SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 16
JUDICIAL OFFICER: BENJAMIN T REYES, II
HEARING DATE: 03/12/2025

INSTRUCTIONS FOR CONTESTING TENTATIVE RULING IN DEPARTMENT 16

The tentative ruling will become the ruling of the Court unless by 4:00PM of the Court day preceding the hearing, notice is given of an intent to argue the matter. Counsel or self-represented parties must email Department 16 (Dept16@contracosta.courts.ca.gov) to request argument and must specify, in detail, what provision(s) of the tentative ruling they intend to argue and why. Counsel or self-represented parties requesting argument must advise all other counsel and self-represented parties by no later than 4:00PM of their decision to argue, 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. (Pursuant to Local Rule 3.43(2).)

ALL APPEARANCES TO ARGUE WILL BE IN PERSON OR BY ZOOM, PROVIDED THAT PROPER NOTIFICATION IS RECEIVED BY THE DEPARTMENT AS PER ABOVE.

Zoom link-
https://www.zoomgov.com/j/1619504895?pwd=N0V1N3JFRnJ0TEVoSDNrTGRzakF3UT09

ID: 161 950 4895
Password: 812674

Courtroom Clerk's Session

1. 8:31 AM CASE NUMBER: C24-01926
CASE NAME: PETER HO VS. CITY OF CITRUS HEIGHTS
***FURTHER CASE MANAGEMENT CONFERENCE**
FILED BY:
TENTATIVE RULING:

Parties to appear via Zoom or in person.

2. 9:00 AM CASE NUMBER: C24-03523
CASE NAME: MELANIE MAYS VS. MARINA ALLEN
HEARING ON ORDER TO SHOW CAUSE IN RE: PRELIMINARY INJUNCTION
FILED BY:
TENTATIVE RULING:

Defendant and Cross-Complainant Marina Allen [Allen] seeks a preliminary injunction to enjoin Plaintiff and Cross-Defendant Melanie Mays [Mays] from those actions prohibited by the temporary restraining order issued January 29, 2025 [TRO]. Mays opposes issuance of the preliminary injunction.

For the following reasons, the preliminary injunction is **denied**.

Background

Mays and Allen are the only members of the limited liability company named RxAccess Partners LLC [Company]. (Complaint, ¶ 17; Cross-Complaint [XC], ¶ 7, Ex. 1.) The Company was formed and the parties entered into an Operating Agreement for the Company on or about May 15, 2024. (Ibid.)

Allen contends that "[t]he Company was formed to combine Cross-Defendant's pharmaceutical market access skills with Cross-Complainant's pharmaceutical patient support/service skills," and to "create a full spectrum of payor to patient services for their clients, which essentially created a system where a patient only needed to interact with one source for payment of their healthcare services." (XC, ¶ 8.) Mays appears to agree that the parties' "vision" for the Company was to combine Mays' experience in pharmaceutical market access and Allen's patient services "to create a 'one-stop' pharmaceutical consulting firm." (Declaration of [Dec.] M. Mays filed 02/08/2025, ¶ 4.) However, there is no indication that the parties entered into a written agreement or otherwise documented or agreed upon the terms of their business venture, the ownership of the rights to this concept, or any restriction on the parties' ability to pursue alternate ventures that correspond to their individual career experience.

The Operating Agreement provides that the Company is formed for "[t]he purpose of … engag[ing] in any lawful act or activity for with a Limited Liability Company may be formed." (XC, ¶ 7, Ex. 1 at § 1.3.] Each member agreed to contribute $100 capital to the Company. (*Id*. at Schedule 2.) It also provides procedures for management of the Company, including appropriate steps where there is a deadlock of the members, and for dissolution of the Company, including in the instance of "sale, transfer, or other disposition of all or substantially all of the property of the Company, by "agreement of all of the Members," "[b]y operation of law." (*Id*. at §§ 5.2-5.3, 9.1) The Operating Agreement also provides that "No salary will be paid to a Member for the performance of his or her duties under this Agreement [absent subsequent written mutual consent] of the Members." (*Id*. at § 6.2.)

Mays sought to extract herself from the Company beginning in or about August 2024, including giving notice of deadlock on October 11, 2024, and forming her own company named RxAccess LLC on October 12, 2024. (Dec. Mays filed 02/28/2025, ¶¶ 7-8, 10.) Mays thereafter took steps to dissolve

RxAccess Partners, including filing suit to dissolve the Company on December 26, 2024. (Complaint, ¶ 29.) Mays has since changed the name of her company, RxAccess LLC, to ScriptAccess LLC [ScriptAccess]. (Dec. Allen filed 03/04/2025, Ex. 1; Mays filed 03/04/25, Ex. A.)

Allen brought an ex parte application to prevent Mays from engaging in work that competed with that contemplated by the parties on formation of the Company, maintaining a website that competes with the Company's business concept, and converting clients and contracts that would otherwise come to the Company. (Ex Parte Application filed 01/29/2025.) Mays disputes Allen's contentions that she is conducting the same business as the Company and that she has taken clients and business from the Company. (Dec. Mays filed 02/28/2025.) However, Mays does not deny that she fulfilled a contract with at least one former client of the Company in early November, after forming ScriptAccess and before filing for dissolution of the Company. (*Ibid*.) Further, the webpages submitted from the website of ScriptAccess mentions that it provides services that include "comprehensive market access programs and tools that take a holistic approach to support the entire patient ecosystem," "assisting patients with insurance and reimbursement," and "utilizing centralized hub services for patient support." (Dec. M. Allen, ¶ 16, Ex. 2 at 1/4 and 2/4.) Such language appears to contemplate a combination of pharmaceutical market access and patient services, similar to the parties' contemplated business model for the Company.

Allen's requested ex parte application was granted on January 29, 2025 [TRO], which set this OSC and ordered that Mays and ScriptAccess were restrained from :

1. Taking any steps to unilaterally dissolve the Company with either the State Franchise Tax Board or the California Secretary of State;

2. Acting on behalf of the Company in any way, including contacting clients on behalf of the Company;

3. Competing with the Company, usurping business opportunities, diverting prospective clients, altering Company systems, files and documents, excluding Allen from prospective client meetings and emails, and changing Company passwords;

4. Using in commerce the trademark of the Company (the "Mark") and trade name in connection with their businesses, and specifically in connection with the patient – payor business and consulting service.

(Temporary Restraining Order and Order to Show Cause re Preliminary Injunction entered January 29, 2025.) Since the date the TRO was granted, Mays has changed the name of her company to ScriptAccess. Allen subsequently brought an ex parte application to enforce the terms of the TRO, which matter was continued to be heard with the OSC.

Standard

A preliminary injunction may be granted: (1) when it appears by the complaint that the plaintiff is

entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually, or (2) when it appears by the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action. (Code of Civ. Proc. § 526 (a).) The California Supreme Court has established that "the question whether a preliminary injunction-should be granted involves two interrelated factors: (1) the likelihood that the plaintiff will prevail on the merits, and (2) the relative balance of harms that is likely to result from the granting or denial of interim injunctive relief." (*White v. Davis* (2003) 30 Cal. 4th 528, 554).

"To obtain a preliminary injunction, a plaintiff ordinarily is required to present evidence of the irreparable injury or interim harm that it will suffer if an injunction is not issued pending an adjudication of the merits." (*White*, *supra*, 30 Cal. 4th at 554). “While the mere possibility of harm to the plaintiffs is insufficient to justify a preliminary injunction, the plaintiffs are ‘not required to wait until they have suffered actual harm before they apply for an injunction but may seek injunctive relief against the threatened infringement of their rights.’” (*Costa Mesa City Employees Assn. v. City of Costa Mesa* (2012) 209 Cal. App. 4th 298, 305).

Analysis

In order to obtain a preliminary injunction, the moving party must establish both a likelihood of prevailing on the merits of the claim and of imminent irreparable harm if the requested injunction is not granted. In order to demonstrate a likelihood of prevailing on the merits, the moving party must present legal analysis to demonstrate they are entitled to recovery under at least one legal theory and evidence supporting each element of such cause of action. (See *Lafferty v. Wells Fargo Bank* (2013) 213 Cal. App. 4th 545, 571-72 ("When a point is asserted without argument and authority for the proposition, 'it is deemed to be without foundation and requires no discussion by the reviewing court.'")

Allen submitted evidence to support her position that Mays and ScriptAccess are working in the same business area as the Company. Mays indicated that the work she is doing is different from the Company, but the evidence demonstrates that Mays’ new company uses a substantially similar name, has a website promoting similar services, and has entered into contracts with former clients of the Company. Further, while Mays has petitioned this court for dissolution, she has not taken the steps outlined in the Operating Agreement for deadlock resolution, which include arbitration of the dispute.

However, Allen does not establish or cite the legal or contractual basis for her claim for relief based on such actions. The only legal citations in Allen’s papers are to the standard for granting of a preliminary injunction and to the statute allowing for dissolution of an LLC. These citations do not provide this court with the legal basis for Allen’s claims. The Cross-Complaint states claims for breach of contract, breach of fiduciary duty, trademark infringement, and violation of business and professions code 17200. However, the Application does not state under which theory of liability Allen seeks to enjoin Mays’ conduct. Further, the Cross-Complaint does not plead for a preliminary injunction as part of any of the individual causes of action so the court is not advised under what theory Allen seeks to prevail.

The Application does not set forth the elements of any claim in the Cross-Complaint, or demonstrate the particular facts that support each element of any of the causes of action. As such, the Application does not include the necessary legal analysis or evidence to make the requisite showing that Allen has a likelihood to prevail at trial on a particular legal theory.

This court previously ordered that the parties were to appear to present testimony on this matter. However, after further review of the Application and supporting papers, this court finds that testimony pertaining to the alleged facts is not necessary to issue a ruling on this matter. Allen has not presented sufficient legal authority or legal analysis to demonstrate that the facts at issue support a finding of a likelihood that Allen will prevail at trial on the merits of any of her stated claims. Thus, Allen has not established the legal basis for granting the preliminary injunction.

For such reasons, the preliminary injunction is denied.

3. 9:01 AM CASE NUMBER: C23-02231
CASE NAME: AMERICAN EXPRESS NATIONAL BANK VS. PREEYAVRAT SAINI
***FURTHER CASE MANAGEMENT CONFERENCE**
FILED BY:
****TENTATIVE RULING:****

Parties to appear via Zoom or in person.

Law & Motion

4. 9:00 AM CASE NUMBER: C23-01973
CASE NAME: DAVID TAYLOR, SR. VS. ANTHONY ROMERO
***HEARING ON MOTION FOR DISCOVERY TO COMPEL FURTHER RESPONSES TO DOCUMENT DEMANDS 18-19; 33-37**
FILED BY: TAYLOR, DAVID, SR.
****TENTATIVE RULING:****

Background

On 11/15/2024, Plaintiff David Taylor Sr. (Plaintiff) filed and served a Notice of Motion to Compel Further Reponses to Document Demand Nox. 18-19 and 33-37, accompanied by a memorandum of points and authorities, separate statement and Declaration of Molly F. Durkin in support of the motion, and the reply brief filed on 3/5/2025.

On 2/27/2025, Defendant / Cross-Defendant United Parcel Service, Inc. filed and served an opposition to Plaintiff's Motion to Compel also filed an opposition to plaintiff's separate statement in support of its notice of motion to compel further response to Document Demand Nos. 18-19; 33-37. The Court notes that the Opposition was redacted was redacted pursuant to an order to seal, and several entries in their pleading are not available as a public filing. The Court did review the unsealed documents in

preparation for the hearing on this motion.

After reviewing the papers submitted to the Court, along with the relevant statutory and decisional authorities, the Court **grants** Plaintiff's motion in part and **denies** the motion in part as set forth below.

Analysis

Civil discovery in California is governed by the Civil Discovery Act. See Code Civ. Proc. §§ 2016.010–2036.050. The Civil Discovery Act provides litigants with the right to broad discovery. *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 402. In general, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.

Code Civ. Proc. § 2017.010; see *Sinaiko Healthcare Consulting, Inc.*, *supra*, 148 Cal.App.4th at 402. On the other hand, the Court is empowered to limit the scope of discovery where the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. Code Civ. Proc. § 2017.020(a). Moreover, the moving party and proponent of the discovery on a motion to compel further responses to a request for production of documents must set forth specific facts showing good cause justifying the discovery sought by the demand. Code Civ. Proc. § 2031.310(b)(1). When a motion to compel has been filed, the burden is on responding party to justify any objections made. *Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255.

The Attorney Client Privilege

The attorney-client privilege in California is specifically codified in Cal. Evid C §§950–962. The applicable definitions are in Cal. Evid C §§950–953, and the basic statement of the attorney-client privilege is in Evid C §954. In substance, the Code authorizes a client to refuse to disclose, and to prevent others from disclosing confidential communications between the attorney and the client unless the client waives the privilege. See *De Los Santos v Superior Court* (1980) 27 C3d 677; *People v Lines* (1975) 13 C3d 500, 509. Except as otherwise set forth in the Evidence Code, the privilege is absolute, and production may not be ordered (by a Court) based on relevance or particular facts of the case. *2,022 Ranch, LLC v Superior Court* (2003) 113 CA4th 1377, 1388, disapproved on other grounds in *Costco Wholesale Corp. v Superior Court* (2009) 47 C4th 725, 729; *Solin v O'Melveny & Myers*, LLP (2001) 89 CA4th 451, 466.

The attorney-client privilege promotes freedom of consultation between a lawyer and his client and encourages full disclosure and discussion of the facts, without fear that subsequent disclosure can be compelled without the client's consent. *Fisher v U.S*. (1976) 425 US 391, 403, 96 S Ct 1569; *People v Bell* (2019) 7 C5th 70, 96; *People v Meredith* (1981) 29 C3d 682, 690. Both California and federal courts have recognized that without full discussion with the client, the attorney cannot give effective legal advice. *Upjohn Co. v U.S*. (1981) 449 US 383, 389, 101 S Ct 677; *People v Meredith, supra*.

Once a party establishes facts necessary to support a *prima facie* claim of privilege, the

communication is presumed to have been made in confidence and the opponent of the claim of privilege has the burden of proof to establish the communication was not confidential or that the privilege does not for other reasons apply. (Evid. Code, § 917, subd. (a); *Wellpoint Health Networks, Inc*., (1997) 59 Cal.App.4th 110, 123.)

Attorney Work Product Doctrine

In California, the work product doctrine was originally court-created law but was codified in 1963 when the California Legislature added former CCP §2016 (now CCP §2018.030), which provides that the following documents are privileged:

> (a) A writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances.
>
> (b) The work product of an attorney, other than a writing described in subdivision (a), is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice.

The work product doctrine is as fundamental to our system of justice as the attorney-client privilege. *PSC Geothermal Servs. Co. v Superior Court* (1994) 25 CA4th 1697, 1710. Under CCP §§2018.010–2018.080, attorney work product is given either absolute or qualified protection. The work product doctrine applies to both attorneys and non-attorneys representing themselves in propria persona. *Dowden v Superior Court* (1999) 73 CA4th 126, 133. Plaintiff does not cite to compelling authority that overcomes the confidentiality of the work product doctrine.

Rulings

Having considered the moving papers, including the Separate Statements, the opposition by Defendant and any further pleadings submitted, Plaintiff's reply brief filed 3/5/2025, the Court makes the following findings as to the discovery requests and responses at issue and rules as follows:

Plaintiff's Request for Production of Documents No. 18: Denied in part and granted in part.

The Court partly **grants** the motion to produce further document on UPS's privilege log described as the e-mail(s) about the investigation:

1. E-mail Dated June 16, 2021 between Marina Santos, Kathy Fitspatrick, and Sandra Morado (Vega) regarding the status of David Taylor's Complaint. The Court finds that Defendants do not meet their prima facie burden establishing that this correspondence is protected by the attorney client privilege or the attorney work product doctrine. This e-mail shall be produced no later than 5 days from the date of the hearing of this motion.
2.

The Court **denies** the remaining motion to produce the following documents listed on Defendant UPS' privilege log based on the decisional authorities in the *Kaiser Foundation Hospitals v. Superior Court* (1998) 66 Cal.App.4th 1217, 1220-1227:

1. The emails dated June 25, 2021 – July 12, 2021 between employee relations and UPS Counsel Regarding Status of David Taylor's Complaint: These e-mails are protected by the attorney

client privilege. There has been no waiver by the holder of the privilege. Plaintiff has not met burden of proof to establish the communication was not confidential or that the privilege does not for other reasons apply. The Court declines to order an *in-camera* review of this document as it appears to fall squarely within the definition of an attorney-client communication.

2. The e-mail dated June 24, 2021 between Jill Cude and Brent Houk: This e-mail is protected by the attorney client privilege. There has been no waiver by the holder of the privilege. Plaintiff has not met his burden of proof to establish the communication was not confidential or that the privilege does not for other reasons apply. The Court declines to order an *in-camera* review of this document as it appears to fall squarely within the definition of an attorney-client communication.

3. The e-mail dated July 28, 2021 between Raquel Crum, Jill Cude and Marina Santos: This e-mail is protected by the attorney client privilege. There has been no waiver by the holder of the privilege. Plaintiff has not met his burden of proof to establish the communication was not confidential or that the privilege does not for other reasons apply. The Court declines to order an *in-camera* review of this document as it appears to fall squarely within the definition of an attorney-client communication.

4. The Draft Investigation Report Dated August 3, 2021 dated August 3, 2021. The Court finds that this document is protected by the attorney-client privilege and the attorney work product doctrine. There has been no waiver of the privilege by the holder of the privilege. There is no showing by Plaintiff that denial of this work product report will unfairly prejudice him in preparing his claim or will result in an injustice.

5. The Ya Li Attorney Investigation Notes dated August 10, 2021. This document is protected by the attorney work product doctrine. There has been no waiver by the holder of the privilege. The Court finds that this document is protected by the attorney-client privilege and the attorney work product doctrine. There has been no waiver of the privilege by the holder of the privilege. There is no showing by Plaintiff that denial of this work product report will unfairly prejudice him in preparing his claim or will result in an injustice.

Plaintiff's Request for Production of Documents No. 19: The request seeks documents that relate to any complaint by plaintiff to UPS about discrimination or harassment. Defendant has already agreed to produce non-privileged documents in its possession, custody and control.

Incorporating the reasoning and ruling in denying in part and granting in part the Plaintiff's Request for Production of Document No. 18, the Court **denies** this request for production of documents.

Plaintiff's Request for Production of Documents No. 33: Plaintiff requests All DOCUMENTS relating to any investigation conducted by YOU into any complaints made by PLAINTIFF regarding harassment or discrimination, including without limitation investigation notes and notes of witness interviews. Defendant has already agreed to produce non-privileged documents in its possession, custody and control.

Incorporating the reasoning and ruling in denying in part and granting in part the Plaintiff's Request

for Production of Document No. 18, the Court **denies** this request for production of documents.

Plaintiff's Request for Production of Documents No. 34: Plaintiff requests All DOCUMENTS related to any remedial action that YOU took in response to any complaints made by PLAINTIFF regarding harassment or discrimination. Defendant has already agreed to produce non-privileged documents in its possession, custody and control.

Incorporating the reasoning and ruling in denying in part and granting in part the Plaintiff's Request for Production of Document No. 18, the Court **denies** this request for production of documents.

Plaintiff's Request for Production of Documents No. 35: Plaintiff requests All DOCUMENTS related to any complaint made by PLAINTIFF to YOU regarding DEFENDANT ROMERO. Defendant has already agreed to produce non-privileged documents in its possession, custody and control.

Incorporating the reasoning and ruling in denying in part and granting in part the Plaintiff's Request for Production of Document No. 18, the Court **denies** this request for production of documents.

Plaintiff's Request for Production of Documents No. 36: Plaintiff requests All DOCUMENTS relating to any investigation conducted by YOU into any complaints made by PLAINTIFF regarding DEFENDANT ROMERO, including without limitation investigation notes and notes of witness interviews. Defendant has already agreed to produce non-privileged documents in its possession, custody and control.

Incorporating the reasoning and ruling in denying in part and granting in part the Plaintiff's Request for Production of Document No. 18, the Court **denies** this request for production of documents.

Plaintiff's Request for Production of Documents No. 37: Plaintiff requests All DOCUMENTS related to any remedial action that YOU took in response to any complaints made by PLAINTIFF regarding DEFENDANT ROMERO. Defendant has already agreed to produce non-privileged documents in its possession, custody and control.

Incorporating the reasoning and ruling in denying in part and granting in part the Plaintiff's Request for Production of Document No. 18, the Court **denies** this request for production of documents.

The Court provides notice that it is inclined to order the parties to retain a discovery referee pursuant to Cal. Code of Civ. Proc Section 639(a)(5) for any further motions for discovery filed in this case. Each party shall bear their own costs and fees for pursuing and defending this motion and a discovery referee will be granted authority to recommend an allocation of fees and/or sanctions.

Defendant's counsel shall prepare and submit, via e-filing, a proposed order consistent with this court's ruling that has been approved as to form by Plaintiff's counsel.

5. 9:00 AM CASE NUMBER: C24-00455
CASE NAME: ADORA ANCHETA VS. DANIEL DAMATO
***HEARING ON MOTION IN RE: TO SET ASIDE DEFAULT**
FILED BY: DAMATO, DANIEL
****TENTATIVE RULING:****

Before the Court is a motion to set aside default filed by defendant Daniel Damato. For the reasons set forth, the motion is **denied**.

Background

Plaintiff Adora Ancheta filed a complaint against defendant Daniel Damato for financial elder abuse, fraud and other related causes of action. Plaintiff served Daniel Damato by subservice on March 12, 2024.

On April 26, 2024, Plaintiff served Damato with a request for entry of Damato's default at the same address where subservice was effectuated. (Req. for Entry of Def. filed 4/26/2024.) On August 15, 2024, Plaintiff served Damato with a copy of Plaintiff's case management conference statement, also at the same address where subservice was effectuated. (POS filed 8/15/2024.) Damato appeared in person at the case management conference held on August 23, 2024, with his mother. (CMC Min. filed 8/26/2024; Olson Decl. ¶ 3.) The Minutes reflect Damato was advised his default was entered on April 26, 2024, and the Court set a default prove-up hearing for November 22, 2024. (CMC Min. filed 8/26/2024.)

Damato first engaged counsel to address the action on November 11, 2024. (Lee Decl. ¶ 3.) On November 18, 2024, more than six months after the default was entered (204 days after entry of the default), Damato, through counsel, filed and served a motion to set aside his default on the ground of mistake, surprise, inadvertence or excusable neglect, citing Code of Civil Procedure sections 473 and 473.5 as the basis for the motion.

Requirements for Relief under Code of Civil Procedure § 473(b)

Code of Civil Procedure § 473(b) provides in pertinent part: "The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief … shall be made within a reasonable time, **in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken**." (Code Civ. Proc. § 473(b) [emphasis added].)

The deadline for filing a motion for discretionary relief under Code of Civil Procedure section 473(b), based on the party's surprise, mistake, inadvertence, or excusable neglect, runs from the date the defendant's default is entered. (*Pulte Homes Corp. v. Williams Mechanical, Inc.* (2016) 2 Cal.App.5th 267, 273 [holding relief under Code of Civil Procedure section 473(b) could not be granted where motion for relief from default and default judgment was filed more than six months after entry of defendant's default].) The Clerk's entry of default is considered a proceeding which starts the six-month deadline is measured. (*Garcia v. Gallo* (1959) 176 Cal.App.2d 658, 669 ["courts have interpreted the clerk's entry of default as a "proceeding" taken against the party, which marks the

beginning of the period, even though the judgment on the default is not entered until later."].) (*See also Weiss v. Blumencranc* (1976) 61 Cal.App.3d 536, 541 [same].) The timely filing and service of the motion for relief from default within the six-month deadline is jurisdictional; the Court has no jurisdiction to set aside a default if the motion for discretionary relief under Code of Civil Procedure section 473(b) is filed and served after the deadline. (*Arambula v. Union Carbide Corp.* (2005) 128 Cal.App.4th 333, 340-342.)

Analysis

A. The Motion Is Untimely

Defendant's motion for discretionary relief from default under Code of Civil Procedure section 473(b) was not filed within six months of the entry of his default. (Code Civ. Proc. § 473(b).) Damato in fact admits he did not retain counsel to pursue this relief until mid-November 2024, more than six months after his default was entered. The six-month deadline under the applicable authorities construing Code of Civil Procedure section 473(b) runs from the entry of the default, not the default judgment, when the party seeks discretionary relief rather than relief based on an admission of fault by an attorney representing the defendant. (*Pulte Homes Corp. v. Williams Mechanical, Inc., supra,* 2 Cal.App.5th at 273; *Garcia v. Gallo, supra,* 176 Cal.App.2d at 669 and other authorities cited above.)

The default was entered April 26, 2024, and the six-month deadline under Code of Civil Procedure section 473(b) was October 27, 2024, as October 26, 2024 was a Sunday. Defendant Damato's motion for relief was filed on November 18, 2024, more than six months after April 26, 2024. Therefore, the motion for relief is time-barred, and the Court cannot lacks the authority or jurisdiction to grant relief from the default under Code of Civil Procedure section 473(b). (*Pulte Homes Corp. v. Williams Mechanical, Inc., supra,* 2 Cal.App.5th at 273; *Arambula v. Union Carbide Corp., supra,* 128 Cal.App.4th at 340-342.) The motion is denied on the ground of untimeliness.

B. Code of Civil Procedure Section 473.5(a) Does Not Apply

Damato's moving papers cite Code of Civil Procedure section 473.5 but quote only the second sentence of subdivision (a) of that statute to argue that the motion is timely. That statute is inapplicable in this circumstance. The complete text of the statute is: "When service of a summons has not resulted in actual notice to a party in time to defend the action and a default or default judgment has been entered against him or her in the action, he or she may serve and file a notice of motion to set aside the default or default judgment and for leave to defend the action. The notice of motion shall be served and filed within a reasonable time, but in no event exceeding the earlier of: (i) two years after entry of a default judgment against him or her; or (ii) 180 days after service on him or her of a written notice that the default or default judgment has been entered." (Code Civ. Proc. § 473.5(a) [emphasis added].) (See also *Pulte Homes Corp. v. Williams Mechanical, Inc., supra,* 2 Cal.App.5th at 274-275 [actual notice of action precludes relief under Code of Civil Procedure section 473.5].)

Defendant Damato does not contend that he did not receive actual notice of the action in time to defend. (Damato Decl. ¶ 5 [stating he believes he was subserved around March 2024]; Ancheta Decl. ¶ 5 and Exh. A.) Damato appears to have been fully aware of the action in March and early April 2024 before his default was entered. (*Id.*) Code of Civil Procedure section 473.5 and the time frame for

bringing a motion for relief from default under Code of Civil Procedure section 473.5(a) do not apply.

C. Other Reasons Supporting Denial of the Motion

Damato was also fully aware that he had been served with a complaint and that a default entered against him, evidenced by his attendance at the August 23, 2024 CMC four months after the default was entered. (Olson Decl. ¶ 3; J. Damato ¶ 4.) Damato did not move for relief on a timely basis under Code of Civil Procedure section 473(b) within a reasonable time after he knew his default had been entered.

Damato also has not demonstrated any of the grounds for discretionary relief under Code of Civil Procedure section 473(b) as a substantive matter. The evidence indicates that Damato was fully aware of the complaint and its implications as of March 2024. (Damato Decl. ¶ 5; Ancheta Decl. ¶ 5 and Exh. A.) Damato has not shown that the default was entered against him as a result of mistake, surprise, inadvertence or excusable neglect, rather than as a result of a deliberate decision not to respond and not to seek assistance from counsel or others to help him respond. Engaging counsel is not a prerequisite to defending a lawsuit for an individual defendant. Damato's claim he did not realize the lawsuit was a "serious matter" until he received Plaintiff's CMC statement in August 2024 is inconsistent with the email exchanges between Damato and Plaintiff at the end of March 2024 and in April 2024 threatening bankruptcy if Plaintiff did not suspend the suit. (Ancheta Decl. ¶ 5 and Exh. A.) Further, Damato does not explain the additional almost two-month delay after the CMC hearing before he engaged counsel and attempted to defend the action, after many months had passed from the date he was served with the complaint and thereafter with the request for entry of default. The motion is also denied on these additional grounds.

6. 9:00 AM CASE NUMBER: C22-01533
CASE NAME: PRINCIPLE REALTY, INC. VS. YIHUA CAO
HEARING ON DEMURRER TO: 2ND AMENDED COMPLAINT
FILED BY: CAO, YIHUA
TENTATIVE RULING:

Introduction

Before the Court are Defendants Yihua Cao ("Cao"), Qingyi Sheng ("Sheng"), Equity Trust Company Custodian FBO Qingyi Sheng IRA ("Sheng IRA")'s Demurrers. The Demurrers relate to Plaintiff Principle Realty Inc. (Principle)'s Second Amended Complaint (FAC) for five contract and fraud related causes of action.

For the following reasons, the **Demurrer is overruled in its entirety**.

Meet and Confer Requirement

Defendants detailed their meet and confer efforts with Plaintiff's counsel in the Declaration of Ernest Chen. Defendant's counsel explained his meet and confer efforts regarding the Second Amended Complaint ("SAC") made over an August 6, 2024, email. (Chen Decl. at ¶ 2.) In a letter dated August 15, 2024, Plaintiff's counsel response letter was unable to resolve the issue brought up by Defendant's counsel. (Chen Decl. at ¶ 4.)

Statement of Facts

Principle Realty, Inc. is in the business of finding undervalued properties and facilitating the purchase of those properties by Defendants Yihua Cao and Qingyi Sheng, husband and wife. (SAC at p. 11(a).) On May 25, 2011, Principle Realty, Inc. and Yihua Cao entered into BUYER REPRESENTATION AGREEMENT EXCLUSIVE, and Addendum also dated May 25, 2011. (SAC at p. 11(a).)

The Agreement sets forth terms in which Plaintiff is to locate undervalued properties and in exchange, the compensation for Plaintiff's services was to be specified listing commission percentage of the property value plus an agreed upon percentage of the net profit from the actual value upon sale. (SAC at p. 11(b).)

Plaintiff alleges performance of the Agreement by locating and facilitating the defendants' procurement of two properties. (SAC at p. 11(c).) The first property commonly known as 1509 Fowler Avenue, Evanston, Illinois, which was acquired by Dominic Y. Leung, corporate officer and authorized agent for Plaintiff, who procured the property on November 16, 2013, and transferred it to Defendants in reliance on the BUYER REPRESENTATION AGREEMENT EXCLUSIVE, Exhibit A. (SAC at p. 11(c)(1); See also Exhibit B.) The second property commonly known as 950 S. 45th Street, Richmond, CA, was procured on or about June 23, 2011, for $85,100.00. (SAC at p. 11(c)(2); See also Exhibit C.)

Defendants represented they would promptly sell the properties for their current fair market value and compensate Plaintiff for the monies earned pursuant to the BUYER REPRESENTATION AGREEMENT EXCLUSIVE. (SAC at p. 11(d).) Defendants rented the properties out to generate profits retained exclusively by defendants. (SAC at p. 11(e).)

Defendant, Qingyi Sheng, agreed to amend the BUYER REPRESENTATION AGREEMENT EXCLUSIVE on April 20, 2016, with Qingyi Sheng signing an addendum on behalf of the EQUITY TRUST COMPANY CUSTODIAN FBO QINGYI SHENG, attached as Exhibit D. (SAC at p. 11(f).) Defendant, Yihua Cao, agreed to amend the BUYER REPRESENTATION AGREEMENT EXCLUSIVE further on April 21, 2016, with Yihua Cao signing an addendum on behalf of herself, attached as Exhibit E. (SAC at p. 11(g).)

Defendants have allegedly failed to compensate Principle Realty, Inc. in accordance with the written agreements. (SAC at p. 12; Exhibits A, and E.) On or about February 19, 2020, Defendants sold the Richmond, CA property, commonly known as 950 S. 45th Street, Richmond, California. (SAC at p. 12.) Defendants kept all the profit from that sale and have refused to pay Plaintiff both 6% listing commission and 12% of net profits as per the written agreement, as amended. (SAC at p. 12; Exhibits A, and E.) Defendants allegedly refuse to compensate Plaintiff any amount for the 1509 Fowler Avenue, Evanston, Illinois property, pursuant to the written agreements. (SAC at p. 12; Exhibits A, D, and E.)

Plaintiff alleges damages by the failure and refusal of the Defendants to pay Plaintiff compensation pursuant to the BUYER REPRESENTATION AGREEMENT EXCLUSIVE as amended. (SAC at p. 12; Exhibits A, D, and E.) Plaintiff alleges damages include 6% of the value at the time of sale and 12% of the net profit from the sale of the 950 S. 45th Street, Richmond, California. (SAC at p. 13.) Plaintiff additionally requests an award of prejudgment interest at the legal rate of seven (7) percent from on or about February 19, 2020, the date escrow closed on the sale of 950 S. 45th Street, Richmond, California. (SAC at p. 13.)

Legal Standard

"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.)

Uncertainty is a well-established ground of demurrer. (*Martin v. Bank of San Jose* (Cal. App. 1929) 98 Cal. App. 390.) The objection of uncertainty does not go to failure to allege sufficient facts but to doubt as to what the pleader means by the facts alleged. (*Brea v. McGlashan* (1934) 3 Cal. App. 2d 454.) A special demurrer for uncertainty is not intended to reach the failure to incorporate sufficient facts in the pleading but is directed at the uncertainty existing in the allegations actually made. (*Butler v. Sequeira* (1950) 100 Cal. App. 2d 143.) A Complaint is ambiguous and uncertain where it cannot be ascertained therefrom whether acts complained of were committed by defendants in their individual capacity, or in one of other capacities in which they are alleged to have acted. (*Lapique v. Ruef* (1916) 30 Cal. App. 391.)

Analysis

Standing as Real Party In Interest

Code of Civil Procedure § 367 requires "Every action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute." Courts have defined that the real party in interest is the party who has title to the cause of action, i.e., the one who has the right to maintain the cause of action. (*Powers v. Ashton* (1975) 45 Cal. App. 3d 783, 788.)

Defendants contend Plaintiff is listed as "Principle Realty, Inc" but the contract under which its entire claim is based, the "Buyer Representation Agreement, Exclusive" and the subsequent addenda which is incorporated as Plaintiff's EXHIBIT A, is entirely devoid of Plaintiff's name. Defendants go on to note that the pleadings are similarly devoid of any allegation to corroborate that Plaintiff is a real party in interest.

Plaintiff argues that after Dominic Leung executed the 2011 Agreement, Plaintiff Principle Realty Inc. assumed responsibility to perform as agent and to be compensated under the agreement through the execution of the two addenda. (Oppo at p. 5: 1-9; Exhibits A, D-E.)

The Court is required to accept a plaintiff's pleaded interpretation of a contract, if the language of the contract is reasonably susceptible to that interpretation. (See *Consolidated World Investments, Inc. v. Lido Preferred Ltd.* (1992) 9 Cal.App.4th 373, 379.) "[W]here an ambiguous contract is the basis of an action, it is proper, if not essential, for a plaintiff to allege its own construction of the agreement. So long as the pleading does not place a clearly erroneous construction upon the provisions of the contract, in passing upon the sufficiency of the complaint, we must accept as correct plaintiff's allegations as to the meaning of the agreement." (*Aragon-Haas v. Family Security Ins. Services, Inc.* (1991) 231 Cal.App.3d 232, 239; citing *Marina Tenants Assn. v. Deauville Marina Development Co*. (1986) 181 Cal.App.3d 122, 128.)

Here, Plaintiff alleges a reasonable interpretation of the contract because although the Plaintiff's name is not in the original 2011 Agreement, Plaintiff is unambiguously named in the two subsequent

addenda as a party to the Agreement. This showing by Plaintiff is sufficient to withstand the current attack on the pleadings.

The Court **overrules Defendants' Demurrer as to Plaintiff's lack of standing.**

Uncertainty is Cured by the SAC

"A cause of action for breach of contract requires proof of the following elements: (1) existence of the contract; (2) plaintiff's performance or excuse for nonperformance; (3) defendant's breach; and (4) damages to plaintiff as a result of the breach." (*CDF Firefighters v. Maldonado* (2008) 158 Cal.App.4th 1226, 1239.) "In an action based on a written contract, a plaintiff may plead the legal effect of the contract rather than its precise language." (*Construction Protective Services, Inc. v. TIG Specialty Ins. Co.* (2002) 29 Cal.4th 189, 198–199.)

Defendants successfully challenged Plaintiff's FAC based on the uncertainty of the Buyer Representation Agreement, Exclusive and the subsequent addenda due to the dates of the original Agreement and the dates on the subsequent addenda not corresponding. The original Buyer Representation Agreement, Exclusive and its contemporaneous addendum is dated May 25, 2011, while both the April 20 (Exhibit D) and April 21, 2016 (Exhibit E), addenda represent that it is amending a Representation Agreement, Exclusive dated May 1, 2016.

Plaintiff in the SAC has specified as to what contract the addendums are modifying. The SAC clarified that no May 1, 2016, agreement ever existed, and both addenda modified the May 25, 2011, Agreement attached to the SAC as Exhibit A. (SAC at p. 12, ¶ j.)

The Court **overrules Defendants' Demurrer as to the uncertainty of Plaintiff's SAC.**

Conclusion

The Court **overrules Defendants' Demurrer in its entirety.**

7. 9:00 AM CASE NUMBER: C22-01533
CASE NAME: PRINCIPLE REALTY, INC. VS. YIHUA CAO
HEARING ON DEMURRER TO: 2ND AMENDED COMPLAINT
FILED BY: SHENG, QINGYI
TENTATIVE RULING:

See line 6.

8. 9:00 AM CASE NUMBER: C22-01533
CASE NAME: PRINCIPLE REALTY, INC. VS. YIHUA CAO
HEARING ON DEMURRER TO: 2ND AMENDED COMPLAINT
FILED BY: EQUITY TRUST COMPANY CUSTODIAN FBO QINGYI SHENG IRA
TENTATIVE RULING:

See line 6.

9. 9:00 AM CASE NUMBER: C23-02231
CASE NAME: AMERICAN EXPRESS NATIONAL BANK VS. PREEYAVRAT SAINI
***HEARING ON MOTION IN RE: TO BE RELIEVED AS COUSEL**
FILED BY: SAINI, PREEYAVRAT
****TENTATIVE RULING:****

On 11/19/2024, Counsel Raymond Lee filed a Notice and Motion to be Relieved as Counsel of record for Defendant Preeyavrat Saini ("Motion"). The Motion was accompanied by a declaration and proof of service, showing service to Defendant. Defendant Saini has not provided any response to this motion as of the posting of this tentative ruling. The Motion was set for hearing on 3/12/2025.

Analysis

Cal. Code of Civ. Proc. § 284(2) allows the Court to change an attorney "any time before or after judgment or final determination" [ ] "upon order of the court, upon the application of either client or attorney, after notice from one to the other." Furthermore, the California Rules of Professional Conduct Rule 1.16(b)(4) permits a lawyer to withdraw from representation of a client where "the client by other conduct renders it unreasonably difficult for the lawyer to carry out the representation effectively."

Applying the foregoing here, Counsel Raymond Lee states that "Attorney and client have a conflict of interest that precludes further representation of the client. There has been a breakdown in the attorney-client relationship that precludes further representation. Attorney is unable to represent the client as a result of this breakdown and conflict."

The Court has not set a trial in this case. This Court finds that withdrawal of Counsel at this stage will not prejudice the rights of the client.

Ruling

Counsel Raymond Lee's motion to be relieved as Counsel is **granted.** The Court will execute the Proposed Order Granting Attorney's Motion to be Relieved as Counsel lodged on 11/19/2024. This order will be effective upon filing of proof of service of this signed order upon client.

10. 9:00 AM CASE NUMBER: C24-00435
CASE NAME: SUSAN GRAHAM VS. XIAOMIN MENG
HEARING ON DEMURRER TO: SECOND CAUSE OF ACTION FOR INTENTIONAL TORT BATTERY IN PLAINTIFF'S FIRST AMENDED COMPLAINT
FILED BY: MENG, XIAOMIN
****TENTATIVE RULING:****

Before the Court are both a demurrer and motion to strike filed by defendants, Xiaomin Meng and Huazhen Chai, with respect to the First Amended Complaint (FAC) filed by plaintiff, Susan M. Graham. As discussed below, the demurrer is **overruled**. The motion to strike is **denied.** An answer

shall be filed and served on or before March 24, 2025.

I. Factual Background

The relevant facts are as alleged in the FAC. Plaintiff contends that defendants Xiaomin Meng and Huazhen Chai, despite having a duty to do so, failed to control their dog in a safe manner, at or near the Werner Dredger Cut in Discovery Bay, California. As a result, the dog struck and knocked plaintiff over, which caused her serious and substantial injuries, including but not limited to, physical injury, emotional distress, pain and suffering, and physical deformity.

Plaintiff first filed suit on February 20, 2024. Following meet and confer efforts, on September 10, 2024, plaintiff filed her FAC wherein she alleges three causes of action against defendants: (1) General Negligence; (2) Intentional Tort; and (3) Strict Liability. She seeks compensatory damages.

Following a meet and confer telephone discussion, defendants demur to the second cause of action in the FAC on the basis that plaintiffs fail to state sufficient facts to state an intentional tort. (See Notice of Demurrer, 2:9-10.) They also move to strike the same cause of action, as well as "[a]ny other reference to allegations of intentional conduct as to Defendants." (See Notice of Motion to Strike, 2:4-5.)

Plaintiff opposes both motions, arguing that they are untimely and that the cause of action is properly pleaded, but requesting leave to amend in the event either motion is granted.

II. Timeliness

Plaintiff's argument regarding timing has merit. The demurrer and motion to strike should probably have been filed within 30 days after service of the complaint. (Code Civ. Proc., § 430.40 (a); Code Civ. Proc., § 435 (b)(1); but see *McAllister v. County of Monterey* (2007) 147 Cal.App.4th 253, 280 [noting that demurrer time limit as to an *amended* complaint is not specifically described in the statute and noting Court has discretion].) Still, the Court exercises its discretion to consider these motions on the merits.

III. Demurrer

A. Standard

The limited role of a demurrer is to test the legal sufficiency of a complaint. It raises issues of law, not fact, regarding the form or content of the opposing party's pleading. (*Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994.) A complaint will be upheld if it provides the defendant with "notice of the issues sufficient to enable preparation of a defense." (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 549-550.)

B. Discussion - Intentional Tort (2nd C/A)

Defendants argue the intentional tort / battery cause of action fails to state the requisite facts because it rests on the same facts as the negligence cause of action.

The FAC was prepared using the Judicial Council's form complaint and the Second Cause of Action is the attachment for an "intentional tort." The preprinted form specifically states that the "defendant[s] intentionally caused the damage to plaintiff" by causing their dog "to touch Plaintiff with the intent to harm or offend Plaintiff." This is sufficient. (See CACI 1300, CACI 1320.)

The opposition correctly argues that alternative theories are permitted so, regardless of the extent that the facts might overlap or contradict each other, this is not grounds for demurrer.

(*Mendoza v. Continental Sales Co*. (2006) 140 Cal.App.4th 1395, 1402 [when pleader is in doubt about what actually occurred or what can be established by the evidence, modern practice allows that party to plead in the alternative and make inconsistent allegations].)

While defendants also argue uncertainty in their memorandum of points and authorities, this is not one of the grounds listed in the notice. Further, uncertainty is a disfavored ground for sustaining a demurrer, and a demurrer for uncertainty will be sustained only when the pleading is such that the responding party cannot even discern what it must respond to. (*Williams v. Beechnut Nutrition Corp.* (1986) 185 Cal.App.3d 135, 139.) The FAC here meets that low bar.

The Court expects that any lingering issues can be illuminated through discovery. (*Khoury v. Maly's of Calif., Inc*. (1993) 14 Cal.App.4th 612, 616 ["demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures"].)

The complaint's allegations are sufficient to allege battery and the demurrer, which only targets this cause of action, is overruled.

IV. Motion to Strike

A. Standard

The Court may, in its discretion and upon a motion to strike by defendant: (a) strike out any irrelevant, false, or improper matter inserted in any pleading, or (b) strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. (Code Civ. Proc., §§ 435-436.) The matter must appear on the face of the complaint, or be subject to judicial notice. (Code Civ. Proc., § 437.)

B. Discussion

Defendants seek to strike (1) the second cause of action and (2) "[a]ny other reference to allegations of intentional conduct as to Defendants." (See Notice of Motion to Strike, 2:4-5.)

Defendants' rationale is the same as that set forth in the demurrer. They assert the factual allegations do not support intent. As discussed above with respect to the demurrer, the cause of action has been sufficiently stated. Further, as to the second request, a notice of motion to strike a portion of a pleading "must quote in full the portions sought to be stricken except where the motion is to strike an entire paragraph, cause of action, count, or defense." (Cal Rules of Court, Rule 3.1322.)

The motion must be denied.

11. 9:00 AM CASE NUMBER: C24-00435
CASE NAME: SUSAN GRAHAM VS. XIAOMIN MENG
***HEARING ON MOTION IN RE: TO STRIKE PORTIONS OF PLAINTIFF'S FIRST AMENDED COMPLAINT FILED BY: MENG, XIAOMIN**
****TENTATIVE RULING:****

Please see line 10.

12. 9:00 AM CASE NUMBER: C23-03182
CASE NAME: KARL URMSON VS. JOHN MUIR HEALTH CONCORD MEDICAL CENTER
***HEARING ON MOTION IN RE: TO SUBSTITUTE SUCCESSOR IN INTEREST**
FILED BY: JUSTICE, JENNIFER
****TENTATIVE RULING:****

Background

On 11/22/2024, Plaintiff filed a Notice and Motion to Substitute Successor in Interest, along with a memorandum of points and authorities, pursuant to Cal. Code of Civ. Proc. §§ 377.31 and 377.32, along with request leave to amend the complaint to substitute herself into the pleading pursuant to Cal. Code of Civ. Proc § 473. ("Motion") Plaintiff seeks relief to allow Jennfer Justice to be named as successor in interest to Karl Urmson.

This action alleges that Karl Urmson was injured on February 17, 2023 after being discharged from Defendant John Muir Health Concord Medical Center. Plaintiff was alleged to have suffered a severe infection from the injury that occurred on that day. He passed away on January 28, 2024 from an unrelated cause. (See Justice Decl. Para 7) Ms. Justice now seeks to continue this action as successor in interest to decedent Karl Urmson. Ms. Justice is decedent's partner and primary caregiver.

Analysis

Cal. Code of Civ. Proc. § 473(a) grants the Court with broad discretion to allow amendments in furtherance of justice. The code states that in the event of the death of the plaintiff, the cause of action for personal injuries survives the death of the injured party. Upon motion after the death of a person who commenced an action, the Court shall allow a pending action to be continued by the decedent's successor in interest. (Cal. Code of Civ. Proc. §§ 377.20, 377.31, 377.34.)

Here, Mr. Urmson's successor-in-interest is Jennifer Justice, who is "beneficiary of the decedent's estate or other successor in interest who succeeds to a cause of action." (Cal. Code of Civ. Proc. § 377.11). Ms. Justice represents that she is Mr. Urmson's partner and, according to his will, is named as the sole beneficiary of his estate. (See Decl. para nos. 5, 7).

No timely opposition has been filed by Defendant in this matter.

Ruling

Plaintiff's motion is **granted** as unopposed. The Court will execute the proposed order lodged with Plaintiff's moving papers. Counsel for Ms. Justice shall file and serve a First Amended Complaint within 30 days of the execution of the order.

13. 9:00 AM CASE NUMBER: C23-02391
CASE NAME: OLD REPUBLIC TITLE COMPANY VS. JEANNIE GREGORI
HEARING ON DEMURRER TO: CROSS-COMPLAINT OF GILBERT J. GREGORI
FILED BY: DUKE, SHANNON GREGORY
TENTATIVE RULING:

On 11/22/2024, Defendant Shannon Gregory Duke (Shannon) filed a Demurrer to Cross-Complaint of Defendant and Cross-Defendant Gilbert J. Gregori (Gilbert) to the first through eight causes of action, and in its entirety pursuant to Cal. Code of Civ. Proc. § 430.10. Shannon is represented through Counsel and Defendant Jeannie Gregori (Jeannie). Proof of service of the Amended Notice of Hearing of the Demurrer to Gilbert J. Gregori's cross-complaint was filed with the Court on 11/27/2024

The Demurrer is sustained without leave to amend for the following reasons.

Brief Background

Plaintiff Old Republic Title Company (ORTC) filed this action on September 21, 2023 seeking declaratory relief as to the rightful owner of real property sale proceeds of property at 400 6th Street, Rodeo, CA (the Property) which had belonged to David L. Gregory, deceased (David), before the sale. ORTC named as defendants the Estate of David L. Gregory and David's family members, Jeannie M. Gregory (Jeannie), Shannon Gregory Duke (Shannon) and Gilbert Gregori (Gilbert).

On 10/23/2024, Gilbert filed a cross-complaint against Shannon alleging eight causes of action as set forth in more detail in the pleading. Gilbert's cross-complaint alleges that venue is proper in Contra Costa County, as the subject property is located at 400 6th Street, Rodeo, CA. The prayers seeks compensatory damages in the amount of $280,000, and other relief as requested.

On 11/22/2024, Defendant Shannon Gregory Duke (Shannon) filed a Demurrer to Cross-Complaint of Defendant and Cross-Defendant Gilbert J. Gregori (Gilbert) to the first through eight causes of action, and in its entirety pursuant to Cal. Code of Civ. Proc. § 430.10. Shannon is represented through Counsel and Defendant Jeannie Gregori (Jeannie). Proof of service of the Amended Notice of Hearing of the Demurrer to Gilbert J. Gregori's cross-complaint was filed with the Court on 11/27/2024

The Demurrer further alleges that Cross-Defendant made factual admissions and allegations that reveal that Gilbert lacks standing and fails to alleges facts sufficient to constitute a cause(s) of action. Jeannie also alleges that this Court has no jurisdiction of the subject of each alleged cause(s) of actions and that venue is improper in Contra Costa County, as there is a case proceeding in Probate Court in Alameda County.

Analysis

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. In reviewing the sufficiency of a complaint against a general demurrer, the court treats the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 319. "Standing is the threshold element required to state a cause of action" and, thus,

lack of standing may be raised by demurrer. *Martin v. Bridgeport Community Assn., Inc*. (2009) 173 Cal.App.4th 1024, 1031(Martin)) When a demurrer is made to a complaint in its entirety and not any specific causes of action, the demurrer can only be sustained if none of the causes of action would survive the challenge made by the demurrer*. Warren v. Atchison, T. & S. F. Ry. Co*. (1971) 19 Cal.App.3d 24, 29.

Ruling

The Court finds that Gilbert did not file a timely response to the demurrer. The Court finds that failure to file a timely response is a waiver of an objection, which results in an uncontested motion. As such, Shannon's Demurrer to Cross-Complaint of Defendant and Cross-Defendant Gilbert to the first through eight causes of action, and in its entirety pursuant to Cal. Code of Civ. Proc. § 430.10 is **sustained without leave to amend**. The Court finds that it lacks jurisdiction over the unrelated Cross-Complaint in its entirety and the alleged eight causes of action contained therein. Gilbert lacks standing to bring this unrelated Cross-Complaint. Venue is not proper in Contra Costa County.

Shannon shall prepare a and e-file a proposed order that conforms to this tentative ruling for the Court's signature thirty (30) days from the hearing on this matter. The proposed order shall be approved as to form by Gilbert.

14. 9:00 AM CASE NUMBER: C24-00277
CASE NAME: BRIHANNA OCHOA VS. LINDA HUGHES
***HEARING ON MINOR'S COMPROMISE RE: BRIHANNA SKY OCHOA**
FILED BY: OCHOA, BRIHANNA SKY
****TENTATIVE RULING:****

Background

This case arises out of a motor vehicle accident (car versus pedestrian) that was alleged to have occurred on or about 2/2/2022. On that date, Defendant Linda Hughes was alleged to have struck Decedent Salvador Victor Ochoa Castro, who is the parent of plaintiff, Brihanna Ochoa, a minor, causing damage and injuries. Ms. Ochoa was fatally injured and passed. Plaintiff Briahnna Ochoa is the surviving heir of Decedent. Daisy Hernandez was appointed by the Court as guardian ad litem for plaintiff on 7/5/2024. Subsequent settlement discussions resulted in a proposed settlement of $15,000 (the policy limits) for which this Petition to Approve Compromise of Claim is filed. Said Petition is filed pursuant to authority set forth in Cal. Code of Civ. Proc § 372 and Cal. Probate Code § 3500, 3600-3613.

On 11/25/2024, Counsel Malek Shraibati this Petition to Approve Compromise of Minor's Claim filed on behalf of Briahnna Sky Ochoa. After deducting costs, fees and satisfying liens, the net balance of proceeds for the Claimant is $6,534.97. Counsel lodged a proposed order approving Compromise of Minor's Claim and a proposed order to deposit funds into a blocked account that prohibits withdrawal of principal or interest without court order until minor reaches the age of 18. No opposition was filed

with the Court.

Disposition

The Court is satisfied that Petitioner has substantially met the requirements of the Probate Code to approve the Compromise of the Minor Brihanna Sky Ochoa's Claim as set forth in the Petition. There is no timely opposition to the Petition. Accordingly, the Court **grants** the Order Approving Compromise of Claimant Brihanna Sky Ochoa. The Court will execute the proposed Order / Judgment submitted by Petitioner approving compromise of Claim and Proposed Order to Deposited Funds in Blocked Account lodged with the Court on 11/25/2024. The Case Management Conference Scheduled for March 25, 2025 at 8:30 a.m. is confirmed for further handling of this case.

15. 9:00 AM CASE NUMBER: C24-01926
CASE NAME: PETER HO VS. CITY OF CITRUS HEIGHTS
HEARING ON DEMURRER TO: COMPLAINT - CONTINUED FROM 1/15/25 DUE TO JUDGE'S UNAVAILABILITY
FILED BY: CITY OF CITRUS HEIGHTS
TENTATIVE RULING:

Before the Court is a demurrer by defendant City of Citrus Heights ("City") to the complaint. For the reasons set forth, the hearing on the demurrer is continued to **9:00 a.m. on April 9, 2025**.

Meet and Confer

Under Code of Civil Procedure section 430.41, the party proposing to demur to a pleading must "meet and confer in person, by telephone, or by video conference with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer." (Code Civ. Proc. §430.41(a).) The City has submitted the Wakefield Declaration which attaches a September 27, 2024 letter to Plaintiff asking Mr. Ho to call to schedule the meet and confer, but the declarant does not indicate whether Mr. Ho responded and whether the parties conducted a telephonic or other discussion to address the case. (Wakefield Decl. ¶ 14 and Exh. 12.) Mr. Ho's response to the demurrer indicates he attempted to reach counsel for the City but was put on hold and never received a call back.

The Court enforces the "meet and confer" obligations under this statute. The Court requires Mr. Ho and the City to schedule and participate in a telephonic, in person, or videoconference meet and confer discussion to address the issues raised in the demurrer **by March 24, 2025** and for the City to file a supplemental declaration regarding the parties' compliance **by March 28, 2025**.

Supplemental Briefing on Jurisdiction

The City has raised the issue of venue and contends venue of the action is improper in this Court. (Code Civ. Proc. § 394(a).) The City argues that if the demurrer is not overruled, the venue of the action should be transferred to Sacramento County under Code of Civil Procedure section 394(a). The argument raises two issues on which the Court requests the City file and serve supplemental briefing **by March 28, 2025**: (1) whether improper venue is a jurisdictional defect in the complaint affecting

the Court's ability to rule on the City's demurrer to the complaint; and (2) whether the Court has any authority to transfer venue when the City has not made a motion to transfer venue. If the City concludes that improper venue is not jurisdictional and/or that venue of the action cannot be transferred without a motion to transfer venue, the City may so indicate in its supplemental briefing. Plaintiff may file and serve a response to the City's supplemental brief **by April 3, 2025**.

16. 9:00 AM CASE NUMBER: C24-02461
CASE NAME: KAYLA COLBERT VS. CRESCENT PARK EAH, L.P.
***HEARING ON MOTION IN RE: TO STRIKE PLAINTIFF'S COMPLAINT - CONTINUED FROM 1/15/25 DUE TO JUDGE'S UNAVAILABILITY**
FILED BY: CRESCENT PARK EAH, L.P.
****TENTATIVE RULING:****

Defendants Crescent Park EAH, L.P., Crescent Park EAH, LLC, Each-Contra Costa, Inc. and Lauren Muntasir's motion to strike punitive damages is **granted with leave to amend**. Plaintiff may file and serve an amended complaint by March 26, 2025.

Plaintiff Kayla Colbert is a residential tenant at a property in Richmond and is suing the defendants for various claims related to habitability problems at her rental. Defendants seek to strike the prayer for relief for punitive damages. (Comp. Prayer C.) Defendants also seek to strike "all references to punitive damages throughout the Complaint". Defendants did not identify the language to be stricken or which paragraphs include the references to punitive damages. If the motion is to strike an entire paragraph, cause of action, count, or defense of the pleading, the notice may refer to the part to be stricken by its number. Otherwise, the notice of motion must quote the portions to be stricken in full. (Rules of Court, rule 3.1322(a).) Since Defendants have not identified where in the complaint they want to strike "all references to punitive damages" that portion of the request is denied. Still, the motion identified the request to strike punitive damages in the prayer for relief by page and line number, which is compliant with the Rules of Court.

In general, punitive damages are available where there is fraud, oppression or malice. (Civil Code §3294.) 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." (Civil Code §3294(c)(1).) And Oppression "means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (Civil Code §3294(c)(2).)

Punitive damages are sometimes available in defective habitability cases. In *Stoiber v. Honeychuck* (1980) 101 Cal.App.3d 903 the court held that punitive damages were available in a defective habitability case. There plaintiff alleged various problems that her landlords did not repair, including "leaking of sewage from the bathroom plumbing; defective and dangerous electrical wiring; structural weaknesses in the walls; deteriorated flooring; falling ceiling; leaking roof; dilapidated doors; broken windows; and other unsafe and dangerous conditions." (*Id*. at 912.)

In *Penner v. Falk* (1984) 153 Cal.App.3d 858, 867 the court reversed the trial court's granting of a motion to strike punitive damages. There, the plaintiff was assaulted in the apartment building.

There had been prior criminal acts at the apartment building, tenants had requested that the landlord repair or replace the doors and gates to entrances for the building, but the landlord failed to do so. (*Id.* at 863.) The court found that the facts alleged showed long existing physical problems with the unit and that the landlord knew of the problems for up to two years and failed to take corrective actions. (*Id*. at 867.)

Here Plaintiff alleges that the unit had "rodents/insects and general dilapidation and lack of maintenance." (Comp. ¶11.) Plaintiff alleges that these defects were severe, longstanding and that Defendants knew of them because plaintiff made several repair requests and defendants should have noticed them. (Comp. ¶12.) Plaintiff also alleges that Defendants engaged in harassment and retaliation by refusing to repair the habitability defects. (Comp. ¶15.)

The Court finds that Plaintiff's allegations are insufficient to support an award of punitive damages. The alleged rodents,insects, general dilapidation and lack of maintenance do not rise to the level of malice or oppression. There could be additional facts that would show that the alleged defects were so severe that not repairing them amounted to malice or oppression and therefore, the Court will grant this motion with leave to amend.

17. 9:00 AM CASE NUMBER: C22-01760
CASE NAME: WEN YU VS. HOI SU
***HEARING ON MOTION IN RE: FOR MONETARY SANCTIONS**
FILED BY: YU, WEN SHEN
****TENTATIVE RULING:****

Background

On 1/10/2025, Plaintiff Wen Shen Yu ("Plaintiff") filed a Notice of Motion and Motion for Monetary Sanctions against Defendants Gillermo E. Hernandez ("Hernandez") and Coldwell Banker Bartles ("Coldwell Banker") (Collectively, Defendants) arising out of the Motion of Summary Judgment, or in the alternative, Motion for Summary Adjudication as to the first, second, third, fourth, fifth, seventh, eighth and ninth causes of action that was filed by Defendants and denied by the Court on 1/8/2025 in its entirety. The Court also denied the motion for summary judgment on the Cross-Complaint filed by Hoi Su and Calyx Realty. The Court specifically found that there are triable issues of fact and/or that Defendants failed to meet their burden that they are entitled to judgment as a matter of law to the causes of action which were the subject of the motions. (For convenience and avoid confusion between the summary judgment motions and this Motion for Monetary Sanctions, the Motions for Summary Judgment and Summary Adjudication are abbreviated and referred to collectively as "MSJ.")

This Motion for Sanctions was originally calendared to be heard on 4/23/2025, but advanced to 3/12/2025 after the Court granted Plaintiff's application for order shortening time. Through this motion, Plaintiff seeks $15,776.50 against Defendants as more thoroughly set for the motion. **The Court denies Plaintiffs motion for sanctions as set forth herein.**

Background

This action arises out of Plaintiff's purchase of a residential real property located at 2420 Tomar Ct. in Pinole in or about June 2021. (Compl. ¶¶ 8, 18, 19.) He alleges he wanted a property with large living area, and square footage was important to him in the purchase. (Compl. ¶¶ 9, 11-17, 20.) Plaintiff alleges the MLS statement listed the square footage of the property as 2,950, but the actual square footage was approximately 1,000 less. (Compl. ¶¶ 20-22.) He contends he expended $80,000 to re-roof the property and then sold it in May 2022 for approximately $47,000 less than what he bought it for. (Compl. ¶¶ 19, 23, 24.) Plaintiff alleges he mediated and settled claims against the seller, but he has sued the seller's real estate agent and broker, defendant Guillermo Hernandez and Bartels-Realtors, Inc. (for convenience, collectively the "Bartels Defendants").

On or around October 7, 2024, the Bartels Defendants filed their MSJ arguing that there are no triable issues of justifiable reliance and that the Transfer Disclosure Statement did not require the Seller's Agent to disclose information regarding the amount of living space. The Defendants moved for summary judgment, or alternatively, for summary adjudication of each of the eight causes of action. (The Bartels Defendants are not named in the sixth cause of action for breach of fiduciary duty, which Yu asserts only against Yu's real estate agent and broker, Hoi Su and Calyx Realty, Inc.)

In addition, Su and Calyx Realty, Inc. have cross-complained against the Bartels Defendants for contribution and/or indemnity and declaratory relief, seeking a declaration that if Su and Calyx are found liable to Yu, the fault lies in whole or in part with the Bartels Defendants and that they are entitled to indemnity or contribution from the Bartels Defendants for any liability they have to Yu. The Bartels Defendants also move for summary judgment on the Su/Calyx cross-complaint. Plaintiff opposed the MSJ. In denying the MSJ, the Court found multiple instances of triable issues of material facts as set forth below.

Analysis

Section 128.5

Sanctions against frivolous lawsuits and legal tactics in California State Courts can be sought under Cal. Code of Civ. Proc. §§ 128.5 and 128. Section 128.5 authorizes the Court to impose sanctions of reasonable expenses, including attorney fees, against litigants acting in bad faith, while Section 128.7 allows sanctions against legal tactics that involve Court documents, such as filing insincere motions with the intent to delay or harass.

Under Section §128.5, a Court has the power to order a party or the party's attorney to pay reasonable expenses, including attorney fees, incurred "as a result of actions or tactics, made in bad faith, that are frivolous or solely intended to cause unnecessary delay." CCP §128.5(a).Section 128.5 requires that the moving party show "bad faith", which means "simply that the action or tactic is being pursued for an improper motive." *Summers v. City of Cathedral City* (1990) 225 Cal.App.3d 1047, 1072. A subjective bad faith standard applies to CCP §128.5 motions. Marriage of *Sahafzadeh-Taeb & Taeb* (2019) 39 Cal.App.5th 124, 141 (party seeking sanctions under CCP §128.5 must show both bad faith—i.e., inappropriate conduct, vexatious tactics, or improper motive ("subjective bad faith")—and a frivolous action or tactic ("objective bad faith"). A motion is "frivolous" and in "bad faith" where "any reasonable lawyer would agree it is totally devoid of merit," such as when it is lacking any basis in statutory or case law or made without any necessary evidence to support it.

Karwasky v. Zachay (1983) 146 Cal.App.3d 679, 681. There must be a showing of subjective bad faith for sanctions under Section 128.5. (See, e.g., *In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1220-21.

The fact a MSJ lacks merit is not enough by itself to justify an award of sanctions under Section 128.5; it is error to award sanctions if it was not unreasonable for the moving party's attorney to think the issues raised were arguable, and there is no evidence of subjective bad faith or improper motive. (*Garcia v. Sterling* (1985) 176 Cal.App.3d 17, 20*; Bruno v. Superior Court (Gridley)* (1990) 219 Cal.App.3d 1359, 1365.)

Section 128.7

Code of Civil Procedure §128.7 effectively makes the signature by an attorney or unrepresented party on a pleading or other similar paper a certification "to the best of the person's knowledge, information, and belief" that the action has merit. CCP §128.7(a)–(b). Under §128.7, before presenting a pleading or similar paper, counsel must make reasonable efforts to ensure that (1) it is not being presented primarily for an improper purpose; (2) the claims, defenses, and other legal contentions are warranted; and (3) the allegations and other factual contentions have evidentiary support and the denials of factual contentions are warranted on the evidence or based on a lack of information or belief. CCP §128.7(b)(1)–(4). Section 128.7(b) sets out requirements that parties and their attorneys must meet when presenting papers to the court (see §§6.11–6.18). Papers are "presented" to the court by signing, filing, submitting, or later advocating them. CCP §128.7(b). Violations of the requirements of §128.7, e.g., a finding that a paper has been presented primarily for an improper purpose may give rise to liability for sanctions, including attorney fees. See CCP §128.7(d).

Ruling

This Court does not re-litigate the underlying Motion for Summary Judgment, or the merits of Judge Marquez's rulings on said Motions; nor will it allow the parties or counsel to re-open argument of the underlying motions. Instead, the Court views that the denial of the Bartels Defendants' MSJ, while arguable, is the result of the Court's finding that the Defendants were unable to sustain their burden that there were no triable issues of material fact and that Defendants were entitled to a judgment as matter of law. The Court's order does not contain references any frivolous action or tactic, subjective bad faith, or actions that are intended to delay this case.

Indeed, the Court found that several material facts that would preclude summary judgment:

- "Plaintiff Yu offers two additional material facts to support that triable issues of material fact exists precluding summary judgment… He points to ta text message sent by Su to the seller's agent after the sale closed questioning the square footage of the property and contends that Bartels Defendants "admitted their liability" in emails exchanged after escrow closed."
- "there is still a question of fact whether the buyer's and buyer's agent's reliance on the square footage repeatedly represented by the seller's agent as 2,950 square feet in the face of the appraisal was so "manifestly unreasonable" or "preposterous" as to warrant determination of

this cause of action by the Court as a matter of law rather than by the trier of fact. For the reasons stated above, there are triable issues regarding the fraudulent concealment cause of action."

- "The Bartels Defendants may be able to demonstrate that Plaintiff did not, or could not have, justifiably and reasonably relied on the square footage of the property stated in the MLS public listing, in Hernandez's written advertisement flyer, and in Hernandez's oral representations to Su. The Bartels Defendants may be able to prove to the trier of fact that it was preposterous or manifestly unreasonable for either Su or Yu himself to believe the square footage was approximately 2,950 based on the available information, their inspection of the property, and their "own intelligence and information." (citations.) The Court merely holds that it cannot reach that determination as a matter of law in the face of the conflicting evidence and inferences."

- " Public policy supports that a seller's agent may not intentionally, in bad faith, knowingly make misrepresentations about a property and then rely on the availability of information discoverable with "diligent attention and observation" to exonerate the seller's agent from liability for violation of the good faith requirements of Civil Code section 1102 et seq. and 2079 et seq.s, unless the misrepresentations are so obviously false, unreasonable or preposterous as to preclude the buyer's reliance on them. Whether that is the case here is a question of fact for the trier of fact. Summary adjudication of the third and fifth causes of action is therefore denied."

- "Yu's fourth, seventh, and eighth causes of action claim all allege negligence founded on the Bartels Defendants' misrepresentation of the square footage of the property. However, they also include allegations regarding the Bartels Defendants' specific affirmative duties of disclosure under Civil Code section 2079 which are not alleged in the second cause of action for negligent misrepresentation. (Compare Compl. ¶¶ 33-39 to Compl. ¶¶ 45 and 62-66 [citing, inter alia, Civil Code section 2079), and 68 [incorporating preceding allegations].) These additional factual allegations distinguish this case from Holcomb and the Court otherwise concludes that the moving parties have failed to carry their burden of showing that Plaintiff cannot prove any particular element of these claims or that there is a complete defense to them. The motion for summary adjudication of the fourth, seventh, and eighth causes of action is therefore denied.

  [See Minute Order on MSJ 1/8/2025]

A Court's ruling denying summary judgment or summary adjudication does not, by itself, infer that the motions were made in bad faith, absent any findings that Defendants had an improper motive to file the subject motions. Section 128.5 requires a showing of a meritless or frivolous action or tactic, and also bad faith. *Levi v. Blum* (2001) 92 Cal.App.4th 635, 635-636. Here, after a thorough analysis of each of the grounds for MSJ/ MSA, Judge Marquez did not make any findings of subjective bad faith in rendering the Court's ruling on the MSJ. The record is devoid of any mention of tactics that the Bartles Defendants engaged in which caused unnecessary delay. There are no findings that the

arguments raised by the Bartles Defendants lacked merit or were frivolous.

Even though Defendants did not prevail in their MSJ, the Court finds that their motions were not brought in bad faith, frivolous, or solely intended to cause unnecessary delay. Plaintiff does not submit sufficient evidentiary support that the Bartels Defendants' MSJ were filed only to cause delay, to increase the cost of litigation, or for other improper motive. The evidentiary facts presented to this Court suggest otherwise. Accordingly, Plaintiff's motion for sanctions is **denied**, as it is not supported by sufficient evidence for this Court to grant this motion for sanctions and fees under Cal. Code of Civ. Proc. §§ 128.5 or 128.7.

Counsel for Bartles Defendants are ordered to prepare an order that conforms to this ruling and to submit it to Plaintiff's Counsel for approval as to form and to file the order within 30 days of the date of this hearing.

18. 9:00 AM CASE NUMBER: MSC21-02081
CASE NAME: YUE-RONG LI VS CHEVRON ORONITE
***HEARING ON MOTION FOR DISCOVERY DISCOVERY REFEREE MOTION CONTINUED FROM 1/27/25 HEARING**
FILED BY:
****TENTATIVE RULING:****

This matter is moot. The Court has already issued an order on January 27, 2025. The Parties were required only to select a discovery referee, which they have done.

The parties filed a Joint Memorandum re Proposed Order Appointing Discovery Referee on 3/6/2025. In reviewing this joint memorandum, the Court understands that Defendant intends to submit a proposed Order Appointing Referee that incorporates this Court's ruling and finding of necessity. Upon submittal to the Court of an order that complies strictly and in verbatim with the Court's ruling on January 26, 2025, the Court will appoint Hon. James Lambden (Ret.) as the discovery referee pursuant to the Court's ruling on January 27, 2025. Any other proposals by Plaintiff to revise Judge Marquez's orders is viewed as an improper and untimely Motion for Reconsideration.

For reference, the January 27, 2025 ruling set forth the following findings and orders:

> "The Discovery Referee Motion is GRANTED and the Court orders the appointment of a discovery referee (the "Discovery Referee") pursuant to Code of Civil Procedure section 640.
>
> The Court finds, in its discretion, that such an appointment is necessary. The Court finds that the multiple discovery motions, the existing disputes raised by the Pending Discovery Motions and complexity of such issues require discovery reference.
>
> The Discovery Referee is appointed to hear and determine the Pending Discovery Motions and any further discovery matters herein.
>
> Costs of the Discovery Referee shall be apportioned 20% to Plaintiff and 80% to Defendant, except that the costs attributable to any motion to compel discovery shall be subject to

reallocation in the discretion of the Discovery Referee.

The parties to meet and confer within thirty (30) days on a form of Discovery Referee appointment order.

In light of the forgoing, the Pending Discovery Motions are taken off calendar and referred to the Discovery Referee, as set forth above."

Defendants' counsel shall prepare and e-file a proposed order that complies with Judge Marquez's orders of January 27, 2025, with exception of inserting Justice Lambden's name as the discovery referee within 10 days. Said proposed order shall be approved as to form by Plaintiff's counsel.

19. 9:00 AM CASE NUMBER: C23-01292
CASE NAME: PATRICIA KUBICHEK VS. MICHAEL YRUETA
***HEARING ON MOTION IN RE: CONTINUED FROM 2/5/25**
FILED BY:
****TENTATIVE RULING:****

On the Court's own motion, the hearing on this matter is continued to Wednesday, March 26, 2025.

Courtroom Clerk's Session
Add-On

20. 9:00 AM CASE NUMBER: C24-03523
CASE NAME: MELANIE MAYS VS. MARINA ALLEN
***EX PARTE HEARING RE APPLICATION FOR ORDER COMPELLING COMPLIANCE OF TRO FILED BY MARINA ALLEN**
FILED BY:
****TENTATIVE RULING:****

See Line No. 2. Parties to appear via Zoom or in person.