TENTATIVE RULINGS: CIVIL LAW & MOTION

Friday, May 29, 2026 at 3:00 p.m.
Courtroom 18 – Hon. Dana Simonds
Civil and Family Law Courthouse
3055 Cleveland Avenue
Santa Rosa, California 95403

The tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument, **YOU MUST NOTIFY** the Judge's Judicial Assistant by telephone at **(707) 521-6724**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

If the tentative ruling is accepted, no appearance is necessary unless otherwise indicated.

TO JOIN ZOOM ONLINE:

Department 18:
Meeting ID: **160—739—4368**
Password: **000169**
https://sonomacourtorg.zoomgov.com/j/1607394368?pwd=aW1JTWlIL3NBeE9LVHU2NVVpQlVRUT09

TO JOIN ZOOM BY PHONE:
By Phone (same meeting ID and password as listed for each calendar):
Call: +1 669 900 6833 US (San Jose)

Unless notification of an appearance has been given as provided above, the tentative ruling shall become the ruling of the Court the day of the hearing at the beginning of the calendar.

1., 2. SCV-270898, Gemignani v. Andrade

1. **Plaintiffs' Motion to Compel Further Responses to Plaintiffs' Request for Production of Documents, Set Three**

Plaintiffs' motion to compel further response to Plaintiffs' Request for Production of Documents, Set Three is **GRANTED**. Defendant City of Santa Rosa shall provide a more detailed privilege log within 10 days of notice of entry of an order on this motion.

Plaintiffs' counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

Analysis:

This case involves a vehicle driven by Defendant Ivan Medina striking Daryl Titus, a pedestrian who was crossing Bennett Valley Road on the night of September 7, 2021. Defendant Jose Andrade ("Andrade"), an off-duty police officer for Defendant City of Santa Rosa ("City"), was driving along Bennett Valley Road when he saw Daryl Titus ("Titus") walking in the middle of the road. Andrade was driving home with his now wife and girlfriend at the time, Vanessa Robledo ("Robledo"). Plaintiffs, the conservators of the estate and person of Daryl Titus, contend that Andrade ordered Titus to walk on the opposite side of the street, at which point Titus crossed the road and was struck by Defendant Medina's vehicle.

At issue in this motion is a request for production of documents propounded by Plaintiffs upon the City of Santa Rosa seeking all recordings and transcripts of any statements taken from Vanessa Robledo. (RPD No. 31.)

In response to the RPD, the City objected on the grounds that the request sought information that is protected from disclosure by the attorney-client privilege and work product doctrine. The City also provided a privilege log.

Plaintiffs now seek to compel further responses to their RPD No. 31 because they argue that the privilege log does not provide sufficient facts to determine whether the attorney-client privilege/work product doctrine apply.

The Court agrees with Plaintiffs that the privilege log provided by the City does not provide sufficient details to make a prima facie showing that either the attorney client privilege or attorney work product doctrine apply to the requested documents and things.

> The precise information required for an adequate privilege log will vary from case to case based on the privileges asserted and the underlying circumstances. In general, however, a privilege log typically should provide the identity and capacity of all individuals who authored, sent, or received each allegedly privileged document, the document's date, a brief description of the document and its contents or subject matter sufficient to determine whether the privilege applies, and the precise privilege or protection asserted.

(*Catalina Island Yacht Club v. Superior Court* (2015) 242 Cal.App.4th 1116, 1130.)

The privilege log provided by the City does not contain sufficient information. A more descriptive privilege log shall be produced.

2. Plaintiffs' Motion to Compel Further Responses to Plaintiff's Special Interrogatories, Set Two

Plaintiffs' motion to compel further responses to Plaintiff's Special Interrogatories, Set Two, is **GRANTED**. Defendant Jose Andrade shall provide further response without objection to Special Interrogatory No. 9.

Plaintiffs' counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

Analysis:

This case involves a vehicle driven by Defendant Ivan Medina striking Daryl Titus, a pedestrian who was crossing Bennett Valley Road on the night of September 7, 2021. Defendant Jose Andrade ("Andrade"), an off-duty police officer for Defendant City of Santa Rosa ("City"), was driving along Bennett Valley Road when he saw Daryl Titus ("Titus") walking in the middle of the road. Andrade was driving home with his now wife and girlfriend at the time, Vanessa Robledo ("Robledo"). Plaintiffs, the conservators of the estate and person of Daryl Titus, contend that Andrade ordered Titus to walk on the opposite side of the street, at which point Titus crossed the road and was struck by Defendant Medina's vehicle.

At issue in this motion is a special interrogatory propounded by Plaintiffs upon the Defendant Andrade asking, "Has the City of Santa Rosa agreed to indemnify YOU for any settlement or judgment resulting from this case?" (Spec. Interrog. No. 9.)

Defendant objected to the interrogatory on the ground that it seeks information that is protected from disclosure by the attorney-client privilege and attorney work product doctrine; that it is not reasonably calculated to lead to the discovery or relevant or admissible evidence; and that it is harassing.

Plaintiffs now seek to compel a further response to this interrogatory based on the arguments that (1) a party may obtain discovery of the existence and contents of any insurance agreement; and (2) evidence of whether the City indemnifies Officer Andrade is relevant because, if the City chooses to indemnify him, it purportedly demonstrates he was acting within the scope of his employment on the day of the incident.

Defendant opposes the motion on the ground that Plaintiffs are not simply seeking discovery of the existence or contents of an insurance agreement in this interrogatory. He argues that they are also seeking communications between Andrade and his attorneys in this case that pertain to legal advice and recommendations.

However, Defendant's argument is not compelling. The question may be answered with a simple "yes" or "no." The Court does not agree that this question would require Defendant to divulge privileged communications. Plaintiffs are entitled to have this question be answered either in the affirmative or the negative.

Defendant argues that information regarding whether the City agreed to indemnify Officer Andrade is not likely to lead to the discovery of relevant or admissible evidence. The Court does not agree. The scope of discovery is broad.

Finally, Defendant objected to the interrogatory as being harassing. Defendant has not explained this objection and the Court does not find it to be harassing. Defendant shall provide further response without objections.

3. 25CV08161, Little Woods Mobile Villa LLC v. City of Petaluma

Defendant City of Petaluma ("Defendant" or "the City")'s demurrer to Plaintiff's complaint is **OVERRULED**.

Defendant's request for judicial notice is **GRANTED**.

Plaintiff's counsel shall submit an order consistent with this tentative ruling and in compliance with Rule 3.1312.

Analysis:

Plaintiff, Little Woods Mobile Villa LLC, owns Little Woods Mobile Villa, a mobilehome park in the City of Petaluma. In 2024, Plaintiff decided to cease operations and close the Park. A park owner wanting to cease operations must first follow certain notice procedures, prepare a "relocation impact report" detailing the effect of closure on tenants, and attend a hearing on that report where the City decides whether to allow closure. (Municipal Code ("PMC") § 8.34.010, et seq.)

By letter dated June 21, 2024, Plaintiff gave notice to the City that it was ceasing operations as a mobilehome park. By letter dated November 8, 2024, the City outlined the requirements and charges that Plaintiff would need to satisfy to apply for permission to close. This letter instructed Plaintiff to deposit $198,880 (which was the estimated cost to prepare the relocation impact report), plus a $1,000 application fee, for a total of $199,880 in order to start the application process. Plaintiff paid the deposit under objection and filed this action for declaratory relief.
Plaintiff raises a single cause of action for declaratory relief seeking declaration that the $199,880 paid in charges are, in whole or in part, unlawful. Plaintiff alleges that the charges are unlawful because they (1) are an unconstitutional exaction and taking under the Fifth Amendment; (2) burden Plaintiff's First Amendment right to petition; (3) are unlawful "taxes" under articles XIII A and XIII C of the California Constitution; and (4) are "unreasonable" under section 65863.7, subdivision (g).

Defendant demurrers to the complaint arguing (1) Plaintiff's claims are not ripe; (2) Plaintiff cannot plead a regulatory taking; (3) Plaintiff's claim is time-barred; (4) the application processing fee is not an unlawful tax; (5) the City satisfied Gov. Code § 65863.7(g); and (6) the fees do not violate the First Amendment right to petition. Each of these arguments is addressed below.

I. Ripeness

Defendant first argues that Plaintiff's claim is not ripe because the deposit and application processing fees are not "final decisions" of the City. However, as alleged, Plaintiff was required to deposit almost $200,000 in order to initiate the application proceedings. Plaintiff alleges that the amount of fees required to initiate the proceedings was unreasonable and unlawful. Since Plaintiff was required to pay these funds in order to have Plaintiff's closure application processed, Plaintiff has sufficiently alleged an actual controversy that is ripe for review. This argument is not persuasive.

II. Regulatory Taking

"Under *Nollan* and *Dolan* the government may choose whether and how a permit applicant is required to mitigate the impacts of a proposed development, but it may not leverage its legitimate interest in mitigation to pursue governmental ends that lack an essential nexus and rough proportionality to those impacts." (*Koontz v. St. Johns River Water Management Dist.* (2013) 570 U.S. 595, 606, citing *Nollan v. California Coastal Comm'n* (1987) 483 U. S. 825, 837 and *Dolan v. City of Tigard* (1994) 512 U. S. 374, 391.)

Here, Plaintiff alleges that the charges "bear no nexus or rough proportionality to any identifiable adverse impacts caused by Little Woods by virtue of its application to the City for approval to exercise its right to cease operations." (Complaint ⁋ 36.)

Defendant argues that Plaintiff cannot plead a regulatory taking because a reasonable user fee is not a taking if it is imposed for the reimbursement of the cost of government services, citing *Zeyen v. Bonneville Joint District, # 93* (9th Cir. 2024) 114 F.4th 1129, 1147 and *U.S. v. Sperry Corp.* (1989) 493 U.S. 52, 63.

Plaintiff does not allege that charges were a "use fee". Plaintiff alleges that the charges were an exaction. Nonetheless, regardless of how the charges are categorized, Plaintiff alleged that the charges are unreasonable and that they bear no nexus or rough proportionality to any identifiable adverse impacts. So, Plaintiff has sufficiently alleged a taking. Any inquiry into the reasonableness of the charges or the nexus/proportionality of the charges would be improper on demurrer.

III. Time Bar

Defendant argues that Plaintiff was required to challenge the August 5, 2024 Fee Resolution adopted by the city within 120 days of its effective date. Therefore, Plaintiff must have filed its challenge by December 3, 2024.

Government Code § 66022 provides,

> (a) Any judicial action or proceeding to attack, review, set aside, void, or annul *an ordinance, resolution, or motion* adopting a new fee or service charge, or modifying or amending an existing fee or service charge, adopted by a local agency, as defined in Section 66000, shall be commenced within 120 days of the effective date of the ordinance, resolution, or motion.

(Italics added.) It further provides, "(c) This section shall apply only to fees, capacity charges, and service charges described in and subject to Sections 66013, 66014, and 66016."

Defendant's argument is not persuasive. Plaintiff does not challenge the Fee Resolution as being unlawful. Plaintiff challenges the charges imposed by the City as being unlawful. The City is not alleged to have enacted the challenged fee by resolution pursuant to the procedures required by section 66016, including public dissemination of data concerning the cost of the fee. Accordingly, the time limits of Government Code § 66022 are not applicable here.

IV. Unlawful Tax

Plaintiff alleges that the charges were unlawful taxes under the California Constitution, and that Defendant cannot meet its burden to show that "the amount is no more than necessary to cover the reasonable costs of the governmental activity," or that "the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to [Little Woods] burdens on, or benefits received" from the City. If the exaction is a tax, then it required voter approval, which did not occur here.

Defendant argues that the alleged exaction is not a tax because it was "'imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege." Defendant also argues that the exaction is not a tax because it was "imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product."

Any inquiry into the reasonableness of the charges or the purposes for which they were imposed would require factual determinations to be made. Such is not appropriate on demurrer. Plaintiff has sufficiently pleaded that the charges are unlawful taxes under the California Constitution.

V. Government Code § 65863.7(g)

Plaintiff alleges that the exaction violates Government Code § 65863.7(g) 65863.7(g). That provision requires the City to "establish reasonable fees" associated with park closure. To be "reasonable," the City's fees cannot "exceed[] the estimated amount required to provide the service for which the fee or service charge is levied." (Gov. Code, § 66016(a).) Plaintiff alleges that the $199,880 exaction is unreasonable, because it "far exceed[s] reasonable estimates that Little Woods was able to obtain."

Defendant argues that Plaintiff alleges no facts showing that the charges will exceed the actual cost for the City's consultant to prepare the Impact Report or for the City to process Plaintiff's application. Defendant has cited no authority requiring such factual allegations to be made in order to adequately state the cause of action. The Court finds Plaintiff's allegations to be sufficient. Finally, whether fees are reasonable under Government Code § 65863.7(g) is a factual question that is not appropriate for determination on demurrer.

VI. Right to Petition

Plaintiff contends that the $199,880 exaction unconstitutionally burdens Plaintiff's First Amendment right to petition the City for an approval that would allow Plaintiff to exercise its right to close. As argued, requiring Plaintiff to pay a substantial fee as the precondition of securing approval chills Plaintiff's petition rights.

Defendant argues that "courts routinely uphold *reasonable* permit, filing, and processing fees even where the permitting process includes public hearings, quasi-adjudicative procedures, and public opposition." (Italics added.) However, Plaintiff alleges that the charges imposed here were

unreasonable and disproportionate. Considering the standard on demurrer, Defendant's argument is not persuasive.

4. SCV-266518, DeJohn Construction, Inc. v. Smith

Defendants' motion for attorney's fees and sanctions is **DENIED**.

Plaintiff's counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

Analysis:

On June 4, 2020, Plaintiff DeJohn Construction, Inc. filed a complaint against Defendants Gary and Donna Smith asserting foreclosure of mechanics' lien, breach of contract, fraud, defamation, unjust enrichment, and related causes of action.

On July 16, 2020, Defendants filed a Cross-Complaint against DeJohn Construction, Inc. and Beau Allen DeJohn and Misti DeJohn individually. The Cross-Complaint asserted causes of action for void contract, breach of contract, professional negligence, fraud, breach of warranties, embezzlement, conversion, defamation, slander of title, and related causes of action.

On December 29, 2021, a Notice of Stay of Proceedings was filed following the initiation of bankruptcy proceedings by Beau and Misti DeJohn. The bankruptcy court granted relief from the stay on November 11, 2022.

On May 1, 2024, Defendants moved to dismiss Plaintiff's foreclosure action, to expunge the mechanic's lien, and to impose sanctions upon Plaintiff in the amount of $25,000. The Court granted the motion in part and denied it in part. Defendants' request to expunge the mechanic's lien was granted and the request to dismiss Plaintiff's first cause of action for foreclosure of the mechanic's lien was granted. The Court found that by failing to oppose the motion, Plaintiff had failed to meet its burden of proving the validity of the mechanic's lien. However, to the extent the motion requested dismissal of Plaintiff's other causes of action, it was denied. Plaintiff's request for sanctions was also denied as being unsupported.

On July 16, 2024, the Court issued Notice of Trial and Trial Orders. The Trial was noticed for April 4, 2025. On April 4, 2025, the parties appeared for trial call, but Plaintiff was not represented by counsel. Plaintiff requested a continuance in order to obtain counsel. The Court issued orders to show cause re sanctions and dismissal to both Plaintiff and Defendants, as both parties failed to comply with the Court's trial orders. The matter was set on the Order to Show Cause Calendar on May 20, 2025.

On May 20, 2025, Plaintiff had obtained counsel, and the Court vacated the orders to show cause and set the matter for a Case Management Conference on October 21, 2025.

On October 20, 2025, Defendants filed a motion for mandatory dismissal of Plaintiff's remaining causes of action for failure to prosecute within the statutory deadline. The motion was unopposed and it was granted on January 1, 2026. Defendants' request for attorney's fees and sanctions was

denied without prejudice because that relief was not included in the notice of motion, in violation of Cal. Rules of Court, Rule 3.1112.

On March 18, 2025, Defendants/Cross-Complainants filed a dismissal with prejudice of their Cross-Complaint.

Defendants now seek to be declared the prevailing party for purposes of attorney's fees, seek attorney's fees in the amount of $51,670.84 and seek to impose sanctions upon Cross-Defendants in the amount of $25,000. For the reasons stated below, each of these requests is denied.

I. The Court Finds No Prevailing Party

Defendants seek attorney's fees under two statutory provisions. The first is Civil Code § 8488, relating to mechanic's liens, and the second is Civil Code § 1717, relating to contractual attorney's fees.

First, Civil Code § 8488 does not apply here. The chapter involves petitions for a release order. Civil Code § 8480 provides that the owner of the property subject to a claim of lien may petition the court for an order to release the property from the claim of lien "*if the claimant has not commenced an action to enforce the lien within the time provided in Section 8460*." (Italics added.) Civil Code § 8488 provides that after a hearing on such a petition, the prevailing party is entitled to attorney's fees. No such petition was filed in this matter. No such hearing on a § 8480 petition was held. Therefore, attorney's fees under § 8488 are not available here.

Next, Civil Code § 1717, which applies to contractually agreed upon attorney's fees and costs, provides,

> (b)(1) The court, upon notice and motion by a party, shall determine who is the party prevailing on the contract for purposes of this section, whether or not the suit proceeds to final judgment. Except as provided in paragraph (2), the party prevailing on the contract shall be the party who recovered a greater relief in the action on the contract. *The court may also determine that there is no party prevailing on the contract for purposes of this section.*

(Italics added.) It also provides, "(b)(2) Where an action has been voluntarily dismissed or dismissed pursuant to a settlement of the case, there shall be no prevailing party for purposes of this section."

"[T]he statutory language…—stating that the trial court 'may' determine that there is no party prevailing on the contract for purposes of an award of attorney fees—vests the trial court with discretion in making the prevailing party determination." (*Hsu v. Abbara* (1995) 9 Cal.4th 863, 871.) "As one Court of Appeal has explained, '[t]ypically, a determination of no prevailing party results when both parties seek relief, but neither prevails, or when the ostensibly prevailing party receives only a part of the relief sought.'" (*Id*. at 875.)

> [W]e hold that in deciding whether there is a "party prevailing on the contract," the trial court is to compare the relief awarded on the contract claim or claims with the parties' demands on those same claims and their litigation objectives as disclosed by the pleadings, trial briefs, opening statements, and similar sources. The prevailing party determination is to

> be made only upon final resolution of the contract claims and only by "a comparison of the extent to which each party ha[s] succeeded and failed to succeed in its contentions."

(*Id*. at 876.)

> If neither party achieves a complete victory on all the contract claims, it is within the discretion of the trial court to determine which party prevailed on the contract or whether, on balance, neither party prevailed sufficiently to justify an award of attorney fees. "[I]n deciding whether there is a 'party prevailing on the contract,' the trial court is to compare the relief awarded on the contract claim or claims with the parties' demands on those same claims and their litigation objectives as disclosed by the pleadings, trial briefs, opening statements, and similar sources."

(*Scott Co. of California v. Blount, Inc.* (1999) 20 Cal.4th 1103, 1109.)

Here, the overall litigation result is mixed. While Defendants were successful in obtaining involuntarily dismissals of all of Plaintiff's claims, Defendants were unsuccessful in any of the affirmative claims raised by them against the cross-defendants. Their stated reasoning for voluntarily dismissing their own claims is because "They are not able to proceed to trial next week due to illness." Defendants do not represent that they dismissed their Cross-Complaint because their litigation objectives were satisfied when Defendants' claims were dismissed. Even if they did make such an assertion, it would not be supported by the record.

The record reflects Defendants prosecuted several causes of action against Cross-Defendants, seeking substantial damages and injunctive relief. Defendants claims went beyond simply responding to Plaintiff's complaint. Defendants' litigation objective was not simply to dispel of Plaintiff's claims. It was also to obtain recovery against Plaintiff and the two additional parties brought into the case. Defendants did not do so.

Defendants assert that they are the prevailing party in this matter because they successfully expunged the mechanic's lien. Focusing on this small victory, as Defendants urge this Court to do, would require the Court to ignore the fact that Defendants asserted several affirmative causes of action against Cross-Defendants—seeking substantial damages and injunctive relief—that Defendants abandoned.

Defendants point to *Cole v. Hammond* (2019) 37 Cal.App.5th 912 as "affirming prevailing party attorney fee award to defendant following dismissal for failure to prosecute." This is an inaccurate representation of the case. There was no attorney fee award in *Cole*. The *Cole* decision involved the question of whether the trial court erred in granting a motion for voluntary dismissal when the opposing party sought mandatory dismissal for failure to prosecute. The *Cole* Court stated, "we conclude that the trial court erred in denying the Hammonds' motion for mandatory dismissal pursuant to section 583.360, and instead granting Cole's motion for voluntary dismissal. Upon remand, the Hammonds *may choose* to move for attorney fees based on their contention that they are the prevailing parties, pursuant to a clause in their rental agreement." (*Id*. at 926. Italics added.) Therefore, *Cole* does not stand for what Defendants represent it does. It is not persuasive here.

Looking to the contract claims, as the law requires this Court to do, neither party obtained their litigation objective. Accordingly, the Court finds that there was no prevailing party in this matter.

Defendant's request for attorney's fees is denied.

II. Sanctions

Defendants' notice of motion identifies no legal basis upon which sanctions are sought. In Defendants' memorandum and their reply, they make general arguments regarding the Court's authority to impose sanctions where a party maintains a position that is frivolous or intended to cause delay. In each of the cases cited by Defendants, the parties had moved for sanctions under a specific statute and involved sanctions for filing frivolous appeals.

- *Champlin/GEI Wind Holdings, LLC v. Avery* (2023) 92 Cal.App.5th 218, 227—"respondent has moved for an award of sanctions under Code of Civil Procedure section 907 and California Rules of Court, rule 8.276."
- Malek Media Group, LLC v. AXQG Corp. (2020) 58 Cal.App.5th 817, 834 –"AXQG moved to sanction MMG and its counsel, Jeffrey S. Konvitz, in the amount of $56,0005 for filing a frivolous appeal…(See § 907, Cal. Rules of Court, rule 8.276(a)(1).)"

This is not an appeal. The authority cited by Defendants in support of their sanctions request is inapplicable here. Defendants' sanction request is unsupported by law and it is denied.

5. SCV-270527, Jane Doe v. Foppoli

Defendant Dominic Foppoli ("Defendant Foppoli") moves for summary adjudication as the First, Second, Third, Seventh, Eighth, and Ninth Causes of Action as to certain Jane Does solely on the basis of the lapsing of the various statutes of limitations. Pursuant to C.C.P. section 437c(f), summary adjudication is **DENIED** in its entirety.

All objections are **OVERRULED**. Defendant Foppoli's and Plaintiffs' requests for judicial notice are **GRANTED** with limitations.

I. Material Facts

Defendant Foppoli moves for summary adjudication as to the following causes of action and individual Plaintiffs:

- First Cause of Action – Sexual Assault and Battery
  - Jane Doe #1, Jane Doe #2, and Jane Doe #3
- Second Cause of Action – Violation of the Bane Civil Rights Act
  - Jane Doe #1, Jane Doe #2, Jane Doe #3, Jane Doe #4, and Jane Doe #5
- Third Cause of Action – Violation of the Ralph Act
  - Jane Doe #1, Jane Doe #2, Jane Doe #3, Jane Doe #4, and Jane Doe #5
- Seventh Cause of Action – Gender Violence
  - Jane Doe #1, Jane Doe #2, Jane Doe #3, Jane Doe #4, and Jane Doe #5
- Eighth Cause of Action – Intentional Infliction of Emotional Distress ("IIED")
  - Jane Doe #1, Jane Doe #2, Jane Doe #3, Jane Doe #4, Jane Doe #5, and Jane Doe #6
- Ninth of Action – Domestic Violence

- Jane Doe #1 and Jane Doe #2.

The allegations in this action are as follows. Jane Doe #1 dated Defendant Foppoli from 2001 to 2004 and alleges that Defendant Foppoli raped her while they were in a romantic relationship from 2001 to 2005 and in 2010 but did not understand Defendant Foppoli's actions to be considered sexual assault. (Undisputed Material Fact ["UMF"], No. 1; Plaintiffs' Additional Material Facts ["AMF"], No. 1.) There have been no incidents of intimate or sexual contact between Jane Doe #1 and Defendant Foppoli occurring on or after January 1, 2009. (UMF, No. 2.) Jane Doe #1's claims for violation of the Bane Civil Rights Act and the Ralph Act are predicated on the acts of sexual abuse and alleged threats to distribute photographs and/or video recordings of Plaintiffs via Defendant Foppoli's agent Robert Stryk. (UMF and Response, Nos. 23–24, 60–61; AMF, No. 11.) Defendant Foppoli disputes that he ever threatened to release photographs and/or video recordings of Jane Doe #1. (UMF and Response, Nos. 25, 62.) Jane Doe #1's claims for gender violence, IIED, and domestic violence are predicated on Defendant Foppoli's sexual abuses of her. (UMF, Nos. 98, 128, 160.) Jane Doe #1 argues that her IIED and domestic violence claims are also predicated on Defendant Foppoli's threat to release photos and/or videos of Plaintiffs. (UMF and Response, Nos. 128, 160.)

Jane Doe #2 briefly dated Defendant Foppoli toward the end of 2003 and assaulted her. (UMF, No. 7; AMF, No. 3.) There have been no incidents of intimate or sexual contact between Jane Doe #2 and Defendant Foppoli occurring on or after January 1, 2009. (UMF, No. 8.) Defendant Foppoli argues that Jane Doe #2 was immediately emotionally distressed after the incident, but she argues that she did not psychologically recognize that Defendant Foppoli had sexually assaulted her until 2021 when she spoke with a reporter. (UMF, Nos. 7, 10, 12, 13; UMF, No. 8 and Response; AMF, Nos. 2, 4.) Jane Doe #2's claims for violation of the Bane Civil Rights Act and the Ralph Act are predicated on the acts of sexual abuse and alleged threats to distribute photographs and/or video recordings of Plaintiffs via Defendant Foppoli's agent Robert Stryk. (UMF and Response, Nos. 33–34, 69–70; AMF, No. 11.) Defendant Foppoli disputes that he ever threatened to release photographs and/or video recordings of Jane Doe #2. (UMF and Response, Nos. 34, 71.) Jane Doe #2's claims for gender violence, IIED, and domestic violence are predicated on Defendant Foppoli's sexual abuses of her. (UMF, Nos. 106, 136, 168.) Jane Doe #2 argues that her IIED and domestic violence claims are also predicated on Defendant Foppoli's threat to release photos and/or videos of Plaintiffs. (UMF and Response, Nos. 136, 168.)

Defendant Foppoli assaulted Jane Doe #3 in 2006 but she did not discover that he had sexually assaulted her until 2021. (AMF, Nos. 5–6.) There have been no incidents of intimate or sexual contact between Jane Doe #3 and Defendant Foppoli occurring on or after January 1, 2009. (UMF, No. 15.) Jane Doe #3 felt violated, scared, and extremely disturbed by what happened but escaped before he removed her pants and did not perceive that Defendant Foppoli had assaulted her. (UMF, No. 17.) Jane Doe #3's claims for violation of the Bane Civil Rights Act and the Ralph Act are predicated on the acts of sexual abuse and alleged threats to distribute photographs and/or video recordings of Plaintiffs via Defendant Foppoli's agent Robert Stryk. (UMF and Response, Nos. 39–40, 76–77; AMF, No. 11.) Defendant Foppoli disputes that he ever threatened to release photographs and/or video recordings of Jane Doe #3. (UMF and Response, Nos. 41, 78.) Jane Doe #3's claims for gender violence and IIED are predicated on Defendant Foppoli's sexual abuses of her. (UMF, Nos. 111, 140.) Jane Doe #3 argues that her IIED claim is also predicated on Defendant Foppoli's threat to release photos and/or videos of Plaintiffs. (UMF and Response, No. 140.)

Jane Doe #4 was assaulted by Defendant Foppoli in 2012 and did not understand that oral copulation without consent was rape. (AMF, Nos. 7–8.) There have been no incidents of intimate or sexual contact between Jane Doe #4 and Defendant Foppoli occurring after 2021. (UMF, No. 42.) Defendant Foppoli presents evidence that Jane Doe #4 lodged complaints against Defendant Foppoli as early as 2013 and was diagnosed with anxiety and depression, which she attributes to the alleged assault. (UMF and Response, Nos. 43, 45–46.) Jane Doe #4's claims for violation of the Bane Civil Rights Act and the Ralph Act are predicated on the acts of sexual abuse and alleged threats to distribute photographs and/or video recordings of Jane Doe #4 via Defendant Foppoli's agent Robert Stryk. (UMF and Response, Nos. 48–49, 85–86; AMF, No. 11.) Defendant Foppoli disputes that he ever threatened to release photographs and/or video recordings of Jane Doe #4. (UMF and Response, Nos. 50, 87.) Jane Doe #4's claims for gender violence and IIED are predicated on Defendant Foppoli's sexual abuses of her. (UMF, Nos. 118, 147.) Jane Doe #4 argues that her IIED claim is also predicated on Defendant Foppoli's threat to release photos and/or videos of Plaintiffs. (UMF and Response, No. 147.)

Jane Doe #5 was assaulted by Defendant Foppoli in 2016 and there have been no instances of intimate or sexual contact between Defendant Foppoli and Jane Doe #5 occurring after 2016. (AMF, No. 9; UMF, No. 51.) Jane Doe #5's claims for violation of the Bane Civil Rights Act and the Ralph Act are predicated on the acts of sexual abuse and alleged threats to distribute photographs and/or video recordings of Jane Doe #5 via Defendant Foppoli's agent Robert Stryk. (UMF and Response, Nos. 54–55, 91–92; AMF, No. 11.) Defendant Foppoli disputes that he ever threatened to release photographs and/or video recordings of Jane Doe #5. (UMF and Response, Nos. 56, 93.) Jane Doe #5's claims for gender violence and IIED are predicated on Defendant Foppoli's sexual abuses of her. (UMF, Nos. 122, 151.) Jane Doe #5 argues that her IIED claim is also predicated on Defendant Foppoli's threat to release photos and/or videos of Plaintiffs. (UMF and Response, No. 151.)

Jane Doe #6 was assaulted by Defendant Foppoli in 2019 and there have been no instances of intimate or sexual contact between Defendant Foppoli and Jane Doe #6 occurring after 2019. (AMF, No. 10; UMF, No. 152.) Jane Doe #6's claim for IIED is predicated on Defendant Foppoli's sexual abuses and Jane Doe #6 contends it is also predicated on Defendant Foppoli's threat to release photographs and/or videos of Plaintiffs. (UMF and Response, No. 154.)

On April 4, 2022, Plaintiffs filed the Complaint in this action against Defendant Foppoli for several causes of action arising from his sexual assaults and threats to release photographs/videos of Plaintiffs. (AMF, No. 13.) Defendant Foppoli contends that all of the above claims are barred by the respective statutes of limitations.

II. Standard at Summary Adjudication

A party moving for summary adjudication of a cause of action must prove that the cause of action has no merit and summary adjudication may only be granted if it completely disposes of the cause of action. (C.C.P. § 437c(f)(1).) "A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action." (C.C.P. § 437c(p)(2).) "Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto." (*Ibid*.)

"From commencement to conclusion," the moving party bears the burden of persuasion and production to make a prima facie showing that there are no triable issues of material fact. (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 850.) "There is no obligation on the opposing party…to establish anything by affidavit unless and until the moving party has by affidavit stated facts establishing every element…necessary to sustain a judgment in his favor." (*Consumer Cause, Inc. v. SmileCare* (2001) 91 Cal.App.4th 454, 468.) Defendants can meet their burden by showing a cause of action has no merit by showing that one or more elements of the cause of action "cannot be established." (See C.C.P. § 437c(p)(2).) Once the defendant has met that burden, the burden shifts to the plaintiff to show that a triable issue of one or more material facts exists as to that cause of action or defense. (*Aguilar, supra*, 25 Cal.4th at p. 849.)

III. Discussion

A. The Protective Order

On August 18, 2022, the Court granted Plaintiffs' *ex parte* application seeking a protective order (the "Protective Order"). (See Plaintiff's Evidence in Opposition to Defendant Foppoli's MSA, Exhibit E.) Paragraph 31 of the Protective Order requires that identifying information for Plaintiffs must be redacted from all documents filed with the Court. Defendant Foppoli filed several documents in support of his MSA containing Plaintiffs' identifying information without redaction in violation of the Protective Order. On February 19, 2026, the Court ordered Defendant Foppoli to file redacted versions of the Declaration of Dominic Foppoli in support of his MSA and the Separate Statement of Undisputed Material Facts in Support of his MSA and for the Clerk of the Court to remove these documents from public view. (See Order Granting Plaintiffs' *Ex Parte* Application to Continue Hearing on Defendant Foppoli's MSA, filed February 19, 2026.) Defendant Foppoli filed redacted versions of these documents on February 24, 2026, and the Court removed them from public view. (See Minute Orders, dated May 8, 2026, and served May 11, 2026.) However, upon review of Defendant Foppoli's evidence in support of his MSA filed on December 12, 2025, the Court finds that the two online articles in Defendant Foppoli's Request for Judicial Notice (Exhibits B and C) and the depositions of Jane Doe #2 and Jane Doe #4 in Defendant Foppoli's "Notice of Lodging of Deposition Transcripts in Support of Defendant Dominic Foppoli's MSA" (Exhibits 1 and 2) all contain identifying information of Plaintiffs. Therefore, the Court **ORDERS** Plaintiffs to lodge a revised order with the Court to include these additional documents to be removed from public view and require Defendant Foppoli to file redacted versions. Plaintiffs' objections to Defendant Foppoli's evidence are addressed below.

Furthermore, Plaintiffs contend their Opposition was timely since Defendant Foppoli's violation of the Protective Order allowed them additional time to file their Opposition. (See Protective Order, ¶ 33.) In Reply, Defendant Foppoli does not challenge the timeliness of Plaintiffs' Opposition. Thus, the Court will review all papers and evidence filed in support of the Opposition to Defendant Foppoli's MSA to decide this motion on the merits.

B. Requests for Judicial Notice

The court may take judicial notice of facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. (Evid. Code § 452(h).) The court must take judicial notice of any matter requested by a party, so long as it complies with the requirements under Evidence Code section 452.

(Evid. Code § 453.) Courts may "take judicial notice of the *existence* of judicial opinions and court documents, along with the truth of the results reached—in the documents such as orders, statements of decision, and judgments—but cannot take judicial notice of the truth of hearsay statements in decisions or court files, including pleadings, affidavits, testimony, or statements of fact." (*People v. Harbolt* (1997) 61 Cal.App.4th 123, 126–127 [citations omitted]; Evid. Code §§ 452, 453.) Courts may also take judicial notice of the existence of websites but may not take notice of the truth of the factual content of a website. (*City and County of San Francisco v. HomeAway.com, Inc.* (2018) 21 Cal.App.5th 1116, fn. 2.)

1. Defendant Foppoli's RJN in Support of his MSA

Defendant Foppoli requests judicial notice of three documents in support of his MSA: (1) the SAC in this action filed on June 13, 2025, (2) an article from the San Francisco Chronicle titled "Four women say Windsor Mayor Dominic Foppoli, 'prince' of Wine Country, sexually assaulted them", and (3) an article from the San Francisco Chronicle titled "Fifth woman accuses Windsor Mayor Dominic Foppoli of sexual assault". Defendant Foppoli's request for judicial notice is **GRANTED with limitations**. Judicial notice is granted as to the *existence* of the SAC and the *existence* of the two articles and that those articles were published online in the San Francisco Chronicle on those dates with those titles. The Court does not take judicial notice of the truth of any statements made in the SAC or the two articles. Plaintiffs' objections to Defendant Foppoli's RJN are discussed below.

2. Plaintiffs' RJN in Support of their Opposition to MSA

Plaintiffs request judicial notice of six documents in support of their Opposition to the MSA: (1) Assembly Bill 250 signed on October 13, 2025; (2) the Senate Judiciary Committee Analysis of Assembly Bill 250 dated July 1, 2025; (3) portions of the Assembly Committee on Judiciary Analysis of Assembly Bill 250, dated May 15, 2025; (4) the Floor Analysis of Assembly Bill 240 from the California State Assembly dated September 10, 2025; (5) the Protective Order in this action; and (6) Plaintiffs' Complaint filed on April 4, 2022. Plaintiffs' request for judicial notice is **GRANTED** but the Court does not take notice of the truth of the statements made in the Complaint.

C. Objections to Evidence

1. Plaintiffs' Objections

Plaintiffs asserts six objections to various documents filed in support of Defendant Foppoli's MSA. Plaintiffs object to the Declaration of Dominic Foppoli, the deposition of Jane Doe #2 (Exhibit 1 of the Notice of Lodging of Deposition Transcripts), and the deposition of Jane Doe #4 (Exhibit 2 of the Notice of Lodging of Deposition Transcripts) on the basis that they violate the Protective Order. Violation of a protective order is not a valid objection under the Evidence Code. Therefore, Objections 1–3 are **OVERRULED**. Plaintiffs object to all three documents in Defendant Foppoli's RJN on the basis of hearsay, lacking foundation, and not proper subject of judicial notice (Objections 4–6). Plaintiff further objects on the basis that the two articles violate the Protective Order in this case as it includes identifying information without redactions. Defendant Foppoli filed a reply to these objections. Objection 4 to the SAC is **OVERRULED** as the Court only takes judicial notice of the existence of the SAC and not the truth of the statements therein. Objections 5 and 6 are **OVERRULED** because violation of a Protective Order is not a valid objection under the Evidence Code and the Court only takes judicial notice of the existence of the two articles.

However, the Court is requiring Plaintiffs to lodge a revised order to correct these violations of the Protective Order.

2. Defendant Foppoli's Objections

Defendant Foppoli asserts 29 objections to the Declaration of Julie Medlin, Ph.D. attached as Exhibit G to Plaintiffs' Evidence in Opposition to Defendant Foppoli's MSA on the basis that the expert witness relayed impermissible hearsay in forming her opinion because the First and Second Amended Complaints in this action are hearsay relating to case-specific facts. All objections to the Declaration are **OVERRULED**.

D. Legislative History of C.C.P. Section 340.16

Section 340.16 was enacted and amended once prior to the filing of Plaintiffs' Complaint on April 4, 2022, and has been amended two additional times while the action has been pending before this Court. Each amendment has expanded upon and clarified the prior version of the statute with the ultimate goal of giving sexual assault survivors sufficient time to come forward with their claims and hold perpetrators accountable.

Section 340.16 was first enacted in 2018, taking effect on January 1, 2019, allowing adults to bring a civil action for recovery of damages suffered as a result of sexual assault within 10 years from the last act, attempted act, or assault with the intent to commit an act of sexual assault against the plaintiff or within three years from the date the plaintiff discover or reasonably should have discovered that an injury or illness resulted from an acted, attempted act, or assault with the intent to comment an act of sexual assault against the plaintiff. (C.C.P. § 340.16, added by Stats. 2018, ch. 939, § 1 (Assem. Bill No. 1619); C.C.P. § 340.16(a), as amended by Stats. 2019, ch. 462 § 1 (Assem. Bill No. 1510).) Effective January 1, 2021, the Legislature added subdivision (b)(3), among other modifications, which clarified that "This section applies to any action described in subdivision (a) that is commenced on or after January 1, 2019." (C.C.P. § 340.16(b)(3), as amended by Stats. 2020, ch. 246 § 1 (Assem. Bill No. 3092).)

Effective January 1, 2023, Section 340.16 was amended to add two revival provisions: subdivision (b)(3) and subdivision (e). (Stats. 2022, ch. 442 § 3 (Assem. Bill No. 2777).) Subdivision (b)(3) allowed Section 340.16 to apply retroactively to "any action described in subdivision (a) that is based upon conduct that occurred on or after January 1, 2009, and is commenced on or after January 1, 2019, that would have been barred solely because the applicable statute of limitations has or had expired. Such claims are hereby revived and may be commenced until December 31, 2026." (C.C.P. § 340.16(b)(3) (2023) [prior to 2026 amendment].) Similarly, subdivision (e), added a one-year revival window to allow claims where one or more entities or their agents, employees, or representatives engaged in a cover up for attempted to cover up of a previous instance or allegations of sexual abuse by an alleged perpetrator of such abuse but that failure to allege a cover up as to one entity does not affect revival of the plaintiff's claims against any other entity. (C.C.P. § 340.16(e)(3) (2023) [prior to 2026 amendment].) Notably, the Legislature made the following findings in the 2023 amendment to the statute:

(a) Every 68 seconds, an American is sexually assaulted.

(c) According to the Rape, Abuse and Incest National Network, only about 300 out of every 1,000 sexual assaults are reported to police. That means more than two out of three go unreported.

(e) A 2016 analysis of 28 studies of nearly 6,000 women and girls 14 years of age or older who had experienced sexual violence found that 60 percent of survivors did not label their experience as "rape."

(f) Women may not define a victimization as a rape or sexual assault for many reasons such as self-blame, embarrassment, not clearly understanding the legal definition of the terms, or not wanting to define someone they know who victimized them as a rapist or because others blame them for their sexual assault.

(g) When the perpetrator is someone a victim trusts, it can take years for the victim even to identify what happened to them as a sexual assault.

(h) For these reasons, it is self-evident that the unique nature of the emotional and psychological consequences of sexual assault, especially on women, can paradoxically permit wrongdoers to escape civil accountability unless statutes of limitation are crafted to prevent this injustice from occurring.

(Stats. 2022, ch. 442, § 2(a), (c), (e)–(h).)

The Legislature again amended Section 340.16, subdivision (e), effective January 1, 2026, to clarify and expand on the types of claims revived to include "claims against the perpetrator of the sexual assault brought by a plaintiff who alleges that the plaintiff was sexually assaulted and that one or more entities or persons, including, but not limited to, the perpetrator of the sexual assault, are legally responsible for damages arising out of the sexual assault against the plaintiff." (C.C.P. § 340.16(e)(3), as amended by Stats. 2025, ch. 682 § 1 (Assem. Bill No. 250).)

E. There are Triable Issues of Fact Related to the Reasonable Discovery of Injury or Illness for Jane Does #1 – #3

Subdivision (a) applies to any civil action for recovery of damages suffered as a result of sexual assault that occurred on or after the plaintiff's 18th birthday, the time for commencement of the action is the later of the following:

(1) Within 10 years from the date of the last act, attempted act, or assault with the intent to commit an act, of sexual assault against the plaintiff.

(2) Within three years from the date the plaintiff discovers or reasonably should have discovered that an injury or illness resulted from an act, attempted act, or assault with the intent to commit an act, of sexual assault against the plaintiff.

(C.C.P. § 340.16(a).) Plaintiffs' contention is that the Complaint is timely filed because Jane Does #1 – #3 did not discover they were sexually assaulted until speaking with law enforcement or reporters at various points in 2021, and thus the statute of limitations never lapsed, rendering their Complaint timely filed on April 4, 2022. Subdivision (a) establishes the statute of limitations for

actions recovering damages suffered as a result of a sexual assault while subdivision (b) acts as the revival portion of the statute reviving claims predicated on conduct that occurred on or after January 1, 2009 that would have been barred *solely* because the applicable statute of limitations has or had expired. (Emphasis added). However, Jane Does #1 – #3's claims are predicated on subdivision (a)(2) and the reasonableness of their discovery of sexual assault until 2021, not on the revival portion of the statute under subdivision (b)(3). From the plain language of the statute, subdivision (a)(2) is an integrated delayed discovery provision and the application of subdivision(a)(2) is not barred by subdivision (b)(3) for claims of sexual assault that occurred before January 1, 2009, but were not reasonably discovered until a later time but still within three years of the filing of an action, such as the procedural posture of Plaintiffs' action. Subdivision (b)(3) "functions to revive actions that could have been brought if A.B. 1619 had applied its 10-year statute of limitations retroactively" and the inception of the statute effective January 1, 2019 (subdivision (a)) "starts the clock for adult victims of sexual assault to assert their civil claims against those responsible." (Sen. Judiciary Com., Analysis of Assem. Bill No. 2777 (2021–2022 Reg. Sess.) June 14, 2022, pp. 5–6.) The Court's reading of C.C.P. section 340.16(a) is further supported by the purpose of the expansion of the limitations period embraced in A.B. 1619:

> Researchers are learning more about the aftermath of sexual assault. As more information about the potential for post-traumatic stress syndrome (PTSD), depression, and other mental health complications in sexual assault survivors is unveiled, it is clear that two years does not provide victims with the time needed to heal from the trauma of sexual assault. By providing victims the later of 10 years or within 3 years from when the plaintiff discovers or reasonably should have discovered an injury or illness that resulted from the sexual assault, this bill would provide victims with a timeframe that is more respectful of the violence they have endured and the trauma that has resulted.

(Sen. Judiciary Com., Analysis of Assem. Bill No. 2777 (2021–2022 Reg. Sess.) June 14, 2022, pp. 9–10 [footnotes omitted].) Therefore, subdivision (b)(3) does not bar Jane Does #1 – #3's action under subdivision (a)(2).

However, whether Jane Does #1 – #3's claims are timely under section 340.16(a)(2) involves the weighing of facts and evidence and will be determined by the jury. "While resolution of the statute of limitations issue is normally a question of fact, where the uncontradicted facts established through discovery are susceptible of only one legitimate inference, summary judgment is proper." (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1112.) Here, the facts are not susceptible of only one legitimate inference, precluding summary adjudication. Defendant Foppoli has presented evidence showing that Jane Does #1 – #3 experienced traumas related to the sexual assaults before 2021 while Plaintiffs' expert declares that Jane Does #1 – #3 did not recognize that Defendant Foppoli's actions were sexually abusive, consistent with trauma-related delayed recognition. (UMF and Response, Nos. 2, 8, 12, 13, 15; AMF, Nos. 2, 4, 6.) Whether Jane Does #1 – #3 reasonably should have discovered that an injury resulted from Defendant Foppoli's acts of sexual assault prior to 2021 (and therefore whether their action is timely) is a triable issue of fact for a jury. Furthermore, subdivision (a) applies to any civil *action* for recovery of damages, which extends to all causes of action asserted by Jane Does #1 – #3 as their claims under the Bane Civil Rights Act, the Ralph Act, gender violence, IIED, and domestic violence (only as to Jane Does #1 and #2) all are predicated on Defendant Foppoli's acts of sexual assault and the disputed threats about releasing photographs and/or videos of Plaintiffs. (UMF and Response, Nos. 98, 106, 111, 128, 136, 140,

160, 168; see *Jane Doe #21 (S.H.) v. CFR Enterprises, Inc.* (2023) 93 Cal.App.5th 1199, 1209 ["Subdivision (a) is not limited to causes of action for sexual assault/battery: it applies to '*any civil action for recovery of damages suffered as a result of sexual assault*.' (§ 340.16, subd. (a), italics added.)"].)

Therefore, summary adjudication is **DENIED** as to the First, Second, Third, Seventh, Eighth, and Ninth Causes of Action as asserted by Jane Doe #1, Jane Doe #2, and Jane Doe #3.

F. There are Triable Issues of Fact Related to the Reasonable Discovery of Injury or Illness for Jane Doe #4

As explained above, subdivision (b)(3) does not bar Jane Doe #4's claims under subdivision (a)(2). The facts are not susceptible of only one legitimate inference. Defendant Foppoli has presented evidence showing that Jane Doe #4 experienced traumas related to her sexual assault and reported these actions to members within Santa Rosa Active 20-30's before 2021 while Plaintiffs' expert declares that Jane Doe #4 did not recognize that Defendant Foppoli's forced oral copulation constituted rape until 2021, consistent with trauma-related delayed recognition. (UMF and Response, Nos. 42, 45–47; AMF, Nos. 7–8.) Whether Jane Doe #4 reasonably should have discovered that an injury resulted from Defendant Foppoli's acts of sexual assault prior to 2021 (and therefore whether her action is timely) is a triable issue of fact for a jury. Furthermore, subdivision (a) applies to any civil *action* for recovery of damages, which extends to all causes of action asserted by Jane Doe #4 as her claims under the Bane Civil Rights Act, the Ralph Act, gender violence, and IIED all are predicated on Defendant Foppoli's acts of sexual assault and/or the disputed threats about releasing photographs and/or videos of Plaintiffs. (UMF and Response, Nos. 118, 147.)

Even if subdivision (a)(2) was inapplicable to Jane Doe #4's claims, the revival provision under subdivision (b)(3) would revive her claims as her assault occurred in 2012 and all causes of action asserted by Jane Doe #4 are predicated on her sexual assault and/or the disputed threats made to release photographs and/or videos of Plaintiffs. (UMF and Response, Nos. 42, 48, 85–86, 118, 147; AMF, Nos. 7, 11.) Subdivision (b)(3) contains the same broad language as in subdivision (a), applying to any *action* described in subdivision (a) that is based on conduct that occurred on or after January 1, 2009. Therefore, Jane Doe #4's claims are not barred by the various statutes of limitations and there remains a triable issue of fact as to whether Jane Doe #4 reasonably should have discovered that an injury resulted from Defendant Foppoli's acts of sexual assault prior to 2021. Summary adjudication is **DENIED** as to the Second, Third, Seventh, and Eighth Causes of Action as asserted by Jane Doe #4.

G. Jane Doe #5 and Jane Doe #6's Claims are Timely

Jane Doe #5 and Jane Doe #6 do not assert their claims under subdivision (a)(2) (three years from discovery of injury). However, both Jane Doe #5 and Jane Doe #6's claims are timely within the 10-year statute of limitations under subdivision (a)(1) as their sexual assaults occurred in 2016 and 2019, respectively, and the action was filed on April 4, 2022. Since subdivision (a) applies to any civil *action*, their claims under the Bane Civil Rights Act, the Ralph Act, gender violence, and IIED are all timely because these claims are predicated on Defendant Foppoli's acts of sexual assault and/or the disputed threats made to release photographs and/or videos of Plaintiffs. (UMF and Response, Nos. 54–55, 91–92, 122, 151, 154; AMF, Nos. 9–11.) Even if the statute of limitations

under subdivision (a)(1) had run, Jane Doe #5 and Jane Doe #6's claims would be revived under subdivision (b)(3) as their sexual assaults occurred after January 1, 2009, their action was commenced on or after January 1, 2019, and the actions are predicated on Defendant Foppoli's acts of sexual assault and/or the disputed threats about releasing photographs and/or videos of Plaintiffs. Therefore, their claims are timely. Summary adjudication is **DENIED** Second, Third, Seventh, and Eighth Causes of Action as asserted by Jane Doe #5 and the Eighth Cause of Action as asserted by Jane Doe #6.

H. Subdivision (e) is Inapplicable to Plaintiffs' Claims

In Opposition, Plaintiffs cite to subdivisions (e)(1) and (e)(3) of the 2026 amendment stating that "Section 340.16 was amended on January 1, 2026 to explicitly revive sexual assault claims that were previously time barred by the statute of limitations. The Section applies to any cause of action that was already pending in court on January 1, 2026. (Code of Civ. Proc. § 340.16(3)(1)." (Opposition, 7:28–8:3.) However, this subdivision does not apply as broadly as Plaintiff concludes. Subdivision (e) applies to cases involving entity-related cover ups of sexual assaults and subdivision (e) was amended in 2026 to explicitly resolve any confusion that the revival applies to entities *and* "the actual perpetrators of these covered up sexual assault claims." (Sen. Judiciary Com., Analysis of Assem. Bill No. 250 (2025–2026 Reg. Sess.) July 1, 2025.) Subdivisions (e)(1) and (e)(3) cannot be read independently from subdivision (e) as a limitless provision allowing revival of all sexual assault claims against the perpetrator of the sexual assault without any connection to a cover up. (*Jane Doe #21 (S.H.), supra,* 93 Cal.App.5th at 1211 ["section 340.16(e) applies to claims regardless of when the alleged sexual assault occurred [] for plaintiffs who plead the requisite statutory allegations of a cover up…"].) Here, Plaintiffs do not argue or present any evidence of a cover up within the meaning of subdivision (e) and therefore this section is inapplicable to their claims.

IV. Conclusion

Defendant Foppoli's motion for summary adjudication is **DENIED** in its entirety. All objections are **OVERRULED**. All requests for judicial notice are **GRANTED** with limitations as described above.

Plaintiffs are **ORDERED** to lodge a revised order with the Court to include the additional documents listed in Section III.A above to be removed from public view and require Defendant Foppoli to file redacted versions.

Plaintiffs' counsel shall submit a written order on its motion to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

6. 25CV02164, Ordaz v. General Motors, LLC

Defendant's motion to compel compliance with CCP § 871.26 is **DENIED**. However, Defendant's request for sanctions against Plaintiff's attorney is **GRANTED** in the amount of $1,500.00. Plaintiff's attorney shall pay these sanctions within 15 days of notice of entry of an order on this motion.

Defendant's counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

Analysis:

Plaintiff alleges several causes of action against Defendant under the Song-Beverly Customer Warranty Act. CCP § 871.26 applies to civil actions seeking restitution or replacement of a motor vehicle pursuant to Section 871.20. It provides that all parties have the right to conduct certain initial depositions—of the plaintiff and defendant—within 120 days after the filing of the answer or other responsive pleading.

This action was filed on March 25, 2025. Defendant filed a demurrer on June 12, 2025. As such, Defendant had the right to conduct Plaintiff's initial deposition within 120 days of June 12th (October 10, 2025). Defendant noticed Plaintiff's deposition for July 25, 2025, but Plaintiff objected to the notice stating that Plaintiff was unavailable on that date.

Defendant made no further attempts to schedule Plaintiff's deposition within the statutory time frame. Defendant made no attempts to compel Plaintiff's deposition within the statutory time frame. Plaintiff objected to the deposition notice on July 22, 2025. Defendant's first attempt to reschedule the deposition occurred on October 15th, 5 days after the 120 day time frame had passed. Defendant did not file this motion until March 2, 2026, nearly 5 months after the deadline had passed.

While CCP § 871.26 provides a statutory right to conduct Plaintiff's "initial" deposition within 120 days of the responsive pleading, Defendant is not herein seeking to conduct the deposition within 120 days of the responsive pleading because that deadline passed long ago. Accordingly, the motion to compel the deposition pursuant to CCP § 871.26 is denied. This order is not a bar to Defendant's ability to compel Plaintiff's deposition under the Civil Discovery Act if appropriate.

CCP § 871.26(j) provides,

> (j) Unless the party failing to comply with this section shows good cause, notwithstanding any other law and in addition to any other sanctions imposed pursuant to this chapter, a court shall impose sanctions as follows:
> …
>> (2) A one-thousand-five-hundred-dollar ($1,500) sanction against the plaintiff's attorney…paid within 15 business days for failure to comply with the provisions relating to depositions as prescribed in subdivision (c).

Plaintiff's counsel failed to comply with the deposition provisions by failing to produce Plaintiff for deposition within 120 days. While it is true that Defendant did not take further steps to reschedule

the deposition after Plaintiff objected, the Code section describes Defendant's ability to take the deposition as a "right."

Furthermore, Defendant sent a meet and confer letter to Plaintiff's counsel on June 12, 2025, which told Plaintiff's counsel that GM was issuing a notice for Plaintiff to appear for deposition and indicating that if Plaintiff was "unavailable to appear at the depositions as noticed, please contact our office with a date to complete the deposition." The letter stated, "[t]hese depositions are to be completed no later than 120 days after the filing of the answer or responsive pleading. See Code of Civil Procedure section 871.26(c)." (Lasater Decl., ⁋ 4.)

Moreover, Plaintiff's objection to the Notice of Deposition stated, "Plaintiff will meet and confer with Defendant to reschedule the deposition on a date and time that is mutually convenient." Plaintiff did not do so. At the very least, Plaintiff's counsel should have proposed alternative dates within the 120 day time period but did not. Plaintiff's counsel has not provided good cause for failing to do so. Accordingly, sanctions are mandatory.

7. <u>24CV04929, Mancuso v. Gilbraith</u>

Plaintiff's motion for leave to file an amended complaint is **GRANTED**. Plaintiff shall file the proposed first amended complaint within 10 days of this order.
If no hearing is requested, the Court will sign the proposed order lodged with the moving papers.

<u>Analysis:</u>

Judicial policy favors resolution of all disputed matters between the parties in the same lawsuit, and courts are bound to apply a policy of great liberality in permitting amendments to the complaint "at any stage of the proceedings, up to and including trial," absent prejudice to the adverse party. (*Atkinson v. Elk Corp*. (2003) 109 Cal.App.4th 739, 761.) "'Generally, leave to amend must be liberally granted…provided there is no statute of limitations concern, nor any prejudice to the opposing party, such as delay in trial, loss of critical evidence, or added costs of preparation.'" (*Solit v. Tokai Bank, Ltd. New York Branch* (1999) 68 Cal.App.4th 1435, 1448.) As long as the motion is timely and will not prejudice a party, it is normally an abuse of discretion to refuse to allow amendment if the denial will deprive a party of a meritorious claim or defense. (*Morgan v. Sup.Ct.* (1959) 172 Cal.App.2d 527, 530.)

Plaintiff's motion is timely the Court finds no prejudice to Defendant. The motion is therefore granted.

8. 25CV08248, Oliver v. Saris

Defendants' motion to compel arbitration is **DENIED**.

Plaintiffs' counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

Analysis:

Plaintiffs, Jennifer R. Oliver, Kali Equity, LLC and Bluestone Main, LLC filed a complaint on November 24, 2025 against Defendants Anthony "Tony" Saris; Saris Fund One, LLC; Saris Fund Two, LLC; Hugh Futrell; Hugh Futrell Corporation; Futrell Walter Pacific, LLC; and Does 1 through 100, inclusive.

Plaintiffs allege that Jennifer R. Oliver is an individual who is the sole owner and operator of Kali Equity, LLC ("Kali"). As alleged, Kali is a passive member of the 8 Cubed LLC, which is a passive member of the 888 Fourth Street LLC, which in turn owned and controlled the 888 Fourth Street Property. Plaintiffs also allege that Jennifer is the sole owner and operator of Bluestone Main, LLC ("Bluestone"). As alleged, Bluestone is a passive member in the Holly Hock LLC.

Defendant Anthony "Tony" Saris ("Saris") is alleged to be the managing member of the 8 Cubed LLC, a managing member of Holly Hock LLC, and the sole owner and principal of both the Saris Fund One, LLC and Saris Fund Two, LLC. Defendant Saris Fund One, LLC ("SF1") is alleged to be solely owned and operated by Saris, and to be one of the two Managing Members of 888 Fourth Street LLC (along with Defendant Futrell Walter Pacific, LLC). SF1 is also alleged to be the sole managing member of 888 Cubed LLC, of which Plaintiff Kali is a passive member. Defendant Saris Fund Two, LLC ("SF2") is alleged to be solely owned and operated by Saris, and to be one of the two Managing Members of Holly Hock LLC.

Defendant Hugh Futrell ("Futrell") is alleged to be the sole owner and operator of Meda Brookwood, LLC. Defendant Hugh Futrell Corporation ("HFC") is alleged to be solely owned and operated by Futrell, and to be one of the two Managing Members of Holly Hock LLC. Defendant Futrell Walter Pacific, LLC ("FWP") is alleged to one of the two Managing Members of 888 Fourth Street LLC.

Plaintiffs allege that this case arises from a scheme in which Defendants Saris and Futrell, in conjunction with their related entities and partners, targeted Plaintiff Jennifer R. Oliver ("Jennifer") in a multi-year engagement to siphon her net worth and ultimately defraud her. As alleged, Saris, who was Jennifer's longtime family friend, CPA, and financial advisor, induced Jennifer to invest $3,500,000 in two exceedingly risky residential real estate development projects, located at (1) 888 Fourth Street, Santa Rosa, CA ("888 Property") and (2) 1650 Meda Avenue property ("Holly Hock Property") in Santa Rosa, California, through limited liability companies entitled 8 Cubed LLC and

Holly Hock, LLC respectively. The development of both properties are referred to hereafter as the "888 Project" and the "Holly Hock Project".

Plaintiffs allege that after several years and false promises and reassurances, the 888 Property sold for a substantial loss, and the Holly Hock Project is equally underwater and stalled. As alleged, Jennifer was promised a safe and handsome guaranteed return on her investment, a 12-14 month completion period on the 888 Property and a 6-12 month completion period on the Holly Hock Property. Plaintiffs also allege that Jennifer's mother, Lillian, was induced into investing in these projects, but she is represented by different counsel and is pursuing her own action. (25CV07282.)

888 Project

On or about November 14, 2020, Jennifer wired $3,000,000 to Saris for an approximately 42.92% passive ownership interest in 8 Cubed LLC, held through her entity, Plaintiff Kali. Plaintiffs allege that Saris, acting through his entity SF1, positioned himself as the sole managing member under a one-sided Operating Agreement requiring a supermajority vote to override any of his decisions. ("888 Operating Agreement".) Plaintiffs allege several issues with this operating agreement.

In or around May of 2021, Saris used $6,563,056 in equity from 8 Cubed LLC capital to purchase 60.6% passive ownership in the controlling 888 Fourth Street LLC ("888 LLC"), of which SF1 and FWP were the managing members.

As alleged, under the 888 LLC's Original Operating Agreement, Futrell Walter Pacific ("FWP") served as the Administrative Managing Member and exercised primary control over the 888 Project's day-to-day operations and financing, while Saris, through SF1, acted as Co-Managing Member with shared authority on major decisions. Although 8 Cubed LLC and 888 Fund were designated as non-managing members, they bore significant financial risk without meaningful governance power. The Agreement vested nearly all management discretion in FWP.

On or about February 11, 2020, the 888 LLC and HFC (owned by Futrell) entered a Construction Contract for the Project (the "Construction Contract"), which will be discussed further herein. The Construction Contract was incorporated into the Original Operating Agreement and was described as a "CostPlus – Guaranteed Maximum Price" contract. Plaintiffs allege that Futrell and Saris' control became the means by which they concealed the 888 Project's unraveling.

Holly Hock Property

On June 14, 2016, Futrell, using his entity Meda Brookwood LLC, purchased two acres of land at 1650 Meda Ave. ("Holly Hock Property"). Saris pitched the Holly Hock Property as a high-return, risk-free investment for Lillian and Jennifer. Based on representations made by Saris, Lillian (Jennifer's mother) purchased the Holly Hock Property from Futrell for $1.47 million and Saris received a finder's fee of $44,000. As alleged, Defendants took the next step in their fraudulent scheme and informed Lillian that she needed to sign an operating agreement for Holly Hock LLC.

This required Lillian to give up ownership of the Property and convey the Property into Holly Hock LLC in exchange for a fractional, passive minority ownership interest in the LLC. Saris and Futrell were the sole managers of the LLC and were solely responsible for the day-to-day operations. As further alleged, Saris induced Jennifer to invest an additional $500,000 for a 15.1% share in the Holly Hock LLC, which Jennifer did through Bluestone LLC.

Construction of Holly Hock LLC was governed by the Holly Hock Construction Contract. Plaintiffs allege that Defendants provided Jennifer with a copy of the Holly Hock Construction Contract as an exhibit to an unsigned copy of the Holly Hock Operating Agreement. Plaintiffs allege that Jennifer was and is a third-party beneficiary under the Holly Hock Construction Contract.

Plaintiffs' Claims

Plaintiffs' first cause of action is by all plaintiffs against all defendants for fraud against all defendants. They allege that Saris, with the knowledge, approval, and/or ratification of Futrell, made a series of affirmative misrepresentations, material omissions, and concealments of fact to Jennifer, with the intent to induce her to invest in the two projects.

The second cause of action is by all plaintiffs against all defendants for negligent misrepresentation, asserting that Defendants made representations regarding the financial security, completion timelines, and projected returns of both Projects without reasonable basis or due care in verifying their accuracy.

In their third cause of action for breach of fiduciary duty against all defendants, Plaintiffs claim that as Managers of 888 LLC and sellers and promoters of the 888 investment, the (1) Saris, (2) Futrell, (3) SF1, and (4) FWP defendants all owed fiduciary duties to Plaintiff Kali (a non-managing Member of the 8 Cubed LLC, which in turn owned a majority stake in the 888 LLC) and to the 888 LLC. Furthermore, as Managers of Holly Hock LLC and sellers and promoters of the Holly Hock investment, the (1) Saris, (2) Futrell, (3) SF2, and (4) HFC defendants all owed fiduciary duties to Plaintiff Bluestone (a non-managing Member) and to the Holly Hock LLC. Finally, Plaintiffs allege that independent of the relationships established by and through 888 LLC and Holly Hock LLC, Saris owed Jennifer a heightened fiduciary duty because he was Jennifer's trusted CPA, sole financial advisor, and sole financial confidant to Jennifer for nearly 30 years.

The fourth cause of action is for breach of contract relating to the 888 LLC Operating Agreement. This cause of action is raised by Plaintiffs Jeniffer and Kali against SF1 and FWP. As alleged, 8 Cubed LLC and the SF1 and FWP defendants ("888 Defendants") entered into a written Operating Agreement for 888 LLC for the development and construction of 108 units on the 888 Property. Under the 888 LLC OA, the 888 Defendants agreed to diligently develop the 888 Project within agreed-upon timelines and budgets, using commercially reasonable skill and care, and to deliver a completed, income-producing development for the benefit of 888 LLC and its Members, including the 8 Cubed LLC.

Plaintiffs allege that Plaintiff Kali is a member of 8 Cubed LLC and contributed $3,000,000 as its capital contribution. Although Plaintiffs Kali and Jennifer are not signatories to the 888 LLC OA, they allege that they are third-party beneficiaries of its promises. Plaintiffs allege that the 888 Defendants breached the 888 LLC OA in multiple ways.

Plaintiffs' fifth cause of action is by Plaintiffs Jennifer and Bluestone against Defendants SF2 and HFC for breach of written contract relating to the Holly Hock LLC Operating Agreement. As alleged, Plaintiff Bluestone and the (1) SF2 and (2) HFC defendants ("HH Defendants") executed a written HH Operating Agreement governing the ownership and management of Holly Hock LLC ("HH Operating Agreement"). Under the HH Operating Agreement, Plaintiff Bluestone contributed $500,000 as its capital contribution and obtained a 15.1% membership interest in the Holly Hock LLC. Plaintiff allege that the HH Defendants breached the HH Operating Agreement in multiple ways.

The sixth cause of action is by Plaintiffs Jennifer and Kali against Defendant HFC for breach of contract for third party beneficiary relating to the Construction Contract for the 888 Project. Plaintiffs allege that 888 LLC and Defendant HFC entered into a written construction contract (the "888 Construction Contract") for the development and construction of 108 units on the 888 Property. As alleged, Plaintiff Kali (and its sole owner, Jennifer) is a member of the 8 Cubed LLC, which in turn is a member of the 888 LLC, and contributed $3,000,000 as its capital contribution. Although Plaintiff Kali is not a signatory to the 888 Construction Contract, Plaintiffs allege that it is a third-party beneficiary of its promises because the 888 Construction Contract expressly contemplates that its purpose is to construct a residential development for the benefit of the Owner's members, including Plaintiff Kali. Plaintiffs allege that HFC breached the 888 Construction Contract in multiple respects.

Plaintiffs' seventh cause of action is by Plaintiff's Jennifer and Bluestone against Defendant HFC for breach of contract relating to the construction contract for the Holly Hock Project. They allege that Holly Hock LLC and Defendant HFC entered into a written construction contract (the "HH Construction Contract") for the development and construction of sixteen duplexes (thirty-two units) on the Property. As alleged, Plaintiff Bluestone (and its sole owner, Jennifer) is a member of Holly Hock LLC and contributed $500,000 as its capital contribution. Although Plaintiffs are not signatories to the HH Construction Contract, they allege that they are third-party beneficiaries of its promises because the HH Construction Contract expressly contemplates that its purpose is to construct a residential development for the benefit of the Holly Hock LLC's members, including Bluestone. They assert that HFC breached the HH Construction Contract in multiple respects.

Plaintiff's eighth cause of action is by all plaintiffs against all defendants for unjust enrichment, claiming that defendants were unjustly enriched by Plaintiffs' investments. The final cause of action is for accounting by all plaintiffs against all defendants claiming that defendants each owe plaintiffs' fiduciary duties arising from their roles as managers and members of the 888 LLC, 8 Cubed LLC, and Holly Hock LLC and as Plaintiff Jennifer's trusted financial advisor. As such, they

seek a full accounting of all funds and assets contributed, invested, or distributed in connection with the Properties and LLCs.

Defendants' Motion

Defendants Saris, SF1, and SF2 now move this Court for (1) an order compelling the claims by Plaintiffs Bluestone and Jennifer as to their investment concerning the Holly Hock Property to arbitration; (2) an order compelling the claims by Plaintiffs Kali and Jennifer as to their investment concerning the "888 Property to arbitration; and (3) an order staying these proceedings pending the outcome of the arbitrations.

They make their motion on the grounds that Plaintiffs allege that they are third party beneficiaries of the Operating Agreements and Construction Contracts at issue and, therefore, they should be bound by the arbitration provisions of those agreements.

The Court notes that Defendants Hugh Futrell ("Futrell"); Hugh Futrell Corporation ("HFC"); and Futrell Walter Pacific, LLC ("FWP") filed a Cross-Complaint against Saris, SF1, and SF2 after this motion was filed. Those cross-claims are not the subject of this motion and will not be herein addressed.

I. Defendants Have Failed to Show the Existence of an Arbitration Agreement that Applies to this Dispute

"The party seeking to compel arbitration has the initial burden to plead and prove the existence of a valid arbitration agreement that applies to the dispute. Once that burden is satisfied, the party opposing arbitration must prove any defense to the agreement's enforcement, such as unconscionability." (*Dennison v. Rosland Cap. LLC* (2020) 47 Cal.App.5th 204, 209.) "Because arbitration is a matter of contract, the general rule is that one must be a party to an arbitration agreement to invoke or be bound by its terms." (*Enmark v. KF Community Care, LLC* (2024) 105 Cal.App.5th 463, 471.)

Operating Agreements

The 888 Operating Agreement is attached as Exhibit A to the declaration of Anthony Saris. It states,

> This Amended and Restated Operating Agreement (this "Agreement") for 888 Fourth Street, LLC (the "Company") is made effective as of the Effective Date, by and among Futrell Walter Pacific, LLC, a California limited liability company ("FWP") as the Administrative Managing Member, Saris Fund One, LLC, a California limited liability company ("Saris Entity"), as the Co-Managing Member, 888 Fourth Street Fund, LLC, a California limited liability company ("888"), as a non-managing Member, and Eight Cubed, LLC, as a non-managing Member ("Cubed"). The managing and non-managing members are referred to in this Agreement collectively as "Members" and individually as "Member." The

> Administrative Managing Member and Co-Managing Member are collectively referred to in this Agreement as "Manager."

In Article 1, the term "Member" is defined as "any person who executes a counterpart of this Agreement as a Member, including any Person who subsequently is admitted as a Member of the Company. The term Member shall include both managing Members and non-managing Members." According the Agreement, "Person means and includes an individual, corporation, Company, association, limited liability company, trust, estate, or other entity."

The Holly Hock Operating Agreement is attached as Exhibit E to the Declaration of Anthony Saris and states,

> This Operating Agreement (the "Agreement") for Holly Hock, LLC (the "Company") is made effective as of the Effective Date, by and among Hugh Futrell Corporation, a California limited liability company ("HFC") as the Administrative Managing Member, Saris Fund Two, LLC, a California limited liability company ("Saris Entity"), as the Co-Managing Member, , [sic] and Lillian M Oliver 1990 Trust, as a non-managing Member ("Oliver"). The managing and non-managing members are referred to in this Agreement collectively as "Members" and individually as "Member." The Administrative Managing Member and Co-Managing Member are collectively referred to as "Managers."

The Holly Hock Operating Agreement provides the same definition for "Member" as the 888 Operating Agreement, above.

Section 11.8 of the Operating Agreement for both 888 Fourth LLC and Holly Hock contains an arbitration agreement stating:

> Any dispute among the Members, or between the Managers, arising out of this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by three arbitrators(s) may be entered in any court having jurisdiction thereof.

Construction Contracts

The Construction Contract relating to the 888 Project is attached as Exhibit B to the Declaration of Anthony Saris. It provides, "This construction contract is by and between the above named Owner ("Owner") and Hugh Futrell Corporation ("Contractor")…" The "Owner" is listed as 888 Fourth Street LLC.

The Construction Contract relating to the Holly Hock Project is attached as Exhibit F to the Declaration of Anthony Saris and provides, "This construction contract is by and between the above named Owner ("Owner") and Hugh Futrell Corporation ("Contractor")…" The "Owner" is listed as Holly Hock LLC.

Section 20 of the Construction Contract for both the 888 Project and Holly Hock reads as follows:

> In the event of any dispute between Owner and Contractor over any of the obligations set forth in this agreement, the matter shall be adjudicated under the Construction Industry Arbitration Rules of the American Arbitration Association. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

Arguments and Analysis

Defendants argue that since each of the plaintiffs claims to be a third party beneficiary of the respective agreements, then they must also be bound by the arbitration provisions.

Plaintiffs and the remaining Defendants oppose the motion on the grounds that the arbitration agreements narrowly apply only to disputes between "Members" or "Managers" in the case of the Operating Agreements and "Owner" or "Contractor" in the case of the Construction Contracts. As argued, Plaintiffs are neither "Members" or "Managers" under the Operating Agreements nor the "Owner" or "Contractor" under the Construction Contracts.

The Court agrees with Plaintiffs and the remaining Defendants that the arbitration provisions of the two operating agreements narrowly apply to disputes "among the Members, or between the Managers." According to the definition of "Member" included in the operating agreements, the term is intended to apply only to members of the 888 Fourth Street LLC or Holly Hock LLC company, respectively. With the exception of Bluestone, Plaintiffs are neither members nor managers of either LLC, nor do they claim to be.

With regard to Bluestone, it is a member of the Holly Hock, LLC. Accordingly, it would be considered one of the parties to which the arbitration provision of the Holly Hock Operating Agreement applies. However, the Court declines to compel Bluestone's claims to arbitration pursuant to CCP § 1281.2(c), as is discussed further below.

The Court also agrees with Plaintiffs and the remaining Defendants that the arbitration provisions of the two construction contracts narrowly apply to disputes between the named "Owner" and the named "Contractor." Plaintiffs are neither.

Accordingly, moving defendants have failed to show that there exists an enforceable arbitration provision that applies to Plaintiffs' claims. Defendants' argument that because Plaintiffs are claiming to be intended beneficiaries of the operating agreements, they must necessarily be required to arbitrate under the operating agreements is unpersuasive. It is discussed further below.

In reply, Defendants argue that this Court has now twice rejected this same argument in related cases involving different parties. Defendants are referring to *Lilian M. Oliver v. Saris* (25CV07282) and *Walter v. Saris* (25CV01004). In *Walter v. Saris*, the Court issued an order on May 4, 2026, granting Defendants Anthony Saris, Saris Fund One, LLC And 8 Cubed, LLC's motion to compel arbitration and stay the action. In *Lilian M. Oliver v. Saris*, the Court adopted its tentative ruling

granting Defendants Anthony Saris and Saris Fund Two, LLC's motion for an order compelling arbitration. The Court has not yet signed an order on that motion.

The issue with Defendants' argument is that the Plaintiffs in those actions were signatories of the operating agreements and listed members/managers of the LLCs or owners/contractor. For example, the Court recognized in the *Lilian M. Oliver v. Saris* case,

> [T]he Operating Agreement requires the dispute to be between members or managers of Holly Hock LLC. The Operating Agreement states Saris LLC and Futrell Corp. are managing members, and Plaintiff, as Trustee of her trust, is a non-managing member…"[Lilian] Oliver signed [the Holly Hock operating agreement] on behalf of herself and her Trust.

(Lilian M. Oliver v. Saris (25CV07282) April 8, 2026 Minute Order.)

Accordingly, this motion cannot be compared to the motions filed in those actions. This action is raised primarily by non-signatories, non-members, non-managers, non-owners, and non-contractors. On the contrary, the other two cases are raised by such individuals.

II. Equitable Estoppel

Defendants cite *JSM Tuscany, LLC v. Superior Court* (2011) 193 Cal.App.4th 1222, 1239-40, which provides, "When plaintiff is suing on a contract- on the basis that, even though the plaintiff is not a party to the contract, the plaintiff is nonetheless entitled to recover for its breach, the plaintiff should be equitably estopped from repudiating the contract's arbitration clause."

This Court finds the *JSM* case to be distinguished. In *JSM*, contracts in question "each contained a broad arbitration clause…" (*Id*. at 1225.)

> Each of the PSAs contained the same very broad arbitration clause: "Any disagreement or dispute between the Parties with reference to the interpretation, performance or breach of any provisions of the Agreement, this Addendum, or any Exhibit to the Agreement or this Addendum, shall, at the request of either Party, be resolved by binding arbitration, and any award shall include reasonable attorney's fees and costs to the prevailing party.

(*Id*. at 1234.)

Here, the arbitration provisions are not so broad. They are narrow and only apply to disputes between Members and Managers or Owner and Contractor. Accordingly, the *JSM* case is distinguished.

The Court finds this argument to be unpersuasive because even if Plaintiffs are ultimately found to be third party beneficiaries of the contracts, they still would not be bound by the terms of the

arbitration provisions since they are not members or managers of 888 Fourth Street LLC or Holly Hock LLC or the owners or contractor under the construction contracts.

III. CCP § 1281.2 (Bluestone claims)

Pursuant to CCP § 1281.2(c) the Court may decline to order arbitration of claims if the Court determines that "A party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact."

Here, the only Plaintiff whose claims may be compelled to arbitration is Bluestone. Since the remaining plaintiffs are not parties to the arbitration agreements, this is the type of matter described in CCP § 1281.2. Bluestone's claims arise out of the same transaction or series of related transactions as the remaining plaintiffs' claims and there is a possibility of conflicting rulings on common issues of law and fact if Bluestone's claims are arbitrated while the remaining plaintiff's claims are not. Accordingly, the Court declines to compel Bluestone's claims to arbitration.

9. 25CV07252, Commercial Collection Service, Inc. v. Smith

Defendants' demurrer to Plaintiff's first amended complaint and Defendants' motion to strike are **CONTINUED** to December 16, 2026 at 3:00 p.m. pending the bankruptcy proceedings. Plaintiff has filed a Notice of Stay of Proceedings following Defendant David Allan Smith's filing for Chapter 7 Bankruptcy.

10. SCV-269513, Castro v. Meacham, III

Plaintiff's unopposed motion for leave to file a Fourth Amended Complaint is **GRANTED**. Plaintiff shall file the proposed Fourth Amended Complaint that is attached as Exhibit A to the Declaration of Maya Castro within 10 court days of this hearing.

The Court's minute order shall constitute the order of the Court.

Analysis:

Judicial policy favors resolution of all disputed matters between the parties in the same lawsuit, and courts are bound to apply a policy of great liberality in permitting amendments to the complaint "at any stage of the proceedings, up to and including trial," absent prejudice to the adverse party. (*Atkinson v. Elk Corp*. (2003) 109 Cal.App.4th 739, 761.) "'Generally, leave to amend must be liberally granted…provided there is no statute of limitations concern, nor any prejudice to the opposing party, such as delay in trial, loss of critical evidence, or added costs of preparation.'" (*Solit v. Tokai Bank, Ltd. New York Branch* (1999) 68 Cal.App.4th 1435, 1448.) As long as the motion is timely and will not prejudice a party, it is normally an abuse of discretion to refuse to allow amendment if the denial will deprive a party of a meritorious claim or defense. (*Morgan v. Sup.Ct.* (1959) 172 Cal.App.2d 527, 530.)

Plaintiff seeks leave only to omit the Sixth Cause of Action for Unlawful Business Practices. The proposed amendment adds no new claims, facts, parties, or legal theories. Plaintiff's motion is timely and it has not been opposed. Therefore, no prejudice has been shown. It is granted.

*****This is the end of the Tentative Rulings*****