Superior Court of the State of California
County of Orange

DEPT C18 TENTATIVE RULINGS

Judge Richard Oberholzer

The court will hear oral argument on all matters at the time noticed for the hearing. If you would prefer to submit the matter on your papers without oral argument, please advise the clerk by calling (657) 622-5218. If no appearance is made by either party, the tentative ruling will be the final ruling. Rulings are normally posted on the Internet by 4:00 p.m. on the day before the hearing.

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Unless otherwise ordered by the Court, all Unlimited and Complex proceedings may be conducted via Zoom or in person. On the date of your hearing click the Department C18 Link to begin the remote online check in/Zoom appearance process:

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Date: June 26, 2025

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1.	**Corzine vs. Riemann** **20-01133569**	**1.Motion to Be Relieved as Counsel of Record** **2 Motion to Be Relieved as Counsel of Record** Before the Court at present are two unopposed Motions to be Relieved as Counsel, filed on 5/21/25 and 5/22/25 by Attorneys Geoffrey A. Neri and Timothy G. Lamoureux of Brown, Neri, Smith & Khan LLP, as to representation of Defendants David Riemann and Lisa Corzine-Riemann. Summary of Evidence: Compliance Mandatory Notice Form? Yes (ROAs 605 and 617) Mandatory Decl. Form? Yes (ROAs 606 and 618) Reasons for Motion? Claims withdrawal mandatory and client relationship is now adversarial Service on Client? Yes, at last known address (Neri Decl. ¶ 3(a)(2).) Recent Confirmation of Client's Address? Yes Proposed Order? Yes (ROAs 610 and 619) Does the proposed order specify all hearing dates scheduled? Yes, for MSC and trial, to be confirmd for 9/25 for MSC Does the proposed order list the date, time and location of the trial? Yes **Tentative Ruling**: The Motions are **GRANTED**, to be effective upon the filing of a proof of service reflecting service of the signed Orders on the respective clients. The Court also now corrects the prior Order entered on 4/1/25, as to resetting the Mandatory Settlement Conference for 9/26/25. As 9/26/25 is a holiday, the Mandatory Settlement Conference is instead reset for 9/25/25, at 8:30 a.m. in Dept. C18. Moving Counsel is to give notice.
2.	**Politis vs. General Motors, LLC** **23-01322075**	**1. Motion for Attorney Fees** Before the Court at present is the Motion for Payment of Attorneys' Fees, etc., filed on 2/13/25 by Plaintiff Spiros Politis ("Plaintiff") against Defendant General Motors, LLC ("GM").

		In accordance with the parties' settlement agreement (ROA 48, Ex. E), the Court is to determine the appropriate sum that Plaintiff may recover for fees and costs in this case. To that end, Plaintiff here has, pursuant to Civil Code §1794(d), claimed fees in the amount of $36,317.50, plus additional fees for this motion in the amount of $3,815, and costs in the amount of $1,602.28, and a .2 fee enhancement of $8,190, for a grand total of $50,742.28. A court assessing a claim for fees under Civil Code §1794(d) is to use the lodestar as the start, to assess the reasonableness of the fee claim. (Mikhaeilpoor v. BMW of North America (2020) 48 Cal.App.5th 240, 246-247.) The party claiming fees has the burden of showing that the fees incurred were reasonably necessary to the conduct of the litigation, and reasonable in amount. (Id; Levy v. Toyota Motor Sales, U.S.A., Inc. (1992) 4 Ca1.App.4th 807, 816.) Here, the hourly rates claimed, and the time claimed per task generally do not appear excessive for the work described in the context of this action, although Plaintiff has not shown why a multiplier should be added thereto. However, the $3,900 flat fee claimed for services rendered prior to the preparation of the Plaintiff's Complaint is not adequately shown to be appropriate here and so will not be allowed. The Court finds that the additional sum which Plaintiff should be able to recover for this Motion and the costs claim is $3,270. With regard to the claimed costs, the opposition has failed to show why any should not be recoverable here. The Court thus finds that Plaintiff should recover $1,602.28 in costs here. The total award for fees and costs here is therefore $37,289.78. Counsel for Plaintiff is to give notice
3.	**Tecaxco vs. 2175 S Mallul Dr, LLC** **19-01069535**	**1. Motion for Attorney Fees** Continued to 7/31/25
4.	**Gagliano vs. Pacific Western Bank**	**1. Motion to Compel Answers to Form Interrogatories**

	24-01410577	**Motion to Compel Further Responses to Form Interrogatories** Pursuant to Code of Civil Procedure section 2017.210, "[a] party may obtain discovery of the existence and contents of any agreement under which any insurance carrier may be liable to satisfy in whole or in part a judgment that may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment." The provision goes on to explain that "[t]his discovery may include the identity of the carrier and the nature and limits of the coverage." (Code Civ. Proc., § 2017.210.) In opposing this motion, Defendant asserts the requested discovery is irrelevant, as "Banc's insurance coverage is wholly unrelated to the claims in this matter, as Gagliano's employment with PWB ended in July 2021, more than two years before the merger between PWB and Banc of California, N.A." (Opposition: 1:15-19.) Defendant similarly asserts that, "if an insurance carrier has no potential liability for the claims asserted, its coverage details are not discoverable." (Opposition: 4:6-7.) This argument is unpersuasive. Initially, "the relevance of the subject matter standard must be reasonably applied…in accordance with the liberal policies underlying the discovery procedures, doubts as to relevance should generally be resolved in favor of permitting discovery…." (*Colonial Life & Accident Ins. Co. v. Superior Court* (1982) 31 Cal.3d 785, 790.) Here, the Complaint alleges Plaintiff was employed by *all* Defendants. (¶5 of Complaint.) Likewise, the Complaint alleges all Defendants participated in the alleged retaliation. (¶4 of Complaint.) While Defendant Banc of California disputes *any* liability, asserting it never employed Gagliano, Defendant has not established the same. To support this assertion, Defendants cites deposition testimony from Plaintiff, wherein she indicates she contacted the Employee Assistance Program during her employment with Pacific West Bank. (¶7 of Turner Declaration and Exhibit 5 thereto, Gagliano Deposition: 213:14-19.) This testimony does not conclusively dispute the allegation of *joint* employment.

		"There is no magic formula for determining whether an organization is a joint employer. Rather, the court must analyze 'myriad facts surrounding the employment relationship in question.' [Citation.] No one factor is decisive." (*Vernon vv. State of California* (2004) 116 Cal.App.4th 114, 124-125.) "[T]he precise contours of an employment relationship can only be established by careful factual inquiry." (*Id.* at p. 125.) Similarly, Defendant repeatedly asserts that a merger in 2023 *proves* it lacks liability; however, (1) there is no clear evidence of the referenced merger; and (2) regardless, there has been no showing that any merger removes the possibility of liability. Defendant presents a Form 10-K filed with the SEC, which states "as of December 1, 2023, Banc of California, N.A. merged into Pacific Western Bank, with Pacific Western Bank continuing under the Banc of California name and brand as the Bank." (See Exhibit A of RJN.) The above, however, simply demonstrates that Bank of California, Inc. communicated that information to the SEC, within a public filing. Moreover, even *assuming* that Banc of California, N.A. has ceased to exist, as it merged into Pacific Western Bank in 2023, this fact does not demonstrate a lack of liability: "[I]t is long established law in California that a corporation formed by a consolidation or merger succeeded by operation of law to all the obligations and liabilities of the constituent corporations, including liability for punitive damages." (*Rubio v. CIA Wheel Group* (2021) 63 Cal.App.5th 82, 102, quoting *Moe v. Transamerica Title Ins. Co.* (1971) 21 Cal.App.3d 289, 304-305.) "More generally, a purchaser of assets has successor liability if '(1) there is an express or implied agreement of assumption, (2) the transaction amounts to a consolidation or merger of the two corporations, (3) the purchasing corporation is a mere continuation of the seller, or (4) the transfer of assets to the purchaser is for the fraudulent purpose of escaping liability for the seller's debts.'" (*Rubio v. CIA Wheel Group* (2021) 63 Cal.App.5th 82, 102.)

		Tentative Ruling: The Motion to Compel Further Responses to Form Interrogatories brought by Plaintiff Alicia Gagliano is **GRANTED**, in part. Defendant Banc of California is ordered to provide a further verified response, without objection, to Plaintiff's Form Interrogatory, No. 214.1, within 15 days-notice of this order. Plaintiff's request for sanctions, however, is **DENIED**.
5.	**Fischer vs. Fischer** **24-01377424**	**1. Motion to Compel Production** **2. Motion to Compel Response to Requests for Admissions** The unopposed motions filed by Defendant Jasdeep Kochar aka Jazz Kochar (Moving Party) against Plaintiff William M. Fischer (Plaintiff) demonstrate that despite meet and confer efforts, Plaintiff failed to provide responses to the subject discovery. As no responses were timely provided to the requests for production of documents, all objections thereto have been waived, and responses may be compelled. (Code Civ. Proc., § 2031.300(a)-(b).) **Tentative Ruling**: The motion to compel responses to requests for production of documents is thus GRANTED. Plaintiff is ordered to provide verified written responses without objections and responsive documents within 20 days of service of this order. Regarding the requests for admissions, the court "shall" grant a motion to deem requests for admission admitted "unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220." (Code Civ. Proc., § 2033.280(c).) Here, no responses have been served. **Tentative Ruling:** The motion to deem the matters admitted is GRANTED. The court imposes a reasonable monetary sanction of $576.06 per motion against Plaintiff and his counsel of record Chandler Law Firm, APC, payable to Moving Party, through his counsel of record, within 20 days of service of this order. (Code Civ. Proc., § 2031.300(c); 2033.280(c).)

		Counsel for Moving Party is ordered to give notice of this ruling.
6.	**Hengler vs. Fryer's Auto Spas, LLC** **24-01418830**	**1. Motion to Substitute Heirs as Successors-in-Interest** The court in which an action is commenced or continued under this article may make any order concerning parties that is appropriate to ensure proper administration of justice in the case, including appointment of a decedent's successor in interest as a special administrator or guardian ad litem. (Code Civ. Proc. § 377.33.) The motion can be made by any party to the proceeding or by the representative or the successor in interest. A successor in interest, i.e., the person entitled to inherit the claim, who seeks to be substituted as plaintiff the place of the decedent must execute and file a declaration in statutory form as required by Code Civ. Proc. § 377.32. Here, neither the declaration of Cassidy Hengler nor the declaration of Tiffany Ruth contain a statement that "No other person has a superior right to commence the action or proceeding or to be substituted for the decedent in the pending action or proceeding" as required by CCP §377.32(a)(6). Also, the declaration of Tiffany Ruth does not contain a statement that "The affiant or declarant is authorized to act on behalf of the decedent's successor in interest" as required by CCP §377.32(a)(5)(B). **Tentative Ruling**: The motion by plaintiff's counsel for an order substituting Plaintiff's heirs, his daughters Addison Lou Alice Althiea Ruth (hereinafter "Addison Ruth"), by and through her guardian ad litem Tiffany Ruth and Cassidy Michelle Ruth (hereinafter collectively referred to as "Heirs") as deceased Plaintiff James Hengler's Successors-in-Interest in this action pursuant to Code of Civil Procedure § 377.31 is DENIED, without prejudice. Moving Party shall give notice

7.	**Lupro vs. Board of Retirement of the Orange County Employees Retirement System** **24-01384565**	**1. Petition for Writ** The independent judgment standard applies where, as here, the administrative decision concerns a fundamental vested right (a public employee's right to a disability pension). (See *County of Alameda v. Board of Retirement* (1988) 46 Cal.3d 902, 904, 909-910; *Beckley v. Board of Administration etc*. (2013) 222 Cal.App.4th 691, 697 (*Beckley*).) The court has reviewed the administrative record (AR) in the exercise of the court's independent judgment, giving due respect to respondent Board of Retirement of the Orange County Employees Retirement System's (OCERS) administrative findings. (See *Espinoza v. Shiomoto* (2017) 10 Cal.App.5th 85, 99-100 [independent judgment standard]; *Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817, 818 (*Fukuda*) [same]; *Alberda v. Board of Retirement of Fresno County Employees' Retirement Assn.* (2013) 214 Cal.App.4th 426, 433 (*Alberda*).) Having done so, the court finds the administrative findings are supported by the weight of the evidence. Government Code section 31720 provides: "Any member permanently incapacitated for the performance of duty shall be retired for disability regardless of age if, and only if: [¶] (a) The member's incapacity is a result of injury or disease arising out of and in the course of the member's employment, and such employment contributes substantially to such incapacity." (Gov. Code, § 31720, subd. (a).) The employee has the burden of proving his or her incapacity is both permanent and service connected. (*Flethez v. San Bernardino County Employees Retirement Assn*. (2017) 2 Cal.5th 630, 636 (Flethez); see Gov. Code, §§ 31720, subd. (a), 31724.) Permanent "incapacity" means the substantial inability of the employee to perform his or her usual duties. (*Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 876 [interpreting "incapacity" under PERS, Gov. Code, § 21022 (now §21151)].) The parties do not dispute that Lupro's psychiatric injury constitutes a permanent incapacity.

		In the instant petition, the central issue is whether Lupro's psychiatric injury is service-connected. An employee's incapacity is service-connected if there is a " 'real and measurable' connection" between the employee's job and his or her incapacitating condition. (*Bowen v. Board of Retirement* (1986) 42 Cal.3d 572, 578 (*Bowen*).) While it is not necessary for a county employee to show that his or her employment was the sole, or even the primary, cause of the disability, the employee must establish that his or her incapacity arose out of and in the course of employment, and the employment "contribute[d] substantially to such incapacity." (Gov. Code, § 31720, subd. (a).) The substantial contribution test requires "substantial evidence of a 'real and measurable' connection between the disability and employment." (*Bowen v. Bd. of Ret.* (1986) 42 Cal. 3d 572, 578) In the present case, the evidence does not support Petitioner's argument that her employment played an active role in the development of her psychological condition. It is apparent from the evidence that Petitioner had pre-existing psychiatric/psychological injuries and multiple non-work stressors. For example, in 2002 Lupro underwent a gastric bypass surgery. She was then treated from 2002-2013 by Dr. Terry Fan at Scripp's "related to her gastric issues/gastric bypass surgery and compulsive eating." (AR 835). Lupro testified that as part of her treatment, she was prescribed and was taking Bupropion, an anti-depressent. (AR 1306, 1406-1407) Lupro also had a family history significant for mental illness. The record also reflects multiple examples of non-work related stressors. For example, at one point in 2013 Lupro's fiancée, who she had been with for two years, told her "the wedding is off," and left her. While Lupro discounts the impact of this traumatic event, the court disagrees. As a further source of outside stressors, Petitioner's daughter was apparently subjected to domestic violence and ultimately had to move in with Petitioner. It is not reasonable to conclude that these events did not cause significant stress to Petitioner.

		In addition to the foregoing, Petitioner's medical records reveal a long history of orthopedic complaints affecting most parts of her body, including multiple surgeries. These conditions are discussed in the doctor's reports. The court does not list them all here but refers to the records, including those from Scripps, to illustrate the substantial, long term, and wide ranging health issues the problems Petitioner had been forced to deal with during her period of employment. Further, Lupro lived in Oceanside and commuted each day to Orange County. This drive was over 60 miles each way. It is apparent from the records that this drive was a significant stressor to Lupro. Dr. Berkowitz' testified at one point that he believed the commute was the cause of 50% of her stress. (AR1007) While such a commute would be difficult for anyone, given Petitioner's history of orthopedic problems, it is not surprising that the lengthy commute was a substantial stressor. In the instant motion, Petitioner points to the reports by Dr. Alan Berkowitz and Dr. Nelson Flores and argues that their opinions are substantial evidence that Lupro's psychological condition is service connected. She argues that these reports should be given the most weight and that the report by Dr. House should be given less weight. In reviewing the record, it is apparent Dr. Flores was not provided complete information regarding Lupro's history or outside stressors. For example, in Dr. Flores' report, he states his opinions are based on his determination that "there is no indication that this patient brought related pre-existing psychiatric disability to her employment," "there is no contribution from supervening events or injuries" and that there is no evidence of preexisting conditions. (AR 857) Dr. Flores' opinions are therefore undermined by his lack of relevant additional information about prior history and intervening stressors. While Dr. Berkowitz was provided more information, he fails to sufficiently address the outside stressors and their connection to Petitioner's psychological condition. Further, Dr. Berkowitz states that "there is no industrial injury with reasonable medical probability." (AR 794) Dr. Berkowitz did

		not determine that Lupro's employment substantially contributed to her psychological injury. The court does not find the opinions of Drs. Flores or Berkowitz to be substantial evidence that Petitioner's psychological condition is service-connected. On the other hand, the court finds Dr. Matthew House's opinion persuasive. Dr. House describes the history of Petitioner's condition and complaints and concludes that it would be speculation to conclude that her work environment aggravated her condition. Dr. House further states that it is more likely than not that Petitioner's condition will not be changed absent employment. (AR 895) Petitioner also argues in the instant motion that Hearing Officer based his conclusions on what he personally thought would cause a psychiatric injury as opposed to what the medical doctors stated. The court disagrees. The Hearing Officer assessed the credibility of Petitioner's testimony and found that certain testimony lacked credibility. For example, the Hearing Officer had doubts as to Lupro's assertions "throughout this case that once her work-place stressors began to affect her in 2013, they alone became the cause of her disabling depression." (AR 1617) This credibility assessment necessarily relied upon other evidence in the AR such as the multiple other stressors in Petitioner's life and a comparison to the alleged work-place stressors she identified such as "not being invited to coworker lunches, not being invited to non-work-place events, having coworkers roll their eyes at Lupro's meeting comments, etc." (Ibid.) Based on the court's review of the entire Administrative Record, along with the briefs submitted in connection with this motion, the court finds that Petitioner's employment did not substantially contribute to her psychological condition and that the Administrative Record supports the findings by the Hearing Officer. **Tentative Ruling**: Petitioner Kelly Lupro's petition/motion for writ of mandate is DENIED. OCERS is ordered to give notice.

8.	**Enenstein Pham & Glass vs. HSA Realty Group, LLC** **24-01439088**	**1. Demurrer to Cross-Complaint** Before the court is a demurrer to the cross-complaint of Abrahim Etemad Haary, Arteen Ataian, Nasreen Khajavi, and Hootsa Gladkikh (collectively, Cross-Complainants) filed by Enenstein Pham & Glass and Daniel Gutenplan (collectively, Cross-Defendants).. Cross-Defendants' request for judicial notice is GRANTED as to the existence of and legal effects of the records, but not as to the truth of any disputed facts asserted therein. (Ev. Code §452(d); *Fontenot v. Wells Fargo Bank, NA* (2011) 198 Cal.App.4th 256, 264; *Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 482.) <u>Uncertainty</u> Cross-Defendants' demurrer for uncertainty is OVERRULED as the pleading is not so poorly pled that Cross-Defendants cannot reasonably respond. (*Khoury v. Maly's of Calif., Inc.* (1993) 14 Cal.App.4th 612, 616.) <u>Statute of Limitations</u> Cross-Defendants' demurrer on statute of limitations grounds is OVERRULED. In ruling on a general demurrer based on statute of limitations grounds, the running of the statute must appear "clearly and affirmatively" from the face of the complaint. It is not enough that the complaint *might* be time-barred. (*Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42; *Stueve Bros. Farms, LLC v. Berger Kahn* (2013) 222 Cal.App.4th 303, 321.) Here, even if Cross-Defendants are correct that all claims are governed by the one-year statute of limitations set forth in Code of Civil Procedure section 340.6, the running of the statute is not "clearly and affirmatively" shown. It is not apparent from the face of the Cross-Complaint or the judicially noticed records that the claims are time-barred. The Cross-Complaint does not clearly plead the date of the wrongful acts or when Cross-Complainants discovered the acts and does not plead the date when legal services were allegedly terminated. Cross-Defendants point to the allegations in paragraph 20. However, this allegation does

		not clearly and affirmatively show that Cross-Complainants discovered or should have discovered the alleged wrongdoing during the representation. Contrary to Cross-Defendants' contention in the Reply, the allegation does not state that Cross-Complainants observed the wrongdoing at that time. Cross-Defendants also argue that the orders granting motions to withdraw as counsel and substitutions of attorney submitted with their request for judicial notice establish that the claims are time barred. However, the Cross-Complaint does not include any case numbers for the litigation matters referenced in the pleading. It is thus not clearly shown that the orders and substitutions of attorney relate to the cases at issue in the Cross-Complaint. In addition, it does not appear that any of the orders or substitutions of attorney relate to cross-complainant Hootsa Gladkikh. It is thus unclear how these documents would support Cross-Defendants' statute of limitations argument as to said cross-complainant. <u>Failure to State a Claim</u> <u>*First Cause of Action (Breach of Contract):*</u> Contrary to Cross-Defendants' contention, the pleading alleges the contract was in writing (see Cross-Compl., ¶ 25) and adequately pleads the legal effect of the agreement. (See Cross-Compl., ¶ 16-17, 21, 25; *Miles v. Deutsche Bank National Trust Company* (2015) 236 Cal.App.4th 394 [plaintiff may plead the legal effect of the contract rather than its precise language].) **Tentative Ruling**: The demurrer to the First Cause of Action (Breach of Contract) is OVERRULED. <u>*Second Cause of Action (Breach of Implied Covenant):*</u> Cross-Defendants are correct that this claim does nothing more than allege a contract breach and thus fails to state a claim. A breach of the implied covenant of good faith and fair dealing involves something beyond breach of the contractual duty itself. (*Careau & Co. v. Security Pacific Business Credit, Inc*. (1990) 222 Cal.App.3d 1371, 1394.) "If the allegations do not go beyond the statement of a mere contract breach and, relying on the same alleged acts, simply seek the same damages or other relief already claimed in a companion contract cause of action, they may be disregarded as

		superfluous as no additional claim is actually stated." (*Id.* at 1395.) **Tentative Ruling**: The demurrer to the Second Cause of Action (Breach of Implied Covenant): is SUSTAINED with 20 days leave to amend. <u>*Third Cause of Action (Breach of Fiduciary Duty):*</u> Cross-Defendants are correct that this claim asserts merely conclusions and fails to include facts demonstrating how Cross-Defendants are alleged to have breached their fiduciary duty. For the purpose of testing the sufficiency of the cause of action, the demurrer admits the truth of all material facts properly pleaded (i.e., all ultimate facts alleged, but not contentions, deductions or conclusions of fact or law). (*Aubry v. Tri-City Hosp. Dist.* (1992) 2 Cal.4th 962, 966-967; *Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) Tentative Ruling: The demurrer to Third Cause of Action (Breach of Fiduciary Duty) is SUSTAINED with 20 days leave to amend. <u>*Fourth Cause of Action (Unlawful Business Practices):*</u> The only argument raised by Cross-Defendants as to this claim is that it is time barred under section 340.6. This argument fails as discussed above. **Tentative Ruling**: The demurrer to the fourth cause of action is OVERRULED. <u>*Fifth Cause of Action (Money Had And Received):*</u> Cross-Defendants are correct that the claim does not adequately allege when the money asserted to have been received by Cross-Defendants was paid. (See Cross-Compl., ¶ 56.) The demurrer to the Fifth Cause of Action (Money Had And Received) is SUSTAINED with 20 days leave to amend. <u>*Sixth Cause of Action (Legal Malpractice):*</u> Cross-Defendants are correct that the pleading fails to allege sufficient facts to support the element of causation. (See Cross-Compl., ¶ 61-62; *Redante v. Yockelson* (2003) 112 Cal.App.4th 1351, 1356 [elements of legal malpractice].) The pleading fails to include sufficient facts demonstrating a proximate causal connection between the alleged breach and any resulting injury.

		Tentative Ruling: The demurrer to Sixth Cause of Action (Legal Malpractice) is SUSTAINED with 20 days leave to amend. <u>*Seventh Cause of Action (Unjust Enrichment):*</u> Cross-Defendants contend this claim fails because there is no cause of action in California for unjust enrichment.. (Compare *Melchior v. New Line Productions, Inc*. (2003) 106 Cal.App.4th 779, 793; *McBride v. Boughton* (2004) 123 Cal.App.4th 379, 387; and *Castillo v. Toll Bros., Inc.* (2011) 197 Cal.App.4th 1172, 1209-1210 with *Ghirardo v. Antonioli* (1996) 14 Cal.4th 39, 43-44 and *Peterson v. Cellco Partnership* (2008) 164 Cal.App.4th 1583, 1593.) **Tentative Ruling**: Due to the split of authority as to whether unjust enrichment is a separate cause of action, the demurrer to the Seventh Cause of Action (Unjust Enrichment) is OVERRULED. <u>*Eighth and Ninth Causes of Action (Negligent Misrepresentation and Intentional Misrepresentation):*</u> Claims for fraud and negligent misrepresentation must be pleaded with particularity, that is, the pleading must set forth how, when, where, to whom, and by what means representations were made. (*Foster v. Sexton* (2021) 61 Cal.App.5th 998, 1028.) Cross-Defendants are correct these claims are not pled with the requisite particularity. These causes of action fail to plead facts showing how, when, where, to whom, and by what means representations were made. **Tentative Ruling:** The demurrer to the Eighth and Ninth Causes of Action (Negligent Misrepresentation and Intentional Misrepresentation) is SUSTAINED 20 days leave to amend. <u>*Declaratory Relief:*</u> Although stated in the caption, the body of the pleading fails to include a separate cause of action for declaratory relief. **Tentative Ruling:** The demurrer to the declaratory relief claim is SUSTAINED with 20 days leave to amend. Counsel for Cross-Defendants is ordered to give notice.

9.	**Pepper vs. Lorkowski** **25-01452672**	**1. Demurrer to Complaint** **2. Motion to Strike Portions of Complaint** ***Meet and Confer***: Under C.C.P. § 435.5(a), before filing a MTS, the moving party shall meet and confer in person or by phone with the party who filed the pleading to determine if an agreement can be reached that resolves the objections to be raised in the MTS. Here, MP has complied. (Ng Decl., ¶¶ 3-6.) Before the Court are the Demurrer and Motion to Strike filed on 2/14/25 by Defendant Denisse F. Lorkowski ("Defendant"), as to the Complaint filed on 1/9/25 by Plaintiff Patricia E. Pepper ("Plaintiff"). **The Demurrer**: The Demurrer is directed to the Eighth, Ninth, Tenth, Eleventh and Twelfth Causes of Action (each a "COA"). For COA 8, the plaintiff must allege: "(i) outrageous conduct by defendant, (ii) an intention by defendant to cause, or reckless disregard of the probability of causing, emotional distress, (iii) severe emotional distress, and (iv) an actual and proximate causal link between the tortious conduct and the emotional distress." (*Nally v. Grace Community Church* (1988) 47 Cal.3d 278, 301.) Conduct is outrageous when it is "so extreme as to exceed all bounds of that usually tolerated in a civilized community." (Id. at 300; *Davidson v. City of Westminster* (1982) 32 Cal.3d 197, 209). But here, Plaintiff has not adequately alleged what the specific objectionable conditions were in the property while she was living there, when and what she told the landlord related thereto, whether any repair efforts were undertaken, and why she believes that Defendant acted here with the intent to harm Plaintiff or with reckless disregard of the probability of causing her emotional distress. Nor has she alleged what she was specifically promised about relocation expenses, what expenses she then claimed, what Defendant did or said in response, and why any of that was sufficient to constitute outrageous conduct. For COA 9, a "direct victim" claim may be stated only on limited grounds. (See CACI 1602.) Plaintiff here has not adequately alleged the factual basis for such a claim. The

		vague assertions of negligence in ¶ 61 do not suffice. Nor are vague references to "mold and sewage" (in ¶¶ 7-9) at the property sufficient to state this claim. Plaintiff also alleges that a "main sewer line on the Property broke." (Complaint, ¶ 10.) But she has failed to state whether that was due to the conduct of the Defendant, and if so, how so. For COAs 10 and 11, neither claim is pled with the requisite specificity. Fraud claims must be alleged in full, factually and specifically. The policy of liberal construction of pleading will not be invoked to sustain a pleading defective in any material respect. (*Tarmann v. State Farm Mut. Auto. Ins. Co.* (1991) 2 Cal.App.4th 153, 157.) The particularity requirement necessitates pleading facts that show how, when, where, to whom, and by what means the representations were tendered. (Id; *Lazar v. Sup. Court* (1996) 12 Cal.4th 631, 645; *Small v. Fritz Companies, Inc.* (2003) 30 Cal.4th 167, 173–74.) But here, the Complaint just vaguely asserts at ¶¶ 9, 12, and 14, that promises were made to Plaintiff. Greater specificity is required. Precisely what was Plaintiff told, by whom, when, and how? What is the alleged falsity, and why? For COA 12, Plaintiff has just alleged, at ¶ 78, that "Defendants acted in violation of Cal. Civ. 1940.2, as described more fully above." But nothing "above" states who did what that would constitute a use of or threat to use force or other menacing conduct to force Plaintiff to vacate. Instead, Plaintiff seems to be alleging at ¶ 15 that she had already vacated when allegedly threatened with eviction (for reasons unexplained). For all of these reasons, COAs 8-12 as pled fail to state facts sufficient to support them, and are uncertain. **Tentative Ruling:** The Demurrer, which is directed to the Eighth, Ninth, Tenth, Eleventh and Twelfth Causes of Action (each a "COA"), is **SUSTAINED** as to COAs 8-12, with 15 days leave to amend. For each, the Complaint fails to allege facts sufficient to state the COA, and is uncertain as pled. The burden is on the plaintiff to show that there is a reasonable possibility that she can amend the pleading in a

		manner which will cure the defect. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349. Plaintiff has not met that burden here. However, as the Demurrer is directed to an original pleading, Plaintiff is granted 15 days leave to amend here. Plaintiff should carefully consider the elements of any of these COAs that she may attempt to reassert in an amended pleading, and state the requisite factual basis for each, as further leave to amend should not be presumed. **<u>The Motion to Strike</u>**: A claim for punitive damages must be supported by specific factual allegations: conclusory characterization of conduct as "intentional, willful and fraudulent" is insufficient to state a claim under Civil Code § 3294. (*Brousseau v. Jarrett* (1977) 73 Cal.App.3d 864, 872.) Here, Plaintiff has repeatedly attempted to assert a punitive damages claim, but has failed to plead facts sufficient to support such a claim. As noted above, Plaintiff has failed to plead facts sufficient to support any of her fraud or emotional distress claims, and has failed here to otherwise show why the allegations in her Complaint suffice to support punitive damages claims on any other COA. **Tentative Ruling:** The Motion to Strike is therefore **GRANTED**, with 15 days leave to amend. Counsel for Defendant is to give notice.
10.	**Keno Capital, LLC vs. Albright, Stoddard, Warnick & Albright** **23-01359179**	**1. Motion for Summary Judgment and/or Adjudication** Defendants Albright, Stoddard, Warnick & Albright, William H. Stoddard, Sr. ("Stoddard" individually), and William H. Stoddard, Jr.'s (Defendants all together) move for Summary Judgment, or in the Alternative, Summary Adjudication **Request to Take Judicial Notice and Objections** <u>Defendants' Request to Take Judicial Notice:</u> Grant as to Exs. 16 (Evid. Code § 452(d); and 18 (Evid. Code § 452 (c) and (h)). <u>Plaintiff's Objections:</u>

		Sustained as to Nos. 1 (lacks foundation/personal knowledge only as to discussions between Jergensen and Sorensen, overruled as to rest); 3 (lacks foundation); and 18 (lacks foundation). Overruled as to Nos. 1 (personal knowledge as to everything but communication between Jergensen and Sorensen); 2, 4 – 5, 12 (personal experience); and 6 – 17, and 19 (not offered as proof of writing but rather proof of activity). <u>Defendant's Objections:</u> Sustained as to Nos. 1 – 6, 50 (hearsay except for Stoddard Testimony – Civ. Proc. Code § 1291(a)); 7, 10, 23, 44, 45 (lacks foundation); 8 – 9, 11, 13 – 14, 16, 18, 20, 22, 29 – 33, 35, 38, 42 (hearsay, lacks foundation); 12, 15, 40, 54 (hearsay, lacks foundation, argumentative); 41, 53 (lacks foundation, argumentative, conclusory); 26, 52 (hearsay); 27 (hearsay, lacks foundation, argumentative, conclusory); 34 (as to second sentence – lacks foundation, argumentative); and 36 – 37, 39, 43, 46 – 47, 49 (lacks foundation, argumentative)). Overruled as to Nos. 17, 19, 21, 24, 25, 28, 34 (as to first sentence; sustained as to second sentence), 48, and 51. **Merits of the Motion**: "(p) For purposes of motions for summary judgment and summary adjudication: . . . (2) A defendant . . . has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action. Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The plaintiff or cross-complainant shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set

		forth the specific facts showing that a triable issue of material fact exists as to the cause of action or a defense thereto." (Civ. Proc. Code § 437c(p)(2).) "(1) A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if the party contends that the cause of action has no merit, that there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action, that there is no merit to a claim for damages, as specified in Section 3294 of the Civil Code, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs. A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty. (2) A motion for summary adjudication may be made by itself or as an alternative to a motion for summary judgment and shall proceed in all procedural respects as a motion for summary judgment. . ." (Civ. Proc. Code § 437c(f).) "The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In determining if the papers show that there is no triable issue as to any material fact, the court shall consider all of the evidence set forth in the papers, except the evidence to which objections have been made and sustained by the court, and all inferences reasonably deducible from the evidence, except summary judgment shall not be granted by the court based on inferences reasonably deducible from the evidence if contradicted by other inferences or evidence that raise a triable issue as to any material fact." (Civ. Proc. Code § 437c(c).) Defendants move for summary judgment/adjudication against causes of action ("COA") Nos. 2 through 9. Defendants argue COA Nos. 2 – 6 and 8 – 9 are time barred and Defendants are not "strangers" to the at issue economic relationship. Defendants argue COA No. 7 is both time barred, and Plaintiff

		cannot establish intent to defraud, reliance, or resulting damage. **1) Time Barred/Statute of Limitations** Defendants argue COA Nos. 2 – 6 and 8 – 9 based on these COA being time barred pursuant to Civ. Proc. Code § 340.6. "It is well settled that the one-year limitations period of section 340.6 " 'is triggered by the client's discovery of "the facts constituting the wrongful act or omission," not by his discovery that such facts constitute professional negligence, i.e., by discovery that a particular legal theory is applicable based on the known facts. "It is irrelevant that the plaintiff is ignorant of his legal remedy or the legal theories underlying his cause of action." ' (*Peregrine Funding, Inc. v. Sheppard Mullin Richter & Hampton LLP* (2005) 133 Cal. App. 4th 658, 685.) All COA that arise from Defendants' performance of their professional services fall under the one-year statute of limitations of Civ. Proc. Code § 340.6. (*Bergstein v. Stroock & Stroock & Lavan LLP* (2015) 236 Cal. App. 4th 793, 818–19 (*Bergstein)*.) COA Nos. 2 – 6 and 8 – 9 are all based upon the alleged attorney-client relationship between Defendants and plaintiff Keno Capital, LLC ("Plaintiff") and acts that occurred during that period, or acts related to the underlying securities purchase agreement ("Agreement"). Defendants put forth two potential start dates for the start of the one-year statute of limitations period. The first was 08/17/21, which was when Defendants contend Plaintiff should have been aware the terms of the Agreement were disclosed to NAHS by way of its CEO Spencer Olsen ("Olsen"). Olsen was on an email with Jeremey Jergensen ("Jergensen") principal of Plaintiff and purchaser of the subject securities, and John Sorensen ("Sorensen") seller of the subject securities. The email contained the Agreement and its financial terms thereof. Plaintiff should have been aware Defendants had sent the terms to NAHS as of that date. " '[N]otice to an agent in [the] course of a transaction is constructive notice to the principal, and it will not avail the latter to show that the

		agent failed to communicate to him what he was told. [Citation omitted.] This constructive notice, when it exists, is irrebutable. It is not merely prima facie evidence, for then it could be rebutted ....' " (*Powell v. Goldsmith* (1984) 152 Cal. App. 3d 746, 751.) Jergensen's knowledge as the Agreement terms that was sent to then NAHS CEO Olsen was irrebuttable. Defendants have met their initial burden regarding notice to NAHS having knowledge of the terms of the Agreement by Defendants giving the information to Olsen. One year from the allegedly confidential information being provided to NAHS on 08/17/21 would be 08/17/22. As the initial complaint in this matter was filed on 10/19/23, the claim as to the initial production would appear time barred. Defendants have met their initial burden and the burden transfers to Plaintiff to show triable issue of material fact. Plaintiff contends, "[i]t is settled California law that "[k]nowledge of an officer of a corporation within the scope of his duties is imputed to the corporation. [Citations.] "On the other hand, an officer's knowledge is not imputed to the corporation when he has no authority to bind the corporation relative to the fact or matter within his knowledge. [Citations.]" [Citation.] Nor is a corporation chargeable with the knowledge of an officer who collaborates with outsiders to defraud the corporation." (*Peregrine Funding, Inc. v. Sheppard Mullin Richter & Hampton LLP* (2005) 133 Cal. App. 4th 658, 679.) Plaintiff put forth evidence creating a triable issue of material fact as to whether Olsen was acting on behalf of NAHS regarding the Securities transaction. Jergensen's declaration as managing member of Plaintiff states the plan between Plaintiff, Sorensen, and Defendants was to go through Olsen, who was aligned with Jergensen/Plaintiff, using personal email accounts and using separate consent pages. (Jergensen Decl. ¶ 25.) "The idea was that nobody at NAHS Holding would receive a copy of our purchase agreement ("Purchase Agreement") and that ASWA [Defendants] would go through Spencer Olsen (through his

		personal email account) to get his signature and obtain a separate signed consent page from Argent (without disclosing the purchase agreement).” Emails Defendants sent to Olsen on the Securities transaction was to Olsen’s personal account. This suggests Olsen was intentionally leaving NAHS in the dark regarding the transaction. While Jergensen’s declaration may be somewhat self-serving, a moving party’s papers are to be strictly construed, while the opposing party’s papers are to be liberally construed. (*Comm. to Save Beverly Highland Homes Ass’n v. Beverly Highland* (2001) 92 Cal.App.4th 1247, 1260.) A court may not make credibility determinations, or weigh evidence, on summary judgment: all evidentiary conflicts are to be resolved against the moving party. (*McCabe v. Am. Honda Motor Corp*. (2002) 100 Cal.App.4th 1111, 1119.) In addition to the declaration, Plaintiff has also put forth evidence Olsen did not have the power or ability to ‘bind’ NAHD by providing consent to the sale of the Securities. While Olsen originally provided consent on 08/19/21 (Opposition, Ex. 9), a letter from NAHS’s counsel dated 11/23/21, stated: “The Consent is invalid as it was obtained through an improper manner in contravention of good corporate governance practices and the Company's Bylaws. Mr. Olsen did not have Board approval to consent to the purchase of the Securities by you or the sale, transfer or assignment thereof by Oakleaf, thus breaching his fiduciary duties as an officer and director of the Company and making the consent by the Company ineffective. . . . Furthermore, Argent Trust Company's consent was obtained through false pretenses as there was no discussion regarding Sensen LLC's [Olsen’s entity] proposed purchase of the Company and that you were going to participate in such transaction. As such, Argent Trust Company's consent was ineffective as it related Note S-44 and related documents. . . . Valid consent requires the express approval of the disinterested members of the Board of Directors and the Company may require a legal opinion pursuant to Section 6 of the Warrant. . .” (Opposition, Ex. 16.)

		Indeed, after NAHS revoked the consents signed by Olsen/Argent, NAHS provided consents signed not by Olsen, but by Tim Paulson and Mark Hansberger. (Opposition, Ex. 23.) The second round of consents provided by someone other than Olsen, in addition to the statements made by NAHS in the 11/23/21 letter, supports Olsen did not have the ability to bind NAHS and/or Olsen was improper collaborating with Sorensen/Plaintiff regarding the Securities. Plaintiff has put forth sufficient evidence to support a triable issue of material fact as to whether Olsen had the power to bind NAHS to the Securities transaction and as to whether Olsen was attempting to defraud NAHS by consenting to the sale without notifying the NAHS board. In doing so, Plaintiff has put forth a triable issue of material fact as to whether Olsen's knowledge of the Securities transaction can be imputed to the corporation. As such, Plaintiff has also put forth a triable issue of material fact as to whether the 08/17/21 production by Defendants to Olsen was the start the statute of limitations running for attorney malpractice. Plaintiff also alleged Defendants produced additional information to NAHS from time to time, including on 03/28/22, when Defendants sent the new 12/15/22 extended closing deadline to NAHS/Walton. (Opposition, Ex. 30.) To the extent Defendants may or may not have been representing Plaintiff at that time due to Buchalter representing Plaintiff, attorneys have a duty to keep client confidentiality even when they no longer represent a client. (CA Rules of Prof. Conduct Rule 1.6.) There is a duty "[t]o maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client." (Bus. & Prof. Code § 6068(e)(1).) Defendants also identify a second date for the start of the running of statute of limitations being 07/05/22, when NAHS sent a letter again withdrawing consent for Plaintiff to the purchase of the Securities. (Motion, Ex. 15.) The statute of limitations is tolled until one-year after the Plaintiff suffered an actual injury. (Civ. Proc. Code § 340.6(a)(1); (*Jordache Enters., Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal. 4th 739, 743.) Plaintiff was notified on 07/05/22 that NAHD

		withdrew its consent for the transfer. One year from that date would be 07/05/23. Again, the Complaint was not filed until 10/19/23, which was 2.5-months after the statute of limitations had run. Even if Plaintiff was damaged when the consent was withdrawn, the limitations period is not triggered until Plaintiff became aware of the facts constituting a wrongful act. (*Peregrine Funding, Inc., supra,* 133 Cal. App. 4th at 685.) Plaintiff contends that while it was aware Sorensen had shared some information with NAHS at some point, Plaintiff was unaware Defendants had also shared additional information. Plaintiff contends it was not aware of the facts of Defendants sharing information regarding the Securities transaction until 12/21/22, when Jergensen spoke with Walton, wherein Walton shared Defendants had allegedly shared the terms of the Security transaction with NAHS. (Jergensen Decl. ¶ 62; Opposition Ex. 40.) Again, declarations of an opposing party are to be liberally construed. (*Beverly Highland, supra,* 92 Cal.App.4th at 1260.) Jergensen also confirmed Sorensen and Defendants had disclosed the details of the transaction at a dinner on 04/15/23. (Jergensen Decl. ¶ 64.) "For purposes of applying the one-year-from-discovery limitation on commencement of attorney malpractice actions in Code of Civil Procedure section 340.6, subdivision (a)(section 340.6(a)), who bears the burden of proving when the plaintiff discovered, or through the use of reasonable diligence should have discovered, the facts constituting the defendant's alleged malpractice? As explained below, we hold the defendant bears that burden." (*Samuels v. Mix* (1999) 22 Cal. 4th 1, 5.) "Under section 340.6, the one-year limitations period commences when the plaintiff actually or constructively discovers the facts of the wrongful act or omission, but the period is tolled until the plaintiff sustains actual injury. That is to say, the statute of limitations will not run during the time the plaintiff cannot bring a cause of action for damages from professional negligence." (*Jordache Enters., Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal. 4th 739, 751.) Defendants have not rebutted Plaintiff's evidence supporting discovery of Defendants alleged bad actions occurring before

		12/21/22. Plaintiff has put at put for triable issues material fact as to when it learned of Defendants' alleged breaches, which would have started the statute of limitations running. One-year from the date of discovery would be 12/21/23, which would have the statute of limitations period ending after the original complaint was filed on 10/19/23. Finally, Plaintiff has indicated that NAHS and Plaintiff (through Jergensen) participated in mediation to negotiate a substantive resolution regarding the Securities purchase. (Jergensen ¶ 61.) The mediation failed, however Jergensen through Joseph Welch at Buchalter, requested Sorensen and Defendants provide an additional 90-days to close the Securities transaction so Plaintiff and NAHS could explore solutions. Given NAHS had previously withdrawn consent, then subsequently reinstated consent before again withdrawing consent suggests that NAHS was not prohibited from again changing its mind regarding the consent. The Securities deal ultimately ended for good when Sorensen cancelled the transaction on 03/16/23 and with Sorensen retaining $3 million and all interest payments. (Jergensen Decl. ¶ 63; Opposition, Ex. 41.) Plaintiff has put at put for triable issues material fact as to when it was damaged for purposes of the statute of limitations running. Even if the court were to consider the 07/05/22 withdrawal of NAHS's consent as the date of injury, the statute of limitations would not begin to run until Plaintiff discovered the withdrawal was the result of some action by Defendants, which again would have been the 12/21/22 discovery date by Plaintiff. To the extent Defendants *might* have met their initial burden on the statute of limitations issues for COA Nos. 2 – 6 and 8 – 9, Plaintiff has met the transferred burden of showing triable issues of material fact remain. **Tentative Ruling**: The Motion is **DENIED** as to COA Nos. 2 – 9 on the statute of limitations issue. **2) COA No. 7 – Fraud – Concealment** "[T]he elements of an action for fraud and deceit based on a concealment are: (1) the defendant must have concealed or

		suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage." (*Roddenberry v. Roddenberry* (1996) 44 Cal. App. 4th 634, 665–66.) "There are "four circumstances in which nondisclosure or concealment may constitute actionable fraud: (1) when the defendant is in a fiduciary relationship with the plaintiff; (2) when the defendant had exclusive knowledge of material facts not known to the plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff; and (4) when the defendant makes partial representations but also suppresses some material facts." (*LiMandri v. Judkins* (1997) 52 Cal. App. 4th 326, 336.) In California, fraud must be pled specifically; general and conclusory allegations do not suffice. [Citations.] "Thus ' "the policy of liberal construction of the pleadings ... will not ordinarily be invoked to sustain a pleading defective in any material respect." ' [Citation.] [¶] This particularity requirement necessitates pleading facts which 'show how, when, where, to whom, and by what means the representations were tendered.' " [Citation.] A plaintiff's burden in asserting a fraud claim against a corporate employer is even greater. In such a case, the plaintiff must "allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written." ' " (*Lazar v. Superior Ct.* (1996) 12 Cal. 4th 631, 645.) Plaintiff alleged Defendants did not notify Plaintiff/Jergensen of any conflict between Sorensen or with NAHS and it was only after the transaction fell apart that Plaintiff learned of Defendant's concurrent representation of NAHS. (FAC ¶ 16.) Jergensen had initially asked Stoddard if Plaintiff needed separate representation because Stoddard represented both Plaintiff and Oakleaf due to their different goals and if there

		was a conflict of interest. (FAC ¶¶ 17, 85.) Stoddard informed Jergensen he did not need separate representation because the transaction was simple and straightforward and Stoddard had represented Jergensen and his companies in other matters before. After the Zeller letter wherein NAHS initially withdrew consent, Stoddard never informed Plaintiff that Plaintiff could no longer be represented by Defendants. (FAC ¶¶ 22, 85.) Jergensen told Stoddard to maintain confidentiality, but Stoddard never informed Plaintiff he could not. or did not, do so. Defendants allegedly repeatedly omitted the potential impact of conflicting duties, in order to collect fees from all parties. (FAC ¶ 88.) Defendants concealed the above facts with the intent to deceive and induce Plaintiff into taking actions it would not have such as retaining Defendants for legal services and preventing Plaintiff from seeking separate counsel. (FAC ¶ 89.) Had Plaintiff been aware of the concealed facts, Plaintiff would have acted earlier to prevent Defendants from disclosing financial terms of the Securities transaction to NAHS. (FAC ¶ 90.) Defendants argue Plaintiff will be unable to establish intent to defraud, reliance, or resulting damage as to COA No. 7 for fraudulent concealment. Defendants first contend Plaintiff cannot premise a claim for concealment on an alleged failure to disclose a tort. Citing to *LiMandri* for the premise, "[w]e are aware of no authority supporting the imposition of additional liability on an intentional tortfeasor for failing to disclose his or her tortious intent before committing a tort." (*LiMandri, supra*, 52 Cal. App. 4th at 338.) The court in *LiMandri* noted there was no fiduciary duty between the plaintiff and defendant which would require disclosure. (*Id.*, 336-37.) "[W]here material facts are known to one party and not to the other, failure to disclose them is not actionable fraud unless there is some relationship between the parties which gives rise to a duty to disclose such known facts." (*Id.*, at 337.) Unlike *LiMandri*, Plaintiff has pled sufficient facts to allege an attorney-client fiduciary relationship between Plaintiff and Defendants through at least the initial phases of the Agreement, which Defendants appear to concede to by their claims in the Motion that the COA are barred by the one-year statute of limitations on attorney malpractice. When there is a fiduciary duty/relationship, as here, there can be actionable

		fraud which gives rise to the duty to disclose facts. (*LiMandri, supra*, 52 Cal. App. 4th at 337.) Defendants have not produced evidence supporting a lack of fiduciary relationship between Plaintiff and Defendants. Defendants argue there was nothing confidential regarding the Securities transaction as it was openly shared with Olsen the CEO of NAHS from the start. As noted in the statute of limitation discussion above, Plaintiff has provided sufficient evidence to support triable issues of material fact regarding imputing knowledge of Olsen onto NAHS. After NAHS initially removed consent and then re-provided consent, Plaintiff through Jergensen requested confidentiality of an amendment that extended the closing date to 12/15/22. (Opposition, Ex. 21.) Defendants then allegedly went on to violate the requested confidentiality by disclosing the new 12/15/22 closing date as well as later allegedly disclosing the terms of the Securities transaction. Plaintiff alleged Defendants failed to disclose concurrent representation and the potential conflicts in June, early July, on 07/15/21, and after a 11/23/21 email from Jergensen. (FAC ¶ 85.) Defendants correctly point out that Plaintiff was or should have been aware of Defendants representing at least Sorensen as well as Plaintiff. However, Defendants' are silent as to the allegations regarding failure to notify Plaintiff of concurrent representation of NAHS and Plaintiff, and the allegations in the complaint regarding telling Jergensen he/Plaintiff did not need separate representation in the Securities matter. As Plaintiff alleged concealment of these facts was meant to induce, and did induce, Plaintiff into using Defendants for legal services related to the Securities transaction. As Defendants failed to address the allegations of concealment of concurrent representation and conflicting loyalties between NAHS and Plaintiff throughout 2021, Defendants have not met their initial burden on this COA. Even if the attorney-client relationship ended when Plaintiff hired Buchalter, there remains a duty of prior counsel to keep confidences. (CA Rules of Prof. Conduct Rule 1.6.) There is a duty "[t]o maintain inviolate the confidence, and at every peril

		to himself or herself to preserve the secrets, of his or her client." (Bus. & Prof. Code § 6068(e)(1).) Finally, Defendants argue Plaintiff cannot show reliance or damage based upon any purported concealment as Defendants represented Sorensen during the transaction and would have still believed the information needed to be shared with NAHS even if Defendants had disclosed the concurrent representation. Plaintiff's allegation was Defendants withheld information that Defendants also represented NAHS at the time Plaintiff/Sorensen began to work on the Securities deal and had Plaintiff known that information, Plaintiff would have acted earlier to prevent Defendants from disclosing terms of the transaction to NAHS. (FAC ¶ 90.) Plaintiff does not allege what it would have done differently aside from retaining different counsel, however Defendants have not met their initial burden of shown Plaintiff's damages would have been the same had Plaintiff known Defendants represented NAHS. **Tentative Ruling**: The Motion is **DENIED** as to COA No. 7. **3) Tortious Interference COA** Defendants next argue COA Nos. 3 – 6 involve tortious interference with the Securities sale contract. "California recognizes a cause of action against *noncontracting parties* who interfere with the performance of a contract. "It has long been held that *a stranger to a contract* may be liable in tort for intentionally interfering with the performance of the contract." [Citation.] [¶] However, consistent with its underlying policy of protecting the expectations of contracting parties against frustration *by outsiders* who have no legitimate social or economic interest in the contractual relationship, the tort cause of action for interference with a contract does not lie against a party to the contract." (*Applied Equip. Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal. 4th 503, 513–14.) "One contracting party owes no general tort duty to another not to interfere with performance of the contract; its duty is simply to perform the contract according to its terms. The tort duty not to interfere with the contract falls only on strangers—interlopers who have no legitimate interest in the scope or course of the contract's performance." (*Id.*)

		"The tort duty not to interfere with the contract falls only on strangers—interlopers who have no legitimate interest in the scope or course of the contract's performance." (*Mintz v. Blue Cross of California* (2009) 172 Cal. App. 4th 1594, 1603.) "[I]t is settled that "corporate agents and employees acting for and on behalf of a corporation cannot be held liable for inducing a breach of the corporation's contract." (*Mintz v. Blue Cross of California* (2009) 172 Cal. App. 4th 1594, 1604.) Defendants themselves have no legitimate social or economic interest in the contractual relationship between Plaintiff and Sorensen and generally must be considered a corporate agent of either of those entities acting within the course and scope of their position and with vested power to do so in order to use corporate agent immunity. To the extent Defendants contend they acted on behalf of Plaintiff regarding the contract, Defendants have not shown they were acting in their official capacities as an agent of Plaintiff, especially given Plaintiff specifically requested confidentiality of the terms of the agreement, which Defendants did not abide by. An agent only has the power to act as vested by the employer. Defendants were explicitly told by Plaintiff not to share the terms of the agreements in December 2021, yet Defendants shared the information several months later. Defendants also alternatively argue in the Motion that Plaintiff cannot toll the attorney malpractice claim as the representation allegedly ended in December 2021. If that is the case, then Defendants were not acting on behalf of Plaintiff regarding notifying NAHS of the terms and therefore cannot use corporate agent immunity regarding Plaintiff. As for representing Sorensen on the contract, Defendants have not shown they sought permission from Sorensen to provide the details to NAHS, nor have they shown they were vested by Sorensen with the power to notify NAHS of the terms of the security agreement, or that they were acting on behalf of Sorensen when Defendants shared the terms of the agreement.

		Finally, as to NAHS, NAHS is a stranger to the Securities contract. As alleged, NAHS could in theory be held liable for the intentional interference with the contract between Sorensen and Plaintiff. As Defendants were also working for stranger to the contract NAHS at the time of the sharing of the terms of the agreement, Defendants cannot hide behind agent immunity as to NAHS. As Defendants were alleged to have been working on behalf of Plaintiff, Sorensen, and NAHS at one time or another and concurrently throughout the alleged circumstances, there are triable issues of material fact as to who Defendants were acting on behalf of when notifying NAHS of the terms of the agreement and whether agent immunity applies here. The cases cited by Defendants are not on point and do not involve attorneys representing multiple parties with conflicting interests, one of which is a stranger to the subject contract which causes the contract to be interfered with. "[F]rom commencement to conclusion, the party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law" (Rutter CPBT §10:224, citing *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) Defendants have not met their burden of persuasion on the tortious interference COA. **Tentative Ruling:** The Motion is **DENIED** as to this issue. Plaintiff to give notice.
11.	**Ark Electronics USA, Inc. vs. Wiley** **24-01418236**	**1. Motion for Summary Judgment and/or Adjudication** Cross-complainant Scott Wiley moves for summary adjudication in his favor on the first cause of action in his first amended cross-complaint against cross-defendant Ark Electronics USA, Inc. A party may move for summary adjudication as to one or more causes of action within an action, one or more

		affirmative defenses, one or more claims for damages, or one or more issues of duty, if the party contends that the cause of action has no merit, that there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action, that there is no merit to a claim for damages, as specified in Section 3294 of the Civil Code, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs. Code Civ. Proc. § 473c(f)(1). A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty. Code Civ. Proc. § 473c(f)(1). For purposes of motions for summary judgment and summary adjudication, a plaintiff or cross-complainant has met that party's burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on the cause of action. Code Civ. Proc. § 437c(p)(1). Once the plaintiff or cross-complainant has met that burden, the burden shifts to the defendant or cross-defendant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. Code Civ. Proc. § 437c(p)(1). The defendant or cross-defendant shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to the cause of action or a defense thereto. Code Civ. Proc. § 437c(p)(1). The first cause of action in the first amended cross-complaint is for breach of the employment contract that is submitted with that pleading as Exhibit A. In the introductory portion of the FACC, cross-complainant alleges that he was hired by cross-defendant in July 2020 as a consultant and then became a full-time employee in December 2020. (FACC, ¶¶ 8 and 9.) He alleges that cross-defendant promoted him to chief commercial officer in January 2022 and then to chief operating officer in May 2022. (FACC, ¶ 9.) He alleges that cross-defendant expanded his title to reflect his role in the company and named him president and COO in November 2022, and that his employment contract was backdated and made effective

		May 1, 2022 for a two-year term. (FACC, ¶ 10.) Cross-complainant alleges that he served as the company's president and COO until his two-year term ended on April 30, 2024. (FACC, ¶ 10.) Cross-complainant further alleges that the employment contract provided that if the parties decided to not renew the employment or he was terminated without cause as defined in the contract, cross-defendant agreed to continue to pay his salary for one year as a severance payment. (FACC, ¶ 11.) Cross-complainant alleges that the only exception to cross-defendant's obligation to pay the severance was if cross-defendant had cause to terminate the relationship and provided written notice of this termination as provided by the employment contract before the expiration of the two-year term. (FACC, ¶ 11.) Cross-complainant alleges that the term of his employment ended on April 30, 2024 because the company did not renew the term or give any effective written notice of termination for cause before May 1, 2024. (FACC, ¶ 15.) Cross-complainant alleges that, on April 30, 2024, cross-complainant sent him a purported notice of termination by overnight delivery but that the notice was not "duly given" or effective until May 1, 2024, which was the next business day after it was deposited with the overnight delivery service. (FACC, ¶ 15.) In the first cause of action, cross-complainant alleges that he performed all of the terms and conditions of his agreements with cross-defendant. (FACC, ¶ 77.) Cross-complainant alleges that his employment term ended on April 30, 2024 because cross-defendant did not renew the term or provide any effective written notice of termination for cause before May 1, 2024 as required under the employment contract. (FACC, ¶ 78.) Cross-complainant alleges that, under the terms of the employment contract, cross-defendant was obligated to pay him the severance set forth in the contract, i.e., his total annual salary, and that it breached the agreement by not doing so. (FACC, ¶¶ 80 and 81.) In moving for summary adjudication on the first cause of action, cross-complainant submits his own declaration (ROA 37) that includes his authentication of the separately filed

		exhibits (ROA 45), i.e., the employment contract (Exhibit A), an email and letter from cross-defendant's CEO dated April 25, 2024 and a unexecuted severance agreement and mutual release (Exhibit B), and a letter from cross-defendant's CEO dated April 30, 2024 with a reference of termination of employment (Exhibit C). He also submits the declaration of his attorney, Kevin Nowicki (ROA 37), with copies of cross-defendant's responses to requests for admission and form and special interrogatories as Exhibits A, B, and C. Cross-complainant contends that this evidence shows that, under the clear and unambiguous terms of the employment contract, cross-defendant was obligated to pay him the severance described in the contract because he completed the two-term of the contract on April 30, 2024 and cross-defendant did not renew the term or terminate it for no cause before it expired. Cross-complaint also contends that, because the contract contains terms specifying the methods for giving notices and the time when they take effect, cross-defendant's purported notice of termination of the term with cause was untimely and does not excuse cross-defendant of the obligation to pay severance. Cross-defendant opposes the motion. It submitted evidence consisting of the declaration of its CEO, Robert Meyerson (ROA 66) with copies of a written exchange with cross-complainant during virtual meetings (Exhibit 1), an email and letter from cross-defendant's CEO dated April 25, 2024 and a unexecuted severance agreement and mutual release (Exhibit 2, which is the same as Exhibit B to cross-complainant's declaration), a letter he sent to cross-complainant dated April 30, 2024 (Exhibit 3, which is the same as Exhibit C to cross-complainant's declaration), and the employment contract (Exhibit 4, which is the same as Exhibit 1 to cross-complainant's declaration). Although cross-defendant does not dispute cross-complainant's contention that the contract obligated it to pay severance to him if it did not renew the term of the employment or terminated the term without cause before it expired, it contends that it notice to cross-complainant of his termination for cause as provided in the contract. It denies that the contract restricts the methods for giving notices to the three that are specified in section 10, and contends that

		it gave effective notice to cross-complainant that it was terminating him for cause. Cross-defendant contends that "no term of the contract requires a deadline for delivery of a notice of termination for cause – or even a notice of renewal or non-renewal." (Opposition to motion, 9:11-12.) The two relevant provisions of the contract are sections 2 and 10, which relate to the term of the contract and the giving of notices. Section 2 provides in relevant part: Term. The term of the Company's employment of Executive pursuant to this Agreement shall commence as of the date hereof and, unless earlier terminated in accordance with this Section 2, will continue for a period of two (2) years from the date hereof (the "Term"). At the end of the Term, the parties may agree to renew the Agreement for an additional two (2) year term (such two year renewal of the Term shall be referred to as the "Renewal Term"), but any such renewal of this Agreement to enter into a Renewal Term shall be at the sole and absolute discretion of both the Company and the Executive. For clarification, the Renewal Term means the first two (2) year extension of this Agreement past the end date of the Term, and not any other renewals if any, thereafter. A. If the Company chooses not to enter into a Renewal Term for this Agreement, then the Company shall only be obligated to continue to pay as severance for one (1) year, the Executive's Base Salary plus an amount to the Employee equal to the Supplemental Salary (as defined herein) when as due and owing from the date of expiration of the Term, but in no event shall the payment of the Executive Base Salary and Supplemental Salary exceed one (1) year. For clarification purposes, (i) a decision not to enter into any additional period of employment with Executive after the expiration of the Renewal Term shall not entitle Executive to the severance benefit set forth in this paragraph and (ii) any termination without cause or termination by Executive for Good Reason shall cancel Executive's severance rights set forth in this paragraph so as to avoid two (2) severance payments).

		B. The Company may terminate the Term or Renewal Term at any time without Cause upon written notice to Executive and the company shall only be obligated to continue to pay as severance for one (1) year, the Executive's Base Salary plus an amount to the Employee equal to the Supplemental Salary (as defined herein) when as due and owing from the date of termination, but in no event shall the payment of the Executive Base Salary and Supplemental Salary exceed one (1) year… C. The Term shall immediately terminate: (1) Upon Executive's death or Disability; or (2) Upon notice to Executive for Cause…. Section 10 provides in relevant part: Notices. Any and all notices and other communications required or desired to be given pursuant to this Agreement will be given in writing and will be deemed duly given upon personal delivery, or on the third day after mailing if sent by certified mail, postage prepaid, return receipt requested, or on the business day after deposit (specifying next business day delivery) with a nationally recognized overnight delivery service which maintains records of the time, place and receipt of delivery, in each case to the person and address set forth below, or to such other person or address which the Company or Executive may respectively designate in like manner from time to time. These provisions do not necessarily support cross-complainant's contention that cross-complainant's purported notice of termination for cause was ineffective. Subsection (C)(2) of section 2 provides that the contract term will "immediately terminate" upon notice to the Executive, i.e., cross-complainant. Section 10 provides in that notices must be given in writing and the letter dated April 25, 2024 (Exhibit B to cross-complainant's declaration and cross-defendant's Exhibit 2) states in the opening paragraph that "[a]fter consulting with our employment attorney, [cross-defendant] believes that, effective immediately, you should be terminated for multiple (and uncurable where applicable) violations of the 'Cause' provisions set forth in Section 2D of your Employment Agreement…." In addition, the letter

		dated April 30, 2024 (Exhibit C to cross-complainant's declaration and cross-defendant's Exhibit 3) states that "[t]his letter is to inform you that your employment with [cross-defendant] will be terminated immediately as of April 30, 2024 ('Effective Date') for the reasons set forth in my letter to you on April 27, 2024." It further states that "in accordance with Section 2C(2) of your Employment Agreement dated May 1, 2022 (the 'Employment Agreement'), this letter serves as notice of termination of your employment for Cause." The letter of April 24, 2024 was sent by email and the letter of April 30, 2024 was sent by overnight delivery. Although section 10 specifies three methods for transmitting written notices under the contract and the time at which they are deemed duly given, i.e., effective, the contract does not indicate that these are the only methods for giving effective notice. In fact, the section ends by stating "or to such other person or address which the Company or Executive may respectively designate in like manner from time to time." Finally, the contract is ambiguous as to when notice must be given. Section 2 specifically states that "[a]t the end of the Term, the parties may agree to renew the Agreement for an additional two (2) year term." This does not necessarily mean that the term must be renewed before it expires. Thus, the Court cannot grant summary adjudication because it cannot find, as a matter of law, that cross-defendant breached the employment contract. **Tentative Ruling**: The motion of cross-complainant Scott Wiley for summary adjudication on the first cause of action for breach of contract in the first amended cross-complaint against cross-defendant Ark Electronics USA, Inc., is DENIED. Cross-complainant's objections to the declaration of Robert Meyerson are overruled with the exception of objection 10, which is sustained.
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