

**TENTATIVE RULINGS  
LAW & MOTION CALENDAR  
Friday, May 29, 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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**1-3. 25CV04069, Nesbitt v. Whitey’s TBA, Inc.**

Plaintiff Reta Nesbitt (“Plaintiff”) filed the complaint (the “Complaint”) in this action against defendants Whitey’s TBA, Inc. (“Defendant”) and Does 1-100. The Complaint contains causes of action related to alleged violations of the Fair Employment and Housing Act (“FEHA”) and other employment law violations.

This matter is on calendar for Plaintiff’s Motions to Compel Further Responses from Defendant to form interrogatories (“FIs”), requests for production of documents (“RPODs”), and requests for admission (“RFAs”) pursuant to CCP § 2030.300(d) (relating to interrogatories), CCP § 2031.310 (relating to RPODs), and CCP §2033.290(d) (relating to requests for admission). The motions are MOOT. The requests for sanctions thereon are GRANTED in part.

I. 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.

Motions to compel further must generally be filed within 45 days of verified responses, but where responses are a combination of objections and unverified substantive responses, that time period does not begin to run until verifications are served. *Golf & Tennis Pro Shop, Inc. v. Superior Court* (2022) 84 Cal.App.5th 127, 134.

## 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 within 45 days 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. RFAs

Regarding requests for admission, CCP § 2033.010 provides that “[a]ny party may obtain discovery ... by a written request that any other party to the action admit ... the truth of specified matters of fact, opinion relating to fact, or application of law to fact” relating to any “matter that is in controversy between the parties.” It is well-established that requests for admissions may go to the “ultimate issues” of a case. *St. Mary v. Sup. Ct.* (2014) 223 Cal.App.4th 762, 774; *see also Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 864. Each response to a request for admission “shall be as complete and straightforward as the information reasonably available to the responding party permits” and must either object or answer, in writing and under oath, with an admission of so much of the matter as is true; a denial of so much of the matter as is untrue; or a specification of so much of the matter as the responding party is unable to admit or deny based on insufficient knowledge or information. CCP §§2033.210(a)-(b), 2033.220. “If a responding party gives lack of information or knowledge as a reason for a failure to admit all or part of a request for admission, that party shall state in the answer that a reasonable inquiry concerning the matter in the particular request has been made, and that the information known or readily obtainable is insufficient to enable that party to admit the matter.” CCP § 2033.220(c). “If only a part of a request for admission is objectionable, the remainder of the request shall be answered” and if an objection is made to a request or part thereof, “the specific ground for the objection shall be set forth clearly in the response.” CCP §2033.230.

Upon receipt of a response, a requesting party may move for a further response if it determines that an answer to a particular request “is evasive or incomplete” or if an objection to a particular request “is without merit or too general.” CCP § 2033.290(a).

Most of the other discovery procedures are aimed primarily at assisting counsel to prepare for trial. Requests for admissions, on the other hand, are primarily aimed at setting at rest a triable issue so that it will not have to be tried. Thus, such requests, in a most definite manner, are aimed at expediting the trial. For this reason, the fact that the request is for the admission of a controversial matter, or one involving complex facts, or calls for an opinion, is of no moment. If the litigant is able to make the admission, the time for making it is during discovery procedures, and not at the trial.

*Cembrook v. Superior Court In and For City and County of San Francisco* (1961) 56 Cal.2d 423, 429. Matters within the knowledge or experience of a party’s expert is deemed obtainable, and therefore claims that such matters fall within the purview of expert testimony is not a defense to request for admission. *Chodos v. Superior Court for Los Angeles County* (1963) 215 Cal.App.2d 318, 323. Where an admission is denied outright (regardless of “weaseling qualifications”), the court cannot “force a litigant to admit any particular fact if he is willing to risk a perjury prosecution or financial sanctions.” *Holguin v. Superior Court* (1972) 22 Cal.App.3d 812, 820.

#### D. RPODs

Regarding RPODs, a demand for production may request access to “documents, tangible things, land or other property, and electronically stored information in the possession, custody, or control” of another party. A party to whom a document demand is directed must respond to each item in the demand with an agreement to comply, a representation of inability to comply, or an objection. CCP § 2031.210(a). If only part of an item or category demanded is objectionable, the response must contain an agreement to comply with the remainder, or a representation of the inability to comply. CCP § 2031.240(c)(1). If a responding party is not able to comply with a particular request, that party “shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand.” CCP § 2031.230. “This statement shall also specify whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party” and “[t]he statement shall set forth the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item.” *Id.* CCP § 2031.240(c)(1) provides that when asserting claims of privilege or attorney work product protection, the objecting party must provide “sufficient factual information” to enable other parties to evaluate the merits of the claim, “including, if necessary, a privilege log.”

Upon receipt of a response to a request for production, the propounding party may move for an order compelling further response if the propounding party deems that a statement of compliance with the demand is incomplete; a representation of inability to comply is inadequate, incomplete, or evasive; or an objection in the response is without merit or too general. CCP § 2031.310(a). A motion to compel further responses to a request for production of documents must “set forth specific facts showing ‘good cause’ justifying the discovery sought by the demand.” CCP § 2031.310(b)(1). Absent a claim of privilege or attorney work product, the party who seeks to compel production has met his burden of showing ‘good cause’ simply by showing that the requested documents are relevant to the case, *i.e.*, that it is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence under CCP § 2017.010. *See also Kirkland v. Sup. Ct.* (2002) 95 Cal.App.4th 92, 98. Once good cause is shown, the burden shifts to the responding party to justify its objections. *See Coy*, 58 Cal.2d at 220–221. It is insufficient to claim that a requested document is within the possession of another person if the party has control over that document. *Clark v. Superior Court of State In and For San Mateo County* (1960) 177 Cal.App.2d 577, 579.

#### E. Sanctions

CCP § 2030.300 (d), CCP § 2033.290(d) (relating to requests for admission) and CCP § 2031.310(h) (relating to requests for production of documents) 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.

## II. Analysis

Plaintiff served RPODs Set One to Defendant on September 16, 2025, and Defendant served objection only responses on November 24, 2025. The parties agreed to multiple extensions both before and after responses were provided. These motions followed on February 20, 2026. Defendant provided supplemental responses on April 20, 2026. Defendant does not contend that their original responses were sufficient, only that the service of supplemental responses has mooted the motion and sanctions are inappropriate as a result.

Due to Defendant's service of responses after the filing of the motion, the substance of the motions to compel responses is MOOT.

Plaintiff argues that the Court should nonetheless order further responses. While the Court has *jurisdiction* over the sufficiency of the subsequent responses (*Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 404), motions to compel further under CCP §§ 2030.300, 2031.310, and 2033.290 are required to be accompanied by meet and confer requirements and a separate statement intended to narrow the issues required to be adjudicated by the Court. Plaintiff received supplemental responses more than a month before the filing of his reply on May 21, 2026. Plaintiff has expended no effort to place the sufficiency of these responses before the Court. To compel further responses at this point would be the Court exercising its power for no useful purpose. *Burr v. Board of Sup'rs of Sacramento County* (1892) 96 Cal. 210, 212-213; see also Civ. Code § 3532. The motion as filed is moot.

Turning to sanctions, all three motions are the result of Defendant's failure to produce timely responses, which necessitated Plaintiff's motions. Monetary discovery sanctions are intended to be compensatory for discovery abuse. Defendant contends that the supplemental responses make the imposition of sanctions unjust. Caselaw is quite clear that late production does not divest the Court of jurisdiction to award sanctions for failure to timely produce. *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 404. Complying with discovery demands after being served with a motion to compel is discovery abuse. *Deck v. Developers Investment Co., Inc.* (2023) 89 Cal.App.5th 808, 831. "Untimely compliance is not compliance." *Ibid.* While Defendant provides *some* reason for late responses, nothing provided is sufficient to show why there were no timely responses produced between the service on September 16, 2025, and the objection only responses on November 24, 2025, nor for a full month after. It does not appear sufficient that Defendant shows that *some* portion of the period elapsed was subject to circumstances that would render sanctions unjust. As such, sanctions are mandatory.

However, there is no indication in the record which supports the contention that the discovery abuse stems from the advice of counsel. Accordingly, the Court cannot find counsel liable for the sanctions imposed.

Plaintiff seeks \$2,610 for each motion. Counsel requests a rate of \$850 per hour, with one hour per motion, one hour for each reply, and one hour for each hearing. Each motion also has a filing fee of \$60. The filing fees are both actual and reasonable. They are granted as to all 3 motions.

Plaintiff's request for time reflects time that is neither reasonable, nor evidenced to be actual. One hour per motion appears supported, and the Court approves this amount. At the time Plaintiff submitted Counsel's Declaration, Plaintiff had received no supplemental responses, no opposition, and had prepared no reply. Plaintiff filed an omnibus reply that can reasonably be attributed half an hour. At the time of review of the papers, no hearing has occurred, and three hours would be patently unreasonable. No time for hearing is "actual" at this juncture. A total of 3.5 hours across all motions represents the actual, reasonable time expended at this time.

Plaintiff's counsel's rate appears excessive, and the time expended appears to exceed what is reasonable. Counsel requests \$850 per hour as his "reasonable hourly rate". This fails to persuade the Court to award such an amount for two reasons. First, the requirement is not constrained to Counsel's "reasonable" rate, but rather the costs actually incurred by Plaintiff in bringing the motion. See *Kwan Software Engineering, Inc. v. Hennings* (2020) 58 Cal.App.5th 57, 74; *Argaman v. Ratan* (1999) 73 Cal.App.4th 1173, 1181 (costs must be both actual **and** reasonable). Counsel does not make clear that his reasonable rate is the one actually charged. Second, counsel provides no facts showing his qualifications sufficient to justify the rate which sits above what the Court would consider proper within the local community. A court is entitled to rely on its own practical experience in determining what is a proper rate within the community. See *Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, ["The court may rely on its own knowledge and familiarity with the legal market in setting a reasonable hourly rate"]; accord, *569 East County Boulevard LLC v. Backcountry Against the Dump, Inc.* (2016) 6 Cal.App.5th 426, 437. Based on Counsel's bar number, the Court infers his approximate time practicing. With evidentiary support, the appropriate rate would be as high as \$550 and no higher. Given that Defendant asserts no genuine contention regarding the rate charged, this is where the Court sets the hourly rate.

Therefore, the reasonable, actual fees across three motions is \$1,925, with \$180 of filing fees.

The three motions are GRANTED as to sanctions. Plaintiff's requests for sanctions against Defendant in the amount of \$2,105 is GRANTED. Defendant is to pay this amount within 30 days.

### III. Conclusion

The Motions to compel are **MOOT**. The requests for sanctions thereon are **GRANTED**. Plaintiff's requests for sanctions against Defendant in the amount of \$2,105 is **GRANTED**. Manufacturer is to pay this amount within 30 days.

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. 25CV06744, Wells Fargo Bank, NA v. Covarrubias**

Plaintiff Wells Fargo Bank, N.A. (“Plaintiff”), filed complaint in this action against Beatriz Covarrubias (“Defendant”), with causes arising out breach of contract of an agreement for credit account (the “Complaint”).

This matter is on calendar for the motion by Plaintiff for summary judgment, or in the alternative adjudication, of the complaint pursuant to Cal. Code Civ. Proc. (“CCP”) § 437c. The motion for summary judgment is **GRANTED**.

**I. Evidentiary and Pleading Issues**

Defendant fails to meet the procedural requirements in opposing summary judgment. Defendant is required to provide a separate statement *with accompanying citations to evidence*. The separate statement has *no* citations to evidence such that the Court understands what evidence Defendant contends raises a triable issue of fact as to each undisputed material fact. Defendant merely contends as to each that the fact is disputed, but no citation to evidence is provided. Each disputed fact is required to contain a citation to evidence to support the dispute. CCP § 437c(b)(3). This alone is sufficient basis for granting the motion. *Ibid*. The Court finds basis to grant the motion based on Defendant’s failure to submit a compliant separate statement.

Moreover, curing the separate statement does not remedy the defective opposition. While Defendant submits evidence in opposition only in the form of a self-serving declaration, that may otherwise be capable of raising a triable issue of material fact in some cases. Here, on review, Defendant’s contentions are not even absolute repudiations or evidentiary contentions relevant to the cause of action. For example, Plaintiff has attached 295 pages of account statements as evidence of the debts accrued. See Plaintiff’s Declaration in Support, Ex. 2. Defendant contends that she disputes the balance claimed by Plaintiff. See Defendant’s Declaration, ¶ 5. Defendant contends that the account statements “do not establish a clear connection between the activity shown and the total balance now being claimed.” Defendant’s Declaration, ¶ 6. Neither of these are *factual* evidentiary contentions that show a dispute of material fact. Defendant’s subjective beliefs are not evidence sufficient to raise triable issues of fact. *Howard v. Accor Management US, Inc.* (2024) 101 Cal.App.5th 130, 137. It is apparent that Defendant does not like the conclusion but conversely does not raise any substantive argument with the accrual of charges. Indeed, she concedes she cannot. Defendant’s Declaration, ¶ 7. Contrary to Defendant’s argument, the accrual of the amount owed is clearly displayed by Plaintiff’s evidence. While Defendant avers that she is unsure what Customer Agreement governs the contract, Plaintiff has attached the customer agreement. Plaintiff’s Declaration in Support, Ex. 1. The source of Defendant’s confusion is not apparent to the Court. Even if Defendant cured the separate statement, no leave to submit further evidence would be granted.

Based on the foregoing, the motion for summary judgment is **GRANTED**.

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).

## 5. SCV-273878, Parks v. Ensign

Plaintiff Michael Parks (“Plaintiff”), as successor-in-interest to decedent Robert Parks (“Decedent”), filed the presently operative second amended complaint (the “SAC”) against defendants Ensign Montgomery, LLC (“Montgomery”), Flagstone Healthcare North, Inc. (“Flagstone”), The Ensign Group (“TEG”), Luke Ensign (“Individual Defendant”), Ensign Services, Inc. (“ESI”, together with other named defendants “Defendants”), and Does 1-50, arising out of Defendants’ care of Decedent. The FAC contains causes of action for: 1) elder neglect/abuse; 2) negligence; 3) Violations of the Patient’s Bill of Rights; 4) Violations of California’s Unfair Competition Law under Business and Professions Code § 17200 *et seq.* (the “UCL”); 5) fraud; and 6) wrongful death.

This matter is on calendar for Defendants’ demurrer to the SAC pursuant to Cal. Code Civ. Proc. (“CCP”) § 430.10 for failure to state facts sufficient to constitute a cause of action as to the fifth cause of action. The motion is GRANTED without leave to amend.

### I. Governing Law

#### A. Demurrer

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. CCP § 430.30(a).

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

*Fremont Indem. Co. v. Fremont Gen. Corp.* (2007) 148 Cal.App.4th 97, 115.

At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. *Serrano v. Priest* (1971) 5 Cal.3d 584, 591. Similarly, opinions, speculation, or allegations contrary to law or facts which are judicially noticed are also disregarded. *Coshov v. City of Escondido* (2005) 132 Cal.App.4th 687, 702. Generally, the pleadings “must allege the ultimate facts necessary to the statement of an actionable claim. It is both improper and insufficient for a plaintiff to simply plead the evidence by which he hopes to prove such ultimate facts.” *Careau & Co. v. Security Pac. Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1390; *FPI Develop., Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384. Each

evidentiary fact that might eventually form part of a party's proof does not need to be alleged. *C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872. Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6. "The distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree." *Burks v. Poppy Const. Co.* (1962) 57 Cal.2d 463, 473. If a demurrer is sustained, leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852.

#### B. Fraud and Negligent Misrepresentation

"The elements of fraud, which give rise to the tort action for deceit, are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage." *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.

Fraud may also be accomplished through suppression of a fact by one who is bound to disclose it. Civ. Code § 1710 (3). "(T)he elements of an action for fraud and deceit based on concealment are: (1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage." *Marketing West, Inc. v. Sanyo Fisher (USA) Corp.* (1992) 6 Cal.App.4th 603, 612–613. "A failure to disclose a fact can constitute actionable fraud or deceit in four circumstances: (1) when the defendant is the plaintiff's fiduciary; (2) when the defendant has exclusive knowledge of material facts not known or reasonably accessible to the plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff; and (4) when the defendant makes partial representations that are misleading because some other material fact has not been disclosed." *Collins v. eMachines, Inc.* (2011) 202 Cal.App.4th 249, 255.

To establish reliance on fraud, reliance upon the truth of the fraudulent misrepresentation does not have to be a predominant factor, but it must be a substantial factor in the plaintiff's subsequent conduct. *OCM Principal Opportunities Fund, L.P. v. CIBC World Markets Corp.* (2007) 157 Cal.App.4th 835, 864. Plaintiffs in fraud by concealment claims must show that if the information had not been omitted, plaintiff would have been aware of it and therefore would have behaved differently. *Id.* The pleading must be adequately specific to show actual reliance on the omission, and that the damages causally resulted therefrom. *Id.* California law "requires a plaintiff to allege specific facts not only showing he or she actually and justifiably relied on the defendant's misrepresentations, but also how the actions he or she took in reliance on the defendant's misrepresentations caused the alleged damages." *Rosberg v. Bank of America, N.A.* (2013) 219 Cal.App.4th 1481, 1499. Reasonable reliance may, where the facts are clear, be determined as a matter of law. *Home Ins. Co. v. Zurich Ins. Co.* (2002) 96 Cal.App.4th 17, 22. "Reliance on an alleged misrepresentation is not reasonable when plaintiff could have

ascertained the truth through the exercise of reasonable diligence.” *Rowland v. PaineWebber Inc.* (1992) 4 Cal.App.4th 279, 286 (disapproved on other grounds by *Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 415).

“(T)o be actionable, a misrepresentation must be of an existing fact, not an opinion or prediction of future events.” *Brakke v. Economic Concepts, Inc.* (2013) 213 Cal.App.4th 761, 769. The exceptions to this rule are “(1) where a party holds himself out to be specially qualified and the other party is so situated that he may reasonably rely upon the former's superior knowledge; (2) where the opinion is by a fiduciary or other trusted person; (3) where a party states his opinion as an existing fact or as implying facts which justify a belief in the truth of the opinion.” *Borba v. Thomas* (1977) 70 Cal.App.3d 144, 152. “(A) statement that is quantifiable, that makes a claim as to the ‘specific or absolute characteristics of a product,’ may be an actionable statement of fact while a general, subjective claim about a product is non-actionable puffery.” *Demetriades v. Yelp, Inc.* (2014) 228 Cal.App.4th 294, 311, quoting *Newcal Industries, Inc. v. Ikon Office Solution* (9th Cir.2008) 513 F.3d 1038, 1053.

“[I]n California, fraud must be pled specifically; general and conclusory allegations do not suffice. [Citations.] “Thus ‘the policy of liberal construction of the pleadings ... will not ordinarily be invoked to sustain a pleading defective in any material respect.’ [Citation.] [¶] This particularity requirement necessitates pleading facts which ‘show how, when, where, to whom, and by what means the representations were tendered.’” *Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, 993; see *Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1166-1167 [“ ‘the plaintiff must allege the names of the persons who made the representations, ... to whom they spoke, what they said or wrote, and when the representation was made’ ”]; see also *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645. “However, the requirement of specificity is relaxed when the allegations indicate that the defendant must necessarily possess full information concerning the facts of the controversy [citations] or when the facts lie more in the knowledge of the defendant.” *Daniels*, at p. 1167, internal quotations and citations omitted; see *Tarmann v. State Farm Mut. Auto. Ins. Co.* (1991) 2 Cal.App.4th 153, 158. In pleading fraud claims, “(e)very element of the cause of action must be alleged in full, factually and specifically.” *Id.* at 1249. In general, as with showing fraud, oppression, or malice sufficient to support punitive damages, while plaintiffs must plead facts, with respect to intent and the like, a “general allegation of intent is sufficient.” *Unruh v. Truck Insurance Exchange* (1972) 7 Cal.3d 616, 632; see *Beckwith v. Dahl* (2012) 205 Cal.App.4th 1039, 1060 (in pleading promissory fraud, a general allegation that the promise was made without intent to perform was sufficient); see also *Stevens v. Superior Court* (1986) 180 Cal.App.3d 605, 608 (pleading that a hospital intentionally withheld that a health practitioner was operating without a medical license was sufficient to meet the pleading requirements for intent).

### C. Constructive Fraud

Similar to fraud by concealment, constructive fraud derives from any breach of duty which, without any fraudulent intent, results in advantage to the person in fault by misleading another to that person’s prejudice. Civil Code § 1573. California’s jury instructions provide the elements of constructive fraud as: 1) a fiduciary relationship; 2) defendant acted on plaintiff’s behalf; 3) defendant knew or should have known the withheld information, or disclosed information which

was misleading; 4) defendant mislead the plaintiff; 5) plaintiff suffered harm; and 6) defendant's conduct was a substantial factor in plaintiff's harm. Judicial Council of California Civil Jury Instruction ("CACI") 4111, Constructive Fraud. As defined in caselaw, "(t)he elements of the cause of action for constructive fraud are: (1) fiduciary relationship; (2) nondisclosure (breach of fiduciary duty); (3) intent to deceive, and (4) reliance and resulting injury (causation)." *Younan v. Equifax Inc.* (1980) 111 Cal.App.3d 498, 517, fn. 14. Whether statements constitute constructive or actual fraud depends on the facts and circumstances of the case. *Assilzadeh v. California Federal Bank* (2000) 82 Cal.App.4th 399, 415. "Like an action for fraud, constructive fraud must be pled with specificity." *Tindell v. Murphy* (2018) 22 Cal.App.5th 1239, 1250. In pleading fraud claims, "(e)very element of the cause of action must be alleged in full, factually and specifically." *Id.* at 1249. However, as to the how, when where or by what means a disclosure never happened, these are not specified elements of a constructive fraud claim.

"Technically, a fiduciary relationship is a recognized legal relationship such as guardian and ward, trustee and beneficiary, principal and agent, or attorney and client [citation], whereas a 'confidential relationship' may be founded on a moral, social, domestic, or merely personal relationship as well as on a legal relationship. [Citations.] The essence of a fiduciary or confidential relationship is that the parties do not deal on equal terms, because the person in whom trust and confidence is reposed and who accepts that trust and confidence is in a superior position to exert unique influence over the dependent party." *Hudson v. Foster* (2021) 68 Cal.App.5th 640, 663 (internal quotations omitted). A confidential relationship is defined by four essential elements: "1) The vulnerability of one party to the other which 2) results in the empowerment of the stronger party by the weaker which 3) empowerment has been solicited or accepted by the stronger party and 4) prevents the weaker party from effectively protecting itself." *Richelle L. v. Roman Catholic Archbishop* (2003) 106 Cal.App.4th 257, 272, quoting *Langford v. Roman Catholic Diocese of Brooklyn* (1998) 177 Misc.2d 897, 900, 677 N.Y.S.2d 436. "Before a person can be charged with a fiduciary obligation, he must either knowingly undertake to act on behalf and for the benefit of another, or must enter into a relationship which imposes that undertaking as a matter of law." *City of Hope National Medical Center v. Genentech, Inc.* (2008) 43 Cal.4th 375, 386 (internal quotations omitted). "a confidential relationship 'is not created simply by the receipt of confidential information.'" *Dino v. Pelayo* (2006) 145 Cal.App.4th 347, 356. "Instead, its creation generally hinges on 'an unequal relationship between parties in which one surrenders to the other some degree of control because of the trust and confidence which he reposes in the other.'" *Ibid*, quoting *Richelle L. v. Roman Catholic Archbishop* (2003) 106 Cal.App.4th 257, 272, fn.6. "The existence of a confidential relationship is a question of fact, and the question is only whether the plaintiff actually reposed such trust and confidence in the other, and whether the other accepted the relationship." *Persson v. Smart Inventions, Inc.* (2005) 125 Cal.App.4th 1141, 1161 (internal quotations omitted). "But the fact that allegations in a different case might have supported finding a confidential relationship if proven does not undermine the propriety of dismissing a claim at the pleading stage where the facts alleged, taken as true, do not support finding a confidential relationship and there is no reasonable prospect of further amendment curing the defects." *Thomas v. Regents of University of California* (2023) 97 Cal.App.5th 587, 633.

## II. Request for Judicial Notice

Defendants have filed an unopposed request for judicial notice of documents within this case. It is GRANTED.

### III. Analysis

Defendants again argue that Plaintiff has failed to state a cause of action for fraud. Defendants raise that the cause of action is not articulably stated under theories for affirmative misrepresentations, fraud by concealment, or constructive fraud. Defendants argue that Plaintiff has not and cannot plead fraud with adequate specificity to state a fraud claim, and that Plaintiff cannot establish the necessary factors to support requirements to affirmatively disclose. Plaintiff avers that he has alleged sufficient facts to support his various fraud theories.

Throughout the arguments on fraud, Defendants contend that lack of specificity renders the pleading insufficient when discussing multiple elements of the fraud claims. They are correct that fraud must be pled with specificity. *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645; *Tindell v. Murphy* (2018) 22 Cal.App.5th 1239, 1250. Plaintiff in turn avers that to the degree there is a lack of specificity, that requirement is relaxed when the facts are more within Defendants' control. See *Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1167. First, to Defendants' contention regarding the lack of specificity for scienter, this is allowable, as Plaintiff cannot be expected to factually allege state of mind. *Thomas v. Regents of University of California* (2023) 97 Cal.App.5th 587, 611. However, Plaintiff's other averments of relaxed requirements generally fall short. This case was filed over two and a half years before the filing of the SAC. The parties have engaged in significant discovery. The matter is set for trial in a few months, and this hearing is occurring on the initial trial date. If Plaintiff is not sufficiently informed of the facts to support the factual portions of these allegations at this juncture, there is no indication that they are reasonably outside of what Plaintiff should be aware of given the advanced age of the case. There is not any reasonable relaxation of the specificity requirements for fraud as a result.

#### A. Affirmative Misrepresentations

The FAC was found to have failed to state a cause of action for fraud. Among the prior allegations which are still present, Plaintiff alleged that Defendants had fraudulently used employees to post facility reviews on Google to falsely inflate the rating and to mislead individuals to choose the facility. They also alleged that Defendants had falsely claimed to have a "5-Star Quality" rating with the California Department of Public Health both on their website and on a banner. The Court granted Defendants' motion for judgment on the pleadings with leave to amend. Defendants now demur. Plaintiff has amended the complaint averring that the added allegations have cured any identified deficiencies in the affirmative misrepresentations.

To the contention that the false reviews constitute a basis for fraud, this fails for multiple reasons. First, the SAC alleges a multiplicity, but makes *one specific* allegation regarding fake reviews, otherwise merely averring that "Defendants' employees" have posted 5 star reviews. SAC ¶ 12-17. The only specific fake review provided is in ¶17, and this lack of specificity adds to the subsequent defects. Second, while the SAC alleges reliance in a conclusory manner, there is no factual allegation when, or if, Plaintiff or Decedent *saw and therefore relied on the reviews*.

The existence of a false statement is not actionable unless Plaintiff can show there was *reasonable reliance on the statement*. *Rossberg v. Bank of America, N.A.* (2013) 219 Cal.App.4th 1481, 1499. If Decedent did not see the fraudulent statement, they cannot have relied on it. Additionally, though Plaintiff does not even manage to make such an allegation to this effect, reliance on the overall review rating does not appear sufficient to state a cause of action for fraud. Plaintiff cites to Business and Professions Code §17200 to claim that this constitutes false advertising. However, Plaintiff equivocates a separate statutory cause of action to one for fraud, and the Court could locate no case (nor does Plaintiff provide one) stating that fake reviews alone constituted a violation of § 17200. Online reviews remain facially issues of opinion which cannot be relied upon as fact. Plaintiff does not allege sufficient facts for the Court to draw any conclusion as to the aggregate effect of any false advertising. For the reasons stated above, Plaintiff should at this juncture be capable of stating these claims in detail. As a result, Plaintiff fails to state facts sufficient for the Court to find the effect on the aggregate rating material. Plaintiff must plead that the specific fraudulent review was relied upon. It is not clear that it would be sufficient to show some aggregate effect on the overall rating, and that the overall rating was relied upon, but nonetheless Plaintiff fails to do so. Plaintiff provides *no* factual pleading showing that the online reviews were accessed by either himself or Decedent. Plaintiff's conclusion that they were relied on is insufficient, because Plaintiff must allege that Decedent was aware of the false statement in order to have relied upon it.

As to the averment that the “5 Star Quality” banner and website representations are fraudulent, this appears to fail for two reasons. First, Plaintiff contends that Defendants’ banner is false because it advertises their 5 star rating in “quality”. Plaintiff avers that this is properly interpreted as an *overall* rating of 5 stars, which Defendants have not had since 2018. SAC ¶ 9. Plaintiff concedes that the facility has a 5 star rating in “quality measures”. SAC ¶ 10. However, the facility had 3 stars for staffing and 2 stars for health inspections, resulting in a 3 star overall score. SAC ¶ 9. Plaintiff fails to express how the statement is *materially* false. Plaintiff's contention concludes that an individual would be misled by those ratings, but review of all the facts makes clear that any reliance thereon would be unreasonable. There are three categories at issue, and a resultant overall rating. Only one of the four ratings, “quality measures” makes any mention of “Quality”. Consumers unaware of the four possible categories reasonably would not distinguish between “Quality”, and “Quality Measures”. The SAC concedes that the facility *does* have 5 stars in quality measures. Defendants’ representation is not demonstrably false based on the allegations. This is not actionable fraud as a result. Additionally, Plaintiff does not allege that Decedent saw the banner or accessed either the website. Again, this is an element which must be pled with specificity. Certainly, of all the elements of fraud, this is the one most in control of Plaintiff. Plaintiff provides no facts showing that Decedent was aware of the 5 star quality representation and therefore relied upon it.

Plaintiffs also contend a theory based on affirmative fraudulent representation to an administrative agency, citing *Randi W. v. Muroc Joint Unified School Dist.* (1997) 14 Cal.4th 1066, 1081 and *McCall v. PacifiCare of California, Inc.* (2001) 25 Cal.4th 412, 425. This was previously addressed by the Court and found to be insufficiently pled, finding that the cause of action was not sufficiently specific for fraud. Contrary to Plaintiff's brief, *McCall* still does not assist Plaintiff, as that court *expressly* did not opine on the sufficiency of any cause of action therein. *McCall v. PacifiCare of California, Inc.* (2001) 25 Cal.4th 412, 426, fn. 10 (“This case

does not call upon us to determine the sufficiency of any of the McCalls' allegations to state a cause of action under California law, and we express no opinion on whether the claims ultimately will be proven.”). To the factual allegations, Plaintiff alleges that Defendants were cited by the California Department of Public Health on December 17, 2020. SAC ¶ 102. Defendants in turn promised to cure the staffing issues by January 1, 2021. *Ibid.* Plaintiff avers that the CDPH relied on Defendants’ representations and otherwise would have taken additional regulatory action. *Ibid.* Plaintiffs aver that the facility would otherwise have lost their licensure. SAC ¶ 103-104. This contention is conclusory and does not appear supported by factual pleading to this effect. Plaintiff strongly avers that these staffing issues were continuous and ongoing. It is apparent, even from the SAC, that the facility remains open and operative. SAC ¶ 8 (the banner remains in place “to the present day”). Plaintiff’s contention regarding that Decedent would not otherwise have been admitted to the facility is not supported by factual pleading. Therefore, no reasonable reliance by CDPH or causation of Decedent’s injuries is displayed. To state a *Randi W.* cause of action for fraud, Plaintiff must have “sufficiently pleaded that defendants owed (plaintiff) a *duty of care*, that they breached that duty by making *misrepresentations* or giving *false information*, and that (third party’s) *reasonable reliance* on their statements *proximately caused* plaintiff’s injury.” *Randi W. v. Muroc Joint Unified School Dist.* (1997) 14 Cal.4th 1066, 1076 (emphasis original). Plaintiff fails to allege facts which might show CDPH’s reliance and proximate causation of injuries caused by that reliance.

#### B. Fraudulent Concealment

Plaintiff also alleges fraudulent concealment but still fails to allege actual concealment sufficient to implicate the cause of action. Plaintiffs contend that there are three categories requiring Defendants to disclose “concealed” information exclusive of a fiduciary relationship on which the cause of action may rely. *LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 336.

Plaintiff’s contention of partial representations fails for the same reasons as their affirmative fraud claims. Plaintiff simply provides no factual pleading showing that there were *factual* representations which would have mislead them, and that therefore Defendants were obligated to disclose the allegedly suppressed facts. It is also not persuasive to state that Defendants have exclusive knowledge. Plaintiff argues that “Defendants alone knew the extent of their citation history, internal staffing levels, actual CMS rating components, and which online reviews were authored by their own staff.” The fake reviews are not matters of exclusive knowledge, because they do not relate to the alleged harm. The CMS rating components are public and again do not relate to exclusive knowledge. Defendants’ citation history knowledge was not exclusive, as said citations are publicly available. The remaining issue is internal understaffing. This too is conceded by facts within the complaint, as the SAC predicates the averred false statement to a governmental entity on the citation for understaffing. There is no indication of exclusive knowledge as a result.

Finally, Plaintiff alleges that Defendant actively concealed negative reviews by having employees post fake reviews to “bury negative ones”. Again, Plaintiff provides insufficient pleading to show that Defendant buried reviews, because the SAC fails to show anything more than a single fake review. Plaintiff fails to express how a single review actively conceals the other reviews. Also, Plaintiff has not alleged that they even looked at the reviews, so any

concealment thereon is not relevant, because Plaintiff would not otherwise have known the concealed information.

### C. Constructive Fraud

It is first worth addressing that Constructive Fraud is an entirely separate statute and therefore should likely be stated as a separate cause of action if Plaintiff intended to assert the theory. Nonetheless, because it was briefed fully by the parties, it is addressed here for the sake of judicial economy.

Plaintiff continues to attempt to expand the definition of a confidential relationship to encompass the care custodian role held by Defendants. Plaintiff is correct that the nature of the relationship is not *itself* preclusive. The nature of a care custodian and a confidential relationship are not preclusive as a matter of law, but sufficient facts must exist that the confidential relationship can be drawn from the complaint. Law related to probate makes clear that the distinction between care custodians and the formation of a confidential relationship are distinct. See, e.g., *Bernard v. Foley* (2006) 39 Cal.4th 794, 800 (statutory presumption of undue influence by care custodians in testamentary benefits is distinguishable and supplementary to the common law presumption applicable to confidential relationships.). Nonetheless, Plaintiff has not laid out a factual predicate for a confidential relationship in their allegations. The first factor is clearly met, as Decedent was clearly vulnerable at the time he came to the facility.

The specific issue is that Plaintiff's view of the surrender of Decedent's power as an element of a confidential relation, and subsequent empowerment, is not supported by the SAC. Plaintiff instead alleges that Decedent came to the facility vulnerable, but there is no displayed *empowerment* as a result of that. Decedent entrusted Defendants with the *responsibility* for his care, which he did not surrender, but was incapable of performing on his own. SAC ¶ 89 (Decedent was "bedbound" at time of admission). As Defendants persuasively assert, Plaintiff's position would subject nearly every case under W&I Code § 15657 to claims for constructive fraud. Decedent's incapacity to perform daily tasks fulfills one of the elements but does not mean that the other elements fall into line as a result. Nothing alleged in the SAC extends beyond care custodian conduct, which is subject to its own burdens and remedies which Plaintiff already seeks. As the Court previously noted:

Cases where both are found have required financial relationships, such as an ombudsman. *Estate of Shinkle* (2002) 97 Cal.App.4th 990, 993 disapproved of on other grounds by *Bernard v. Foley* (2006) 39 Cal.4th 794. The FAC does not allege facts sufficient to show that Decedent and Defendants had "an unequal relationship between parties in which one surrenders to the other some degree of control because of the trust and confidence which he reposes in the other." *Richelle L. v. Roman Catholic Archbishop* (2003) 106 Cal.App.4th 257, 272, fn. 6.

Court's Order, pg. 12-13.

The jurisprudence still overwhelmingly relates to both vulnerability *and* surrender resulting in empowerment. Care custodian relationships are definitionally vulnerable. However, that speaks to the *responsibility* vested in a care custodian, not their power. They appear distinguishable for precisely this reason. Decedent did not vest power he otherwise would have exercised in Defendants, because he could not perform these basic tasks. The alleged failure to affirmatively disclose that Defendants lacked the ability to provide sufficient care does not sound in constructive fraud as a result.

The motion for judgment on the pleadings as to fifth cause of action is GRANTED.

#### D. Agency

The Court finds nothing distinguishing the demurrer from the prior ruling regarding agency. As was previously stated: “Plaintiff makes allegations of financial interconnection, direction to each other for financial gain, and jointly agreed on policies that allegedly resulted in the tortious conduct. See FAC 24-28. These allegations seem sufficiently factual to plead the issue of agency.” The agency allegations continue to be adequately pled due to the significant financial entanglement of the Defendants.

#### E. Leave to Amend

Plaintiff has had three opportunities to state a fraud cause of action and has not been capable of expressing a viable theory. This is the second finding by the Court that the particular cause of action is deficient. Leave to amend at this juncture appears improper as a result.

#### IV. Conclusion

Based on the foregoing, the demurrer is **GRANTED WITHOUT LEAVE TO AMEND as to the FIFTH CAUSE OF ACTION.**

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

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