SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 39
JUDICIAL OFFICER: EDWARD G WEIL
HEARING DATE: 05/01/2025

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 email or call the department rendering the decision to request argument and to specify the issues to be argued. 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 their 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. (*Local Rule* 3.43(2).)

Note: In order to minimize the risk of miscommunication, parties are to provide an **EMAIL NOTIFICATION TO THE DEPARTMENT OF THE REQUEST TO ARGUE AND SPECIFICATION OF ISSUES TO BE ARGUED**. Dept. 39's email address is: dept39@contracosta.courts.ca.gov. Warning: this email address is not to be used for any communication with the department except as expressly and specifically authorized by the court. Any emails received in contravention of this order will be disregarded by the court and may subject the offending party to sanctions.

Submission of Orders After Hearing in Department 39 Cases

The prevailing party must prepare an order after hearing in accordance with CRC 3.1312. If the tentative ruling becomes the Court's ruling, a copy of the Court's tentative ruling **must be attached to the proposed order** when submitted to the Court for issuance of the order.

Law & Motion

1. 9:00 AM CASE NUMBER: C22-01372
CASE NAME: AMERICA MORALES VS. ACORN SOLUTIONS, LLC, DBA CHOCOLATE WORKS EAST BAY, A CALIFORNIA CORPORATION
***HEARING ON MOTION IN RE: FOR CLASS CERTIFICATION & APPOINTMENT OF CLASS REPRESENTATIVES AND CLASS COUNSEL**
FILED BY: MORALES, AMERICA
****TENTATIVE RULING:****

Continued by stipulation and order to June 5, 2025, 9:00 a.m.

2. 9:00 AM CASE NUMBER: C23-00348
CASE NAME: LINDA KANTUN VS. SAFEWAY, INC
***HEARING ON MOTION IN RE: TO BE RELIEVED AS COUNSEL**

FILED BY:
TENTATIVE RULING:

The motion is granted. Counsel is directed to serve the order relieving counsel in compliance with CRC 3.1362(d). Counsel is not formally relieved until the order is served on the client and proof of service is filed with the court.

3. 9:00 AM CASE NUMBER: C23-01450
CASE NAME: JEANIE BURTON VS. JOINN BIOLOGICS US INC.
***HEARING ON MOTION IN RE: FOR APPROVAL OF PAGA SETTLEMENT**
FILED BY: BURTON, JEANIE
TENTATIVE RULING:

Jeanie Burton moves for approval of the settlement of her PAGA suit against defendant JOINN Biologics US Inc.

A. Background of the Case and Terms of Settlement

This a PAGA case, alleging a variety of violations of the Labor Code concerning failure to provide rest and meal breaks, failure to pay for off-the-clock work, and cascading derivative violations. Plaintiff has given notice to the LWDA. The complaint was filed June 12, 2023. A First Amended Complaint was filed on August 24, 2023. The original complaint was a putative class action, but the parties agreed to dismiss the class action allegations, leaving only the PAGA claim.

The total settlement payment is $30,000. This is composed of attorney's fees of $10,000, litigation costs of $2,000, $2,000 in costs to the settlement administrator (ILYM Group), and a $5,000 enhancement payment to the plaintiff. The remaining amount would be a PAGA penalty of $11,000 which would be apportioned 75% to the LWDA and 25% to the aggrieved employees, i.e., $8,250 to the LWDA and $2,750 to the aggrieved employees.

The settlement indicates that there are an estimated 44 aggrieved employees. The payments from the employee share of the penalty will be distributed among the employees based on the number of pay periods each individual worked during the PAGA period. The average employee share will be about $62.

Plaintiff's counsel attests that they engaged in extensive arms-length settlement negotiations. Informal discovery was undertaken. Counsel's declaration provides a general discussion of the strengths and weaknesses of the case. He estimates the maximum potential recovery at $147,000, and explains why the settlement is justified.

Plaintiff provided required notices to the LWDA of the initial claims and of the proposed settlement.

The settlement provides a process for mailing the notices to the aggrieved employees, who will not have to submit a claim, along with a process for following up on returned mail. Because this is a PAGA settlement, not a class action, there is no opportunity to object or opt out.

The settlement provides that the value of checks uncashed after 180 days will be turned over

to the State Controller's Office Unclaimed Property Division in the names of the aggrieved employees.

The settlement releases any claims under PAGA that "arose during the PAGA Release Period that were alleged in the Action … and all other claims under PAGA that could have been premised on the facts, claims causes of action, or legal theories described above and in Plaintiff's LWDA Letter and the operative Complaint[.]" (The PAGA period is August 24, 2022, through the date of approval of the settlement by the Court.) Under recent appellate authority, limitation to those claims with the "same factual predicate" as those alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 ["A court cannot release claims that are outside the scope of the allegations of the complaint." "Put another way, a release of claims that goes beyond the scope of the allegations in the operative complaint' is impermissible." (*Id*., quoting *Marshall v. Northrop Grumman Corp*. (C.D. Cal.2020) 469 F.Supp.3d 942, 949.) Similarly, in a PAGA case, the release is limited to claims set forth in the LWDA notice.

B. Standards for Review of a PAGA Settlement

Settlements in PAGA cases must be approved by the court. (Labor Code § 2699(s)(2).) The Court of Appeal's decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the "fair, reasonable, and adequate" standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.) The Court also held that the trial court must assess "the fairness of the settlement's allocation of civil penalties between the affected aggrieved employees[.]" (*Id*., at 64-65.)

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, "[t]he court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter." (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because "[w]here the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutatory purpose." (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 46, 63.)

C. Application to this settlement

Plaintiff indicates that the settlement is fair and was evaluated by counsel based on adequate information and arms-length negotiation. Even assuming success on the merits of each claim, PAGA gives the court discretion to reduce penalties for a variety of reasons, including where "based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory." (Labor Code, § 2699(e)(2).) These factors make the result hard to predict. Considering counsel's analysis, the Court finds that the recovery is fair, reasonable, and adequate.

Labor Code section 2699(k)(1) provides that a prevailing employee in a PAGA action may recover attorney's fees. Plaintiff seeks one-third of the total settlement amount as fees, relying on the "common fund" theory. Even a proper common fund-based fee award, however, should be reviewed

through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: "If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." (*Id*., at 505.) Although *Lafitte* concerns a class action, not a PAGA-only case, this Court views the use of a lodestar cross-check as appropriate here.

Plaintiff has conducted a lodestar cross-check. Counsel calculate 31 hours, at hourly rates ranging from $975 or $575, depending on the attorney. This results in a lodestar of approximately $27,825, with an implied multiplier of 0.36. Without necessarily endorsing every individual component of the lodestar, it is clear in this case that no adjustment is required.

The statute does not expressly address how the 25% plaintiff's share of the penalties is to be allocated among all of the aggrieved employees. (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 382.) One court has held, however, that the entire 25% share of penalties could not be awarded to the plaintiff. (*Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742-743.) In *Moorer*, the plaintiff had a claim worth about $9,500, yet was collecting penalties of $148,000, and keeping the entire employee share, causing the court to be concerned that the plaintiff had lost sight of the fact that the purpose of the action is to benefit the public, not private parties. Allocation based on pay periods is reasonable here, but the enhancement fee must be reviewed for its effect on the allocation.

The plaintiff's enhancement fee of $5,000 is claimed to be justified on the basis of plaintiff's time spent on the matter (about 25 hours), and the risks she took as plaintiff. Moreover, the entire recovery for the 44 aggrieved employees is $2,750, an average of $62 for each employee. While not as extreme as the allocation in *Moorer,* the Court finds that the proposed allocation is disproportionately allocated to the plaintiff. The enhancement fee is reduced to $1,000, with the $4,000 difference allocated to PAGA penalties.

Costs of $2,000 are sought. They are reasonable and are approved.

The administrator's costs of $2,000 are reasonable and are approved.

D. Conclusion

The Court finds that the settlement is fair, reasonable, and adequate, and grants the motion to approve, conditioned on modification of the enhancement award to $1,000, and modification of the PAGA penalty to $15,000.

Counsel are directed to prepare an order incorporating the provisions of this ruling.

In addition, the order should include a compliance hearing for a suitable date (after the settlement has been implemented), chosen in consultation with the Department's clerk. One week before the compliance hearing, counsel shall file a compliance statement. 5% of the attorney's fees shall be withheld by the Administrator pending the compliance hearing.

4. 9:00 AM CASE NUMBER: C23-02140

CASE NAME: THE CONSTRUCTION ZONE, LLC VS. JOE PEIXOTO
***HEARING ON MOTION IN RE: BE RELIEVED AS COUNSEL AS TO JOE PEIXOTO**
FILED BY:
****TENTATIVE RULING:****

The motion is granted. Counsel is directed to serve the order relieving counsel in compliance with CRC 3.1362(d). Counsel is not formally relieved until the order is served on the client and proof of service is filed with the court.

5. 9:00 AM CASE NUMBER: C23-02140
CASE NAME: THE CONSTRUCTION ZONE, LLC VS. JOE PEIXOTO
***HEARING ON MOTION IN RE: BE RELIEVED AS COUNSEL AS TO ADVANCED TRENCHLESS, INC.**
FILED BY:
****TENTATIVE RULING:****
The motion is granted. Counsel is directed to serve the order relieving counsel in compliance with CRC 3.1362(d). Counsel is not formally relieved until the order is served on the client and proof of service is filed with the court. The party is advised that as a corporation, it can appear only through counsel. (*Merco Construction Engineers, Inc. v. Mun. Ct. (Sully Miller Contracting Co*.) (1978) 21 Cal.3d 724, 731.)

6. 9:00 AM CASE NUMBER: C23-02855
CASE NAME: YVONNE THOMPSON VS. SAFEAMERICA CREDIT UNION
***HEARING ON MOTION IN RE: PRELIMINARY APPROVAL**
FILED BY: THOMPSON, YVONNE POPE
****TENTATIVE RULING:****

Plaintiff Yvonne Thompson moves for preliminary approval of her class action settlement with defendant SafeAmerica Credit Union. The case arises from overdraft fees. **Hearing required.**

A. Background and Settlement Terms

The complaint was filed on November 9, 2023, raising class action claims on behalf of members of the Credit Union who were charged overdraft fees in three situations: (1) for debit card transactions where there was a sufficient available balance at the time the transaction was authorized, but insufficient available balance at the time the transaction was presented to SafeAmerica for payment and posted to a member's account (called ASPN, for "authorize positive, settle negative); (2) for fees on a "retry" of a previously rejected check ("retry fees"); and (3) fees where a member actually had a sufficient ledger balance ("sufficient funds fees").

The settlement would create a gross settlement fund of $390,000 fund. The class representative payment to the plaintiff would be up to $5,000. Attorney's fees would be up to one third of the settlement ($130,000). The settlement administrator's costs (Kroll Settlement Administration) would not exceed $32,990.89. The net amount paid directly to the class members would be about $222,009. The fund is non-reversionary. Based on the estimated class size of 2,797, the average net payment for each class member is approximately $79.

The proposed settlement would certify three classes: (1)the ASPN class; (2) the Retry Fee class; and (3) the Insufficient Funds class, all for charges during the period November 9, 2019, to

February 29, 2024.

The class members will not be required to file a claim. They will be given notice, through a postcard, and may object or opt out of the settlement. Funds would be apportioned to class members based on the amount of overdraft charges they paid.

Various prescribed follow-up steps will be taken with respect to mail that is returned as undeliverable. If checks are uncashed 60 days after mailing, the settlement administrator will follow up on the address. Any uncollected funds will be provided 50% to the Food Bank of Contra Costa and 50% to the Alameda County Community Food Bank.

Because the settlement would include payments to two cy pres beneficiaries, counsel must comply with Code of Civil Procedure section 384(b), which requires that cy pres funds be provided "to nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent[.]" In addition, they must comply with Code of Civil Procedure section 382.4. which requires counsel to "notify the court if the attorney has a connection to or a relationship with a nonparty recipient of the distribution that could reasonably create the appearance of impropriety as between the selection of the recipient of the money or thing of value and the interests of the class." (CCP § 382.4.)

Counsel attests that the settlement contains release language covering only claims in the complaint related to APSN Fees, Retry Fees, and Sufficient Funds Fees. Only the class representative executed a general release. Under recent appellate authority, the limitation to those claims with the "same factual predicate" as those alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 ["A court cannot release claims that are outside the scope of the allegations of the complaint." "Put another way, a release of claims that goes beyond the scope of the allegations in the operative complaint' is impermissible." (*Id*., quoting *Marshall v. Northrop Grumman Corp*. (C.D. Cal.2020) 469 F.Supp.3d 942, 949.)

Counsel for both parties are experienced in these types of matters, and used their experience to evaluate the case. They also relied on a mutually acceptable third-party to analyze the case, and who estimated the actual damages to be $730,771. Defendant's ability to pay was also considered, since they reported a net loss in the first quarter of 2024 of $1.3 million.

B. Legal Standards

The primary determination to be made is whether the proposed settlement is "fair, reasonable, and adequate," under *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801, including "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction … to the proposed settlement." (See also *Amaro v. Anaheim Arena Mgmt., LLC, supra,* 69 Cal.App.5th 521.)

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, "[t]he court cannot surrender its duty to see that the judgment

to be entered is a just one, nor is the court to act as a mere puppet in the matter." (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because "[w]here the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutatory purpose." (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

C. Attorney fees

Plaintiffs seek one-third of the total settlement amount as fees, relying on the "common fund" theory. Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: "If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." (*Id*., at 505.) Following typical practice, however, the fee award will not be considered at this time, but only as part of final approval.

Similarly, litigation costs and the requested representative payment of $5,000 for plaintiff will be reviewed at time of final approval. Criteria for evaluation of representative payment requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.

D. Conclusion

Hearing required, in order to set a date for a supplemental submission and a date for a continued hearing.

Although the Miller Declaration attests that the settlement agreement is attached as Exhibit A, the version of the declaration filed with the Court does not include the agreement. Counsel need to file an amended declaration that attaches the declaration.

In addition, counsel need to submit a supplemental declaration establishing compliance with Code of Civil Procedure sections 384(b)and 382.4.

Assuming that these requirements are met, the Court does not anticipate any other barrier to preliminary approval.

If the motion ultimately is granted, counsel will be directed to prepare an order reflecting this tentative ruling, the other findings in the previously submitted proposed order, and to obtain a hearing date for the motion for final approval from the Department clerk. Other dates in the scheduled notice process should track as appropriate to the hearing date. The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented (although the date of the compliance hearing should not be set until the hearing on the final approval). Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing date. 5% of the attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court.

7. 9:00 AM CASE NUMBER: C23-03161
CASE NAME: ALISCHA WILSON VS. INTEX RECREATION CORP.,
HEARING ON DEMURRER TO: RE 1ST AMENDED COMPLAINT
FILED BY: INTEX RECREATION CORP.,
TENTATIVE RULING:

The hearing on the motion to quash filed by defendants, Intex Marketing Ltd. and Intex Industries (Xiamen) Company Ltd., is **continued to July 17, 2025**, at 9:00 a.m. to allow plaintiff time to conduct jurisdictional discovery. The discovery shall be limited to the issue of personal jurisdiction. Based on the evidence obtained through this process, plaintiffs' supplemental submission will be due June 24, 2025, and defendants' response will be due July 3, 2025. These dates are set by the Court as a default, and if the parties agree on a different schedule, they may submit an appropriate stipulation.

Background

Plaintiff Alischa Wilson filed this putative class action against defendants over allegedly false claims by defendants over the durability of their product, the Kool Splash Pool Water Slide. The false claims are alleged to have led members of the putative class to purchase defective products that did not perform as advertised and, in some cases, suffer physical injuries because of the defects. Plaintiff alleges the putative class members were damaged by the loss of the purchase price of the product.

The initial complaint was filed in December 2023 against defendant Intex Recreation Corp. ("IRC"). IRC demurred, but prior to the hearing, plaintiff filed a First Amended Complaint ("FAC"), which is now at issue in the present motions. The FAC named two additional defendants, Intex Marketing Ltd. ("IML"), and Intex Industries (Xiamen) Company Ltd. ("Xiamen").

The FAC asserts the following "counts": (1) Breach of Implied Warranty of Fitness for a Particular Purpose, (2) Breach of Implied Warranty of Merchantability, (3) Breach of Implied Warranty of Fitness for a Particular Purpose Pursuant to the Song-Beverly Consumer Warranty Act; (4) Breach of Implied Warranty of Merchantability Pursuant to the Song-Beverly Consumer Warranty Act; (5) Violation of the California Business & Professions Code § 17500 et seq. for False and Misleading Advertising; and (6) Violation of the Unfair Competition Law, Bus. & Prof. Code § 17200, et seq.

In response to the FAC, IML and Xiamen filed a motion to quash pursuant to Code Civ. Proc., § 418.10.

Standard

When a defendant moves to quash service of process on jurisdictional grounds, the plaintiff has the initial burden of demonstrating facts justifying the exercise of jurisdiction. (*Jayone Foods, Inc. v. Aekyung Industrial Co. Ltd*. (2019) 31 Cal.App.5th 543, 553, citations omitted.) If the plaintiff meets this initial burden, then the defendant has the burden of demonstrating that the exercise of jurisdiction would be unreasonable. (*Ibid*.)

Section 410.10 of the California Code of Civil Procedure provides: "A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States." The Judicial Council comment on section 410.10 states: "All recognized bases of judicial jurisdiction are included" and goes on to list nine bases of judicial jurisdiction over corporations: (1) incorporation or organization in a state, (2) consent, (3) appointment of an agent, (4) appearance, (5) doing business in a state, (6) doing an act in a state, (7) causing an effect in a state by an act or omission elsewhere, (8) ownership, use or possession of a thing in a state, and (9) other relationships to a state.

Opinions in the wake of the pathmarking *International Shoe* decision have differentiated between general or all-purpose jurisdiction, and specific or case-linked jurisdiction. (*Goodyear Dunlop Tires Operations, S.A. v. Brown* (2011) 564 U.S. 915, 919.) A court with general jurisdiction may hear any claim against that defendant. (*Bristol-Myers Squibb Co. v. Superior Court* (2017) 582 U.S. 255, 262.) Plaintiffs do not contend that IML or Xiamen are subject to general jurisdiction. (Opposition, 5, note 3.) Accordingly, the Court need only examine the question of specific jurisdiction.

To establish specific jurisdiction, a plaintiff must demonstrate, as to each non-resident defendant, that (1) the nonresident defendant has purposefully directed its activities at the forum; (2) the litigation is related to, or arises out of, these forum-related activities; and (3) exercise of jurisdiction is reasonable and complies with traditional notions of fair play and substantial justice. The cause of action need not arise within the forum state as long as a sufficient "nexus" with defendant's forum-related activities is shown. (*Cornelison v. Chaney* (1976) 16 Cal.3d 143, 149-150.) Once a court has concluded that the first two prongs of the test have been satisfied, the burden shifts to the defendant to show the exercise of jurisdiction would be unreasonable under the third prong. (*Strasner v. Touchstone Wireless Repair & Logistics, LP* (2016) 5 Cal.App.5th 215, 221-22, 226, internal citations omitted.)

1. Intex Industries (Xiamen) Co., Ltd.

Xiamen argues, and submits evidence that, it "has no property, offices, employees, agents, or bank accounts in California, does not sell goods in California, neither solicits business nor advertises in California, and is not licensed to do business in California." (Memorandum of Points and Authorities in Support of Motion, 7:20-24.) Xiamen further submits it did not place any products into the stream of commerce in California, nor anywhere in the U.S., but that it would have sold the product to nonparty Intex Development Co., Ltd., a Hong Kong corporation that would have then resold (within China) to either (1) retailers and wholesalers, or (2) IRC, and they, in turn, would have imported the slide to the U.S. (*Id*. at 7:28-8:6.) Xiamen contends the marketing material containing any statements at issue was not created by Xiamen, instead coming from sources such as sellers on Amazon. (*Id*. at 8:7-12.)

2. Intex Marketing Ltd.

IML submits that it did not place the slide at issue here into the stream of commerce "in California, nor anywhere in the US." IML has no property, offices, employees, agents, or bank accounts in California, does not sell goods in California, neither solicits business nor advertises in California, and is not licensed to do business in California. (Memorandum of Points and Authorities in Support of Motion, 8:16-19.) IML contends it did not "create, prepare, or approve the marketing materials, advertising language, or similar materials about the slide which is the subject of this suit. (*Id*., 8:23-24.) IML concedes that it owns patents, trademarks, and copyrights in the U.S., but contends this is not related specifically to California. (*Id*., 8:26-27.)

Continuance for Discovery

Plaintiff requests a continuance of the hearing in order to conduct jurisdictional discovery. The facts offered by Xiamen and IML, mentioned above, appear to weigh in favor of granting the motion. On the other hand, the facts requested in plaintiff's targeted jurisdictional discovery highlight that the information offered by moving defendants may selectively portray only those issues that would tend to negate any relationship with the forum state. (See Declaration of Luke Landers in Support of Opposition, Ex. M.) Plaintiff served her discovery on April 4, 2025, but at the time of the

opposition, neither IML nor Xiamen had responded.

IML and Xiamen urge denial of the continuance, but the authorities they cite for denial are distinguishable. *Yamashita v. LG Chem, Ltd.* (9th Cir. 2023) 62 F. 4th 496, involved an extremely fact-specific discussion by the appellate court in affirming a district court's denial of a continuance. The same factual basis is not present here. As for *Preciado v. Freightliner Custom Chassis Corp*. (2023) 87 Cal.App.5th 964, the case is also easily distinguishable based on the plaintiffs in that case failing to articulate what facts they would seek to develop if granted a continuance. (*Id*. at 973.) In contrast, plaintiff here has already served discovery requests which she attaches to a declaration by counsel.

A plaintiff is generally entitled to conduct discovery with regard to a jurisdictional issue before a court rules on a motion to quash (*Mihlon* v. *Superior Court* (1985) 169 Cal.App.3d 703, 710.) Plaintiff has provided enough information to suggest that she may be able to establish specific jurisdiction. Moreover, such continuance would enable plaintiff to obtain admissible evidence.

8. 9:00 AM CASE NUMBER: C23-03161
CASE NAME: ALISCHA WILSON VS. INTEX RECREATION CORP.,
***HEARING ON MOTION IN RE: QUASH SERVICE OF SUMMONS**
FILED BY: INTEX RECREATION CORP.,
****TENTATIVE RULING:****

The demurrer filed by defendant Intex Recreation Corp. is sustained in part, with leave to amend. The demurrer is **sustained with respect to the first and second causes of action, with leave to amend**, but otherwise overruled. Any amended complaint must be filed and served by May 12, 2025.

Background

Plaintiff Alischa Wilson filed this putative class action against defendants over allegedly false claims by defendants over the durability of their product, the Kool Splash Pool Water Slide. The false claims are alleged to have led members of the putative class to purchase defective products that did not perform as advertised and, in some cases, suffer physical injuries because of the defects. Plaintiff alleges the putative class members were damaged by the loss of the purchase price of the product.

The initial complaint was filed in December 2023 against defendant Intex Recreation Corp. ("IRC"). IRC demurred, but prior to the hearing, plaintiff filed a First Amended Complaint ("FAC"), which is now at issue in the present motions. The FAC named two additional defendants, Intex Marketing Ltd. ("IML"), and Intex Industries (Xiamen) Company Ltd. ("Xiamen").

The FAC asserts the following "counts": (1) Breach of Implied Warranty of Fitness for a Particular Purpose, (2) Breach of Implied Warranty of Merchantability, (3) Breach of Implied Warranty of Fitness for a Particular Purpose Pursuant to the Song-Beverly Consumer Warranty Act; (4) Breach of Implied Warranty of Merchantability Pursuant to the Song-Beverly Consumer Warranty Act; (5) Violation of the California Business & Professions Code § 17500 et seq. for False and Misleading Advertising; and (6) Violation of the Unfair Competition Law, Bus. & Prof. Code § 17200, et seq.

In response to the FAC, and following meet and confer efforts with plaintiff, defendant IRC filed this demurrer.

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.) The grounds for a demurrer must appear on the face of the challenged pleading, or from matters subject to judicial notice. (Code Civ. Proc. § 430.30(a).) In evaluating the sufficiency of the challenged pleading, all material facts properly pleaded are treated as true, but not contentions, deductions, or conclusions of fact or law. (*Moore v. Conliffe* (1994) 7 Cal.4th 634, 638, citing *Serrano v. Priest* (1971) 5 Cal.3d 584, 491.)

Discussion – Class Allegations

"The decision whether a case is suitable to proceed as a class action ordinarily is made on a motion for class certification." (*Shaw v. Los Angeles Unified School Dist.* (2023) 95 Cal.App.5th 740, 760, citation omitted.) When the invalidity of the class allegations is revealed on the face of the complaint, the trial court may decide the issue by demurrer or motion to strike. (*Id*. at 761.) Still, California courts have long disfavored disposing of class allegations at the pleading stage. (*Ibid*., citing *Gutierrez v. California Commerce Club, Inc*. (2010) 187 Cal.App.4th 969, 976.) "Accordingly, a court may decide the question on demurrer only if it is clear there is no reasonable possibility that the plaintiffs could establish a community of interest among the potential class members and that individual issues predominate over common questions of law and fact." (*Gutierrez, supra*, 187 Cal.App.4th at 975; see *Tucker v. Pacific Bell Mobile Services* (2012) 208 Cal.App.4th 201, 211 [court may sustain a demurrer as to class claims "'only if it concludes as a matter of law that, assuming the truth of the factual allegations in the complaint, there is no reasonable possibility that the requirements for class certification will be satisfied'"].)

Here, the FAC does not fall below this standard.

The "ultimate question" the element of predominance presents is whether "the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants." (*Brinker Restaurant Corp. v. Sup.Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1021-22, internal citations omitted.) "As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages." (*Ibid*.)

The class definition in paragraph 54 of the FAC, states as follows:

> **Class Definition.** The Class consists of and is defined as all California citizens, including Plaintiff, who (a) on or after December 14, 2019, (b) purchased the Product, and (c) suffered economic damages because of the Product not being fit for its intended purpose. All Class Members will have encountered the claims that the Product is durable and safe because it is a key feature of Defendants' advertising of the Product.

IRC argues the definition is vague, that it does not adequately describe the reasons for the class period, that it does not adequately define the model of product, that the damages amounts are not clear, etc. As to the time period covered by the FAC, plaintiff's opposition notes the period is based on the statute of limitations. (Memorandum of Points and Authorities in Support of Opposition, 5:5-6.) Plaintiff also explicitly identifies the purchase price of the item as defining the damages due. (See FAC, ¶5 ["consumers who purchased it were damaged by the loss of the purchase price"].) To the extent that certain language was removed from IRC's website at some point, potentially limiting

certain individuals from bringing the claims, that is also subject to discovery. Generally, each of the issues raised by IRC are evidentiary in nature and must be dealt with via discovery, or at a later stage in litigation.

The demurrer based on the insufficiency of the class allegations is overruled.

Discussion – Individual Causes of Action

1) Breach of Implied Warranty of Fitness for a Particular Purpose

"An implied warranty of fitness for a particular purpose arises only where (1) the purchaser at the time of contracting intends to use the goods for a particular purpose, (2) the seller at the time of contracting has reason to know of this particular purpose, (3) the buyer relies on the seller's skill or judgment to select or furnish goods suitable for the particular purpose, and (4) the seller at the time of contracting has reason to know that the buyer is relying on such skill and judgment." (*Keith v. Buchanan* (1985) 173 Cal.App.3d 13, 25; CACI no. 1232.) Vertical privity is a prerequisite in California for recovery on a theory of breach of the implied warranties of fitness and merchantability." (*United States Roofing, Inc. v. Credit Alliance Corp.* (1991) 228 Cal.App.3d 1431, 1441; see also *Anthony v. Kelsey-Hayes Co*. (1972) 25 Cal.App.3d 442, 448 [“It is settled law in California that privity between the parties is a necessary element to recovery on a breach of an implied warranty of fitness for the buyer's use, with exceptions not applicable here.”])

Vertical privity means that the buyer and seller were parties to the sales contract. (*Cardinal Health 301, Inc. v. Tyco Electronics Corp*. (2008) 169 Cal.App.4th 116, 138.) There is no privity between the original seller and a subsequent purchaser who is in no way a party to the original sale. (*Id*. at 138-139.) While the FAC notes consumers are likely to believe the Amazon storefront means the purchase is coming from defendants, plaintiff cites no authority that sets a consumer’s expectations as the measure by which the seller is determined.

IRC argues a lack of privity. The FAC does not allege that IRC was the seller. On the contrary, the FAC alleges plaintiff purchased the product “through” Amazon. (FAC, at ¶41.) As to who was the seller, the FAC alleges class members purchased the product “from IRC directly *or through authorized third party retailers*.” (FAC, ¶77.) In sum, plaintiff does not unequivocally allege privity with IRC. Such privity is generally required, even under the authority plaintiff cites, *Cardinal Health 301, Inc. v. Tyco Electronics Corp*. (2008) 169 Cal.App.4th 116.

In opposition to the demurrer, plaintiff argues that she relied on IRC’s statements, but reliance is a separate element and not a substitute for privity. Plaintiff argues no applicable exception to this requirement.

Accordingly, the demurrer as to the first cause of action is sustained with leave to amend.

2) Breach of Implied Warranty of Merchantability

IRC demurs to this cause of action based on lack of privity. “Unlike express warranties, which are basically contractual in nature, the implied warranty of merchantability arises by operation of law. It does not impose a general requirement that goods precisely fulfill the expectation of the buyer. Instead, it provides for a minimum level of quality.” (*American Suzuki Motor Corp. v. Superior Court* (1995) 37 Cal.App.4th 1291, 1295–1296, internal citations omitted.) “Vertical privity is a prerequisite in California for recovery on a theory of breach of the implied warranties of fitness and merchantability.” (*United States Roofing, Inc. v. Credit Alliance Corp.* (1991) 228 Cal.App.3d 1431, 1441, internal citations omitted; see also CACI 1231.)

Instead of countering IRC's privity argument directly, plaintiff's opposition argues the facts here "infer privity and should give Plaintiff access to discovery to determine who controls the Intex Amazon storefront and sells the Product." The extent to which plaintiff may properly inquire into IRC's relationship with the Amazon storefront does not determine the existence of a cause of action.

With respect to the second cause of action, the demurrer is sustained with leave to amend.

3) Breach of Implied Warranty of Fitness for a Particular Purpose Pursuant to the Song-Beverly Consumer Warranty Act

As noted above, a cause of action for breach of this implied warranty requires plaintiff to establish (1) the purchaser at the time of contracting intends to use the goods for a particular purpose, (2) the seller at the time of contracting has reason to know of this particular purpose, (3) the buyer relies on the seller's skill or judgment to select or furnish goods suitable for the particular purpose, and (4) the seller at the time of contracting has reason to know that the buyer is relying on such skill and judgment. (*Keith, supra,* 173 Cal.App.3d at 25.)

In challenging the third cause of action, IRC refers to and incorporates its argument with respect to the first cause of action. Unlike the first two causes of action, however, this cause of action is brought under the Song-Beverly Act. Such claims do not require privity. (*Ballesteros v. Ford Motor Co*. (2025) 109 Cal.App.5th 1196, 1218.)

IRC's other criticisms (details regarding precise defect, whether the class definition must include specification about the product purchase being "new," timing of product failure, etc) relate to evidentiary details that may be the subject of contention interrogatories or other discovery. The FAC's allegations are sufficient. The demurrer is overruled with respect to the third cause of action.

4) Breach of Implied Warranty of Merchantability Pursuant to the Song-Beverly Consumer Warranty Act

"As defined in the Song-Beverly Consumer Warranty Act, an implied warranty of merchantability guarantees that consumer goods meet each of the following: [¶] (1) Pass without objection in the trade under the contract description. [¶] (2) Are fit for the ordinary purposes for which such goods are used. [¶] (3) Are adequately contained, packaged, and labeled. [¶] (4) Conform to the promises or affirmations of fact made on the container or label. (*Isip v. Mercedes-Benz USA, LLC* (2007) 155 Cal.App.4th 19, 26–27, internal citations omitted.)

Similar to the discussion of the third cause of action above, IRC's demurrer attacks the level of specificity in the FAC. These criticisms are related to evidentiary details that may be the subject of discovery, not ultimate facts. The FAC's allegations are sufficient. The demurrer is overruled with respect to the fourth cause of action.

5) Fifth and Sixth Counts: Violation of the California Business & Professions Code § 17500 et seq. for False and Misleading Advertising and Violation of the Unfair Competition Law, Bus. & Prof. Code § 17200, et seq

The UCL prohibits unfair competition, defined as "any unlawful, unfair or fraudulent business act or practice." (*Abbott Laboratories v. Superior Court* (2020) 9 Cal.5th 642, 651.) The purpose of the statute is to protect both consumers and competitors by promoting fair competition in commercial markets for goods and services. (*Ibid*.) In service of that purpose, the Legislature framed the UCL's substantive provisions in broad, sweeping language to reach anything that can properly be called a business practice and that at the same time is forbidden by law. (*Ibid*., citations omitted.) By proscribing "any unlawful" business practice, section 17200 "borrows" violations of other laws and

treats them as unlawful practices' that the unfair competition law makes independently actionable. (*Id*. at 651-652, citations omitted.) The Legislature intended by this sweeping language to permit tribunals to enjoin on-going wrongful business conduct in whatever context such activity might occur. (*Id*. at 652, citations omitted.)

Any violation of the false advertising law necessarily violates the UCL. (*Kasky v. Nike, Inc*. (2002) 27 Cal.4th 939, 950-951, citations omitted.) These laws prohibit not only advertising which is false, but also advertising which, although true, is either actually misleading or which has a capacity, likelihood or tendency to deceive or confuse the public. (*Ibid*.) Thus, to state a claim under either the UCL or the false advertising law, based on false advertising or promotional practices, it is necessary only to show that members of the public are likely to be deceived. (*Ibid*.)

The FAC alleges "Class Members relied on Defendants' advertising claims that the Product is durable and safe." (FAC, ¶110.) It further states "Defendants' advertisements were likely to deceive or mislead consumers" and they "did, in fact, mislead Plaintiff and Class Members, causing them to purchase the Product […]." (FAC, ¶¶111-112.)

IRC denies having drafted the language of the false statements at issue here. It asserts plaintiff "did not establish IRC or the other named defendants" created the language. (Memorandum of Points and Authorities in Support of Motion, 12:28-13:1.) Such denial of liability may be included in the answer, but is not grounds for a demurrer. Plaintiff adequately assigns defendants responsibility for the language in the FAC. (See FAC, ¶1 ["This class action for damages and equitable relief arises from false claims made by Defendants about the durability of their product […]"].)

IRC argues these causes of action are deficient because the FAC fails to plead a commonly suffered economic injury, or that they lost similar amounts of money or property. The FAC alleges that the purchasers suffered damages equal to what they paid for the product, plus prejudgment interest. (See, e.g., FAC, ¶104.) While there may remain questions with respect to whether class members all paid the same purchase price, such damages questions would better be resolved at an evidentiary stage of the case, not on demurrer.

The demurrer is overruled with respect to the fifth and sixth causes of action.

9. 9:00 AM CASE NUMBER: C24-02709
CASE NAME: MARIA SEREDKINA VS. PAVEL YEFENAU
HEARING ON DEMURRER TO: COMPLAINT
FILED BY: YEFENAU, PAVEL
TENTATIVE RULING:

Before the Court is a demurrer to the complaint. For the reasons set forth, the Court rules as follows: general demurrers to first and second causes of action – **overruled**, and general demurrer to the third cause of action – **sustained, with leave to amend**.

Background

Plaintiff Maria Seredkina is suing her former spouse defendant Pavel Yefanau for claims arising out of his alleged accessing plaintiff's "personal and work" electronic devices, including corporate phones and computers provided by her employer, without her consent. (Compl. ¶¶ 5-7.) She alleges by Yefanau obtaining access to her personal electronic devices without her consent or permission, defendant discovered plaintiff had a relationship with her co-worker Stuart, who also recently

divorced his wife Victoria. (Compl. ¶¶ 8, 9, 11.) Stuart lives in Connecticut, and Seredkina alleges she and Stuart intend to marry. (Compl. ¶ 6.)

Plaintiff alleges that defendant has engaged in a conspiracy with Victoria to disseminate "confidential and embarrassing materials" obtained through the unauthorized access to her devices, including confidential, proprietary business information which affected the stock price of her employer's company. (Compl. ¶¶ 11-13.) She alleges she had to disclose to her employer that defendant gained access to her employer's confidential or proprietary business information on her work devices, and that she has credible fear that she will suffer adverse effects on her employment as a result. (Compl. ¶ 13.) She alleges Yefanau has disclosed confidential information and transferred private data to Victoria's and Yefanau and Victoria's agents/attorneys. (Compl. ¶ 15.)

Seredkina alleges her devices were password-protected, that she had not shared her pins or passwords, and she had a reasonable expectation of privacy in the devices. (Compl. ¶¶ 7, 9, 20, 21, 27.) She alleges defendant intentionally took possession of her devices and hacked into them to gain access to confidential information. (Compl. ¶¶ 32-34.) The complaint alleges causes of action for invasion of constitutional right to privacy (1st C/A), intrusion into private affairs (2nd C/A), and conversion (3rd C/A). Defendant generally demurs to each cause of action of the complaint.

Governing Standards for Ruling on 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.) 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.) The Court is limited to consideration of the complaint and matters of which the Court can take judicial notice. (*Blank v. Kirwan* (1985) 39 Cal. 3d 311, 318; *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994.)

Generally, a complaint is sufficient if it pleads "ultimate" facts. (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 549-550; *C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872.) What constitutes an "ultimate fact" rather than a conclusion is not always clear. (*Doheny Park Terrace Homeowners Assn., Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1098-1099 [recognizing the distinction "involves at most a matter of degree"]; *Colgan v. Leatherman Tool Group, Inc.* (2006) 135 Cal.App.4th 663, 686 [whether an ultimate fact or one of law "is not always an easy question."].) "In theory, a determination is one of ultimate fact if it can be reached by logical reasoning from the evidence, but one of law if it can be reached only by the application of legal principles. [Citations omitted.]" (*Board of Education v. Jack M.* (1977) 19 Cal.3d 691, 698, fn. 3.) (*See also Boling v. Public Employment Relations Bd.* (2018) 5 Cal.5th 898, 912, fn. 5 [same].)

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.) "Ultimately, the complaint is sufficient if 'the adversary has been fairly apprised of the factual basis of the claim against him.' [Citations, internal quotations omitted.]." (*Randall v. Ditech Financial, LLC* (2018) 23 Cal.App.5th 804, 810.)

Note Regarding Citation to Federal Case Law

Both parties both cite federal cases. Federal cases construing California substantive law are at best persuasive and not binding authority on this Court. (*T.H. v. Novartis Pharmaceuticals Corp.* (2017) 4 Cal.5th 145, 175; *Beverage v. Apple, Inc.* (2024) 101 Cal.App.5th 736, 756, fn. 6].)

Analysis

A. Invasion of Constitutional Right of Privacy – 1st C/A

"[A] plaintiff alleging an invasion of privacy in violation of the state constitutional right to privacy must establish each of the following: (1) a legally protected privacy interest; (2) a reasonable expectation of privacy in the circumstances; and (3) conduct by defendant constituting a serious invasion of privacy. [¶] Whether a legally recognized privacy interest is present in a given case is a question of law to be decided by the court. [Citation omitted.] Whether plaintiff has a reasonable expectation of privacy in the circumstances and whether defendant's conduct constitutes a serious invasion of privacy are mixed questions of law and fact. If the undisputed material facts show no reasonable expectation of privacy or an insubstantial impact on privacy interests, the question of invasion may be adjudicated as a matter of law." (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 39-40.)

Defendant contends Plaintiff's allegations that (a) she had a reasonable expectation of privacy in her devices," (b) Defendant improperly gained access to information from her personal devices, and (c) the information was contained "exclusively in personal and work devices which were password protected and which Maria had not granted access to any other persons" are conclusions that the Court should disregard in ruling on the demurrer. The allegations are ultimate facts and are sufficient to state a claim for an invasion of Plaintiff's constitutional right to privacy as to information on her personal devices. (*C.A. v. William S. Hart Union High School Dist., supra,* 53 Cal.4th at 872.)

Defendant argues Plaintiff did not allege that any information was accessed by Defendant on her personal devices. The complaint alleges Yefanau accessed information on her personal devices, though he "initially" discovered her relationship by accessing information on her work iPad. (Compl. ¶¶ 7-10.) Defendant does not dispute, and cites no authority to support, that Plaintiff did not have a legally protected right of privacy in her personal, password or pin-protected electronic devices or in information contained on those personal devices.

As to the allegations Yefanau accessed without permission information on her work devices (Compl. ¶¶ 7-12), Defendant makes factual arguments outside the allegations of the complaint or matters subject to judicial notice regarding a "custom and practice in the business world" as to privacy rights in employer-provided electronic devices and speculates in the reply that the employer may have been monitoring those devices. The Court does not consider those arguments in ruling on a demurrer. (*Blank v. Kirwan, supra*, 39 Cal.3d at 318; *Donabedian v. Mercury Ins. Co., supra,* 116 Cal.App.4th at 994.) Defendant cites no legal authority that an employee with employer-provided electronic devices has no reasonable expectation of privacy in the information contained in those devices against an intrusion into those devices by an unauthorized third party. Further, Plaintiff alleges Defendant accessed information on her "personal" devices as well as work devices. (Compl. ¶¶ 5, 10.) A demurrer cannot be sustained to a part of a cause of action. (*PH II, Inc. v. Superior Court, supra,* 33 Cal.App.4th at 1682-1683.) Defendant's other factual arguments regarding alternative means by which he might have accessed the information on Plaintiff's devices other than by "hacking" are

outside the allegations of the Complaint, and not properly considered in ruling on the demurrer. (*Blank v. Kirwan, supra*, 39 Cal.3d at 318; *Donabedian v. Mercury Ins. Co., supra,* 116 Cal.App.4th at 994.)

Defendant argues, without supporting authority, that Plaintiff has to allege that she did not provide Defendant with her "unlocked" device. Plaintiff's allegations that she did not share her electronic devices or her passwords with Defendant, that she never gave Yefanau access to pins or passwords for her devices, and that Defendant hacked her locked devices without her permission or consent make that allegation in substance. (Compl. ¶¶ 5, 10.) A demurrer admits the truth of the factual allegations of the Complaint. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591, superseded by statute on other grounds, *see Crawford v. Huntington Beach Union High School Dist.* (2002) 98 Cal.App.4th 1275, 1285-1286.) The allegations of the first cause of action sufficiently apprise Defendant of the basis of her claim for invasion of privacy under the constitution. (*Randall v. Ditech Financial, LLC, supra,* 23 Cal.App.5th at 810.)

The demurrer to the first cause of action is **overruled.**

B. Intrusion into Private Affairs (Common Law Invasion of Privacy) – 2nd C/A

"[T]he common law right of privacy is neither absolute nor globally vague but is carefully confined to specific sets of interests that must inevitably be weighed in the balance against competing interests before the right is judicially recognized. A plaintiff's expectation of privacy in a specific context must be objectively reasonable under the circumstances, especially in light of the competing social interests involved." (*Hill v. National Collegiate Athletic Assn., supra,* 7 Cal.4th at 26-27.) "A privacy violation based on the common law tort of intrusion has two elements. First, the defendant must intentionally intrude into a place, conversation, or matter as to which the plaintiff has a reasonable expectation of privacy. Second, the intrusion must occur in a manner highly offensive to a reasonable person. [Citation omitted.]" (*Hernandez v. Hillsides, Inc.* (2009) 47 Cal.4th 272, 286 [emphasis added].) (*See also Sanchez-Scott v. Alza Pharmaceuticals* (2001) 86 Cal.App.4th 365, 373 [stating there are "degrees and nuances" to the expectation of privacy, and "the fact that the privacy one expects in a given setting is not complete or absolute does not render the expectation unreasonable as a matter of law"].)

Defendant cites BAJI instruction No. 7.20 as amended after the Court's decision in *Garrabrants v. Erhart* (2023) 98 Cal.App.5th 486, which found the prior version of the form jury instruction to be incorrect. Form jury instructions are not legal authority. (*See Evans v. Hood Corp.* (2016) 5 Cal.App.5th 1022, 1049 [addressing CACI instructions on invasion of privacy].) The *Garrabrants* case concerned the constitutional right to privacy of bank customers in their financial information, not the common law tort of intrusion into private affairs. Addressing the constitutional right to privacy, the Court explained that "[w]hether an expectation of privacy is reasonable in any given circumstance is a context-specific inquiry, and '[t]he protection afforded to the plaintiff's interest in his [or her] privacy must be relative to the customs of the time and place, to the occupation of the plaintiff[,] and to the habits of his [or her] neighbors and fellow citizens.' [Citations, some internal quotation marks omitted.]" (*Id.* at 500.)

Defendant argues the facts alleged are insufficient to state a cause of action for common law intrusion for the same reasons he contends the first cause of action is deficient. For the same reasons,

the Court finds the arguments insufficient to sustain the demurrer to this cause of action. The demurrer to the second cause of action is **overruled.**

C. Conversion – 3rd C/A

" 'Conversion is generally described as the wrongful exercise of dominion over the personal property of another. [Citation.] The basic elements of the tort are (1) the plaintiff's ownership or right to possession of personal property; (2) the defendant's disposition of the property in a manner that is inconsistent with the plaintiff's property rights; and (3) resulting damages. [Citation.]' [Citation omitted.]" (*Regent Alliance Ltd. v. Rabizadeh* (2014) 231 Cal.App.4th 1177, 1181 [emphasis added, addressing claim for conversion of clothing].) (*See also Welco Electronics, Inc. v. Mora* (2014) 223 Cal.App.4th 202, 208.)

Plaintiff argues that intangible property misappropriated without the owner's authority can be subject to conversion. In *A & M Records, Inc. v. Heilman* (1977) 75 Cal.App.3d 554 cited by Plaintiff, the intangible property converted consisted of recorded performances of musicians as to which the plaintiff owned the master recordings that the defendant duplicated without authority from the owner, and the disputes in the appeal focused on the propriety of the remedies imposed. (*Id.* at 569-570.)

Other cases cited by Plaintiff do not address the type of intangible property rights Plaintiff alleges were "converted" by Defendant when he viewed her emails or other information on her electronic devices. Conversion has been held to be a viable claim for financial information, such as credit or debit card account information, savings account information, customer lists, and a net operating loss. (*Welco Electronics, supra,* 223 Cal.App.4th at 211, 216-217 [applying test to find funds taken from a credit line subject to conversion, where claim alleged defendant transferred to himself specific, identifiable sums of money from plaintiff's available credit line]; *Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 125 ["A net operating loss is a definite amount (see 26 U.S.C. § 172(c)) that can be recorded in tax and accounting records. The significance of this, in our view, is not that the intangible right is somehow merged or reflected in a document, but that both the property and the owner's rights of possession and exclusive use are sufficiently definite and certain." (emphasis added)]; *Silvaco v. Intel Corp.* (2010) 184 Cal.App.4th 210, 239-240 and fn. 22 [alleged conversion and use of software source code developed and owned by plaintiff, holding the conversion claim alleged no property subject to conversion other than a trade secret and was therefore pre-empted by the California Uniform Trade Secrets Act, stating, "An allegation that a person has converted an idea or information simply does not state a cause of action without the allegation of further facts showing a property right in the idea or information allegedly converted," and "Information that does not fit this definition [of trade secret under CUTSA], and is not otherwise made property by some provision of positive law, belongs to no one, and cannot be converted or stolen."].)

Plaintiff has not alleged her electronic devices were taken or injured. Plaintiff has not alleged that she had "exclusive" control of the information allegedly taken, that the electronic data was damaged, or that she was dispossessed of the information on her devices, only that Defendant gained access to and viewed the electronic information. Plaintiff has not alleged facts identifying "sufficiently definite and certain" property that was allegedly converted as opposed to generic "information." (*Welco*

Electronics, Inc., supra, 223 Cal.App.4th at 216-217; *Fremont Indemnity Co., supra,* 148 Cal.App.4th at 125.)

The fact she has alleged privacy rights attached to the unspecified information does not mean the facts are sufficient to allege conversion of property, or even a trespass to chattels. (*See Intel Corp. v. Hamidi* (2003) 30 Cal.4th 1342, 1361–1362 ["the contents of a telephone communication may cause a variety of injuries and may be the basis for a variety of tort actions (e.g., defamation, intentional infliction of emotional distress, invasion of privacy), but the injuries are not to an interest in property, . . . and the appropriate tort is not trespass"].) Trespass to chattels claim requires injury to personal property or plaintiff's legal interest in the personal property. (*Id.* at 1348, 1350-1351.) As presently alleged, the facts in the complaint would be insufficient to state a claim under that theory as there is no allegation the hacking into the devices or viewing of the material caused any damage to her devices or interference with her use of the devices. (*Intel Corp., supra*, 30 Cal.4th at 1347, 1350-1351 [in the context of emails sent from a work computer, the Court found conversion requires more serious or important damage to property than trespass to chattels, but that no claim was stated for trespass to chattels, stating "we conclude under California law the tort does not encompass, and should not be extended to encompass, an electronic communication that neither damages the recipient computer system nor impairs its functioning. Such an electronic communication does not constitute an actionable trespass to personal property, i.e., the computer system, because it does not interfere with the possessor's use or possession of, or any other legally protected interest in, the personal property itself. [Citations omitted.]"].)

The demurrer to the third cause of action for conversion is **sustained, with leave to amend**.

10. 9:00 AM CASE NUMBER: C24-02709
CASE NAME: MARIA SEREDKINA VS. PAVEL YEFENAU
***HEARING ON MOTION IN RE: STRIKE ALLEGATIONS OF COMPLAINT**
FILED BY: YEFENAU, PAVEL
****TENTATIVE RULING:****

Before the Court is a motion by defendant to strike portions of the complaint. For the reasons set forth, the motion is **granted in part and denied in part.** The Court **grants** Defendant's motion to strike paragraph 11, p. 3, ll. 10 – 13 (Allegation 4; "Maria is informed and believes . . . by illegal and improper means."), paragraph 15 in its entirety (Allegation 7), paragraph 16 in its entirety (Allegation 9), and a portion of paragraph ¶ 15, p. 4, ll. 3-4 (Allegation 8; "and purposefully to harm Stuart in his divorce proceedings"). The motion to strike a portion of paragraph 32 (Allegation 16) is **denied as moot**, and remainder of the motion is **denied.**

Background

The factual background and summary of allegations of the complaint is set forth in the Court's concurrent ruling on defendant Yefanau's demurrer to the complaint.

Legal Standards for Motion to Strike

Code of Civil Procedure sections 435, 436, and 437 and California Rule of Court, Rule 3.1322 address

motions to strike. The Court "may, upon a motion made pursuant to Section 435, or at any time in its discretion" strike all or a part of a pleading by striking out "any irrelevant, false or improper matter." (Code Civ. Proc. § 436 [emphasis added].) The grounds for a motion to strike must appear on the face of the pleading or be based on a matter subject to judicial notice under Evidence Code sections 452 and 453. (Code Civ. Proc. § 437(a) and (b).) The Court will "read allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth." (*Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255 [emphasis added].)

Whether to grant a motion to strike is in the Court's discretion. (Code Civ. Proc. § 436; *Clements v. T. R. Bechtel Co.* (1954) 43 Cal.2d 227, 242.) The Court's discretion, however, is exceeded if the Court strikes portions of a complaint necessary to a cause of action. (*Id.* [court should not have granted motion to strike portions of the complaint necessary to state plaintiff's cause of action for foreclosure of mechanic's lien].) (*See also Ferraro v. Camarlinghi* (2008) 161 Cal.App.4th 509, 528 [stating the purpose of the motion to strike statute "is to authorize the excision of superfluous or abusive allegations."].)

Analysis

Defendant groups the portions of the Complaint he seeks to strike into various categories of allegations.

A. Allegations Pertaining to Plaintiff's Employer-Provided Devices and Information Accessed by Defendant on Those Devices (Allegations 1, 2, 4, 10, 12, 14, 15, 16)

Defendant contends any allegations in the complaint referring to electronic devices issued to Plaintiff by her employer, or information Defendant accessed on those devices, should be stricken on the ground that Plaintiff has no reasonable expectation of privacy in those devices or information. Defendant relies on *TBG Insurance Services v. Superior Court* (2002) 96 Cal.App.4th 443 to support his position, but the case does not stand for the broad proposition that an employee has no expectation of privacy on an employer-issued device generally, much less in the context of access to the device by an unauthorized third party, such as her husband or ex-husband.

In *TSG*, an employee sued his employer for wrongful termination. The employee had an office computer and a computer issued by the employer for the employee to work at home. (*Id.* at 445.) The employee refused to produce the home computer in discovery, the trial court denied the employer's motion to compel, and the Court of Appeal reversed. (*Id.*) The employer alleged the employee was terminated for violating the company's electronic policies, including accessing pornographic internet sites with the home computer. (*Id.* at 446-447.) The Court of Appeal held the employer was entitled to inspect the home computer, but that the trial court could "make such orders as are necessary to minimize TBG's intrusion." (*Id.* at 449.)

The Court explained: "Assuming the existence of a legally cognizable privacy interest, the extent of that interest is not independent of the circumstances, and other factors (including advance notice) may affect a person's reasonable expectation of privacy. [Citation omitted.] 'A "reasonable" expectation of privacy is an objective entitlement founded on broadly based and widely accepted community norms,' and 'the presence or absence of opportunities to consent voluntarily to activities impacting privacy interests obviously affects the expectations of the participant.' [Citation omitted.] Accordingly, our decision about the reasonableness of Zieminski's claimed expectation of privacy

must take into account any 'accepted community norms,' advance notice to Zieminski about TBG's policy statement, and whether Zieminski had the opportunity to consent to or reject the very thing that constitutes the invasion. [Citation omitted.]" (*Id.* at 449-450 [emphasis added].) Despite proof in that case of a broad company policy of the employer monitoring computers used by the company's employees to which the employee had expressly consented and the context of the privacy analysis, which was a suit between the employee and employer for the employee's improper use of the work-provided computer by accessing internet sites (pornography) prohibited by the employer's policies, the Court still found there might be some privacy interest in the information stored in the home computer for which protective orders could be issued, excluding that personal information from inspection and copying. (*Id*. at 454.)

The factual context of the *TBG* decision is clearly distinguishable from this case. Plaintiff is asserting a right to privacy in the information on her-employer provided electronic devices from invasion of those devices by her husband or former husband. Nothing in the *TBG* decision stands for the proposition that any employee has no reasonable expectation of privacy in an employer-provided device from intrusion into that device by persons other than the employer, including any unauthorized users, whether or not the unauthorized user is the employee's spouse or relative. "It is axiomatic that language in a judicial opinion is to be understood in accordance with the facts and issues before the court**."** (*Chevron U.S.A., Inc. v. Workers' Comp. Appeals Bd.* (1999) 19 Cal.4th 1182, 1195.)

TSG and other decisions recognize a reasonable expectation of privacy is dependent upon the context. For example, *Sanders v. American Broadcasting Companies* (1999) 20 Cal.4th 907 links a person's reasonable privacy expectations to "such factors as (1) the identity of the intruder, (2) the extent to which other persons had access to the subject place, and could see or hear the plaintiff, and (3) the means by which the intrusion occurred. [Citations omitted.]" (*Id.* at 923 [emphasis added, holding that the privacy or seclusion need not be absolute in order for the person to state an intrusion claim].) "The issue of whether there is a reasonable expectation of privacy under the circumstances is a mixed question of law and fact. [Citations omitted.]" (*Sanchez-Scott v. Alza Pharmaceuticals* (2001) 86 Cal.App.4th 365, 372-373.) (*See also Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 40 [same].) For purposes of a motion to strike, Defendant has not demonstrated the allegations concerning Plaintiff's employer-provided devices are irrelevant as a matter of law.

The Court notes that Allegation 4 is not specific as to the source of the private information about "estate issues" pertaining to Stuart and Victoria, which could have been located in Plaintiff's personal devices. This is an additional ground not to strike that allegation based on the foregoing arguments, though as set forth below, the Court finds striking Allegation 4 is appropriate for other reasons.

The Court denies the motion to strike Allegations 1, 2, 4, 10, 12, 14, and 15. As to **Allegation 16**, the motion is **moot** because the Court has sustained a demurrer to the third cause of action, with leave to amend.

B. Allegations re Plaintiff Harmed by Defendant Accessing Confidential Employer Information (Allegations 3, 6, 13) and Information About Stuart (Allegations 4 and 8)

Defendant contends that the allegations regarding Defendant accessing proprietary and confidential

information of Plaintiff's employer and regarding Stuart should be stricken because Plaintiff has no standing to assert claims for violation of privacy rights of her employer or Stuart. In *Moreno v. Hanford Sentinel, Inc.* (2009) 172 Cal.App.4th 1125, an "ode" written by plaintiff Cynthia Moreno originally published on MySpace.com was later republished by the newspaper defendant, who Cynthia sued for invasion of privacy based on public disclosure of private facts. The ode made negative comments about her hometown Coalinga, where her parents and sister still resided and resulted in serious negative reaction from the local community toward her family. (*Id.* at 1128.) The Court held that a demurrer was properly sustained to the invasion of privacy claim without leave to amend as the article was publicly available on the internet website where it was originally published, such that neither Cynthia nor the other family members could state an invasion of privacy claim. (*Id*.) The Court also held, "[T]the right of privacy is purely personal. It cannot be asserted by anyone other than the person whose privacy has been invaded. [Citation omitted.] Thus, even if Cynthia did have an invasion of privacy claim, David, Maria and Araceli would not have standing. . . . Their invasion of privacy claim is primarily based on their relationship to Cynthia and the community reaction to Cynthia's opinions, not on respondents' conduct directed toward them. [Citation omitted.]" (*Id.* at 1131 [emphasis added].)

Plaintiff does not address the *Moreno* decision and the personal nature of the right to privacy. The Court concurs with Defendant's position that Plaintiff has no standing to allege violations of either her employer's or Stuart's right to privacy. The Court finds it appropriate to **strike Allegation 4** on that ground. Giving the Complaint a reasonable interpretation and reading **Allegations 3, 6, and 13** in context, however, the Court **denies** the motion to strike those allegations. Those allegations relate to and support a claim that Plaintiff herself was harmed by Defendant's accessing her work-provided devices because she informed her employer of the unauthorized access of her devices and she "credibly fears that this breach could have a material negative impact on her career." (Compl. ¶ 13 [Allegation 6].)

As to **Allegation 8**, the Court **grants** the motion to strike only **in part** as to the phrase "**and purposefully harm Stuart in his divorce proceedings**." (Compl. ¶ 15 [Allegation 8].) In the portion of paragraph 15 of the complaint with ellipses not quoted in Allegation 8, Plaintiff alleges the improper accessing of her devices by Defendant "caus[ed] harm to Ms. Seredkina and her relationship with Stuart." The paragraph, with the noted exception stated, is properly retained as an allegation that Plaintiff's privacy rights were violated, and she sustained injury as a result.

C. Allegations of Civil Conspiracy (Allegations 4 and 11)

The Court has ruled the Allegation 4 should be stricken for other reasons stated above. The Court in its discretion **denies** the motion to strike **Allegation 11**.

D. Allegations Related to Other Interactions with Defendant (Allegation 9)

Plaintiff contends that her allegations regarding interactions with Defendant unrelated to his accessing her electronic devices are relevant because they show Defendant "repeatedly invaded her privacy." (Opp. p. 4.) Plaintiff's allegations in the first and second causes of action, however, are expressly limited to invasion/intrusion through Defendant's access to her electronic devices. (Compl. ¶¶ 20, 21, 27-29.) The Court **grants** the motion to strike **Allegation 9**. (*Ferraro v. Camarlinghi, supra,* 161 Cal.App.4th at 528.)

E. Allegations Related to Defendant's Conduct in His Employment (Allegation 7)

The Court **grants** the motion to strike **Allegation 7**. (Compl. ¶ 14.) Plaintiff has not demonstrated why the allegations regarding any conduct by Defendant involving his employer are relevant to her claims that Defendant improperly accessed her electronic devices and invaded her privacy/intruded into her private affairs. (*Ferraro v. Camarlinghi, supra,* 161 Cal.App.4th at 528.)

F. Prayer for Damages for Impaired Future Earnings and Lost Wages (Allegations 17 and 18)

Plaintiff alleges potential harm to her career as a result of her disclosure of Defendant's unauthorized access to information on her work devices. (Compl. ¶ 13.) The Court in its discretion **denies** the motion to strike paragraphs 3 and 4 of the prayer for relief (**Allegations 17 and 18**); whether Plaintiff sustained any adverse employment effects and can prove damages for lost wages or impaired future earnings is a matter for proof at trial.

11. 9:00 AM CASE NUMBER: C24-02789
CASE NAME: QUINITA DANIEL VS. HOMELIFE SENIOR CARE, INC., A CALIFORNIA CORPORATION;
***HEARING ON MOTION IN RE: COMPEL ARBITRATION**
FILED BY: HOMELIFE SENIOR CARE, INC., A CALIFORNIA CORPORATION;
****TENTATIVE RULING:****
Continued to September 15, 2025, 9:00 a.m., by stipulation and order.

12. 9:00 AM CASE NUMBER: MSC19-01498
CASE NAME: FORD VS BUDDE, ET AL.
HEARING ON SUMMARY MOTION JUDMENT OR IN ALT ADJUDICATION
FILED BY: ROSS, FRANKIE
****TENTATIVE RULING:****

Before the Court is a motion for summary judgment, or in the alternative, summary adjudication filed by defendant Frankie Ross. For the reasons set forth, the motion is **denied.**

Background

Plaintiff Lawrence Ford alleges that he was the spouse of Katherine Hill-Ford ("Hill" or "Decedent"), who passed away on November 30, 2015. (Second Am. Compl. ("2AC") ¶ 1.) After an order sustaining demurrers to the first and second causes of action against the Decedent's daughter, Anita Budde, there is one remaining cause of action negligence (3rd C/A) against Frankie Ross, a financial advisor, arising out of disputed IRA accounts of the Decedent. Plaintiff alleges that Ross knew the Decedent was married to him, that the Decedent completed forms stating she was "single" that Ross accepted, and that Ross failed to have the forms corrected and failed to obtain spousal consent forms signed by Plaintiff for him to relinquish his interest in the funds in the IRA accounts. (2AC ¶¶ 17-19, 22, 24.)

Ross's motion for summary judgment or alternatively summary adjudication is supported by a memorandum of points and authorities, a declaration by Ross, a declaration by Ross's counsel Goins which attaches copies of the 2AC and Ross's answer, and a separate statement ("SS") of undisputed material facts ("UMFs").

Legal Standards for Ruling on Motion for Summary Judgment and Motion for Summary Adjudication and Effect of the Parties' Filing Cross-Motions

A motion for summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law." (Code Civ. Proc. § 437c(c).) Motions for summary adjudication under Code of Civil Procedure section 437c(f)(1) "are 'procedurally identical' to summary judgment motions. [Citation.]" (*Duffey v. Tender Heart Home Care Agency, LLC* (2019) 31 Cal.App.5th 232, 240-241.) The issues to be considered on a motion for summary judgment are defined by the pleadings. (*Doe v. Good Samaritan Hospital* (2018) 23 Cal.App.5th 653, 661; *Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 161.) A motion for summary adjudication under Code of Civil Procedure section 437c(f)(1) can only be granted "if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." (Code Civ. Proc. § 437c(f)(1).)

On a defendant's motion, " 'as to each claim as framed by the complaint, []the motion must respond by establishing a complete defense or otherwise showing there is no factual basis for relief on any theory reasonably contemplated by the opponent's pleading.[] [Citations, internal quotation marks and italics omitted.]' " (*Doe, supra,* 23 Cal.App.5th at 661.) A defendant has met its burden "if that party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to that cause of action." (Code Civ. Proc. § 437c(p)(2).)

Once the moving party has met its initial burden, the burden shifts to the other party to produce admissible evidence showing that a triable issue exists. (*Advent, Inc. v. National Union Fire Ins. Co. of Pittsburgh, PA* (2016) 6 Cal.App.5th 443, 453; Code Civ. Proc. § 437c(p)(1) and (2).) The Court may not weigh the evidence but must view it "in the light most favorable to the opposing party and draw all reasonable inferences in favor of that party. [Citations omitted.]" (*Weiss v. People ex rel. Dept. of Transportation* (2020) 9 Cal.5th 840, 864.) " '[S]ummary judgment cannot be granted when the facts are susceptible to more than one reasonable inference . . . .' " (*Husman v. Toyota Motor Credit Corp.* (2017) 12 Cal.App.5th 1168, 1180 [quoting *Rosas v. BASF Corp.* (2015) 236 Cal.App.4th 1378, 1392].) "All doubts as to the propriety of granting the motion—i.e., whether there is any triable issue of material fact—are to be resolved in favor of the party opposing the motion." (*Cohen v. Five Brooks Stable* (2008) 159 Cal.App.4th 1476, 1483.)

This ruling addresses only defendant Ross' motion for summary judgment, or in the alternative, summary adjudication. Plaintiff Ford filed his own motion for summary judgment or summary adjudication which is being heard concurrently. "The fact that both parties moved for summary judgment does not conclusively establish the absence of a triable issue of fact; the trial court must independently determine the motions. [Citation omitted.]" (*Advent, supra,* 6 Cal.App.5th at 453.) Because the Court must draw inferences in favor of the party opposing a motion for summary judgment and views the sufficiency of each motion independently, where there are cross-motions for summary judgment, the Court may deny both motions. (*Id.*)

Plaintiff's Opposition to the Ross Motion

Code of Civil Procedure section 437c was amended effective January 1, 2025 to change the deadlines for oppositions and replies. Opposition to the motion was required to be filed and served by April 11,

2025, 20 calendar days prior to the hearing. (Code Civ. Proc. § 437c(b)(2).) Even under the former version of the statute, the opposition would have been due April 17, 2025. Ford's opposition was not served until April 18, 2025 and was not filed until April 21, 2025, and is untimely.

In addition, the opposition is not supported by a declaration or other evidence. Ford refers to his declaration in support of his own motion for summary judgment. He did not request judicial notice of that declaration, but even if he had, a request for judicial notice only allows the Court to take judicial notice of the fact the declaration was filed but not the truth of the content, even in the context of cross-motions for summary judgment. (*South Lake Tahoe Property Owners Group v. City of South Lake Tahoe* (2023) 92 Cal.App.5th 735, 751-752 ["Courts may not take judicial notice of allegations in affidavits, declarations and probation reports in court records because such matters are reasonably subject to dispute and therefore require formal proof. [Citations omitted.]"]; *Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 882.)

Analysis

A. Summary Judgment or Summary Adjudication Requested in the Motion

The 2AC includes factual allegations that Ross owed Plaintiff fiduciary duties which he breached that are incorporated into Plaintiff's third cause of action for negligence, as all allegations preceding the negligence cause of action are incorporated by reference. (2AC ¶ 45.) Ross seeks summary judgment of the 2AC in its entirety, including the negligence cause of action, as his first issue in his SS based on UMF Nos. 1-21, and summary adjudication of the negligence cause of action as his second issue, relying on the same UMFs.

Though the Court will treat the motion as unopposed for the reasons stated, the moving party nevertheless bears the burden "to establish a complete defense or otherwise show that there [is] no factual basis for relief on any theory presented" by Plaintiffs. (*Doe v. Good Samaritan Hospital, supra,* 23 Cal.App.5th at 662.) Viewing the evidence "in the light most favorable to the opposing party and draw[ing] all reasonable inferences in favor of that party" (*Weiss, supra,* 9 Cal.5th at 864), the Court finds that Ross has not met his initial burden of demonstrating that there are no triable issues of material fact and that he is entitled to summary judgment in his favor as a matter of law.

Among the material facts alleged in the 2AC are that Ross knew that Ford and Hill were married, that Ross attended Ford and Hill's wedding in 2006, and that Ford and Hill met Ross many times after the wedding in his capacity as a financial advisor. (2AC ¶¶ 12, 14.) Ross states he did not attend "any social gatherings with [Ford] since 2006," that he never provided Ford "with individual financial advice or managed any investment accounts belonging to him," that Ford was not Ross's client between 2014 and 2017, and that he "did not provide him with any financial services nor advice." (UMF Nos. 4, 5, 8, 20.)

In the motion, Ross does not address or deny his knowledge of Ford's marriage or wedding with Hill at least as of 2006 or that Ross met Ford thereafter, even if only acting in the capacity of a financial advisor for Hill alone. He also does not address or deny that providing any advisory services to Ford and Hill through any entity in which they were owners, such as H&F Management, Inc. and Lawrence Construction, alleged in the 2AC. (2AC ¶¶ 8, 11, 16, and Exh. p. F28.)

The Traditional IRA Adoption Agreement forms attached as Exhibit A to the Ross Declaration in

support of the motion which Ross declares are the Adoption Agreements executed by the Decedent which he states were prepared by Pershing LLC. (Ross Decl. ¶ 10 and Exh. A; UMF No. 12.) The Adoption Agreements attached to Ross's declaration are fully executed by both the Decedent and Ross, and are complete, with the exception of Hill's marital status, where all of the boxes are blank. (Ross Decl. Exh. A, PDF pp. 25, 49, and 73, 74.) (*But compare to* 2AC Exh. 7, F31, F42, F53.) The options in the form for marital status are not limited to "single" or "married" but also include "divorced" and "widowed." (*Id.*)

A. Negligence and Triable Issues of Fact Presented in the UMFs and Ross's Evidence

Civil Code section 1714 addresses the general rule of negligence. It provides in pertinent part: "Everyone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself." (Civ. Code § 1714(a).) The elements of negligence are a legal duty owed to the plaintiff to use due care, a breach that legal duty, and damages suffered as a proximate result of the breach. (*Ladd v. County of San Mateo* (1996) 12 Cal.4th 913, 917.)

UMF Nos. 13 and 14, much of which is repeated in Ross's declaration, coupled with the content of the Adoption Agreements with multiple options for marital status, raise triable issues of material fact as to Ross's duties with regard to his client Hill's completion of the forms as to her marital status. Ross states that he had no discussions with Hill regarding her marital status "prior to or during the signing" of the Adoption Agreements and that she did not seek Ross's advice on "how to report her marital status or who to designate as her primary beneficiary." (UMF No. 13.) He states that by designating herself as "single" she had the right to designate "whomever she chose to as a beneficiary." (UMF No. 13.) But Ross explicitly acknowledges that Ross's role as a financial advisor who was accepting the documents for the opening of the IRA accounts required him to "ensure that the information [in the documents] was correct." (UMF No. 14; Ross Decl. ¶ 11 [emphasis added].) The spousal consent portion of the forms, which appear on the same page as both Hill's and Ross's signature, require a spouse's consent to waive beneficiary rights in community property states, including California and Nevada, such that including the correct marital status on the face of the forms is significant and material to the opening of the accounts. (Ross Decl. Exh. A PDF pp. 29, 30, 53, 78.)

Ross acknowledges in his declaration that the Decedent was "a longtime client and good friend." (Ross Decl. ¶ 3.) At a minimum, there is a reasonable inference that Ross would have known at some point over the nine years he knew Hill between her wedding and her death that Ross would have known at some point she was married to Ford just based on their "longtime" friendship and long-term business relationship acting as Hill's financial advisor. The fact Ross did not "discuss" Hill's marital status in July 2014 when Hill submitted the Adoption Agreements (UMF No. 13) does not negate that Ross knew that she was married or knew she had been married to Ford prior to that time.

The Adoption Agreements on their face had options for "divorced" or "widowed" if Hill was no longer married, such that checking the box for "single" on its face under the circumstances known (and not disputed) by Ross suggested the forms were not correct. Even if Ross allegedly did not know the marital status of his "longtime friend and client" in July 2014 when the forms were presented to him, Ross has acknowledged he had a duty "to ensure the information was correct" in the forms, which

means he admittedly had a duty to ensure that checking the "single" box was correct. (UMF No. 14.) In the forms, Hill designated a daughter and grandchildren as beneficiaries. (Ross Decl. Exh. A, PDF pp. 26, 50, 75.) Given Ross's duty to "ensure the information was correct," the beneficiaries designated, coupled with his failure to deny his knowledge that at least as of 2006 Hill was married to Ford, the information would have suggested at least some inquiry was required by Ross to confirm the use of the designation "single" rather than "married," "divorced" or "widowed" was appropriate. Ross admits he did not check the forms for correctness with respect to his client's designation as "single" but simply accepted the forms allegedly with that box checked (though Exhibit A to the Ross Declaration actually does not show any of those boxes checked).

Ross's admission that his role was to ensure the correctness of the information in the forms, coupled with his admission he did not take any steps to ensure the information in the forms was accurate as to Hill's marital status, and his failure to dispute the operative facts of the 2AC that Hill was in fact married to Ford when she executed the Adoption Agreements, are facts that show Ross failed to perform a legal duty he admits he was supposed to perform and that because he did not ensure the information in the forms was correct, Ford was denied the opportunity to consent or refuse to consent to waive his beneficiary rights. This is sufficient to support that there are triable issues of fact regarding Ross's legal duty and breach of that duty precluding summary judgment.

B. Failure to Demonstrate as A Matter of Law Ross Owed No Legal Duty to Plaintiff

To the extent Ross contends that as a matter of law, regardless of any breach of duty he owed to his client Hill to ensure the accuracy of the information in the Adoption Agreements, he owed no legal duty to Ford as his client's husband, the moving papers do not meet Ross's initial burden of demonstrating the absence of such a legal duty under the circumstances presented. The Court has reviewed each of the decisions cited in Ross's moving papers. None of the cases addressing either breach of fiduciary duty or negligence provide anything more than general statements of law in circumstances that are completely factually inapposite to the circumstances here.

Ross contends he had no fiduciary duty to Ford because he never had any agreement with Ford. The cases cited support the general proposition that a fiduciary duty, as opposed to a general legal duty to avoid injuring others under Civil Code section 1714, can only be imposed if the person "voluntarily accepts or assumes to accept" the confidential relationship or "knowingly undertake[s] to act on behalf of and for the benefit of another," or if the person enters into "a relationship which imposes that undertaking as a matter of law." (*Wolf v. Superior Court* (2003) 107 Cal.App.4th 25, 29 [involving claim by author against movie company under a contract, holding no fiduciary duty created]; *Cleveland v. Johnson* (2012) 209 Cal.App.4th 1315, 1338, 1344 [fiduciary duty existed between investors and corporate promoter, and affirming jury's finding of such duty, and addressing successor liability].) Neither these decisions, nor others cited by Ross, address the fiduciary duties of a financial or investment advisor generally, or specifically whether a financial or investment advisor advising a client, who is married, in connection with the opening of IRA accounts owes any fiduciary duty that extends to the nonclient spouse who would have rights in the IRA accounts as a beneficiary. (*Knox v. Dean* (2012) 205 Cal.App.4th 417, 420-421 [suit between former and successor conservators, addressing res judicata, Probate Code section 2103, and successor conservator's right to challenge prior orders approving accountings]; *Marzec v. Public Employees' Retirement System* (2015) 236 Cal.App.4th 889, 895-896 [class actions against California Public Employees' Retirement System

concerning calculation of retirement benefits, reversing in part order sustaining demurrer as to cause of action for breach of fiduciary duty for inadequate disclosure regarding risks of purchasing service credit, where existence of a fiduciary duty was not disputed].)

Even if the Court accepted Ross's argument that he owed no fiduciary duty to Ford based on the general propositions of law in those factually inapposite cases, Ross has not met his burden of demonstrating that he did not owe a legal duty to Ford in negligence as a matter of law. None of the negligence cases cited by Ross arose in a factual context remotely similar or analogous to this case. (*Ladd, supra,* 12 Cal.4th at 916 [determining public entity was not liable for injuries suffered by prisoner when prisoner attempted to escape while he was being transported in by public entity's employee in a motor vehicle]; *Richards v. Stanley* (1954) 43 Cal.2d 60, 62-64, 67 [where theory of negligence liability of vehicle owner was that the owner negligently left the vehicle parked but unlocked with the key in the ignition, which allowed the thief to steal the car and strike the plaintiff motorcyclist, explaining policy reasons for not finding a legal duty to protect the injured motorcyclist from the negligent operation of a stolen vehicle by a thief]; *Valdez v. J. D. Diffenbaugh Co.* (1975) 51 Cal.App.3d 494, 506-507 [production worker at a pipe manufacturer was crushed between a pipe and an oven door, finding contractor liable based on their negligence, among other things, in the manner in which they installed the oven door and their failure to install a fail-safe device, analyzing six-prong policy test for duty in the decisions *Biakanja v. Irving* (1958) 49 Cal.2d 647, 650 and *Rowland v. Christian* (1968) 69 Cal.2d 108, 113]; *Hillyar v. Union Ice* (1955) 45 Cal.2d 30, 35-37 [no issue of duty but rather whether the evidence was sufficient to show a truck driver failed to exercise the degree of care required under the circumstances in light of the driver's knowledge of the presence of children where the accident occurred]; *Peter W. v. San Francisco Unified School District* (1976) 60 Cal.App.3d 814, 817, 825 [analyzing the *Rowland* factors, finding no duty owed by school district to plaintiff, a student in the school district, for negligence based on providing plaintiff an inadequate education].)

None of the negligence cases cited by Ross demonstrate that as a matter of law, there is no legal duty owed by a financial advisor to the spouse of a client who will lose his beneficiary rights in IRA accounts established by the financial advisor if the financial advisor fails to "ensure the information is correct" in the forms creating the accounts. The cases are so far afield factually they offer little guidance for the context presented here. However, they do provide legal guidance that the existence or limitation on a legal duty owed to a person not in privity or in a direct relationship with the defendant for a negligence claim is determined under a multi-factor test set forth in the *Biakanja* and *Rowland* decisions and their progeny, which are not addressed in Ross's motion. To meet Ross's initial burden to demonstrate as a matter of law he owed no legal duty to Ford, Ross either had to direct the Court to cases addressing similar relationships or circumstances that have held no legal duty exists or address the *Biakanja/Rowland* factors and cases interpreting and applying those factors. Ross has done neither.

Conclusion

The motion for summary judgment, and in the alternative, summary adjudication is **denied**.

13. 9:00 AM CASE NUMBER: MSC19-01498
CASE NAME: FORD VS BUDDE, ET AL.

HEARING ON SUMMARY MOTION MOTION FOR SUMMARY JUDGMENT FILED BY LAWRENCE FORD FILED BY: FORD, LAWRENCE W.
TENTATIVE RULING:

Before the Court is a motion for summary judgment or summary adjudication filed by plaintiff Lawrence Ford. For the reasons set forth, the motion is **denied.**

Background

Plaintiff Lawrence Ford alleges that he was the spouse of Katherine Hill-Ford ("Hill" or "Decedent"), who passed away on November 30, 2015. (Second Am. Compl. ("2AC") ¶ 1.) After an order sustaining demurrers to the first and second causes of action against the Decedent's daughter, Anita Budde, there is one remaining cause of action negligence (3rd C/A) against Frankie Ross, a financial advisor, arising out of disputed IRA accounts of the Decedent. Plaintiff alleges that Ross knew the Decedent was married to him, that the Decedent completed forms stating she was "single" that Ross accepted, and that Ross failed to have the forms corrected and failed to obtain spousal consent forms signed by Plaintiff for him to relinquish his interest in the funds in the IRA accounts. (2AC ¶¶ 17-19, 22, 24.)

This motion for summary judgment or summary adjudication was filed by Ford in December 2024. It was originally set for hearing on April 17, 2025 but was continued by the Court to the date of the hearing on defendant Ross's motion for summary judgment or alternatively summary adjudication.

Ford's motion is supported by a memorandum of points and authorities, Ford's declaration, and a separate statement ("SS") of undisputed material facts ("UMFs"). Ross's opposition to the motion includes a response to Plaintiff's SS ("Ross SS"), in which he responds to Plaintiff's UMF Nos. 1-23 and includes additional material facts ("AFs") Nos. 24-43 and Ross's declaration.

Legal Standards for Ruling on Motion for Summary Judgment and Motion for Summary Adjudication and Effect of the Parties' Filing Cross-Motions

A motion for summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law." (Code Civ. Proc. § 437c(c).) Motions for summary adjudication under Code of Civil Procedure section 437c(f)(1) "are 'procedurally identical' to summary judgment motions. [Citation.]" (*Duffey v. Tender Heart Home Care Agency, LLC* (2019) 31 Cal.App.5th 232, 240-241.) The issues to be considered on a motion for summary judgment are defined by the pleadings. (*Doe v. Good Samaritan Hospital* (2018) 23 Cal.App.5th 653, 661; *Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 161.) A motion for summary adjudication under Code of Civil Procedure section 437c(f)(1) can only be granted "if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." (Code Civ. Proc. § 437c(f)(1).)

A plaintiff as the moving party does not need to disprove the defendant's defenses; a plaintiff meets its burden of showing there is no defense to the claim if the plaintiff proves each element of the cause of action that would entitle plaintiff to judgment on that cause of action in its favor. (Code Civ. Proc. § 437c(p)(1); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849, 853; *Paramount Petroleum Corp. v. Superior Court* (2014) 227 Cal.App.4th 226, 241.)

Once the moving party has met its initial burden, the burden shifts to the other party to produce admissible evidence showing that a triable issue exists. (*Advent, Inc. v. National Union Fire Ins. Co. of*

Pittsburgh, PA (2016) 6 Cal.App.5th 443, 453; Code Civ. Proc. § 437c(p)(1) and (2).) The Court may not weigh the evidence but must view it "in the light most favorable to the opposing party and draw all reasonable inferences in favor of that party. [Citations omitted.]" (*Weiss v. People ex rel. Dept. of Transportation* (2020) 9 Cal.5th 840, 864.) " '[S]ummary judgment cannot be granted when the facts are susceptible to more than one reasonable inference . . . .' " (*Husman v. Toyota Motor Credit Corp.* (2017) 12 Cal.App.5th 1168, 1180 [quoting *Rosas v. BASF Corp.* (2015) 236 Cal.App.4th 1378, 1392].) "All doubts as to the propriety of granting the motion—i.e., whether there is any triable issue of material fact—are to be resolved in favor of the party opposing the motion." (*Cohen v. Five Brooks Stable* (2008) 159 Cal.App.4th 1476, 1483.)

This ruling addresses plaintiff Ford's motion for summary judgment or summary adjudication. Defendant Ross filed his own motion for summary judgment or summary adjudication which is being heard concurrently. "The fact that both parties moved for summary judgment does not conclusively establish the absence of a triable issue of fact; the trial court must independently determine the motions. [Citation omitted.]" (*Advent, Inc. v. National Union Fire Ins. Co. of Pittsburgh, PA, supra,* 6 Cal.App.5th at 453.) Because the Court must draw inferences in favor of the party opposing a motion for summary judgment and views the sufficiency of each motion independently, where there are cross-motions for summary judgment, the Court may deny both motions. (*Id.*)

Preliminary Procedural Issues

A. Plaintiff's Alternative Request for Summary Adjudication

As a preliminary matter, Ford's motion asks, as an alternative to summary judgment, that the Court "[i]ssue an Order clarifying which part(s) of Plaintiff's negligence claim is either without merit or is not supported by the evidence as to negligence on the part of Defendant Frankie Ross." (Mot. p. 2, ¶ 1.) In addition to referring to the motion seeking summary judgment, the SS describes "AT ISSUE" a series of questions regarding whether Ross had a legal duty or exercised a reasonable standard of care and breached a legal duty or standard of ordinary care, and whether the breach proximately caused injury. (SS p. 1.) The issues or questions which appear to refer to Plaintiff's alternative request for summary adjudication were not set forth in the notice of motion, which is required for summary adjudication of issues. (Cal. R. Ct., Rule 3.1350(b).) Further, summary adjudication can only be granted if it fully disposes of the one remaining cause of action, negligence, such that it is not clear that the motion for summary adjudication in this case is functionally any different from the motion for summary judgment.

B. Ross's Evidentiary Objections in Ross SS in Response to Plaintiff's UMFs

In response to Plaintiff's UMF Nos. 1-10, Ross lists the UMFs as disputed followed by string cites of grounds for objecting to evidence. The Court disregards the string cite of evidentiary objections as not in compliance with California Rule of Court, Rule 3.1354. As presented, the objections appear to object to the factual statement (the UMF), not the underlying evidence. Further, as evidentiary objections, they are not filed in a separate document, they are not directed to any specifically identified item of evidence or exhibit, and they are not accompanied by a proposed order. (Cal. R. Ct., Rule 3.1354(b) and (c).)

C. Ross's "Disputed" Responses to UMF Nos. 1, 4-10, and 13

In response to Plaintiff's UMF Nos. 1 and 4-10, and 13, Ross lists the UMFs as "disputed" but does not state any facts disputing the UMF or cite any evidence supporting his dispute. The Court considers those UMFs undisputed. (Cal. R. Ct., Rule 3.1350(f)(2) and (3) [An opposing party who contends that a fact is disputed must state, on the right side of the page directly opposite the fact in dispute, the nature of the dispute and describe the evidence that supports the position that the fact is controverted," and the evidence citation "must include reference to the exhibit, title, page, and line numbers."].)

Legal Framework of Negligence Cause of Action

Civil Code section 1714 addresses the general rule of negligence. It provides in pertinent part: "Everyone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself." (Civ. Code § 1714(a).) The elements of negligence are a legal duty owed to the plaintiff to use due care, a breach that legal duty, and damages suffered as a proximate result of the breach. (*Ladd v. County of San Mateo* (1996) 12 Cal.4th 913, 917.)

For the reasons set forth below, the Court does not need to address the factors for establishing or limiting the existence of a legal duty under the *Biakanja/Rowland* test to rule on the motion.

A. Plaintiff Has Not Met His Initial Burden to Prove Each Element of His Claim

Damages are an essential element of a claim for negligence. (*Ladd, supra,* 12 Cal.4th at 917-918 [elements of a claim for negligence include a breach of duty as the proximate cause of "resulting injury"].) Plaintiff's moving papers, including his SS, do not include facts or evidence demonstrating the nature and dollar amount of damages Plaintiff contends he sustained as a result of any breach of duty by Ross. When damages are an essential element of a cause of action, as is the case for claims of both negligence and breach of contract, a motion for summary judgment cannot be granted when there is no proof that there are no triable issues of material fact regarding the nature and amount of damages sustained by the plaintiff. (*Paramount Petroleum Corp., supra,* 227 Cal.App.4th at 241 [disputed facts concerning damages on breach of contract claim precluded summary adjudication of that cause of action]; *Dept. of Indus. Rel. v. UI Video Stores, Inc.* (1997) 55 Cal.App.4th 1084, 1090 [in breach of contract claim, denying summary judgment or summary adjudication where "issues of the calculation of damages . . . remain to be determined"].)

Ford's declaration in support of the motion includes a one-page document without a signature following by affidavits that appear to have been filed in other proceedings by him and by other witnesses, as well as other exhibits, including verified discovery responses by Ross. In apparent recognition of issues regarding the initial declaration, Ford filed a supplemental/reply declaration which does attempt to authenticate and lay foundation for the documents provided with his original declaration. Even if Ford had asked the Court to take judicial notice of the prior affidavits or declarations filed in another case, which he did not, those affidavits and declarations cannot be accepted by the Court for the truth of their contents on a motion for summary judgment. (*South Lake Tahoe Property Owners Group v. City of South Lake Tahoe* (2023) 92 Cal.App.5th 735, 751-752 ["Courts may not take judicial notice of allegations in affidavits, declarations and probation reports in court records because such matters are reasonably subject to dispute and therefore require formal

proof. [Citations omitted.]"]; *Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 882.) While the Court accepts that Ford has adequately authenticated the copies of the affidavits and declarations filed in prior actions, the content of those documents cannot be accepted by the Court as true under the foregoing authorities, which is another reason Plaintiff has not met his initial burden on the motion. The Court will consider the verified discovery responses by Ross as admissions adequately authenticated, however.

B. <u>There Are Triable Issues of Fact Precluding Summary Judgment</u>

Ross has presented evidence in opposition to the motion that genuinely disputes a number of Plaintiff's UMFs that the Court finds are material to the resolution of Plaintiff's claim for negligence, including without limitation, UMF Nos. 11, 12, 16, and 20, in which Ross disputes that he acted as a financial advisor for Plaintiff and disputes that he knew Hill was married to Ford in July 2014 when she executed the Adoption Agreements for the IRA accounts at Principal. In addition, in particular, there are triable issues of fact raised by Ross's AF No. 36 in particular, as Ross concedes that his role required him to "ensure that the information [in the Adoption Agreements] was correct." (Ross SS AF No. 36.) Ross also acknowledged that he knew of the "spousal consent" requirement reflected in the Adoption Agreement, which also would appear to be part of Ross's admitted role in making sure the information in the Adoption Agreements was correct, and presumably that the spousal consent was completed and executed if applicable. (Ford Decl. ISO Mot. at PDF p. 103 [Ross Verified Resp. to RFAs, Resp. to RFA No. 28].) In addition, Ross's statement in AF No. 36 that he was "not involved in the preparation of the Adoption Agreement" appears to be contradicted by his verified discovery responses, in which he admitted that "Ross or a member of his staff at Ross's direction" prepared the Adoption Agreements (Exhs. F31-38, F40-49, F51-61 and 63, 64 as marked and attached to the 2AC), raising a triable issue. (Ford Decl. ISO Mot. at PDF p. 99 [Ross Verified Resp. to RFAs, Resp. to RFA No. 8].)

<u>Conclusion</u>

The motion for summary judgment or summary adjudication is **denied**.

14. 9:00 AM CASE NUMBER: MSC21-01344
CASE NAME: GONZALEZ VS AMTRUST NORTH AMERICA, ET AL.
***HEARING ON MOTION IN RE: PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
FILED BY: GONZALEZ, ROSANA
<u>*TENTATIVE RULING:*</u>

Plaintiff Rosana Gonzalez moves for preliminary approval of her class action settlement with defendants AmTrust Financial Services, Inc., and AmTrust North America, Inc. The action alleges various Labor Code wage & hour violations. The action does not include a claim under PAGA.

The Court previously heard this matter on March 13, 2025, and concluded that that a supplemental declaration was necessary to establish (1) case-specific evaluation of the strengths and weaknesses of the case; (2) that the possible invocation of the "escalator clause" will not be unfair to employees whose compensable time will be reduced or eliminated by its terms; and (3) that CASA of Contra Costa County meets the criteria of Code of Civil Procedure section 384.

Counsel for plaintiff filed a supplemental declaration responding to the Court's request. The

declaration sets forth a detailed analysis of the strengths of the case, including quantitative estimates of the value of the claims. As to the escalator clause, it explains how the function and value of the clause. As to the cy pres issues, the record now addresses the requirements of Code of Civil Procedure section 384. Accordingly, the Court hereby issues a new tentative ruling as set forth below.

A. Background and Settlement Terms

The original complaint was filed on June 30, 2021, raising class action claims on behalf of non-exempt employees, alleging that defendants violated the Labor Code in various ways, including failure to pay minimum and overtime wages, failure to provide meal breaks, failure to provide proper wage statements, failure to reimburse necessary business expenses, and failure to pay all wages due on separation.

The settlement would create a gross settlement fund of $2,500,000. The class representative payment to the plaintiffs would be $12,000. Attorney's fees would be $875,000 (35% of the settlement). Litigation costs would not exceed $20,000. The settlement administrator's costs (Phoenix Class Action Administration Solutions) would not exceed $13,000. The net amount paid directly to the class members would be about $1,580,000. The fund is non-reversionary. Based on the estimated class size of 760 individuals, the average net payment for each class member is approximately $2,079.

The proposed settlement would certify a class of all current and former non-exempt employees employed by Defendants in California during the class period, which is June 30, 2017 through June 8, 2023.

The agreement also includes an escalator clause, under which if the number of workweeks exceed 72,000 by more than 5%, defendant may either increase the payments or shorten the Class Period to reduce the claims that must be paid. The provision involves something of a tradeoff—it may result in payments increasing, or it may result in some claims being excluded from the settlement. If the claims period is reduced, those claims removed from the settlement are no longer released from further claims by employees. The Court still has some qualms about whether, as a practical matter, anyone likely will be able to pursue such "unreleased" claims. Nonetheless, at least in this case, the Court does not view it as a barrier to approval.

The class members will not be required to file a claim. Class members may object or opt out of the settlement.

Various prescribed follow-up steps will be taken with respect to mail that is returned as undeliverable. Checks undelivered or uncashed 180 days after mailing will be voided, and will be paid to tendered to the CASA of Contra Costa County. Pursuant to Code of Civil Procedure section 384, counsel attests that CASA of Contra Costa County is a nonprofit organization that provides services in Juvenile Court in this county. The supplemental declaration of counsel now describes the activities of the organization in sufficient detail to establish that it is a "child advocacy program" within the meaning of the code provision. Pursuant to Code of Civil Procedure section 382.4, counsel attests that that there is no connection between Casa of Contra Costa County and counsel that could create the appearance of impropriety.

The settlement contains release language covering "all claims stated under state, federal, or local law…alleged in the operative complaint or which could have been alleged based on the factual allegations in the operative Complaint[.]" Under recent appellate authority, the limitation to those claims with the "same factual predicate" as those alleged in the complaint is critical. (*Amaro v.*

Anaheim Arena Mgmt., LLC (2021) 69 Cal.App.5th 521, 537 ["A court cannot release claims that are outside the scope of the allegations of the complaint." "Put another way, a release of claims that goes beyond the scope of the allegations in the operative complaint' is impermissible." (*Id*., quoting *Marshall v. Northrop Grumman Corp*. (C.D. Cal.2020) 469 F.Supp.3d 942, 949.)

Informal and formal written discovery was undertaken, and counsel had the information evaluated by outside experts. The matter settled after arms-length negotiations, which included a session with an experienced mediator.

By way of the supplemental declaration, Counsel have provided not only a general discussion of their work on the case, and stated that they assessed the case, but have provided analysis of this particular case, including estimation of the monetary value of the case.

B. Legal Standards

The primary determination to be made is whether the proposed settlement is "fair, reasonable, and adequate," under *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801, including "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction … to the proposed settlement." (See also *Amaro v. Anaheim Arena Mgmt., LLC, supra,* 69 Cal.App.5th 521.)

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, "[t]he court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter." (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because "[w]here the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutatory purpose." (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

C. Attorney fees

Plaintiff seeks 35% of the total settlement amount as fees, relying on the "common fund" theory. Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: "If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." (*Id*., at 505.) Following typical practice, however, the fee award will not be considered at this time, but only as part of final approval.

Similarly, litigation costs and the requested representative payment of $12,000 for plaintiff will be reviewed at time of final approval. Criteria for evaluation of representative payment requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.

D. Conclusion

Based on the entire record, including the supplemental declaration of counsel, the Court finds that the settlement is sufficiently fair, reasonable, and adequate to justify preliminary approval. The motion for preliminary approval is granted.

Counsel are directed to prepare an order reflecting this tentative ruling, the other findings in the previously submitted proposed order, and to obtain a hearing date for the motion for final approval from the Department clerk. Other dates in the scheduled notice process should track as appropriate to the hearing date. The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented. Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing date. 5% of the attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court including amendment of the judgment to reflect the funds paid to the cy pres recipient pursuant to Code of Civil Procedure section 384.

15. 9:00 AM CASE NUMBER: MSC21-01453
CASE NAME: HARRIS VS. WESTMONT LIVING
***HEARING ON MOTION IN RE: FINAL APPROVAL**
FILED BY:
****TENTATIVE RULING:****
Plaintiff Quai'lyn Harris moves for final approval of her class action and PAGA settlement with defendant Westmont Living, Inc.

A. **Background and Settlement Terms**

Defendant operates a retirement community in Brentwood. Plaintiff worked there for several years as a server.

The original complaint in this action was filed on July 7, 2021 as a class action. Defendant moved to compel arbitration; the motion was denied but an appeal was filed. A separate PAGA-only action was filed in Riverside County, but the parties agreed to stay it pending the appeal. The parties then proceeded to a successful mediation, after which the parties agreed to the filing of a consolidated amended complaint encompassing both class and PAGA claims. The Riverside action remains stayed and will be dismissed upon completion of this case.

The settlement would create a gross settlement fund of $300,000. The class representative payment to the plaintiff would be $10,000. Attorney's fees would be $105,000 (35% of the settlement). Litigation costs would not exceed $25,000. The settlement administrator's costs are estimated at $12,450. PAGA penalties would be $20,000, resulting in a payment of $15,000 to the LWDA. The net amount paid directly to the class members would be about $132,010, not including distribution of PAGA penalties. The fund is non-reversionary. There are an estimated 392 class members. Based on the estimated class size, the average net payment for each class member is approximately $325. The individual payments will vary considerably, however, because of the allocation formula prorating payments according to the number of weeks worked during the relevant time. The number of

aggrieved employees for PAGA purposes is smaller, about 247, because the starting date of the relevant period is later.]

The entire settlement amount will be deposited with the settlement administrator in two equal installments. The first will occur within 30 days after the effective date of the settlement, and the second a year later.

The proposed settlement would certify a class of all current and former non-exempt employees employed at Defendants' California facilities between January 10, 2017 and August 29, 2023. For PAGA purposes, the period covered by the settlement is November 3, 2019 to August 29, 2023.

The class members will not be required to file a claim. Class members may object or opt out of the settlement. (Aggrieved employees cannot opt out of the PAGA portion of the settlement.) Funds would be apportioned to class members based on the number of workweeks worked during the class period.

A list of class members will be provided to the settlement administrator within 15 days after preliminary approval. The administrator will use skip tracing as necessary. Various prescribed follow-up steps will be taken with respect to mail that is returned as undeliverable. Settlement checks not cashed within 180 days will be cancelled, and the funds will be directed to the controller's unclaimed property fund.

Since preliminary approval of the settlement was granted, the parties and the settlement administrator have been implementing provisions of the agreement. Notices have been mailed to 432 addresses. 42 notices were returned. Skiptracing found new addresses for 30 of the 42, and were remailed. A total of 12 notice packages have been deemed undeliverable. There have been no objections or opts outs, and the final size of the class is now 431 members. The average payment per class member will be about $306.

The settlement contains release language covering all claims and causes of action, alleged or which could have reasonably been alleged based on the allegations in the operative pleading, including a number of specified claims. Under recent appellate authority, the limitation to those claims with the "same factual predicate" as those alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 ("A court cannot release claims that are outside the scope of the allegations of the complaint.") "Put another way, a release of claims that goes beyond the scope of the allegations in the operative complaint' is impermissible." (*Id*., quoting *Marshall v. Northrop Grumman Corp*. (C.D. Cal.2020) 469 F.Supp.3d 942, 949.)

Formal discovery was undertaken, resulting in the production of substantial documents. The matter settled after arms-length negotiations, which included a session with an experienced mediator.

Counsel also has provided an analysis of the case, and how the settlement compares to the potential value of the case, after allowing for various risks and contingencies. For example, much of plaintiff's allegations centers on possible off-the-clock work, including missed or skipped meal breaks and rest breaks. Defendant, however, pointed out that its formal policies prohibit off-the-clock work, and

asserted that it would have had no knowledge of employees beginning work before punching in or continuing after punching out. Further, it argued that it was required to make meal and rest breaks available, but not required to ensure that they be taken, so long as no employer policy prevented or discouraged taking such breaks. As to unreimbursed employee expenses (mainly cell phone use), plaintiff would have been called on to show that such expenses were in fact incurred, were reasonably necessary to job performance, and were unreimbursed. Furthermore, the fact-intensive character of such claims would have presented a serious obstacle to class certification.

The potential liability needs to be adjusted for various evidence and risk-based contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a number of reasons: they derive from other violations, they include "stacking" of violations, the law may only allow application of the "initial violation" penalty amount, and the total amount may be reduced in the discretion of the court. (See Labor Code § 2699(e)(2) (PAGA penalties may be reduced where "based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory.")) Moreover, recent decisions may make it difficult for PAGA plaintiffs to recover statutory penalties, as opposed to actual missed wages. (See, e.g., *Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056.)

Counsel attest that notice of the proposed settlement was transmitted to the LWDA concurrently with the filing of the motion for preliminary approval.

B. **Legal Standards**

The primary determination to be made is whether the proposed settlement is "fair, reasonable, and adequate," under *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801, including "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction … to the proposed settlement." (See also *Amaro*, 69 Cal.App.5th 521.)

Because this matter also proposes to settle PAGA claims, the Court also must consider the criteria that apply under that statute. Recently, the Court of Appeal's decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the "fair, reasonable, and adequate" standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.) The Court also held that the trial court must assess "the fairness of the settlement's allocation of civil penalties between the affected aggrieved employees". (*Id*., at 64-65.)

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, "The court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter." (*California State Auto. Assn. Inter-*

Ins. Bureau v. Superior Court (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because "Where the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutatory purpose." (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

C. **Attorney Fees**

Plaintiff seeks 35% of the total settlement amount as fees, relying on the "common fund" theory. Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: "If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." (*Id*., at 505.) Following typical practice, however, the fee award was not considered at the time of preliminary approval, but as part of final approval.

Counsel have provided a lodestar estimate of $258,935, based on 353.6 hours at hourly rates of either $625 or $850. This yields an implied multiplier of about 0.30. Without necessarily endorsing the hourly rates, it is clear that no adjustment is needed. The attorney's fees are approved.

The litigation costs of $20,539.24 are reasonable and are approved.

The settlement administrator's costs of $12,450 are reasonable and are approved.

The requested representative payment of $10,000 for the plaintiff is reviewed under the criteria discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-07. Ms. Harris attests that she has spent about 40 hours working on this matter. She took the risks that are typically associated with being a plaintiff in this kind of matter. She also signed a general release of claims, which is much broader than the release that applies to the class. In her declaration, she attests to incidents of racial harassment at work. Without reviewing the merits of the claims, the references establish that her release encompasses claims with some potential value. The $10,000 payment is approved.

D. **Discussion and Conclusion**

The Court finds that the settlement is fair, reasonable, and adequate. The motion for approval is granted.

Counsel are directed to prepare an order reflecting this tentative ruling and the other findings in the previously submitted proposed order. The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented, on a date to be selected in consultation with the Department Clerk. Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing date. Five percent of the attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court.

16. 9:00 AM CASE NUMBER: MSC21-02516
CASE NAME: JINCY JOY VS. RED DOOR RESTORATION, INC A CALIFORNIA CORPORATION
***HEARING ON MOTION IN RE: ORDER AUTHORIZING PLAINTIFFS TO PROCEED IN COURT**
FILED BY:
****TENTATIVE RULING:****

Before the Court is Plaintiff Jincy Joy and Plaintiff Joby James (collectively, "Plaintiffs")'s motion for an order authorizing Plaintiffs to proceed in Court. The Motion is opposed by Defendant Red Door Restoration, Defendant Zhobin Safdari, and Defendant Cynthia Safdari (collectively, "Defendants").

Plaintiffs move for an order authorizing Plaintiffs to proceed in Court on the grounds that the American Arbitration Association ("AAA") declined administration of the matter as an arbitration because the contract includes a mandatory provision that the prevailing party shall be entitled to recover attorney's fees.

For the following reasons, the motion is **denied**.

Brief Factual and Procedural Background

Plaintiffs are homeowners who contracted with Red Door Restoration for a remodeling project in their home. Plaintiffs filed a complaint against Red Door Restoration, their corporate officers Zhobin Safdari and Cynthia Marie Safdari, as well as Red Door's surety company, Western Surety Company for (1) breach of contract, (2) intentional misrepresentation, (3) false promise, (4) negligent misrepresentation, (5) accounting and refund, and (6) enforcement of contractor's license bond. Previously, this Court granted Defendants' motion to compel arbitration of Plaintiffs' claims and stay this action pending arbitration.

On October 28, 2024 Plaintiffs filed a demand for arbitration with the AAA under the Construction Industry Arbitration Rules. (Miles Decl. at ¶ 2, Ex. A.)

On October 31, 2024 the AAA informed the parties that "[f]or the AAA to commence administration of this matter, both parties must waive the [prevailing party is entitled to its attorneys fees and costs] provision." (Miles Decl. at ¶ 3, Ex. B.) Counsel for Plaintiff proposed "that AAA direct its request for waiver of the attorney's fees provision only to the contractors, RDR and Mr. Safdari." (*Id*. at ¶ 4, Ex. C.)

The Court understands that neither party executed the waiver and neither party have heard further from AAA.

Legal Standard

When a lawsuit is stayed pending a decision through binding arbitration, "the action at law sits in the twilight zone of abatement with the trial court retaining merely a vestigial jurisdiction over matters submitted to arbitration." (*Optimal Markets, Inc. v. Salant* (2013) 221 Cal.App.4th 912 [quoting Brock v. Kaiser Foundation Hospitals (1992) 10 Cal.App.4th 1790, 1796].) Absent an agreement to withdraw the controversy from arbitration, no other judicial act is authorized upon stay pending arbitration by the trial court, except to appoint arbitrators if the method selected by the parties fails, grant a provisional remedy, and confirm, correct or vacate the arbitration award. (*Aronow v. Superior Court*

(2022) 76 Cal.App.5th 865, 873.)

It has also been held that the court's "vestigial jurisdiction" includes: (1) appointing arbitrators if the method selected by the parties fails; (2) granting provisional remedies if the arbitration award would otherwise be rendered ineffectual; (3) determining whether plaintiff is financially unable to pay their share of arbitration costs, and, if so, to order defendant to pay plaintiff's share of costs or waive the right to arbitration; (4) confirming, correcting, or vacating the award; (5) setting a date for completion of the arbitration if it is not included in the parties' agreement; and (6) removing an arbitrator who "fails to act and his or her successor has not been appointed...." (See, Titan/Value Equities Group, Inc. v. Superior Court (1994) 29 Cal.App.4th 482, 486; *Aronow*, *supra*, at pp. 885-886; *Bosworth v. Whitmore* (2006) 135 Cal.App.4th 536, 539, 550.) "Otherwise, however, the arbitrator takes over. The court has no continuing jurisdiction." (Cal. Prac. Guide, Alternative Dispute Resolution (Rutter Group, 2022 December Update), § 5:346.2.)

The preservation of the arbitrator's jurisdiction through a stay of litigation "is essential to the enforceability of an arbitration agreement .... Given the purpose of the statute, the most reasonable interpretation of the stay provision is that it grants a trial court discretion to lift a stay prior to the completion of arbitration only under circumstances in which lifting the stay would not frustrate the arbitrator's jurisdiction." (*MKJA, Inc. v. 123 Fit Franchising, LLC* (2011) 191 Cal.App.4th 643, 660.)

Analysis

Plaintiffs argue that under *Aronow v. Superior Court*, "this Court's scope of discretion should include the ability to lift the current stay of the trial court proceedings and allow the case to proceed in court." (Motion. at 2:25-26 [citing *Aronow*, *supra*, at p. 876].) They further argue that proceeding at the AAA would require them to waive their rights under the contract which, Plaintiffs contend, is a due process issue.

In opposition, Defendants argue that this motion is an untimely motion for reconsideration of this Court's prior order under CCP § 1008 and Plaintiffs representation that AAA has "declined" to arbitrate the matter is inaccurate.

Whether this motion is interpreted as a request to lift the stay under CCP § 1281.4 or to reconsider the Order compelling arbitration under CCP § 1008(a), this Court is without jurisdiction and must deny the motion. The requested relief fundamentally invades the province of the arbitrator and the arbitration stay. The Court's ability to review the arbitrator's decisions is severely limited. "The trial court may not step into a case submitted to arbitration and tell the arbitrator what to do and when to do it: it may not resolve procedural questions, order discovery, determine the status of claims before the arbitrator or set the case for trial because of a party's alleged dilatory conduct." (*Titan/Value Equities Group, Inc. v. Superior Court* (1994) 29 Cal.App.4th 482, 489.)

Finally, the Court notes that Plaintiffs representation that "AAA declined administration of the matter as an arbitration" is not entirely accurate. Instead, the correspondence Plaintiffs filed in support of their motion shows that they declined to comply with AAA's procedural requirements for arbitration.

The motion is **denied**.

17. 9:00 AM CASE NUMBER: N23-2314
CASE NAME: STEVEN SMITH VS. AURIN CANSON
***HEARING ON MOTION IN RE: JUDGMENT ON THE PLEADINGS**
FILED BY: CANSON, AURIN M.K.

TENTATIVE RULING:

Defendant Aurin Canson [Defendant] brings this Motion for Judgment on the Pleadings [Motion]. The Motion is opposed by Plaintiff Steven A. Smith, in his capacity as Trustee of the Patricia Byrd Canson Living Trust dtd 8/13/2023 [Plaintiff].

For the following reasons, the Motion is **denied**.

Background

Plaintiff filed this Action on December 8, 2023, seeking damages and restitution from, and an injunction against Defendant based on three claims arising from forcible entry to the property located at 2065 Tamalpais Dr. in Pinole. Plaintiff's Complaint includes verified allegations relating to Plaintiff's initial possession of the property, his capacity as trustee of the Patricia Canson Trust, and ownership of the property by the Trust. (Complaint, ¶¶ 3-23.) Plaintiff also alleges that Defendant entered the property by breaking locks, prevented entry by Plaintiff's real estate agent, Scott Tufnell, and wrote to Plaintiff and Plaintiff's attorney claiming possession and allegedly making veiled threats. (*Id.*, ¶¶ 25, 27-45, 54.) Plaintiff also alleges that Defendant has wrongfully taken possession of mail that he had delivered to the house for the Trust. (*Id.*, ¶¶ 46-51.) Plaintiff further alleges that Defendant fails to provide any evidence of his right of possession (*Id.*, ¶¶ 52-53.)

Defendant seeks a motion for judgment on the pleadings based on the contention: "(a) that the court has no jurisdiction over the subject of the cause of action alleged in the complaint as plaintiff is not a real party in interest; (b) that the complaint does not state facts sufficient to constitute a cause of action against this defendant. CCP §438 (c)(1)." The court addresses these matters in detail below.

Standard

Burden of Moving Party

A motion for judgment on the pleadings serves the same function as a general demurrer, challenging the entire complaint; the only difference being that a motion for judgment on the pleadings may be brought after an answer is filed. (Code of Civil Proc. § 438.) Thus, except as provided by Code of Civil Procedure section 438, the rules governing demurrers apply. (*Pang v. Beverly Hospital, Inc.* (2000) 79 Cal.App.4th 986, 989.) Accordingly, the grounds for judgment on the pleadings must appear on the face of the challenged pleading or be based on facts the court may judicially notice. (CCP 438(d); *Tung v Chicago Title Co.* (2021) 63 Cal.App.5th 734, 758-59.)

Just as on general demurrer, we treat the Motion as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. (*Lafferty v. Wells Fargo Bank* (2013) 213 Cal.App.4th 545, 564.) The court may also consider matters subject to judicial notice. (CCP 438(d).)

A challenge to an entire complaint should be denied if any cause of action within the complaint has merit. (*Fire Insurance Exchange v Superior Court (Altman)* (2004) 116 Cal.App.4th 446, 451.)

Forcible Entry

The claim of forcible entry and forcible detainer are codified in Civil Code §§ 1159-1160. A person is guilty of forcible entry where they break doors, windows or other parts of the house to gain possession and where they turn out the party in possession by force, threats, or menacing conduct. (Civ. Code § 1159.) A person is guilty of forcible detainer where they unlawfully hold and keep possession of real property by menaces or threats of violence, and where they enter a premises in the absence of the occupant and fail to surrender the premises for five (5) days after a demand is made. (Civ. Code § 1160.)

Analysis

Meet and Confer

Defendant has not shown that he complied with meet and confer obligations for this Motion. (Code of Civ. Proc. § 439 (a).) However, insufficient meet and confer is not grounds to deny or grant the Motion. (*Id*., (a)(4).)

Standing

Standing is shown where Plaintiff alleges that he peaceably possessed the subject property prior to Defendant's forcible entry and detention of said property. (Civ. Code §§ 1159-1160.) Here, Plaintiff alleges that he assumed trusteeship on August 17, 2023, and that he changed the locks and had possession of the property on or about August 25 and that he left the property vacant on August 29, and provided the keys to his real estate agent, Mr. Tufnell. (Complaint, ¶ 24.) Plaintiff contends that Defendant broke the locks and entered the property on or about October 3, 2023. (*Id*., ¶ 32.) In addition to the allegation of peaceable possession prior to forcible entry by Defendant, Plaintiff alleges he has a right to possession as trustee of the Patricia Boyd Canson Living Trust and presents documentation in his Complaint to evidence his capacity as trustee and ownership of the property by the trust. (*Id*., ¶¶ 3-23.)

For such reasons, Plaintiff has alleged sufficient facts to support his capacity as Trustee and as prior peaceable possessor to seek relief under theories of forcible entry and forcible detainer.

Forcible Entry and Detention

As discussed above, Plaintiff alleges that he had possession of the property prior to entry by Defendant as trustee of the Trust. Plaintiff further alleges that he had possession of, changed the locks, and locked the property approximately 30-45 days before Defendant broke into the property, changed the locks and repeatedly claimed the property as his own. (Complaint, ¶¶ 23-24, 31-35.)

Plaintiff alleges that his real estate agent, Mr. Tufnell, visited the property to investigate notice of Defendant's entry and that Mr. Tufnell was verbally threatened and run off the property by Defendant. (*Id*., ¶ 34-36). Plaintiff also alleges that he and his counsel received messages from Defendant that were menacing, veiled threats of violence to prevent re-entry by Plaintiff or his agents, and that

Plaintiff takes such matters seriously, particularly considering prior restraining orders issued against Defendant. (*Id*., ¶¶ 37-42.) Plaintiff alleges that he made a demand to Defendant to vacate the property on or about October 11, 2023, and that Defendant failed to vacate. (*Id*., ¶¶ 43-44, 54.) Plaintiff further alleges that Defendant has not presented any evidence to show Defendant has any right to ownership despite demands for same. (*Id*., ¶ 53.)

Such allegations include sufficient facts to meet with the necessary elements for forcible entry and forcible detainer as set forth in Civ. Code §§ 1159-1160.

18. 9:00 AM CASE NUMBER: N25-0232
CASE NAME: PETITION OF:PRAVEEN GUPTA
HEARING IN RE: PETITION FOR ORDER RELIEVING PETITIONER FROM PROVISIONS OF GOV'T CODE SEC 945.4 OR OTHERWISE ACCEPTING HIS GOV'T CLAIM AS TIMELY
FILED BY:
TENTATIVE RULING:

Parties to appear to discuss additional briefing schedule.

First, the Court recognizes that Petitioner's claim against the County is a real property claim as Petitioner in his claim to the Board of Supervisors of Contra Costa County identifies the purchase of parcels from the tax deed sale, specific APN numbers, describes the properties as landlocked, and specifically refers to the decision to case C22-00819. A government claim for damage to real property provides for a one-year statute of limitations. (Gov. Code § 911.2.)

Second, the Court is inclined to agree with Petitioner that the claim did not accrue until the May 2024 judgment that decided the easement Petitioner was using from 2014 to 2024 was adversely possessed, abandoned, and no longer an easement. (See Petition, Exh. 1 generally.) The Court considered Respondent's arguments that the claim accrued at the latest in 2019 but is wary about how a claim filed before the May 2024 judgment would not be considered premature.

Third, the Petition mentions that Petitioner filed a Complaint that pleads facts about delayed discovery and delayed accrual of the claim. The Court invites the Petitioner to brief those facts in the requested additional briefing.

The parties have briefed the issue of whether Petitioner's claim should be relieved from a late filing, but the parties omitted, and the Court is requesting them to brief the issue of whether Petitioner's claim was initially filed timely, which would naturally include the issue of when Petitioner's claim accrued.

Courtroom Clerk's Calendar
Add On

19. 9:00 AM CASE NUMBER: C24-02966
CASE NAME: YUE REN VS. GAUTAM PATIL

***HEARING ON MOTION IN RE: LEAVE TO FILE CROSS COMPLAINT * EXTENSION OF TIME (CONTINUED FROM 4/24/2025)**
FILED BY: PATIL, GAUTAM
****TENTATIVE RULING:****

This hearing was initially set for March 27, 2025. The Court in its tentative ruling for the March 27 hearing expressed its inclination to grant the motion but pointed out the moving party failed to include a copy of a proposed pleading to the motion. (See Cal. Rules of Court, rule 3.1324(a).) The Court continued the hearing on the motion to April 24, 2025, to allow Defendant to fix their procedural misstep and attach a proposed cross-complaint to their motion.

However, the moving party failed to file a proposed cross-complaint by the April 24, 2025, hearing. In response, the Court posted a tentative ruling for the April 24 hearing denying the motion for leave to file a cross-complaint without prejudice. The Court in its tentative ruling allowed for the possibility of re-filing the motion for leave to file cross complaint with an attached proposed cross-complaint as required by the Rules of Court.

Plaintiff's objection to improperly filed proposed cross-complaint is well taken by the Court. The Court directs Defendant to this Court's tentative ruling for the April 24 hearing regarding Defendant's opportunity to refile the motion.