ¶¶ 49, 50.)
Jason has submitted evidence establishing the existence of the Distribution Agreement. (See Goldberg Decl. ¶¶ 3-4, 6-10, Exs. 2, 4-16; Grochow Decl., Ex. A, Verified Compl. at ¶¶17-20, 23, 25, 28-29, 39, 40, 42; 5AC.)

Jill argues the great weight of the evidence supports her position that she did not make such a promise. Jill states that Jason testified that the Distribution Agreement was "memorialized" and "sealed" in February (or March) 2018 at a breakfast meeting at the Beverly Wilshire Hotel among Jason, Jill, and Mark Shapiro, and that there was no agreement prior to that meeting. (Shilub Decl. ¶ 3, Ex. B, Goldberg Depo. at 297:5-8, 297:14-17; 320:10-19, 321:14-322:21.) Jill contends Shapiro contradicted Jason by testifying that there was no discussion at the meeting of giving Jason a one-third share of Herbert's estate and/or any promise by Jason not to discuss the trust with Herbert. (See Shilub Decl. ¶ 4, Ex. C, Shapiro Depo. at 34:15-35:3, 35:6-9, 35:21-24, 55:1-5.)

		As Jason correctly points out, Jill mischaracterizes the meeting and a reading of Shapiro's full testimony support's Jason's position, that he and Jill had an oral agreement to split up their father's assets and properties: A. … And in that meeting, Jason -- there was no formal agreement, there was no discussion about money, or any specifics. But Jason said, you know, "I would hope that in the event I don't get anything resolved with Herb, that," you know, "we could split this up, and," you know, "I wouldn't be left with nothing." And Jill, I think just being nice, was, like "Of course," you know, "We wouldn't do that to you"; like "We wouldn't" -- "wouldn't cut you out." I don't know specifically if it was a third, a third, a third, like it says in that testimony, but it was an understanding, that, like, "Jason, you're my brother, I love you"; you know, "You're sideways with Dad, but nobody's here to screw you." That was basically the gist. Sorry? Oh. Q. So you said there was no discussion about "a third, a third, a third"? A. I don't recall if it was specifically blocked out that way. There was an understanding that Jason wasn't going to get screwed. And Jill was amendable to sit -- I mean, she was almost, like: "Well, of course not. No one would ever cut you out." Like, "no one's going to screw you." Like, she was a good -- a good sister. Like, that's what you would hope she'd say. They weren't, like, signing on the dotted line and -- who knew -- who know what they were even going to get? Maybe they did; I didn't know. But it wasn't, like, you know lined up; it was an understanding that the -- you know, the three of them would figure something out. "Nobody's going to get screwed on this." Q. Did Jason make any promises? "I promise to do this; I promise to do that"? Anything that – A. No. No, not that I recall. Not that I recall. (Shilub Decl. ¶ 4, Ex. C, Shapiro Depo. at 34:15-35:24.) Shapiro's testimony substantiates the siblings' basic understanding that notwithstanding Herbert's testamentary disposition, the siblings agreed to divide the estate and include Jason as a beneficiary. Further, contrary to Jill's contention, the great weight of the evidence supports the conclusion that Jill assented to the Distribution Agreement, including emails, texts, and oral communications between the siblings confirming the Distribution Agreement's existence (Goldberg Decl., ¶ 10, Exs. 5-16); Jeff's Verified Complaint in this action where he repeatedly attests under penalty of perjury to the existence of the Distribution Agreement and Jill's agreement to it (Grochow Dec., Ex. A, Verified Compl. at ¶¶ 17-20, 23, 25, 28-29, 39, 40, 42); the July 20, 2021 Agreement signed by Jeff and Jason, which states in its recital that Jill, Jason and Jeffrey agreed orally, notwithstanding the provisions of the Trust, the entire residue of the Trust would be distributed equally among the three of them after Herbert's death (Goldberg Dec., Ex. 2 at p. 2, ¶ J.); the declaration of Gary Goldberg, the siblings' uncle, wherein he declares that Jill confirmed to him at Thanksgiving dinner in 2019, shortly after Herbert's death, that she had an agreement with Jason and Jeff that they would receive one-third of Herbert's assets (Goldberg

		Decl., Ex. 4, Gary Goldberg Decl. at ¶ 4); and the declaration of Kyon Smith, Herbert's caretaker, wherein he declares that he was present at a meeting in October 2019 between Herbert, Jill, Jason, and Jeff during which he witnessed Jill and Jeff tell Herbert that they would be dividing his assets equally among the three siblings upon his death "1/3, 1/3, 1/3" and Jill told Herbert that she would be the one distributing everything and that everyone was getting 1/3 (Goldberg Decl., Ex. 17, Smith Decl. at ¶ 3). Jill does not address any of this evidence. Jason has also submitted evidence establishing he performed under the Distribution Agreement by refraining from speaking with his father about changing the terms of his trust, even when, in May 2019, Herbert broached the subject of amending his trust; Jason subsequently explained to Herbert that amending the trust was not necessary because Jill, Jeff, and Jason had an agreement to equally share Herbert's estate. (Goldberg Decl. ¶ 3-4.) Jill argues, as she did in her MSJ, that Jason admitted to not performing under the Distribution Agreement. Specifically, Jill has submitted an email dated October 14, 2021, sent by Jason to his former attorney, Thomas Vogele, in which Jason states: "One of the most disturbing parts of the story is in November of 2018, One year exactly before my Fathers eventual death I came back into his life. We were making amends. The issue was Jill was in the middle of creating a First Amendment wiping my brother out. Of course, we had no idea what she was doing. I was wanting to be included in the trust and often told my Father this as I was seeing him daily. Both my sister and my brother assured me that there was a 1/3 agreement and that there was no reason to change the trust." (Shilub Decl. ¶ 2, Ex. A (emphasis added).) During his deposition, Jason admitted to the accuracy of the statement. (Shilub Decl., at ¶ 3, Ex. B, Jason Depo. 354:23-355:3.) In his reply, Jason argues Jill has taken the email out of context. Jason states that both he and Vogele testified that Jason never went to Herbert about changing the terms of the trust or took steps to have Herbert change the trust terms, and Jason performed consideration under the Distribution Agreement by refraining from encouraging or supporting Herbert to change the terms of the Trust. During his deposition, Jason explained his statement in the email as follows: "A…I was with my father every day, every day, taking care of him. He would have left me everything. I had that control over him. But I had the agreement with my brother and sister to not talk to him, so -- I didn't want any problems with them, so I made sure that I did not talk to him about changing the trust. He often said, because we didn't have much dialog to talk about, is, 'Are you sure you're in the trust?' And we would discuss it. And that's what I'm referring to in this statement. Meaning that I talked to him about the

		trust doesn't mean that I brought it up. It means that he's speaking to me about the trust and we're communicating about it. That's what I'm saying in this statement." (Shilub Decl. ¶ 2, Ex. A, Jason Depo. 354:23-355:3.) Vogele similarly explained the statement in the email as follows: "Q…Earlier we spoke about that statement that Jason made in this email to you which says, I was wanting to be included in the Trust and often told my father this as I was seeing him daily. You received this email, right, sir A. Yes, I did. Q. Did you have any reason to believe that Jason was lying to you when he wrote this email? A. No. And again, there is a distinction in my mind between speaking to his father about the Trust and wishing to be included and taking any steps to affirmatively modify the testamentary document. Q. So in your mind there is a material distinction between dad, I'd like to be included in the Trust and dad, please see a lawyer and change the Trust so I can be included; is that your testimony? A. Slightly different. My understanding is that Jason was serving as a quasi caregiver to his father and that they talked about a number of things, including Jason's business, his father's activities as an investor, and I believe that Jason represented to me that while he did talk to his father about feeling like he should be included in the Trust, that he did not do anything or say anything to affirmatively change the trust because it had already been changed a couple times as I recall." (Kalinowski Decl., ¶ 3, Ex. B, Vogele Depo. 51:8-52:7.) Further, Jason has shown he testified to performing under the agreement by not taking steps to have Herbert change the trust terms or speaking with Herbert about changes in the trust. Specifically, Jason testified: "Q. Okay. In April, 2019 how -- When was the first time your dad proposed that he make you a one-third beneficiary of the Trust? A. When we started working on the properties and our relationship basically became where he depended on me. He didn't really want to deal with Jeff. He excluded Jeff. Jeff wasn't happy about that. But ultimately our relationship was prosperous and blooming. So when that situation arose, he wanted to make sure that the Trust was back to what he wanted. And then when I told him, "Listen, I have a deal already arranged that we made in 2018. It's all said and done. Jeff and Jill are going to pay me outside of the Trust." "Okay, whatever you want to do, as long as you're in there." Q. Okay. Well, you said just now your dad told you he wanted the Trust back. Back to what? A. He wanted the Trust to reflect his feelings. That's what I said. His feelings were he wanted me part of the Trust. Q. Okay. But you said your dad wanted the Trust back. A. He wanted the Trust -- Let me reiterate, if you didn't understand. He wanted the Trust to reflect his feelings. Q. His feelings at what time?

		A. His feelings -- Like I said, when I started working with him, his feelings were that he wanted me to be an equal beneficiary to both Jill and Jeff. He wanted the Trust to reflect that. I told him, "No. Jill and Jeff have ordered me not to change the Trust." (Kalinowski Decl., ¶ 3, Ex. A, Jason Depo. 140:19-142:2 [emphasis added].) "Q…Quote, in or about February 2018, Jill agreed with Jeff and Jason that, notwithstanding the terms of the trust, the three siblings would share equally all the property of the trust. As consideration therefor, Jason agreed that he would not speak with Herbert about changing the terms of the trust and would not challenge the trust after Herbert's death. Is that accurate statement? A. Yes. Q. And did you adhere to the consideration that you agreed to; namely, did you forestall speaking with Herbert about the changes in the trust? A. What's your definition of 'forestall'? Q. You didn't do it. A. Yes. Correct. I – performed under the agreement." (Kalinowski Decl., ¶ 3, Ex. A, Jason Depo. 364:17-365:8.) Vogele testified to Jason's performance as well: Q. Now, you said that you believe that Jason provided certain consideration as part of the agreement between himself, Jeff and Jill, correct? A. Yes, based on what I was told by Jeff and Jason I believe that to be a true statement. Q. And what was the consideration that you believe Jason provided? A. Refraining from seeking to amend the Trust to incorporate him as a one-third recipient of the testamentary devise, that the Trust had been amended I thought twice, maybe more than that, and the siblings did not want to go through that exercise again.· And so my understanding is that Jason agreed that he would not seek an amendment of that Trust or to challenge the Trust in any legal proceedings. (Kalinowski Decl., ¶ 3, Ex. B, Vogele Depo. 56:9-22.) "Q. I have one question, Mr. Vogele. During your representation of Jason and Jeff did either of them ever present any information to you that led you to believe that Jason actively sought from Herbert to change the terms of the Trust while Herbert was alive? A· · No." (Kalinowski Decl., ¶ 3, Ex. B, Vogele Depo. 67:21-58:1.) Jason has also submitted evidence Jill and Jeff now refuse to honor the Distribution Agreement (Goldberg Decl. ¶¶ 7, 10) and Jason's resulting damages as he has not received his 1/3 share of his father's estate assets due under the Distribution Agreement (Goldberg Decl. ¶ 11.) Jill does not address either of these elements. Based on the foregoing, Jason has established his probable success on the merits of the first cause of action for breach of oral contract. <u>Second Cause of Action: Fraud/ Misrepresentation</u>

		" 'The elements of fraud, which give rise to the tort action for deceit, are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage.' [Citations.] [¶] 'Promissory fraud' is a subspecies of the action for fraud and deceit. A promise to do something necessarily implies the intention to perform; hence, where a promise is made without such intention, there is an implied misrepresentation of fact that may be actionable fraud. [Citations.]" (Lazar v. Superior Court (1996) 12 Cal.4th 631, 638 (Lazar).) "In proving fraud, however, rarely does a plaintiff have direct evidence of a defendant's fraudulent intent. Therefore, the subsequent conduct of a defendant, such as his failure to immediately carry out his pledge has some evidentiary value to show that a defendant made the promise without the intent to keep the obligation. But, ' "something more than nonperformance is required to prove the defendant's intent not to perform his promise." [Citations.]' [Citation.]" (Las Palmas Assocs. v. Las Palmas Ctr. Assocs. (1991) 235 Cal.App.3d 1220, 1239.) Jason has submitted evidence establishing each element of his fraud claim against Jill. More specifically, Jason's evidence establishes Jill and Jeff made multiple promises to Jason that the three of them would divide their father's estate equally between them. (See Goldberg Decl. ¶¶ 3-4, 6-10, Exs. 2, 4-16; 5AC; Grochow Decl., Ex. A, Verified Compl. at ¶ 17-20, 23, 25, 28, 29, 39, 40, 42.) Jeff and Jill had no intent to perform when the promises were made as evidenced by their continued refusal to honor the agreement after Jason upheld his end of the bargain by refraining from going to his father to change the trust terms and after their father died. (Goldberg Decl. ¶¶ 3-4.) Jason justifiably relied on Jill and Jeff's promises when he refrained from going to his father to change the Trust terms. (Goldberg Decl. ¶¶ 3-4.) He further relied on Jeff's promises, including those memorialized in the July 20, 2021 agreement, when he worked with Jeff to help Jeff in bringing his causes of action against Jill. (Goldberg Decl. ¶ 6.) Jason has been damaged because he has not received his 1/3 share of his father's estate assets due under the Distribution Agreement and he refrained from having his father change his Trust to reflect this agreement during his father's lifetime in reliance on his siblings misrepresentations. (Goldberg Decl. ¶ 11.) Jill does not specifically address this cause of action. Based on the foregoing, Jason has established his probable success on the merits of the second cause of action for fraud/misrepresentation. <u>Balancing Harms</u> Jason contends he will suffer great and immediate irreparable harm if a preliminary injunction is not issued. Jason contends this is an action for the transfer of real property, and real property is "unique" such that injury or loss cannot always be compensated in damages. He explains that after the court denied his ex parte application for a TRO and OSC re

		Preliminary Injunction on March 7, 2023, Jill sold three of the real properties that are part of the assets of the Trust and transferred a fourth property into a Wyoming Limited Liability Company called Nadigan Legacy LLC. (Grochow Decl. ¶ 13, Exs. C-F.) Jason contends if Jill is not restrained and enjoined from selling the remaining properties and otherwise dissipating the Trust assets, he will be unable to recover in this action should he obtain a judgment. Jill argues Jason has not established irreparable harm because Jason has not shown that money would not afford him adequate relief and his unsubstantiated fear that Jill may not have sufficient funds to satisfy any judgment—he provides no evidence to establish that Jill lacks such funds—is not a sufficient basis for an injunction. Jill does not address her harm if a preliminary injunction is issued. In his reply, Jason argues Jill's position ignores both well-established legal principles and the particular facts of this case. Jason points out that Jill does not provide any evidentiary support that she received adequate consideration for the properties that she already sold, that she retains ownership and control over the property that she transferred title to, or that she is taking any measure to not dissipate the funds she received for the sold properties. In response to recently served discovery seeking this information (e.g., her ownership and sale of properties in her possession), Jill served objections only, refusing to provide any information or documents as to the state of each property she owns. (Kalinowski Decl., ¶¶ 5-7, Ex. C-E.) Jason has established that the harm he will suffer if the preliminary injunction is not issued far outweighs any harm to Jill will suffer if it is issued. Namely, Jill's conduct - transferring assets out of state, selling trust properties, and refusing to respond to discovery concerning the properties - threatens irreparable loss of trust assets and will frustrate Jason's ability to obtain effective relief. Preliminary injunctions are appropriate when monetary damages may be inadequate due to difficulties in enforcement or collection. (See, e.g., Heckmann v. Ahmanson (1985) 168 Cal. App. 3d 119, 136 ["An injunction against disposing of property is proper if disposal would render the final judgment ineffectual."].) Jill, on the other hand, will suffer minimal harm since she will continue to hold and maintain the properties and collect rents until the dispute is resolved. Accordingly, the Motion is GRANTED. Both sides should be prepared to address the bond requirement under Code Civ. Proc. § 529 at the time of the hearing.
9	***24-01422971*** ***Juell vs. Elliott***	**1) Demurrer to Amended Complaint** **2) Motion to Strike** **<u>Demurrer to Amended Complaint</u>** Defendants Nathan Andrew Elliott and Mark Christopher Elliott's Demurrer to the First Amended Complaint is SUSTAINED.

		Defendants' demur to the fifth cause of action of the First Amended Complaint on the grounds it fails to state facts sufficient to constitute a cause of action against Defendant Nathan. To state a cause of action for Intentional Infliction of Emotional Distress ("IIED"), the plaintiff must allege: (1) outrageous conduct by the defendant; (2) the defendant's intention of causing or reckless disregard of the probability of causing emotional distress; (3) the plaintiff's suffering severe or extreme emotional distress; and (4) actual and proximate causation of the emotional distress by the defendant's outrageous conduct. (*Yau v. Santa Margarita Ford, Inc.* (2014) 229 Cal.App.4th 144, 161.) For conduct to be outrageous for purposes of IIED, the conduct must be so extreme as to exceed all bounds of that usually tolerated in a civilized society. (Id.) In addition, "[the defendant's] conduct [must be] directed at the plaintiff, or occur in the presence of a plaintiff of whom the defendant is aware." (*Christensen v. Superior Court* (1991) 54 Cal. 3d 868, 903 (emphasis added).) The FAC alleges Defendant Nathan, a minor, hit Plaintiff with his vehicle, causing him serious injuries. Defendant Nathan provided Plaintiff with his mother's contact number "due to an onlooker forcing him to do so" and misrepresented to Plaintiff that the number was his own cellphone number. Such actions were done with the intent to mislead Plaintiff and was done in a "malicious manner." Thereafter, Defendant Nathan left the scene without offering assistance to Plaintiff or summoning medical care, showing a lack of concern regarding the harm to Plaintiff. The main difference between the Complaint and the FAC is the new allegation Defendant Nathan provided Plaintiff with his mother's phone number and not his own because an onlooker forced him to do so. The FAC also adds conclusory allegations that Defendant Nathan's actions were malicious and undertaken with an intent to deceive. Again, assuming the allegations to be true, it is not outrageous conduct for a minor to provide his mother's contact information to another minor victim and then leave the accident scene without calling for medical help. Perhaps if Defendant Nathan had provided a false number, and not the number of his parent, an intent to deceive could be found. But he offered a number where he could be located. Moreover, the FAC's inclusion of the allegation that Defendant Nathan admitted to the officer he left the scene of the accident because he was a new driver and unaware of his responsibilities, suggests Defendant left the scene due to panic and fear versus an intent to cause harm. This conclusion is supported by the Traffic Collision Report, attached as Exhibit A to the FAC, which states Defendant Nathan "drove home because he was scared and did not know what to do since he was a new driver."

Accordingly, the demurrer to the fifth cause of action is SUSTAINED without leave to amend.

Motion to Strike

Defendants Nathan Andrew Elliott and Mark Christopher Elliott's Motion to Strike is GRANTED.

Defendant seeks to strike Paragraphs 37, 41, 45, 61, 70, 90 and the Prayer for Relief (paragraph c) of the Complaint as they relate to punitive damages.

As for the negligence claims, Plaintiff argues punitive damages are warranted because Defendant Nathan was in violation of California Vehicle Code § 20003(a) which required him to stop and provide medical assistance to Plaintiff.

Plaintiff contends violation of Section 20003 imposes a violation of $1,000 to $10,000 fine and imprisonment for up to one year in non-injury accidents, and up to four years in cases involving serious physical injury or death for the failure to comply with the same. He also states Defendant Nathan committed a felony, but there are no allegation he was charged with such a crime or found guilty of such a crime. In fact Exhibit A to the FAC, which is the Traffic Collision Report, does not indicate Defendant Nathan was charged with a felony.

The FAC alleges Defendant Nathan provided Plaintiff with his mother's contact information before he left the accident scene. He also returned to the accident scene when instructed by the police officer who contacted his mother. And while he did not summon for help, there are no factual allegations that give rise to a finding Defendant Nathan acted with malice.

The form of malice contemplated by Civil Code § 3294 is malice in fact. (*Ebaugh v. Rabkin* (1972) 22 Cal.App.3d 891, 894-895.) "Under general definition, malice in fact denotes ill will on the part of the defendant, or his desire to do harm for the mere satisfaction of doing it. In ultimate analysis, malice in fact is malice of evil motive." (Ibid.)

In this case, other than conclusory allegations, the FAC is again devoid of any facts suggesting Defendant Nathan had an evil motive when he left the scene of the accident and intended to cause Plaintiff harm for the mere satisfaction of doing it. The FAC acknowledges Defendant Nathan admitted to the officer "he was a new driver and was unaware of his responsibilities" and was "scared." Such facts are not indicative of malice.

Accordingly, the motion to strike is GRANTED without leave to amend.

10	***24-01440728*** ***Kaltenbach vs. Signature Resources Capital Management, LLC***	**Motion for Sanctions** **CONTINUED**
11	***25-01452373*** ***Lake Park Brea LP vs. Bostrand***	**Motion to Strike or Tax Costs** Plaintiff, Lake Park Brea LP, dba Lake Park Brea's Motion to Strike or Tax Costs is MOOT. The motion is moot because Defendant's memorandum of costs was ineffective, having been filed and served prematurely. California Rule of Court 3.1700 states, "A prevailing party who claims costs must serve and file a memorandum of costs within 15 days after the date of service of the notice of entry of judgment or dismissal by the clerk under Code of Civil Procedure section 664.5 or the date of service of written notice of entry of judgment or dismissal, or within 180 days after entry of judgment, whichever is first. The memorandum of costs must be verified by a statement of the party, attorney, or agent that to the best of his or her knowledge the items of cost are correct and were necessarily incurred in the case." Here, Defendant filed the memorandum of costs on 5/12/25, before judgment was entered or notice of judgment was served. Notice of entry of judgment was filed and served by a plaintiff's counsel on 6/18/25. Therefore, the memorandum of costs was premature. Defendant shall timely file and serve an amended memorandum of costs pursuant to Rule 3.1700.
12	***22-01259432*** ***Main Street Plaza vs. Jiu-Jitsu Corp.***	**Motion to Tax Costs** Defendants Jiu-Jitsu Corp., Cedric Chamouille and Roxana Chamouille's Motion to Tax Costs is GRANTED in part as to $2,948.95 and DENIED in part as to striking the memorandum as untimely. <u>Late Filed Papers</u> "All papers opposing a motion so noticed shall be filed with the court and a copy served on each party at least nine court days, and all reply papers at least five court days before the hearing." (Code Civ. Proc., § 1005(b).) The Court may in its discretion consider late filed papers. (See Rules of Court, Rule 3.1300(d).) The Court exercises its discretion to consider the late filed papers. <u>Timeliness</u> "A prevailing party who claims costs must serve and file a memorandum of costs within 15 days after the date of service of the notice of entry of judgment or dismissal by the clerk under Code of Civil Procedure section 664.5 or the date of service of written notice of entry of

judgment or dismissal, or within 180 days after entry of judgment, whichever is first." (Cal. Rules of Court, rule 3.1700(a)(1).) "[C]ourts treat prematurely filed cost bills as being timely filed." (*Haley v. Casa Del Rey Homeowners Assn.* (2007) 153 Cal.App.4th 863, 880.)

"(a) In any contested action or special proceeding other than a small claims action or an action or proceeding in which a prevailing party is not represented by counsel, the party submitting an order or judgment for entry shall prepare and serve, a copy of the notice of entry of judgment to all parties who have appeared in the action or proceeding and shall file with the court the original notice of entry of judgment together with the proof of service. This subdivision does not apply in a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation. [¶] (b) Promptly upon entry of judgment in a contested action or special proceeding in which a prevailing party is not represented by counsel, the clerk of the court shall serve notice of entry of judgment to all parties who have appeared in the action or special proceeding and shall execute a certificate of service and place it in the court's file in the cause." (Code Civ. Proc., § 644.5.)

The Court entered judgment on 9/30/24. (ROA 236.) On 11/12/24, the court clerk filed a certificate of electronic service of the entered judgment. (ROA 239.) Defendants argue the certificate filed by the clerk was a notice of entry of judgment.

Code of Civil Procedure section 664.5 requires a notice of entry of judgment to be served on all parties who have appeared in an action whether it is served by the party submitted the judgment or the clerk of court. Here, the certificate was only served on Plaintiff's counsel. (ROA 239.) Thus, it does not constitute a notice of entry of judgment under Section 664.5. Therefore, Plaintiff's Motion is timely because it was within 180 days of the entry of judgment on 9/30/24.

Merits

Deposition Costs

Defendants seek to tax $725 of the $1,522.80 in claimed deposition costs on the grounds the attached invoice no. 7481582 dated 6/11/24 was for a canceled deposition without any information regarding the deposition. Plaintiff concedes the invoice was improperly included. Thus, Defendants' request to tax $725 of Plaintiff's deposition costs is granted.

Court Reporter

Defendants seek to tax the entire $2,223.95 for court reporter fees because the invoice labels the proceeding as "Depositions" and not as court reporter fees. Plaintiff presents no argument regarding this invoice and how the invoice constitutes a court reporter fee. Thus, Defendants' request to tax the entire $2,223.95 of Plaintiff's court reporter costs is granted.

14	***24-01418184*** ***Tsang vs. Tesla, Inc***	**Motion to Compel Arbitration** Defendant Tesla, Inc.'s Motion to Compel Arbitration is GRANTED. Tesla moves for an order compelling Plaintiff Eric Siuwah Tsang to arbitrate their claims in accordance with their arbitration agreement with Tesla; and staying this action pending the outcome of arbitration. Tesla's request for judicial notice is GRANTED pursuant to Evidence Code section 452(d). However, the Court declines to take judicial notice of the hearsay statement contained therein. Tesla brings this motion pursuant to both the Federal Arbitration Act ("FAA") and the California Arbitration Act ("CAA"). The party asserting the FAA bears the burden to show it applies by presenting evidence establishing the contract with the arbitration provision has a substantial relationship to interstate commerce, and the failure to do so renders the FAA inapplicable. (Carbajal v. CWPSC, Inc. (2016) 245 Cal.App.4th 227, 234.) There is nothing in Tesla's moving papers or the subject arbitration agreement that suggests that the FAA applies. Under Code of Civil Procedure section 1281.2, the court may order a petitioner and respondent to arbitrate a controversy if the court determines that an agreement to arbitrate the controversy exists and "[o]n petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party thereto refuses to arbitrate such controversy." (Code Civ. Proc. § 1281.2; Hyundai Amco America, Inc. v. S3H, Inc. (2014) 232 Cal.App.4th 572, 577 ("[plaintiff's] filing of a lawsuit rather than commencing arbitration proceedings as required by the agreement affirmatively establishes [plaintiff's] refusal to arbitrate").] " '[W]hen a petition to compel arbitration is filed and accompanied by prima facie evidence of a written agreement to arbitrate the controversy, the court itself must determine whether the agreement exists and, if any defense to its enforcement is raised, whether it is enforceable. Because the existence of the agreement is a statutory prerequisite to granting the petition, the petitioner bears the burden of proving its existence by a preponderance of the evidence. If the party opposing the petition raises a defense to enforcement--either fraud in the execution voiding the agreement, or a statutory defense of waiver or revocation (see § 1281.2, subds. (a), (b))--that party bears the burden of producing evidence of, and proving by a preponderance of the evidence, any fact necessary to the defense.' " (Hotels Nevada v. L.A. Pacific Center, Inc. (2006) 144 Cal. App. 4th 754, 761, quoting Rosenthal v. Great Western Fin. Securities Corp. (1996) 14 Cal. 4th 394, 413.) The party seeking to compel arbitration bears the burden of proving the existence of a written agreement to arbitrate the controversy by a preponderance of the evidence. To resolve this inquiry, the court applies a three-step burden shifting process. (Iyere v. Wise Auto Group (2023) 87 Cal.App.5th 747, 755 ("Iyere"); Gamboa v. Northeast Community Clinic (2021) 72 Cal.App.5th 158, 165 ("Gamboa").)

		On the first step, "the moving party bears the burden of producing 'prima facie evidence of a written agreement to arbitrate the controversy.' [Citation.]" (Gamboa, supra, 72 Cal.App.5th at p. 165.) To meet this burden, the moving party can " 'attach[ ] to the [motion or] petition a copy of the arbitration agreement purporting to bear the [opposing party's] signature.' [Citation.] Alternatively, the moving party can meet its burden by setting forth the agreement's provisions in the motion. [Citations.]" (Ibid.; accord, Iyere, supra, 87 Cal.App.5th at p. 755.) At this step, the movant need not follow the normal procedures of document authentication. (Iyere, at p. 755; Gamboa, at p. 165.) On the second step, "[i]f the movant bears its initial burden, the burden shifts to the party opposing arbitration to identify a factual dispute as to the agreement's existence" through admissible evidence. (Iyere, supra, 87 Cal.App.5th at p. 755; Gamboa, supra, 72 Cal.App.5th at p. 165.) Here, Tesla has met its initial burden of producing "prima facie evidence" of the existence of an arbitration agreement by setting forth the agreement's provisions. (See Declaration of Raymond Kim ("Kim Decl.") ¶¶ 3, 7, Ex. 1, p. 3.) Specifically, Tesla submits the declaration of Raymond Kim, a Manager for Business Resolution at Tesla, who declares that Plaintiff placed an order for a 2023 Tesla Model Y with VIN 7SAYGDEE7PA065160 (the "Subject Vehicle") from Tesla's website on 1/15/2023, and that in placing that order, Plaintiff agreed to the terms of a "Motor Vehicle Order Agreement" which contains an agreement to arbitrate. (Id. ¶¶ 2-3, Ex. 1.) Mr. Kim declares that Plaintiff placed the order on Tesla's website by clicking the "Place Order" button, and that prior to placing the order, Plaintiff would have seen text advising that Plaintiff was agreeing to the Order Agreement's terms and conditions, and that there would have been a hyperlink to the terms and conditions of the Order Agreement. (Id. ¶ 4.) He declares Plaintiff would not have been able to place the order without clicking the "Place Order" button, and that "once executed, the Order Agreement would [have] become visible to the customer on the customer's mytesla.com account for as long as the customer owns the vehicle." (Ibid.) Mr. Kim sets forth the terms of the subject arbitration agreement and also attaches a copy of the same as Exhibit 1 to his declaration. (Id. ¶¶3, 7, Ex. 1.) Mr. Kim additionally provides that while a customer may opt out of the agreement to arbitrate, Plaintiff did not do so. (Id. ¶ 5.) The arbitration agreement in the Order Agreement provides that Plaintiff "agree[s] that any dispute arising out of or relating to any aspect of the relationship between you and Tesla will not be decided by a judge or jury but instead by a single arbitrator in an arbitration administered by the American Arbitration Association (AAA) under its Consumer Arbitration Rules. This includes claims arising before this Agreement, such as claims related to statements about our products. You further agree that any disputes related to the arbitrability of your claims will be decided by the court rather than an arbitrator, notwithstanding AAA rules to the contrary." (Ex. 1 to Kim Decl., Order Agreement, at p. 3.) Plaintiff does not dispute executing the arbitration agreement or its application to the claims asserted in this action. Thus, Plaintiff does not dispute the existence of the agreement to arbitrate in the Order Agreement.

Plaintiff argues that the arbitration agreement should not be enforced because it is unconscionable.

Unconscionability

"Because unconscionability is a contract defense, the party asserting the defense bears the burden of proof." (Sanchez v. Valencia Holding Co., LLC (2015) 61 Cal.4th 899, 911.)

"A contract is unconscionable if one of the parties lacked a meaningful choice in deciding whether to agree and the contract contains terms that are unreasonably favorable to other party. [Citation.]" (OTO, L.L.C. v. Kho (2019) 8 Cal. 5th 111, 125 ("OTO").) "Under this standard, the unconscionability doctrine ' "has both a procedural and a substantive element." ' [Citation.] 'The procedural element addresses the circumstances of contract negotiation and formation, focusing on oppression or surprise due to unequal bargaining power. [Citations.] Substantive unconscionability pertains to the fairness of an agreement's actual terms and to assessments of whether they are overly harsh or one-sided.' [Citation.]" (Ibid.) "Both procedural and substantive unconscionability must be shown for the defense to be established, but 'they need not be present in the same degree.' [Citation.]" (Ibid.)

Procedural Unconscionability

"A procedural unconscionability analysis 'begins with an inquiry into whether the contract is one of adhesion.' [Citation.]" (OTO, supra, 8 Cal. 5th at p. 126.) "An adhesive contract is standardized, generally on a preprinted form, and offered by the party with superior bargaining power 'on a take-it-or-leave-it basis.' [Citations]." (Ibid.)

Plaintiff first contends that the agreement to arbitrate was presented on a "take-it or leave-it" basis. This contention is without merit. The agreement to arbitrate provides Plaintiff with a unilateral option to opt-out: "You may opt out of arbitration within 30 days after signing this Agreement by sending a letter to: Tesla, Inc.; P.O. Box 15430; Fremont, CA 94539-7970, stating your name, Order Number or Vehicle Identification Number, and intent to opt out of the arbitration provision. If you do not opt out, this agreement to arbitrate overrides any different arbitration agreement between us, including any arbitration agreement in a lease or finance contract." (Ex. 1 to Kim Decl., Order Agreement at p. 3.)

Plaintiff next contends Tesla failed to provide Plaintiff with a copy of the relevant arbitration rules or even advise which rules would be chosen. The failure to attach a copy of the AAA rules does not necessarily render the Agreement procedurally unconscionable. (Lane v. Francis Capital Mgmt. (2014) 224 Cal.App.4th 676, 691 ["the failure to attach a copy of the AAA rules did not render the agreement procedurally unconscionable. There could be no surprise, as the arbitration 8 rules referenced in the agreement were easily accessible to the parties — the AAA rules are 9 available on the Internet."].) The California Supreme Court has explained that "the courts will more closely scrutinize the substantive unconscionability of terms that were

		'artfully hidden' by the simple expedient of incorporating them by reference rather than including them in or attaching them to the arbitration agreement." (Baltazar v. Forever 2I, Inc. (2016) 62 Cal.4th 1237, 1246.) Finally, contrary to Plaintiff's assertion, the arbitration agreement does not provide for an election of rules by Tesla. Rather, the arbitration agreement clearly states that the arbitration will be administered by the AAA under its Consumer Arbitration Rules. <u>Substantive Unconscionability</u> "Substantive unconscionability examines the fairness of a contract's terms." (OTO, supra, 8 Cal. 5th at p. 129.) "Substantive unconscionability exists when a term is so one-sided as to shock the conscience. [Citation.] " ' "Substantive unconscionability 'may take many forms,' but typically is found in the employment context when the arbitration agreement is 'one-sided' in favor of the employer without sufficient justification." ' [Citation.]" (De Leon v. Pinnacle Property Management Services, LLC (2021) 72 Cal.App.5th 476, 486.) "In evaluating substantive unconscionability, courts often look to whether the arbitration agreement meets certain minimum levels of fairness." (Ibid.) Plaintiff first contends the arbitration agreement is substantively unconscionable because it "allows for a choice of arbitration forum but only for the party 'electing' to arbitrate" and therefore "always favors one party"—Tesla. However, contrary to Plaintiff's assertion, the arbitration agreement does not allow the party initiating arbitration to choose the arbitration forum; it requires arbitration with AAA under its Consumer Arbitration Rules and this requirement applies equally to either party to the contract. (Ex. 1 to Kim Decl., Order Agreement at p. 3.) Plaintiff also contends that the arbitration agreement is substantively unconscionable because the cost-provisions violate both State law and minimum due process standards for consumer arbitration in that it benefits manufacturers and discourages or prevents buyers from seeking to enforce their legal rights as they are potentially faced with bearing exorbitant arbitration costs and expenses they may have to reimburse to Tesla. Plaintiff's contention is not supported by the plain language of the arbitration agreement, which provides that "you [Plaintiff] will pay the filing fee directly to AAA and we [Tesla] will pay all subsequent AAA fees for the arbitration, except you [Plaintiff] are responsible for your own attorney, expert, and other witness fees and costs unless otherwise provided by law." (Ex. 1 to Kim Decl., Order Agreement at p. 3.) It further provides: "If you prevail on any claim, we will reimburse you your filing fee." (Ibid.) Contrary to Plaintiff's contention, there is no language which provides that Plaintiff will have to reimburse Tesla for the costs and expenses of arbitration. Plaintiff also fails to show that the costs of arbitration, i.e., the filing fee, is prohibitive, or that Plaintiff having to pay for his own attorney, expert, or other witness fees and

		costs "unless otherwise provided by law" violates State law and due process. Based on the foregoing, Plaintiff fails to demonstrate the arbitration agreement is either procedurally or substantively unconscionable, and thus, fails to meet Plaintiff's burden to show that the agreement to arbitrate is not enforceable because it is unconscionable. Tesla's motion to compel arbitration is GRANTED. Plaintiff is ORDERED to arbitrate his claims against Defendant in accordance with the terms of the subject arbitration agreement. (Kim Decl., ¶ 3, Ex. 1, Order Agreement.) The Court STAYS the action pending completion of arbitration. (Code Civ. Proc. § 1281.4.)
15	***24-01426315*** ***Vivares vs. Berry***	**Demurrer to Cross-Complaint** Plaintiff/Cross-Defendant Antonio Vivares' Demurrer to the Cross-Complaint is CONTINUED to _____. "Before filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person, by telephone, or by video conference with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer. If an amended complaint, cross-complaint, or answer is filed, the responding party shall meet and confer again with the party who filed the amended pleading before filing a demurrer to the amended pleading." (Code Civ. Proc., § 430.41(a).) There are insufficient meet and confer efforts. Vivares' counsel states he emailed Defendants' counsel with the alleged deficiencies but did not receive a response. However, Defendants' counsel did respond and stated they would amend by March 10. (Diaz Decl., Ex. B.) Vivares' counsel did not attempt to meet and confer further when Defendants' counsel failed to amend the Cross-Complaint. Vivares did not meet and confer "in person, by telephone, or by video conference" nor did he attempt to find a resolution to address the objections raised in the demurrer. Defendants are willing to amend the Cross-Complaint. Thus, the parties are ORDERED to engage in further meet and confer efforts to resolve the issues with the Cross-Complaint stated in the Demurrer. Any supplemental opposition is due by _____ and a supplemental reply is due by _____. (9 and 5 court days before the hearing respectively.)