SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 09
JUDICIAL OFFICER: JOHN P DEVINE
HEARING DATE: 01/27/2025

ALL APPEARANCES WILL BE BY ZOOM

For matters where an appearance is required, the parties should appear by Zoom unless told to appear by another method. For all other matters, if argument is requested appearances will be by Zoom.

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Law & Motion

1. 9:00 AM CASE NUMBER: C23-00233
CASE NAME: MAEN JWEINAT VS. NATALIE MOSS
***HEARING ON MOTION IN RE: TO STRIKE PORTIONS OF PLTFS 3RD AMENDED COMPLAINT**
FILED BY:
TENTATIVE RULING:

See line 2.

2. 9:00 AM CASE NUMBER: C23-00233
CASE NAME: MAEN JWEINAT VS. NATALIE MOSS
HEARING ON DEMURRER TO: THIRD AMENDED COMPLAINT, SECOND CAUSE OF ACTION
FILED BY:
TENTATIVE RULING:

[Demurrer]

Introduction
Before the Court is Defendants Natalie Moss (standing in place of her late mother Edith Miladinovich), Individually and As Trustee of The 1987 Miladinovich Family Trust Dated May 4, 1987's Demurrer. The Demurrer relates to Plaintiff MAEN S. JWEINAT, dba FANTASIA SMOKE SHOP's second cause of action for Violation of Contra Costa County Ordinances to its Third Amended Complaint.

For the following reasons, the Demurrer is overruled.

Meet and Confer Requirement

Defendants satisfied their meet and confer requirement regarding their Demurrer in detailing their meet and confer efforts with Plaintiff's counsel in the Declaration of Robert Rich. Defendant's counsel explained his meet and confer efforts made through an exchange of letters via email with Plaintiff's counsel during the span of May 29 to June 13, 2024. (Decl. of Rich at ¶¶ 8-11.) The parties also exchanged emails but were unable to resolve Defendants objections to the Complaint. (Decl. of Rich at ¶ 12.)

Statement of Facts

Plaintiff entered a lease of commercial property within Defendant Miladinovich's shopping center on December 24, 2012 (hereinafter "Lease"). (TAC ¶ 1.) In 2017, Fantasia exercised the first of two options under the Lease, extending the Lease term to December 31, 2022. (Id. at ¶¶ 11-12, Lease, § 2.) After the COVID-19 pandemic struck, the Contra Costa County Board of Supervisors enacted a successively superseding series of ordinances containing temporary prohibitions on certain evictions of commercial tenants in Contra Costa County to ameliorate the impacts of the pandemic (hereinafter, collectively "Ordinances") in 2020 to 2021. (Id. at ¶¶ 14-15 and 37-38 and Exh. 2; Miladinovich's RJNs filed June 21, 2023, and June 26, 2023, and her Errata filed August 27, 2024 (hereinafter "Miladinovich's RJNs").) The Ordinances provide that "a landlord of commercial real property shall not terminate a tenancy for failure to pay rent if the tenant demonstrates that the failure to pay rent is directly related to a loss of income or out-of-pocket medical expenses associated with the COVID-19 pandemic or any local, state, or federal government response to the pandemic." (See, e.g., TAC, Exh. 2, § 4(a).) In addition to prohibiting eviction notices and unlawful detainer actions served or filed during the effective term of the Ordinances, the Ordinances all provided actionable remedies in identical language as seen, for example, in Section 6 (b) of Ordinance 2021-20.

Through April 30, 2020, Fantasia timely made all required rent payments due under the Lease. TAC, ¶ 17. Thereafter, in May, 2020, after receiving a text message from a representative of Miladinovich, Fantasia provided Miladinovich with a Declaration of COVID-19 Financial Distress dated May 1, 2020, documenting Fantasia's inability to continue to timely pay rent as a result of the COVID-19 pandemic due to: (1) substantial loss of business income, (2) temporary closure of business, (3) substantial out-of-pocket medical expense, (4) decrease in traffic, and (5) shorter business hours (hereinafter "May 2020 Declaration"). (Id. at ¶ 18, Exh. 1, § 3.1, and Exh. 3.) Therein, it was stated that "Fantasia Smoke Shop is seeking protection under the Contra Costa County eviction moratorium ordinance." (Id.) Although not able to pay full rent due to hardships of the COVID-19 pandemic, Fantasia made a rent payment to Miladinovich in the amount of $3,322.60 on October 1, 2020. (Id. at ¶¶ 16 and 19.)

On March 8, 2021, Miladinovich served a Five Day Notice to Pay or Quit on Fantasia (hereinafter "March 2021 Notice") for "rent . . . for months of May, June, July, August, September, November, and December 2020, and January and February 2021" and "Common area maintenance charges . . . ." (Id. at ¶ 20 and Exh. 4.) The March 2021 Notice did not include a Notice of Tenant=s Rights and Availability of Assistance, as required by the Ordinances. (Id. at ¶21.) On March 15, 2021, Fantasia provided, under penalty of perjury, another Declaration of COVID-19 Financial Distress to Miladinovich in which Fantasia set forth a payment plan for the shortfall of actual rent and common area expense, with a final payment proposed for October 1, 2022 (hereinafter "March 2021 Declaration"). (Id. at Exh. 5.) Fantasia stated in the March 2021 Declaration that it was being presented "pursuant to Contra Costa Ordinance No. 2021-04" and "[d]ue to the COVID-19 pandemic." (Id.)

Fantasia commenced making payments as promised in his Declaration. Nevertheless, on October 15,

2021, Miladinovich caused to be served another Five Day Notice to Pay or Quit on Fantasia (hereinafter "October 2021 Notice") for "rent . . . for a portion of the month of May 2021, and the months of June, July, August, September, and October 2021" and "Common area maintenance charges . . . ." for a total demanded of $18,203.40. (Id. at ¶ 23 and Exh. 6.) The October 2021 Notice also did not include a Notice of Tenant=s Rights and Availability of Assistance, as required by the Ordinances. (Id.) Due to the immediate threat of eviction and further retaliation, Fantasia paid the entire sum set forth in the October 2021 Notice within the five-day period, as demanded. (Id. at ¶ 24.)

Under the Lease, Fantasia acquired Aan option to extend this lease for a period of two five (5) year options if all rents and common area costs have been paid in a timely manner. Tenant to notify landlord in writing of his intent to extend no less than 90 days before the expiration of original terms." (TAC, Exh. 1, § 2. On September 23, 2022, more than ninety days prior to the Lease expiring on December 31, 2022, Fantasia attempted to exercise the second of the two options to extend the Lease. (Id. at ¶¶ 25-26 and Exh. 7.) Miladinovich refused to extend the Lease, citing Plaintiff having fallen behind on payment of rent due during the time that the Ordinances were in effect as a reason. (Id.)

In its TAC, Plaintiff seeks to hold Defendants accountable for violations of the Ordinances, including the two eviction notices and alleged retaliation against Plaintiff for exercising rights under the Ordinances as described therein. (Id. at ¶¶ 4, 7, and 36-40.)

Requests for Judicial Notice

Initial Requests for Judicial Notice

Defendants' request judicial notice of four documents, all of which are Contra County Ordinances. Under Evid. Code § 452, the Court is empowered to take judicial notice of "[r]egulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States." (Evid. Code § 452(b).) County ordinances fall within this category. The Court **grants Defendants' initial request for judicial notice of initial Exhibits A-D**.

Requests for Judicial Notice on Reply

The burden is on the party seeking judicial notice to provide sufficient information to allow the court to take judicial notice. (*Ross v. Creel Printing & Publishing Co., Inc.* (2002) 100 Cal.App.4th 736, 744.) "The burden is on the party requesting judicial notice to supply the court with sufficient, reliable and trustworthy sources of information about the matter. Resort to accurate sources of information is necessary to enable a court to take judicial notice of many matters. A court is not required to seek out on its own initiative indisputable sources of information. Whether information supplied by a party is sufficient for the purpose will vary from case to case. In some cases, the original source documents may be required to provide the court with *sufficient* information." (*People v. Maxwell* (1978) 78 Cal.App.3d 124, 130-131.) If the information supplied is *not* sufficient the trial judge is entitled to refuse to take judicial notice of the matter requested. (Jefferson, Cal. Evidence Benchbook (Cont.Ed.Bar 1972) Judicial Notice, § 47.4.)

Defendants' request judicial notice on reply of five documents: **Exhibit A:** County Counsel (Mary Ann Mason) legal opinion in connection with the meeting of the Contra Costa County Board of Supervisors on September 20, 2021; **Exhibit B:** Annotated Agenda and Minutes for the meeting of the Contra Costa County Board of Supervisors on September 21, 2021; **Exhibit C:** Unofficial transcript portion of the meeting of the Board of Supervisors of Contra Costa County on September 21, 2021; **Exhibit D:** Executive Order N-02-21; and **Exhibit E:** Executive Order N-28-20.

The Court declines to take notice of Exhibits A-C as Defendants did not meet their burden by providing the Court with the sufficient information to allow the Court to take judicial notice. Defendant fails to make a showing of how Exhibit A is reliable, trustworthy, and not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. (Evidence Code § 452(h).) The Court is not confident in taking judicial notice of Exhibits B and C because annotated and unofficial documents are concerning to the Court as such documents lack the reliability and trustworthiness that judicial notice is built on.

For these reasons, **the Court declines to take notice of reply Exhibits A-C and does grant judicial notice of reply Exhibits D-E**.

Legal Standard

A demurrer "tests the pleadings alone and not the evidence or other extrinsic matters." (*SKF Farms v. Superior Court* (1984) 153 Cal.App.3d 902, 905.) A demurrer presents an issue of law regarding the sufficiency of the allegations set forth in the complaint. (*Lambert v. Carneghi* (2008) 158 Cal.App.4th 1120, 1126.) Extrinsic evidence may not properly be considered on demurrer or on a motion to strike. (*Ion Equipment Corp. v. Nelson* (1980) 110 Cal. App. 3d 868, 881.) To put it another way, a demurrer is a "non-speaking" motion, and no other extrinsic evidence can be considered, except for the pleadings at issue and such matters subject to judicial notice. (See, *Ion Equip. Corp. v. Nelson* (1980) 110 Cal.App.3d 868, 881, 168 CR 361, 367—error for court to consider facts asserted in memorandum supporting demurrer; *640 Tenth, LP v. Newsom* (2022) 78 Cal.App.5th 840, 852, 294 CR3d 123, 130, fn. 7—court ignores "a three page 'Introduction' resembling closing argument in a jury trial" and looks only to "well-pleaded factual allegations and matters properly subject to judicial notice"].)

"The function of a demurrer is to test the sufficiency of the complaint as a matter of law." (*Holiday Matinee, Inc. v. Rambus, Inc*. (2004) 118 Cal.App.4th 1413, 1420.) A complaint "is sufficient if it alleges ultimate rather than evidentiary facts" (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550 ("*Doe*")), but the plaintiff must set forth the essential facts of his or her case "with reasonable precision and with particularity sufficient to acquaint [the] defendant with the nature, source and extent" of the plaintiff's claim. (*Doheny Park Terrace Homeowners Assn., Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1099.) Legal conclusions are insufficient. (*Id*. at 1098–1099; *Doe* at 551, fn. 5.) The Court "assume[s] the truth of the allegations in the complaint but do[es] not assume the truth of contentions, deductions, or conclusions of law." (*California Logistics, Inc. v. State of California* (2008) 161 Cal.App.4th 242, 247.) A demurrer may be sustained only if the complaint lacks any sufficient allegations to entitle the plaintiff to relief. (*Financial Corp. of America v. Wilburn* (1987) 189 Cal. App. 3d 764, 778.)

Analysis

Violation of Contra Costa Ordinances

Plaintiff alleges that Defendant violated the Contra Costa County emergency ordinances in response to the COVID-19 pandemic. (TAC ¶¶ 1-4.)

Repeal

Defendants argue that repeal of statute terminates all claims under that statute, even for alleged violations of the statute that occurred before the repeal. (Demurrer at p. 7: 1-7.) (See *Beverly Hilton Hotel v. Workers' Comp. Appeals Ed*. (2009) 176 Cal. App. 4th 1597, 1602, 1611 (holding petitioner was not entitled to benefits under statutes that had been repealed).) Defendants posit that only way that Plaintiff would be able to maintain an action under the repealed legislation is if the statute explicitly

saves the rights of litigants to bring an action thereunder. (*Bourquez v. Super. Ct*. (2007) 156 Cal. App. 4th 1275, 1284 ("Where the Legislature repeals statute but intends to save the rights of litigants in pending actions, it may accomplish that purpose by including an express saving clause in the repealing act."))

Plaintiff contends that *Bourquez* addressed termination of pending actions based on repealed statutes and distinguished those actions where rights had vested under the repealed statute. (*Bourquez v. Superior Ct*. (2007) 156 Cal. App. 4th 1275, 1284; citing *Governing Board v. Mann* (1977) 18 Cal.3d 819, 829.) Further, *Bourquez* held that an express savings clause is not necessary in those instances, as courts should instead be guided by legislative intent. (Id.; citing *In re Pedro T*. (1994) 8 Cal.4th 1041, 1048-1049.) Notably, Section 4 of Ordinance 2021-11 allows for tenants to pay all past due rent no later than August 31, 2021, unless the landlord agrees to a longer repayment period. Thus, the statute establishes remedies to take place a month after the expiration of the statute and contemplates remedies fashioned to take place even longer than that. (TAC, Exh. 2, § 4(e).) While the term of the last Ordinance 2021-20 expired on September 30, 2021, tenants could exercise the right to delay payment of rent until November 30, 2021, unless the landlord agrees to a longer repayment period. (Initial RJN, Exh. D, § 4 (e).)

Here, the TAC alleges that Defendants' two "Five Day Notice to Pay or Quit" were made during the active period of the Ordinances, the first dated March 8, 2021, and the second dated October 14, 2021. (TAC, ¶¶ 20, 23, Exhs. 4, 6.) Considering Plaintiff alleged Defendants' both "Five Day Notice to Pay or Quit" were made during the active period of the Ordinances, and that the Ordinance in multiple sections contemplates remedies for violation of the statute after its expiration, the Court finds that Plaintiffs allegations are sufficient to withstand attack at the pleading stage regarding Defendants' repeal argument.

May 1, 2020, Notice of Hardship

Defendants contend that since the May 1, 2020, notice was not signed under penalty of perjury as required by the ordinance in effect at the time, Ordinance No. 2020-14, Section 3(a) and no further supporting documents were provided, Plaintiff failed to comply with the applicable Ordinance. (Demurrer at pp. 8-9.)

The Ordinances state in Section 4(a)(2), "The tenant must notify the owner in writing before the rent is due, or within reasonable period of time afterwards not to exceed 14 days, that the tenant needs to delay all or some payment of rent because of an inability to pay the full amount due to reasons related closures that affected the tenant's income." (TAC, Exh. 2, § 4(e); Initial RJN, Exh. D, § 4 (e).)

"Substantial compliance, as the phrase is used in the decisions, means actual compliance in respect to the substance essential to every reasonable objective of the statute. [Citation.] Where there is compliance as to all matters of substance[,] technical deviations are not to be given the stature of noncompliance. [Citation.] Substance prevails over form. [Citations.] Our high court has more recently explained with respect to the above quoted passage … : 'This formulation is unobjectionable so long as it is understood to mean that each objective or purpose of a statute must be achieved in order to satisfy the substantial compliance standard, but this language cannot properly be understood to require "actual compliance" with every specific statutory requirement.' [Citation.]" (*Andrews v. Metropolitan Transit System* (2022) 74 Cal.App.5th 597, 606.) An appellate court in a more recent case succinctly observed: 'Substantial compliance with a statute is dependent on the meaning and purpose of the statute.'" (*St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 779.)

The TAC alleges Plaintiff submitted to Defendants a document entitled Declaration of COVID-19

Financial Distress wherein he stated that his business income had been negatively impacted by the pandemic, listed five specific impacts, and announced that he was seeking protection under the Ordinances. (TAC ¶ 18.) The Court cannot grant a demurrer if the allegations in the complaint may entitle Plaintiff to relief. (*Financial Corp. of America v. Wilburn* (1987) 189 Cal. App. 3d 764, 778.)

The text of the Ordinances spells out the legislative intent for the notice was to provide the landlord a writing stating that the tenant needs to delay payment because of an inability to pay due to COVID-19 related reasons. (TAC, Exh. 2, § 4(e); Initial RJN, Exh. D, § 4 (e).) Here, although Plaintiff did not provide a signature under penalty of perjury, Plaintiff's allegations suffice to stand attack on this issue because Plaintiff provided the essential substance for the reasonable objective of the Ordinance, to provide written notice of an inability to pay rent due to COVID-19 related reasons.

Conclusion

For the reasons analyzed above, the Court overrules Defendants' Demurrer to the second cause of action for Violations of Contra Costa County Ordinances to Plaintiff's Third Amended Complaint.

[Motion to Strike]

Introduction

Before the Court is Defendants Natalie Moss (standing in place of her late mother Edith Miladinovich), Individually and As Trustee of The 1987 Miladinovich Family Trust Dated May 4, 1987's Motion to Strike. The Motion to Strike relates to Plaintiff relates to Plaintiff MAEN S. JWEINAT, dba FANTASIA SMOKE SHOP's allegations regarding Defendants' alleged violations of Contra Costa County Ordinances. For the following reasons, the Motion to Strike is overruled in its entirety.

Defendants request that the following portions to be stricken:

1. The entirety of Paragraph of Plaintiff's TAC.

2. From Paragraph of Plaintiffs TAC: "The Ordinances provide for civil penalties, protections against discrimination and reasonable attorney fees against landlord who violates its provisions. By way of this Complaint, Plaintiff seeks to hold Defendants accountable, causing financial damages and uncertainty for his future operations."

3. From Paragraph of Plaintiffs TAC: "Plaintiff seeks to hold Defendants responsible for retaliating against him in direct violation of the clear language of the County's Ordinances and"

4. The entirety of Paragraph 13 of Plaintiff's TAC.

5. The entirety of Paragraph 14 of Plaintiff's TAC.

The entirety of Paragraph 15 of Plaintiff's TAC.

The entirety of Paragraph 18 of Plaintiff TAC.

From Paragraph 20 of Plaintiff's TAC: "In violation of the Ordinances" The entirety of Paragraph 21 of Plaintiff's TAC.

10. The entirety of Paragraph 22 of Plaintiffs TAC.

11. From Paragraph 23 of Plaintiff's TAC: "as promised in his Declaration. Contrary to Plaintiff' payment plan, but in violation of the Ordinance"

12. From Paragraph 30 of Plaintiff's TAC: "including obligations excused by the Ordinance"

13. From Paragraph 34 of Plaintiff's TAC: "and the Ordinance"

14. The entirety of the Second Cause of Action of Plaintiffs TAC, including Paragraphs 36-40.

15. From Paragraph 44 of Plaintiff's TAC: "by the Ordinance, and Plaintiff cured and performed his obligations per the requirements of the Ordinance"

16. From Paragraph 50 of Plaintiff TAC: "2. That the County's Ordinance protected Plaintiff from default and from derogating any rights guaranteed by the Lease;"

17. From Plaintiffs prayer on page of the TAC: "2. For statutory damages in the amount of three times actual damages in accordance with the Contra Costa County Ordinances;"

Meet and Confer Requirement

Defendants met this requirement. Please see analysis in the Demurrer section.

Legal Standard

A court's determination of a motion to strike is a matter within its discretion. (*Clements v. T.R. Bechtel Co.* (1954) 43 Cal.2d 227, 242.) When ruling on a motion to strike, the court must read the allegations subject to the motion as a whole, with all parts in their context, and assume their truth. (*Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255; *Spielholz v. Superior Court* (2001) 86 Cal.App.4th 1366, 1371.) As with demurrers, the grounds for a motion to strike must appear on the face of the pleading under attack, or from any matter which the court may judicially notice. (Civ. Proc. Code § 437.) A motion to strike may not be based on "extrinsic evidence showing that the allegations are 'false' or 'sham.' Such challenges lie only if these defects appear on the face of the complaint, or from matters judicially noticeable." (Weil ¶ Brown, Cal. Prac. Guide Civ. Pro. Before Trial, ¶7:168 (TRG 2023).) Scandalous allegations can be properly stricken. (*Bartling v. Glendale Adventist Medical Center* (1986) 184 Cal.App.3d 961, 970.) Moreover, matters which are not essential or relevant to any statement or claim for relief should also be stricken. (C.C.P. § 431.10(b)(1), (2).)

The court may strike any irrelevant, false, or improper matter from any pleading. (Code Civ. Proc., § 436(a).) The court may also strike out all or any portion of any pleading not drawn in conformity with the laws of this state. (Code Civ. Proc., § 436(b).) "Irrelevant matter," as the term is used in section 436, means "immaterial allegation." (Code Civ. Proc., § 431.10(c).) Code of Civil Procedure section 431.10(b) defines "immaterial allegation" as, among others, a demand for judgment requesting relief not supported by the allegations of the complaint or cross-complaint.

Analysis

The allegations at issue all relate to Plaintiff's allegations of Defendants' violating Contra Costa County Ordinances. Defendants forward the same two arguments utilized in their Demurrer. Neither of Defendants' arguments made a showing that any of the requested portions of Plaintiff's Third Amended Complaint rise to the level of irrelevant, false, or improper.

Conclusion

In consideration of the above, **all of Defendants' requests to strike portions of the Third Amended Complaint, is overruled**.

3. 9:00 AM CASE NUMBER: C23-02013
CASE NAME: DENNIS SANFORD VS. CHANNEL LUMBER CO.
***HEARING ON MOTION IN RE: FOR LEAVE TO FILE FIRST AMENDED COMPLAINT**
FILED BY: SANFORD, DENNIS MICHAEL
****TENTATIVE RULING:****

Plaintiff Dennis Sanford [Plaintiff] brings this Motion for Leave to File a First Amended Complaint [Motion]. The Motion is opposed by Defendants Channel Lumber and Ronald David Alvarez [Defendants].

For the following reasons, the Motion is **granted** only to allow pleading of the new allegations found in the proposed First Amended Complaint at paragraphs 10, 16 -19, 23. The Motion is **denied** with respect to the new allegations pertaining to punitive damages, found in the proposed First Amended Complaint at paragraphs 20, 29-36, 38 and the prayer for relief. Plaintiff shall modify the proposed First Amended Complaint to conform to this order and submit such modified First Amended Complaint for filing no later than **February 7, 2025**.

Background

The Motion relates to Plaintiff's request to seek punitive damages for a motor vehicle accident that occurred on August 20, 2021. Plaintiff moves this court to file a first amended complaint after taking the deposition of Defendant Alvarez and Defendant Channel Lumber's Person Most Qualified, Barry Navallier.

While not particularly discussed in the Motion, Plaintiff's Complaint and proposed First Amended Complaint allege that the subject accident occurred when Alvarez made a left turn from the median of West Cutting Blvd. in Richmond into a Channel Lumber driveway without confirming it was safe to do so. (See Complaint at ¶ 10.) Plaintiff's Motion requests leave to amend the Complaint to allege additional facts relating to the circumstances of the alleged incident, the alleged Vehicle Code violations, as well as allegations to support and demand punitive damages. Specifically, Plaintiff seeks to make the following amendments to the operative pleadings:

- At paragraph 10, modify allegations to further describe the location of the incident;
- Add new paragraph 16, such that paragraph 16 of the original Complaint became paragraph 17;
- At new paragraphs 17 and 19, add one additional California Vehicle Code and explained Defendants' violation thereof;
- Delete original paragraph 18;
- Add new paragraph 20;
- Add new paragraphs 23-26;
- Add new paragraphs 29-35;
- Add new paragraph 36 to include "reckless, willful, and intentional;" and
- Add new subsection f to paragraph 38 (which was paragraph 26 in the original Complaint), seeking punitive damages; and
- Add paragraph 6 to the Prayer for Relief to include punitive damages.

(Memorandum of Points and Authorities [MPA] in support of Plaintiff's Motion, 4:12-25.)

Plaintiff contends that the following testimony from Alvarez evidences facts that support an award of punitive damages: (1) Alvarez was travelling in the median area for 500 feet prior to the collision, (2) Alvarez did not receive supplemental training or education on how to drier or operate a semi-truck, (3) Alvarez did not receive a driver's manual or employee handbook from Channel Lumber while an employee. (Motion MPA, 2:15-21.)

Plaintiff also contends that the following testimony from Navallier supports a punitive damages award: (1) Channel Lumber does not advise its employees on the proper use of company vehicles, (2) Channel Lumber was not aware that driving in the median violates the Vehicle Code, (3) a background check was not performed on Alvarez, (4) Alvarez was not reprimanded for his involvement in the subject collision, (5) Channel Lumber allowed Alvarez over one week to submit a statement related to the collusion, (6) Channel Lumber was unaware of whether Defendant Alvarez was drug tested after the incident, (7) Channel Lumber does not conduct performance evaluations on its drivers, and (8) Channel Lumber has no policies or procedures to investigate motor vehicle accidents involving company vehicles. (Motion MPA, 2:22-3:10.)

Legal Standard

"'Generally, motions for leave to amend are liberally granted.' … However, 'leave to amend should not be granted where, in all probability, amendment would be futile.'" (*Foroudi v. The Aerospace Corp*. (2020) 57 Cal.App.5th 992, 1000 [citations omitted], *quoting Royalty Carpet Mills, Inc. v. City of Irvine* (2005) 125 Cal.App.4th 1110, 1124, *Vaillette v. Fireman's Fund Ins. Co.* (1993) 18 Cal.App.4th 680, 685.)

To plead a claim for punitive damages, Plaintiff must plead specific facts to demonstrate such claim meets with the requirements of Civil Code ("CC") § 3294. (*Smith v. Superior Court* (1992) 10 Cal.App.4th 1033, 1041-1042.) CC § 3294 provides in relevant part:

In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant...

(1) "Malice" means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others.

(2) "Oppression" means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights.

(3) "Fraud" means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury.

(CC § 3294 (a).)

Further, when punitive damages are sought against an employer, CC § 3294 requires the plaintiff to establish the following:

1) the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized;

2) the employer ratified the wrongful conduct for which the damages are awarded, or

3) the employer was personally guilty of oppression, fraud, or malice.

(CC § 3294 (b).)

Thus, with respect to a corporate employer, CC § 3294 requires that the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation.

California precedent has historically found that punitive damages are not justified in the context of a motor vehicle accident, except where "the defendant was operating a motor vehicle while intoxicated, under circumstances which disclosed a conscious disregard of the probable dangerous consequences." (*Taylor v Sup. Ct.* (1979) 24 Cal.3d 890, 892; see also *Meek v Fowler* (1935) 3 Cal.2d 420, 425-426; *People v Allison* (1951) 101 Cal.App.2d.Supp. 932, 935.) Particularly, in *Taylor*, the court held: "One who willfully consumes alcoholic beverages to the point of intoxication, knowing that he thereafter must operate a motor vehicle, thereby combining sharply impaired physical and mental faculties with a vehicle capable of great force and speed, reasonably may be held to exhibit a conscious disregard of the safety of others." (*Taylor*, *supra*, 24 Cal.3d at 897.)

However, California courts have found that statutory violations, negligence, gross negligence, and even recklessness are insufficient to sustain an award of punitive damages. (*Ibid*; see also *G.D. Searle & Co.,* (1975) 49 Cal.App.3d 22, 122 Cal.Rptr. 218; *Lackner v. North* (2006) 135 Cal.App.4th 1188, 1210-1211.) "In order to justify an award of punitive damages on this basis, the plaintiff must establish that the defendant was aware of the probable dangerous consequences of his conduct, and that he willfully and deliberately failed to avoid those consequences." (*Taylor*, *supra*, 24 Cal.3d at 895–896.)

Defendants raised this line of case law in their Opposition, but Plaintiff did not cite or address this precedent in their moving papers or on reply. Plaintiff's failure to discuss or distinguish these cases in their briefs effectively concedes the argument. (*DuPont Merck Pharmaceutical Co. v. Sup. Ct.* (2000) 78 Cal.App.4th 562, 566 ["By failing to argue the contrary, plaintiffs concede the issue."]; *Westside Center Associates v. Safeway Stores 23, Inc.* (1996) 42 Cal.App.4th 507, 529 ["…failure to address the threshold question … effectively concedes that issue and renders its remaining arguments moot."])

Analysis

The allegations, here, are that Alvarez was driving in the median or left-hand turn lane and that he failed to confirm it was safe to turn left before doing so, and that Channel Lumber regularly allowed or directed their employees to drive and park in the median at the area near the business location

and of not conducting training or investigation of their drivers.

The facts as pled indicate that Alvarez violated certain Vehicle Code sections while he was driving a semi-truck for Channel Lumber and was, thus, found responsible for the subject incident. The allegations do not indicate or evidence that Defendant Alvarez was driving under the influence of alcohol or other drugs at the time of the alleged incident. There are no factual allegations to support a contention that Defendants were aware of, and *willfully and deliberately failed to avoid*, the probable dangerous consequences of their actions. There is also no allegation that Alvarez was not properly licensed to drive the vehicle, that he had prior accidents, that Channel Lumber had notice of prior incidents occurring under similar circumstances or prior incidents of negligent, grossly negligent, or reckless driving by its drivers or Defendant Alvarez in particular.

As such, Plaintiff's proposed First Amended Complaint does not include factual allegations that rise to the level necessary to allege intentional or despicable conduct as required support an allegation of malice or oppression and to seek punitive damages. Thus, allowing amendment to the pleadings to include conclusory legal allegations relating to punitive damages would be futile.

For these reasons, this court denies Plaintiff's request amend the Complaint to include punitive damages allegations and claims.

Accordingly, with respect to the requested amendments to the pleadings this court orders the following:

Plaintiff's Motion is **granted** only to allow the new allegations found in the proposed First Amended Complaint at paragraphs 10, 16 -19, 23. The Motion is **denied** with respect to the new allegations in the proposed First Amended Complaint at paragraphs 20, 29-36, 38 and the prayer for relief. Plaintiff shall modify the First Amended Complaint to conform to this order and submit the modified First Amended Complaint for filing no later than February 7, 2025.

4. 9:00 AM CASE NUMBER: C23-03087
CASE NAME: CARLOS CERMENO VS. RONALD CERMENO
***HEARING ON MOTION IN RE: TO QUASH SUBPOENA AND FOR A PROTECTIVE ORDER**
FILED BY:
****TENTATIVE RULING:****

In accord with the request by the parties, this motion is continued to May 19, 2025, at 9:00 a.m. in Department 9.

5. 9:00 AM CASE NUMBER: C23-03139
CASE NAME: NORTHERN CALIFORNIA COLLECTION SERVICE, INC. VS. MARK BONGI
***HEARING ON MOTION FOR DISCOVERY TO COMPEL INITIAL RESPONSES TO SPECIAL**

INTERROGATORIES, SET ONE [SUPPLEMENTAL] FROM DEFENDANT MARK BONGI AND TO IMPOSE MONETARY SANCTIONS
FILED BY: NORTHERN CALIFORNIA COLLECTION SERVICE, INC.
TENTATIVE RULING:

The court refers this matter to a discovery referee, due to the multiplicity and complexity of the discovery issues. (Code of Civ. Pro. Section 639(a)(5).) The referee shall hear and determine any and all discovery motions and disputes relevant to the discovery in the lawsuit and to report findings and make recommendations on these findings.

Due to the disagreement of the parties about a discovery referee, as previously ordered, the court selects John D. Hourihan from the list of Discovery Facilitators for all the discovery disputes.

6. 9:00 AM CASE NUMBER: C23-03139
CASE NAME: NORTHERN CALIFORNIA COLLECTION SERVICE, INC. VS. MARK BONGI
***HEARING ON MOTION FOR DISCOVERY TO COMPEL INITIAL RESPONSES TO FORM INTERROGATORIES, SET ONE [SUPPLEMENTAL] FROM DEFENDANT MARK BONGI AND TO IMPOSE MONETARY SANCTIONS**
FILED BY: NORTHERN CALIFORNIA COLLECTION SERVICE, INC.
TENTATIVE RULING:

The court refers this matter to a discovery referee, due to the multiplicity and complexity of the discovery issues. (Code of Civ. Pro. Section 639(a)(5).) The referee shall hear and determine any and all discovery motions and disputes relevant to the discovery in the lawsuit and to report findings and make recommendations on these findings.

Due to the disagreement of the parties about a discovery referee, as previously ordered, the court selects John D. Hourihan from the list of Discovery Facilitators for all the discovery disputes.

7. 9:00 AM CASE NUMBER: C23-03139
CASE NAME: NORTHERN CALIFORNIA COLLECTION SERVICE, INC. VS. MARK BONGI
***HEARING ON MOTION FOR DISCOVERY TO COMPEL INITIAL RESPONSES TO FORM INTERROGATORIES, SET TWO FROM DEFENDANT MARK BONGI AND TO IMPOSE MONETARY SANCTIONS**
FILED BY: NORTHERN CALIFORNIA COLLECTION SERVICE, INC.
TENTATIVE RULING:

The court refers this matter to a discovery referee, due to the multiplicity and complexity of the discovery issues. (Code of Civ. Pro. Section 639(a)(5).) The referee shall hear and determine any and all discovery motions and disputes relevant to the discovery in the lawsuit and to report findings and make recommendations on these findings.

Due to the disagreement of the parties about a discovery referee, as previously ordered, the court selects John D. Hourihan from the list of Discovery Facilitators for all the discovery disputes.

8. 9:00 AM CASE NUMBER: C24-00083
CASE NAME: ANGEL ISLAND CO., LLC VS. ROBERT STAHL
***HEARING ON MOTION FOR DISCOVERY**
FILED BY: ANGEL ISLAND CO., LLC
****TENTATIVE RULING:****

The court intends to execute the amended proposed order granting plaintiff's motion to compel.

The court also intends to award discovery sanctions against defendants, but not for the full amount presently sought by plaintiff. Appearance by counsel is required to discuss the correct amount of monetary sanctions that should be awarded by the court under the circumstances that arose during the discovery dispute.

9. 9:00 AM CASE NUMBER: C24-01365
CASE NAME: MONIQUE WARREN VS. FCA US LLC
***HEARING ON MOTION FOR DISCOVERY TO COMPEL THE DEPOSITION OF DEFENDANT FCA US LLC'S PERSON(S) MOST QUALIFIED, WITH PRODUCTION OF DOCUMENTS AND REQUEST FOR MONETARY SANCTIONS IN THE AMOUNT OF $2,250.00**
FILED BY: FCA US LLC
****TENTATIVE RULING:****

Off-calendar. Motion withdrawn.

10. 9:00 AM CASE NUMBER: C24-01928
CASE NAME: KENTON KEADING VS. HILJA KEADING
***HEARING ON MOTION IN RE: TO TRANSFER TO PROBATE DIVISION AND FOR ATTORNEYS' FEES**
FILED BY: KEADING, HILJA
****TENTATIVE RULING:****

Defendant Hilja Keading's Motion to Transfer to Probate Division and for Attorney Fees is **continued to February 24, 2025** at 9:00 a.m. in Department 9.

On January 23, 2025, Plaintiff Kenton Keading filed a "Notice of Errata to his Opposition to

Defendant's Motion…." The filing exceeds the bounds of a proper notice of errata because it contains new arguments. Defendant may file a reply to the opposition, including the so-called errata, no later than **February 10, 2025**.

Attorney Anthony Ferrigno is ordered to serve and file a fully completed Notice of Limited Scope Representation, using Judicial Council form CIV-150, no later than **February 3, 2025**.

Except as stated above, there shall be no further briefing on this motion.

11. 9:00 AM CASE NUMBER: C24-01939
CASE NAME: NICKOLAI POPOV VS. ALEXANDER POPOV
***HEARING ON MOTION IN RE: TO DISMISS COMPLAINT**
FILED BY: POPOV, ALEXANDER
****TENTATIVE RULING:****

Off-calendar. The motion to dismiss the complaint is now moot because plaintiff filed a request for dismissal of the entire complaint on January 13, 2025.

12. 9:00 AM CASE NUMBER: C24-02082
CASE NAME: MICHAEL DANIELS VS. JUDY LYTLE
HEARING ON DEMURRER TO: COMPLAINT
FILED BY: INGENITO, RICHARD
****TENTATIVE RULING:****

Before the Court is a demurrer by defendant Richard Ingenito to the complaint. For the reasons set forth, the general demurrers to the first, second and third causes of action are **sustained, with leave to amend**.

Background

Plaintiff is the grandson of Boyd G. Daniels, now deceased (the "Settlor"). (Compl. Exh. B.) Patricia Daniels, who is Plaintiff's aunt and apparently now deceased, was the Settlor's daughter. (Compl. ¶¶ 6, 24 and Exh. B.) For clarity in this ruling given the same last names and with no disrespect to the parties, the Court will sometimes refer to Plaintiff as "Michael," Patricia Daniels as "Patricia," and the Settlor as "Boyd."

Michael alleges his "understanding" that he was an "equal beneficiary" of the assets subject to The Boyd G. Daniels Family Trust Dated December 21, 1995 (the "1995 Trust") as it was originally stated, but that the interest he understood he was given in the 1995 Trust was diminished to only a $50,000 educational trust in a 1998 trust restatement and a 1999 amendment (with the 1995 Trust, collectively sometimes referred to in this ruling as the "Trust" for convenience). (Compl. ¶¶ 4, 5.) Only

an incomplete copy of the 1998 revised trust ("Revised Trust"), without the attachment to Exhibit A and without Exhibit B referred to in Article Four, section 1, and the 1999 amendment are attached to the Complaint; Plaintiff alleges he does not have a copy of the 1995 Trust. (Compl. ¶ 4 and Exhs. A and B.) He alleges the 1998 and 1999 changes to the Trust were made at a time when the Settlor lacked capacity and was in hospice, and that the changes were made through the undue influence of the successor trustee, defendant Judy Lytle, and Patricia. (Compl. ¶¶ 6, 9, 10, 18.)

The Complaint filed August 7, 2024 names as defendants Judy Lytle in her capacity as successor trustee of the Trust and Richard Ingenito, who is apparently the spouse of the decedent Patricia. (Compl. ¶ 24.) Plaintiff alleges the assets of the Trust included real property located at 1800 Gilardy Drive in Concord ("Concord Property"). (Compl. ¶ 21.) He alleges "to the extent" that Ingenito claims title to the Concord Property as the spouse of Patricia, Michael seeks to quiet title to the Concord Property for distribution pursuant to the 1995 Trust (3rd C/A). He also alleges claims for financial elder abuse (1st C/A) and to declare the 1998 trust restatement and 1999 amendment void (2nd C/A).

Legal Standards Governing Demurrer

In ruling on the demurrer, the Court must accept as true all well-pleaded factual allegations of the complaint, but not legal or factual conclusions or contentions of law. (*City of Dinuba v. County of Tulare* (2007) 41 Cal. 4th 859, 865; *Julian v. Mission Community Hospital* (2017) 11 Cal.App.5th 360, 374.) The Court gives "the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation omitted.]" (*Evans v. City of Berkeley* (2006) 38 Cal. 4th 1, 6.) (*See also* Code Civ. Proc. § 452.) A demurrer must dispose of an entire cause of action. (*Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1167, overruled in part on other grounds by *Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal.5th 905, 919; *PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682-1683.)

Statutory causes of action must be pleaded with particularity; the "complaint must plead every fact which is essential to the cause of action under the statute.'" (*Baskin v. Hughes Realty, Inc.* (2018) 25 Cal.App.5th 184, 207.) (*See also Fischer v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 604.) If a complaint fails to state a cause of action but there is a reasonable possibility of amendment to cure the deficiencies, then leave to amend must be granted. (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 39.)

Analysis

Defendant Ingenito has made general demurrers to the three causes of action of the Complaint under Code of Civil Procedure section 430.10(e) for failure to allege facts sufficient to state a cause of action. He argues all of the causes of action are barred by the applicable statutes of limitations.

The Court observes that the Complaint fails to identify which causes of action are directed to which defendants in violation of California Rule of Court 2.112. (Cal. R. Ct. 2.112 subd. (4) ["Each separately stated cause of action, count, or defense must specifically state . . . [t] he party or parties to whom it is directed (e.g., 'against defendant Smith')."].) The Court will address the demurrer to each of the three causes of action consistent with Ingenito's assumption that he is a defendant in each of them.

A. Law Governing Statute of Limitations Generally and Delayed Accrual under the Discovery Rule

The statute of limitations begins to run when a cause of action "accrues"; a cause of action generally accrues when it is "complete with all its elements." (*E-Fab, Inc. v. Accountants Inc. Services* (2007) 153 Cal.App.4th 1308, 1317 [quoting *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806 ("*Fox*")]; *Choi v. Sagemark Consulting* (2017) 18 Cal.App.5th 308, 323 [cause of action accrues, and statute of limitations begins to run when the last essential element of the cause of action occurs].)

The "discovery rule" or "delayed discovery rule" is an exception to the general rule regarding when the statute of limitations begins to run. (*E-Fab, Inc. v. Accountants Inc. Services, supra,* 153 Cal.App.4th at 1318.) The California Supreme Court in *Fox* explained that "under the delayed discovery rule, a cause of action accrues and the statute of limitations begins to run when the plaintiff has reason to suspect an injury and some wrongful cause, unless the plaintiff pleads and proves that a reasonable investigation at that time would not have revealed a factual basis for that particular cause of action. In that case, the statute of limitations for that cause of action will be tolled until such time as a reasonable investigation would have revealed its factual basis." (*Fox, supra,* 25 Cal.4th at 803 [emphasis added].)

To plead the delayed discovery rule, " '[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.' [Citation omitted.] In assessing the sufficiency of the allegations of delayed discovery, the court places the burden on the plaintiff to 'show diligence'; 'conclusory allegations will not withstand demurrer.' [Citation omitted.]" (*Fox, supra,* 35 Cal.4th at 808 [underscoring added, italics in original, quoting *McKelvey v. Boeing North American, Inc.* (1999) 74 Cal.App.4th 151, 160].)

Plaintiff does not address but relies on *Eisenbaum v. Western Energy Resources, Inc.* (1990) 218 Cal.App.3d 314, arguing that Plaintiff was in a fiduciary relationship with Lytle as successor trustee under the Trust, and perhaps with Patricia, which delays accrual of the statute of limitations and limits any duty of inquiry. The Court in *Eisenbaum* addressed when the statute of limitations accrued under Corporations Code section 25507. The Court concluded the statute of limitations did not bar the action in that case, in part based on the existence of a fiduciary duty but also based on the language of that statute which the Court interpreted as requiring actual discovery of the facts for the time to commence the action to begin to run. (*Id.* at 324, 325.) Subsequent decisions have disregarded the inquiry notice discussion in *Eisenbaum* as *dicta*. (*Yuba City Unified School Dist. v. State Teachers' Retirement System* (2017) 18 Cal.App.5th 648, 657 [citing *Deveny v. Entropin, Inc.* (2006) 139 Cal.App.4th 408, 422].)

In any event, *Eisenbaum*'s statement of the general rule acknowledges that even when a fiduciary relationship exists, notice of facts that breach the fiduciary duty commences the statute of limitations. "Where a fiduciary obligation is present, the courts have recognized a postponement of the accrual of the cause of action until the beneficiary has knowledge or notice of the act constituting a breach of fidelity." [Citations omitted.] The existence of a trust relationship limits the duty of inquiry." (*Eisenbaum, supra,* 218 Cal.App.3d at 324.) A more recent decision explains:

" 'Thus, when a potential plaintiff is in a fiduciary relationship with

> another individual, that plaintiff's burden of discovery is reduced and he is entitled to rely on the statements and advice provided by the fiduciary.' " [Citation omitted.] But, even assuming for the sake of argument that each of the respondents had a fiduciary duty to plaintiffs, this does not mean that plaintiffs had no duty of inquiry if they were put on notice of a breach of such duty.

(*WA Southwest 2, LLC v. First American Title Ins. Co.* (2015) 240 Cal.App.4th 148, 157, 158 [emphasis added, holding "reasonable diligence" with respect to an investment "does not consist of ignoring a private placement memorandum received prior to making an investment"].) (*See also Ferguson v. Yaspan* (2014) 233 Cal.App.4th 676, 683 [" 'The existence of the fiduciary relationship limits the plaintiff's duty of inquiry by eliminating the plaintiff's usual duty to conduct due diligence, but it does not empower that plaintiff to "sit idly by" when "facts sufficient to arouse the suspicions of a reasonable [person] . . . " "come to his [or her] attention." [Citations.].' [Citations, some internal quotation marks omitted.]"]; *Alfaro v. Community Housing Improvement System & Planning Assn., Inc.* (2009) 171 Cal.App.4th 1356, 1394 ["A person in a fiduciary relationship may relax, but not fall asleep. '[I]f she became aware of facts which would make a reasonably prudent person suspicious, she had a duty to investigate further, and she was charged with knowledge of matters which would have been revealed by such an investigation.' [Citation omitted.]"].)

B. Financial Elder Abuse (1st C/A)

Plaintiff alleges a claim under the Elder Abuse and Dependent Adult Civil Protection Act, Welfare & Institutions Code section 15600 *et seq.* ("Elder Abuse Act") for financial abuse of the Settlor through undue influence. (Welf. & Inst. Code § 15610.30(a)(3); Compl. ¶¶ 8-16.) Such an action must be filed "within four years after the plaintiff discovers or, through the exercise of reasonable diligence, should have discovered, the facts constituting the financial abuse." (Welf. & Inst. Code § 15657.7.) Plaintiff does not dispute the applicable statute of limitations.

The acts constituting the financial elder abuse alleged in the Complaint occurred in 1998 and 1999 when the Revised Trust and the 1999 amendment were made, and Plaintiff was injured when he was removed from the "equal beneficiary" status he understood he had under the 1995 Trust. Plaintiff does not allege specifically when the Settlor passed away, but it appears from the allegations to have been in late 1999 or early 2000. (*See* Compl. ¶¶ 6, 18 [Boyd's medications were heavier in October 1999 when the 1999 amendment was signed "but begun at least over 18 months from his passing" at or before he made the Revised Trust in August 1998].) Plaintiff alleges he was a minor when the Trust was administered, and he alleges he was not served with the proper statutory notice of the Settlor's death and the Trust's administration under Probate Code sections 16061.7 and 16061.8. (Compl. ¶ 3; Opp. to Dem.) Those are the only facts Plaintiff relies on as justifying his commencement of suit almost 26 years after the 1998 Revised Trust was made.

As presently pleaded, the Complaint on its face shows the action is barred by the statute of limitations. It alleges facts that support an inference that more than four years before Plaintiff commenced suit, Michael had notice of facts that would have alerted him to potential breaches of fiduciary duty and violation of his alleged interest in assets under the Trust which, "with the exercise of reasonable diligence" would give rise to the alleged financial abuse claim. (Welf. & Inst. Code §

15657.7.)

Under the Revised Trust, his "reduced" interest in the Settlor's assets, limited to the $50,000 educational trust, would have become available to him at or near the time he reached the age of majority for his use for college, vocational or other post-secondary school education. (Compl. ¶ 5 and Exhs. A and B.) Michael is specifically mentioned in the Revised Trust executed in August 1998 (Compl. Exh. A), such that mathematically, he had to have reached the age of majority by no later than late 2016, at or near the time when his right to use funds from his educational trust fund would have arisen so he could further his education. In addition, when he reached the age of majority and did not receive any share of the Concord Property, he should also have been on notice that he was not an "equal beneficiary" in the Trust assets. Plaintiff does not allege facts to the contrary to show he was not on notice of any facts indicating his interest in the Trust assets were less than he "understood" by not later than late 2016.

The Complaint does not " 'specifically plead facts to show (1) the time and manner of discovery and (2) the inability to have made earlier discovery despite reasonable diligence,' " which is required to state facts to show the cause of action is not barred by the four-year statute of limitations. (*Fox, supra,* 35 Cal.4th at 808.) Plaintiff does not allege when and how he discovered that his "understanding" that he had an equal beneficiary interest in his grandfather's Trust was incorrect, and facts showing why he could not have discovered the alleged change in his interest in the Trust earlier than within four years before he filed the lawsuit. Absent such allegations, Plaintiff has failed to allege facts sufficient to state this cause of action because on its face, it is barred by the four-year statute.

C. <u>Voiding Trust Documents (2nd C/A)</u>

Code of Civil Procedure section 343 is a "catch all" statute of limitations. "An action for relief not hereinbefore provided for must be commenced within four years after the cause of action shall have accrued." (Code Civ. Proc. § 343.) This statute of limitations has been applied to actions for cancellation of instruments. (*Zakaessian v. Zakaessian* (1945) 70 Cal.App.2d 721, 725.) "However when the gravamen of the cause of action stated involves fraud or a mistake, Code of Civil Procedure, section 338(4) [now 338(d)] is the statute of limitations applicable and the cause of action is not deemed to have accrued until the discovery of the facts constituting the mistake. [Citation omitted.]" (*Id.*) Plaintiff does not dispute Defendant's position that these authorities reflect the statute of limitations applicable to the second cause of action.

Code of Civil Procedure section 338 applicable to fraud is three years but the cause of action "is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake." (Code Civ. Proc. § 338(d).) While the existence of a fiduciary duty may mean the plaintiff does not have an affirmative duty to investigate through available means of obtaining knowledge or information, nevertheless Plaintiff does not allege facts showing when and how he discovered the previously unknown information about his alleged reduction in his interest in the Trust assets and the Revised Trust and 1999 amendment and why he could not have discovered that information earlier. (*See* authorities cited above.) (*See also Hobart v. Hobart Estate Co.* (1945) 26 Cal.2d 412, 442-443.) Plaintiff does not allege such facts. Absent such allegations, Plaintiff has failed to allege facts sufficient to state this cause of action.

D. Quiet Title (3rd C/A)

No specific statute of limitations applies to quiet title actions, so courts look to the theory of relief on which the claim is pleaded. (*Muktarian v. Barmby* (1965) 63 Cal.2d 558, 560.) (*See also Salazar v. Thomas* (2015) 236 Cal.App.4th 467, 476-477 ["[C]ourts refer to the underlying theory of relief to determine the applicable period of limitations. [Citations omitted.] An inquiry into the underlying theory requires the court to identify the nature (i.e., the 'gravamen') of the cause of action. [Citation omitted.]"].) The "gravamen" of Plaintiff's cause of action is either cancellation of instruments, which has a four-year statute of limitations under Code of Civil Procedure section 343, or some form of fraud based on his undue influence allegations, on which Plaintiff may rely to invoke the discovery rule under Code of Civil Procedure section 338(d). (*Salazar, supra,* 236 Cal.App.4th at 477 [applicable quiet title statutes of limitations are typically the four-year statute for cancellation of instruments or three-year statute for fraud or mistake].)

The Complaint fails to allege facts sufficient to state the quiet title cause of action for the same reasons the second cause of action fails. Plaintiff does not allege when and in what manner he discovered facts previously unknown to him regarding his lack of an "equal beneficiary" interest in the Trust assets and the modifications of the Trust in 1998 and 1999, and why he could not have discovered the fraud or grounds for cancellation of the 1998 and 1999 Trust documents earlier than within three or four years of August 2024 when he filed the Complaint. On the face of the Complaint, the claim accrued as early as two decades before suit was filed when his interest was reduced from the "equal beneficiary" interest he claims. He does not allege facts showing he did not discover facts leading to the fraud or other basis for cancellation of the Trust instruments until a date within three or four years of his filing of the complaint, and that he had no notice of facts creating a suspicion of these claims until that time. This cause of action fails to allege facts sufficient to state the quiet title claim on that ground.

Conclusion

Ingenito's general demurrers to the first, second, and third causes of action are **sustained, with leave to amend**. If Plaintiff amends, Plaintiff shall comply with Rule 2.112 in pleading his amended causes of action.

13. 9:00 AM CASE NUMBER: C24-02209
CASE NAME: PATRICK MORRISSEY VS. ALBERT SEBILIA
HEARING ON DEMURRER TO:
FILED BY:
TENTATIVE RULING:

Before the Court is Defendant United Wholesale Mortgage, LLC (“Defendant” or “United Wholesale”)’s demurrer to Plaintiff Patrick Morrissey and Plaintiff Alexandra Morrisey (collectively,

"Plaintiffs")'s Complaint for (1) private nuisance, (2) damages for public nuisance, (3) injunctive relief for abatement of nuisance, (4) damages for trespass, (5) diversion of surface waters, (6) diversion of surface water to groundwater, (7) negligence, (8) declaratory relief, and (9) breach of implied covenant of good faith and fair dealing. Only the eighth and ninth cause of action is alleged against Defendant United Wholesale Mortgage.

For the following reasons, the Demurrer is **sustained**, with leave to amend.

Request for Judicial Notice

Defendants' unopposed Request for Judicial Notice is **granted**. (Evid. Code §§ 452, 453.) The Court notes that certified copies of recorded documents are self-authenticating. (Evid. Code §§ 1530, 1600; see also *Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 264-65, disapproved on another point by *Yvanova v. New Century Mortgage Corp*. (2016) 62 Cal.4th 919.)

Factual Allegations and Procedural Background

This case arises out of a landslide that occurred on and near the homes owned by Plaintiffs and Defendant Homeowners on or about January 15 through 19, 2023. (Complaint at ¶ 12.) Plaintiff Patrick Morrissey and Alexandra Morrisey own the property at 14 Cedar Lane, Orinda. (*Id*. at ¶ 2.) Defendant Christopher Allen Roberts and Courtly Allen Stevens own the property at 6 Cedar Lane, Orinda. (*Id*. at ¶ 3.) Defendant Albert J. Sebilia and Carol Anne Dalton Sebilia own the property at 10 Cedar Lane, Orinda. (*Id*. at ¶ 4.) Finally, Defendant Nanette N. Andrews owns the property at 18 Cedar Lane, Orinda. (*Id*. at ¶ 5.)

Plaintiffs allege that United Wholesale issued Loan 1051783065 to them, secured by a deed of trust against their property. (Complaint at ¶ 7.) The Complaint further alleges that "[a]s a result of its loan to Plaintiffs, [United Wholesale] is a necessary and indispensable party in that it has an interest relating to Plaintiffs and Plaintiffs' property[.]" (*Id*. at ¶ 8.) Plaintiffs contend that "[a]s a result of its loan from [United Wholesale], Plaintiffs cannot obtain full and complete relief in this action unless [United Wholesale] is joined as a party to this action." (*Id*. at ¶ 9.)

Analysis

As a threshold issue, Defendant correctly identifies Plaintiffs' standing issue: the Deed of Trust recorded against the property indicates that the borrower is the 2008 Patrick J. Morrissey and Alexandra P. Morrissey Revocable Trust, of which Plaintiffs are Trustees. Plaintiffs acknowledge this issue in opposition. (Opp. at 2:12-13 ["Plaintiffs agree to amend their names in the complaint to correct their inadvertent mistake which omitted the reference to their trust ownership of the subject property."].)

Even assuming *arguendo* that Plaintiffs had properly alleged standing, both causes of action against Defendant are defective.

Plaintiffs allege in their declaratory relief claim that "Plaintiffs' efforts in this action have benefitted [United Wholesale] and Does 101-300, and Plaintiffs are entitled to be indemnified by [United Wholesale] and Does 101-300 for their costs and fees incurred in this action." (Complaint at ¶ 76.)

The obligation of indemnity arises only "from either of two general sources." (*E.L. White, Inc. v. City of Huntington Beach* (1978) 21 Cal.3d 497, 506.) "First, it may arise by virtue of express contractual language establishing a duty in one party to save another harmless upon the occurrence of specified circumstances." (*Ibid*.) "Second, it may find its source in equitable considerations brought into play

either by contractual language not specifically dealing with indemnification or by the equities of the particular case." (*Id*. at p. 507 [italics added].)

Here, Plaintiffs' complaint is silent with respect for the source of Defendant's alleged indemnity obligation. This is insufficient.

With respect to Plaintiffs' ninth cause of action for breach of the implied covenant of good faith and fair dealing, as Defendant notes, the Complaint fails to allege actual breach. Instead, the Plaintiffs allege that United Wholesale "has threatened to lock Plaintiffs out of their property and prevent their access, and otherwise unfairly frustrated Plaintiffs' right to receive the benefits of the agreement." (Complaint at ¶ 85.) This is inadequate. The Complaint is also silent with respect to what benefits Plaintiffs were allegedly unfairly deprived.

The Demurrer is **sustained**, with leave to amend.

14. 9:00 AM CASE NUMBER: L21-06147
CASE NAME: PORTFOLIO RECOVERY ASSOCIATES, LLC VS. JOSE MALTEZ
***HEARING ON MOTION IN RE: MOTION TO SET ASIDE DISMISSAL/ENTER JUDGMENT UNDER STIP**
FILED BY PLN ON 9/16/24
FILED BY: PORTFOLIO RECOVERY ASSOCIATES, LLC
****TENTATIVE RULING:****

Plaintiff filed a motion to set aside dismissal and enter judgment, seeking to enforce a stipulated settlement. The parties previously stipulated to a settlement of this case, but provided that in the event of a default in payments the amount in the stipulation would become due.

While defendant eventually made payments in the amount of $3,343.76, no further payments were made as required by the terms of the settlement agreement. (Wang Decl., p. 4). According to its terms, upon default the defendant would be responsible for the entire balance owed, less any payments made to date. (Req. Jud. Notice, Ex. B.)

The balance now due is the total sum of $1,560.50 (i.e., $4,393.76 [principal] + $510.50 [costs] - $3,343.76 [prior payments]).

All conditions for a judgment pursuant to Code of Civil Procedure section 664.6 have been met.

Consequently, the court will execute and enter judgment for $1,560.50 for plaintiff.

15. 9:00 AM CASE NUMBER: L22-04716
CASE NAME: BANK OF AMERICA N.A. VS. BRENDA FRITSCHI
***HEARING ON MOTION IN RE: MOTION TO SET ASIDE DISMISSAL/ENTER JUDGMENT UNDER STIP**
FILED BY PLN ON 9/18/24

FILED BY: BANK OF AMERICA N.A.
TENTATIVE RULING:

Plaintiff filed a motion to set aside dismissal and enter judgment, seeking to enforce a stipulated settlement. The parties previously stipulated to a settlement of this case, but provided that in the event of a default in payments the amount in the stipulation would become due.

While defendant eventually made payments in the amount of $940 no further payments were made as required by the terms of the settlement agreement. (Wang Decl., p. 4). According to its terms, upon default the defendant would be responsible for the entire balance owed, less any payments made to date. (Req. Jud. Notice, Ex. B.)

The balance now due is the total sum of $7,462.77 (i.e., $8,028.77 [principal] + $373.50 [costs] - $940 [prior payments]).

All conditions for a judgment pursuant to Code of Civil Procedure section 664.6 have been met.

Consequently, the court will execute and enter judgment for $7,462.77 for plaintiff.

16. 9:00 AM CASE NUMBER: L23-01707
CASE NAME: BANK OF AMERICA N.A. VS. BEVERLY ORTEGA-BELMES
***HEARING ON MOTION IN RE: MOTION TO VACATE DISMISSAL/ENTER JUDGMENT UNDER STIPULATED SETTLEMENT BY PLN ON 9/10/24**
FILED BY: BANK OF AMERICA N.A.
TENTATIVE RULING:

Plaintiff filed a motion to vacate dismissal and enter judgment, seeking to enforce a stipulated settlement. The parties previously stipulated to a settlement of this case, but provided that in the event of a default in payments the amount in the stipulation would become due.

While defendant eventually made payments in the amount of $2,452, no further payments were made as required by the terms of the settlement agreement. (Carr Decl., p. 4). According to its terms, upon default the defendant would be responsible for the entire balance owed, less any payments made to date. (Req. Jud . Notice, Ex. B.)

The balance now due is the total sum of $5,082.42 (i.e., $6,955.92 [principal] + $578.50 [costs] - $2,452 [prior payments]).

All conditions for a judgment pursuant to Code of Civil Procedure section 664.6 have been met.

Consequently, the court will execute and enter judgment for $5,082.42 for plaintiff.

17. 9:00 AM CASE NUMBER: L23-02934
CASE NAME: AMERICAN EXPRESS NATIONAL BANK VS. LISSETTE MIRANDA
***HEARING ON MOTION IN RE: MOTION TO VACATE THE CONDITIONAL DISMISSAL AND FOR ENTRY OF JUDGMENT FILED BY PLN ON 9/11/24**
FILED BY: AMERICAN EXPRESS NATIONAL BANK
****TENTATIVE RULING:****

Plaintiff filed a motion to vacate dismissal and enter judgment, seeking to enforce a stipulated settlement. The parties previously stipulated to a settlement of this case, but provided that in the event of a default in payments the amount in the stipulation would become due.

While defendant eventually made payments in the amount of $2,076.37, no further payments were made as required by the terms of the settlement agreement. (Dyle Decl., p. 4). According to its terms, upon default the defendant would be responsible for the entire balance owed, less any payments made to date. (Dyle Decl., Ex. A.)

The balance now due is the total sum of $9,120 (i.e., $10,686.37 [principal] + $510 [costs] - $2,076.37 [prior payments]).

All conditions for a judgment pursuant to Code of Civil Procedure section 664.6 have been met.

Consequently, the court will execute and enter judgment for $9,120 for plaintiff.

18. 9:00 AM CASE NUMBER: L23-04383
CASE NAME: CAPITAL ONE N.A. VS. MARY KELLY
***HEARING ON MOTION IN RE: MOTION TO SET ASIDE DISMISSAL/ENTER JUDGMENT UNDER STIP FILED BY PLN ON 9/3/24**
FILED BY: CAPITAL ONE N.A.
****TENTATIVE RULING:****

Plaintiff filed a motion to set aside dismissal and enter judgment, seeking to enforce a stipulated settlement. The parties previously stipulated to a settlement of this case, but provided that in the event of a default in payments the amount in the stipulation would become due.

While defendant eventually made payments in the amount of $2,647.44, no further payments were made as required by the terms of the settlement agreement. (Wang Decl., p. 4). According to its terms, upon default the defendant would be responsible for the entire balance owed, less any payments made to date. (Req. Jud . Notice, Ex. B.)

The balance now due is the total sum of $3,878.50 (i.e., $5,947.44 [principal] + $578.50 [costs] - $2,647.44 [prior payments]).

All conditions for a judgment pursuant to Code of Civil Procedure section 664.6 have been met.

Consequently, the court will execute and enter judgment for $3,878.50 for plaintiff.

19. 9:00 AM CASE NUMBER: L23-06068
CASE NAME: CITIBANK N.A. VS. JOEL DELASALAS
***HEARING ON MOTION IN RE: MOTION TO VACATE DISMISSAL/ENTRY OF JUDGMENT PUR TO STIP FILED BY PLN ON 9/18/24**
FILED BY: CITIBANK N.A.
****TENTATIVE RULING:****

Plaintiff filed a motion to vacate dismissal and enter judgment, seeking to enforce a stipulated settlement. The parties previously stipulated to a settlement of this case, but provided that in the event of a default in payments the amount in the stipulation would become due.

While defendant eventually made payments in the amount of $1,197, no further payments were made as required by the terms of the settlement agreement. (Wang Decl., p. 4). According to its terms, upon default the defendant would be responsible for the entire balance owed, less any payments made to date. (Req. Jud . Notice, Ex. B.)

The balance now due is the total sum of $2,555.30 (i.e., $3,173.80 [principal] + $578.50 [costs] - $1,197 [prior payments]).

All conditions for a judgment pursuant to Code of Civil Procedure section 664.6 have been met.

Consequently, the court will execute and enter judgment for $2,555.30 for plaintiff.

20. 9:00 AM CASE NUMBER: L24-03688
CASE NAME: WELLS FARGO BANK, N.A. VS. LAVONNE ROBINSON
***HEARING ON MOTION IN RE: MOTION TO DEEM REQUESTS FOR ADMISSIONS ADMITTED FILED BY PLN ON 9/5/24**
FILED BY: WELLS FARGO BANK, N.A.
****TENTATIVE RULING:****

Motion vacated by court as moot, due to the judgment filed on December 10, 2024.

21. 9:00 AM CASE NUMBER: MSL07-00470
CASE NAME: LHR, INC. VS. WIESLAW ZIEBA
***HEARING ON MOTION IN RE: MOTION TO AMEND JUDGMENT/RENEWAL OF JUDGMENT TO CHANGE PLN NAME FILED BY PLN ON 9/20/24**
FILED BY: PHARUS FUNDING LLC, AS SUCCESSOR IN INTEREST TO LHR,INC.
****TENTATIVE RULING:****

The motion is denied without prejudice for failure to file a proof of service indicating that defendant was notified of the hearing date.

Additionally, the amounts in the amended judgment filed on January 13, 2023, do not accord with those mentioned in the motion to amend judgment and declaration of Steven Booska.

22. 9:00 AM CASE NUMBER: MSL21-03281
CASE NAME: BANK OF AMERICA VS FOUNTAINE
***HEARING ON MOTION IN RE: MOTION TO SET ASIDE DISMISSAL/ENTER JUDGMENT UNDER STIP FILED BY PLN ON 9/3/2**
FILED BY: BANK OF AMERICA, N.A.
****TENTATIVE RULING:****

Plaintiff filed a motion to vacate dismissal and enter judgment, seeking to enforce a stipulated settlement. The parties previously stipulated to a settlement of this case, but provided that in the event of a default in payments the amount in the stipulation would become due.

While defendant eventually made payments in the amount of $6,407.56, no further payments were made as required by the terms of the settlement agreement. (Wang Decl., p. 4). According to its terms, upon default the defendant would be responsible for the entire balance owed, less any payments made to date. (Req. Jud . Notice, Ex. B.)

The balance now due is the total sum of $3,265 (i.e., $9,095.56 [principal] + $577[costs] - $6,407.56 [prior payments]).

All conditions for a judgment pursuant to Code of Civil Procedure section 664.6 have been met.

Consequently, the court will execute and enter judgment for $3,265 for plaintiff.

23. 9:00 AM CASE NUMBER: MSL21-04887
CASE NAME: PORTFOLIO RECOVERYASSOCCIATES, LLC VS. JOSE MALTEZ

***HEARING ON MOTION IN RE: MOTION TO VACATE DISMISSAL/ENTER JUDGMENT UNDER STIPULATED SETTLEMENT FILED BY PLN ON 9/10/24**
FILED BY: PORTFOLIO RECOVERYASSOCCIATES, LLC
****TENTATIVE RULING:****

Plaintiff filed a motion to vacate dismissal and enter judgment, seeking to enforce a stipulated settlement. The parties previously stipulated to a settlement of this case, but provided that in the event of a default in payments the amount in the stipulation would become due.

While defendant eventually made payments in the amount of $5,526.70, no further payments were made as required by the terms of the settlement agreement. (Carr Decl., p. 4). According to its terms, upon default the defendant would be responsible for the entire balance owed, less any payments made to date. (Req. Jud . Notice, Ex. B.)

The balance now due is the total sum of $1,578.50 (i.e., $6,526.70 [principal] + $578.50 [costs] - $5,526.70 [prior payments]).

All conditions for a judgment pursuant to Code of Civil Procedure section 664.6 have been met.

Consequently, the court will execute and enter judgment for $7,578.50 for plaintiff.

24. 9:00 AM CASE NUMBER: N22-2463
CASE NAME: JANICE LEE HANSEN, TRUSTEE OF THE JANICE L. HANSEN SURVIVORS TRUST VS. DOROTHY FRIBERG
HEARING IN RE: NOH ON CLAIM FOR SURPLUS FUNDS
FILED BY:
****TENTATIVE RULING:****

Appearance required.

25. 9:00 AM CASE NUMBER: N24-1341
CASE NAME: TESLA, INC. VS. MARIO DEVERA
***HEARING ON MOTION IN RE: TO REINSTATE & VACATE AWARD DUE TO FRAUD FILED BY MARIO DE VERA**
FILED BY:
****TENTATIVE RULING:****

Before the Court is Respondent Mario De Vera's Motion to Reinstate and Schedule a Hearing to Vacate Award Due to Fraud.

Procedural Background

Tesla filed its Petition to Confirm Arbitration Award on July 25, 2024. On August 5, 2024, Defendant Mario De Vera filed his answer/opposition seeking to have the arbitration award vacated or corrected.

A hearing on the Petition was scheduled for October 14, 2024. On October 11, 2024, the Court posted the Tentative Ruling on its website in accordance with its Local Rule 3.43. The Tentative Ruling granted Tesla's Petition to Confirm the Arbitration Award.

In accordance with Local Rule 3.43:

> The tentative ruling will become the Court's ruling unless by 4:00 p.m. of the court day preceding the hearing, counsel ***or self-represented parties*** call the department rendering the decision to request argument. …
> Calling counsel ***or self-represented parties*** requesting argument must advise all other affected counsel and self-represented parties by no later than 4:00 p.m. of his or her decision to appear and of the issues to be argued. Failure to timely advise the Court and counsel or self-represented parties will preclude any party from arguing the matter. (emphasis added.)

As noted by the Court's order, no party called to contest the Tentative Ruling and as such, it became the Order of the Court. Thereafter, on October 16, 2024, Tesla filed and served a "Notice of Entry Regarding Petition to Confirm Arbitration Award."

Respondent filed his instant motion on October 21, 2024.

Analysis

Respondent's full argument consists of a single paragraph:

> Respondent didn't know there was a tentative ruling the Friday before the hearing on October 14th, 2024, that was removed since the respondent didn't call in wanting an oral argument before 4pm on the day of the tentative ruling. The respondent is a Pro Se and is not well versed in the process of the court. The respondent has evidence to show to the court that the Neutral is biased and favors Tesla. Please see email to Department 9 and the Petitioner on the 14th of October 2024. Respondent has more evidence to show he believes Neutral was biased and made her ruling in an unfair and fraudulent manner favoring Tesla in addition to what is presented.

Self-Representation Argument

Initially, the fact that Respondent is not an attorney and is representing himself in pro per does not mean that he is afforded special treatment and/or is exempt from following the Rules.

"[M]ere self-representation is not a ground for exceptionally lenient treatment. Except when a particular rule provides otherwise, the rules of civil procedure must apply equally to parties represented by counsel and those who forgo attorney representation." (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 894-85.) "A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the

other parties to litigation." (*Id.* at 895.)

"[J]udges are not required to act as counsel for self-represented part[ies], instead, self-represented litigants 'must expect and receive the same treatment as if represented by an attorney – no different, no better, no worse.'" (*Nuno v. California State University, Bakersfield* (2020) 47 Cal.App.5th 799, 811 quoting *Taylor v. Bell* (1971) 21 Cal.App.3d 1002, 1009.)

Respondent was required to make himself aware of the Tentative Ruling rules and procedures and to abide by them. He failed to timely give notice of his opposition to the Court's Tentative Ruling and as such, it became the Order of the Court. Respondent cannot use his failure to follow the rules as a basis for overturning the Court's Order.

Motion for Reconsideration

While Respondent titles his Motion as one to "Reinstate and Schedule a Hearing to Vacate Award Due to Fraud," it is, in essence, a motion for reconsideration.

"The requirements for a motion for reconsideration 'apply to any motion that asks the judge to decide the *same matter* previously ruled on.'" (*R&B Auto Center, Inc. v. Farmers Group, Ins.* (2006) 140 Cal.App.4th 327, 373 *see also Powell v. County of Orange* (2011) 197 Cal.App.4th 1573, 1577

The Court may not entertain a motion for reconsideration absent a showing of new or different facts, law, or circumstances. (Code of Civil Procedure ("CCP") § 1008(a)-(b); *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1098.) "The party making the application shall state by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown." (CCP § 1008(a).)

Not only must the party seeking reconsideration provide "new evidence *but also a satisfactory explanation for the failure to produce that evidence at an earlier time. In short, the moving party's burden is the same as that of a party seeking new trial on the ground of 'newly discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at trial*.'" (*Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1198 quoting *Blue Mountain Development Co. v. Carville* (1982) 132 Cal.App.3d 1005, 1013, *italics* in original.)

Respondent has failed to meet any of the above requirements for a motion for reconsideration.

Conclusion

Based on the above, Respondent's Motion is **denied**.

26. 10:00 AM CASE NUMBER: L24-00475
CASE NAME: BANK OF AMERICA, N.A. VS. ISRAEL CONDE
COURT TRIAL HEARING
FILED BY:
TENTATIVE RULING:

Appearance required.

27. 10:00 AM CASE NUMBER: C24-01893
CASE NAME: THOMAS STALLINGS VS. DOROTHY FARIA
HEARING IN RE: EVIDENTIARY HEARING SET PER EX PARTE
FILED BY:
TENTATIVE RULING:

Appearance required.

28. 10:00 AM CASE NUMBER: MSL20-03857
CASE NAME: THE LAW OFFICES OFETHAN W. WEISINGER INC A PROFESSIONAL LAW CORPORATION VS. VITO TRAGNI
JURY TRIAL
FILED BY:
TENTATIVE RULING:

Trial continued to April 7, 2025, at 10 a.m. in Department 9.