TENTATIVE RULINGS: CIVIL LAW & MOTION

Wednesday, June 17, 2026 at 3:00 p.m.
Courtroom 18 – Visiting Judge Rene Chouteau
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. **25CV08535, Holton v. County of Sonoma**

Defendant County of Sonoma's motion to strike portions of Plaintiff's complaint is **DENIED**.

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

Analysis:

On December 12, 2025, Plaintiff Marcus Holton, a former Sonoma County Sheriff's Office Deputy, filed an 83 page complaint asserting five causes of action under FEHA, arising from alleged race-based employment discrimination and harassment. Plaintiff alleges that the Sonoma County Sheriff's Office has a long history with anti-African American biases. As such, Plaintiff's complaint contains several pages of factual allegations that outline specific circumstances dating back to the 1960s that purportedly indicate such history of racial bias.

Regarding Plaintiff specifically, Plaintiff alleges that he was passed up for promotions several times during his 22 year tenure with the Sheriff's Office for less qualified white employees. Specifically, he identifies promotional decisions from October 2013, June 2016, February 2017, June 2018, October 2020, November 2021, February 2022, and October 2022. Plaintiff makes additional allegations regarding discriminating and harassing conduct by employees of the Sheriff's Office that are not the subject of this motion.

Defendant County of Sonoma has filed this motion to strike portions of Plaintiff's complaint seeking to strike paragraphs 179-198, 214-290, and 294-300 as containing time-barred allegations and paragraphs 36-105, 206, 305-307, and 369-371 as being irrelevant. For the reasons stated below, Defendant's motion is denied.

I. It is Not Clear from the Face of the Complaint that Any of Plaintiff's Allegations are Time-Barred

A demurrer (or motion to strike) on the ground of the bar of the statute of limitations will not lie where the action *may be*, but is not necessarily, barred. (*Childs v. State of California* (1983) 144 Cal.App.3d 155, 161.) "It must appear *affirmatively* that, upon the facts stated, the *right of action is necessarily barred*. (*Ibid.*, citing *Valvo v. University of Southern Cal.* (1977) 67 Cal.App.3d 887, 895. Italics in original.) "[I]t is not enough that the complaint shows that the action may be barred." (*Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42.)

Defendant seeks to strike paragraphs 179-198, 214-290, and 294-300 because they contain allegations of promotions that Plaintiff did not receive in years predating the applicable cut-off. Defendant contends that before filing a civil lawsuit premised on alleged violations of the FEHA, plaintiffs must first file an administrative complaint with the CRD and obtain a Right-to-Sue Notice. Plaintiffs are required to file the administrative complaint with the CRD within three years of the alleged unlawful conduct. Since Plaintiff's Complaint states that Plaintiff filed an administrative complaint with the CRD and received a Right-to-Sue Notice on or about December 12, 2025, Defendant contends that this means Plaintiff is barred from relying on adverse employment actions and/or harassing conduct occurring prior to December 12, 2022.

However, Plaintiff has alleged in the Complaint that Defendant's wrongful acts and omissions constituted a pattern, practice and course of unlawful conduct, and constituted continuing violations of FEHA such that any alleged acts that took place outside of the limitations period are sufficiently linked to its unlawful conduct occurring within the limitations period. Plaintiff further alleges that such actions and omissions "had not acquired a significant degree of permanence until Plaintiff made the decision to resign/retire in April 2025 due to intolerable working conditions." (Complaint ¶ 34.)

Defendant argues that "to invoke the [continuing violation] doctrine, plaintiffs must prove all of the following: (1) the acts occurring outside the limitations period are sufficiently similar to the acts that occurred within the limitations period; (2) the acts occurred with reasonable frequency; and (3) the acts that occurred outside the limitations period did not "acquire a degree of permanence." (Def. MPA, p. 4, citing *Richards v. CH2M Hill, Inc.* (2001) 26 Cal.4th 798, 811-818.) As argued, upon receiving notice that Plaintiff did not receive the promotions, "each promotion decision achieved 'permanence' meaning the statute of limitations immediately began running."

Defendant has not cited any cases where such a determination was made on a motion to strike. Rather, finding that the promotions predating December 12, 2022 achieved "permanence" would require a factual determination to be made—which is not appropriate on a motion challenging the sufficiency of the pleading. Defendant relies heavily on *Pollock v. Tri-Modal Distribution Services* (2021) 11 Cal.5th 918 and *Willis v. City of Carlsbad* (2020) 48 Cal.App.5th 1104. The *Pollock* case was on review of a grant of summary judgment for the employer. The *Willis* case was on review of after jury trial. Accordingly, they are both distinguished for purposes of this motion, which is not a fact-finding motion.

It is not apparent on the face of the complaint that Plaintiff's allegations regarding Defendant's conduct predating December 12, 2022 are time-barred.

II. The Court Does Not Find Any Irrelevant, Immaterial, or Unnecessary Allegations

Defendant seeks to strike paragraphs 36-105, 206, 305-307, and 369-371 as being irrelevant because they do not contain factual allegations that are specific to Plaintiff. They contain general allegations regarding the County, the structure of the Sheriff's Office, and an alleged history of racial issues involving the Sheriff's Office.

While the Court agrees that Plaintiff's Complaint is certainly not concise considering that it is 83 pages long for only 5 causes of action, the Court does not agree that any portion of it is irrelevant or "immaterial filler," as characterized by Defendant. Plaintiff alleges a long-existent history and culture of discrimination at the Sheriff's Office and the allegations contained in these paragraphs are relevant to such allegations. Moreover, the historical information and related allegations in the Complaint may be relevant for determining whether the continuing violation doctrine applies and to what extent. Defendant has not shown that these paragraphs could have no possible bearing on this case. Therefore, they shall not be stricken.

2. 25CV04156, Scott v. General Motors, LLC

Plaintiff's motion for attorney's fees and costs is **GRANTED** in the amount of $18,110.2. This consists of $15,575.00 in attorney's fees and $2,535.50 in costs.

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

Analysis:

On June 16, 2025, Plaintiff filed a complaint alleging causes of action against Defendant under the Song-Beverly Consumer Warranty Act. Defendant filed an answer on August 1, 2025. The parties engaged in initial discovery and attended mediation in January of 2026. The parties reached a settlement on January 26th and the Settlement Agreement was executed on March 2, 2026. The parties agreed that Plaintiff was the prevailing party and that attorney's fees and costs would be resolved by motion.

Defendant does not herein contest that Plaintiff is the prevailing party and is entitled to attorney's fees and costs. Defendant argues that Plaintiff's request is inflated and should be reduced. Plaintiff

seeks a total of $32,312.85, which is based on a lodestar of $26,988.50, costs of $2,535.50, and a multiplier of 0.1x. As outlined below, the Court finds that a reduction in the lodestar is necessary and that no multiplier shall be applied.

I. Loadstar

The standard for calculating attorney fee awards under California law, "[O]rdinarily begins with the 'lodestar,' i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate…" (*PLCM Group, Inc. u. Drexler* (2000) 22 Cal.4th 1084, 1095.)

> The lodestar figure may then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided. [Citation.] Such an approach anchors the trial court's analysis to an objective determination of the value of the attorney's services, ensuring that the amount awarded is not arbitrary.

(*Ibid*.) In calculating the lodestar, "The reasonable hourly rate is that prevailing in the community for similar work." (*Ibid*.) "[T]he trial court has broad authority to determine the amount of a reasonable fee." (*Ibid*.) "The determination of what constitutes reasonable attorney fees is committed to the discretion of the trial court. [Citation.] The experienced trial judge is the best judge of the value of professional services rendered in his or her court. [Citation.]" (*Rey v. Madera Unified School Dist.* (2012) 203 Cal.App.4th 1223, 1240.)

Here, Plaintiff seeks an hourly rate of $600 in 2025 and $625 in 2026 for Aaron Fhima, who is the principle of the firm. Mr. Fhima billed an initial flat rate of $3,900 for services rendered prior to the preparation of the complaint and then 1 additional hour relating to this motion. The Court finds the flat rate not to be compensable. The Court also finds the additional hour billed by Mr. Fhima to be duplicative considering there were two other attorneys assigned to the case. No time shall be awarded for Mr. Fhima.

Most of the work done on this case was by Nadia Alam and Christopher Danna, who billed $450 and $485 respectively. The Court finds that a reduction in these hourly rates is necessary in order to be in line with the Sonoma County market. An hourly rate of $350 will be awarded for Ms. Alam and an hourly rate of $400 will be awarded for Mr. Danna. The Court finds the number of hours expended by Ms. Alam and Mr. Danna to be reasonable. Defendant argues that the hours should be reduced because some tasks were duplicate or secretarial in nature. The Court does not find there to be any duplicate or unreasonable time entries.

Finally, Plaintiff seeks an hourly rate of $220 for a paralegal, Cindie Ianni. The Court finds an hourly rate of $200 to be appropriate. The number of hours requested for the paralegal are reasonable.

The award for fees shall be $15,575.00 based on the following:

> Nadia Alam: $12,495 for 35.7 hours of work at $350 per hour
>
> Christopher Danna: $2,760 for 6.9 hours at $400 per hour
>
> Cindie Ianni: $320 for 1.6 hours at $200 per hour

II. Multiplier

"The 'experienced trial judge is the best judge of the value of professional services rendered in his court…'" (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.) The relevant factors in determining the proper multiplier include,

> (1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, (4) the contingent nature of the fee award.

(*Ibid*.)

Plaintiff seeks a fee multiplier of 0.1x considering this matter was taken on a contingency. Defendant does not respond to this request in its opposition. However, the Court does not find a multiplier to be appropriate in this case. Though it was taken on a contingency, the matter settled in less than a year and, as it appears from the billing statements, the matter did not require much attorney time to be expended. The Court declines to apply a multiplier.

III. Costs

Plaintiff seeks $2,535.50 in costs. Defendant has not challenged this request. The Court finds it to be reasonable.

3. 26CV01488, In Re: Assured Management Corporation

Assured Management Corporation's Petition for Approval of Transfer of Structured Settlement Payment Rights is **DENIED**.

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

California Insurance Code § 10137(a) requires transfer of structured settlement payment rights to be fair and reasonable and in the best interest of the payee, taking into account the welfare and support of his dependents.

Petitioner states that the Petition is supported by the Declaration of the Payee. However, no Declaration of the Payee has been submitted. Petitioner makes several representations regarding the Payee's personal information, marital status, dependents, financial information, etc. However, none of those representations are supported by evidentiary foundation. The Court has not been provided with any information regarding why approval of this transfer is in the best interest of the transferor. Accordingly, the Petition is denied.

4. 25CV03532, Looney v. Mrs. B, LLC

Plaintiff's unopposed motion to appoint receiver to take possession and, if necessary, sell Defendant's liquor license is **GRANTED**.

Plaintiff shall submit a written order consistent with this tentative ruling. Due to the lack of opposition, compliance with Rule 3.1312 is excused.

Judgment was entered against Defendant on September 23, 2025, in the amount of $7,208.78 to be paid to Plaintiff/Judgment Creditor Gary Looney dba Collectronics of California. Plaintiff has propounded postjudgment discovery on Defendant and has received no response. Plaintiff has attempted several times to contact Defendant via phone and letter to no avail. Plaintiff represents all measures to enforce the judgment have been unsuccessful. Plaintiff submits that the only attachable asset is the liquor license. Plaintiff has met his burden of proving that the appointment of a receiver is necessary.

The Court approves Landon McPherson as the receiver. Mr. McPherson shall post an undertaking in the amount of $1,000.00 upon his appointment.

5.,6. 25CV00611, American Agcredit, PCA v. KCOE ISOM, LLP

I. Motion for Judgment on the Pleadings

Defendants KCoe Isom, LLP and Christy Norton's motion for judgment on the pleadings of Plaintiff's claim against Christy Norton is **GRANTED**. Leave to amend is **GRANTED**. The amendment shall be filed no later than 20 days from notice of entry of an order on this motion.

The Court notes that Plaintiffs have submitted evidence in support of their opposition. Doing so was improper considering that the Court's review of a motion for judgment on the pleadings is limited to the face of the complaint and that which must be judicially noticed. The Court has not considered the evidence submitted by Plaintiffs.

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

Summary of Plaintiff's Claims:

On January 23, 2025, Plaintiffs American AgCredit, PCA and American AgCredit, FLCA filed a complaint against Defendants KCOE ISOM, LLP, a Kansas limited liability partnership, and Christy Norton, an individual, alleging one cause of action for negligent misrepresentation. Plaintiffs allege that they are an agricultural lender that made substantial commercial loans to an unidentified "Borrower." As alleged, in evaluating Borrower's credit worthiness for the loans, American AgCredit relied on audited financial statements prepared by defendant KCoe Isom, LLP, now known as Pinion, a certified public accounting firm. Christy Norton is alleged to be a certified public accountant and the lead engagement partner responsible for KCoe Isom's audit engagement. The defendants are collectively referred to as "KCoe Isom" in the complaint.

Plaintiffs allege that on August 28, 2020 and April 30, 2021, respectively, KCoe Isom issued two "clean" audit opinions on Borrower's May 31, 2020 and December 31, 2020 financial statements on which American AgCredit relied in deciding to extend and substantially increase Borrower's line of credit. However, Plaintiffs allege that KCoe Isom did not have a reasonable basis for those clean audit opinions, as the inventory values stated therein were grossly exaggerated.

As alleged, American AgCredit suffered tens of millions of dollars in damages when, in 2024, following Borrower's default on its loan obligations to American AgCredit, it sold the Borrower loans for a fraction of their outstanding amount. Plaintiffs assert that if American AgCredit had known the truth about Borrower's financial condition at the time of the 2020 audits, American AgCredit would have begun the foreclosure process and eventually foreclosed on the loans at a time when Borrower was in better financial condition than it would later be.

Analysis:

"A motion for judgment on the pleadings performs the same function as a general demurrer...." (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999, 79 Cal.Rptr.2d 544.) "It is axiomatic that a demurrer lies only for defects appearing on the face of the pleadings." (*Harboring Villas Homeowners Assn. v. Superior Court* (1998) 63 Cal.App.4th 426, 429.) "The grounds for motion provided for in this section shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice." (CCP § 438(d).) "A trial court's determination of a motion for judgment on the pleadings *accepts as true* the factual allegations that the plaintiff makes." (*Gerawan Farming, Inc. v. Lyons* (2000) 24 Cal. 4th 468, 515. Emphasis added.) "In addition, it gives them a liberal construction." (*Ibid*.)

Here, Defendants argue that Plaintiffs have failed to state a claim for negligent misrepresentation against Defendant Christy Norton individually because the only facts alleged in the complaint specific to Christy Norton are that she is a certified public accountant and a partner at KCoe Isom and that she was the lead engagement partner responsible for KCoe Isom's audits of Borrower.

Plaintiffs argue that a corporation is an artificial person that can act only through its employees, citing *AvalonBay Communities, Inc. v. County of Los Angeles* (2011) 197 Cal.App.4th 890, 903. Therefore, Plaintiff argues that Christy Norton is personally liable for her involvement in the preparation of the audit reports as an employee of KCoe Isom. The *AvalonBay* Court made the cited statement in the context of employer liability for employee conduct, not the other way around. The same is true of the other two cases cited by Plaintiff, *PacifiCare Life & Health Ins. Co. v. Jones* (2018) 27 Cal.App.5th 391, 418 and *Trane Co. v. Gilbert* (1968) 267 Cal.App.2d 720, 283-284.

Plaintiff has not cited any authority allowing personal liability of an employee under the facts alleged. Plaintiff has failed to state a claim against Christy Norton personally. Leave to amend is granted.

II. Motion for Summary Judgment, or in the alternative, Summary Adjudication

Defendant KCoe Isom's motion for summary judgment is **DENIED**. Defendant KCoe Isom's alternative motion for summary adjudication is **DENIED**.

Defendant Christy Norton's motion for summary judgment, or in the alternative, summary

adjudication is **STAYED** pending the amendment of Plaintiffs' complaint, as permitted by the Court's concurrent ruling on Defendants' motion for judgment on the pleadings of the claims against Christy Norton. (*Prue v. Brady Co./San Diego, Inc.* (2015) 242 Cal.App.4th 1367, 1384.) Defendant may request it be placed back on calendar once the pleading is settled as to Christy Norton.

All references to "Defendant" below refer to Defendant KCoe Isom.

The Court declines to rule on Defendant's objections to the Declaration of Gary Bradley Collins pursuant to CCP § 437c(q).

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

Procedural Deficiencies of Defendant KCoe Isom's Motion

Defendant's motion contains several procedural deficiencies. First, Defendant's memorandum consists of 29 pages, not counting the tables. This is in violation of Cal. Rules of Court, Rule 3.1113(d), which dictates that no opening memorandum on summary judgment or adjudication may exceed 20 pages. Defendant did not seek leave of Court to file an oversized brief.

Next, Defendant's' separate statement is 53 pages long and contains 240 "material facts" for only three identified issues. Plaintiffs assert only one cause of action for negligent misrepresentation. "The moving party must include only material statements of fact, not incidental and background facts." (*Beltran v. Hard Rock Hotel Licensing, Inc.* (2023) 97 Cal.App.5th 865, 876; Cal. Rules of Court, Rule 3.1350(d)(2).)

> Trial courts should not hesitate to deny summary judgment motions when the moving -party fails to draft a compliant separate statement – and an inappropriate separate statement includes an overly long document that includes multiple nonmaterial facts in violation of the Rules of Court.

(*Ibid*.) Defendant's' separate statement is overly long and contains several nonmaterial facts. This is evidenced by the fact that Defendant only relied on a fraction of the stated facts in their memorandum.

Moreover, several of Defendant's statements of fact misstate what is reflected in the evidence supporting them. Some examples include:

- "On January 1, 2022, Plaintiffs' refinance with Panhandle was complete. (Exhibit 34.)" (UMF, 36.) Exhibit 34 makes no mention of July 1st. It rather states that in "January 2022" the AgCredit refinance was completed.
- "On May 1, 2022, Plaintiffs identified multiple items that had not been submitted pursuant to loan covenants by Panhandle, include Fiscal Year End Audited Financial Statements. As a result, the default interest rate was imposed. (Exhibit 38.)" (UMF, 42.) The letter attached as Exhibit 38 is dated July 13, 2022. The mention of May 1, 2022 in the letter refers to the initial date of the event of default. Furthermore, the letter does not state that the default

interest rate was imposed, but that it would be imposed if the missing documents were not submitted by July 8, 2022.

- "On May 18, 2022, Plaintiffs sent an email to Panhandle, third-party auditor Cascade Credit, and Glenn Buttolph of AgCredit, regarding 'large discrepancies on the two (2)bulk wheat counts.' (Exhibit 41.)" (UMF, 45.) The email was not sent by Plaintiffs. It was sent by Jeff Kessel, who is an employee of Cascade Credit. (Pl. Ex. DD.)
- "On or about June 15, 2022, AgCredit increased Panhandle's Probability of Default rating to 12 out of 14. (Exhibit 44.)" (UMF, 48.) Exhibit 44 reflects the "Date of Action" as being "6/2022." It makes no mention of June 15th.
- "On September 16, 2022, Plaintiffs denied Panhandle's Application for Restructure. (Exhibit 51)" (UMF, 59.) Exhibit 51 does not state that Plaintiffs denied Panhandle's application for restructure. It rather states, "we find that we cannot approve your restructure plan as proposed," and "Rather than deny your Application for Restructure, we would like to discuss with you the counterproposal set forth below…"
- "On November 14, 2022, AgCredit issued an updated Term Note to Panhandle. (Exhibit 53.)" (UMF, 61.) Exhibit 53 does not reflect a November date whatsoever.
- "On January 3, 2023, KCoe's observation of physical inventories was complete for the December 31, 2022 audit. (Exhibit 54.)" (UMF, 62.) Exhibit 54 does not confirm that the observation of physical inventories was in fact completed on December 31, 2022. It states, "The timing of our audit will be scheduled for performance and completion as follows: …Observe physical inventories [Begin] January 2, 2023 [Complete] January 3, 2023."
- "On April 21, 2023, the Independent Auditor's Report was issued for Panhandle's December 31, 2022 financials. (Exhibit 54.)" (UMF, 63.) Again, Exhibit 54 does not confirm that the report was actually issued on April 21, 2023, just that it was scheduled to be by that time. Plaintiff has submitted evidence showing that this report was not issued until June 15, 2023. (Pl. Ex. BB.)
- "…The value of the loans was roughly $68,000,000.00. (Exhibit 59.)" (UMF, 72.) Nowhere in Exhibit 59 does it state that the value of the loans was roughly $68,000,000.00.
- "On April 13, 2022, the March information triggered audits… (Exhibit 61.)" (UMF, 116.) Exhibit 61 does not contain any information regarding "March information."

Finally, Defendant's notice of motion makes an alternative motion for summary adjudication of 7 identified issues: "(1) Plaintiffs cause of action is time barred; (2) each of Plaintiff's causes of action as individually barred by California's Economic Loss Rule; (3) Plaintiff's causes of action as individually barred by Plaintiffs' failure to establish causation; (4) damages, (5) no reasonable basis, (6) inducement, or (7) reliance." However, many of these issues are not repeated, verbatim, in the separate statement.

> If summary adjudication is sought, whether separately or as an alternative to the motion for summary judgment, the specific cause of action, affirmative defense, claims for damages, or issues of duty must be stated specifically in the notice of motion and be repeated, verbatim, in the separate statement of undisputed material facts.

(Cal. Rules of Court, Rule 3.1350(b).)

Based on the procedural defects identified above, Defendant's motion is denied.

Substantive Analysis:

Defendant's motion is denied on substantive grounds as follows:

Three issues have been identified in the separate statement as being:

> Issue 1: Undisputed Material Facts that Plaintiff Cannot Demonstrate a Triable Issue of Material Fact of the Element of Reliance on Defendants' Audit Opinions
>
> Issue 2: Facts Supporting that the Statute of Limitations has Run
>
> Issue 3: Plaintiffs Claim is Barred by the Economic Loss Rule (there is no duty, and loss was contractual in nature)

Summary of Plaintiffs' Allegations:

On January 23, 2025, Plaintiffs American AgCredit, PCA and American AgCredit, FLCA filed a complaint against Defendants KCOE ISOM, LLP, a Kansas limited liability partnership, and Christy Norton, an individual, alleging one cause of action for negligent misrepresentation. Plaintiffs allege that they are an agricultural lender that made substantial commercial loans to an unidentified "Borrower." As alleged, in evaluating Borrower's credit worthiness for the loans, American AgCredit relied on audited financial statements prepared by defendant KCoe Isom, LLP, now known as Pinion, a certified public accounting firm. Christy Norton is alleged to be the KCoe Isom partner responsible for the audit engagement. The defendants are collectively referred to as "KCoe Isom."

Plaintiffs allege that on August 28, 2020 and April 30, 2021, respectively, KCoe Isom issued two "clean" audit opinions on Borrower's May 31, 2020 and December 31, 2020 financial statements on which American AgCredit relied in deciding to extend and substantially increase Borrower's line of credit. However, Plaintiffs allege that KCoe Isom did not have a reasonable basis for those clean audit opinions, as the inventory values stated therein were grossly exaggerated.

As alleged, American AgCredit suffered tens of millions of dollars in damages when, in 2024, following Borrower's default on its loan obligations to American AgCredit, it sold the Borrower loans for a fraction of their outstanding amount. Plaintiffs assert that if American AgCredit had known the truth about Borrower's financial condition at the time of the 2020 audits, American AgCredit would have begun the foreclosure process and eventually foreclosed on the loans at a time when Borrower was in better financial condition than it would later be.

Summary of Facts:

On January 28, 2019, Panhandle Milling ("Panhandle" or "Borrower") and American AgCredit ("AgCredit") entered into a Credit Agreement for a Revolving Line of Credit (RLOC) for $16,000,000.00. Panhandle and AgCredit entered into a Promissory Note for $16,000,000.00 in

connection with that loan. No Defendants are party to this loan. (Def. Undisputed Material Facts "UMF," 1.) On the same day, Panhandle and AgCredit entered a Term Loan memorialized in a Promissory Note for $9,500,000.00. No Defendants are party to this loan. (UMF, 2.)

On January 3, 2020, Plaintiffs' CEO sent a letter to Panhandle noting that Panhandle was not compliant with 3 loan covenants. (UMF, 8.) On January 31, 2020, Panhandle responded requesting a waiver for the non-compliant items contained in Plaintiffs' January 3, 2020 communication. (UMF, 10.)

In February of 2020, Panhandle altered their internal Mark-to-Market accounting methodology. (UMF, 11.) On March 30, 2020, AgCredit recommended waiving Panhandle's non-compliance with loan covenants. The report recommended Panhandle's Probability of Default rating ("PD") increase from 8 to 9, out of 14. (UMF, 12.)

Panhandle contracted with KCoe to perform auditing of the consolidated financial statements for Panhandle and other PHM Brands entities. Plaintiffs were not a party to the contract. (UMF, 13.) On August 7, 2020, KCoe completed the reports for the audit of Panhandle's financial records. (UMF, 17.) On August 28, 2020, KCoe completed its Independent Auditor's Report for the May 31, 2020 and May 31, 2019 financials. (Resp. to UMF, 19; Exh. 16.)

During August 2020, Plaintiffs conducted an audit of Borrower's facility. On October 7, 2020, Plaintiffs released the Chattel (inventory) Report of Borrower's facilities prepared by Plaintiff's internal team. (UMF, 24.)

On April 30, 2021, KCoe released their Independent Auditor's Report of Panhandle's December 31, 2020 financials. (UMF, 32.) Prior to this report being issued, Plaintiffs and Panhandle had amended the RLOC several times, such that it was now increased to $34.75 million. After this report issued, Plaintiffs and Panhandle again amended the RLOC to $38.75 million. (UMF, 35.)

In March 2022, the Russia-Ukraine war began, driving wheat prices higher. (UMF, 39.) In April 2022, Panhandle missed the deadline to submit the December 31, 2021 audited financials to Plaintiffs. (UMF, 40.) On April 13, 2022, Brad Collings from AgCredit sent an email stating "This will be our initial meeting to start the annual chattel inspection/audit process…" sending a link to a Zoom Meeting. (Exh. 61.)

On May 3, 2022, Plaintiffs reported a recommended $5.25 million increase to Panhandle's RLOC. The report identified independent inventory evaluations by Cascade Credit Services, related to contracts on flour, A/R collections, and inventory in storage. (UMF, 43.)

On May 18, 2022, Jeff Kessel sent an email to Panhandle, Cascade Credit, and Glenn Buttolph of AgCredit, regarding "large discrepancies on the two (2) bulk wheat counts." (UMF, 45; Def. Ex. 41.) On May 25, 2022, Glen Buttolph from AgCredit sent an email to Deanna Harris at PHM Brands seeking answers to 5 questions, some of which were regarding discrepancies in the inventory. (Exhibit 62.) Glen Buttolph's investigation evaluated Panhandle's inventory as of March 31, 2022. (Exhibit 46.) He followed up with an email on March 36, 2022, stating "I was unable to reconcile the bushels on Open Purchase Contracts-Priced and the amount shown on the BBC." (UMF, 126.) He sent another email that day that asked, "Just to be clear, the value shown is the value of the contract to be fulfilled...correct?" (UMF, 127.)

On May 31, 2022, Glen Buttolph sent an email to PHM Brands, stating,

> 1. I am unable to reconcile to the 1,095,000 bushels for the basis contracts. 2. I can only find ~429,000 bushels of Open Purchased Contracts Priced vs. the 978,174 bushels shown on the BBC – Open Basis Purchase Contracts Priced . . . 4. My net contract receivable position is significantly different than what is shown on the BBC. The sales and purchase contracts should be offset against each other and compared to current flax px or cash price on wheat to arrive at a net contract receivable.

(UMF, 128.)

On June 1, 2022, Bill Streeter of Panhandle sent an email to Sallie Miller and Brad Collins of AgCredit, stating,

> As you are aware it was brought to our attention during your field audit that we should take a closer look at our Mark-to-Market accounting methodology. Ever since this time, we have been diligently reviewing all our data and found this method has been practiced since Feb 2020. We have been working with KCoe Isom on what effects this will have on past audits and our current April 30 BB.

(UMF, 129.)

On June 9, 2022, AgCredit denied Panhandle's April request to draw $5.25 million in funds. (UMF, 46.) On June 10, 2022, Plaintiffs sent a Notice of Distressed Loan Restructuring to Panhandle due to non-compliance with several loan covenants. (UMF, 47.) In June of 2022, AgCredit increased Panhandle's Probability of Default rating to 12 out of 14. (UMF, 48.)

On June 23, 2022, Cascade Credit Services released their Collateral Examination Report to AgCredit. (UMF, 49.) On June 24, 2022, Glenn Buttolph released his Chattel Evaluation Report (dating back to the prompt for the investigation, March 31, 2022.). (UMF, 50.) On June 29, 2022, Plaintiffs notified Panhandle regarding the default of their Financial Covenants. (UMF, 51.)

On July 1, 2022, KCoe Isom issued Borrower's audit reports. On July 7, 2022, KCoe issued a notice relating to Panhandle's December 31, 2021 financial statements. Namely, KCoe's Note 2 disclosed roughly $3.6 million in overstatement of inventory that was adjusted accordingly. (UMF, 53.) The $3.6 million overstatement referred to the value as of December 31, 2020. (Pl. Resp. UMF, 53.)

In October of 2022, Plaintiffs and Panhandle restructured Panhandle's loan agreements. (UMF, 57-60.) On May 22, 2023, AgCredit moved to lock Panhandle's accounts "After numerous conversations with the Borrower in an effort to avert issuing a demand the Lending group reached an impasse with the Borrower refusing to consider a CRO." (UMF, 64.) AgCredit engaged a Chief Transformation Officer ("CTO") on May 31, 2022, whose duties included "Manage and direct all cash distributions of" Borrower and "Direct day-to-day management of operations of" Borrower. (Pl. Resp. to UMF, 65.)

On June 15, 2023, KCoe Isom issued the Independent Auditor's Report for Panhandle's December 31, 2022 financials. (Pl. Resp. to UMF, 63.) On July 7, 2023, Plaintiffs presented a revised term sheet to Panhandle. (UMF, 66.) On August 21, 2023, Plaintiffs recommended a 20-bullet proposal

and recognized that if Borrower did not agree to this 20-bullet proposal, Plaintiffs would "recommend a shutdown of the line and demand on the notes and would expect a bankruptcy filing by the company shortly after." (Resp. to UMF, 69.)

On September 12, 2023, Plaintiffs and Panhandle entered into "Second Amendment to Amended and Restated Credit Agreement, Omnibus Amendment to Certain Loan Documents, Limited Waiver and Joinder." (Resp. to UMF 71.) On January 26, 2024, AgCredit sold the total debt to Sandton Capital Solutions Master Fund V, LP, for $19,500,000.00. (UMF, 72.)

A. Defendant Has Failed to Show the Lack of Triable Issue of Material Fact Regarding the Elements of Inducement, Reliance, Causation, or Damages

There are triable issues of material fact regarding Defendant's intent to induce Plaintiff's reliance on the audit reports, Plaintiffs' reasonable reliance on the audit reports, causation, or damages. There is a triable issue of fact as to whether Plaintiffs' claim is barred by the economic loss rule. The deposition testimony of Christy Norton demonstrates a triable issue of material fact regarding whether Defendant intended to induce Plaintiff's reliance on the audit reports. Whether Plaintiff's reliance on those audit reports was reasonable is also a triable issue of material fact. Christy Norton's testimony indicates that Defendant knew who the lender was, that the lender required these audits to be submitted, and designed the audits for use by the lender. There exists a triable issue of material fact regarding the element of causation because Defendant has not shown that its audit reports could not have caused Plaintiffs' damage. The evidence indicates that the audit reports were designed for use by the lender. Finally, a triable issue of material fact exists as to the element of damages. Whether Plaintiffs can show damages after they sold the debt is a triable issue.

B. Defendant Has Failed to Show the Lack of Triable Issue of Material Fact Regarding Whether Plaintiffs' Claim is Time-Barred

"[R]esolution of the statute of limitations issue is normally a question of fact," and summary judgment is proper only "where the uncontradicted facts established through discovery are susceptible of only one legitimate inference." (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1112.) "Under the discovery rule, the statute of limitations begins to run when the plaintiff suspects or should suspect that her injury was caused by wrongdoing, that someone has done something wrong…" (*Id*. at 1110,)

Defendant argues that a two-year statute of limitations applies to Plaintiffs' claim for negligent misrepresentation. They argue that the statue began to run, at the latest, in March of 2022. Thus, they argue that Plaintiffs' claim expired in March of 2024 and Plaintiffs did not file until January of 2025.

Defendant fails to mention that the parties executed a Tolling Agreement on June 19, 2024 and a Second Tolling Agreement on November 20, 2024 wherein they agreed that the tolling period would "continue uninterrupted and end on January 23, 2025." Plaintiffs filed this action on January 23, 2025. These facts, as presented by Plaintiffs, have been undisputed by Defendant. Defendant also does not dispute that, "This action is timely if the statute of limitations began to run on or after June 19, 2022 (two years before the tolling agreement was executed)."

The parties dispute the date upon which Plaintiffs discovered or should have discovered the alleged wrongdoing. Plaintiffs submit that prior to June 19, 2022, they had no reason to suspect a wrongful act. Defendant submits that the evidence suggests Plaintiffs were on notice of discrepancies well before June 19, 2022, as evidenced by Plaintiffs' knowledge of inventory and accounting discrepancies as early as May of 2022 and Plaintiff's identification of Borrower's loans as "distressed" on June 10, 2022.

The record before this Court does not lend itself to only one legitimate inference, as is required for granting of summary judgment or adjudication on statute of limitations grounds. The cases cited by Defendant are inapposite. They are *Czajkowski v. Haskell & White, LLP* (2012) 208 Cal.App.4th 166, *Apple Valley Unified School Dist. v. Vavrinek, Trine, Day & Co.* (2002) 98 Cal.App.4th 934; *Curtis v. Kellogg & Andelson* (1999) 73 Cal.App.4th 492. None of them were on review of summary judgment; each of them was on review of a sustained demurrer without leave to amend. Therefore, an entirely different legal standard applied.

The record reflects triable issues of material fact exist as to the date of discovery. As such, the motion for summary adjudication on these grounds is denied.

C. Defendant Has Failed to Show That Plaintiffs' Claim is Barred by the Economic Loss Rule

Defendant argues that they cannot be liable for Plaintiffs' purely economic losses because Plaintiffs' claim is contractual in nature (against the Borrower). They also argue that professional negligence claims are limited to a professional's clients. Defendant's arguments are not compelling. First, Plaintiffs are not asserting a cause of action for professional negligence. Plaintiffs' cause of action is for negligent misrepresentation. Furthermore, the Court in *Bily v. Arthur Young & Co.* (1992) 3 Cal.4th 370 expressly described the circumstances under which an auditor may be liable to a third party for negligent misrepresentation. Those circumstances are exactly those alleged in this matter.

"[The Restatement Second of Torts] states a general principle that one who negligently supplies false information 'for the guidance of others in their business transactions' is liable for economic loss suffered by the recipients in justifiable reliance on the information." (*Bily v. Arthur Young & Co.* (1992) 3 Cal.4th 370, 392.) "The 'intent to benefit' language of the Restatement Second of Torts thus creates an objective standard that looks to the specific circumstances (e.g., supplier-client engagement and the supplier's communications with the third party) to ascertain whether a supplier has undertaken to inform and guide a third party with respect to an identified transaction or type of transaction. If such a specific undertaking has been made, liability is imposed on the supplier." (*Id.* at 410.) "[I]ntended beneficiaries of an audit report are entitled to recovery on a theory of negligent misrepresentation…" (*Id.* at 413.)

As Defendant correctly points out, liability will attach only where Defendant undertook to inform a specific third party with respect to a specific transaction or type of transaction. (*Bily, supra,* at 410.) They argue that the mere fact that audited financial statements are customarily used to obtain financing—including bank loans—is insufficient to create a duty to non-clients absent evidence that the auditor intended to influence the specific transaction at issue. This is true; "an auditor retained to conduct an annual audit and to furnish an opinion for no particular purpose generally undertakes no duty to third parties." (*Bily*, *supra*, at 393.) However, Defendant has not shown the lack of triable issue of material fact in this regard.

Plaintiffs identify the "specific type of transaction" here as being "maintaining and changing their loan position." Plaintiff has submitted the deposition transcript of Christy Norton and has highlighted pertinent portions. The Court finds this testimony to demonstrate triable issues of material fact regarding whether Defendant knew its audit reports would be used by Plaintiffs specifically in maintaining or changing their loan position. See for example:

> Q. Okay. And this is all documented – going into these audits, you know that the creditor -- and the creditor was American AgCredit; right?
> A. Yes.
> Q. You knew it required the audits; right?
> A. Yes.
> Q. And according to this form, you were documenting that it was a party that may potentially rely on the audit; right?
> A. Yes.
> […]
> Q. So part of your challenge in doing this audit was to design the audit so that it would be sufficient for the use of the lender pursuant to these documents; right?
> A. Yes.

(Pl. Ex. D, p. 142-143.)

The record does not reflect that this is a case, as Defendant suggests, where "an auditor [is] retained to conduct an annual audit and to furnish an opinion for no particular purpose," as described in *Bily*, *supra*. Rather, as Christy Norton's testimony demonstrates, going into the audits she knew AgCredit was Borrower's creditor, she knew it required audits, she documented that AgCredit was a party that may potentially rely on the audit, and she designed the audit so that it would be sufficient for the use of the lender. Such is sufficient to demonstrate a triable issue of material fact as to whether Defendant can be liable for negligent misrepresentation to a third party.

7. 25CV05920, Citibank v. Trujillo

Plaintiff's unopposed motion to deem is requests for admissions admitted is **GRANTED**.

The Court will sign the proposed order lodged with the Court on April 10, 2026.

Plaintiff served its Requests for Admissions, Set One, on Defendant Randy J. Trujillo by mail on November 6, 2025. To date, Defendant has not served any response. Accordingly, the truth of the matters set forth in Plaintiff's Requests for Admissions, Set One, are deemed admitted pursuant to CCP § 2033.280.

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