

TENTATIVE RULINGS: CIVIL LAW & MOTION

Wednesday, March 5, 2025 at 3:00 p.m.

Courtroom 18 – Covered by Hon. Dennis Hayashi for Hon. Kenneth G. English

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) 521-6604**, 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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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. 23CV01698, Looney v. Enfuzion Bar & Lounge, LLC

Plaintiff Gary E. Looney dba Collectronics of California (“Plaintiff”), assignee of Young’s Market Company, obtained a default judgment against defendants obtained a default judgment against defendants Enfuzion Bar & Lounge, LLC, (“Defendant”), Latfia Pacheco (“Guarantor”, together with Defendant, “Defendants”). This matter is on calendar for Plaintiff’s motion to compel answers to special interrogatories (“SIs”) against Defendants under Code of Civil Procedure (“CCP”) §§ 708.020 & 2030.290, and to compel production of documents (“RPODs”) from Defendants under CCP §§ 708.030 & 2031.300. The unopposed Motion is **GRANTED**. Defendants shall serve verified code-compliant responses free of objections within thirty (30) days of notice of entry of the order on this Motion. Defendants shall pay \$60 in sanctions to Plaintiff within thirty (30) days of notice of entry of the order on this Motion.

I. Governing Law

A judgment creditor generally has the same rights to propound discovery to the judgment debtor in order to facilitate collection of the judgment. Particularly, a judgment debtor may propound interrogatories as allowed under CCP § 2030.010, et seq. See CCP § 708.020. Judgment creditors may also request production of documents under CCP § 2031.010. See CCP § 708.030.

Regarding the SIs, a party responding to an interrogatory must provide a response that is “as complete and straightforward as the information reasonably available to the responding party permits” and “[i]f an interrogatory cannot be answered completely, it shall be answered to the extent possible.” Code Civ. Proc. (“CCP”) §2030.220(a)-(b). “If the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall make a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations, except where the information is equally available to the propounding party.” CCP §2030.220(c). If a party fails serve a timely response to interrogatories, the court shall impose sanctions unless it finds that the party subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. CCP §2030.290(c). Code of Civil Procedure section 2030.290 provides that if a party to whom interrogatories were directed fails to serve timely responses, the responding party waives all objections, including those based on privilege and work product protection, and the propounding party may move for an order compelling responses. CCP §2030.290(a)-(b); see also, *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 404; CCP § 708.020(c). All that the moving party needs to show in its motion is that a set of interrogatories was properly served, that the time to respond has expired, and that no response has been provided. See, *Leach v. Superior Court* (1980) 111 Cal.App.3d 902, 905-906.

Similarly, Code of Civil Procedure section 2031.300 provides that if a party fails to serve timely responses to requests for production of documents, the responding party waives all objections, including those based on privilege and work product and “[t]he party making the demand may move for an order compelling [a] response to the demand.” CCP §2031.300(a)-(b); CCP §708.030(c). When the motion to compel seeks a response to document requests, as opposed to further responses, no showing of “good cause” is required. CCP §2031.300.

CCP § 2030.290(c) (relating to interrogatories), and CCP § 2031.300(c) (relating to requests for production of documents), provide that a monetary sanction “shall” be imposed against the party losing a motion to compel further responses unless the court finds “substantial justification” for that party’s position or other circumstances making sanctions “unjust.”

II. Analysis

Plaintiff served their SIs and RPODs on October 23, 2024. Defendants have served no responses.

There is no opposition to the motion, nor is there evidence that there have been responses to the underlying requests. The time to respond has expired. Compelling responses is appropriate. Plaintiff’s motion to compel responses to SIs and RPODs GRANTED. Defendants will serve code complaint, objection-free responses within 30 days of notice of this order.

III. Sanctions

Sanctions are mandatory under the CCP for discovery abuses, absent substantial justification. Absent substantial justification, the Court must grant compensatory monetary sanctions which represent reasonable and actual costs to Plaintiff. While Plaintiff appears to also ask for some form of discretionary sanctions, he provides no authority to support them.

Plaintiff requests sanctions of his actual costs of filing fees of \$60. Filing fees of \$60 is appropriate. The Court **GRANTS** Plaintiff's request for monetary sanctions in the amount of \$60. Defendants shall pay \$60 to Plaintiff within 30 days' notice of this order.

IV. Conclusion

Plaintiff's motion to compel responses to SIs and RPODs is GRANTED. Defendants will serve code complaint, objection-free responses within 30 days of notice of this order. The request for sanctions is granted and Defendants shall pay \$60 to Plaintiff within 30 days' notice of this order.

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).

2. 23CV02189, Looney v. Sanctuary Restaurants, LLC

Plaintiff's unopposed motion to compel answers to post judgment discovery is GRANTED. Plaintiff's request for monetary sanctions is granted in the amount of \$60.00. Defendant is ordered to pay Plaintiff \$60.00 within 30 days of service of the Court's order on this motion. Defendant is also ordered to respond to Plaintiff's discovery requests within 30 days of service of the order on this motion. Because Defendant failed to timely respond to Plaintiff's discovery requests, objections to such discovery are waived. (CCP § 2031.300.) If no hearing is requested, the Court will sign the proposed order lodged with the moving papers.

3. 24CV04586, Ritter v. Harris

The motion by Sarah Shapero to be relieved as counsel for Rebecca Ritter is GRANTED. Counsel has represented that there has been a breakdown in the attorney-client relationship. If no hearing is requested the Court will sign the proposed order lodged with the moving papers.

4. 24CV06018, J.G. Wentworth Originations, LLC v. Georg

The Petition for Approval of Transfer of Structured Settlement Payment Rights is DENIED. The Court continued the hearing on this motion to allow the moving party time to file a supplemental declaration supporting the motion. The moving party has not done so. Therefore, the motion is denied.

5 & 6. SCV-267562, Wagner v. Messana

Plaintiff Deborah Wagner ("Plaintiff"), in her capacity as trustee of the Separate Share Trust for Charles Joseph Messana ("Charles") filed the complaint in this action ("Complaint") against Russell C. Messana ("Messana") and Amber Merkel ("Merkel" succeeding in interest deceased Chris Merkel [d. 2021], together with Messana, "Individual Defendants"), along with nominal defendant

TJRV & Boat Storage, LLC (“TJRV LLC”) (together “Defendants”) with Does 1-20 with causes arising out of controversies over the real property at 4266 Santa Rosa Avenue, Santa Rosa (“the Property”) which is subject to a partition judgment (“the Judgment”) in *Wagner v. Messana, et al.*, SCV-260727 (“the Partition Action”).

This matter is on calendar for two motions: 1) Plaintiff’s motion to file a supplemental complaint pursuant to Code of Civil Procedure (“CCP”) § 464; and 2) Defendants’ motion to quash service of the Complaint after Plaintiff’s Doe amendment under CCP § 474.

MOTION TO FILE SUPPLEMENTAL COMPLAINT.

V. Governing Law

A plaintiff may, on a motion, be allowed to make a supplemental complaint alleging facts material to the case occurring after the former complaint or answer. CCP § 464.

The office of a supplemental complaint is to plead facts material to plaintiff’s cause of action accruing after the filing of the complaint. Code Civ.Proc. § 464. It is not proper to set forth a new and independent cause of action, but only such matters as may be consistent with and in aid of the case made by the original complaint. “It is no objection to a supplemental complaint that different or additional relief is asked for. Indeed, the object of the supplemental complaint is to obtain additional or different relief without resort to a new trial.” *Jacob v. Lorenz*, 98 Cal. 332, 33 Pac. 119; *Baker v. Bartol*, 6 Cal. 483. In *Miller v. Cook*, 135 Ill. 190, 25 N.E. 756, 10 L.R.A. 292, it is said: “If the original bill is sufficient for one kind of relief, and facts afterward occur which entitle the complainant to other and more extensive relief, he may have such relief by setting out the new matter in a supplemental bill.”

Melvin v. E.B. & A.L. Stone Co. (1908) 7 Cal.App. 324, 326

“(T)he issues in a case refer to the beginning of an action, and that matters occurring pendente lite cannot be put in evidence and are not adjudicated by the judgment unless brought before the court by a supplemental pleading.” *Grand Union Hotel v. Industrial Acc. Commission* (1924) 67 Cal.App. 123, 127. It is not proper for supplemental pleadings to allege new causes of action or defenses, rather the new facts must “supplement” the already alleged causes of action. *Flood v. Simpson* (1975) 45 Cal.App.3d 644, 647. “It is the policy of law to permit generally the filing of supplemental pleadings (Citation). While it is a general rule that an application for permission to file a supplemental pleading is addressed to the court’s discretion (Citation), the discretion referred to is a legal discretion subject to review. (Citation.)” *Louie Queriolo Trucking, Inc. v. Superior Court of Kern County* (1967) 252 Cal.App.2d 194, 197–198.

VI. Motion

Plaintiffs seek to file a supplemental complaint adding factual allegations occurring after the filing of the action, and reinforcing Plaintiff’s first cause of action for violations of Civ. Code § 798.37.5 (c). Defendant has filed an opposition to the motion.

The Proposed Supplemental Complaint clearly alleges facts related to Plaintiff's First, Second, Sixth, and Seventh causes of action. Plaintiff alleges that Defendants undertook a concerted effort to remove her from TJRV without notice or compensation. These facts appear clearly related to the already alleged causes of action.

Defendants' opposition attempts to frame the issue as being facts exclusively related to Plaintiff's previously attempted amendment to add a cause of action for conversion. Defendants accurately point out that the motion was denied, but fail to mention that the denial was procedural in nature and without prejudice to Plaintiff bringing a motion to modify their pleading which conformed to substantive law. Defendants fail to elucidate how their alleged wrongdoing is not also relevant to causes of action already asserted. Their assertion that Plaintiff has a "proposed new cause of action" is simply untrue. The Proposed Supplemental Complaint has no added cause of action. The facts are relevant to the already alleged causes of action, and Defendants offer no analysis to the contrary outside of conclusory statements. Nor do Defendants express any articulable prejudice related to the amendment.

The motion is **GRANTED**.

VII. Conclusion

Based on the foregoing, Plaintiff's motion for leave to file a supplemental complaint is GRANTED. Plaintiff will file the Supplemental Complaint within 30 days of notice of this order.

MOTION TO QUASH

I. Underlying Facts

This matter is the third suit litigated between Individual Defendants and Plaintiff. Plaintiff was initially appointed when Messana was removed as trustee by the probate court (the "Probate Action"). The Property was distributed to Charles (in trust with Plaintiff), Chris, and Messana, along with a business associated with the property, called TJ RV & Boat Storage. Subsequently, due to alleged failures of Chris and Messana to pay dividends, Plaintiff brought the Partition Action as to the Property. While that matter was being litigated, Plaintiff filed the instant suit on December 16, 2020, naming Chris (succeeded after his death by Merkel), and Messana individually, along with TJRV LLC as a nominal defendant. Since then, this matter has been litigating actively as Plaintiff sought to pursue the rights of Charles to his share of the business entity at issue. The Court subsequently made orders regarding production of discovery and sanctions, finding that the responses provided on behalf of TJRV LLC were evasive, as Defendants raised for the first time that TJRV LLC was a defunct entity, and that the true entity was a partnership not named in this case. Defendants appealed, and the order for sanctions was affirmed.

The Court of Appeal issued remittitur on January 2, 2024. Plaintiff filed a motion to amend on July 29, 2024 under CCP § 473. The motion was denied without prejudice under a multiplicity of factors on November 20, 2024. Plaintiff filed an amendment under CCP § 474 (the "Doe Amendment") on December 6, 2024, naming "TJ Recreational Vehicle & Boat Storage", "TJ RV & Boat Storage",

“TJ Recreational Vehicle Storage” and “TJ RV Storage” as Does 1-4 respectively (“Doe Defendants”). The amendment clearly states that Plaintiff names Doe Defendants as nominal defendants only (Doe Defendants with TJRV LLC, “Nominal Defendants”). This motion followed.

II. Governing Law

A. Doe Amendments

“When the plaintiff is ignorant of the name of a defendant, he must state that fact in the complaint, ... and such defendant may be designated in any pleading or proceeding by any name, and when his true name is discovered, the pleading or proceeding must be amended accordingly...” Code Civ. Proc., § 474. “If the identity of the Doe defendant is known but, at the time of the filing of the complaint the plaintiff did not know facts that would cause a reasonable person to believe that liability is probable, the requirements of section 474 are met.” *McOwen v. Grossman* (2007) 153 Cal.App.4th 937, 943; see also *Munoz v. Purdy* (1979) 91 Cal.App.3d 942, 947 (“Section 474, however, does not relate to the steps which should be taken after the filing of the action; it is restricted to the knowledge of the plaintiff at the time of filing of the complaint.”). “Section 474 allows a plaintiff in good faith to delay suing particular persons as named defendants until he has knowledge of sufficient facts to cause a reasonable person to believe liability is probable.” *Dieckmann v. Superior Court* (1985) 175 Cal.App.3d 345, 363. “The fact that the plaintiff had the means to obtain knowledge is irrelevant.” *General Motors Corp. v. Superior Court* (1996) 48 Cal.App.4th 580, 594. “In short, section 474 does not impose upon the plaintiff a duty to go in search of facts she does not actually have at the time she files her original pleading.” *Id.* at 596.

“Code of Civil Procedure section 474 is to be liberally construed. [Citation.]” (*Citation.*) Nevertheless, its requirements, as so construed, are mandatory. (*Citation.*) Failure to comply with Code of Civil Procedure section 474 does not prevent a plaintiff from filing an amendment adding a new defendant; however, it does prevent the amendment from relating back. (*Citations.*)

Fireman's Fund Ins. Co. v. Sparks Construction, Inc. (2004) 114 Cal.App.4th 1135, 1143–1144 (internal citations omitted).

“The lack of knowledge of the true name of a defendant, however, must be ‘real and not feigned.’” (*Citation.*) A plaintiff must actually be ignorant of the facts giving him a cause of action against a defendant.” *Munoz v. Purdy* (1979) 91 Cal.App.3d 942, 947. “[I]gnorance of the facts is the critical issue, and whether it be due to misfortune or negligence is not relevant.” *Breceda v. Gamsby* (1968) 267 Cal.App.2d 167, 174–175. Courts may find actual ignorance where defendants are closely associated corporations which create “an inferable source of reasonable confusion by the plaintiff and of awareness by the intended defendant of plaintiff’s mistake.” *Omega Video Inc. v. Superior Court* (1983) 146 Cal.App.3d 470, 480

Where plaintiff does not have genuine ignorance at the time the complaint is filed, the amendment under CCP § 474 is not effective, and a motion to quash or demurrer may be granted accordingly. *McClatchy v. Coblenz, Patch, Duffy & Bass, LLP* (2016) 247 Cal.App.4th 368, 375 (“*McClatchy*”); *Marasco v. Wadsworth* (1978) 21 Cal.3d 82, 89. If the court does not find actual ignorance, it must grant defendants relief where the statute of limitations has passed. *Optical Surplus, Inc. v. Superior*

Court (1991) 228 Cal.App.3d 776, 784. In contrast, a motion stating that plaintiff has unduly delayed amending under CCP § 474 is not related to jurisdiction. *Barrows v. American Motors Corp.* (1983) 144 Cal.App.3d 1, 7-10 (“*Barrows*”); *A.N. v. County of Los Angeles* (2009) 171 Cal.App.4th 1058, 1064. Where the statute of limitations on the claim has not run, CCP § 474 provides no defense. *Wallis v. Southern Pac. Transportation Co.* (1976) 61 Cal.App.3d 782, 787. The analysis under CCP § 474 need not be examined where the claims have not expired. *Davis v. Marin* (2000) 80 Cal.App.4th 380, 387.

While the title of the motion is not controlling, so long as the gravamen of the motion relates to the Doe amendment, a citation to CCP § 474 will suffice. *A.N. v. County of Los Angeles* (2009) 171 Cal.App.4th 1058, 1064. Failure to follow the provisions of CCP § 474 does not render proceedings void, nor does it deprive the court of jurisdiction. *Crenshaw v. Smith* (1946) 74 Cal.App.2d 255, 264.

B. Nominal Defendants

“If the consent of any one who should have been joined as plaintiff cannot be obtained, he may be made a defendant...” CCP, § 382. “When a derivative suit is brought to litigate the rights of the corporation, the corporation is an indispensable party and must be joined as a nominal defendant.” *Grosset v. Wenaas* (2008) 42 Cal.4th 1100, 1108. “Thus, although the corporation is made a defendant in a derivative suit, the corporation nevertheless is the real plaintiff and it alone benefits from the decree; the stockholders derive no benefit therefrom except the indirect benefit resulting from a realization upon the corporation's assets.” *Jones v. H. F. Ahmanson & Co.* (1969) 1 Cal.3d 93, 107. Where a corporation is a nominal defendant, and litigating against the merits is against its interests, it has no right to defendant the action in substance with limited exceptions. *Patrick v. Alacer Corp.* (2008) 167 Cal.App.4th 995, 1010 (“*Patrick*”). Motions brought by the corporation against its own interest should be denied or struck as a result. *Id.* at 1018.

III. Analysis

Defendants bring this motion arguing that Plaintiff’s amendment under CCP § 474 must be quashed, as Plaintiff cannot make a good faith claim of ignorance of Doe Defendant’s identity as required by the statute. Plaintiff opposes the motion, arguing both genuine ignorance, and that Nominal Defendants may not raise attacks on the merits

Based on the arguments of the parties, this motion appears to turn on two considerations. First, may Nominal Defendants even raise a defense under CCP § 474 in comportment with their obligation of neutrality in derivative actions? Second, assuming the motion is properly brought by Nominal Defendants, has Plaintiff’s amendment complied with CCP § 474?

A. Nominal Defendants’ Lack the Right to Bring the Motion

Plaintiff points out that nominal defendants are not defendants in the truest sense, but rather plaintiffs on whose behalf Plaintiff seeks to recover for the alleged misdeeds of Individual Defendants.¹

Clarity is required for the Court to determine whether the challenge mounted by Defendants under CCP § 474 is procedural or substantive. If the challenge is substantive, Nominal Defendants may not raise it, as it would violate the principle that “a nominal defendant corporation generally may not defend a derivative action filed on its behalf.” *Patrick v. Alacer Corp.* (2008) 167 Cal.App.4th 995, 1005. Defendants attempt to argue that this is a challenge to jurisdiction, and the decision in *Patrick* explicitly does not cover challenges to personal jurisdiction. This is refuted by a more careful review of the decision. The quote upon which Defendants rely is derived from a decision issued by the Court of Appeal in another state. See *Patrick v. Alacer Corp.* (2008) 167 Cal.App.4th 995, 1007 (“[T]he corporation may assert lack of personal jurisdiction, lack of subject matter jurisdiction, or improper venue.” ([*Swenson v. Thibaut* (N.C. Ct. App. 1978) 39 N.C.App. 77, 100])). It is not adopted as a principle of California law. The *Patrick* court is clear that if the defense is to the merits, a nominal defendant **cannot** raise them. If the challenge is procedural, there does not appear to be any controlling case on the issue. *Patrick v. Alacer Corp.* (2008) 167 Cal.App.4th 995, 1010 (“[The procedural defense] exception may well exist under California law, or it may not. We need not decide [that] here, as [corporation] does not assert any viable basis for invoking such an exception.”).

The question for the purposes of CCP § 474 is whether Plaintiff was actually ignorant of the basis for naming Doe Defendants. Defendants only raise a question under *McClatchy v. Coblenz, Patch, Duffy & Bass, LLP* (2016) 247 Cal.App.4th 368, 375, which analyzes whether Plaintiff was unaware at the time of filing the Complaint under CCP § 474. Whether Plaintiff has subsequently unreasonably delayed in filing the amendment (under *Barrows v. American Motors Corp.* (1983) 144 Cal.App.3d 1, 7-10) is not raised. Despite the *McClatchy* court’s analysis as a motion to quash, the same deficiency has been raised at demurrer. *Marasco v. Wadsworth* (1978) 21 Cal.3d 82, 89. Failure to be genuinely ignorant merely prevents the case from relating back to the original filing of the complaint. *Fireman’s Fund Ins. Co. v. Sparks Construction, Inc.* (2004) 114 Cal.App.4th 1135, 1143–1144. Even Defendants’ cited case concedes that this jurisdictional challenge only relates to those causes of action upon which the statute of limitations has run at the time of amendment. *McClatchy v. Coblenz, Patch, Duffy & Bass, LLP* (2016) 247 Cal.App.4th 368, 375-376; citing *Wallis v. Southern Pac. Transportation Co.* (1976) 61 Cal.App.3d 782, 787. As a result, it appears that any assertion of failure to comply with CCP § 474 might be jurisdictional, but only as related to the substance of the claims. The Court finds that the ignorance of Nominal Defendants is therefore a contention to the merits of claims against Nominal Defendants. As nominal defendants, they may not raise them. Rather, Nominal Defendants must sit idly while “merely awaiting the outcome and reaping the fruits of any judgment for plaintiffs.” *Patrick v. Alacer Corp.* (2008) 167 Cal.App.4th 995, 1010.

On this basis, the motion to quash is properly denied.

¹ Plaintiff also elucidates that Defendant’s counsel is clearly inadequately neutral to represent Nominal Defendants, as her arguments advance the interests of Individual Defendants to the detriment of the entities. See, e.g., *Ontiveros v. Constable* (2016) 245 Cal.App.4th 686, 696. This asserted merely in opposition, and not a noticed motion. Therefore, the Court declines to accord affirmative relief thereon.

B. Plaintiff has Displayed Adequate Facts to Support Ignorance

Defendants argue that Plaintiff was required to bring a motion to amend. This is not reflected in any of the case law around CCP § 474, and would render such amendments indistinguishable from amendment under CCP § 473 (a) (which itself has no requirement for a hearing). This argument is not supported.

Substantively, the motion still suffers from defects. As the Court notes above, Defendants do not raise a lack of diligence in amending under *Barrows*, and therefore we need not question whether Plaintiff has subsequently come upon this information. The analysis is restrained to what Plaintiff knew when she filed the Complaint on December 16, 2020.

First, it is worth noting that Defendants fail to provide any distinguishing arguments in regards to *all* the Doe Defendants. Defendants argue that Plaintiff was obviously aware of the existence of a partnership, and therefore any argument that Plaintiff did not know the identity of Defendants is not genuine. However, the facts presented by Defendants merely indicate that Plaintiff was aware of a partnership. Not the four possible names attributable to one entity listed by Plaintiff's Doe Amendment. Defendants still refuse to commit to the name of that partnership in their motion. Defendants appear to rely on a various similar nicknames of entities to obscure facts essential to Plaintiff's claims. As such, it seems apparent that Plaintiff's ignorance of which entity should be named is genuine.

A doe amendment may be proper due to closely associated entities which are a "source of reasonable confusion by the plaintiff and of awareness by the intended defendant of plaintiff's mistake." *Omega Video Inc. v. Superior Court* (1983) 146 Cal.App.3d 470, 480. Individual Defendants (who allegedly have control over all entities at issue), have been aware of this case from the outset. This Court has found (and been affirmed thereon) that Individual Defendant's obstructed the discovery process by attempting to create confusion and uncertainty as to the identity of the entities at issue. See Court's 7/23/2022 Order on Plaintiff's Motion for Terminating Sanctions; *Wagner v. Messana* (Cal. Ct. App., Oct. 27, 2023, No. A165730) 2023 WL 7101189. The record is replete with evidence that "Plaintiff has been trying to determine. and obtain through discovery, is information on the nature of the TJRV business entity..." Court's 7/23/2022 Order on Plaintiff's Motion for Terminating Sanctions, pg. 7:3-4. Nothing submitted by Defendants persuades this Court that Plaintiff's confusion is not genuine, particularly in light of the history of obfuscation and litigation.

Defendants argue that the naming of Does substantively, only to amend to name Doe Defendants as nominal defendants is a judicial admission. This argument is unpersuasive. The entire purpose of pleading parties under CCP § 474 is naming parties generically so as to be capable of amendment when the extent of that parties' involvement is known. Plaintiff's amendment specifically naming Doe Defendants nominally appears adequate to effectuate the intent of the statute.

C. Service of the Complaint

Despite this detailed legal issue, Defendants raise a final argument that the Doe Defendants were not properly served with the summons as required by CCP § 474. Defendants contend that while the summons was properly served, no copy of the Complaint was included. Plaintiff has filed proofs of

service with the Court on January 21, 2025, averring that the Doe Defendants were served with the Summons, and the Doe Amendment. There is no averment of service of the Complaint.

However, Defendants list no statute or authority in making this argument. None is included in their notice of motion, as would be required under the Rules of Court. Cal Rules of Court, Rule 3.1110 (a). CCP § 474, as the only statute that Defendants cite to quash, does not enumerate service of the Complaint among its requirements. The effect of Plaintiff's failure to serve the Complaint is murky, but Defendants have decidedly failed to show that they are entitled to quash as a result. Therefore, based on the above, the motion to quash is DENIED.

IV. Conclusion

The motion to quash 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).

7. **SCV-270527, Jane Doe #1 v. Foppoli**

Defendant Dominic Foppoli's ("Foppoli") motion for judgment on the pleadings per Code of Civil Procedure ("C.C.P.") section 438 is **GRANTED with leave to amend** regarding claims asserted by Jane Does #1, #2, and #3 in the First Amended Complaint ("FAC").

PROCEDURAL HISTORY

Plaintiffs Jane Does #1-#7 commenced this action on April 4, 2022, against Defendants Dominic Foppoli, Two Kings, Santa Rosa Active 20-30 #50 Foundation, and Active 20-30 U.S. & Canada (collectively "Defendants"). The First Amended Complaint ("FAC") alleges twelve causes of actions, including causes for sexual assault and battery and the violation of the Ralph Act. (FAC, ¶¶ 88-227.) The FAC further alleges that Plaintiffs are each a victim of sexual assault committed by, or attempted to be committed by, Defendant Foppoli under Penal Code sections 243.4, 261, 264.1, 273.5, 286, 287, or 289, after Plaintiffs turned eighteen between the years 2001 to 2020. (FAC, ¶¶ 2-3, 13-75.)

Plaintiffs Jane Doe #1, #2, and #3 ("Plaintiffs") allege the following regarding Foppoli's actions:

1. Jane Doe #1 alleges that Foppoli assaulted her throughout their relationship beginning in 2001 and misled her to believe that his actions did not constitute sexual assault or rape but were "simply sexual contact." (FAC, ¶¶ 13-17.) She claims that it was not until 2021, after reading an article of investigation into Foppoli by the San Francisco Chronicle, that she came forward to report the sexual conduct to law enforcement and learned for the first time that his alleged actions during their relationship did constitute rape unlike simple sexual contact as he had led her to believe. (*Id.*)
2. Jane Doe #2 alleges that she was romantically involved with Foppoli in 2003 and on multiple occasions he committed sexual acts on her either without her consent or disregarding her wishes to abstain based on her Catholic faith. (FAC, ¶¶ 18-22.) On

December 31, 2003, after the parties had broken off their romantic relationship, Plaintiff alleges that Foppoli pressured her to drink alcohol while under the legal drinking age and raped her when she was intoxicated multiple times disregarding her telling him to stop. (*Id.* at ¶¶ 23-29.) Though Plaintiff states that it was not until “much later in life” that she discovered or fully appreciated that Foppoli’s actions were rape, she stated that immediately after the incident on December 31, 2003, she felt “sick mentally, emotionally, physically, and spiritually... she was shocked, violated, and extremely confused... also blamed herself for many years later, not appreciating the depth of what he had done to her.” (*Id.* at ¶¶ 27-29.)

3. Jane Doe #3 alleges that she had a friendly relationship with Foppoli in 2006 after they met in a dance class offered at the Santa Rosa Junior College. (FAC, ¶ 30.) She went out dancing and drinking with a group of friends on one evening in 2006 and ended up in the same taxi as Foppoli on the way home. (*Id.* at ¶ 31.) Though she expected to be dropped at her home, she was instead taken to Foppoli’s home where he assaulted her despite her statement to him to stop. (FAC, ¶¶ 33-37.) Plaintiff alleges she felt “violated, scared and extremely disturbed by what had happened” and continued to feel anxiety and a range of emotions for many years after. (*Id.* at ¶ 38.)

Foppoli moves for Judgment on the Pleadings (“JOTP”) on all claims alleged by above Plaintiffs on grounds that they are time-barred under California law. (Memorandum of Points and Authorities for JOTP [“JOTP”], 2:3-4.) Foppoli argues that their claims occurred at a time outside of the revival window allowed under C.C.P. section 340.16 expanded to include incidents occurring on or after January 1, 2009. (*Id.* at 2:4-11.) As the above Plaintiffs allege their respective incidents occurred before 2009, Foppoli’s counsel met with Plaintiffs’ counsel to request them to dismiss the claims prior to filing the JOTP, but the parties did not find a resolution. (JOTP, 2:15-17.) Plaintiffs opposed the JOTP and Foppoli filed a reply brief.

ANALYSIS

Legal Standard

Judgment on the Pleadings

A defendant may move for judgment on the pleadings on the grounds that the court has no jurisdiction of the subject of the cause of action alleged in the complaint or because the complaint does not state facts sufficient to constitute a cause of action against that defendant. (C.C.P. § 438(c).)

A motion for judgment on the pleadings functions the same way as a general demurrer. (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999.) The grounds for a motion for judgment on the pleadings appear on the face of the challenged pleading or from any matter judicially noticed by the court. (C.C.P. § 438(d).) In considering a motion for judgment on the pleadings, trial courts accept plaintiff’s factual allegations in the pleading as true and give them liberal construction. (*Gerawan Farming, Inc. v. Lyons* (2000) 24 Cal.4th 468, 515.) Presentation of extrinsic evidence is therefore not proper on a motion for judgment on the pleadings. (*Cloud v. Northrop Grumman Corp.*, supra, at p. 999.) The complaint must be viewed in isolation and matters set forth in the answer will not be considered. (*Hughes v. Western MacArthur Co.* (1987) 192 Cal.App.3d 951.

Leave to amend should be granted if there is any reasonable possibility that the plaintiff can state a good cause of action. (*Gami v. Mullikin Med. Ctr.* (1993) 18 Cal.App.4th 870, 876.)

Statute of Limitations

Plaintiffs must bring civil actions within the statutory periods allowed after the cause of action has “accrued.” (C.C.P. § 312) A cause of action accrues at “the time ‘when, under the substantive law, the wrongful act is done,’ or the wrongful result occurs, and the consequent ‘liability arises.’” (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397.) The exception to this rule is the “discovery rule” under which a cause of action does not accrue until the plaintiff discovers it or has reason to discover it. (*Ibid.*) Plaintiffs discover causes of action when they “at least suspects a factual basis, as opposed to a legal theory, for its elements,” that someone has done something wrong, or has “notice or information of circumstances to put a reasonable person on inquiry.” (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397-8; *Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1110-1111.) In ruling on a demurrer based on the statute of limitations, “the defect must clearly and affirmatively appear on the face of the complaint; it is not enough that the complaint shows that the action may be barred.” (*Comm. for Green Foothills v. Santa Clara Cnty. Bd. of Supervisors* (2010) 48 Cal. 4th 32, 42; *Geneva Towers Ltd. P'ship v. City of San Francisco* (2003) 29 Cal. 4th 769, 781.)

Action for Damages Suffered from Sexual Assault

Per C.C.P. section 340.16(a), in civil actions commenced to recover damages suffered as a result of sexual assault, which occurred on or after plaintiff’s 18th birthday, the cause of action accrues on the later date 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; or (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. “Sexual assault” includes any of the crimes described in Section 243.4 (sexual battery), 261 (rape), 264.1 (rape or penetration of genital or anal openings by foreign object), 286 (sodomy), 287 (oral copulation), or 289 (forcible acts of sexual penetration), or former Sections 262 and 288a, of the Penal Code, assault with the intent to commit any of those crimes, or an attempt to commit any of those crimes. (C.C.P. § 340.16(b)(1).)

This section was amended and now revives any cause of action based upon conduct that occurred on or after January 1, 2009, regarding which an action has been commenced on or after January 1, 2019, that would have been barred solely because the applicable statute of limitations has or had expired and may be brought until December 31, 2026. (C.C.P. § 340.16(b)(3).) However, the section does not revive claims that have been litigated to finality in a court of competent jurisdiction before January 1, 2023, or that has been compromised by a written settlement agreement by the parties before January 1, 2023. (C.C.P. § 340.16(b)(3)(A)-(B).)

Foppoli’s Motion for Judgment on the Pleadings

In the JOTP, Foppoli argues that, because Plaintiffs’ claims all pertain to alleged incidents that occurred before 2009, they are not covered by the revival under C.C.P. section 340.16. (JOTP, 2:12-17.) Foppoli states that A.B. 2777, which expanded the revival window, explicitly restricts its revival provisions to incidents occurring on or after January 1, 2009. (*Id.* at 5:22-28, 6:1-10.)

Foppoli notes that there was no evidence of delayed discovery of injury or illness as to the opposing Plaintiffs' claims, whose alleged incidents all occurred prior to 2009. (*Id.* at 7:3-11.) Foppoli also cites to *Miller v. Board of Supervisors* (1981) 122 Cal.App.3d 788, in which case the Court of Appeal clarified that the delayed discovery rule requires the identification of a specific injury or illness directly attributable to the incident, not merely a realization of legal implications after the event, such as emotional regret or generalized psychological distress. (*Id.* at 7:25-28.)

Opposition

Plaintiffs argue that the JOTP fails because the date of the "last act" for the purposes of statute of limitations cannot be determined from the face of the FAC, because each Plaintiff alleges delayed discovery, and because the motion itself is procedurally defective. (Opposition, 2:8-12.) They argue that the motion is procedurally defective because Foppoli does not provide any explanation or analysis of the various causes of action, but simply states that all of the claims brought by Jane Does #1, #2, and #3 are time-barred based on C.C.P. section 340.16. (*Id.* at 3:1-12.) Furthermore, Plaintiffs argue that some portions of the JOTP go beyond matters appearing on the FAC, i.e., deposition testimony that was not requested to be judicially noticed. (*Id.* at 3:13-28, 4:1-8.) Finally, Plaintiffs argue their sexual assault claims were timely filed and their claims are not time-barred based on the allegations in the FAC because: (1) the date of the "last act" does not appear in any of the Plaintiffs' allegations in the FAC; (2) the delayed discovery doctrine because the Plaintiffs either did not at the time understand the legal implications of Foppoli's sexual assault alleged in the FAC or otherwise argue that it is for a trier of fact to determine whether the facts alleged are reasonably or with sufficient particularity to constitute delayed discovery. (*Id.* at pp. 4-8.) Should the Court however find that Plaintiffs' allegations are not sufficient, Plaintiffs request leave to amend. (*Id.* at 8:7-22.)

Reply

In the Reply brief, Foppoli argues that the JOTP is not procedurally defective because Jane Does #1, #2, and #3 only allege sexual assault and battery, violation of the Bane Civil Rights Act, violation of the Ralph Act, gender violence, and intentional infliction of emotional distress against Foppoli in the FAC, all of which relate back to C.C.P. section 340.16 which section allows revival of sexual assault claims from the past that are otherwise time-barred. (Reply, 2:11-26.) Foppoli also argues that the JOTP does not go to facts beyond the motion or FAC because the essential information referenced in the JOTP central to the claims against which the motion was brought are contained in the FAC. (*Id.* at 3:3-28, 4:1-16.) Foppoli reaffirms argues made in the JOTP regarding the delayed discovery rule, and requests that the Court grant the motion without leave to amend because Plaintiffs cannot reasonably cure the defects. (*Id.* at pp. 4-10.)

Application

As a preliminary matter, the Court will not consider the deposition testimony referenced in the JOTP as that was neither requested to be judicially noticed nor contained on the face of the FAC. The Court finds that based on the allegations in the FAC, it is uncertain whether the "last act" causing any injury or illness to Jane Does #1, #2, or #3 occurred after 2009. Due to that, it is unclear whether the general regret or emotional distress Plaintiffs allege they continued to feel years later satisfy the delayed discovery rule. Jane Doe #1 alleges that she did not understand the legal implications of Foppoli's sexual assault until 2021. She did not allege that this was the same time

that she suspected on a factual basis that something wrong had been done to her, because her other allegations stated in support of her claims point to otherwise. Jane Does #2 and #3 alleged that in the immediate aftermath of the sexual assault they experienced, they felt violated, sick, shocked, and other negative emotions. These allegations in the FAC suggest that they suspected on a factual basis that something wrong had been done to them immediately after the assaults occurred and do not reference any other injury or illness that they discovered afterwards.

Based on the foregoing, the Court will grant Foppoli's motion for JOTP, but as the Court finds there may be a reasonable possibility to cure the defects regarding the "last act" or illness or injury that may have occurred to Jane Does #1, #2, and #3 within the timeframe allowed by revival which as of yet cannot be determined on the face of the FAC.

CONCLUSION

Foppoli's motion is **GRANTED with leave to amend**. Foppoli shall submit a written order on this motion to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

8. SCV-273331, Barragan v. American Honda Motor Co. Inc.

Plaintiff Yesenia Barragan ("Plaintiff") filed the complaint (the "Complaint") in this action against defendants American Honda Motor Co., Inc., ("Defendant" or "Manufacturer"), and Does 1-10. The Complaint contains causes of action for: 1) breach of express warranty through failure to repair under the Song-Beverly Consumer Warranty Act, Civ. Code § 1790 et seq. (the "Act") (Civ. Code § 1793.2); and 2) fraudulent inducement – concealment.

This matter is on calendar for the motion by the Defendant for summary adjudication of Plaintiff's fraudulent concealment cause of action pursuant to Cal. Code Civ. Proc. ("CCP") § 437(c). Plaintiff has requested that this matter be either denied or continued under CCP § 437c(h).

I. Governing Law

Summary judgment or adjudication "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CCP § 437c(c). All evidence and inferences drawn reasonably drawn therefrom must be viewed in the light most favorable to the party opposing summary adjudication. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843 ("*Aguilar*").

A moving defendant meets its initial burden to show that one or more elements of a cause of action "cannot be established" (CCP § 437c(p)(2)) by presenting evidence that, if uncontradicted, would constitute a preponderance of evidence that an essential element of the plaintiff's case cannot be established. *Aguilar, supra*, 25 Cal.4th at 851; *Kids Universe v. In2Labs* (2002) 95 Cal.App.4th 870, 879. Alternatively, a defendant may show that there is a "complete defense" to a cause of action. CCP § 437c(p)(2). To show a complete defense, a defendant must present admissible evidence of each essential element of the defense upon which it bears the burden of proof at trial. *See, e.g. Anderson v. Metalclad Insulation Corp.* (1999) 72 Cal.App.4th 284, 289. A defendant cannot base

its “showing” on the plaintiff’s lack of evidence to disprove its claimed defense. *Consumer Cause, Inc. v. SmileCare* (2001) 91 Cal.App.4th 454, 472.

A moving party does not meet its initial burden if some “reasonable inference” can be drawn from the moving party’s own evidence which creates a triable issue of material fact. *See, e.g. Conn v. National Can Corp.* (1981) 124 Cal.App.3d 630, 637; *Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 840.

If a defendant meets its initial burden to show a “complete defense,” the burden shifts to the plaintiff to provide sufficient evidence to raise a triable issue of fact as to the defense asserted. CCP § 437c(p)(2). *Consumer Cause, Inc.*, 91 Cal.App.4th at 468. An issue of fact exists if “the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof.” *Aguilar*, 25 Cal.4th at 845.

“When a party makes a good faith showing by affidavit demonstrating that a continuance is necessary to obtain essential facts to oppose a motion for summary judgment, the trial court must grant the continuance request. The affidavit is required to show that (1) the facts to be obtained are essential to opposing the motion; (2) there is reason to believe such facts may exist; and (3) the reasons why additional time is needed to obtain [or discover] these facts.” *Braganza v. Albertson's LLC* (2021) 67 Cal.App.5th 144, 152 (internal quotations and citations omitted).

II. Analysis

This is the second time this matter has come before the Court for Defendant’s motion for summary adjudication. The matter was previously continued from December 4, 2024 so that the parties could effectuate the agreed upon depositions of Defendant’s Person Most Qualified (“PMQ”) on various subjects.

To quote the Court’s December 4, 2024 order:

The Court finds inadequate basis to deny the motion based on CCP § 437c(h). However, the Court does note several pertinent facts raised by the Plaintiff relevant to continuing the motion. The factors for the continuance being “virtually mandated” are met here. *Bahl v. Bank of America* (2001) 89 Cal.App.4th 395, 398-399.

Defendant’s motion is predicated in part on showing that Plaintiff “cannot establish” elements of her fraudulent concealment cause of action. However, this is not the full extent of the Defendant’s burden at summary adjudication. Defendant must show “the plaintiff cannot establish at least one element of the cause of action by showing that the plaintiff does not possess, and cannot reasonably obtain, needed evidence: The defendant must show that the plaintiff *does not possess* needed evidence, because otherwise the plaintiff might be able to establish the elements of the cause of action; the defendant must also show that the plaintiff *cannot reasonably obtain* needed evidence, because the plaintiff must be allowed a reasonable opportunity to oppose the motion (Code Civ. Proc., § 437c, subd. (h)).²²” *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 854 (emphasis original). Defendant has produced evidence that Plaintiff does not currently have evidence to support this

cause of action. Plaintiff requests that the Court continue the matter for depositions to be performed. Given that Defendant's burden includes showing that Plaintiff cannot reasonably obtain the necessary evidence, continuing the matter for Plaintiff to complete the necessary discovery appears to be necessary. The facts at issue appear essential to showing the necessary elements of the fraudulent concealment cause of action.

As to whether such facts may exist, the Court notes that Defendant presents no evidence (such as a declaration or deposition testimony) attempting to affirmatively disprove Plaintiff's cause of action, instead relying on Plaintiff having not yet obtained evidence as to this issue. It appears reasonable to say that the facts *may* exist.

The continuance here also appears necessary for Plaintiff to have adequate opportunity for discovery into issues raised by Defendant in this motion. Plaintiff filed a motion to compel further deposition testimony which was to be heard by the Court on October 24, 2024. Defendant stipulated to producing a witness after the motion had already been filed, obviating the need for a hearing, but had, as of the date of the opposition, not produced a witness as to all categories at issue. The reason for additional time for Plaintiff to muster an opposition appears adequate.

These considerations continue to be applicable. As was previously noted, Plaintiff had a pending motion to compel production of Defendant's PMQ on calendar, but dropped it due to agreement of the parties that a PMQ would be produced. After the last continuance of this motion, Defendant unilaterally served a cross-notice for a deposition already scheduled to occur within another case, *Andy Meraz v. American Honda Motor Co., Inc.*, Los Angeles Superior Court Case No. 22AHCV01340 ("*Meraz*"). See Declaration of Timothy Lupinek filed 2/13/2025 ("Lupinek Decl."), ¶ 4. Plaintiff asserts that some of the necessary depositions occurred over multiple days, on dates ranging between December 13, 2024 and February 10, 2025. Lupinek Decl. ¶ 5. There is a protective order within *Meraz* which stops Plaintiff from being able to introduce this evidence absent a stipulation. *Id.* at 8. As of February 13, 2025, Defendant has not signed and returned Plaintiff's proposed stipulation for this evidence to be allowed outside of the *Meraz* case, despite their unilateral cross-notice of the deposition. *Id.* at 7. Defendants have still not produced a PMQ for matters 1-28, 38 and 49-53 in Plaintiff's notice of deposition. Lupinek Decl. ¶ 10 (misabeled 6).

On review of the record, and the Court's prior order, it appears appropriate to allow one final continuance so the parties may effectuate the agreed upon discovery. Plaintiff appears to have some of what was agreed to, but Defendant has produced it in such a way that Plaintiff may not proffer it to this Court. This is a problematic delay that continues to impact Plaintiff's ability to muster a complete opposition, and the Court's docket. Defendant's continued failure to sign the stipulation to allow the already taken cross-noticed deposition or to produce the agreed upon PMQ for the remaining subjects may serve as grounds for the Court to deny the motion under CCP § 437c(i).

All three factors being met, a continuance is necessary. Therefore, this matter is CONTINUED to June 11, 2024 at 3:00 pm in Department 19.

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