TENTATIVE RULINGS

DEPT C28

Judge Thomas S. McConville

July 7, 2025 at 2:00 p.m.

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

- Civil Court Reporter Pooling; and

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

Tentative rulings: The court endeavors to post tentative rulings on the court's website in the morning, prior to the afternoon hearing. However, ongoing proceedings such as jury trials may prevent posting by that time. Tentative rulings may not be posted in every case. 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) 622-5228. 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.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

Appearances: Department C28 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 C28 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) 622-5228 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.

Arguments: The court will allow arguments on the pending motions up to 10 minutes per side, but those arguments must not repeat arguments previously made in each parties' applicable briefs.

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
50.	The Neshanian Law Firm, Inc. v. Healy 2024-01375553	Plaintiff 's Motion to Compel Initial Responses to Special Interrogatories, Set One and Motion to Deem Matters Asserted in Plaintiff's Request for Admissions, Set Two are DENIED without prejudice. Plaintiff has failed to establish that the underlying discovery requests were validly served upon Defendant Giovanna Healy. Defendant is an unrepresented party in a civil action, and thus, pursuant to Code Civ. Proc. §1010.6, subd. (c), may only be served electronically if there is a record of her consent to receive service by electronic means. No such record of consent appears in the register of actions for this case. The discovery requests were never validly served on Defendant as they were only served via email. (ROA 81, Exh. 2). Thus, Defendant never had an obligation to respond. As such, there is nothing to compel. (See Code Civ. Proc. §§ 2030.290 and 2033.280.) Plaintiff shall give notice of this ruling.
51.	Puma v. Shaohua 2024-01402523	**1. Defendants Chen Shaohua and Sophie Yu's Motion to Dismiss Plaintiffs' Action, or in the Alternative, Demurrer to Plaintiffs' Enza Puma and Calogero Calandra's Complaint and Each Cause of Action Therein** This motion is DENIED in its entirety. Defendants cite numerous provisions of the Code of Civil Procedure (CCP), but do not explain how the provisions are relevant to their motion. Defendants also cite no law whatsoever in support of their contention that the subject provision of the lease (i.e., paragraph 35A) requires the parties to mediate or else no court action may be filed (and if filed, must be dismissed). Paragraph 35A of the lease states: **35. MEDIATION:** **A.** Consistent with paragraphs B and C below, Landlord and Tenant agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction before resorting to court action. Mediation fees, if any, shall be divided equally

		among the parties involved. If, for any dispute or claim to which this paragraph applies, any party commences an action without first attempting to resolve the matter through mediation or refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney fees, even if they would otherwise be available to that party in any such action. (Compl. Exh. A.) This provision does not support Defendants' arguments. It does not state that no court action may ever be filed if the parties do not mediate first. Instead, the provision, by its own terms, provides that the relevant remedy for the failure to mediate first is inability to recover attorneys' fees. Indeed, this apparently is a standard provision found in California leases and residential purchase agreements, based on cases where courts have interpreted the provision--and only applied to whether attorneys' fees are recoverable at the conclusion of a court action. (See, e.g., *Cullen v. Corwin* (2012) 206 Cal.App.4th 1074, *Lange v. Schilling* (2008) 163 Cal.App.4th 1412, 1417-1418 [provision "sets forth a clear and unambiguous condition precedent that must be met in order for attorney fees to be awarded"]; *Frei v. Davey* (2004) 124 Cal.App.4th 1506, 1509, 1511-1512 [the agreement "means what it says—a party refusing a request to mediate a dispute that ripens into litigation may not recover attorney fees at the conclusion of the litigation, even if that party is the prevailing party"].) The court could find no cases (or other law) mandating the dismissal of an action should a party fail to mediate in the context currently before the court. Nor do Defendants cite any law in support of their alternative contention that the complaint is subject to demurrer under CCP sections 430.10, subdivisions (e) and (f), and 430.30, subdivision (a), just because it does not allege facts demonstrating that Plaintiffs have satisfied this so-called "mediation requirement." Moreover, given that the complaint makes no allegations regarding whether mediation occurred, Defendants' allegation in their motion that the parties never mediated is a fact extrinsic to the complaint, which the court may not properly consider on a demurrer. (*Knickerbocker v. City of Stockton* (1988)

		199 Cal.App.3d 235, 239, fn. 2, italics original ["a demurrer looks *only* to the face of the pleadings and to matters judicially noticeable and not to the evidence or other extrinsic matter"].) Therefore, there is no merit to Defendants' motion to dismiss/demurrer. The motion is DENIED. **2. Plaintiffs Enza Puma and Calogero Calandra's Motion for Sanctions** Based on the foregoing, the Court GRANTS in part Plaintiffs' motion for sanctions. (Code Civ. Proc. [CCP], § 128.7.) The Court finds that Defendants Chen Shaohua and Sophie Yu's attorney violated CCP section 128.7, subdivision (b)(2) by filing the subject motion to dismiss/demurrer, which has no merit and is therefore frivolous, as explained in the earlier part of this order applicable to that motion/demurrer. (See *Bucur v. Ahmad* (2016) 244 Cal.App.4th 175, 189, internal quotes omitted [defining "frivolous" as "any reasonable attorney would agree that the motion is totally and completely without merit"].) Sanctions are granted in favor of Plaintiffs and against Defendants' counsel, Christian C.H. Counts, payable to Plaintiffs' counsel within 30 days of notice, but in the amount of $2,000 only. The Court finds that this sanction is sufficient to effectively deter repetition of the conduct at issue. (CCP § 128.7, subds. (d) & (d)(1); see also *Musaelin v. Adams* (2009) 45 Cal.4th 512, 519 ["primary purpose is to deter filing abuses, not to compensate those affected by them"].) The case management conference is continued to November 17, 2025 at 9:00 a.m. in Department C28. Plaintiffs shall give notice of these rulings.
52.	Fuller v. Exp Realty of California, Inc. 2024-0141164	Off calendar due to stipulation of the parties.
53.	Yip v. Palo Verde Graduate Housing 2022-01275473	**<u>Defendant The Regents of the University of California's demurrer to the Second Amended Complaint</u>** Defendants the Regents of the University of California's demurrer to the Second Amended

		Complaint is SUSTAINED as to the First and Third through Tenth Causes of Action without leave to amend and OVERRULED as to the Second, Twelfth and Thirteenth Causes of Action. Defendant shall file an answer no later than **July 18, 2025**. As an initial matter, the Court finds that Plaintiff timely filed the Second Amended Complaint on 10/29/24. Plaintiff was provided 30 days leave to amend and the notice of this ruling was served via electronic means on 9/25/24. (See ROA No. 92.) Accordingly, Plaintiff had until 10/29/24 to file the Second Amended Complaint. Plaintiff's contention that Defendant's act of filing an answer to the First Amended Complaint served to render this Court's Order sustaining the demurrer moot is without support. Plaintiff points to no authority that provides a defendant may render a demurrer that has already been sustained moot by filing an answer. The Court considers the Second Amended Complaint the operative complaint, and shall consider the merits of Defendant's demurrer. The Second Amended Complaint alleges no new facts nor statutory basis for public entity liability for the First and Third through Tenth causes of action. The court has identified this exact shortcoming in ruling on the demurrer to the Complaint (ROA 55) and First Amended Complaint (ROA 90). Yet Plaintiff has taken no steps to address the Court's prior orders. Nor has Plaintiff provided the Court with an adequate explanation for how the complaint can be amended to assert these claims against a public entity. The demurrer is OVERRULED as to the second, twelfth and thirteenth causes of action. Defendant demurs on the ground that the Second Amended Complaint was untimely filed. This is not a ground for a demurrer, but rather a motion to strike. In any event, the Second Amended Complaint was timely filed and Defendant does not otherwise challenge the legal sufficiency of these causes of action. The case management conference is continued to November 17, 2025 at 9:00 a.m. in Department C28. Defendant shall provide notice of this ruling.

54.	Hot Pepper, Inc. v. mMax Communications, Inc. 2022-01250772	Defendants/cross-complainants Hong Peow Ong, Christine Tan, mMax Communications, Inc., and mMax Communications Pte Ltd.'s (hereinafter, defendants) motion to continue trial is DENIED AS MOOT. After this motion was filed, defendants filed an ex parte application seeking the exact same relief. (See ROA Nos. 914 [1/7/25 notice of motion and motion to continue trial], 918 [1/7/25 ex parte application to continue trial, related pre-trial deadlines, and MSC].) On 1/8/25, the court granted the requested relief, rendering this motion moot. (See ROA Nos. 923, 926.) Defendants shall give notice of this ruling.
55.	Safari v. Marks 2023-01300519	Plaintiff Robert Safari's Motion to Recuse Defense Counsel is DENIED. First, there is no proof of service of the moving papers. (Code Civ. Proc., §§ 1005, subd. (b) [motion requires at least 16 court days' notice, plus additional time for service other than personal service], 1013a, 1013b [proof of service requirements]; Cal. Rules of Court, Rule 3.1300, subd. (c) ["Proof of service of the moving papers must be filed no later than five court days before the time appointed for the hearing"].) Second, the motion is also denied on the merits. Moving party provides no evidence that defense counsel in fact received confidential or privileged information from moving party's former counsel, nor of the nature of any confidential information disclosed, but only that former counsel allegedly threatened to disclose confidential information. Moreover, according to plaintiff's filing, receipt of confidential information was denied by defense counsel. (*State Comp. Ins. Fund. v. WPS, Inc.* (1999) 70 Cal.App.4th 644, 656-657 [attorney's duties upon inadvertent receipt of confidential material]; *Oaks Management Corporation v. Superior Court* (2006) 145 Cal.App.4th 453, 459, FN 2, citing *Shadow Traffic Network v. Superior Court* (1994) 24 Cal.App.4th 1067, 1085 ["Generally, a party moving for disqualification is not required to disclose the actual information contended to be confidential, but must advise the court of the nature of the material and its relationship to the litigation"]; Evid. Code, § 952 [defining "confidential communication between client and lawyer"]; Ex. B to moving papers, 12-23-24 Safari email [plaintiff's former counsel allegedly "threatened

		that privileged case information would be shared with [defense counsel] in the attempts of Mr. Denni to [s]abotage my case"], no evidence this in fact occurred; see also Ex. B, 12-30-24 Buffington email ["we have not ever received any confidential information from your former attorney ... [i]f we had, we would have disclosed it as required by California law"].) Moving party also fails to present any evidence showing how defense counsel's testimony is necessary or relevant to any claims or defenses in this action, so as to support disqualification under the advocate/witness rule. (CA Rules of Professional Conduct, Rule 3.7 [governing advocate as witness]; *Doe v. Yim* (2020) 55 Cal.App.5th 573, 583–584 [factors considered whether to disqualify counsel under the advocate-witness rule include "whether counsel's testimony is, in fact, genuinely needed," the possibility that moving party "is using the motion to disqualify for purely tactical reasons," and "the combined effects of the strong interest parties have in representation by counsel of their choice, and in avoiding the duplicate expense and time-consuming effort involved in replacing counsel already familiar with the case"].) Clerk shall give notice of this ruling.
56.		
57.	Sunwest Bank v. Encino Towers, LLC 2023-01329501	**Demurrer to Verified Cross-complaint by Cross-defendants Sunwest Bank and 9996 Sunset Properties, LLC.** Cross-defendants Sunwest Bank and 9996 Sunset Properties, LLC's demurrer to the Verified Cross-complaint ["VCC"] filed by Kaysan Ghassemi-Najad, Behnam Ghasseminejad and K3B Enterprises, LLC, is SUSTAINED, with leave to amend, on grounds of failure to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).) Cross-defendants Sunwest Bank and 9996 Sunset Properties, LLC's request for judicial notice is: (1) DENIED as to Ex. 1 (*Stevens v. Superior Court* (1999) 75 Cal.App.4th 594, 607-608 [materials prepared by private parties and merely on file with state agencies

		are not ordinarily a proper subject of judicial notice]); (2) GRANTED in part as to Exs. 2, 6, 7, limited to the fact that the documents were recorded, but not of the truth of their contents (*Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 264-265 [judicial notice of recorded documents]; *Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1117 ["the fact a court may take judicial notice of a recorded deed, or similar document, does not mean it may take judicial notice of factual matters stated therein"]); and (3) GRANTED as to Exs. 3-5 (Evid. Code, § 452, subd. (d) [court records]). Moving parties shall give notice of this ruling. 1st cause of action: violation of Truth in Lending Act [TILA]. This cause of action fails to state sufficient facts. TILA imposes certain requirements, including specified disclosures, against lenders for certain "high cost mortgages," defined as "a consumer credit transaction that is secured by the consumer's principal dwelling, other than a reverse mortgage transaction." (15 U.S.C., §§ 1602, subd. (bb), 1639, subd. (a)(1).) "The adjective 'consumer', used with reference to a credit transaction, characterizes the transaction as one in which the party to whom credit is offered or extended is a natural person, and the money, property, or services which are the subject of the transaction are primarily for personal, family, or household purposes. (15 U.S.C., § 1602, subd. (i).) TILA does not apply to "[c]redit transactions involving extensions of credit primarily for business, commercial, or agricultural purposes ... or to organizations." (15 U.S.C., § 1603, subd. (a)(1).) "The term 'organization' means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association." (15 U.S.C., § 1602, subd. (d).) Here, there are no facts alleged to show that the loan from Sunwest Bank to Encino Towers, LLC, or the

		Forbearance Agreement for which the residential Sunset Property was pledged as collateral, was "primarily for personal, family, or household purposes" (15 U.S.C., § 1602, subd. (i)), so as to be subject to TILA, or was anything other than a commercial loan. (VCC, ¶¶ 37, 38; Ex. 11 to VCC [Forbearance Agreement referring to "commercial" securities]; see also *Holland v. Morse Diesel International* (2001) 86 Cal.App.4th 1443, 1447 [facts appearing in exhibits attached to the complaint are given precedence over inconsistent allegations within the complaint].) Plaintiffs cite no authority that pledging residential property as security for a Forbearance Agreement on a loan not otherwise subject to TILA, operates to convert that loan to one "primarily for personal, family, or household purposes." (15 U.S.C., § 1602, subd. (i).) 2nd cause of action: misrepresentation and fraud. This cause of action fails to state sufficient facts. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638, 645 [misrepresentation elements, specific pleading required]; *Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 665-666 [concealment elements]; *Cansino v. Bank of America* (2014) 224 Cal.App.4th 1462, 1472 [concealment also requires specific pleading].) There are no misrepresentations attributed to these moving parties. Rather, as to these moving parties, this cause of action sounds in concealment; however, there are no facts pled showing a duty to disclose, a required element for a concealment claim. The alleged duty to disclose is based on TILA (VCC, ¶¶ 39, 119), but as discussed above in connection with the 1st cause of action, there are no facts alleged to show that the Sunwest Bank loan to Encino Towers, LLC, or the Forbearance Agreement, are subject to TILA. 3rd cause of action: quiet title.

		Given the ruling on the 1st cause of action, this cause of action also fails to state any factual basis of any adverse claim by these moving parties. (Code Civ. Proc., § 761.020, subd. (c).) The VCC also fails to set forth a legal description of the disputed property; only the street address is provided. (Code Civ. Proc., § 761.020, subd. (a) ["In the case of real property, the description shall include both its legal description and its street address or common designation, if any"].) As there are no facts indicating that determination of title is sought as of a date other than the date the VCC was filed, it is presumed that determination is sought as of the filing date. (Code Civ. Proc., § 761.020, subd. (d).) If moving parties seek determination on a different date, any amended pleading shall include supporting facts. (*Id*.) Further, as noted above, judicial notice of the recorded deeds is limited to the fact of recordation; thus, moving parties' remaining arguments as to the eventual disposition of the disputed property are not addressed. <u>4th cause of action: rescission</u>. This cause of action is not alleged against these moving parties, and was not addressed by the instant demurrer. (Code Civ. Proc., § 430.10, subd. (e).) <u>5th cause of action: declaratory and injunctive relief</u>. This cause of action fails to state sufficient facts to support declaratory relief, as the demurrer is sustained as to all other claims against these moving parties. (Code Civ. Proc., § 1060 [declaratory relief]; *City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 80 ["'an actual, present controversy must be pleaded

		specifically' and 'the facts of the respective claims concerning the [underlying] subject must be given;'" internal citations omitted.) As to injunctive relief, this is a remedy, not a separate cause of action. (*Marlin v. Aimco Venezia, LLC* (2007) 154 Cal.App.4th 154, 162; *County of Del Norte v. City of Crescent City* (1998) 71 Cal.App.4th 965, 973.) 6th cause of action violation of B&P 17200. As the demurrer is sustained as to all other claims against these moving parties, this cause of action fails as well. (*Ingels v. Westwood One Broadcasting* (2005) 129 Cal.App.4th 1050, 1060 [where a plaintiff cannot state a claim under the "borrowed" law, plaintiff cannot state a UCL claim either].) **Motion to Strike Portions of Verified Cross-complaint by Cross-defendants Sunwest Bank and 9996 Sunset Properties, LLC.** These moving parties' motion to strike K3B Enterprises, LLC as a party to the Verified Cross-complaint is DENIED as moot. (Code Civ. Proc., §§ 435, 436 [authorizing motion to strike].) At the time this motion to strike was filed, K3B Enterprises, LLC was also a cross-complainant, along with Encino Towers, LLC, in a separate cross-action, i.e. a First Amended Cross-complaint filed on 1-30-24. (ROA 135.) However, that First Amended Cross-complaint is no longer operative. On 1-31-25, cross-complainants Encino Towers, LLC and 20 E Mariposa St, LLC, filed a Second Amended Cross-complaint, where K3B Enterprises, LLC is no longer a cross-complainant. (ROA 464; see also *Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 884 ["It is well established that an amendatory pleading supersedes the original one, which ceases to perform any function as a pleading," and "supplants all prior complaints; internal citations omitted].)

		The court takes judicial notice of the Second Amended Cross-complaint on its own motion. (Evid. Code, § 452, subd. (d).) Given the filing of the Second Amended Cross-complaint, the instant motion to strike is moot. Moving parties shall give notice of this ruling. **<u>Demurrer to Verified Cross-complaint by Cross-defendant Preferred Bank</u>.** Cross-defendant Preferred's demurrer to the Verified Cross-complaint filed by Kaysan Ghassemi-Najad, Behnam Ghasseminejad and K3B Enterprises, LLC, is SUSTAINED, with leave to amend, on grounds of failure to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).) Cross-defendant Preferred Bank's request for judicial notice is: (1) DENIED as to Exs. A-C (*Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1145–1146 ["the existence of a contract between private parties cannot be established by judicial notice"]; *Travelers Indemnity Company of Connecticut v. Navigators Specialty Insurance Company* (2021) 70 Cal.App.5th 341, 354–355 ["The existence and terms of a private agreement are not facts that are not reasonably subject to dispute and that can be determined by indisputable accuracy"]); (2) GRANTED as to Exs. D-G (Evid. Code, § 452, subd. (d) [court records]); and (3) GRANTED in part as to Ex. H, limited to the fact that the document was recorded, but not of the truth of its contents (*Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 264-265 [judicial notice of recorded documents]; *Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1117 ["the fact a court may take judicial notice of a recorded deed, or similar document, does not mean it may take judicial notice of factual matters stated therein"]).

		Moving party shall give notice of this ruling. 1st cause of action: violation of Truth in Lending Act [TILA]. This cause of action fails to state sufficient facts. First, the VCC alleges that Preferred Bank's first loan was made to cross-complainant K3B Enterprises LLC (VCC, Para. 26), and the second loan was made to the hospice entities (VCC, Para. 28). However, as noted above: "The adjective 'consumer', used with reference to a credit transaction, characterizes the transaction as one in which the party to whom credit is offered or extended is a natural person, and the money, property, or services which are the subject of the transaction are primarily for personal, family, or household purposes. (15 U.S.C., § 1602, subd. (i).) TILA does not apply to "[c]redit transactions ... to organizations." (15 U.S.C., § 1603, subd. (a)(1); see also 15 U.S.C., § 1602, subd. (d) [defining "organization"].) Second, this cause of action is time-barred as alleged. With exceptions not applicable here, any claim for damages under TILA must be brought within one year of the violation. (15 U.S.C., § 1640, subd. (e).) The VCC alleges that the Preferred Bank loans were made on or about 5-10-19. (VCC, ¶¶ 26, 28.) The VCC was not filed until 8-14-24, nearly five years later. The VCC fails to allege sufficient facts to support tolling or delayed discovery. (VCC, ¶¶ 18, 19 [conclusory allegations only as to delayed discovery and/or tolling]; *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 808 ["In order to rely on the discovery rule for delayed accrual of a cause of action, '[a] plaintiff whose complaint shows on its face that his claim would be barred without the benefit of the discovery rule must specifically plead facts to show (1) the time and manner of discovery and (2) the inability to have made earlier discovery despite reasonable diligence'"]; *Sagehorn v. Engle* (2006) 141 Cal. App. 4th 452, 461 [no facts that cross-complainants "use[d] reasonable care and diligence in attempting to

		learn the facts that would disclose the defendant's fraud or other misconduct" so as to support equitable tolling]; *Community Cause v. Boatwright* (1981) 124 Cal.App.3d 888, 900 [no facts showing cross-complainants were "not at fault for failing to discover it or had no actual or presumptive knowledge of facts sufficient to put [them] on inquiry" so as to support tolling based on fraudulent concealment].) 2nd cause of action: misrepresentation and fraud. This cause of action is not pled with the specificity required for fraud claims. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638, 645 [misrepresentation elements, specific pleading required].) The alleged misrepresentations and the speakers' authority is sufficiently alleged. (VCC, ¶¶ 23, 24, 98, 99, 100, 110-115.) Reliance and damages are also sufficiently alleged. (*Id.*, ¶¶ 107-109.) However, the means of representation is not alleged. Moreover, there are no facts alleged as to knowledge of falsity and/or intent to defraud; rather, this is alleged as a conclusion only. (VCC, ¶ 102.) Further, this cause of action is also time-barred as currently alleged. (Code Civ. Proc., § 338, subd. (d) [three years "for relief on the ground of fraud or mistake," which cause of action "is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake"]; VCC, ¶¶ 26, 28, 99 [alleged misrepresentations on or about 5-10-19].) As noted above, there are no facts, as opposed to conclusions, supporting delayed discovery. 3rd cause of action: quiet title. This cause of action fails to allege any adverse claim by this moving party, as the VCC alleges moving party

		Preferred Bank sold the loan[s] to cross-defendant 9996 Sunset Loan Acquisition, LLC. (VCC, ¶ 34.) While not argued by this moving party, as noted above, this cause of action is also deficient because the VCC fails to set forth a legal description of the disputed property. (Code Civ. Proc., § 761.020, subd. (a) ["In the case of real property, the description shall include both its legal description and its street address or common designation, if any"].) 4th cause of action: rescission. This cause of action is time-barred. With exceptions not applicable here, an obligor's right of rescission under TILA "shall expire three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs first, notwithstanding the fact that the information and forms required under this section or any other disclosures required under this part have not been delivered to the obligor." (15 U.S.C., § 1635, subd. (f).) As noted above, the VCC alleges the loans were issued on or about 5-10-19 (¶¶ 26, 28), but the VCC was not filed until 8-14-24. Further, to the extent that the right to rescind is based on alleged fraud, since the fraud cause of action fails, the rescission claim would also fail for the same reasons. 5th cause of action: declaratory and injunctive relief. This cause of action fails to state sufficient facts to support declaratory relief, as the demurrer is sustained as to all other claims against this moving party. (Code Civ. Proc., § 1060 [declaratory relief]; *City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 80 ["'an actual, present controversy must be pleaded specifically' and 'the facts of the respective claims concerning the [underlying] subject must be given;'" internal citations omitted.)

		As to injunctive relief, this is a remedy, not a separate cause of action. (*Marlin v. Aimco Venezia, LLC* (2007) 154 Cal.App.4th 154, 162; *County of Del Norte v. City of Crescent City* (1998) 71 Cal.App.4th 965, 973.) 6th cause of action: violation of B&P 17200. As the demurrer is sustained as to all other claims against this moving party, the 6th cause of action fails as well. (*Ingels v. Westwood One Broadcasting* (2005) 129 Cal.App.4th 1050, 1060 [where a plaintiff cannot state a claim under the "borrowed" law, plaintiff cannot state a UCL claim either].) **Motion to Strike Portions of Verified Cross-complaint by Cross-defendant Preferred Bank.** Given the ruling on the demurrer by cross-defendant Preferred Bank, its motion to strike portions of the VCC is MOOT. The case management conference is continued to November 17, 2025 at 9:00 a.m. in Department C28. Moving party shall give notice of this ruling.
58.	City of Fullerton v. Vickie A. Bearup-Gamarra, as Trustee of the Vickie Bearup-Gamarra Trust, Dated January 18, 2024 2025-01482429	**Petition for Appointment of Receiver** The hearing on Petitioner City of Fullerton's Petition for Appointment of Receiver is CONTINUED to August 11, 2025 at 1:30 p.m. in Department C-28. The notice of the order advancing the hearing date of this hearing to 7/7/25 was served upon Respondent Vickie A. Bearup-Gamarra via electronic mail, but Respondent is an unrepresented party in a civil action and there is no record that Respondent has consented to receipt of electronic service. The clerk shall provide notice of this ruling. Respondent shall be provided notice by mail and e-mail.
59.	McGhee v. Marriott Hotel Services, Inc. 2022-01286073	Cross-defendant Comren, Inc.'s (Comren) motion for summary adjudication is DENIED.

		Comren has failed to meet its initial burden to show cross-complainant Marriott Hotel Services, LLC's (Marriott) fourth cause of action (erroneously labeled as a second "third" cause of action) for "Breach of Contract and Failure to Defend and Indemnify against Comren, Inc." has no merit. (See Code Civ. Proc., § 437c, subds. (a), (p)(2) [burden]; *Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 850 [same].) Marriott's fourth cause of action is based on the terms of a Major Construction Agreement (Master Contract) for a "2018 Room Renovation Project" at the subject hotel entered into between the hotel owner and Comren. (See Marriott XC ¶¶ 13-20; see also Comren SSMF Nos. 1, 3; Comren Appendix of Exhibits (AOE) at Ex. B [Master Contract].) Under this claim, Marriott's cross-complaint alleges Comren has breached the Master Contract by failing to comply with Comren's (1) *defense* obligation, by refusing to defend cross-complainant from plaintiff's claims despite demand; and (2) *indemnity* obligation, by "refusing to fully ... indemnify and hold cross-complainant harmless without any reservation of rights" from plaintiff's claims. (Marriott XC ¶¶ 13-15, 18-20; see *Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 163, 172 [the allegations of the complaint define the issues to be considered on a motion for summary adjudication].) In other words, the fourth cause of action is based on both Comren's (1) duty to defend, and (2) duty to indemnify. (Marriott XC ¶¶ 13-15, 18-20.) Comren has failed to show Marriott will not be able to establish its fourth cause of action for breach of contract based on Comren's alleged failure to defend Marriott against plaintiff's claims. (See *Teselle v. McLoughlin, supra,* 173 Cal.App.4th at p. 172 [as to each claim at issue, the defendant must present facts to negate an essential element or to establish a defense; only then will the burden shift to the plaintiff to demonstrate the existence of a triable, material issue of fact]; *McAlpine v. Norman* (2020) 51 Cal.App.5th 933, 941; [on a motion for summary judgment/adjudication, defendant has the burden to

		show he is entitled to judgment on any theory of liability reasonably embraced within the allegations of the subject claim].) Instead of addressing its defense and indemnity obligations separately, Comren has joined these two concepts together and has applied the law governing the duty to indemnify to both obligations, primarily relying on federal authority, *Colonies Partners LP v. County of San Bernardino* (C.D. Cal., Nov. 14, 2019) 2019 WL 8621438, at *5-10 (*Colonies Partners*), and the two California authorities upon which *Colonies Partners* relies, *Baldwin Builders v. Coast Plastering Corp.* (2005) 125 Cal.App.4th 1339, 1347 (*Baldwin Builders*), and *Heppler v. J.M. Peters Co*. (1999) 73 Cal.App.4th 1265, 1280 (*Heppler*). Specifically, Comren argues that in the noninsurance context, " 'an indemnitor… generally *will not be liable or have a duty to defend* [the indemnitee] pursuant to the terms of an indemnity agreement unless it was negligent in performing its work under the [contract],' " unless the agreement contains "clear and explicit" *indemnity* language creating no-fault liability. (Mtn. P&As at pp. 4-9.) As the California Supreme Court explicitly noted in *Crawford v. Weather Shield Mfg., Inc.* (2008) 44 Cal.4th 541 (*Crawford*), however, *Heppler* "never separately addressed the defense clause" of the contract at issue in that case and "simply assumed that the indemnity and defense provisions ... were congruent," and *Baldwin Builders* "had nothing to do with an indemnitor's duty, regardless of fault, to defend its indemnitee." (*Id.* at p. 561 & fn. 10.) It is well established that "[a]n opinion is not authority for a point not raised, considered, or resolved therein. [Citations.]" (*Styne v. Stevens* (2001) 26 Cal.4th 42, 57-58.) Indeed, in the same case, the California Supreme Court explicitly held that the two duties are distinct and subject to different rules. "The duty to indemnify is distinct from the duty to defend: the former 'require[s] one party to *indemnify* the other, under specified circumstances, for moneys paid or expenses

		incurred ... as a result of' a third party claim, while the latter 'assign[s] one party ... responsibility for the other's *legal defense* when a third party claim is made.' (*Crawford,* 44 Cal.4th at p. 551].) Depending on the contractual language, a duty to defend may exist even if no duty to indemnify is ultimately found. (*Id.* at p. 561, 79 Cal.Rptr.3d 721, 187 P.3d 424 …; *UDC–Universal Development, L.P. v. CH2M Hill* (2010) 181 Cal.App.4th 10, 21-22, 103 Cal.Rptr.3d 684 [rejecting indemnitor's argument that 'the jury's eventual "no negligence" finding rendered the entire indemnity clause, including the defense provision, inapplicable'].)" (*Aluma Systems Concrete Construction of California v. Nibbi Bros. Inc.* (2016) 2 Cal.App.5th 620, 627.) "[U]nless the parties' agreement expressly provides otherwise, a contractual indemnitor has the obligation, upon proper tender by the indemnitee, to accept and assume the indemnitee's active **defense** against claims encompassed by the indemnity provision." (*Crawford,* 44 Cal.4th at p. 555.) Importantly, this duty to defend "arises immediately upon a proper tender of defense by the indemnitee, and ... before the litigation to be defended has determined whether indemnity is actually owed." (*Id.* at p. 558.) "[C]laims 'embraced by the indemnity,' as to which the duty to defend is owed, include those which, at the time of tender, *allege* facts that would give rise to a duty of indemnity." (*Ibid.*, original italics; accord, *Centex Homes v. R-Help Construction Co., Inc.* (2019) 32 Cal.App.5th 1230, 1236-1237 (*Centex Homes*).) In contrast, "if a party seeks to be **indemnified** ... regardless of the indemnitor's fault, the contractual language on the point 'must be particularly clear and explicit, and will be construed strictly against the indemnitee.' [Citations.]" (*Prince v. Pacific Gas & Electric Co.* (2009) 45 Cal.4th 1151, 1158 [discussing indemnity provisions in the noninsurance context]; *Crawford,* 44 Cal.4th at p. 552 [same].) Here, plaintiff's complaint asserts two causes of action for negligence and premises liability against Marriott (Doe 2) based in part on Comren's (Doe 1) alleged

		negligent construction/installation/design of the door and failure to warn of the dangerous condition. (See Compl. ¶¶ 4, 8, 12, 17, 20; see also ROA Nos. 17, 18 [4/3/23 Doe amendments].) Marriott's cross-complaint in turn alleges that Comren performed the construction work related to the subject door pursuant to the terms of the Master Contract, and that Comren has breached the Master Contract by failing to defend and indemnify Marriott from and against plaintiff's claims despite demand, as required under section 8.02 of the agreement. (See Marriott XC ¶¶ 13-20.) Comren's own evidence shows that section 8.02 of the Master Contract requires Comren to defend and indemnify Marriott for all claims "arising out of, or related to" any and all "injuries and damages to any person ... arising from or in connection with Work performed or to be performed under the [Master Contract]...." (Comren SSMF No. 3; AOE at Ex. B [Master Contract § 8.02].) Nothing in the Master Contract expressly limits Comren's immediate duty to defend Marriott from the claims encompassed by this indemnity provision. (See *Crawford, supra,* 44 Cal.4th at p. 555 ["unless the parties' agreement expressly provides otherwise, a contractual indemnitor has the obligation, upon proper tender by the indemnitee, to accept and assume the indemnitee's active defense against claims encompassed by the indemnity provision"].) Comren does not dispute that plaintiff's complaint alleges such claims against Marriott, i.e., claims "arising out of, or related to" injuries sustained by a person (plaintiff) "arising from or in connection with" Comren's work under the Master Contract. (See Compl. ¶¶ 4, 8, 12, 17, 20; Marriott XC ¶¶ 13-15; see also Comren Sep. Stmt., in passim; *Orange County Water Dist. v. Sabic Innovative Plastics US, LLC* (2017) 14 Cal.App.5th 343, 396-397 (*OCWD*) [failure to address material facts alleged in complaint

		permits that portion of the complaint to proceed unchallenged].) Comren also does not dispute that Marriott placed Comren on notice of plaintiff's complaint and demanded that Comren defend Marriott from and against plaintiff's claims pursuant to section 8.02 of the Master Contract. (Marriott XC ¶ 18; see *OCWD, supra,* 14 Cal.App.5th at pp. 396-397.) Thus, as the facts currently stand, Comren has not shown that it had no duty to defend Marriott from plaintiff's claims immediately upon Marriott's tender of defense, which Marriott allegedly tendered at some point prior to filing its cross-complaint on 6/14/23. (*Crawford, supra*, 44 Cal.4th at p. 558; *Centex Homes, supra,* 32 Cal.App.5th at p. 1236; see Marriott XC ¶ 18.) "Under *Crawford*, the duty to defend arises as a matter of law from the mere allegation in the underlying tort action that plaintiff's injuries arose out of [Comren's] work" and continues until " 'the underlying lawsuit is concluded, or until it has been shown that there is no potential for coverage.' " (*Centex Homes,* at pp. 1236, 1238.) As far as the evidence presently before the court, Comren has not shown it has a complete defense to Marriott's claim for Comren to defendant it. Comren has therefore failed to meet its initial burden to show Marriott's fourth cause of action for "breach of contract and failure to defend and indemnify" has no merit. Comren's motion is therefore DENIED. Comren's and Marriott's requests for judicial notice are GRANTED. Comren shall give notice of this ruling.

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