

**TENTATIVE RULINGS  
LAW & MOTION CALENDAR  
Friday, February 16, 2024 3:00 p.m.  
Courtroom 19 –Hon. Oscar A. Pardo  
3055 Cleveland Avenue, Santa Rosa**

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) 521-6602**, 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.**

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**Department 19 Hearings**

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Password: 410765

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**1-2. 23CV00060, Marcus v. Beatie**

Plaintiffs Jordan Marcus and Rachel Marcus (“Plaintiffs”, or “Buyers”), filed the complaint against defendants Leonard Beatie, Andrea Beatie (together with Leonard Beatie, “Sellers”), Daniel Casabonne (“Casabonne”) Sotheby’s International Realty, Inc. (together with Casabonne, “Sellers’ Agent”), Robert Ross (“Ross”), VOMR, Inc. (together with Ross, “Buyers’ Agent”) (Sellers, Sellers’ Agent, and Buyers’ Agent together, “Defendants”) and Does 1-50 arising out of alleged misconduct in representing Plaintiffs in a real estate transaction (the “Complaint”). The Complaint contains causes of action for: 1) breach of contract; 2) negligence; 3) negligent misrepresentation; 4) fraud; 5) failure to disclose; 6) violations of Business and Professions Code § 17200 (“UCL Claim”); 7) rescission; and 8) breach of fiduciary duty.

This matter is on calendar for Buyers’ Agent’s demurrer to the Complaint pursuant to Cal. Code Civ. Proc. (“CCP”) § 430.10(e) for failure to state facts sufficient to constitute a cause of action, as well as Buyers’ Agent’s motion to strike types of damages pursuant to CCP § 435 et seq. The Demurrer is **SUSTAINED IN PART WITH LEAVE TO AMEND**. The Motion to Strike is **GRANTED with leave to amend**.

## I. Legal Standards

### A. Demurrers

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. CCP § 430.30(a). In the event a demurrer is sustained, leave to amend should be granted where the complaint's defect can be cured by amendment. *The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852. Furthermore, a demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. CCP § 430.30(a).

At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. *Serrano v. Priest* (1971) 5 Cal.3d 584, 591. Similarly, opinions, speculation, or allegations contrary to law or facts which are judicially noticed are also disregarded. *Coshov v. City of Escondido* (2005) 132 Cal.App.4th 687, 702. Generally, the pleadings "must allege the ultimate facts necessary to the statement of an actionable claim. It is both improper and insufficient for a plaintiff to simply plead the evidence by which he hopes to prove such ultimate facts." *Careau & Co. v. Security Pac. Business Credit, Inc.* (1990) 222 Cal. App. 3d 1371, 1390; *FPI Develop., Inc. v. Nakashima* (1991) 231 Cal. App. 3d 367, 384. Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. *C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal. 4th 861, 872. Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6. "The distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree." *Burks v. Poppy Const. Co.* (1962) 57 Cal.2d 463, 473. Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.

"On a demurrer a court's function is limited to testing the legal sufficiency of the complaint. [Citation.] 'A demurrer is simply not the appropriate procedure for determining the truth of disputed facts.' [Citation.] The hearing on demurrer may not be turned into a contested evidentiary hearing through the guise of having the court take judicial notice of documents whose truthfulness or proper interpretation are disputable. [Citation.]" *Bounds v. Sup. Ct.* (2014) 229 Cal.App.4th 468, 477-478. "(A) court cannot by means of judicial notice convert a demurrer into an incomplete evidentiary hearing in which the demurring party can present documentary evidence and the opposing party is bound by what that evidence appears to show." *Fremont Indem. Co. v. Fremont Gen. Corp.* (2007) 148 Cal.App.4th 97, 115.

### B. Professional Negligence

"To state a cause of action for professional negligence, a party must show (1) the duty of the professional to use such skill, prudence and diligence as other members of the profession commonly possess and exercise; (2) breach of that duty; (3) a causal connection between the negligent conduct and the resulting injury; and (4) actual loss or damage resulting from the

professional negligence. “*Giacometti v. Aulla, LLC* (2010) 187 Cal.App.4th 1133, 1137 (internal quotations omitted).

The real estate agent **for a seller** nonetheless owes a duty “to conduct a reasonably competent and diligent visual inspection of the property offered for sale and to disclose to that prospective buyer all facts materially affecting the value or desirability of the property that an investigation would reveal”. Civ. Code, § 2079. “(T)he *fiduciary* duty owed by brokers to their own clients is substantially more extensive than the *non-fiduciary* duty codified in section 2079.” *Field v. Century 21 Klowden-Forness Realty* (1998) 63 Cal.App.4th 18, 25 (emphasis original); see also *Assilzadeh v. California Federal Bank* (2000) 82 Cal.App.4th 399, 415 (“*Assilzadeh*”) (real estate agents owe a fiduciary duty to their clients). As a fiduciary, a real estate agent owes a duty to share all material information with their clients. *Michel v. Moore & Associates, Inc.* (2007) 156 Cal.App.4th 756, 762.

### C. Negligent Misrepresentation

“The elements of a negligent misrepresentation are ‘(1) the misrepresentation of a past or existing material fact, (2) without reasonable ground for believing it to be true, (3) with intent to induce another’s reliance on the fact misrepresented, (4) justifiable reliance on the misrepresentation, and (5) resulting damage.’” *Borman v. Brown* (2020) 59 Cal.App.5th 1048, 1060; *Tindell v. Murphy* (2018) 22 Cal.App.5th 1239, 1252; see also, *Hasso v. Hapke* (2014) 227 Cal.App.4th 107, 127; *Ragland v. U.S. Bank National Assn.* (2012) 209 Cal.App.4th 182, 196. “The tort of negligent misrepresentation is similar to fraud, except that it does not require scienter or an intent to defraud.” *Tenet Healthsystem Desert, Inc. v. Blue Cross of California* (2016) 245 Cal.App.4th 821, 845. A cause of action for negligent misrepresentation sounds in fraud and therefore, “each element must be pleaded with specificity.” *Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1166; see also, *Charnay v. Cobert* (2006) 145 Cal.App.4th 170, 185, fn. 14 [the elements of negligent misrepresentation “must be pled with particularity...”]. This means “a plaintiff must allege facts showing how, when, where, to whom, and by what means the representations were made, and, in the case of a corporate defendant...the names of the persons who made the representations [and] their authority to speak on behalf of the corporation...” *West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 793; see also, *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645. Thus, “general and conclusory allegations do not suffice,” and “the policy of liberal construction of the pleadings...will not ordinarily be invoked to sustain a pleading defective in any material respect.” *Lazar, supra*, 12 Cal.4th at 645.

### D. Motion to Strike

A motion to strike lies where a pleading contains “irrelevant, false, or improper matter[s]” or is “not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court.” CCP § 436(b). A motion to strike is properly directed to unauthorized claims for damages, meaning damages which are not allowable as a matter of law. See, e.g. *Commodore Home Systems, Inc. v. Sup. Ct.* (1982) 32 Cal.3d 211, 214 (motion to strike lies against request for punitive damages when the claim sued upon would not support an award of punitive damages as a matter of law). A request for relief not supported by the complaint is an immaterial matter. CCP § 431.10 (b)(3).

Prejudgment interest is generally allowable in cases derived from breach of contract where the damages are certain or capable of being made certain by calculation. Civ. Code, § 3287 (a). The inclusion of a prayer for prejudgment interest is not necessary for recovery thereof, so long as the complaint contains a prayer for such other and further relief as might be proper, and the requirements are proven at trial. *Newby v. Vroman* (1992) 11 Cal.App.4th 283, 286. Similarly, “(t)he complaint need not include a prayer for attorney fees, and that due process is satisfied by notice to the opposing party of the motion for attorney fees.” *Chinn v. KMR Property Management* (2008) 166 Cal.App.4th 175, 194 disapproved of on other grounds by *DeSaulles v. Community Hospital of Monterey Peninsula* (2016) 62 Cal.4th 1140.

## II. Demurrer

### A. Second Cause of Action for Negligence

While Plaintiffs plead the cause of action as simply “negligence”, the action as pled against Buyers’ Agent is clearly one of professional negligence. Were this not the case, Plaintiff would have failed to plead a duty, something which Plaintiffs clearly elucidate in the context of the professional relationship between Plaintiffs and Buyers’ Agent. See Complaint ¶ 35.

Buyers’ Agent misapprehends the nature of their duty to Plaintiffs. Buyers’ Agent was the agent of Plaintiffs and therefore owed them a fiduciary duty entirely distinguishable from the duty argued under Civ. Code § 2079. See *Assilzadeh v. California Federal Bank* (2000) 82 Cal.App.4th 399, 415. As a fiduciary to Plaintiffs, Buyers’ Agent clearly owed a duty to disclose all material facts of which they were aware. See, e.g., Complaint ¶ 35. As such, the Court finds the assertion that Plaintiffs have not pled a duty unpersuasive.

The remaining consideration is whether Plaintiffs have plead a breach of the duty to disclose here. In the generalized terms allowable in negligence claims, Plaintiffs have plead a breach of duty. Buyers’ Agent has not provided any applicable authority regarding their duties as a *fiduciary*, rather continuously citing caselaw applicable to Seller’s Agent. *Wilson v. Century 21 Great Western Realty* (1993) 15 Cal.App.4th 298, 301; *Robinson v. Grossman* (1997) 57 Cal.App.4th 634, 644; *Pagano v. Krohn* (1997) 60 Cal.App.4th 1, 11.

To the degree that Buyers’ Agent cites the applicable case of *Assilzadeh v. California Federal Bank* (2000) 82 Cal.App.4th 399, 415, they misstate its holding. *Assilzadeh* was a case involving a real estate agent acting as dual agent for both the buyer and the seller in a real estate transaction. *Id.* at 405. As such, the *Assilzadeh* court examined both the agent’s duty as seller’s agent, **and their fiduciary duty to buyer as buyer’s agent.** *Id.* at 415. While again, *seller’s agent* only owes a duty under to inspect the property visually, the duty of Buyer’s agent as a fiduciary is both more extensive and fact dependent.

“[A] broker's fiduciary duty to his client requires the highest good faith and undivided service and loyalty. [Citations.] ‘The broker as a fiduciary has a duty to learn the material facts that may affect the principal's decision. He is hired for his professional knowledge and skill; he is expected to perform the necessary research and investigation in order to know those important matters that will affect the principal's

decision, and he has a duty to counsel and advise the principal regarding the propriety and ramifications of the decision. The agent's duty to disclose material information to the principal includes the duty to disclose reasonably obtainable material information. [¶] ... [¶] The facts that a broker must learn, and the advice and counsel required of the broker, depend on the facts of each transaction, the knowledge and the experience of the principal, the questions asked by the principal, and the nature of the property and the terms of sale. The broker must place himself in the position of the principal and ask himself the type of information required for the principal to make a well-informed decision. This obligation requires investigation of facts not known to the agent and disclosure of all material facts that might reasonably be discovered.' [Citation.] [¶] **Thus, depending on the circumstances, a broker's fiduciary duty may be much broader than the duty to visually inspect and may include a duty to inspect public records or permits concerning title or use of the property, a duty which is expressly excluded from section 2079.**"

*Assilzadeh v. California Federal Bank* (2000) 82 Cal.App.4th 399, 414–415, quoting *Field v. Century 21 Klowden-Forness Realty* (1998) 63 Cal.App.4th 18, 25–26 (emphasis added).

Thereafter, the *Assilzadeh* court concluded that the defendant in that case had presented evidence **at summary judgment** that there had been no breach of duty. *Id.* at 417. Here, the case sits at demurrer. Therefore, the only matter properly before the Court is the pleadings, and those are entitled to liberal construction. CCP § 452; *Perez v. Golden Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1238, (where allegations are subject to different reasonable interpretations, court must draw “inferences favorable to the plaintiff, not the defendant.”). Buyers’ Agent has not presented any authority to show their duty did not extend to know common issues prevalent in the area, as is alleged in the Complaint. Complaint ¶ 21. Plaintiffs have adequately alleged a duty and breach thereon. Buyers’ Agent does not attack either causation or damages.

The demurrer to the second cause of action is OVERRULED.

B. Third Cause of Action for Negligent Misrepresentation

The finding as to the negligence claim is substantially different from the analysis as applied to negligent misrepresentation. Plaintiffs misstate the requirements for negligent misrepresentation. While general allegations will suffice for most other causes of action, negligent misrepresentation sounds in fraud, and therefore must meet those heightened pleading requirements. *Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1166; see also, *Charnay v. Cobert* (2006) 145 Cal.App.4th 170, 185, fn. 14. Each element of negligent misrepresentation must be pled with particularity. The rules of liberal construction do not apply. *Lazar, supra*, 12 Cal.4th at 645. Plaintiffs do not aver that Buyers’ Agent made an affirmative misrepresentation. Each allegation of an affirmative misrepresentation is postured as a misrepresentation by either Seller or Seller’s Agent. See, e.g., Complaint ¶ 39. Plaintiffs’ failure to plead a misrepresentation with particularity renders the cause of action as deficient.

The demurrer to the third cause of action is SUSTAINED WITH LEAVE TO AMEND.

### C. Leave to amend

In ruling on the motion, the trial court should, ordinarily, permit the party whose pleadings are attacked to amend if it so desires. *Hardy v. Admiral Oil Co.* (1961) 56 Cal.2d 836, 841–842. Buyers’ Agent cites *Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349, arguing that the Court should deny leave to amend when the responding party does not produce facts which show a reasonable possibility that amendment may be effective. This misstates at what stage the burden applies. As stated in *Cooper v. Leslie Salt Co.* (1969) 70 Cal.2d 627, 636 (cited by *Goodman*), the burden to show reasonable possibility that amendment will cure the defect applies **where the trial court does not grant leave to amend, the burden is present for appellant on appeal**. Indeed, even the decision in *Goodman* is quite clear on this point. See *Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349 (“[T]he burden is on the plaintiff **to demonstrate that the trial court abused its discretion**. (Citations). Plaintiff must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading.”)

Here, while Plaintiff has not stated how they could amend their objection to state a valid claim, there does not appear to be an affirmative requirement for them to do so. Certainly, at the initial complaint, and where the issue lies in the specificity of the fraud allegations, leave to amend is proper.

### III. Motion to Strike

First, the Court notes that Plaintiffs particularly defend the request for attorneys’ fees, and no mention is made in their opposition of the issue of prejudgment interest.

While Plaintiff argues that the prayers are applied generally to all parties, Plaintiff provides no basis for recovery of attorneys’ fees or prejudgment interest against any party. Rather, they aver that striking these immaterial allegations will prejudice them in the ability to recover on these damages after trial, should discovery bear out a basis thereon. The Court notes that both forms of damages need not be pled to be recovered. Second, Plaintiff pleads no basis thereon. Third, should Plaintiffs obtain discovery supporting these types of damages, the opportunity to amend is substantially more liberal than the time to strike irrelevant allegations. See CCP § 473; CCP § 435(b)(1). Relief not supported by law is immaterial (CCP § 431.10(b)), and therefore capable of being struck as irrelevant. The Court finds it proper to do so here.

Therefore, the Motion to Strike is **GRANTED with leave to amend**.

### IV. Conclusion

Based on the foregoing, the Demurrer is **GRANTED WITH LEAVE TO AMEND as to the third cause of action and OVERRULED as to the second cause of action**. The Motion to Strike is **GRANTED with leave to amend**. If Plaintiffs are to amend their complaint, they shall do so within 20 days notice of entry of this order. Buyers Agents shall file their answers within thirty-five (35) days of notice of entry of the order on this Demurrer.

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

### **3. SCV-266838, Watson v. Jumpsport, Inc.**

Plaintiff Harriet Watson ("Plaintiff") filed the complaint (the "Complaint") against defendants Jumpsport, Inc. ("Defendants"), and Does 1-20 alleging causes of action derived from products liability claims. The matter is on calendar for the motion by Defendant to allow discovery into Plaintiff's psychiatric records. The motion is DENIED.

#### **I. Evidentiary and Procedural Issues**

The Court notes that Defendant's reply is over length, presenting 12 pages of substantive argument, where the page limit for replies is 10 pages. Cal. Rule of Court Rule 3.1113(d). The Court, on its own motion, strikes pages 12-13 for failing to comply with the Rules of Court.

#### **II. Procedural History**

Plaintiff brought this action against Defendant on or about August 5, 2020, alleging she suffered injuries when a trampoline which Defendant designed, manufactured, and/or supplied, snapped shut on her and crushed her during use. The parties subsequently engaged in the discovery process, including propounding written discovery and scheduling depositions of key parties and witnesses. In preparation for trial, Plaintiff filed Motion in Limine # 1 ("MIL 1") on March 9, 2023, requesting to exclude evidence related to Plaintiff's psychiatric condition. The Court granted MIL 1 on the first day of trial, September 26, 2023. See Court's 9/26/2023 Minutes. The parties began jury selection the following day. The matter proceeded to trial over 18 days from September 26, 2023, to October 27, 2023 (the "Original Trial"). The Jury was sent to begin deliberations on October 25, 2023. On October 27, 2023, the jury returned with a hung verdict, and the Court declared a mistrial. The Court has set the new trial for June 21, 2023.

#### **III. Governing Law**

##### **A. Discovery After Mistrial**

Under CCP § 2024.020, the discovery cut-off is based on the date *initially* set for trial, and as such, a trial continuance or postponement of the trial date does not operate to reopen discovery. *See Pelton-Shepherd Industries, Inc. v. Delta Packaging Products, Inc.* (2008) 165 Cal.App.4th 1568, 1575. Discovery is to be completed 30 days prior to initial trial date, and motions regarding discovery are to be heard no later than 15 days before the initial trial date. *Ibid.* However, a mistrial reopens discovery for all purposes. *Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 253; see also *Hirano v. Hirano* (2007) 158 Cal.App.4th 1, 6 (after mistrial, discovery as to expert witnesses was reopened). The right to discovery for the new trial is the same as the right to discovery before the original trial. *Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 253.

##### **B. Compel Production Under Subpoena**

Where a nonparty deponent fails to provide satisfactory answers under a subpoena, the subpoenaing party may move to compel compliance within 60 days of completion of the deposition record. Code Civ. Proc., § 2025.480. Under a subpoena for records, the records and responses produced serve as the deposition record for determining the 60 day time limit. *Unzipped Apparel, LLC v. Bader* (2007) 156 Cal.App.4th 123, 131.

### **C. Motions in Limine**

Motions in limine are common law constructs implied from the court's statutory powers. See CCP § 128 (a)(3) (court's power to "provide for the orderly conduct of proceedings before it"); Evid. Code § 350 (court's power to exclude irrelevant evidence); Evid. Code § 352 (court's power to exclude evidence where the probative value is outweighed by the prejudice); Evid. Code § 402(b) (court's power to make evidentiary rulings on admissibility outside the presence of the jury).

## **IV. Analysis**

### **A. Discovery is Open**

Plaintiff avers that discovery has not entirely reopened after trial. This is not the posture of the law. Discovery reopens after a mistrial. *Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 254. The right to discover for the parties' new trial is the same as the right to discovery before the original trial. *Ibid.* Therefore the Court's analysis turns to whether the Defendant's request is proper.

### **B. Relief Requested**

The Court will first note that it does not find Plaintiff's argument that this is a motion for reconsideration persuasive, largely because motions in limine are not subject to such a motion. Motions in limine are a common law construct derived from the Court's inherent powers to control proceedings. The Court maintains the power to change in limine rulings, even from the bench during trial. See, e.g., *Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th 276, 297. On the other hand, Defendant strongly avers that this is not a request to reconsider of MIL 1 but seems to labor under the assumption that the rulings on the motions in limine somehow no longer constrain the parties. Defendant offers no authority to this effect, nor could the Court locate any. The current posture is that MIL 1 is still the order of this Court. The Court therefore proceeds to the motion.

Defendants offer no statutory authority for their motion, nor is their requested relief elucidated beyond the request that the Court "issue orders 1) compelling the production of unredacted subpoenaed records; 2) compelling the production of unredacted psychiatric and psychological records; and 3) allowing the depositions of medical professionals who have treated Plaintiff for psychiatric and psychological conditions; and 4) allowing discovery of Plaintiff's In Home Health Services (IHSS) provided to her because of her psychiatric disability." The expectation is that any authority for a motion be contained in the notice of motion. CCP § 1010.



While the Court notes that Defendant in part states this motion is in part to compel “production of unredacted subpoenaed records”, they provide no authority, nor facts to support a motion to compel. The Court notes that the declaration provided by Defendant only avers to have received responses to subpoenas in May of 2023. Motions to compel further compliance with a subpoena are due within 60 days of production. CCP § 2025.480. To say any attempt to compel further production under subpoenas ranging back to “beginning in 2020” is untimely would be an understatement. To the degree that the motion requests this relief, it is **DENIED**.

As to the request to allow depositions and discovery, Defendant has already served a great number of discovery requests prior to the First Trial. Those requests have, to the Court’s knowledge, all received responses. Defendant provides no evidence that there are pending discovery requests. Defendants essentially seek an advisory opinion allowing them to delve into Plaintiff’s psychological records, despite the prior agreement of the parties and the Court’s ruling on MIL 1. The motion presented is too theoretical to provide a genuine controversy on which the Court can accord relief. Defendant requests that the Court allow the discovery, but present no reason why such discovery is not already allowable. When Plaintiff raises both the prior agreement and MIL 1 in response, Defendant strongly avers that the motion does not attempt to have MIL 1 reconsidered, but that the “requested discovery” is relevant due to the expert opinion provided. See Defendant’s Reply, pg. 7:12-13. Understanding that MIL 1 remains the order of the Court, and no request to set it aside being presented, strongly affects the scope of what is relevant **because it affects what is admissible**. Given that the Court has already ruled that the prejudicial nature of the requested category outweighs the probative value, there is absolutely no basis presented that the mere conduct of discovery will lead to admissible evidence. Such a determination is too ephemeral to adequately rule on in the posture presented by Defendant.

The Court is not inclined to enter orders predicated on some hypothetical discovery. There are no discovery requests at issue before the Court. As such, there is no basis presented to grant the motion. Defendant’s motion is **DENIED**.

Given that the Court cannot reach the substance of the discovery requested, it does not reach the substance of Plaintiff’s privacy objection. That matter is left too theoretical to be determined.

### **C. Sanctions**

Plaintiff provides no relevant authority for sanctions. The request for sanctions under CCP § 128.5 fails to comply with the notice and safe harbor requirements under that section. See CCP § 128.5 (f)(1)(B). As such, there is no basis under CCP § 128.5 to grant sanctions.

The request for sanctions under CCP § 2031.010 is equally misplaced, as that only applies to requests for inspection, which is not the motion before the Court. Indeed, the only relevant statute cited by Plaintiff is CCP § 2023.010 regarding discovery abuse, but that section makes no mention of sanctions, merely defining what constitutes discovery abuse. The applicable statute for monetary sanctions for discovery abuses as defined by CCP § 2023.010 would be CCP § 2023.030. However, this section only deals with **discretionary** monetary sanctions. See CCP § 2023.030 (a) (“The court **may** impose a monetary sanction ordering that one engaging in the

misuse of the discovery process”). Here, both parties brought substantially unavailing arguments. No sanctions are proper.

## **V. Conclusion**

Based on the foregoing, Defendant’s motion is **DENIED**.

Plaintiff shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

### **4. SCV-271178, Abundiz v. O’Connor**

Plaintiffs Beysaira Abundiz and Luiz Abundiz Medina (together “Plaintiffs”), filed the complaint (the “Complaint”) against defendants Daniel O’Connor, Debra O’Connor, O’Connor Properties, LLC (together “Defendants”), and Does 1-20, arising out of residential lease agreement. Defendants have in turn filed a cross-complaint (the “Cross-Complaint”) against Plaintiffs. This matter is on calendar for Plaintiffs’ motion to compel deposition of Defendants under California Code of Civil Procedure (“CCP”) § 2025.450(a).

Defendants have responded to this motion with both an opposition and a motion requesting that the parties be referred to the Sonoma Superior Court’s discovery facilitator program under Local Rule 4.14 (D)(3). That motion has been calendared for March 27, 2024. The Court, under its own power provided by Local Rule 4.14 (D)(1), finds referral to the discovery facilitator program appropriate. The Court will issue notices under Local Rule 4.14 (E) providing the names of prospective facilitators, and parties will have the opportunity to object to facilitators as delineated in the notice.

The Plaintiffs’ motion to compel is CONTINUED to March 27, 2024, at 3:00 pm in Department 19.

Defendants’ motion for referral set for that date has been rendered moot and is VACATED.

### **5. SCV-271402, Maier v. Alvarez**

Plaintiffs Cheryl Maier (“Injured Plaintiff”) and John Maier (“Consortium Plaintiff”, together with Injured Plaintiff, “Plaintiffs”), filed the complaint (the “Complaint”) against defendants Jose Alvarez (“Individual Defendant”) G6 Hospitality Property, LLC (“Corporate Defendant”, together with Individual Defendant, “Defendants”), arising out of an automobile accident.

This matter is on the February 16, 2024, law and motion calendar for the motion by Corporate Defendant for summary judgment of the Complaint pursuant to Cal. Code Civ. Proc. (“CCP”) § 437(c). Recently the Court was informed by Plaintiffs’ counsel that Injured Plaintiff had passed away and the complaint would be amended accordingly after a representative for the Injured Plaintiff’s estate was identified. On February 9, 2024, a “Joint Stipulation to Stay and Continue Motion for Summary Judgment Hearing and Remaining Briefing in Light of Stay” (“Stipulation”), signed by counsel for all parties was filed. After reviewing the Stipulation, the

Court signed the accompanying order on February 14, 2024. The Court's Order continues the hearing date on Corporate Defendant's summary judgment motion and maintains the current CMC hearing on February 22, 2024, at 3:00 p.m. Appearances are now required for this CMC so the Court can discuss timelines for pleading amendments, designation of personal representative, and re-setting of Corporate Defendant's summary judgment motion.

**6. SCV-273072, G.M. v. United Church of Christ Board, Inc.**

The declaration of Attorney Neda Saghafi states that Plaintiff was served via mail at her last known address, and that Plaintiff's counsel has been unable to confirm that address despite numerous attempts and modalities. Counsel's motion to be relieved as counsel for plaintiff G.M. is **DENIED without prejudice**. There is no proof of service within the file. Therefore, there is no evidence that Counsel has served all parties who have appeared as required under the rules of court. Additionally, there is no evidence of when Counsel attempted to give their client notice, as there is no proof of service reflecting what efforts Counsel undertook to locate their client. Furthermore, since there is no proof of service, there is no indication that any effort were ever made to serve Plaintiff with a copy of the motion that contained the hearing date. Lack of proper service to Plaintiff results in a failure to ensure due process.

**7. SCV-273578, County of Sonoma v. Cupp**

Appearance required regarding Fee Waiver.

**8. SCV-273747, E. v. Bright Starz Day Care**

The Proof of Service reflecting service to Plaintiff through her Guardian Ad Litem, states that Guardian Ad Litem was served via mail at her last known address. However, there is no indication that any effort was made to serve Plaintiff with a copy of the motion that contained the hearing date, and therefore there is no evidence Guardian Ad Litem has notice of the instant date. In fact, there is no proof of service on file for the motion, and so there is no evidence of when Counsel attempted to give their client notice. Furthermore, because there is no proof of service, there is no evidence that Counsel has served all parties who have appeared as required under the rules of court. See Cal. Rule of Court Rule 3.1362(d). Therefore, Attorney Elan Zekster's motion to be relieved as counsel for Plaintiff Anastasia E., is **DENIED without prejudice**.

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