SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 39
JUDICIAL OFFICER: EDWARD G WEIL
HEARING DATE: 05/22/2025

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-fcrepresented 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: C22-01605
CASE NAME: TIMOTHY MEINECKE VS. KEVIN DAVIDSON
***HEARING ON MOTION FOR DISCOVERY COMPEL RESPONSES TO PLTFS SUPPLEMENTAL INTEROGS AND SUPP REQUEST FOR PROD OF DOCS**
FILED BY: MEINECKE, TIMOTHY
****TENTATIVE RULING:****

Plaintiffs move for an order compelling defendant Karen Davidson to respond to Plaintiffs Supplemental Interrogatories and Requests for Production of Documents. They seek that the

responses to interrogatories be ordered without objections and monetary sanctions.

Plaintiffs served the discovery in question on June 18, 2024, by electronic mail. No responses were received. On January 27, 2025, plaintiff's counsel inquired of defense counsel as to whether a response would be forthcoming. Defense counsel did not respond. This motion was filed February 11, 2025.

Where a party serves responses to requests for production of documents, and the motion seeks to compel further responses, the motion must be made within 45 days after responses are served. (CCP § 2030.300(c).) Where no response is made, however, there is no specific time deadline unless a trial date has been set. (CCP § 2024.050.) Similar provisions apply to requests for production of documents. (CCP § 2031.310(c).)

No opposition has been filed, nor does any reason for the failure to respond appear in the moving papers.

Plaintiff's motion is granted. Defendant Karen Davidson is ordered to respond, without objection, to Plaintiffs Supplemental Interrogatories and Requests for Production of Documents within 30 days after notice of this order. Sanctions in the form of attorney's fees of $1,700, are awarded against counsel for defendants in favor of plaintiffs' counsel, and are to be paid within 30 days after notice of this order.

2. 9:00 AM CASE NUMBER: C22-02212
CASE NAME: DOUGLAS RYAN VS. DONALD RYAN
HEARING ON DEMURRER TO: RE 3RD AMENDED COMPLAINT
FILED BY: PARISH, WILLIAM
TENTATIVE RULING:

Before the Court is Defendant William H. Parish's Demurrer to Plaintiff's Third Amended Complaint.

Defendant Parish requests that the Court take judicial notice of several documents related to the proceedings in the Placer County action, Case No. SCV-004-3563 *Sierra College Brace 18, LLC v. Barbara Ryan, et al.*, including various minute orders, motions, and a jury verdict form. Defendant's request is **granted in a limited manner**.

Evidence Code section 452, subdivision (d) permits the Court to take judicial notice of court records. Such judicial notice, however, is limited to "the *existence* of each document in a court file." (*Magnolia Square Homeowners Ass'n v. Safeco Ins. Co.* (1990) 221 Cal.App.3d 1049, 1056 quoting *Day v. Sharp* (1975) 50 Cal.App.3d 904, 914.) The Court "can only take judicial notice of the truth of facts asserted in documents such as orders, findings of fact and conclusions of law, and judgments." (*Ibid.*)

It is worth noting that Plaintiff's counsel submits a declaration which attaches several documents. "[E]lectronic exhibits ***must include*** electronic bookmarks with links to the first page of each exhibit and with bookmark titles that identify the exhibit number or letter and briefly describe the exhibit." (Cal. R. Ct. 3.1110 (f)(4) emphasis added.) Plaintiff's counsel's declaration in support of his Opposition attaches eight separate exhibits but fails to include bookmarks to each of the exhibits. Counsel is

reminded to comply with the Rules of Court going forward.

In addition, as Plaintiff does not request judicial notice of those documents, the Court does not take judicial notice thereof.

Defendant's demurrer is **sustained without leave to amend** for the reasons set forth below.

Background and Factual Allegations

Below is a summary of the procedural background for this matter. This Court's earlier rulings on the Defendants' demurrers and motion to strike set forth in detail that allegations and issues in this matter, which are incorporated herein and not re-recited for sake of brevity.

Plaintiff Douglas Ryan filed his initial complaint, in his capacity as executor of the Estate of Barbara Ryan and Trustee of the Barbara W. Ryan Revocable Trust, on October 14, 2022. The Complaint named two Defendants: Donald Ryan and William Parish. Plaintiff asserted five causes of action, only one of which was directed toward moving party William Parish: Legal Malpractice (CoA 5.)

Almost one year later, on August 9, 2023, a First Amended Complaint was filed. The FAC now asserted five causes of action against Mr. Parish: (CoA 1) Financial Elder Abuse; (CoA 2) Undue Influence; (CoA 4) Breach of Fiduciary Duty; (CoA 6) Legal Malpractice; and (CoA 7) Negligence. The FAC also alleged causes of action for (COA 3) lack of capacity and (CoA 5) Equitable Indemnity against Donald Ryan. Both Defendants demurred to the FAC, and Defendant Parish moved to strike portions of the FAC.

The Court issued tentative rulings on the demurrers and motion to strike on May 15, 2024. As none of the tentative rulings were contested, they became the Orders of the Court. Both demurrers were sustained with leave to amend. The motion to strike was deemed moot given the rulings on the demurrers.

Plaintiff's Second Amended Complaint was filed on June 6, 2024. Plaintiff Douglas Ryan is now suing only in his capacity as the Trustee of the Trust, and not as the executor of the estate. The SAC alleges five causes of action: (1) Financial Elder Abuse; (2) Breach of Fiduciary Duty; (3) Equitable Indemnity; (4) Legal Malpractice; and (5) Negligence. All but the Equitable Indemnity claim were asserted against Defendant Parish.

Notably, on July 25, 2024, after the ruling on the FAC and the SAC was filed, a jury verdict was reached in the Placer County action. The jury verdict found that Barbara Ryan assigned her rights and obligations under the Assignment Purchase Agreement ("APA") to Donald Ryan. It also found that Barbara or Donald Ryan failed to do something required under the Assignment Contract – i.e. that they breached the Assignment Contract. The jury found that Sierra College Brace 18 was damaged in the amount of $1. Before entry of judgment, Barbara Ryan was dismissed.

Defendant William Parish demurred and moved to strike portions of the SAC. The Court sustained the demurrer with leave to amend. Plaintiff then filed the Third Amended Complaint on January 14, 2025. The Third Amended Complaint now alleges three causes of action: (1) Financial Elder Abuse, (2) Breach of Fiduciary Duty, and (3) Legal Malpractice. All three causes of action are asserted against Defendant Parish.

Standard for Demurrer

"The function of a demurrer is to test the sufficiency of the complaint as a matter of law." (*Holiday*

Matinee, Inc. v. Rambus, Inc. (2004) 118 Cal.App.4th 1413, 1420.) A complaint "is sufficient if it alleges ultimate rather than evidentiary facts" (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550 ("*Doe*")), but the plaintiff must set forth the essential facts of his or her case "with reasonable precision and with particularity sufficient to acquaint [the] defendant with the nature, source and extent" of the plaintiff's claim. (*Doheny Park Terrace Homeowners Assn., Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1099.) A complaint must be "liberally construed" and a demurrer "overruled if any cause of action is stated by the plaintiff." (*Amacorp Industrial Leasing Co. v. Robert C. Young Associates, Inc.* (1965) 237 Cal.App.2d 724, 727.)

Legal conclusions are insufficient. (*Id*. at 1098–99; *Doe* at 551, fn. 5.) The Court "assume[s] the truth of the allegations in the complaint, but do[es] not assume the truth of contentions, deductions, or conclusions of law." (*California Logistics, Inc. v. State of California* (2008) 161 Cal.App.4th 242, 247.) A demurrer lies only for defects appearing on the face of the complaint or from matters of which the court must or may take judicial notice. (CCP 430.40; *see Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) A demurrer may be filed to one of several causes of action in a complaint. (Cal. R. Ct. 3.1320(b).)

Analysis

Defendant Parish's demurrer to the Second Amended Complaint was sustained due to the Court's finding that the Plaintiff failed to allege any cognizable damages relating to Defendant Parish's representation of her. That earlier ruling summarized the issue as follows:

> No matter how styled, each of Plaintiff's causes of action must allege that Plaintiff was damaged in some way. As outlined above, Plaintiff has failed to articulate any specific, certain, and cognizable damage incurred by Barbara Ryan or her estate. There are no allegations of any out-of-pocket expenses incurred during the Placer County action. In addition, each of the causes of action Plaintiff claims could/should have been brought there are now being asserted in this action on behalf of the estate. Plaintiff has failed to cite any legal authority to show that the delay in bringing such claims constitutes 'damages' for any of their causes of action.

Defendant Parish again argues that Plaintiff has failed to allege any claim for damages against him. He addresses two separate theories upon which Plaintiff bases his claims.

Defendant's Arguments

The first theory Plaintiff asserts is the failure to assert claims on her behalf against Defendant Donald Ryan in the Placer County action. (TAC ¶¶ 32, 54, 82.) Defendant Parish notes that the Court already ruled upon this theory, finding that Plaintiff has not been prevented from bringing those claims against Donald Ryan in this action. As the Court previously noted:

> … Barbara *hasn't* lost that opportunity. On the contrary, she is asserting that million dollar claim against Donald *in this very case*. There is no suggestion that the claim was a mandatory cross-complaint in the Placer action, nor any suggestion that Donald is now in a position to use the results of the Placer action to escape his own liability in this action for allegedly defrauding his mother. [¶]
> … Plaintiff fails to cite any authority to support a claim that an attorney's failure to assert a non-compulsory cross-complaint in an underlying action supports a claim for

damages when that non-compulsory cause of action can and is brought later.

Second, Defendant Parish addresses the claim that Plaintiff was damaged due to Parish's failure to object and/or oppose the motion to reform the APA. As alleged in the TAC: "In absence of objection from PARISH, the court in the Placer County action granted SCB's motion and reallocated the Alternative Consideration benefit to SCB resulting in permanent loss of the $1,000,000 benefit for Barbara." (TAC ¶ 55.) Defendant Parish notes that Barbara Ryan had died years prior to this motion being made and heard. As such, Defendant Parish did not have any authority to object on Barbara's behalf because "the authority of an attorney to act for his client normally ends with the client's death." (*In re Lanza's Estate* (1964) 229 Cal.App.2d 720, 724.)

Plaintiff's Response

Plaintiff argues that the Third Amended Complaint alleges "newly developed facts and newly incurred damages that were not present in the First and Second Amended Complaints…." (Opp. at 4:1-4.) The new damages "did not arise until December 23, 2024 when a Statement of Decision was issued and a judgment entered on February 11, 2025" in the related Placer County action. The portion of the Statement of Decision at issue is the finding that the APA was to be reformed to make it explicit that Barbara Ryan was only to be paid $850,000.

Plaintiff appears to concede that he is not relying on the alleged failure to file a cross-complaint but is instead limiting his claims to the failure to object to and/or oppose the motion to reform the APA. Plaintiff also does not address Defendant's arguments relating to the death of Barbara Ryan.

Analysis

As noted above, the Court has already addressed and ruled on Plaintiff's claims regarding the failure to bring a cross-complaint on behalf of Barbara Ryan. The sole new alleged basis for Plaintiff's claims now relates to his assertion the Defendant Parish failed to object to and/or oppose SCB's motion to reform the APA. (TAC ¶ 40, 55.)

The Placer County action was commenced on August 19, 2019. Barbara Ryan died on November 9, 2021. As set forth in the Statement of Decision, jury trial on the legal claims took place between May 23 and June 25, 2024. (Final Statement of Decision ("SoD") at 1:22-24.) At the conclusion of the jury trial and the dismissal of certain claims, there were several equitable claims left – which included SCB's fifth cause of action for reformation of the APA and Promissory Note. (*Id.* at 2:19-3:3.)

Importantly, the Placer County Court indicates that SCB's motion for leave to file an amendment to its complaint to conform to proof after the jury trial was granted on June 24, 2024. (SoD at 2:22-23, fn. 1.) The amendment to the first amended complaint was filed on June 26, 2024. (*Ibid.*) The Placer County Court held a bench trial on the equitable claims (including the reformation claim) on August 5, 2024. (*Id.* at 3:4-6.) The parties submitted written closing briefs on August 16, 2024, and the matter was deemed submitted on that date. (*Ibid.*) The Court issued a proposed statement of decision on October 30, 2024 – and the final Statement of Decision was issued on December 23, 2024. (*Id.* at 3:7-13.)

Regarding the reformation cause of action, the Placer County Court stated:

Per the amendment to the first amended complaint filed June 26, 2024, SCB seeks

> reformation of the Assignment Purchase Agreement and Promissory Note to reflect that the amount due to SCB upon the closing of the Costco Contract was to be one hundred percent (100%) of the profit earned less $850,000 to be paid to Barbara Ryan. (SoD 11:4-8.)

The Court then reviewed the relevant law and the evidence presented by the parties before determining that the "testimony and evidence admitted at trial supports a judgment of reformation as to the APA and the accompanying promissory note." (*Id.* at 12:18-19.) As such, the Court ordered the APA reformed to conform to that understanding.

Plaintiff contends that Defendant Parish is (at least partially) responsible for this finding by the Placer County Court because he "stood idly by and raised on objection to SCB's motion," and that in the "absence of an objection from PARISH," the Placer County court granted SCB's motion "resulting in a permanent loss of the $1M benefit for Barbara. (TAC ¶ 40, 55.)

As noted above, Barbara Ryan died on November 9, 2021 – over two and a half years *before* SCB sought leave to amend to include a claim for reformation and almost three years before the Placer County court tried that cause of action.

The general rule is that the death of a party terminates the authority of the attorney to represent that party. (*See* Civ. Code § 2356(a)(2) [agency terminates on death of principal]; *Deiter v. Kiser* (1910) 158 Cal. 259, 262; *Herring v. Peterson* (1981) 116 Cal.App.3d 608, 612; *Swartfager v. Wells* (1942) 53 Cal.App.2d 522, 527-528.) "Since the authority of retained counsel generally does not survive the death of his client [citation], plaintiff's death here left no person or entity to prosecute the underlying action on her behalf, and any proceedings taken in the absence of her personal representative would have been subject to being declared void." (*Pham v. Wagner Litho Mach. Co.* (1985) 172 Cal.App.3d 966, 973 citations omitted.)

Barbara Ryan died on November 9, 2021. At that point in time, Defendant Parish's representation of her ceased. If the estate or representative of Barbara Ryan wished to have Defendant Parish continue to represent her interests in the litigation (to the extent they survived her passing) they should have intervened or substituted into that action. In fact, the "court ought to cease to exercise its jurisdiction over a party at his death until an authorized representative has been appointed and substituted." (*Boyd v. Lancaster* (1939) 32 Cal.App.2d 574, 580.) This appears to be what occurred when the Placer County court dismissed Barbara Ryan from the case.

A "judgment cannot be rendered for or against a decedent, nor can it be rendered for or against a personal representative of a decedent's estate, until the representative has been made a party by substitution." (*Sacks v. FSR Brokerage, Inc.* (1992) 7 Cal.App.4th 950, 957.) Thus, it appears that the Placer County judgment has no bearing on Barbara Ryan's claims – which are being asserted in this matter against Defendant Donald Ryan.

In addition, it is clear that Defendant Parish had no authority to assert claims or defenses of Barbara Ryan in the Placer County action any time after her death in November 2021. As such, there is no basis for claiming failure to do so somehow injured Barbara Ryan and/or her estate.

Summary and Conclusion

No matter how styled, each of Plaintiff's causes of action must allege that Plaintiff was damaged in some way. As outlined above, Plaintiff has failed to articulate any specific, certain, and cognizable damage incurred by Barbara Ryan or her estate. As the Court finds that the TAC fails to allege any cognizable damages for any of the causes of action, it need not address the other pleading issues raised by the Parties.

"[T]he burden is on the plaintiff to show in what manner he or she can amend the complaint, and how that amendment will change the legal effect of the pleading." (*Medina v. Safe-Guard Products, Internat., Inc.* (2008) 164 Cal.App.4th 105, 112 fn. 8.) (citation omitted.) Plaintiff does not request leave to amend in his opposition. The Court also notes that Plaintiff has had three opportunities to properly allege claims against Defendant Parish and has failed to do so.

Based on the above, Defendant's demurrer is **sustained** without leave to amend.

3. 9:00 AM CASE NUMBER: C22-02212
CASE NAME: DOUGLAS RYAN VS. DONALD RYAN
***HEARING ON MOTION IN RE: STRIKE PLTFS 3RD AMENDED COMPLAINT**
FILED BY: PARISH, WILLIAM
****TENTATIVE RULING:****

See Line 2.

4. 9:00 AM CASE NUMBER: C22-02212
CASE NAME: DOUGLAS RYAN VS. DONALD RYAN
HEARING ON DEMURRER TO: 3RD AMENDED COMPLAINT
FILED BY: RYAN, DONALD
****TENTATIVE RULING:****

Before the Court is Defendant Donald Ryan's Demurrer to Plaintiff's Third Amended Complaint.

Defendant's demurrer is **overruled** for the reasons set forth below.

Background and Factual Allegations

Below is a summary of the procedural background for this matter. This Court's earlier rulings on the Defendants' demurrers and motion to strike set forth in detail the allegations and issues in this matter, which are incorporated herein and not re-recited for sake of brevity.

Plaintiff Douglas Ryan filed his initial complaint, in his capacity as executor of the Estate of Barbara Ryan and Trustee of the Barbara W. Ryan Revocable Trust, on October 14, 2022. The Complaint named two Defendants: Donald Ryan and William Parish. Plaintiff asserted five causes of action, four of which were asserted against Defendant Donald Ryan: (1) Recission, (2) Financial Elder Abuse, (3) Equitable Indemnity, and (4) Contribution.

Almost one year later, on August 9, 2023, a First Amended Complaint was filed. The FAC now asserted five causes of action against Donald Ryan: (1) Financial Elder Abuse; (2) Undue Influence; (3) Lack of Capacity, (4) Breach of Fiduciary Duty, and (5) Equitable Indemnity. Both Defendants demurred to the

FAC, and Defendant Parish moved to strike portions of the FAC.

The Court issued tentative rulings on the demurrers and motion to strike on May 15, 2024. As none of the tentative rulings were contested, they became the Orders of the Court. Both demurrers were sustained with leave to amend. The motion to strike was deemed moot given the rulings on the demurrers.

Plaintiff's Second Amended Complaint was filed on June 6, 2024. Plaintiff Douglas Ryan was now suing only in his capacity as the Trustee of the Trust, and not as the executor of the estate. The SAC alleged four causes of action against Donald Ryan: (1) Financial Elder Abuse; (2) Breach of Fiduciary Duty; (3) Equitable Indemnity, and (4) Negligence. It also alleged a single cause of action for Legal Malpractice.

Notably, on July 25, 2024, after the ruling on the FAC and the SAC was filed, a jury verdict was reached in the Placer County action. The jury verdict found that Barbara Ryan assigned her rights and obligations under the Assignment Purchase Agreement to Donald Ryan. It also found that Barbara or Donald Ryan failed to do something required under the Assignment Contract – i.e. that they breached the Assignment Contract. The jury found that Sierra College Brace 18 was damaged in the amount of $1. Before entry of judgment, Barbara Ryan was dismissed.

Defendant William Parish demurred and moved to strike portions of the SAC. The Court sustained the demurrer with leave to amend. Plaintiff then filed the Third Amended Complaint on January 14, 2025. The Third Amended Complaint now alleges three causes of action: (1) Financial Elder Abuse, (2) Breach of Fiduciary Duty, and (3) Legal Malpractice. The first two causes of action are asserted against Donald Ryan.

Standard for Demurrer

"The function of a demurrer is to test the sufficiency of the complaint as a matter of law." (*Holiday Matinee, Inc. v. Rambus, Inc*. (2004) 118 Cal.App.4th 1413, 1420.) A complaint "is sufficient if it alleges ultimate rather than evidentiary facts" (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550 ("*Doe*")), but the plaintiff must set forth the essential facts of his or her case "with reasonable precision and with particularity sufficient to acquaint [the] defendant with the nature, source and extent" of the plaintiff's claim. (*Doheny Park Terrace Homeowners Assn., Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1099.) A complaint must be "liberally construed" and a demurrer "overruled if any cause of action is stated by the plaintiff." (*Amacorp Industrial Leasing Co. v. Robert C. Young Associates, Inc.* (1965) 237 Cal.App.2d 724, 727.)

Legal conclusions are insufficient. (*Id*. at 1098–99; *Doe* at 551, fn. 5.) The Court "assume[s] the truth of the allegations in the complaint, but do[es] not assume the truth of contentions, deductions, or conclusions of law." (*California Logistics, Inc. v. State of California* (2008) 161 Cal.App.4th 242, 247.) A demurrer lies only for defects appearing on the face of the complaint or from matters of which the court must or may take judicial notice. (Cal. Code Civ. Proc. § 430.40; *see Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) A demurrer may be filed to one of several causes of action in a complaint. (Cal. R. Ct. 3.1320(b).)

Initial Considerations

"[E]lectronic exhibits ***must include*** electronic bookmarks with links to the first page of each exhibit and with bookmark titles that identify the exhibit number or letter and briefly describe the exhibit." (Cal. R. Ct. 3.1110 (f)(4) emphasis added.) Plaintiff's counsel's declaration in support of his Opposition

attaches eight separate exhibits but fails to include bookmarks to each of the exhibits. Counsel is reminded to comply with the Rules of Court going forward.

Analysis

Defendant asserts three separate grounds for why he believes the Third Amended Complaint is deficient: (1) lack of standing, (2) lack of damages, and (3) Plaintiff approved of the underlying transaction and thus cannot maintain an elder abuse claim.

Standing

Defendant argues that Plaintiff does not have standing to sue as the Trustee of the Trust, that only the Executor has the ability to sue on behalf of the Trust, citing *In re Estate of Beech* (1975) 15 Cal.3d 623. Counsel does not provide a pin cite indicating where the *Beech* court makes this assertion. The only mention of standing in the opinion is: "Although contestant as trust beneficiaries had standing to petition for preliminary distribution to the trustee [cite], the executor's duty to avoid unreasonable delay in distribution was not dependent upon the initiative of a beneficiary." (*Id.* at 641.) This does not address the present issue.

Defendant's position on standing also appears to be incorrect. "As a general rule, the trustee is the real party in interest with standing to sue and defend on the trust's behalf." (*Portico Management Group, LLC v. Harrison* (2011) 202 Cal.App.4th 464, 473 quoting *Estate of Bowles* (2008) 169 Cal.App.4th 684, 691.) Also, as noted by Plaintiff, it appears the Court already determined Plaintiff had standing when Judge Treat discharged the Order to Show Cause directed toward this issue.

Lack of Damages

Defendant cites a single case for the proposition that a plaintiff must suffer a concrete or particularized injury to have standing to sue in California, *Limon v. Circle K Stores Inc.* (2022) 84 Cal.App.5th, 300 Rptr.3d 572. Again, there is no pin citation to any particular page of this 27-page opinion to assist the Court in determining if the case does stand for this proposition.

Defendant then cites to one paragraph of the Statement of Decision issued in the Placer County case indicating that the Placer County Court ruled that the Assignment and Purchase Agreement "shall be reformed with respect to the purchase price to reflect that the amount due to SCB upon the closing of the Costco Contract was to be (10%) of the profit less $850,000 to be paid to Barbara Ryan." Defendant contends this language "makes clear, the total amount due Barbara Ryan was $850,000 and was paid the [sic] full." (Demurrer at 6:1-2.) There are a few problems with this argument.

To begin with, demurrer lies only for defects appearing on the face of the complaint or from matters of which the court must or may take judicial notice. (CCP 430.40; *see Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The language cited above is not in the Complaint, and Defendant does not request that the Court take judicial notice of the Statement of Decision. While the Court recognizes that it can take judicial notice of the records of any court of this state (Cal. Evid. Code §452 (d)), Defendant does not argue or explain the scope of such judicial notice. Does this Court have to recognize every factual finding made by the Placer County Court?

It has been held that "factual findings in a prior judicial opinion are not a proper subject of judicial notice." (*Kilroy v. State of California* (2004) 119 Cal.App.4th 140, 148.) "However, that does not end

the inquiry." (*Ibid.*) "Whether a factual finding is true is a different question than whether the truth of that factual finding may or may not be subsequently litigated a second time. The doctrines of res judicata and collateral estoppel will, when they apply, serve to bar relitigation of a factual dispute even in those instances where the factual dispute was erroneously decided in favor of a party who did not testify truthfully." (*Ibid.* quoting *Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1569.) "In other words, even though a factual finding in a prior judicial decision may not establish the truth of that fact for purposes of judicial notice, the finding itself may be a proper subject of judicial notice if it has a res judicata or collateral estoppel effect in a subsequent action." (*Ibid.*)

Thus, while the Court may be able to take judicial notice of the Statement of Decision, it may only due so in the context of determining if that prior decision has a "res judicata or collateral estoppel effect in the subsequent action."

Defendant provides no argument, analysis, or legal authority indicating that res judicata or collateral estoppel apply. In fact, Defendant does not even argue that either theory applies in this case. Every memorandum of points and authorities "must contain a statement of facts, *a concise statement of the law*, evidence *and arguments relied on*, and a discussion of the statutes, cases, and textbooks cited in support of the position advanced." (Cal. R. Ct. 3.1113 (b) emphasis added.) Rule 3.1113 prevents the "trial court from being cast as a tacit advocate for the moving party's theories by freeing it from any obligation to comb the record and the law for factual and legal support that a party has failed to identify or provide." (*Quantum Cooking Concepts, Inc. v. LV Associates, Inc.* (2011) 197 Cal.App.4th 927, 934.)

Plaintiff approved of the underlying transaction

This argument appears to only apply to the financial elder abuse cause of action. Defendant argues that Plaintiff "knew and approved of the transaction before it was even consummated," quoting paragraph 12 from the ***First*** Amended Complaint. The operative complaint, however, is the ***Third*** Amended Complaint – which does not contain the paragraph relied upon by Defendant.

To the extent Defendant is arguing that Donald knew of the 2018 Assignment Purchase Agreement, that agreement is not the basis for the financial elder abuse claim. As noted by Plaintiff, the Third Amended Complaint "clearly identifies as financial elder abuse the January 11, 2019 assignment that Donald took from his elderly mother of the rights she had previously purchased from SCB a year before on January 10, 2018." (Opp. at 10:3-7; see also TAC ¶ 20, 51-53.)

Defendant makes no attempt to contend that the 2019 assignment cannot support a claim for financial elder abuse.

Conclusion

Defendant's Demurrer is **overruled** for all the reasons stated above.

5. 9:00 AM CASE NUMBER: C23-00683
CASE NAME: TARIN KASIM VS. RADC ENTERPRISES, INC.
***HEARING ON MOTION IN RE: NAFISA TARIN TO SUBSTITUTE IN THIS ACTION AS PLAINTIFF KASIM TARINS SUCCESSOR IN INTEREST**

FILED BY: KASIM, TARIN
TENTATIVE RULING:

Before the Court is Nafisa Tarin's motion for an order allowing her to substitute for Plaintiff in this Action as the successor-in-interest for Plaintiff. The motion is made on the ground that Plaintiff passed away on or about January 4, 2025, that this Action survives per Code of Civil Procedure §§ 377.10 to 377.35, and that Nafisa Tarin may be substituted for Plaintiff because Habiba Tarin was Plaintiff's wife and is thus Plaintiff's immediate successor-in-interest, and she authorizes their eldest daughter Nafisa Tarin to act as success-in-interest on her behalf.

Defendant RADC Enterprises opposes the motion on the grounds that Nafisa Tarin is not a proper class representative and PAGA claims are not maintainable by the proposed successor in interest.

For the following reasons, the motion is **granted-in-part** with respect to the class claims and **denied-in-part** with respect to the PAGA claims.

Analysis

This action involves the death of the class representative. To the extent any of the class claims survive Plaintiff's death, the action passes to his successor-in-interest pursuant to Code of Civil Procedure section 377.30. Survival actions are authorized under Code of Civil Procedure section 377.20, subdivision (a), which provides that "a cause of action for or against a person is not lost by reason of the person's death but survives subject to the applicable statute of limitations."

Habiba designates her daughter to act as successor-in-interest in this action. The daughter, Nafisa Tarin, has filed a declaration stating that she wants to act as successor-in-interest. This is expressly authorized by Code of Civil Procedure section 377.3d(a)(5)(B).

Defendant's primary argument in opposition to Nafisa Tarin's substitution with respect to the class claims is the contention that she is not a proper class representative. This argument is not a ground to deny the motion to substitute as successor-in-interest; this is neither a motion for class certification nor is it a motion to strike class allegations.

With respect to the PAGA claims, however, Courts have held that a representative plaintiff's death during the pendency of a PAGA action requires the dismissal of the PAGA claim unless the complaint can be amended to substitute another person as the representative plaintiff. (See, e.g., *Hargrove v. Legacy Healthcare, Inc*. (2022) 80 Cal.App.5th 782, 789-790.) Although substitution of the representative plaintiff may be permissible under some circumstances, such an amendment may fail since "[a]n employee does not have an assignable interest in his or her PAGA claim," and allowing such a substitution may frustrate enforcement of the statute of limitations. (*Id*. at pp. 790-792; see also, *Hutcheson v. Sup. Ct. (UBS Fin'l Services, Inc.)* (2022) 74 Cal.App.5th 932, 945.)

The Court finds the outcome of this motion is controlled by *Hargrove*. *Hargrove* was initiated by plaintiff Stephanie Hargrove in 2016, against various defendants, including San Bernardino Convalescent Operations, Inc. (SBCO), her former employer, under PAGA. "Approximately four years later, in 2020, Hargrove died. Her attorneys requested leave to file an amended pleading to substitute movant and appellant Makiya Cornell in place of Hargrove to prosecute the PAGA claims; however ... the trial court denied the request, dismissed the action, and stated that Cornell 'is free to file her own

claim and her own causes of action.'" (*Hargrove*, *supra*, 80 Cal.App.5th at pp. 785-786.)

Cornell appealed the trial court's denial of her motion to amend Hargrove's complaint to substitute herself as the plaintiff in Hargrove's pending PAGA matter. The *Hargrove* court noted that, while "strictly speaking" Cornell did not have standing to appeal the judgment, it would "treat the order denying the motion to amend as an order denying an implicit motion to intervene" and consider the appeal. *Hargrove* concluded "the trial court did not abuse its discretion in denying the motion [to amend]" to substitute Cornell as the plaintiff in the matter. (*Hargrove*, *supra*, 80 Cal.App.5th at p. 786.)

Here, there is no evidence that Nafisa Tarin could properly substitute as Plaintiff for her father's PAGA claims; there is no evidence that she is an aggrieved employee of Defendant and would have standing to bring the PAGA claims of the Complaint. Substitution of Nafisa Tarin as a PAGA plaintiff is not available under the facts presented.

6. 9:00 AM CASE NUMBER: C23-02679
CASE NAME: TRACY OLIPHANT VS. PROMEDICAL SKILLED NURSING AND REHABILITATION (ROSSMOOR)
***HEARING ON MOTION IN RE: STRIKE PORTIONS OF PLTFS 2ND AMENDED COMPLAINT**
FILED BY: GHC OF WALNUT CREEK, LLC
****TENTATIVE RULING:****

Defendants GHC of Walnut Creek, LLC and Life Generations Healthcare, LLC's motion to strike is **granted as to treble damages and otherwise denied**.

Defendants seeks to strike the following requests in the second amended complaint: (1) restitution, (2) attorney fees and (3) treble damages.

Defendants do not make an argument regarding restitution and therefore, that request is denied.

Here, Plaintiff seeks attorney fees under Code of Civil Procedure section 1021.5 and the elder abuse statute, Welfare and Institution Code section 15657(a). Welfare and Institution Code section 15657 allows for enhanced damages "[w]here it is proven by clear and convincing evidence that a defendant is liable for… neglect as defined in Section 15610.57… and that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of this abuse…" These enhanced damages include attorney fees. (Welf. & Inst. 15657(a).) Plaintiff has also alleged Defendants staffed their facilities at inadequate level, so as to maximize the business profits. (SAC ¶¶49,50, 57.) Such allegations are sufficient at the pleading stage to show recklessness and perhaps also malice. Therefore, the request to strike attorney fees is denied.

Treble damages are sought under the elder abuse statute, Welfare and Institution Code section 15657(a). While punitive damages are permitted under section 15657(a), treble damages are not mentioned in that section. Plaintiff has not explained how treble damages could be awarded in this case and therefore, the motion to strike them is granted.

Defendants did not request to strike punitive damages in their notice of motion, but they argue

for striking punitive damages in their memorandum. Punitive damages can be awarded in an elder abuse case where there is recklessness, oppression, fraud, or malice. In order to award punitive damages against employer the standard for awarding punitive damages against a corporate entity must be met. (Welf. & Inst. 15657(c); Civil Code 3294(b).)

Defendants argue that Plaintiff has not alleged facts required to seek punitive damages and that that Plaintiff has not alleged facts showing that a director, officer, or managing agent of the Defendants was involved in the wrongful conduct. As explained above, the allegations here are sufficient to show recklessness. As to corporate liability, Plaintiff has alleged that Defendants had a plan to understaff the facility to increase profits, while no individuals are named in the complaint, the allegations can be fairly read as including individuals sufficiently high up to be officers, directors or managing agents. At the pleading stage, Plaintiff has alleged enough for punitive damages.

7. 9:00 AM CASE NUMBER: C23-02679
CASE NAME: TRACY OLIPHANT VS. PROMEDICAL SKILLED NURSING AND REHABILITATION (ROSSMOOR)
HEARING ON DEMURRER TO: 2ND AMENDED COMPLAINT
FILED BY: GHC OF WALNUT CREEK, LLC
TENTATIVE RULING:

Defendants GHC of Walnut Creek, LLC and Life Generations Healthcare, LLC's demurrer is **overruled.** Defendants shall file and serve an answer by June 5, 2025.

Plaintiff is suing GHC and Life Generations for medical malpractice (cause of action one) and elder abuse (cause of action three). Defendants demur to the elder abuse cause of action.

Allegations

Plaintiff fell at home and injured her right hip in July 2022. She was 77 years old at the time. She had hip surgery at Kaiser on July 25. She was transferred to Promedica on July 27 and had another fall, injuring her right hip on July 29. (SAC ¶19.) Plaintiff had a second surgery at Kaiser on July 30. Plaintiff was discharged to the care of GHC and Life Generations on August 3. (SAC ¶21.) While under their care, Plaintiff had acute delirium and confusion and was transferred to John Muir Hospital on August 4. (SAC ¶22.) While in the care of GHC and Life Generations, Plaintiff was not being monitored by defendants and Plaintiff's family had a difficult time communicating with staff, and the family was not notified of Plaintiff's transfer to John Muir until they contacted GHC and Life Generations on August 4. (SAC ¶¶22, 23.) While at John Muir, Plaintiff's pain was controlled and she was able to return to GHC and Life Generations. (SAC ¶23.) By August 10, while under the care of GHC and Life Generations, Plaintiff was declining and her pain was uncontrolled. (SAC ¶24.) Plaintiff almost missed her appointment at Kaiser on August 10 because defendants did not have the necessary equipment to transfer her. (SAC ¶24.) Kaiser determined that Plaintiff need another surgery because her lower right extremity was significantly shorter than her left. She had surgery on August 12 and was discharged on August 22 to Windsor Manor. (SAC ¶25.)

Defendants GHC and Life Generations are alleged to be a skilled nursing facility. (SAC ¶46.) Plaintiff alleges that it was ordered that an abductor pillow be placed between Plaintiff's legs at all times, but this was frequently not done and when it was done, the pillow was not secured properly. (SAC

¶53(c).) GHC and Life Generations' staff also failed to implement Plaintiff's care plan, which required transferring and repositioning Plaintiff due to her mobility dependance and risk for skin breakdown (although it was not alleged that Plaintiff experienced skin problems). (SAC¶ 53(d), (e).) Plaintiff alleges that the staff chronically failed or refused to provide Plaintiff with quality nutrition and water, assist her with personal hygiene and skin care and subjected her to abusive and imprudent handling. (SAC ¶53(g).) Plaintiff also alleges that she experienced constipation with a fecal impaction, but staff failed to properly diagnose and treat her for this condition. (SAC ¶53(h). Finally, Plaintiff includes several paragraphs alleging Defendants' refusal or failure to communicate with Plaintiff's family and physicians and the failure to investigate and document problems. (SAC ¶53 (i), (j).)

Elder Abuse Claim

Defendants argue that the facts showing elder abuse must be alleged with particularity and here, they argue that the facts are insufficient to show elder abuse through neglect. Defendants also argue that Plaintiff has not alleged facts showing recklessness, oppression, fraud or malice and Plaintiff has not alleged facts showing corporate liability.

Elder abused based upon neglect is " 'failure of those responsible for attending to the basic needs and comforts of elderly or dependent adults, regardless of their professional standing, to carry out their custodial obligations.' [Citation.]" (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 783.) "It includes a failure to provide for personal hygiene, food, clothing, shelter, and medical care; a failure to protect from health and safety hazards; and a failure to prevent malnutrition or dehydration. [Citation.] Elder neglect does not refer to substandard performance of medical services but rather the failure of those responsible for attending to the basic needs and comforts of elderly or dependent adults, regardless of their professional standing, to carry out their custodial obligations. [Citations.]" (*Hearden v. Windsor Redding Care Center, LLC* (2024) 103 Cal.App.5th 1010, 1018-1019.)

Carter v. Prime Healthcare Paradise Valley LLC (2011) 198 Cal.App.4th 396 explained when an elder abuse claim upon neglect is proper:

> The plaintiff must allege (and ultimately prove by clear and convincing evidence) facts establishing that the defendant (1) had responsibility for meeting the basic needs of the elder or dependent adult, such as nutrition, hydration, hygiene or medical care [citations]; (2) knew of conditions that made the elder or dependent adult unable to provide for his or her own basic needs [citations]; and (3) denied or withheld goods or services necessary to meet the elder or dependent adult's basic needs, either with knowledge that injury was substantially certain to befall the elder or dependent adult (if the plaintiff alleges oppression, fraud or malice) or with conscious disregard of the high probability of such injury (if the plaintiff alleges recklessness) [citations].

(*Id.* at 404-405.) *Carter* also explained that in order "[t]o recover the enhanced remedies available under the Elder Abuse Act from a health care provider, a plaintiff must prove more than simple or even gross negligence in the provider's care or custody of the elder. [Citations.]" (*Carter, supra,* 198 Cal.App.4th at 405.) Finally, the facts for this claim must be pleaded with particularity. (*Carter, supra,* 198 Cal.App.4th at 410.) *Carter* also provided several examples where the allegations were sufficient to support a claim for neglect. (*Carter, supra,* 198 Cal.App.4th at 405-406.)

In order to state a claim for elder abuse by neglect, the facts must show something more than simple or gross negligence by health care providers. (*Delaney v. Baker* (1999) 20 Cal.4th 23, 30; *Sababin v. Superior Court* (2006) 144 Cal.App.4th 81, 88.) For this claim, the allegations must show "reckless, oppressive, fraudulent, or malicious conduct." (*Delaney*, *supra*, 20 Cal.4th at p. 31.) Recklessness refers "to a subjective state of culpability greater than simple negligence, which has been described as a 'deliberate disregard' of the 'high degree of probability' that an injury will occur." (*Ibid*.) Oppression, fraud and malice involve intentional or conscious wrongdoing of a despicable or injurious nature. (*Ibid*.)

Allegations of understaffing without more are not sufficient to state a claim for elder abuse. In *Worsham v. O'Connor Hospital* (2014) 226 Cal.App.4th 331, the court found that allegations that a patient fell due to understaffing and undertrained staff were insufficient to state a claim for elder abuse. However, in *Fenimore v. Regents of University of California* (2016) 245 Cal.App.4th 1339 the court found that the allegations were sufficient for neglect, where it was alleged that the hospital committed neglect by allowing the patient to fall minutes after entering the facility, failing to treat the patient's fractured hip for four days, and violating certain state regulations for acute psychiatric hospitals. (*Id*. at 1347-48.) The court also found the following allegations sufficient to show recklessness: the hospital had a pattern and knowing practice of improperly understaffing to cut costs, and had the hospital been staffed sufficiently, the patient would have been properly supervised and would not have suffered injury. (*Id.* at 1349.)

Here, Plaintiff was at Defendants' facility after multiple hip surgeries. Plaintiff alleges that she was not provided quality nutrition and water and that she experienced constipation with a fecal impaction, but staff failed to properly diagnose and treat her for this condition. (SAC ¶53(g)(h).) Plaintiff also alleges that the staff did not notify Plaintiff's doctors or family members of the conditions described above, which would include the fecal impaction. (SAC ¶53(i).) Although a close call, the court finds that these facts are sufficient at the pleading stages to allege neglect.

8. 9:00 AM CASE NUMBER: C23-02855
CASE NAME: YVONNE THOMPSON VS. SAFEAMERICA CREDIT UNION
***HEARING ON MOTION IN RE: PRELIMINARY APPROVAL**
FILED BY:
****TENTATIVE RULING:****
On May 1, 2025, the Court heard plaintiff's motion for preliminary approval of class action settlement. The Court continued the hearing date to allow plaintiff to supplement the record by (1) including a copy of the agreement; and (2) establishing compliance with Code of Civil Procedure sections 384(b) and 382.4.

The parties have revised the settlement to change the cy pre beneficiaries to be Junior Achievement of Northern California and Bay Area Legal Aid. The latter qualifies under CCP section 384(b) because it is a non-profit providing legal services to the indigent. The former qualifies as a "child advocacy program" and it supports projects that will benefit the class or similarly situated persons," because it provides lessons in financial literacy, work and career readiness to young people.

Counsel also attest that they have no connection with a recipient that could reasonably create the

appearance of impropriety as set forth in CCP section 382.4.

This addresses the Court's previous concerns.

The motion for preliminary approval is granted.

Counsel are directed to prepare an order reflecting this tentative ruling, the previous 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.

9. 9:00 AM CASE NUMBER: C23-02936

CASE NAME: SOLARENEWAL LLC VS. PRISTINE SUN FUND 5 LLC

***HEARING ON MOTION IN RE: SEAL PLTFS 2ND AMENDED COMPLAINT**

FILED BY: PRISTINE SUN CORPORATION

****TENTATIVE RULING:****

Defendants Pristine Sun Fund 5 LLC, Pristine Sun Corporation, Sustainable Solar Corp., Traverse Fitness Inc., Karun LLC, Green Reach, Inc., Defendant 7, Dorado Holdings, LLC, Troy Helming, Jeff Irvine, Seyed Jazayeri, and Gregory Scott Lane [Defendants] bring this Motion to Seal certain portions of the Second Amended Complaint [Motion]. The Motion is opposed by Plaintiff Solarenewal LLC [Plaintiff].

For the following reasons, the Motion is **granted in part and denied in part as discussed below**.

I. **Legal Standard**

"Unless confidentiality is required by law, court records are presumed to be open." (Cal. Rules of Court, Rule 2.550 (c).) To seal portions of the court record, the court must expressly find facts to establish:

(1) There exists an overriding interest that overcomes the right of public access to the record;
(2) The overriding interest supports sealing the record;
(3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
(4) The proposed sealing is narrowly tailored; and
(5) No less restrictive means exist to protect the overriding interest.

(Cal. Rules of Court, Rule 2.550(d); *Overstock.com, Inc. v. Goldman Sachs Group, Inc.* (2014) 231 Cal.App.4th 471, 487.)

> The experience of courts over the centuries has been that one who is in a position to testify directly to facts, but who, in a formal pleading or similar submission, instead states relevant matters in an oblique, vague, attributive, conditional, incomplete, or otherwise circumlocutory manner, may be deliberately *avoiding* a direct (and thus more easily controverted) assertion.

(*H.B. Fuller Co. v. Doe* (2007) 151 Cal.App.4th 879, 897.)

The public's right of access to court records exists only as to material which is *relevant* to the contentions advocated by the proffering party. (*Overstock.com, Inc. v. Goldman Sachs Group, Inc.* (2014) 231 Cal.App.4th 471, 500.) Where financial information is involved, a declaration from the moving party can provide substantial evidence to demonstrate that such matters involve "confidential proprietary information" or "trade secrets" to justify sealing of the record, including where "disclosure will cause 'competitive harm' to defendant in its negotiations with competitors and customers." (*Universal City Studios, Inc. v. Superior Court* (2003) 110 Cal.App.4th 1273, 1286; see also *McGuan v. Endovascular Technologies, Inc.* (2010) 182 Cal.App.4th 974, 988.) However, where such information is available in other public documents, such voluntary disclosure or failure to promptly act to seal such public record can substantially outweigh the confidentiality interests. (*Universal City Studios, Inc.*, *supra*, 110 Cal.App.4th at 1286.)

II. **Summary of Allegations at Issue**

Defendants seek to seal the portions of the Second Amended Complaint [SAC] specified below based on the contentions of privacy and business interests as summarized below. (See Amended Notice and Motion filed 04/30/25, Memorandum of Points and Authorities, at 1:5-8; Dec. J. Joyner filed 12/30/24, ¶ 4; Dec. T. Helming, ¶ 5.)

Allegations	**Argued Basis to Seal**
14:5-8; 14:10-15	Sensitive Financial Details and Internal Billing Practices: Reveals sensitive financial details and internal management strategies, including specific account and credit card numbers
14:18-19; 14:22; 14:27-15:6; 15:23; 19:21-26; 20:27-28; 21:4-12; 22:4-6; 22:9-12; 23:17-19; 25:10-12; 26:2-3	Sensitive Financial Details and Internal Billing Practices: Reveals confidential billing practices and pricing strategies
26:16-20; 40:9; 50:23-26; 51:17-21	Sensitive Financial Details and Internal Billing Practices: References to invoices expose sensitive billing practices and financial flows
15:17-18; 22:19-20; 23:6-8; 23:26-27	Non-Public Project Locations and Operational Details: Identifies non-public project locations and internal operations

16:5-6; 16:13-15; 16:19; 17:27-28	Privileged or Confidential Legal Information: References to law firm invoices and related communications
16:22-23; 16:25-27	Privileged or Confidential Legal Information: References to the Master Purchase Agreement that discloses sensitive contractual details
24:22-24	Strategic Business Communications and Negotiations: Reveals internal compensation terms and staffing strategies
24:28-25:3	Strategic Business Communications and Negotiations: Reveals sensitive business communications about strategy and negotiations
26:16-21; 40:9-10; 50:23-26	References to Defendant No. 7: No connection to Plaintiff, and discloses proprietary business and financial details that, if disclosed, could harm its competitive position, reputation, and ongoing fundraising efforts.

The redacted SAC is currently available in the court's public records and the non-redacted SAC has been lodged with the court pending determination of this Motion. Defendants submitted a declaration of Troy Helming and a declaration of counsel to support this Motion. Plaintiff submitted a declaration of counsel, which included documents lodged with the court pursuant to the parties' stipulated protective order.

Defendants also submitted a further declaration of Troy Helming on Reply to which Plaintiff filed an objection based on failure to present such evidence with the moving papers. The Reply Declaration references the Motion to Seal, but clearly relates to Defendants' Motion to Strike as it addresses the three categories raised in the Motion to Strike and does not address the categories of allegations raised in this Motion, apart from matters relating to Defendant 7.

The Declarations of Troy Helming provide the evidence of the factual basis for this Motion. Helming's declaration generally describes the alleged nature of the material sought to be sealed, and broadly contends that public disclosure of such information "would cause significant and irreparable harm to Defendants by providing competitors with unfair access to proprietary strategies, financial arrangements, and operational details." However, the declaration does not provide particular facts to support this contention, or why Defendants' business interests outweigh the public right to access the court records and the allegations relating to Defendants' allegedly fraudulent billing practices.

III. **Analysis**

A. **Sensitive Financial Details and Internal Billing Practices**

The Declaration of Troy Helming states that the matters that relate to sensitive financial details and

internal billing practices, including that the allegations detail "internal invoices, payment methods, credit arrangements, and the management of financial accounts," and that "[p]ublic disclosure of these details would expose private financial data, compromise Defendants' bargaining position, and potentially invite security risks." (Dec. T. Helming, ¶ 5.) The declaration does not contend that the redacted facts are unsupported by the evidence.

The allegations Defendants seek to seal based on sensitive financial details and internal billing practices are: 14:5-8, 14:10-15, 14:18-19, 14:22, 14:27-15:6, 15:23, 19:21-26, 20:27-28, 21:4-12, 22:4-6, 22:9-12, 23:17-19, 25:10-12, 26:2-3, 26:16-20, 40:9, 50:23-26, and 51:17-21. These allegations pertain to what is alleged to be fraudulent billing and invoicing practices, as well as intermingling of corporate funds between Plaintiff and Defendant entities at the instruction of Helming and with the assistance of his staff and associates.

In view of the redacted portions, it appears Defendants' concern is not information with respect to the amounts being charged, as such information is left in the unredacted portions. Instead, it appears that the key issue is the language that describes the mark-ups of the invoices and directions by Helming of how to bill the amounts to Plaintiff. The court notes that credit card information that is provided includes the abbreviated name of the institution and only the last four digits of the account number.

Although Defendants contend that this is a mere billing dispute and they seek to seal the details of the business dealings between the parties, they do not provide substantive evidence to support this position. Additionally, Plaintiffs' counsel has submitted a declaration that includes communications that are the source of the allegations. (Dec. J. Fields, ¶¶ 5-22, Ex. 3-16.)

The SAC also alleges prior cases against and discipline of Helming to support the contention that this is not the first time that Helming has perpetrated a similar, potentially fraudulent, scheme. Helming has not provided any facts in his declaration to support finding that the mark-ups and directions alleged in the SAC were appropriate and legitimate or to provide a rational explanation for the described practices that Plaintiff alleges were tortious.

As such, as to allegations pertaining to mark-ups and directions as to invoices, billing and payments, this court finds that Plaintiff has not presented sufficient evidence to support a finding by this court that there exists an overriding interest that overcomes the right of public access to the record or that the overriding interest supports sealing the record for these allegations, generally. Defendants also have not shown that the abbreviation of the account information is not sufficient to protect their interests.

Thus, with respect to sensitive financial details and internal billing practices, the court denies Defendants' Motion to seal the allegations found at 14:5-8, 14:10-15, 14:18-19, 14:22, 14:27-15:6, 15:23, 19:21-26, 20:27-28, 21:4-12, 22:4-6, 22:9-12, 23:17-19, 25:10-12, 26:2-3, 26:16-20, 40:9, and 51:17-21.

B. **Non-Public Project Locations and Operational Details**

Defendants seek to seal matters that relate to non-public project locations and operational details. Particularly, this issue relates to the allegations found at 15:17-18; 22:19-20; 23:6-8; 23:26-27. In his declaration, Helming states that this "[i]nformation identif[ies] specific project sites and internal operations," and that "[p]ublicly revealing this information could provide competitors with insights

into Defendants' strategic initiatives, operational priorities, and client relationships, causing competitive harm." (Dec. T. Helming, ¶ 5.)

Defendants identified specific portions of the SAC that outline these projects for sealing. Helming asserts in his declaration that these projects are non-public and that disclosure of such matters will provide competitors with insights and cause competitive harm. Helming does not explain the factual basis for his statement that competitive harm would be caused by mentioning these projects, to what extent the projects have been kept confidential, or if there are investors that may be investigating these projects.

Plaintiff argues that the allegations with respect to Texas, Lassen County, and Kang were previously disclosed in the Original and First Amended Complaint. This court also notes that these matters are also alleged in unredacted portions of the Second Amended Complaint. (*Universal City Studios, Inc.*, *supra*, 110 Cal.App.4th at 1286.)

With respect to the other projects mentioned, Defendants have not shown substantial evidence that would evidence an overriding interest in sealing that supports portion of the SAC that overcomes the right of public access to the record. In weighing this issue, the court considers the prejudice to others investigating, involved with, or investing in these other listed projects, if the public right to access court records is curbed.

As such, with respect to non-public projects, the court denies Defendants' Motion to seal the allegations found at 15:17-18, 22:19-20, and 23:8.

C. **Privileged or Confidential Legal Information**

Defendants seek to seal matters that relate to what they describe as privileged or confidential legal information, including attorney invoicing and references to a Master Purchase Agreement. Particularly, this issue relates to the allegations found at 16:5-6, 16:13-15, 16:19, 16:22-23, 16:25-27, and 17:27-28. In his declaration, Helming states that this information "could disclose sensitive legal strategies or proprietary business arrangements," and "these details risk violating the attorney-client privilege and revealing confidential negotiations." (Dec. T. Helming, ¶ 5.)

The allegations pertaining to attorney-client privilege include certain detail relating to the content of the attorney's work. The surrounding unredacted allegations include sufficient detail to describe the alleged incongruity between the subject of the invoice and the payment by Plaintiff. (SAC, ¶¶ 75-77.) The confidentiality of attorney-client communications is an overriding interest that overcomes the right of public access to the record and supports sealing the relevant portion of the record. The request is also narrowly tailored.

Additionally, with respect to the Master Purchase Agreement [MPA], Defendant seeks to redact and seal references to such agreement and detail associated therewith. As Plaintiff points out, Defendants reference the MPA in their moving papers, but the detail of such matters is not discussed therein. In addition to referencing the MPA, these portions of the SAC allege information relating to companies that are not involved in the suit as well as certain business information relating to these companies. These details may support the allegations of wrongdoing, but they do not allege actions or events relating to the business of Plaintiff entity. For such reasons, except for the reference to the MPA, Defendant has shown an overriding interest in the confidentiality of these business matters that is sufficient to support sealing of the record and is narrowly tailored.

As such, the court grants Defendants' Motion, with respect to this privileged or confidential legal information, to seal and allow redaction of the allegations found at 16:5-6, 16:13-15, 16:19, 16:22-23, 16:25-27, and 17:27-28, except as to the reference to the phrase "Master Purchase Agreement."

D. **Strategic Business Communications and Negotiations**

Defendants seek to seal matters that relate to what they describe as strategic . Particularly, this issue relates to the allegations found at 24:22-24 and 24:28-25:3. In his declaration, Helming states that such allegations are Internal communications regarding compensation terms, staffing, and negotiation strategies," and that "[p]ublic disclosure could compromise Defendants' relationships with key industry partners and undermine their competitive position in the marketplace." (Dec. T. Helming, ¶ 5.) Defendants argue that these allegations regarding communications between Defendants Helming and Jazayeri regarding his work for Plaintiff and on unrelated projects that were allegedly billed to Plaintiff.

Generally, the detail within the redaction pertains to the manner in which Helming and Jazayeri characterized his work in billing, the scope of work that was anticipated, and the concealment of such matters. In analysis of the business interest v. the public right to access the court records, the court finds that Helming does not provide sufficient facts to show that such information is confidential or that prejudice would result. As to 24:22-24, the amount of the billing and the scope of work are also discussed in other non-redacted portions, and it is not clear how such matters are confidential. As to 24:28-25:3, this allegation pertains to the concealment of the scheme, which is highly relevant to the claims at issue. Defendants do not show that this allegation relates to confidential communications or information to an extent that would overcome the public right to access court records with respect to the basis for the claims against the Defendants.

As such, the court denies Defendants' Motion, with respect to the purported strategic business communications and negotiations, to seal the allegations found at 24:22-24 and 24:28-25:3.

E. **References to Defendant 7**

Defendants' argument with respect to redaction and sealing of the name of Defendant 7 rests on a ruling sustaining its Demurrer to the claims against Defendant 7. It appears that Defendants may have conceded this argument as the amended Motion papers do not discuss this basis for redaction or sealing of the SAC.

The Demurrer was not sustained and Defendant has not presented evidence or argument to support sealing the name of Defendant 7 if it continues in this litigation. The court finds that Defendants have not made a showing of a basis to find that Defendant 7 or any other Defendant has an overriding interest in the confidentiality of this information that overcomes the public right to access the records.

As such, the court denies Defendants' Motion, with respect to the name of Defendant 7, to seal the allegations found at 26:16-21; 40:9-10; 50:23-26.

10. 9:00 AM CASE NUMBER: C23-02936

CASE NAME: SOLARENEWAL LLC VS. PRISTINE SUN FUND 5 LLC
***HEARING ON MOTION IN RE: STRIKE PORTIONS OF PLAINTIFFS SECOND AMENDED COMPLAINT**
FILED BY: PRISTINE SUN FUND 5 LLC
****TENTATIVE RULING:****

Defendants Pristine Sun Fund 5 LLC, Pristine Sun Corporation, Sustainable Solar Corp., Traverse Fitness Inc., Karun LLC, Green Reach, Inc., Defendant 7, Dorado Holdings, LLC, Troy Helming, Jeff Irvine, Seyed Jazayeri, and Gregory Scott Lane [Defendants] bring this Motion to Strike certain portions of the Second Amended Complaint [Motion]. The Motion is opposed by Plaintiff Solarenewal LLC [Plaintiff].

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

I. Legal Standard

A. Motion to Strike

A motion to strike is properly brought to challenge "any irrelevant, false or improper matter inserted in any pleading" and "all or any part of any pleading not drawn or filed in conformity with the laws of the state, a court rule, or an order of the court." (Code Civ. Proc. § 436.) "Irrelevant matter" includes allegations not essential to the claim or defense, or allegations that are "neither pertinent to nor support[ed] by an otherwise sufficient claim or defense" or demands for judgment "requesting relief not supported by the allegations of the complaint." (Code Civ. Proc. § 431.10(b).) A motion to strike under Code Civ. Proc. § 436 must be based upon facts appearing on the face of the challenged pleading and judicial notice. (Code Civ. Proc. § 437, subd. (a).)

B. Meet and Confer

A moving party must meet and confer regarding the allegations it believes are subject to a motion to strike and the legal support for such claims deficiencies before filing such motion. (CCP § 435.5 (a), (a)(1).) Such meet and confer is required to be conducted in person or by phone at least five days before the motion to strike must be filed. (*Ibid*.) Insufficient meet and confer efforts are not grounds to grant or deny the motion. (*Id*., (a)(4).)

II. Analysis

A. Meet and Confer

Defendants have not shown that they met with their meet and confer obligations for bringing this motion to strike in that it is disputed that they raised issue of the issues on which this motion is brought. However, insufficient meet and confer efforts are not grounds to grant or deny the motion. (Code Civ. Proc. § 435.5, (a)(4).) As such, the court addresses the merits of each of Defendants' demurrer arguments below.

B. Motion to Strike

Defendants seek to strike three categories of allegations. First, Defendants seek to strike allegations involving alleged securities law violations and related settlements between Helming and the States of Kansas and Missouri, which occurred from 2002 to 2006. Second, Defendants seek to strike allegations relating to activities in 2018 to 2021 that they contend are barred by the relevant statute of

limitations. Third, Defendants seek to strike paragraphs 134-155, which they contend are protected by California's litigation privilege. This court does not consider the Declaration of Troy Helming with respect to the Motion to Strike as such evidence is not at issue at this stage in the proceedings. (Code Civ. Proc. § 437.)

The court does not find merit to Defendants' arguments. First, the allegations of prior formal discipline of Helming and prior litigations involving securities law violations and similar instances of fraudulent or wrongful activity in paragraphs 23-28 go to the mindset of Helming and the plausibility of the alleged scheme. This goes to both the elements of wrongful acts and intent, as well as the issues of fiduciary duty and punitive damages. These allegations also demonstrate that Helming and his entities were apprised of their obligations as officers and the effect of their failure to comply, and, despite this, have allegedly acted fraudulently and in bad faith with respect to Plaintiff and its business.

Similarly, with respect to the matters in 2018 – 2021, these alleged actions provide the background for Defendants' alleged wrongful and fraudulent actions, and as Plaintiff points out, are, at least potentially, actionable based on the discovery rule and other potentially applicable doctrines, including fraudulent concealment, continuing violation doctrine, or equitable estoppel. (Cal. Code Civ. Proc. §338(d); *Hobart v. Hobart Estate Co.* (1945) 26 Cal.2d 412, 440 ["it is recognized that in cases involving such [fiduciary] relationship facts which would ordinarily require investigation may not excite suspicion, and that the same degree of diligence is not required."]; *Moreno v. Sanchez* (2003) 106 Cal.App.4th 1415, 1424.)

Finally, with respect to the allegations pertaining to what Defendants contend were privileged pre-litigation discussions in paragraphs 134-155, Plaintiff has not alleged facts that show at this pleading stage that the statements are settlement discussions or otherwise subject to a litigation privilege. It appears that Plaintiff relies on the contention that the discussions described in the SAC were settlement related, but this is not supported by the context described in the allegations. Paragraph 134 describes Plaintiff's demand for an accounting and paragraph 135 describes the response by Defendant Lane and promise to provide an audit. The response by Defendant Helming is included in paragraph 136. The following paragraphs describe the removal of PSF5 and Helming from management of Plaintiff.

These allegations do not appear on their face to relate to settlement discussions, but, instead, convey the facts pertaining to the demand for accounting of funds allegedly improperly transferred to PSC and to Helming personally, and the subsequent responses of the parties and actions taken by Plaintiff. These allegations relate to the basis for Plaintiff's claims and the continued wrongful taking, ongoing misrepresentations and breach of fiduciary duties.

Defendants cite various cases that supposedly support their position, but they do not discuss the context or the holdings of such decisions or provide analysis with respect to the basis for finding that such rulings apply and mandate that these paragraphs be stricken under the litigation privilege. (See *Lafferty v. Wells Fargo Bank* (2013) 213 Cal. App. 4th 545, 571-72.) Simply because the alleged discussions took place prior to the filing of this action does not mean de facto that they are privileged

or otherwise protected from being pled as the basis for Plaintiff's claims. (See *Edwards v. Centex Real Estate Corp.* (1997) 53 Cal.App.4th 15, 34-35.) Defendants have not shown that the necessary factors were met to designate such matters as litigation or settlement privileged and subject to being stricken from the SAC.

For such reasons the Motion is denied.

11. 9:00 AM CASE NUMBER: C23-02936
CASE NAME: SOLARENEWAL LLC VS. PRISTINE SUN FUND 5 LLC
HEARING ON DEMURRER TO: 2ND AMENDED COMPLAINT
FILED BY: PRISTINE SUN FUND 5 LLC
TENTATIVE RULING:

I. Legal Standard

A. Demurrer

The limited role of the demurrer is to test the legal sufficiency of the allegations in a complaint. (*Lewis v. Safeway, Inc.* (2015) 235 Cal.App.4th 385, 388.) 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 demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. (*Ibid*.) For purposes of demurrer, all facts pleaded in a complaint are assumed to be true, but the court does not assume the truth of conclusions of law. (*Aubry v. Tri-City Hosp. Dist.* (1992) 2 Cal.4th 962, 967.)

"Liberality in permitting amendment is the rule, if a fair opportunity to correct any defect has not been given." (*Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1227.) "However, leave to amend should not be granted where, in all probability, amendment would be futile." (*Foroudi v. The Aerospace Corp.* (2020) 57 Cal.App.5th 992, 1000 [citations and internal quotes omitted].)

B. Meet and Confer

A moving party must meet and confer regarding the allegations it believes are subject to a motion to strike and the legal support for such claims deficiencies before filing such motion. (CCP § 430.41 (a), (a) (1).) Such meet and confer is required to be conducted in person or by phone at least five days before the motion to strike must be filed. (*Ibid*.) Insufficient meet and confer efforts are not grounds to grant or deny the motion. (*Id*., (a)(4).)

II. Background

Plaintiff's Second Amended Complaint [SAC] alleges the factual basis for asserting that Defendants perpetrated a scheme to solicit and obtain certain payments for other companies and individual associates, and to improperly retain those funds without providing an accounting even after request by Plaintiff. (SAC, ¶¶ 52-155.) Defendants at once contend that Plaintiff has not alleged sufficient facts to support its claim, and also then also seeks to redact portions of those allegations, demonstrating both the sensitivity and the detail of the facts alleged. Defendants' accompanying Motion to Seal seeks to ensure the confidentiality of the allegations, due to "proprietary business information" contained therein with respect to the account information as well as, apparently, the manner in which

Helming and his associates characterized and prepared invoices that Plaintiff alleges were fraudulent.

Plaintiff argues that "The 58-page, 284-Paragraph Second Amended Complaint ("SAC") provides a detailed and painstaking rendition of Defendants' financial fraud and malfeasance supporting the causes of action alleged. (Code Civ. Proc. §425.10(a).)" (Opposition to Demurrer, at 5:2-5.) This court agrees with Plaintiff's contention, as discussed below, and notes the volume of information, including redacted details, that allege the basis for the claims against the individuals and their related companies. The extent of the Defendants' allegedly improper actions is explained sufficiently in the SAC to support each cause of action.

The court reviews the merits of each of Defendants' demurrer contentions below.

III. Analysis

A. Meet and Confer

Defendants have not shown that they met with their meet and confer obligations for bringing this demurrer in that it is disputed that they raised issue of the issues on which this demurrer is brought. However, insufficient meet and confer efforts are not grounds to grant or deny the motion. (Code Civ. Proc. § 430.41, (a)(4).) As such, the court addresses the merits of each of Defendants' demurrer arguments below.

B. Demurrer

1. SECOND CAUSE OF ACTION for Breach of Implied Covenant of Good Faith and Fair Dealing re Management Agreement against Pristine Sun Fund 5 LLC [PSF5]; FOURTH CAUSE OF ACTION for Breach of Implied Covenant of Good Faith and Fair Dealing re SolaRenewal LLC Agreement against Pristine Sun Fund 5 LLC

PSF5 demurs to the second and fourth causes of action on the grounds that the claim fails to state facts sufficient to constitute a cause of action. (Civ. Proc. Code § 430.10(e).) Each contract has an implied covenant of good faith and fair dealing. (*Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1391 [citations].) Defendant relies on the case of *Guz v Bechtel* (2000) 24 Cal.4th 317 for the argument that these claims should be dismissed as duplicative of the breach of contract claim. *Guz v Bechtel* involves termination of employment and an alleged breach of employment contract where the court found the employment agreement to be at will where no particular time period was reflected in the contract. (*Id*., at 352-353.) With respect to the scope of duties under the covenant, the court held: "The covenant of good faith and fair dealing, implied by law in every contract, exists merely to prevent one contracting party from unfairly frustrating the other party's right to receive the *benefits of the agreement actually made."* (*Id.*, at 349.)

Here, it is alleged that there was a contract with PSF5, and that Defendants' acts not only breached the specific terms of the contract but also unfairly frustrated the other party's right to receive the benefits of the agreement. As such, Plaintiff alleges a claim for breach of covenant of good faith. Particularly, paragraphs 171 and 172, 182 and 183 detail the basis for these claims, as well as the paragraphs setting forth the factual allegations supporting Plaintiff's claims found at paragraphs 52 to 155.

Accordingly, demurrer to the second and fourth cause of action is overruled.

2. FIFTH CAUSE OF ACTION for Conversion against All Defendants; SIXTH CAUSE OF ACTION for

Fraud against Pristine Sun Fund 5, Pristine Sun Corporation [PSC], and Helming; SEVENTH CAUSE OF ACTION for Fraud against Sustainable Solar [SSC] and Helming; FOURTEENTH CAUSE OF ACTION for Fraud against Defendant 7 and Helming; FIFTEENTH CAUSE OF ACTION for Fraud against Green Reach and Helming

Defendants demur to the fifth, sixth, seventh, fourteenth, and fifteenth causes of action on the grounds that the claims fail to state facts sufficient to constitute a cause of action. (Civ. Proc. Code § 430.10(e).)

The elements of a conversion claim are: (1) the plaintiff's ownership or right to possession of the property, (2) the defendant's conversion by a wrongful act or disposition of property rights, and (3) damages. (*Lee v. Hanley* (2015) 61 Cal.4th 1225, 1240, quoting *Welco Electronics, Inc. v Mora* (2014) 223 Cal.App.4th 202, 208.) “Conversion is the wrongful exercise of dominion over the property of another.” (*Welco Electronics, Inc.*, *supra*, 223 Cal.App.4th at 208., citations and internal quotes omitted.) “The unauthorized transfer of property constitutes a conversion.” (*Id.* at 209.) “Money may be the subject of conversion if the claim involves a specific, identifiable sum.” (*Ibid*.)

"The elements of fraud, which give rise to the tort action for deceit, are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage." (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.) In California, fraud must be pled specifically. The particularity requirement necessitates pleading facts which show how, when, where, to whom, and by what means the representations were tendered. (Id., at 645.)

As discussed above, the SAC details a scheme by which the Defendants obtained funds from Plaintiff wrongfully and under false pretenses. These allegations are detailed and pertain to each of the individuals and the related companies. They include allegations regarding whom, what, when, where and how as to multiple wrongful acts and/or fraudulent transactions. These allegations detail the manner in which Defendants PSF5 and Helming obtained control over the affairs and management of Plaintiff and the manner in which Defendants collaborated to submit to and obtain payment from Plaintiff for various alleged fraudulent invoices, such allegations specifically discuss facts regarding the management structure of Plaintiff and the actions and improper invoicing by the named Defendants, as well as the damages suffered by Plaintiff. (SAC, at ¶¶ 4-162.)

Plaintiff has alleged facts to support an allegation that Defendants acted with the intent to defraud when they entered into the contracts with Plaintiff and for management of Plaintiff’s affairs, and when they presented unfounded invoices for payment by Plaintiff.

Additionally, Plaintiff alleges that such funds were wrongfully taken and that Plaintiff requested return of the money and an accounting, and that Defendants failed to return the allegedly wrongfully taken funds. Such allegations further support the conversion cause of action.

Particularly, paragraphs 186 to 189, 193 to 194, 197 to 198, 240 to 249, and 252 to 260 detail the basis for the elements of these claims, as well as the paragraphs setting forth the extensive factual allegations supporting Plaintiff’s claims beginning at paragraph 4 and going through paragraph 155 at least.

Accordingly, demurrer to the fifth, sixth, seventh, fourteenth and fifteenth causes of action is overruled.

3. EIGHTH CAUSE OF ACTION for Breach of Implied Contract against Sustainable Solar Corp.

SSC demurs to the eighth cause of action on the grounds that the claim fails to state facts sufficient to constitute a cause of action. (Civ. Proc. Code § 430.10(e).)

"An implied contract is one, the existence and terms of which are manifested by conduct." (Cal. Civ. Code §1621.) Here, Plaintiff alleges an implied contract relating to work performed by SSC for Plaintiff as reflected in invoices. This claim does not rest solely on one or two invoices; Plaintiff also includes allegations regarding the work purportedly performed by SSC for Plaintiff. This eighth cause of action is adequately alleged in paragraphs 200 to 204 along with factual allegations in paragraphs 52 to 155, which include additional facts regarding the invoices submitted for work by SSC which were paid by Plaintiff (see particularly ¶¶ 90-106), as well as the allegations in paragraphs 157, 186, 197 and 198.

Accordingly, demurrer to the eighth cause of action is overruled

4. NINTH CAUSE OF ACTION for Breach of Fiduciary Duty and Corporations Code Duties against Pristine Sun Fund 5; TENTH CAUSE OF ACTION for Breach of Contract against Troy Helming; ELEVENTH CAUSE OF ACTION for Breach of Fiduciary Duty and Corporations Code Duties against Troy Helming; TWELFTH CAUSE OF ACTION for Fraud against Irvine/Dorado, Jazayeri/Karun, Lane

Defendants demur to the ninth, tenth, eleventh, and twelfth causes of action, again, on the grounds that the claim fails to state facts sufficient to constitute a cause of action. (Cal. Civ. Proc. Code § 430.10(e).)

These causes of action relate to breach of fiduciary duty, and alleged personal liability of the individual defendants. As Plaintiff points out, the SAC alleges that Helming, *individually*, was a party to the Agreement, and that he, *individually*, assumed specified duties and obligations. (SAC, ¶¶ 32, 35 [Helming is a party to the Agreement]; ¶¶213-217 [describing the provisions of the Agreement breached by Helming]; see also ¶¶ 6, 7, 8, 9, 11, 12 [describing Helming's role in each of the Entity Defendants that he founded], 144(f); ¶¶57-62, 63-88, 94-97, 98-103, 107-128, 131-133 [detail of invoices submitted].) Additionally, with respect to the acts of the other individual defendants, Plaintiff alleges fraudulent billing practices as well as concealment of the fact that these individual consultants held official positions with the related entities. (SAC, ¶¶ 13-16, 90, 94-95, 105-130.)

Defendants argue that Delaware law supports demurrer to this claim, citing *Hiller & Arban, LLC v. Rsrvs. Mgmt., LLC*, 2016 WL 3678544, at *3 (Del. Super. Ct. July 1, 2016 (dismissing a claim against a corporate president because "he retained no individual benefit").) However, even considering, as Defendants argue, that the "Delaware Court in *Hiller & Arban* recognized that even when an individual signs an agreement in a corporate capacity, they cannot be held personally liable unless there is clear evidence of personal benefit or misconduct," Defendants cannot prevail on demurrer. As discussed below, Plaintiff has provided sufficient detail of the allegations regarding the individual Defendants' wrongdoing with respect to improper billing. Defendants do not acknowledge any of these allegations in their argument.

Plaintiff argues that **"**control persons absolutely are personally liable for the torts that they commit. California and Delaware follow this rule," citing *Frances T. v. Village Green Owners Assn.* (1986) 42 Cal.3d 490, 504, holding that "directors are liable to third persons injured by their own tortious conduct regardless of whether they acted on behalf of the corporation and regardless of whether the corporation is also liable," and *Prairie Capital III, L.P. v. Double E Holdings Corp.* (Del. Ch. Nov. 24, 2015)

132 A.3d 35, 60, holding that "'[a] corporate officer can be held personally liable for the torts he commits and cannot shield himself behind a corporation when he is a participant.'"

Additionally, California precedent has held that "Self-dealing in whatever form it occurs should be handled with rough hands for what it is—dishonest dealing. And while it is often difficult to discover self-dealing in … dissolution and liquidation, the difficulty makes it even more imperative that the search be thorough and relentless." (*Everest Investors 8 v. McNeil Partners* (2003) 114 Cal.App.4th 411,425.) "This rule has its roots in the law of agency. ... And "[the] true rule is, of course, that the agent is liable for his own acts, regardless of whether the principal is liable or amenable to judicial action." (*Frances T.*, *supra*, 42 Cal.3d at 505.)

Here, Plaintiff has alleged, among other various fraudulent invoicing, that through the fraudulent invoicing, Helming obtained $200,00, which was initially part of funds ($220,500) paid to PSC, and was then transferred to Helming's personal account. (SAC, ¶ 56). Further, it is alleged that the other individual defendants were paid directly by Plaintiff and through PSC under management by Helming pursuant to fraudulent invoices. (SAC, ¶¶ 108, 113-115, 118-120, 122, 124, 128.)

The allegations with respect to wrongful and fraudulent actions are sufficient to allege breach of fiduciary duty, particularly based upon actions by Troy Helming as further discussed below. Helming took these actions pursuant to the authority granted to PSF5 in the SolaRenewal LLC Agreement and to he and PSF5 in the Management Agreement. (SAC, ¶¶ 34-38, 40-43.) This is sufficient to allege breach of fiduciary duty.

Further, Plaintiff has clearly alleged personal benefit to and misconduct by Helming and the other individual defendants as a result of the alleged wrongful and fraudulent actions and invoicing, which is sufficient to support a breach of contract claim, as well as a claim for breach of fiduciary duty, and fraud.

Accordingly, demurrer to the tenth, eleventh, and twelfth causes of action is overruled

5. THIRTEENTH CAUSE OF ACTION for Constructive Fraud against Helming and Pristine Sun Fund 5

Helming and PSF5 demur to this purported cause of action on the grounds that the claim fails to state facts sufficient to constitute a cause of action. See Cal. Civ. Proc. Code § 430.10(e).

Defendants argue simply that the claim for "constructive suffers from the same flaws as the preceding claims," and that it "is entirely duplicative of the sixth cause of action for fraud." Defendants state that Plaintiff has not alleged the "existence of a fiduciary or special relationship." As discussed previously, Plaintiff has alleged a basis for fiduciary duty and for fraud. Defendants claim that Helming's managerial role does not create a fiduciary relationship. However, officers of corporate entities, including managers, and business agents given authority to act for a company have a fiduciary duty to the entity, as discussed above.

Plaintiff has sufficiently alleged facts to support this cause of action as detailed with respect to fraud and fiduciary duty allegations above.

Accordingly, demurrer to the thirteenth cause of action is overruled

6. SIXTEENTH CAUSE OF ACTION for Civil Theft against Helming, Pristine Sun Corporation, Sustainable Solar, Defendant 7, Green Reach [Penal Code Section 496]

Helming, PSC, SSC, Defendant 7, and Green Reach demur to this purported cause of action on the grounds that the claim fails to state facts sufficient to constitute a cause of action. See Cal. Civ. Proc. Code § 430.10(e). Penal Code Section 496 provides for civil relief where there is theft, which requires a finding of intent. Here, Plaintiff has alleged the elements of this claim as against each of the Defendants named, particularly with respect to the detail provided about Defendants' alleged fraudulent invoicing practices discussed above.

Accordingly, demurrer to the sixteenth cause of action is overruled

7. SEVENTEENTH CAUSE OF ACTION for Aiding and Abetting Tortious Conduct against all Defendants; EIGHTEENTH CAUSE OF ACTION for Conspiracy against all Defendants

Defendants demur to the seventeenth and eighteenth causes of action on the grounds that the claims fail to state facts sufficient to constitute a cause of action. (Cal. Civ. Proc. Code § 430.10(e).)

Each of these claims relates to the coordinated efforts of the Defendants to perpetrate the alleged fraud and breaches of duties detailed above. (See CACI 3600, 3610.) Contrary to Defendants' argument, Plaintiff alleges sufficient detail with respect to how each defendant specifically acted in relation to the others to support these claims, as discussed above. These allegations include details of the acts, assistance, and coordination between the Defendants to execute the tortious conduct, including fraud, breach of fiduciary duty, conversion, and theft, as discussed above.

Accordingly, demurrer to the seventeenth and eighteenth causes of action is overruled.

12. 9:00 AM CASE NUMBER: C23-03262
CASE NAME: DAVID LORIE VS. TOWN OF MORAGA
***HEARING ON MOTION IN RE: STRIKE PORTION OF 1ST AMENDED COMPLAINT**
FILED BY: TOWN OF MORAGA

****TENTATIVE RULING****

Off-calendar. Request for dismissal with prejudice of entire action filed 05/14/2025.

13. 9:00 AM CASE NUMBER: C23-03262
CASE NAME: DAVID LORIE VS. TOWN OF MORAGA
HEARING ON DEMURRER TO: 1ST AMENDED COMPLAINT
FILED BY: TOWN OF MORAGA

****TENTATIVE RULING****

Off-calendar. Request for dismissal with prejudice of entire action filed 05/14/2025.

14. 9:00 AM CASE NUMBER: C23-03307
CASE NAME: PAWNEE LEASING CORPORATION VS. SARFARAZ DHILLON
***HEARING ON MOTION IN RE: SET ASIDE FEBRUARY 20, 2025 RULING AND CHALLENGE PERSONAL GUARANTEE**
FILED BY: DHILLON, SARFARAZ SINGH

TENTATIVE RULING:

Before the Court is Defendant Sarfaraz Singh Dhillon ("Defendant" or "Dhillon")'s Motion to Set Aside February 20, 2025 Ruling and Challenge Personal Guarantee." Defendant is in pro per. The Motion is opposed by Plaintiff Pawnee Leasing Corporation.

The Motion relates to this Court's February 20, 2025 order regarding Defendant's motion to set aside, which was directed to the Court's October 14, 2024 order denying Defendant's claim of exemption under section 703.010.

Though styled as a motion to set aside, it is effectively a motion for reconsideration. Code of Civil Procedure Section 1008, subdivision (a), provides that any party affected by an order may apply for reconsideration based on new or different facts, circumstances, or law within 10 days after service of notice of entry of the order. While technically Defendant's motion was untimely under subsection (a), to the extent it was brought under subdivision (b) of the same statute—which authorizes a party who originally applied for an order to make a subsequent application on new or different facts, circumstances, or law—the motion was timely.

Nevertheless, Defendant's motion fails. A party seeking reconsideration of an order based on new evidence must provide a "satisfactory explanation for the failure to produce that evidence at an earlier time." (*Shiffer v. CBS Corp*. (2015) 240 Cal.App.4th 246, 255.) Defendant has not done so. Furthermore, with respect to Defendant's arguments regarding the enforceability of the personal guarantee, substantive challenges to the merits of Plaintiff's judgment are not a ground to grant or deny the instant motion.

The motion is **denied**.

15. 9:00 AM CASE NUMBER: C24-01810
CASE NAME: A. G. VS. COUNTY OF CONTRA COSTA
HEARING ON DEMURRER TO: THE FIRST AMENDED COMPLAINT
FILED BY: COUNTY OF CONTRA COSTA
TENTATIVE RULING:

Before the Court is a demurrer by defendant County of Contra Costa to the first amended complaint. For the reasons set forth, the special demurrer to the first cause of action for uncertainty is **sustained, with leave to amend** as set forth below, and the other demurrers are deemed withdrawn. The County's request for attorneys' fees and costs is **denied**.

Background

Plaintiff alleges that when she was three years old and in the foster care system, she suffered sexual and other physical abuse by members of her foster case family, including her foster mother and father and another child in the same foster home. Her complaint alleges one claim for negligence against the County of Contra Costa (the "County"), which administered the foster care program.

Legal Standards Governing Demurrer

In ruling on the demurrer, the Court must accept as true all well-pleaded factual allegations of the

complaint, but not legal or factual conclusions or contentions of law. (*City of Dinuba v. County of Tulare* (2007) 41 Cal. 4th 859, 865; *Julian v. Mission Community Hospital* (2017) 11 Cal.App.5th 360, 374.) Statutory causes of action must be pleaded with particularity; the "complaint must plead every fact which is essential to the cause of action under the statute.'" (*Baskin v. Hughes Realty, Inc.* (2018) 25 Cal.App.5th 184, 207.) (*See also Fischer v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 604.)

Demurrers for uncertainty are generally disfavored. (*Lickiss v. Financial Industry Regulatory Authority* (2012) 208 Cal.App.4th 1125, 1135.) Nevertheless, a demurrer for uncertainty can be sustained with leave to amend where multiple causes of action are combined into one cause of action. (*See Williams v. Beechnut Nutrition Corp.* (1986) 185 Cal.App.3d 135, 139, fn. 2 [demurrer for uncertainty could be sustained where multiple causes of action joined in one, stating "where the complaint contains substantive factual allegations sufficiently apprising defendant of the issues it is being asked to meet, a demurrer for uncertainty should be overruled or plaintiff given leave to amend" (emphasis added)]; *Craig v. Los Angeles* (1941) 44 Cal.App.2d 71, 73.) (*See also* Cal. R. Ct., Rule 2.112.)

Analysis

A. The County's Demurrer

The County's demurrer originally made two special demurrers for uncertainty to the first cause of action for negligence, as well as a general demurrer to the cause of action on the ground the allegations of the first cause of action fail to allege facts sufficient to establish a mandatory duty under Welfare & Institutions Code section 328. Plaintiff's opposition to the demurrer and the County's reply narrow the issues in dispute on the demurrer. Plaintiff has conceded that references to Health & Safety Code section 1522 *et seq.* and Department of Social Services Child Welfare Services Manual section 31-401 *et seq.*, should be stricken or excluded from any amended pleading Plaintiff may file. (Opp. p. 2, ll. 19-22 and p. 9, l. 24 – p. 10, l. 4.) The County has conceded that Plaintiff has adequately alleged facts stating a claim for breach of a mandatory duty under Government Code section 815.6. (Reply p. 2, ll. 10-12.)

The County's demurrer also prays for an award of attorneys' fees and costs. Though the County's demurrer includes a prayer for attorneys' fees and costs, the County cites no basis for such an award in its initial or reply briefing. The unsupported request for attorneys' fees and costs is therefore **denied**.

What remains in dispute is whether the FAC is uncertain because it combines multiple causes of action, or at a minimum, multiple counts reflecting distinct theories of relief, without setting the theories out in separate cause of action or separate counts.

B. Public Entity Liability Generally

A public entity's civil liability is limited to claims authorized by statute under the Government Claims Act, Government Code sections 810 *et seq*. (*San Mateo Union High School Dist. v. County of San Mateo* (2013) 213 Cal.App.4th 418, 427-428; *Washington v. County of Contra Costa* (1995) 38 Cal.App.4th 890, 895-896 ["In California, governmental tort liability must be based on statute."].) There is no dispute by the parties that a public entity may be held liable for violation of a mandatory duty under Government Code section 815.6. (*See also C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 868.) The Government Claims Act provides that a public entity may also be held

vicariously liable for negligent acts or omissions of its employees if, under the circumstances, the employee would be liable to the claimant for the employee's acts or omissions. (Govt. Code §§ 815.2(a) and 820(a) and (b) ["a public employee is liable for injury caused by his act or omission to the same extent as a private person" except as provided in Government Code section 820.2 [discretionary acts] and subject to defenses a private person would have].) (*See also Doe v. Lawndale Elementary School Dist.* (2021) 72 Cal.App.5th 113, 124-138 [finding the special relationship between school and student imposed a duty on school administrators to protect student from sexual abuse by a teacher and that *Rowland* factors did not warrant limiting the duty as the district defendants contended, reversing trial court order granting summary adjudication of negligence claims in favor of defendants].)

C. Separate Causes of Action or "Counts" for Failure to Perform Mandatory Duty and Vicarious Liability for Employee Negligence

Plaintiff contends that she has a single cause of action for negligence under the "primary rights" theory. "The primary right theory is a theory of code pleading that has long been followed in California. It provides that a 'cause of action' is comprised of a 'primary right' of the plaintiff, a corresponding 'primary duty' of the defendant, and a wrongful act by the defendant constituting a breach of that duty. [Citation omitted.] The most salient characteristic of a primary right is that it is indivisible: the violation of a single primary right gives rise to but a single cause of action. [Citation omitted.]" (*Crowley v. Katleman* (1994) 8 Cal.4th 666, 681–682.)

Plaintiff relies on *Bay Cities Paving & Grading v. Lawyers v. Mutual Ins. Co.* (1993) 5 Cal.4th 854 for the proposition that negligence is a single cause of action, even though multiple theories of negligence are presented. (*Id.* at 860, cited at Opp. p. 5, ll. 3-6.) That case involved a claim for common law negligence for attorney malpractice, not statutory claims against a public entity under the Government Claims Act. (*Id.* at 860 ["Bay Cities had one primary right--the right to be free of negligence by its attorney in connection with the particular debt collection for which he was retained."].)

Courts concede that the term "cause of action" is often used to refer to "counts," meaning different legal theories for recovery on the same "cause of action" under a primary rights theory. (*Slater v. Blackwood* (1975) 15 Cal.3d 791, 795-796 ["[T]he phrase 'cause of action' is 'often used indiscriminately to mean what it says and to mean counts which state differently the same cause of action, . . .,' quoting *Eichler Homes of San Mateo, Inc. v. Superior Court* (1961) 55 Cal.2d 845, 847–848]; *Boeken v. Philip Morris USA, Inc.* (2010) 48 Cal.4th 788, 798 ["Even where there are multiple legal theories upon which recovery might be predicated, one injury gives rise to only one claim for relief."].) (*See also* Cal. R. Ct., Rule 2.112 subd. 2 [separately stated causes of action or counts must "specifically state . . . [i]ts nature].) The phrase "cause of action" is given the more precise meaning under the primary rights doctrine generally when courts are deciding whether *res judicata* applies to bar a claim because the same "cause of action" was determined in prior litigation. (*See Boeken, supra,* 48 Cal.4th at 798; *Bay Cities, supra,* 5 Cal.4th at 862 ["The primary right theory has a fairly narrow field of application. It is invoked most often when a plaintiff attempts to divide a primary right and enforce it in two suits." (emphasis added)].)

Under the less precise use of the term "cause of action," Plaintiff's allegations in the FAC set forth in one combined claim two distinct causes of action, or at a minimum, two distinct "counts" based on

separate theories of recovery for her injuries, specifically failure to discharge mandatory duties and failure of County employees to exercise reasonable care in breach of a duty owed to Plaintiff based on the County's special relationship with Plaintiff. (*See Doe, supra,* 72 Cal.App.5th 113, 124, 137-138, 142-143; FAC ¶¶ 24-27, 37, 38, 48, 51, 52, 53, 63, 65, 71, 72, 76, 77 [alleging failure to discharge mandatory duties under Welf. & Inst. Code §§ 16501(f), 16504, 16561.5, and 16561.6 ; Penal Code §§ 11165.9 and 11166; DSS Manual §§ 31-320 and 31-501, giving rise to liability under Govt. Code § 815.6] and FAC ¶¶ 15-23, 28, 38-47, 49, 50, 52-55, 64, 68-70, 73-75, 78 [alleging special relationship giving rise to various duties to Plaintiff and breach of the duty of care owed to Plaintiff, giving rise to liability under Govt. Code §§ 815.2 and 820].) The Court agrees with the County that the "negligence" cause of action is uncertain as it combines and conflates these allegations under one "negligence" cause of action heading. The theories of relief should be pled as separate causes of action, under the more informal use of that term, or at a minimum, as separate counts alleging the nature of the distinct theories of relief. (Cal. R. Ct., Rule 2.112 subd. 2.)

The special demurrer for uncertainty is **sustained, with leave to amend**. Leave to amend also includes leave for Plaintiff to eliminate references to Health & Safety Code section 1522 *et seq.* and Department of Social Services Child Welfare Services Manual section 31-401 *et seq.*, consistent with Plaintiff's intentions stated in the opposition as cited above.

16. 9:00 AM CASE NUMBER: C24-01962
CASE NAME: STATE FARM AUTOMOBILE MUTUAL INSURANCE CO. VS. SONYA HOPPE
***HEARING ON MOTION IN RE: FOR DISCOVERY LEAVE TO COMPEL RESPONDENT TO UNDERGO PSYCHOLOGICAL EXAMINATION AND TESTING**
FILED BY:
****TENTATIVE RULING:****

This is an underinsured motorist matter in which plaintiff opened a case file in order file a motion to compel claimant Sonya Hoppe to undergo a neuropsychological examination. She sustained head injuries in an automobile accident, and claims brain injury and a need for ongoing treatment. Hoppe already has been evaluated by a neurologist, who recommended a treatment plan and further testing. State Farm argues, however, that she needs an examination by a psychologist, not just a neurologist.

A court may order a physical or mental examination of a party for good cause shown. This requires the party seeking the examination to produce specifics justifying the discovery. (*Vinson v. Superior Court* (1987) 43 Cal.3d 833, 840. The examination must meet the requirements of Code of Civil Procedure section 2032, which govern the location the timing of the examination, and require that the nature of the examination be specified.

State Farm argues that (1) it wishes to administer a broader, more extensive panel of tests; and (2) it is entitled to its own expert, rather than relying on Hoppe's expert.

Hoppe points out, however, that the defense already had an IME with a neurologist (Dr. McIntire), who produced at 53-page report; that State Farm has failed to sufficiently specify each test that will be conducted. If the examination is required, Hoppe requests that the Court set appropriate limitations set forth in CCP section 2032.320(d), including: specification of time, location, and

duration, limitations on the scope of testing, the right to an audio recording, restrictions on dissemination of plaintiff's mental health history, and production of all raw test data.

State Farm has sufficiently identified the tests and explained that the tests sought to be performed by Dr. Henderson are different from those performed by Dr. McIntire. As to the request for specific limitations, the limitations are imposed directly by the code, and do not need to be ordered specifically in response to this motion.

17. 9:00 AM CASE NUMBER: L24-05058
CASE NAME: CAPITAL ONE N.A. VS. GILMAR RECINOS
HEARING IN RE: MOTION TO SET ASIDE DEFAULT FILED BY GILMAR RECINOS ON 2-28-25
FILED BY:
TENTATIVE RULING:

Defendant moves to set aside his default, and default judgment, under Code of Civil Procedure section 473(b). he was served on June 30, 2024. Default was entered on October 23, 2024.

Background

He asserts that he was "on a payment plan paying $150 every 22nd of the month since July 2024, and "was not aware I needed to respond since payment plan was due." He says that he called plaintiff's counsel several times, but did not receive the contract until 10-22-2024 and he signed and mailed to them and faxed over a copy the same day. He submits documents that back up his story: checks for $150 each month beginning in July through February. Each check is endorsed by Hunt & Henriques. He also attaches a letter from counsel conveying the settlement agreement, dated August 6, 2024, although he accompanies it with an envelope postmarked October 11, 2024. The letter states that "if the signed Settlement Agreement is not returned within ten days of the date of this letter the litigation will proceed, even if payments are being made in accordance with the Agreement." He attaches a signed copy of the agreement, dated 10/22/24. He includes a fax confirmation sheet showing transmission of a 7 page document on October 23, 2024, to the same telephone number as that shown on the letter from counsel.
This motion was filed on February 28, 2025, less than six months from the entry of default.
Plaintiff has filed no opposition.

Legal Standard

It has long been established that "[the policy of the law is to have every litigated case tried upon its merits, and it looks with disfavor upon a party, who, regardless of the merits of the case, attempts to take advantage of the mistake, surprise, inadvertence, or neglect of his adversary." (*Weitz v. Yankosky* (1966) 63 Cal.2d 849, 854-855.) Thus, '"the provisions of section 473 … are to be liberally construed and sound policy favors the determination of actions on their merits." [Citation.]' [Citation.] '[B]ecause the law strongly favors trial and disposition on the merits, any doubts in applying section 473 must be resolved in favor of the party seeking relief from default.'" (*Shapell SoCal Rental Properties, LLC v. Chico's FAS, Inc.* (2022) 85 Cal.App.5th 198, 212.) "'Section 473 is often applied liberally where the party in default moves promptly to seek relief, and the party opposing the motion will not suffer prejudice if relief is granted. [Citations.] In such situations "very slight evidence will be required to justify a court in setting aside the default." [Citations.]'" (*Fasuyi v. Permatex, Inc*. (2008) 167 Cal.App.4th 681, 695.)

Defendant moves to set aside the default judgment pursuant to California Code of Civil Procedure section 473(b), which allows a court to "relieve a party or this or her legal representative

from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." "The statute includes a discretionary provision, which applies permissively, and a mandatory provision, which applies as of right." (*Minick v. City of Petaluma* (2016) 3 Cal.App.5th 15, 25.) "Although this bifurcation is not demarcated in any internal subtitling, it is plainly evidence in the textual structure of the statute." (*Ibid.*)

When moving to set aside a default under CCP §473(b), the moving party has the burden of proof. (*In re Marriage of Kieturakis* (2006) 138 Cal.App.4th 56, 88.) However, section 473 is often applied liberally when a party in default moves promptly to seek relief and the party opposing the motion will not suffer prejudice if relief is granted. (*Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233.)

Analysis

Defendant may have a binding contract that meant plaintiff was obligated to dismiss the case. At the very least, he believed he had such an agreement—which he showed by mailing a monthly check—which created a reasonable and good faith belief that he did not have to further respond to the summons and complaint. Thus, his failure to appear was due to mistake or excusable neglect under the statute.

The motion is granted. The default and default judgment are vacated. Defendant shall be permitted to file his answer (a proposed version of which was attached to his declaration and motion).

18. 9:00 AM CASE NUMBER: MSC18-01132
CASE NAME: SCHWENDEMAN VS. TRAVEL STAFF
***HEARING ON MOTION IN RE: FOR APPROVAL OF PAGA SETTLEMENT**
FILED BY: SCHWENDEMAN, CONNIE
****TENTATIVE RULING:****

Connie Schwendeman moves for approval of the settlement of her PAGA suit against defendants Travel Staff, LLC, Cross Country Staffing, Inc., and Cross Country Healthcare.

A. Background of the Case and Terms of Settlement

This is a PAGA case, alleging a variety of violations of the Labor Code concerning improper deduction of "missed shift charges," improperly failing to account for per diem allowances in setting regular rate of pay when calculating overtime, and cascading derivative violations. Plaintiff has given notice to the LWDA. The complaint was filed June 5, 2018. Due to disputes about whether arbitration was compelled, the resolution of the matter was delayed.

The total settlement payment is $1,200,000. This is composed of attorney's fees of $400,000 (one-third of the settlement), litigation costs of up to $20,000 (but actually $417,309.38), costs to the settlement administrator of $12,750, and a $10,000 incentive award to plaintiff. The remaining amount ($759,940.62) would be a PAGA penalty, which would be apportioned 75% to the LWDA and 25% to the aggrieved employees.

The settlement indicates that there are an estimated 2,470 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 $76.92.

Plaintiff's counsel attests that they engaged in extensive arms-length settlement negotiations, and settled after a session with an experienced mediator. Written discovery was undertaken.

Counsel's declaration provides a general discussion of the strengths and weaknesses of the case.

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 are asserted in this action or in any letter to the LWDA relating to this action, or arise from "the claims or factual allegations asserted in this action." 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. Based on one-third of the recovery, plaintiff seeks $400,000.

Plaintiff has conducted a lodestar cross-check. Counsel calculate 672 hours, including 448 hours at a rate of $650 per hour and 224 hours at a rate of $600 per hour. This results in a lodestar of approximately $425,600, with an implied multiplier of less than 1. Without necessarily endorsing every individual component of the lodestar, 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.

Litigation costs of $13,189.21 (less than the maximum of $20,000 provided in the agreement), are sought. They are reasonable and are approved.

The administrator's costs of $12,750 (less than the maximum of $20,000 provided in the agreement), are reasonable and are approved.

Criteria for evaluation of representative payment requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807. Plaintiff's counsel attests that plaintiff took a substantial risk that her ability to obtain employment as a travel nurse would be impaired, and devoted substantial hours to participation in the action. Moreover, because it is a PAGA-only action, she does not receive back wages. Finally, she released additional claims, although there is no indication that she had other claims of significant value. All things considered, the Court approves the $10,000 payment.

D. Conclusion

The Court finds that the settlement is fair, reasonable, and adequate, and grants the motion to approve.

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.

19. 9:00 AM CASE NUMBER: MSC22-00243
CASE NAME: VIRELAS VS. SWEEZEY
***HEARING ON MOTION FOR DISCOVERY MOTION TO COMPEL DISCOVERY RESPONSES TO SPECIAL INTERROGATORIES, SUBSEQUENT DEPO OBJECTION FREE TESTIMONY FILED BY PTR VIRELAS**
FILED BY:
****TENTATIVE RULING:****

Plaintiff Antonio Virelas moves (1) to compel defendant to respond without objection to special interrogatories; (2) to compel defendant to appear again for her deposition, but to answer all questions without objection; (3) for monetary sanctions; and (4) for issue sanctions.

Virelas relies on his motion, his notice of motion, his declaration re meet & confer efforts, his proposed order, his declaration in support of the motion, his memorandum of points and authorities; his "Exhibits re… motion to compel".

While voluminous, the presentation is missing two particular items: (1) a declaration that authenticates under penalty of perjury the documents attached to the "Exhibits"; and (2) the "Separate Statement" required by California Rule of Court 3.1345. The Separate Statement must set out each question as to which a further answer is requested, along with the answer given, such that "no person is required to review any other document in order to determine the full request and the full response." (CRC 3.145(c).) The statement is not required where no response is provided, but in this instance defendant did provide a response to the interrogatories, although it was allegedly two days late.

In the absence of properly authenticated documents and a Separate Statement, the Court cannot consider the motion. The motion is continued to July 17, 2025, 9:00 a.m. Plaintiff is directed to file and serve the required documents no later than June 12, 2025.

20. 9:00 AM CASE NUMBER: N23-0409
CASE NAME: ALEXANDRA PADILLA VS. BRIAN DEMAIN
***HEARING ON MOTION IN RE: TERMINATING SANCTIONS OR COMPEL PLTFS ATTENDANCE AT DEPOSITION**
FILED BY: HOWARD ORTHOPEDICS, INC., A CALIFORNIA CORPORATION
****TENTATIVE RULING:****

Defendant Howard Orthopedics, Inc. ("HOI") moves for discovery sanctions against Plaintiff Alexandra Padilla, for failure to appear for her deposition and failure to comply with a motion to compel. It seeks monetary sanctions, as well as terminating sanctions.

On April 24, 2025, the court granted a motion to compel responses to written discovery and awarding monetary sanctions brought by Defendants Brian Demain and Howard Davis, and joined in by HOI.

By way of background, the previous motion concerned Request for Production of Documents, Set 1, and Form and Special Interrogatories, sets 1. Plaintiff Padilla, represented by the second of four different law firms at the time, did not respond timely to the request, but requested and obtained more than one extension, but no responses were provided within the new deadlines. A third counsel substituted into the case on her behalf, and that counsel negotiated further extensions. When the responses finally were served, they were objections only. Shortly after that, a fourth counsel substituted in on plaintiff's behalf. Another extension was negotiated. No further responses were served, and Demain and Davis filed a motion to compel further responses. While the motion was pending, plaintiff's counsel substituted out, and plaintiff became self-represented. On November 21, 2024, the Court granted the motions to compel further responses, and awarded sanctions of $1,395 on each of the two one motion, payable within 30 days. (The Court initially set the response date for December 19, 2024 and January 2, 2025, but on request of plaintiff, ordered the response dates to be January 10, 2025, and January 17, 2025.) Plaintiff did not file further responses as ordered by the Court, either within the deadline set by the Court, or to this day.

This motion concerns the failure of plaintiff to appear for her deposition. HOI served notice of her deposition on May 8, 2024, when she had counsel. Padilla's then-counsel advised HOI that he needed to provide alternative dates, but did not provide any. On September 6, 2024, HOI renoticed the deposition for November 22, 2024. On September 30, 2024, Padilla, by then self-represented, advised that she was not available on the noticed day. The parties attempted to find an appropriate day, but Padilla was not able to commit to any particular day. On December 3, 2024, at a Case Management Conference held before the judge presiding over the case at that time, the court ordered Padilla to appear for deposition on January 27, 2025 "unless all parties agree otherwise." HOI renoticed the deposition for that date. On January 24, 2025, Padilla advised that she would not appear "due to an urgent family matter." This motion followed, and as of this date, the Court has not been informed that the deposition has taken place.

In response to the first motion, plaintiff filed a declaration entitled "Objection to Hearing April 24, 2025. She has not filed anything separate in opposition to this motion. The lengthy declaration first lays out the history of the dispute that led to the suit. She describes her changes of attorneys, which she attributes primarily to being unable to afford the fees, and looking for someone more affordable. But she also claims that counsel did not keep her fully informed about the status of discovery. She had a dispute with one firm about the payment of fees. She offers a variety of other information explaining the situation: her email and physical mail were compromised, as were her bank records. Her mail was opened. Her computer files were erased. Her husband almost died due to a medical error. Another family member ended up in the hospital (causing her to miss the January 27, 2025, deposition). A family member was killed in a plane crash. She further states that she is working on the discovery and will reschedule her deposition.

Depositions can be hard to schedule, but this is beyond the ordinary difficulty. The Court already imposed a specific date, but Padilla did not appear, though she asserts good cause.

The next step would be an order compelling her appearance. Already done. The next step

after that would be monetary sanctions. Already done. An evidence sanction is not appropriate at this point and is not requested.

The Court also has ample authority under Code of Civil Procedure section 2023.030(a) to require plaintiff to pay reasonable expenses, including attorney's fees, incurred as a result of plaintiff's misuses of the discovery process and failure to abide by the court's order. HOI request attorney's fees of $23,447.50 for their time spent on this motion. That amount includes 25.3 hours "in connection with preparing for Plaintiff's Court-ordered deposition." Assuming the deposition takes place at some point, the value of the preparation time ($11,385) will not be lost. Since Padilla has not filed an opposition, there will be no need for a reply ($1,725). Deducting each of those items results in an amount of $10,337.50. The Court finds that amount is reasonable and awards it.

Padilla is ordered to appear for her deposition on June 11, 2025 at a time and location designated by HOI. If this date is not available for HOI's counsel, they may contest the tentative ruling and request another date.

The remaining question is whether the various reasons offered by way of excuse are sufficient to preclude the issuance of terminating sanctions. All things considered, the Court declines to enter a dismissal, for the time being. The Court is giving plaintiff one final chance, with the understanding that failure to comply with the Court's order will likely result in dismissal.

Courtroom Clerk's Calendar

21. 1:30 PM CASE NUMBER: C24-01508
CASE NAME: DAVID PARKS VS. CARL MAST
HEARING IN RE: EVIDENTIARY HEARING SET BY THE COURT AT 04.03.2025 HEARING
FILED BY:
TENTATIVE RULING: