TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, April 8, 2026 3:00 pm
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
MeetingID: 160-421-7577
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PLEASE NOTE: The Court's Official Court Reporters are "not available" within the meaning of California Rules of Court, Rule 2.956, for court reporting of civil cases.

1. 24CV00905, JPMorgan Chase Bank NA v. Botsford

Plaintiff JP Morgan Chase Bank, N.A.("Plaintiff") filed the complaint in this action against defendant Amanda Botsford ("Defendant"), with causes of action related to a claim for common counts. This matter is on calendar for Plaintiff's motion pursuant to pursuant to Cal. Code Civ. Proc. ("CCP") § 664.6 and the settlement agreement filed August 5, 2024 (the "Agreement") to enter judgment in the case in the amount of $9,787.05, as Defendant has defaulted on the agreement. There is no opposition to the motion.

As an initial matter, there is no proof of service in the file reflecting the Plaintiff has served the above motions on the Defendant with the hearing date. Plaintiff has served the moving papers, but failed to subsequently serve notice of the hearing date after it was assigned by the Court. See Code of Civil Procedure §§ 1005, 1010; Cal. Rule of Court, Rule 3.1300(a); Sonoma Court Local Rule 5.1 (B). The proof of service was required to be filed by April 1, 2026, and no proof of service is on file. Cal. Rule of Court, Rule 3.1300(c). The motion not being served in accordance with CCP § 1010, there is no cause to consider the merits. The motion is dropped from calendar.

2-3. 24CV02169, Habtom v. The Permanente Medical Group

Plaintiff, Sabir Habtom ("Plaintiff"), has filed the currently operative first amended complaint (the "FAC") against defendants The Permanente Medical Group ("TPMG"), Allied Universal Security Services Universal Protection Service, LLP ("Allied"), Rachel Brauer ("Brauer"), Kent Pena ("Pena", together with all other defendants, "Defendants"), and Does 1-20 with seven causes of action.

This matter is on calendar for the motion by Plaintiff to compel responses from Brauer to compel further responses to form interrogatories ("FIs") under CCP § 2030.300. The motion is **DENIED** as untimely.

I. Procedural Issues

Plaintiff appears to have erroneously filed the same motion to compel further responses three times, on December 1, 2025; December 10, 2025; and December 12, 2025. Each were filed by the clerk's office. The original hearing of March 26, 2026, was set-off by the version of the motion filed December 1, 2025, and was later dropped from calendar at the request of Plaintiff. The present hearing date was triggered by the subsequent filing of the motion on December 10, 2025. Given that the motions remaining on the Court's calendar appear indistinguishable in substance, the Court only considers the motion once.

The Court also notes that due to the provision of supplemental responses, Brauer has excised Plaintiff's reasoning for providing further responses in Brauer's version of the separate statement. The purpose of a separate statement is for the Court to have a "document filed and served with the discovery motion that provides all the information necessary to understand each discovery request and all the responses to it that are at issue." Cal. Rule of Court, Rule 3.1345 (c). Removing the responses of the other party frustrates this purpose, even if supplemental responses have been provided after the motion was filed.

II. Governing Law

A. Discovery Generally

The right to discovery is generally liberally construed. *Williams v. Superior Court* (2017) 3 Cal.5th 531, 540. "California law provides parties with expansive discovery rights." *Lopez v. Watchtower Bible & Tract Society of N.Y., Inc.* (2016) 246 Cal.App.4th 566, 590-591. Specifically, the Code provides that "any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." CCP § 2017.010; see also, *Garamendi v. Golden Eagle Ins. Co*. (2004) 116 Cal.App.4th 694, 712, fn. 8. ("For discovery purposes, information is relevant if it 'might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement…") See *Lopez, supra,* 246 Cal.App.4th at 590-591, citing *Garamendi, supra,* 116 Cal.App.4th at 712, fn. 8. "Admissibility

is not the test and information[,] unless privileged, is discoverable if it might reasonably lead to admissible evidence." *Id*. "These rules are applied liberally in favor of discovery, and (contrary to popular belief), fishing expeditions are permissible in some cases." *Id.* Good cause can be met through showing specific facts of the case and the relevance of the requested information. *Associated Brewers Distributing Co. v. Superior Court of Los Angeles County* (1967) 65 Cal.2d 583, 586–587. "(T)he good cause which must be shown should be such that will satisfy an impartial tribunal that the request may be granted without abuse of the inherent rights of the adversary. There is no requirement, or necessity, for a further showing." *Greyhound Corp. v. Superior Court In and For Merced County* (1961) 56 Cal.2d 355, 388. As the right to discovery is liberally construed, so too is good cause. *Id* at 377-378. Generally, failure to assert a discovery objection in a response waives that objection later. *Stadish v. Superior Court* (1999) 71 Cal.App.4th 1130, 1140.

B. Interrogatories

Regarding interrogatories, 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." 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).

Upon receipt of a response, the propounding party may move to compel further response if it deems that an answer to a particular interrogatory is evasive or incomplete, an exercise of the option to produce documents under Section 2030.230 is unwarranted or the required specification of those documents is inadequate, or an objection to an interrogatory is without merit or too general. CCP §2030.300(a). Any motion to compel further answers to interrogatories must be filed <u>within 45 days</u> of receipt of response unless the parties agree to extend the time in writing. CCP § 2030.300 (c). When such a motion is filed, the Court must determine whether responses are sufficient under the Code and the burden is on the responding party to justify any objections made and/or its failure to fully answer the interrogatories. *Coy v. Sup. Ct.* (1962) 58 Cal.2d 210, 220-21; *Fairmont Ins. Co. v. Sup. Ct.* (2000) 22 Cal.4th 245, 255.

C. Sanctions

CCP § 2030.300(d) (relating to interrogatories) provides 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." There is no requirement that the failure to comply with discovery be willful for the court to impose monetary sanctions. *Ellis v. Toshiba America Information Systems, Inc.* (2013) 218 Cal.App.4th 853, 878. For the court to order sanctions against an attorney, the Court must find that the attorney advised their client to engage in discovery misconduct. *Kwan Software Engineering, Inc. v. Hennings* (2020) 58 Cal.App.5th 57, 81. Additionally, the motion must

advise the attorney that joint and several liability against the attorney is sought for the sanctions. *Blumenthal v. Superior Court* (1980) 103 Cal.App.3d 317, 319.

III. Analysis

A. Timeliness of Motion

Plaintiff served FIs to Brauer on August 25, 2025, and Brauer provided responses on September 26, 2025. Karpilow Declaration, ¶ 2-3, Ex. 1-2. In subsequent communications, the parties agreed to extend Plaintiff's motion to compel deadline to December 1, 2025. Karpilow Decl. ¶4, Ex. 2). No further discovery extensions appear evident. Defendant did not provide supplemental responses by the motion deadline and Plaintiff then filed a discovery motion that same day. However, the December 1, 2025, motion is defective as it was missing the required separate statement. CRC Rule 3.1345(a). On December 10, 2025, Plaintiff re-filed the discovery motion now including a separate statement and a truncated attorney declaration which is clearly dependent on the declaration filed on December 1st. Thereafter, Plaintiff re-filed again the same discovery motion on December 12, 2025. It is unclear what prompted three separate discovery motion filings all to the same discovery at issue, form interrogatories, set one. Potentially realizing this error, Plaintiff's counsel then withdrew the first motion which contained the full attorney declaration and exhibits and had a hearing date of March 26, 2026, and kept the other two motions on calendar.

In the Court's review of all three motions, it could not find any extension of time agreed to by the parties other than the December 1, 2025, deadline. Although Plaintiff did file a motion on this date it was incomplete and therefore it cannot serve to satisfy compliance with a filing deadline. *Golf & Tennis Pro Shop, Inc. v. Superior Court* (2022) 84 Cal.App.5th 127, 139, see also fn. 8, fn. 9. Plaintiff's subsequent motions contain no evidence that the parties agreed to extend the deadline to December 10th and 12th, therefore these filings are considered untimely. The Court was provided with no additional evidence that would effectively prolong the motion deadline and on that basis the motion is now DENIED.

IV. Conclusion

Plaintiff's Motion to Compel Further Responses to Form Interrogatories, Set One, is deemed untimely filed and is therefore **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. 25CV00234, Fleming v. Mitchell

Plaintiff Matthew Fleming, both individually and as guardian ad litem for Montana Love Fleming (together "Plaintiffs"), filed the complaint (the "Complaint") against defendants Jasmine Mitchell ("Defendant"), Colin James Brodeur (dismissed on January 6, 2026), along with Does 1-10, arising out of an alleged unlawful eviction. This matter is on calendar for Defendant's motion to set aside her default under CCP § 473(d) and to quash service of

summons under Code of Civil Procedure ("CCP") § 418.10(a)(1) on the grounds that the Court lacked personal jurisdiction over Defendant because the summons and complaint were never properly served. The motion is GRANTED.

I. Governing Law

A. Set Aside

"A judgment is void for lack of jurisdiction of the person where there is no proper service of process on or appearance by a party to the proceedings." *David B. v. Superior Court* (1994) 21 Cal.App.4th 1010, 1016. "In the absence of a voluntary submission to the authority of the court, compliance with the statutes governing service of process is essential to establish th[e] court's personal jurisdiction over a defendant." *Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1439; see also, Code Civ. Proc. §410.50 ["the court in which an action is pending has jurisdiction over a party from the time summons is [properly] served on him…"]; *Am. Express Centurion Bank v. Zara* (2011) 199 Cal.App.4th 383, 387 ["[C]ompliance with the statutory procedures for service of process is essential to establish personal jurisdiction."]. Thus, without valid service, the court lacks personal jurisdiction over a defendant. Code Civ. Proc. §418.10(a)(1); see also, *Ruttenberg v. Ruttenberg* (1997) 53 Cal.App.4th 801, 808; Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2010) § 4:413, p. 4–63.

A judgment derived from an action which was never properly served on a defendant is not merely voidable, but void. *City of Los Angeles v. Morgan* (1951) 105 Cal.App.2d 726, 730. "(A) judgment shown by evidence to be invalid for want of jurisdiction is a void judgment or at all events has all the attributes of a void judgment." *Id.* at 732–733. Where a defendant establishes that they have not been served as mandated by the statutory scheme, the court never obtained jurisdiction over the defendant and the resulting judgment is void as violating fundamental due process. *County of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215, 1227. "Where a person has been deprived of property in a manner contrary to the most basic tenets of due process, 'it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits.'" *Peralta v. Heights Medical Center, Inc.* (1988) 485 U.S. 80, 86–87, quoting *Coe v. Armour Fertilizer Works* (1915) 237 U.S. 413, 424. A judgment obtained through extrinsic fraud may be set aside either by filing a separate suit or by a motion made within the action in which a default resulting from the fraud is taken. *Munoz v. Lopez* (1969) 275 Cal.App.2d 178, 181. This motion is one made in equity, may be made at any time provided the party acts with diligence upon learning the relevant facts. *Trackman v. Kenney* (2010) 187 Cal.App.4th 175, 181.

B. Motions to Quash

The Code of Civil Procedure states that "[a] defendant, on or before the last day of his or her time to plead or within any further time that the court may for good cause allow, may serve and file a notice of motion... [t]o quash service of summons on the ground of lack of jurisdiction of the court over him or her." CCP §418.10(a)(1).) Proper in state methods of service of summons for general civil actions are delineated under CCP §§ 415.10, 415.20, 415.30, and 415.50. In the

case of a defendant sued in his or her individual capacity, service may only be made on a person other than the individual defendant if that person has been authorized by the defendant to receive service of process on his or her behalf. CCP § 416.90.

Furthermore, "[i]n the absence of a voluntary submission to the authority of the court, compliance with the statutes governing service of process is essential to establish th[e] court's personal jurisdiction over a defendant." *Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1439; see also, Code Civ. Proc. §410.50 ["the court in which an action is pending has jurisdiction over a party from the time summons is [properly] served on him…"]; *Am. Express Centurion Bank v. Zara* (2011) 199 Cal.App.4th 383, 387 ["[C]ompliance with the statutory procedures for service of process is essential to establish personal jurisdiction."]. Thus, without valid service, the court lacks personal jurisdiction over a defendant. Code Civ. Proc. §418.10(a)(1); see also, *Ruttenberg v. Ruttenberg* (1997) 53 Cal.App.4th 801, 808; Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2010) § 4:413, p. 4–63.

"When a defendant argues that service of summons did not bring him or her within the trial court's jurisdiction, the plaintiff has 'the burden of proving the facts that did give the court jurisdiction, that is the facts requisite to an effective service.'" *Am. Express Centurion Bank, supra,* 199 Cal.App.4th at 387, quoting *Coulston v. Cooper* (1966) 245 Cal.App.2d 866, 868; see also, *School Dist. of Okaloosa County v. Superior Court* (1997) 58 Cal.App.4th 1126, 1131 [When a defendant challenges jurisdiction by bringing a motion to quash, the burden is on the plaintiff to prove the existence of jurisdiction by proving, by a preponderance of evidence, the facts requisite to an effective service.]; *Dill, supra,* 24 Cal.App.4th at 1439-1440.

A defendant is under no duty to respond in any way to a defectively served summons. It makes no difference that defendant had actual knowledge of the action. Such knowledge does not dispense with statutory requirements for service of summons. *Kappel v. Bartlett* (1988) 200 Cal.App.3d 1457, 1466; *Ruttenberg v. Ruttenberg* (1997) 53 Cal.App.4th 801, 808.

II. Defendant Raises Adequate Basis to Quash

Defendant brings the instant motion to vacate default and quash service of summons averring that the Complaint was not properly served, and that she had no notice of the suit. Plaintiff opposes, producing evidence in the form of a declaration from the registered process server who completed the proof of service, and the declaration of Plaintiff's counsel regarding the procedural steps taken thereafter.

Defendant offers no further evidence than her flat denial that service occurred. The Court notes that default was entered on July 3, 2025, and that Defendant's motion was filed on February 4, 2026. However, Defendant's motion is couched under CCP § 473(d), and as such no time limit applies. Motions for failure to provide service of the action do not have the time limit requirements applied to other forms of set aside, as the failure to serve results in a lack of jurisdiction over the defendant, and any action taken thereon is therefore void.

Plaintiff's proof of service avers that Plaintiff served the Complaint on June 1, 2025. The proof of service reflects that it was personal service on the Defendant. The declaration of the process server provides details regarding the interaction that led to service. See Plaintiff's Opposition, pg. 3, Declaration of Joe McNeany. The process server recounts that he knocked on the door of the residence (which Defendant lists as her address on this motion) and received a response from a female voice from the second story window. When he asked "Jasmine, is it you?", the person responded. "What do you want?". *Id*. at 5. He identified that he had legal documents for service, and when she refused to come to the door and asked that they be left at the door, he drop served them and told her that she had been served. *Id*. at 5-6. He specifically admits that he did *not* mail serve the documents because he believed that service was personal. *Id*. at 6.

The Court generally finds the *factual* contentions within the process server's declaration credible. The Court reviews the account provided to determine whether such service meets the standards for service under the Code of Civil Procedure. However, the Court does not find that the contention that the person to whom the process server spoke is Defendant as being one of fact. The declaration concedes this in a manner, noting that the person he spoke to "responded as if she were defendant". See Plaintiff's Opposition, pg. 4, Declaration of Joe McNeany, ¶ 7. This is an assertion of the process server's assumption based on the flow of conversation. While that assumption might have been reasonable to derive from the conversation, it is nonetheless not factual. Beyond that, the declaration provides no factual basis to conclude that the voice in the window was that of Defendant besides the voice being female. The declaration does not aver that the process server saw the person at issue, no physical description is given, nor a description of the voice besides its gender. Other than implication, there is no indication that the voice did not belong to a co-resident. While the declaration proffers that a car was present at the property, no description of the car is provided. The Court has no facts offered by Plaintiff with which to probe Defendant's contention that she was not served personally.

Plaintiff provides no authority showing that such service is sufficient under the statute. Two cases appear instructive. First, *Khourie, Crew & Jaeger v. Sabek, Inc.* (1990) 220 Cal.App.3d 1009, deals with the service of a corporate defendant through a locked office door. When the process server attempted to serve the complaint and found it locked, a member of the staff within refused to unlock the door. *Id*. at 1013-1014. The process server nonetheless drop served the documents at the door and completed mailing of the complaint in compliance with substitute service. *Ibid*. The trial court found service sufficient. *Ibid*. The court of appeal affirmed that such service was sufficient, because defendant was not allowed to defeat service by making it impossible, and the process undertaken was done so in a way that made actual notice probable. *Ibid*.

Second, *Stafford v. Mach* (1998) 64 Cal.App.4th 1174, is particularly illuminative. In that case, defendant was drop-served at his home after he refused to identify himself, claimed that he was not the defendant and did not know the defendant, and refusing to take service. *Id*. at 1178. The process server thereafter mail served the documents and filed a proof of service averring substitute service. *Ibid*. Defendant provided the documents to his insurer, told his insurer that he was not personally served, and accordingly no answer was filed on his behalf. *Ibid*. Default was entered against defendant thereafter. *Id*. at 1179. Insurer moved to set aside the default, and the trial court granted that motion, in spite of finding that service was proper. *Id*. at 1183. The court

of appeal reversed, finding that there was substantial evidence service was proper based on the actual delivery of documents, regardless of the proof of service reflecting substitute service instead of personal service. *Ibid*. The trial court's finding that service was proper meant that insurer was required to satisfy the requirements under CCP § 473(b), and its failure to do so meant that granting set aside was improper.

The notable distinction in both of these cases from the instant case is that in each of the cases cited, the plaintiff undertook substitute service under CCP § 415.20 when the identity of the receiving party was in doubt. It is accurate to state that the burden here lies with Plaintiff, and that until Plaintiff makes a prima facie showing, Defendant may "stand mute". *Floveyor Internat., Ltd. v. Superior Court* (1997) 59 Cal.App.4th 789, 795. Absent some factual showing that would allow the Court to reasonably conclude that the served individual was Defendant, the method of service required to be effectuated by the facts at bar appears to be substitute service, and not personal service as averred in the proof of service filed with the Court.

Therefore, Plaintiff has not made a prima facie showing that the service that occurred was sufficient to be personal service. Two defects are apparent that each mandate granting Defendant's motion as a result. First, Plaintiff never mail served the Complaint after the drop service occurred. This means that unlike *Stafford*, Plaintiff cannot rely on substitute service as a failsafe against the insufficiency of personal service. Second, Plaintiff requested default a mere 32 days after "service". The subsequent service of the default notices by mail cannot cure these defects in the initial service of summons, as the Defendant is under no obligation to respond to a suit where service was not properly effectuated. *Kappel v. Bartlett* (1988) 200 Cal.App.3d 1457, 1466; *Ruttenberg v. Ruttenberg* (1997) 53 Cal.App.4th 801, 808.

The motion to set aside default and quash service of summons is **GRANTED.**

III. Conclusion

Based on the foregoing, the motion to set aside default and quash service of summons is **GRANTED.**

Defendant 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).

5. 25CV00471, Holley v. Yates

Plaintiffs Amber Holley ("Plaintiff") filed the complaint (the "Complaint") against defendants United Cerebral Palsy of the North Bay ("UCP"), Cypress School ("Cypress"), Nathan Yates ("Yates", together with Cypress and UCP, "Defendants") and Does 1-25 for causes of action arising out of termination of Plaintiff's employment. The Complaint contains causes of action for wrongful termination in violation of public policy, violation of Labor Code ("LC")§ 1102.5, breach of the covenant of good faith and fair dealing, and intentional infliction of emotional distress. This matter is on calendar for the motion by Plaintiff to compel responses to requests for production of documents ("RPODs") under Code of Civil Procedure ("CCP") § 2031.300, to compel further responses to special interrogatories ("SIs") under CCP § 2030.290.

As an initial matter, there is no proof of service in the file reflecting that Plaintiff has served the above motions on the Defendants with the hearing date. No other documents are reflected, nor is there a proof of service provided showing that the Reply was served. Parties are required to provide notice of a motion, including the hearing date assigned by the Clerk. See Code of Civil Procedure §§ 1005, 1010; Cal. Rule of Court, Rule 3.1300(a); Sonoma Court Local Rule 5.1 (B). The proof of service was required to be filed on April 1, 2026, and no proof of service is on file. Cal. Rule of Court, Rule 3.1300(c). While Defendant has filed a non-opposition, it only reflects its own service, and the Plaintiff's service of responses. No sufficient notice of the hearing is apparent from those documents. The motion not being served in accordance with CCP § 1010, there is no cause to consider the merits.

The motion is dropped from calendar.

6. 25CV02868, Vasquez Martinez v. Strides Riding Academy LLC

Plaintiff Daniel Vasquez Martinez's ("Plaintiff") filed the second amended complaint (the "SAC") against defendants Timothy Grace, Margaret Clancy, Strides Riding Academy LLC, and Strides Equestrian Foundation (together "Defendants") and Does 1-10 for claims arising out of alleged violations of labor law. The matter is on calendar for the demurrer to the SAC filed by Defendants under Code of Civil Procedure ("CCP") § 430.10.

The instant Demurrer was filed on December 10, 2025. On March 17, 2026, Plaintiff filed a third amended complaint ("TAC") with leave of the court. Therefore, the Demurrer is rendered **MOOT**. It is accordingly dropped from calendar.

7. SCV-269230, Fidelity National Title Company v. McCarty

Plaintiff Fidelity National Title Company ("Fidelity" or "Plaintiff") initiated this action on August 6, 2021 filing the interpleader action for disbursement of escrow funds against defendants Heidi Darling ("Darling"), Debbie Darlene Shimon ("Shimon"), William McCarty, Jr. ("McCarty, Jr." or "Cross-Complainant") and Does 1-10, related to McCarty, Jr.'s objection to the sale of the property located at 6881 Day Road, Windsor, California (the "Property"). McCarty, Jr. has in turn filed the currently operative first amended cross-complaint (the "FAXC") against Fidelity, Anthony Haberthur ("Haberthur"), Shimon, Sherri Cooper Johnston ("Johnston"), Darling (all together "Cross-Defendants") Richard Carnation (now dismissed), and Does 1-20 alleging causes of action arising out of the sale of the Property.

This matter is on calendar for McCarty, Jr.'s Motion for Leave a Second Amended Cross-Complaint pursuant to Cal. Code Civ. Proc. ("CCP") § 473. The Motion is **DENIED.**

I. Governing Authorities

The California Code of Civil Procedure provides that a court "may in the furtherance of justice, and on any terms as may be proper" allow a party to amend any pleading to correct a mistake. CCP § 473(a)(1). Likewise, the court may "in its discretion, after notice to the adverse party,

allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars". CCP § 473(a)(1). "Any judge, at any time before or after commencement of trial, in the furtherance of justice, and upon such terms as may be proper, may allow the amendment of any pleading or pretrial conference order." CCP § 576. The general rule is "liberal allowance of amendments." *Nestle v. Santa Monica* (1972) 6 Cal.3d 920, 939; see *Lincoln Property Co., Inc. v. Travelers Indemnity Co.* (2006) 137 Cal.App.4th 905, 916. The "policy of great liberality" applies to amendments "at any stage of the proceedings, up to and including trial." *Magpali v. Farmers Group* (1996) 48 Cal.App.4th 471, 487. "Absent a showing of prejudice to the adverse party, the rule of great liberality in allowing amendment of pleadings will prevail." *Board of Trustees v. Superior Court* (2007) 149 Cal. App.4th 1154, 1163.

Absent a showing of prejudice, delay alone is not a basis for denial of leave to amend. *Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 563. "(I)t is irrelevant that new legal theories are introduced as long as the proposed amendments relate to the same general set of facts." *Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048 [internal citations omitted].

It is within the Court's discretion to deny leave to amend where the amendment has been pursued in a dilatory manner, and that delay has prejudiced other parties. Prejudice exists where the amendment would result in the delay of trial, where there has been a critical loss of evidence, where amendment would add substantially to the costs of preparation, or where it would substantially increase the burdens of discovery. *Magpali v. Farmers Group, Inc.* (1996) 48 Cal.App.4th 471, 486-488; see *P & D Consultants, Inc. v. City of Carlsbad* (2010) 190 Cal.App.4th 1332, 1345; *Fisher v. Larsen* (1982) 138 Cal.App.3d 627, 649.

Great liberality applies to amendment unless the amendment raises new and substantially different issues from those already pleaded. *McMillin v. Eare* (2021) 70 Cal.App.5th 893, 910. In exercising its discretion over amendment, the court will consider whether there is a reasonable excuse for the delay, whether the change relates to facts or legal theories, and whether the opposing party will be prejudiced by the amendment. *Duchrow v. Forrest* (2013) 215 Cal.App.4th 1359, 1378. The underlying merits of the proposed cause of action amendments are not relevant to determining whether amendment is appropriate, as long as they relate to the same general set of facts, as the amended pleadings may be attacked by demurrer, motion for judgment on the pleadings, or other similar proceedings. *Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048. Denying leave to amend due to failure to sufficiently plead a cause of action would be most appropriate where the defect cannot be cured by further amendment. *California Casualty Gen. Ins. Co. v. Superior Court* (1985) 173 Cal.App.3d 274, 280–281; disapproved of on different grounds by *Kransco v. American Empire Surplus Lines Ins. Co.* (2000) 23 Cal.4th 390. The exception would lie where a plaintiff makes contradictory pleadings. "As a general rule a party will not be allowed to file an amendment contradicting an admission made in his original pleadings. If it be proper in any case, it must be upon very satisfactory evidence that the party has been deceived or misled, or that his pleading was put in under a clear mistake as to the facts." *Brown v. Aguilar* (1927) 202 Cal. 143, 149. Furthermore, allowing plaintiff amendment in the face of a defendant's summary judgment motion is "patently unfair", as there is prejudice "by allowing [plaintiff] to present a 'moving target' unbounded by the pleadings." *Melican v. Regents of University of California* (2007) 151 Cal.App.4th 168, 176. This maxim does not apply where the summary judgment functions as a judgment on the pleadings, and "plaintiff has a good cause of action which is imperfectly pleaded…" *Ibid*.

While motions to amend a pleading are generally within the discretion of the court, it does

require that some showing be made which justifies the court's exercise of discretionary power. *Baxter v. Riverside Portland Cement Co.* (1913) 22 Cal.App. 199, 201. Though there is no statute requiring the filing of an affidavit, it is the burden of the moving party to place before the court such material to evidence that the ends of justice will be served through granting the motion. *Plummer v. Superior Court for Los Angeles County* (1963) 212 Cal.App.2d 841, 844. Any motion to amend must be accompanied by a supporting declaration stating the effect of the amendment, why the amendment is necessary and proper, when the changed facts were discovered, and the reasons why amendment was not made earlier. CROC, rule 3.1324 (b).

A. Supplemental Complaints

Amendment of a complaint is not the proper procedure for adding allegations which have occurred after the filing of the initial complaint, rather such allegations should be added through a supplemental complaint under CCP § 464. *Hebert v. Los Angeles Raiders, Ltd.* (1991) 23 Cal.App.4th 414, 426. However, the substance of a request, and not the title, is the proper measure of the sufficiency of a pleading. *Hutnick v. U.S. Fidelity & Guaranty Co.* (1988) 47 Cal.3d 456, 464, fn.6. 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.

II. Analysis

McCarty, Jr. requests leave to amend the FAXC to add new allegations against Darling and Shimon, and to excise claims against Fidelity and Cooper-Johnson which have been respectively adjudicated or settled. Shimon and Darling oppose the motion.

McCarty, Jr. has on two prior occasions requested leave of the Court to amend the FAXC, and each was denied. The first request for leave to amend was denied on May 7, 2025 due to procedural defects in McCarty, Jr.'s submission, as the proposed complaint was submitted without a required list of revisions, it was submitted without any supporting declaration as required by the Rules of Court, and the prejudice clear from the matter being heard on the same date as Fidelity's summary judgment motion. The Court did not make a finding at that time that the same prejudice applied to Darling.

The second motion for leave to amend was filed on June 26, 2025. On August 28, 2025, McCarty, Jr. filed an appeal of Fidelity's order granting summary judgment as to the FAXC. When the second motion for leave to amend was heard on September 10, 2025, the matter was subject to the appellate stay related to the FAXC, and as such the Court had no jurisdiction to allow McCarty, Jr. to amend the FAXC. The Court issued an order reflecting this and denying the motion on September 12, 2025 (the "September Order"). The Court nonetheless noted that the merits of the motion remained deficient. The Court found palpable prejudice in the new allegations and that tardiness of the motion constituted undue delay from the alleged facts, not sufficiently supported by any evidentiary declaration. McCarty, Jr. abandoned his appeal on October 17, 2025. The instant motion for leave to amend was not filed until December 15, 2025.

McCarty, Jr. raises the same arguments already tendered in support of the instant motion. He

opines that the FAXC has several matters that need to be clarified through amendment. He also asserts that he has relevant facts to adjudicate with Darling and Shimon, and accordingly liberal allowance of amendment should prevail. McCarty, Jr. asserts that there is no articulable prejudice to Cross-Defendants because he has been attempting to amend this pleading for almost a year and a half, and that his delay is not relevant due to the time between when the motion was filed and the upcoming trial date. While the motion was filed significantly before trial, the current trial date is nonetheless one month from the hearing on this motion. The Court addresses the weight of any undue delay further below.

First, the argument that the Cross-Defendants have been in possession of the proposed SAXC since early 2025, and therefore no additional discovery is required, is not persuasive for two reasons. First, Darling notes that McCarty, Jr.'s allegations within the SAXC have shifted over that period. Since the version of the proposed SAXC that was submitted with the second motion, there are entire causes of action which were undisclosed before this motion was brought. The provision of legally inoperative proposed pleadings with differences in allegations does not ameliorate the prejudice of the case's advanced age, or the fresh facts inserted.

However, even more concerning, normally that assessment would be based on McCarty, Jr.'s own designation of those matters which are "new". It is clear that McCarty, Jr. has failed to accurately relay what matters are new and different from the FAXC. Particularly, the Court notes that no breach of fiduciary duty claim was even present in the FAXC, and yet the proposed SAXC contains no highlighting designating that these are new allegations. The Court cannot regard McCarty, Jr.'s disclosure of new matters as accurate, and accordingly he has failed to provide the required statement of what allegations were added or deleted from a previous pleading. See Rule of Court, Rule 3.1324(a). This alone would be sufficient basis to deny the motion.

The oppositions do not help matters either. Shimon's opposition does not offer issues of significant substance when considering the question of leave to amend. Shimon argues several matters related to the merits of the allegations within the proposed SAXC. *Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048. As to Darling, the Court disapproves of Darling's ad hominem attack on the competence of McCarty, Jr.'s counsel. It fails to advance her position. Darling's other arguments in opposition have mixed success.

Darling also argues that this matter was already adjudicated in the Court's September ruling, and accordingly this is an untimely motion for reconsideration. This argument is initially attractive, but on further reflection fails to be persuasive. At the time the Court denied the prior motion, it had *no* jurisdiction to allow amendment of the operative complaint. It does not appear to follow that the Court could adjudicate the merits of the motion where it had no power to grant the motion. The lack of jurisdiction would likely preclude the Court from disposing of the motion on the merits. Darling provides no authority to the contrary.

However, the prior decision *is* indicative of the issues of both delay and prejudice. As Darling argues in opposition, this motion is *again* being heard a mere month before trial. McCarty, Jr. is correct that this stems in part from the Court's overloaded law and motion calendars. However, McCarty, Jr. provides no explanation for the nearly two-month delay between the dismissal of

his appeal and his filing of the instant motion. Moreover, the Court's prior reasoning for the untimeliness of the motion remains an accurate depiction of McCarty, Jr.'s undue delay in bringing claims reaching back to 2020.

Even more problematic, the Court is deeply concerned that McCarty, Jr. has provided the *exact same declaration that the Court found deficient in the September Order.* The declarations are identical in substance and have the same signature date. As was stated in that order:

> Second, McCarty has again failed to meet the evidentiary burdens necessary for this type of motion. Again, the declaration of Mr. Martel addresses the effect of the amendment and why the amendment is necessary and proper. However, that is only two of the four articulated requirements under the Rules of Court. McCarty, Jr.'s declaration opines about why he did not think the information was relevant when he learned it in 2020, or why he did not feel the information was clear in 2022. The declaration still fails to show the **when the facts giving rise to the allegations were discovered**. McCarty, Jr. must meet his evidentiary burden for the Court to have the power to allow amendment. At minimum, this supports a finding of undue delay, since McCarty was aware of the 2020 allegations since that time, and elected not to include them in his cross-complaint filed nearly two years later.

Having been provided with another opportunity to remedy this defect, McCarty, Jr. has clearly failed to do so. This analysis remains even more applicable given McCarty, Jr.'s additional delay in bringing this motion.

Moreover, *again*, McCarty, Jr. brings a motion which impermissibly conflates supplemental and amended complaints. Again, quoting from the September Order:

> Fourth, the motion is not exclusively one for amendment. McCarty, Jr. seeks to add some allegations which occurred after the filing of the original cross-complaint in this matter. McCarty, Jr. filed his cross-complaint on April 11, 2022. The PAXC contains allegations going to June 2022. PAXC ¶ 37. Procedurally, the instant motion is neither a motion for leave to amend, nor a motion to supplement the original complaint. A motion to amend should not allege facts which occur after the filing of the complaint. *Hebert v. Los Angeles Raiders, Ltd.* (1991) 23 Cal.App.4th 414, 426. Conversely, a motion to supplement the complaint should not seek to add causes of action. *Flood v. Simpson* (1975) 45 Cal.App.3d 644, 647. Here, McCarty, Jr. seeks both these remedies. The dual nature of these proposed allegations are illustrative of the prejudice in allowing amendment.

The same paragraph of the proposed SAXC submitted with this motion reflects the same defect.

Therefore, McCarty, Jr.'s motion to amend is **DENIED.**

Darling shall submit a written order for that motion to the court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b). Thereafter, Darling shall provide

notice of the orders per CCP § 1019.5.

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