TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, July 9, 2025
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. 24CV00257, Loeza v. General Motors, LLC

Plaintiff Elioenai Mascote Loeza ("Plaintiff") filed the currently operative complaint (the "Complaint") in this action against defendants General Motors LLC ("Manufacturer"), Henry Curtis Ford ("Dealer") Redwood Credit Union ("Redwood"), together with Manufacturer and Dealer, "Defendants"), and Does 1-10. The Complaint contains causes of action for: 1) breach of express warranty through failure to repair under the Song-Beverly Consumer Warranty Act, Civ. Code § 1790 et seq. (the "Act") (Civ. Code § 1793.2); 2) Civil Penalties under the Act Civil Code § 1794(e); and 3) Civil Penalties under the Act Civil Code § 1794(c).

This matter is on calendar for Plaintiff's motion to compel deposition of Manufacturer's person most qualified ("PMQ"). The motion is **GRANTED.** Sanctions are **GRANTED in part.**

I. Relevant Law

A party may take the deposition of an entity by examining an officer or agent designated by the entity to testify on its behalf. In such a case, the notice of deposition must "describe with reasonable particularity the matters on which examination is requested" and the entity must

"designate and produce at the deposition those of its officers, directors, managing agents, employees, or agents who are most qualified to testify on its behalf as to those matters to the extent of any information known or reasonably available to the deponent." CCP § 2025.230. Additionally, when documents are requested pursuant to CCP § 2025.220, the witness must "make in inquiry of everyone who might be holding responsive documents or everyone who knowns where such documents might be held." *Maldonado v. Sup. Ct.* (2002) 94 Cal.App.4th 1390, 1396. After service of a deposition notice, a party may object to disclosure of privileged or protected information. CCP § 2025.460. Objections to the sufficiency of the deposition notice must be served three court days prior to the deposition. CCP § 2025.410.

CCP § 2025.450(a), provides: "If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under Section 2025.230, without having served a valid objection under Section 2025.410, fails to appear for examination, or to proceed with it, or to produce for inspection any document or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document or tangible thing described in the deposition notice." The scope of discovery is one of reason, logic and common sense. *Lipton v. Superior Court* (1996) 48 Cal.App.4th 1599, 1612. 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.*

"If he or his agent or employee claims the privilege, the owner of a trade secret has a privilege to refuse to disclose the secret, and to prevent another from disclosing it, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice." Evid. Code, § 1060. (d) "'Trade secret' means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." Civ. Code, § 3426.1. Where the record establishes a prima facie that the requested information is a material element of a cause of action and the moving party would be unfairly disadvantaged in its proof absent the trade secret, "a court is required to order disclosure of a trade secret unless, after balancing the interests of both sides, it concludes that under the particular circumstances of the case, no fraud or injustice would result

from denying disclosure. What is more, in the balancing process the court must necessarily consider the protection afforded the holder of the privilege by a protective order as well as any less intrusive alternatives to disclosure proposed by the parties." *Bridgestone/Firestone, Inc. v. Superior Court* (1992) 7 Cal.App.4th 1384, 1392-1393. "Either party may propose or oppose less intrusive alternatives to disclosure of the trade secret, **but the burden is upon the trade secret claimant to demonstrate that an alternative to disclosure will not be unduly burdensome to the opposing side** and that it will maintain the same fair balance in the litigation that would have been achieved by disclosure." *Id*. at 1393. The trade secret procedure outlined in Evid. Code § 1061 (b)(1) is equally applicable to civil actions. *Stadish v. Superior Court* (1999) 71 Cal.App.4th 1130, 1145.

"If a motion under subdivision (a) is granted, the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) in favor of the party who noticed the deposition and against the deponent or the party with whom the deponent is affiliated, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." CCP § 2025.450(g)(1). The purpose of monetary sanctions is to mitigate the effects of the necessity of discovery motions and responses on the prevailing party. 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. Requests for costs must be both reasonable and actual. *See Kwan Software Engineering, Inc. v. Hennings* (2020) 58 Cal.App.5th 57, 74; *Argaman v. Ratan* (1999) 73 Cal.App.4th 1173, 1181.

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

The deposition notice in this case was initially served on January 17, 2025. After several cancellations, agreements, and stipulations, Plaintiff filed the instant motion on May 30, 2025.

Manufacturer contends that Plaintiff did not meet and confer in good faith, but the Opposition concedes sufficient information that this is unpersuasive. Manufacturer admits that Plaintiff offered alternative dates but argues that they failed to "narrow the scope of the discovery sought". As the analysis below shows, Plaintiff need not have done so. Plaintiff's requests for this matter are substantially more narrow than is common in Song-Beverly cases. The requirement to meet and confer does not obligate Plaintiff to abandon meritorious positions in response to Manufacturer's unsupported position. Plaintiff both attempted to call multiple times to meet and confer on the substance and offered alternative dates. Manufacturer elected to force the motion by not responding. Plaintiff cannot force Manufacturer to engage in the meet and confer process.

Manufacturer also contends that the motion was filed without a separate statement. However, there is a separate statement on file, and a proof of service reflecting that Manufacturer is in receipt of that document. Therefore, this does not provide a basis to deny the motion.

Manufacturer also argues that Plaintiff cannot show good cause, because Plaintiff's claims are not viable as a matter of law. While the parties have recently received a disposition on Manufacturer's motion for summary judgment, that motion was denied for procedural reasons. The question for good cause is whether the requested information is relevant to Plaintiff's claims, not whether Plaintiff's claims are viable. To deny Plaintiff discovery based on arguments that the merits of the Complaint exceeds the scope of the motion is improper.

The good cause here is apparent. Plaintiff noticed the deposition and production of documents on a variety of subjects, the majority of which are directly addressed to the specific vehicle in this case. Manufacturer's repeated contention that the deposition notice is overbroad loses its efficacy when the objection is asserted to each request without any variation based on the merit of the objection. Other requests go directly to the pleadings or discovery responses in this case and are equally obvious in the finding of good cause. The Manufacturer's contention that good cause does not exist as to the requests is meritless. The burden therefore shifts to Manufacturer to justify their objections.

Finally, Manufacturer contends that the requests in the deposition notice go to trade secret information. This contention fails for three reasons. First, Manufacturer fails to address how this justifies failing to produce a witness at all. It appears incongruous with the intent of the statute in moving to compel attendance that this is the sort of issue to be addressed in a motion to compel further answers. It does not justify failure to appear. Second, if this is appropriate to address before deposition, the burden appears to be on Manufacturer to move for a protective order, as opposed to their selected course of action. Third, despite their assertion to the contrary, the burden is on Manufacturer to show that trade secret protections apply. Manufacturer provides no privilege log, no less intrusive alternatives, and no evidence to support the factors of trade secret protections. The trade secret objection is therefore unprevailing.

Plaintiff's motion to compel is **GRANTED as to all noticed subjects**. Manufacturer shall produce a person(s) most qualified to address the seventeen (17) categories of inquiry and eight (8) categories of documents included in the January 17, 2025, deposition notice. Manufacturer is to produce documents three (3) days prior to date on which the witness(es) are produced. The deposition(s) shall take place within fifteen (15) days from the date of this order.

III. Sanctions

Sanctions are mandatory under the CCP for discovery abuses, absent substantial justification. Without a showing of substantial justification, the Court **must** grant compensatory monetary sanctions which represent reasonable and actual costs to Plaintiff.

Simply put, Plaintiff noticed a deposition, Defendant did not timely produce a PMQ or responsive documents. A discovery motion was then necessitated and found to be meritorious. Plaintiff requests sanctions against both Manufacturer and their counsel. It appears based on the

briefs of both sides that much of the burden herein derives the objections of counsel. *Kwan Software Engineering, Inc. v. Hennings* (2020) 58 Cal.App.5th 57, 81. As such, joint liability for sanctions appears appropriate.

Plaintiff seeks $7,260 for the discovery motion, representing attorney work of 11 hours for the meet and confer and the motion, 1 anticipated hour in reading the opposition and preparing the reply at $600/hr, and $60 in filing fees. Hendrickson Declaration in Support, ¶ 11. The request for filing fees is both actual and reasonable. The time expended on the meet and confer efforts and the motion appears quite excessive. Eleven hours in drafting two documents, the meet and confer correspondence, which in this case consists of two short emails, does not appear to be a reasonable amount of time. Given the limited categories addressed by the deposition, and the brevity of the legal arguments and authority, a total of five hours in meet and confer, the motion, and reply appears reasonable. The Court finds that a total of 5 hours at the rate of $600/hr is appropriate, for a total sanctions award in the amount of $3,060 ($3,000 + $60 filing fee). Manufacturer and/or their counsel are to pay $3,060 to Plaintiffs within 30 days of this order.

IV. Conclusion

For the reasons above, Plaintiff's motion to compel is **GRANTED**.

Manufacturer shall produce a person(s) most qualified to address the seventeen (17) categories of inquiry and eight (8) categories of documents included in the January 17, 2025, deposition notice. Manufacturer is to produce documents three (3) days prior to the date on which the witness(es) are produced. The deposition(s) shall take place within fifteen (15) days from the date of this order.

Plaintiff's request for sanctions is GRANTED. Manufacturer shall pay $3,060 to Plaintiff within 30 days' notice of this order.

Plaintiff's 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).

2. 24CV00517, Taft Street Inc. v. Sussman

Plaintiff Taft Street Incorporated ("Taft" or "Plaintiff") filed the presently operative Complaint against defendants Eric Sussman ("Sussman"), Radio-Coteau Wine Cellars, LLC ("Radio"), Agrarian Properties, LLC ("Agrarian", together with Sussman and Radio, "Defendants") with causes of action for declaratory and injunctive relief, intentional interference with prospective economic relations, negligent interference with prospective economic relations, and breach of contract(the "Complaint") related to 2030 Barlow Lane, Sebastopol, in the County of Sonoma (the "Property"). Agrarian and Radio (together "Cross-Complainants") have in turn filed the currently operative first amended cross-complaint ("FAXC") against Taft and Michael Martini ("Martini", together with Taft, "Cross-Defendants") with ten causes of action (the "Cross-Complaint").

This matter is on calendar for the motion by Plaintiff pursuant to Cal. Code Civ. Proc. ("CCP") § 473 for leave to amend the Complaint. The motion is unopposed. The Motion is **GRANTED**.

I. Facts and Procedure

The original complaint in this action was filed by Plaintiff on January 29, 2024. Cross-Complainants in turn filed the original cross-complaint on April 17, 2024. The parties have in that time exchanged significant discovery and settled the filed pleadings. The matter is not yet set for trial.

II. 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). 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.

III. Analysis

Plaintiff has requested leave to amend the Complaint. This is the first amendment of the Complaint, and the matter is not currently set for trial. Defendants have filed a non-opposition to the motion. Therefore, there is no articulable prejudice. The Motion is GRANTED. Plaintiff shall submit a first amended complaint within 10 days of notice of this order.

IV. Conclusion

Based on the foregoing, Plaintiff's motion for leave to amend the Complaint is GRANTED. Plaintiff shall submit a first amended complaint within 10 days of notice of this order.

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

3. 24CV02039, Looney v. 860 Restaurant, LLC

Plaintiff Gary E. Looney dba Collectronics of California ("Plaintiff"), assignee of Young's Market Company, obtained a default judgment against defendants 860 Restaurant, LLC ("Defendant"), David Greenlee ("Guarantor", together with Defendant, "Defendants").

This matter is on calendar for Plaintiff's motion for reconsideration of the Court's May 21, 2025 order. The Motion is DENIED.

I. Procedural History

Plaintiff filed a motion to compel postjudgment interrogatories and production of documents, which was granted by the Court on January 21, 2025. Plaintiff filed a proof of service on January 31, 2025, claiming to have served the order on January 23, 2025. Plaintiff filed a motion to appoint receiver on March 21, 2025. The Court denied the motion on May 21, 2025, finding that the proof of service could not be true, as the Court did not process the order until January 29, 2025. Plaintiff asks the Court to reconsider the motion, claiming that the proof of service is inaccurate, but the order was served on January 30, 2025.

II. Governing Law

CCP §1008 reads in relevant part:

> (a) When an application for an order has been made to a judge, or to a court, and refused in whole or in part, or granted, or granted conditionally, or on terms, any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and **based upon new or different facts, circumstances, or law**, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order. The party making the application shall state by affidavit what application was made before, when and to what judge, what order or decisions were made, **and what new or different facts, circumstances, or law are claimed to be shown**.

Code Civ. Proc., § 1008 (emphasis added)

Contentions that the court has made an error of law or refused to consider evidence is not a new fact as required for a motion under CCP § 1008. *Jones v. P.S. Development Co., Inc.* (2008) 166 Cal.App.4th 707, 724 disapproved of on other grounds by *Reid v. Google, Inc.* (2010) 50 Cal.4th 512. New facts mean facts which were not available to the party at the time of the hearing. *In re Marriage of Herr* (2009) 174 Cal.App.4th 1463, 1468. To prevail on a motion for reconsideration based on new facts, a party must provide a satisfactory explanation for failing to offer the evidence in the first instance. *New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 212. The new facts offered must be accompanied by a showing of strong diligence in discovery and bringing the new facts, and absent a strong showing of diligence, the motion will be denied. *Forrest v. Department of Corporations* (2007) 150 Cal.App.4th 183, 202 disapproved of on other grounds by *Shalant v. Girardi* (2011) 51 Cal.4th 1164. Failure to show new facts or law is jurisdictional. *Kerns v. CSE Ins. Group* (2003) 106 Cal.App.4th 368, 380. Where the motion for reconsideration brings no valid new fact to the merits of the underlying motion, and merely contends a collateral matter, reconsideration will be denied. *Gilberd v. AC Transit* (1995) 32 Cal.App.4th 1494, 1500.

III. Analysis

Plaintiff has moved the Court for reconsideration based on the denial of his request to appoint a receiver. Plaintiff asserts several matters which he contends constitute a new fact which should result in reconsideration of the prior order. As an initial matter, the lack of order after hearing means that the motion is timely. See CCP § 1019.5. Analysis then turns to the substance of Plaintiff's argued new facts.

Plaintiff asserts in a declaration that he has questioned his process server, and that her logs reflect that the order was actually served on January 30, 2025, and not January 23rd as stated on the initial proof of service. No corrected proof of service has been filed with the Court. Ms. Minton, who signed the original proof of service, did not submit a declaration testifying to this fact with the motion. Plaintiff's declaration is hearsay, and therefore appropriate to disregard. The log attached as Exhibit B to Plaintiff's declaration is not adequately supported to be considered a business record, and accordingly it is also inadmissible hearsay. Moreover, Plaintiff's assertion of error fails to be persuasive, as even if the evidence presented were entitled to any weight, it would be outweighed by the proof of service signed under penalty of perjury. There is no admissible evidence before the Court that the motion to compel order was served on January 30, 2025. Accordingly, Plaintiff has failed to display a new facts sufficient for the Court to reconsider the motion.

Plaintiff has attempted to remedy the deficiency in this showing by filing a Declaration of K. Minton on July 3, 2025, a mere 6 days before this hearing. That fails to be persuasive for multiple reasons. First, there is no evidence this declaration was served, and therefore it is properly disregarded. Second, it was not part of the motion, and therefore untimely under CCP §§ 1005 and 1010. The Court therefore disregards the declaration.

Plaintiff also purports to have submitted an amended proof of service, but this still contains obviously false information. Plaintiff's new proof of service of the original order granting discovery responses still states that it was executed on January 30, 2025, which again *cannot be true*, given that it was prepared in response to the later identified deficiencies raised by the Court. Nor can this be the case that the Declarant, Ms. Minton, has neglected to change the date, as the original proof of service reflected an execution date of January 23, 2025. The Amended Proof of Service, like its predecessor, cannot be true and therefore is accorded no evidentiary value.

Moreover, even if the motion were supported by evidence, Plaintiff has not displayed adequate diligence in why this was not presented to the Court in the first instance. *Forrest v. Department of Corporations* (2007) 150 Cal.App.4th 183, 202. Given that the logs have been available to Plaintiff, no satisfactory explanation is offered for why this new fact was not raised in the first instance. *New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 212.

There are no new facts or law offered as related to the merits, which is required for the Court to reconsider the previous ruling. The motion for reconsideration is DENIED.

IV. Conclusion

Based on the foregoing, Plaintiff's motion for reconsideration is DENIED.

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).

4. 24CV02492, SBRI Standish, LLC v. Risman

Plaintiff SBRI Standish, LLC ("Plaintiff") filed the complaint (the "Complaint") in this action against defendants the Jacob Risman ("Risman"), Steven Maman ("Manman", together with Risman, "Individual Defendants"), 3418 Standish SPV, LLC ("Entity Defendant", together with Individual Defendants, "Defendants"), and Does 1-50, for causes of action alleging breach of contract and common counts arising out of a lease transaction.

This matter is on calendar for the Defendants' demurrer to both causes of within the Complaint pursuant to Cal. Code Civ. Proc. ("CCP") § 430.10(e) for failure to state facts sufficient to constitute a cause of action against Individual Defendants. The Demurrer is **OVERRULED.**

I. Legal Standards

A. General Demurrers

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

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. *Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 702. Generally, the pleadings "must allege the ultimate facts necessary to the statement of an actionable claim. It is both improper and insufficient for a plaintiff to simply plead the evidence by which he hopes to prove such ultimate facts." *Careau & Co. v. Security Pac. Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1390; *FPI Develop., Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384. Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. *C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872. Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6. "The distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree." *Burks v. Poppy Const. Co.* (1962) 57 Cal.2d 463, 473. Leave to amend should generally be granted liberally where there

is some reasonable possibility that a party may cure the defect through amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.

B. Breach of Contract and Common Counts

The elements of a cause of action for breach of contract are: "'(1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff.'" *See Coles v. Glaser* (2016) 2 Cal.App.5th 384, 391; quoting *Hamilton v. Greenwich Investors XXVI, LLC* (2011) 195 Cal.App.4th 1602, 1614, 126 Cal.Rptr.3d 174. "It is the general rule that if an instrument is ambiguous the party pleading is required to set forth the meaning of the writing. The meaning attributed to the writing must be one to which it is reasonably acceptable, and where 'a pleaded instrument is, because of the uncertainty of the language in which it is expressed, susceptible of more than one construction As to its nature or as to the purpose intended by the parties to be attained by it, … the construction of the party pleading it should be accepted, if such construction be reasonable' in considering a pleading attacked by general demurrer." *Connell v. Zaid* (1969) 268 Cal.App.2d 788, 794–795 (internal citations omitted). Breach of lease is merely a form of breach of contract. See *Staples v. Hoefke* (1987) 189 Cal.App.3d 1397, 1414.

The basic elements for any common count are that defendant became indebted to plaintiff in a certain sum, consideration, and defendant's nonpayment. See *Farmers Ins. Exchange v. Zerin* (1997) 53 Cal.App.4th 445, 460; see 4 Witkin, Cal.Proc. (6th Ed.2021, March 2022 Update) Pleading, section 565. As the court explained in *Farmers Ins. Exchange, supra*, '[t]he only essential allegations of a common count are "(1) the statement of indebtedness in a certain sum, (2) the consideration, i.e., goods sold, work done, etc., and (3) nonpayment." [Citation.] A cause of action for money had and received is stated if it is alleged the defendant "is indebted to the plaintiff in a certain sum 'for money had and received by the defendant for the use of the plaintiff.' " [Citation.]'

C. Alter Ego

"Ordinarily, a corporation is regarded as a legal entity, separate and distinct from its stockholders, officers and directors, with separate and distinct liabilities and obligations. [Citations.]' [Citation.] '[T]he corporate form will be disregarded only in narrowly defined circumstances and only when the ends of justice so require.'" *Leek v. Cooper* (2011) 194 Cal.App.4th 399, 411. "A plaintiff seeking to invoke the alter ego doctrine must prove two conditions: (1) unity of interest and ownership between the two entities and (2) an inequitable result if the two entities are not equally liable." *Constellation-F, LLC v. World Trading 23, Inc.* (2020) 45 Cal.App.5th 22, 30. "An allegation that a person owns all of the corporate stock and makes all of the management decisions is insufficient to cause the court to disregard the corporate entity." *Leek v. Cooper* (2011) 194 Cal.App.4th 399, 415.

II. Procedural and Evidentiary Issues

Plaintiff requests judicial notice of a wide variety of public records and documents. Defendant has in turn filed objections to the request for judicial notice. Courts may take notice of public

records, but not take notice of the truth of their contents. *Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375. Additional information which is included in the documentation or contentions as to the truth of the contents is not appropriate for judicial notice. *Ibid.* The documents are not noticeable for any admissible purpose, since the Court cannot take notice of the truthfulness of their content. The request for judicial notice is denied. The objections are therefore sustained.

III. Analysis

Defendant demurs based on the principle that Plaintiff has attached the contract to the Complaint (Ex. A, the "Contract"), but Risman and Maman are not parties to the Contract. Defendant argues that while Plaintiff's allegations include the language of alter ego liability, that the factual allegations themselves are insufficient to support alter ego liability. Plaintiff in turn argues that the Complaint is subject to liberal interpretation, and that the facts alleged are sufficient to meet the requirements of alter ego at the pleading stage. Plaintiff's request for judicial notice attempts to bring several matters before the Court regarding the current viability of Entity Defendant. Plaintiff neither explains the legal effect of these documents in their opposition, nor is there any allegation in this regard within the Complaint. Plaintiff also argues that alter ego is not itself demurrable because it is not a cause of action. This does not accurately frame the issue. Plaintiff must plead a cause of action against each Defendant in order to name them in the Complaint. Plaintiff has provided the Contract attached to the Complaint. Plaintiff's allegations of breach of contract against the Individual Defendants are not complete absent allegations of alter ego in order to bring Risman and Maman into the cause of action.

Defendants urge the Court to come to the same conclusion as the Court in *Leek v. Cooper* (2011) 194 Cal.App.4th 399, where the court of appeal concluded that the allegations within the complaint were not sufficient to give notice of the alter ego liability. *Id.* at 414. This case is instructive, but not persuasive for Defendants' position. In that case, the plaintiff had made relatively generic allegations about the existence of a corporate entity, and the only allegation regarding alter ego liability stated "Defendant Cooper is the sole owner of AUBURN HONDA, owning all of its stock and making all of its business decisions personally" *Id.* at 415. Plaintiff had made no use of the term "alter ego" in the complaint. The trial court and the court of appeal concluded that this was insufficient to show "allege sufficient facts to show a unity of interest and ownership, and an unjust result if the corporation is treated as the sole actor." *Ibid.*

Here, Plaintiff's Complaint appears distinguishable. Plaintiff has made allegations which provide factual basis for cutting through the corporate veil. Plaintiff has expressly alleged not just the alter ego nature of the Defendants, but substantial allegations of ultimate fact to this effect. Plaintiff alleged that there was a unity of interest and ownership between the Defendants, that Individual Defendants used Entity Defendant's assets for personal use and transferred those assets and funds without sufficient consideration. Complaint, pg. 6, ¶ 3. Plaintiffs allege that Risman and Maman used the Entity Defendant as a mere shell that was under their complete control. Complaint, pg. 6, ¶ 4. Defendants argue that these allegations are conclusory, but this is not persuasive. Plaintiff need not plead every incident of fact which they hope to prove, and the distinction between ultimate fact and conclusory statements is a matter of degree. *Burks v. Poppy Const. Co.* (1962) 57 Cal.2d 463, 473. The allegations here appear to strongly resemble

Rutherford Holdings, LLC v. Plaza Del Rey (2014) 223 Cal.App.4th 221, 236, where the court of appeal found the allegations were sufficient to be those of "ultimate fact" establishing alter ego liability.

Defendants also argue that the Complaint contains no allegation regarding the "unjust result" which will occur absent alter ego liability. Again, this appears to underplay liberal construction at demurrer. Plaintiff has alleged substantial transfers of assets occur between Defendants without consideration. It does not appear an undue presumption to determine that Plaintiff's allegations extend to the concern that if only Entity Defendant were remaining in the case, they may come to the case's conclusion only to find the coffers empty. See, e.g., *Ming-Hsiang Kao v. Holiday* (2020) 58 Cal.App.5th 199, 207. The unjust result is adequately implied that the Complaint survives demurrer.

Therefore, Defendants' demurrer to the Complaint is OVERRULED.

IV. Conclusion

Based on the foregoing, **the Demurrer is OVERRULED.**

Plaintiff's 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).

5. 24CV04694, B.C. v. Westminster Woods Camp & Conference Center

Plaintiff B.C., by and through her guardian ad litem, Jessica M. Cruz ("Plaintiff"), filed the complaint (the "Complaint") against defendants Westminster Woods Camp and Conference Center ("Westminster Woods"), Piner-Olivet Union School District (the "District", together with the Westminster Woods, "Defendants") and Does 1-10 arising out of alleged negligence occurring during a school activity.

This matter is on calendar for the motions by Plaintiff to compel further responses to form interrogatories ("FIs") special interrogatories ("SIs"), requests for production of documents ("RPODs"), and requests for admission ("RFAs") pursuant to CCP §2033.290(d) (relating to requests for admission), CCP § 2031.310 (relating to RPODs) and CCP § 2030.300(d) (relating to interrogatories). The motion to compel is GRANTED in part.

I. Procedural and Evidentiary Issues

Plaintiff has filed an unduly compound motion which fails to identify any statute in the notice of motion, as required by CCP § 1010 (notice of motion must state "the grounds upon which it will be made"). Plaintiff moves under multiple statutes requesting relief as to multiple propounded discovery modalities. This appears generally improper, as it does not conform to the language of the statutes at issue. See, e.g., CCP § 2030.300 (a) ("On receipt of **a response to interrogatories**, the propounding party may move for **an order** compelling a further response".) (Emphasis added). This interpretation is further supported by the Rules of Court. "Any motion involving the content of **a discovery request** or the responses to such a request must be

accompanied by a separate statement." Cal Rule of Court, Rule 3.1345 (a). The Court cautions counsel to file these as separate motions going forward.

The procedural impacts brought by the insufficiency of the separate statement will be addressed below.

The parties have met and conferred and otherwise resolved the dispute as to SI ¶ 5 and RPOD ¶ 18. Those matters are moot.

II. Legal Authority

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.

A. 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). 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. An interrogatory requiring respondent to elucidate an opinion or a conclusion is not a proper objection to interrogatory. *West Pico Furniture Co. of Los Angeles v. Superior Court In and For Los Angeles County* (1961) 56 Cal.2d 407, 417.

B. Requests for Production of Documents

Regarding the 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.

C. Requests for Admission

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. FERPA and Ed. Code § 49076

> FERPA generally provides financial sanctions for violation of its nondisclosure provisions as follows: "No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein *other than directory information*, as defined in paragraph (5) of subsection (a) of this section) of students without the written consent of their parents" (20 U.S.C. § 1238g, subd. (b)(1), italics added) or of the student if the student is at least 18 years old or attending an institution of postsecondary education (20 U.S.C. § 1238g, subd. (d)). The term "directory information" is statutorily defined as including "the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student." (20 U.S.C., § 1232g, subd. (a)(2)(5)(A); see 34 C.F.R. § 99.3 [regulatory definition].) The term "personally identifiable information" is defined by regulation as including but not limited to: "(a) The student's name; [¶] (b) The name of the student's parent or other family members; [¶] (c) The address of the student or student's family; [¶] (d) A personal identifier, such as the student's social security number, student number, or biometric record; [¶] (e) Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name; [¶] (f) Other *information that, alone or in combination, is linked or linkable* to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or [¶] (g) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates." (34 C.F.R. § 99.3, italics added.) Thus, it appears that under FERPA a student's name, address, and telephone number may be released since the information is directory information.

"A school district shall not permit access to pupil records to a person without written parental consent or under judicial order except as set forth in this section and as permitted by Part 99 (commencing with Section 99.1) of Title 34 of the Code of Federal Regulations." Ed. Code, § 49076(a).

E. Privacy Rights and Discovery

Compelling need is not always the test to apply in determining whether discovery is permissible, as "Courts must instead place the burden on the party asserting a privacy interest to establish its extent and the seriousness of the prospective invasion, and against that showing must weigh the countervailing interests the opposing party identifies". *Williams v. Superior Court* (2017) 3 Cal.5th 531, 557. 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.

Additionally, the right of privacy is an "inalienable right" secured by article I, section 1 of the California Constitution. *Valley Bank of Nevada v. Superior Court* (1975) 15 Cal.3d 652, 656. The right of privacy protects against the unwarranted, compelled disclosure of private or personal information and "extends to one's confidential financial affairs as well as to the details of one's personal life." *Ibid*. However, even the constitutional right of privacy does not provide absolute protection "but may yield in the furtherance of compelling state interests." *People v. Wharton* (1991) 53 Cal.3d 522, 563. Thus, "when the constitutional right of privacy is involved, the party seeking discovery of private matter must do more than satisfy the section 2017[.010] standard [and] the party seeking discovery must demonstrate a compelling need for discovery, and that compelling need must be so strong as to outweigh the privacy right when these two competing interests are carefully balanced." *Lantz v. Superior Court* (1994) 28 Cal.App.4th 1839, 1853–1854. A discovery proponent may demonstrate compelling need by establishing the discovery sought is directly relevant and essential to the fair resolution of the underlying lawsuit. *Planned Parenthood Golden Gate v. Superior Court* (2000) 83 Cal.App.4th 347, 367; see also, *Britt v. Superior Court* (1978) 20 Cal.3d 844, 859-862; *Williams v. Superior Court* (2017) 3 Cal.5th 531, 552-555; *Johnson v. Superior Court* (2000) 80 Cal.App.4th 1050, 1071.

The court must "carefully balance" the interests involved - *i.e.* the right of privacy versus the public interest in obtaining just results in litigation. *Schnabel v. Superior Court* (1993) 5 Cal.4th 704, 714; see also, *Valley Bank of Nevada, supra,* 15 Cal.3d at 657; *Pioneer Electronics (USA), Inc., supra,* 40 Cal.4th at 371. In balancing these interests, "[t]he court must consider the purpose of the information sought, the effect that disclosure will have on the affected persons and parties, the nature of the objections urged by the party resisting disclosure and availability of alternative, less intrusive means for obtaining the requested information." *SCC Acquisitions, Inc., supra,* 243 Cal.App.4th at 754–755. "[T]he more sensitive the nature of the personal information that is sought to be discovered, the more substantial the showing of the need for the discovery that will be required before disclosure will be permitted." *Ibid.* 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.

F. Attorney Client Privilege and Work Product

The attorney-client privilege limits disclosure of confidential communications between a lawyer and client. Evid. Code § 954. "But not all communications with attorneys are subject to that privilege." *Caldecott v. Superior Ct*. (2015) 243 Ca1.App.4th 212, 227. The attorney-client privilege follows from the establishment of the professional relationship between client and attorney. *Moeller v. Superior Ct.* (1997) 16 Cal.4th 1124, 1130. Once this relationship is established, the attorney-client privilege attaches to communications made in confidence during the course of the relationship. *Ibid.* As such, "[i]n assessing whether a communication is privileged, the initial focus of the inquiry is on the *'dominant purpose of the relationship' between attorney and client and not on the purpose served by the individual communication*." *Fiduciary Tr. Int'l v. Klein* (2017) 9 Cal.App.5th 1184, 1198 (emphasis in original). The party

claiming the attorney-client privilege as a bar to disclosure has the burden of showing that the communication sought to be suppressed falls within the parameters of the privilege. *Doe 2 v. Superior Ct*. (2005) 132 Ca1.App.4th 1504, 1522. Although the information must have been transmitted, or the advice given, "in the course of that relationship" (Evid. Code, § 952), there is no requirement that the attorney actually be employed in order to create an attorney-client relationship. *Benge v. Superior Court* (1982) 131 Cal.App.3d 336, 345. Evidence Code section 951 states the prevailing view that a person may discuss a potential legal problem with an attorney for the purpose of obtaining advice or representation, and the statements made are privileged whether or not actual employment ensues. *Ibid.*

"The protections of the attorney-client privilege and the work product doctrine may be waived by disclosure of privileged communications or work product to a party outside the attorney-client relationship if the disclosure is inconsistent with goals of maintaining confidentiality or safeguarding the attorney's work product." *City of Petaluma v. Superior Court* (2016) 248 Cal.App.4th 1023, 1033. Evidence Code § 952 provides, in full:

> As used in this article, "confidential communication between client and lawyer" means information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted, and includes a legal opinion formed and the advice given by the lawyer in the course of that relationship.

"(I)n order for disclosure to a third party to be "reasonably necessary" for an attorney' purpose, and thus not to effect a waiver of privilege, it is not enough that the third party weighs in on legal strategy. Instead, the third party must facilitate communication between the attorney and client. *Anderson v. SeaWorld Parks and Entertainment, Inc.* (N.D. Cal. 2019) 329 F.R.D. 628, 634.

III. Most of District's Responses are Deficient

A. General Issues

Plaintiff contends that the District has waived its objections by failing to provide timely verifications. This is not reflective of the law. It is true that unverified responses are "tantamount to no response at all". *Appleton v. Superior Court* (1988) 206 Cal.App.3d 632, 635. However, no verification is required to preserve objections. See, e.g., CCP § 2030.250; *Food 4 Less Supermarkets, Inc. v. Superior Court* (1995) 40 Cal.App.4th 651, 656. The District has provided evidence that verifications were provided. Objections were timely served on January 21, 2025. They were preserved in spite of the subsequent delay in verification. Analysis turns to good cause and the objections.

B. RFAs

Plaintiff moves to compel further responses to all of the RFAs. The District has provided evidence that verifications were provided. Plaintiff has not provided any delineation of the RFAs in the Separate Statement. The Court therefore exercises its discretion in declining to consider the RFAs further, as there is no separate statement, and therefore the Court cannot even from the separate statement determine whether there are objections served nor can it opine on their merit.

The Motion to Compel Further Responses to RFAs DENIED.

C. Interrogatories

Plaintiffs move to compel further responses to FIs ¶¶ 4.1, 4.2 and 12.1, and SIs ¶ 1, 3, 5 and,7.

To FIs ¶ 4.1 and 4.2, the request for policy limits appears directly addressed by statute. "A party may obtain discovery of the existence and contents of any agreement under which any insurance carrier may be liable to satisfy in whole or in part a judgment that may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. This discovery may include the identity of the carrier and the nature and limits of the coverage." CCP § 2017.210. Plaintiff's right to discover this information is "without the need for a threshold showing of relevancy and admissibility as is required under the general discovery statute.." *Catholic Mutual Relief Society v. Superior Court* (2007) 42 Cal.4th 358, 367. The District makes substantial arguments regarding the public policies related to withholding this type of information, but this appears to have been a matter better raised by motion for protective order.

However, the information is statutorily discoverable, and the District's vague policy concerns are not sufficiently expressed to override the clear policy mandated by the Legislature. Moreover, the propriety of discovering such information by use of interrogatories was upheld *Pettie v. Superior Court* (1960) 178 CA 2d, 680. There the court noted the relevancy of this information by stating "[U]nlike other assets, a liability insurance policy exists for the single purpose of satisfying the liability that it covers. It has no other function and no other value." *Id*. at 689. Knowledge of the information, the court reasoned, would promote "purposeful discussions of settlement" and "effective judicial administration." *Id*. at 690.

Therefor the Court finds the present response is incomplete and the District must provide further responses.

As to the other interrogatories, good cause appears obvious. Plaintiff seeks witnesses and statements about the incident itself. This is clearly discoverable information to which the District must now assert valid objections to avoid disclosure.

Plaintiff also moves for further responses to FI ¶ 12.1 and SIs ¶ 1 and 3. While the District in opposition contends that this is private information, they do not argue that the information falls under either FERPA or Ed. Code § 49706(a). Instead, the District is arguing a generalized privacy right and then arguing that the application of the notice provisions of FERPA require that the students' guardians be informed before the Court orders disclosure. As the court in *Doe v. United States Swimming, Inc.* (2011) 200 Cal.App.4th 1424, 1439 stated, "under FERPA a student's name, address, and telephone number may be released since the information is directory

information." *Doe v. United States Swimming, Inc.* (2011) 200 Cal.App.4th 1424, 1439. If disclosure is allowed under FERPA, it is also allowable under Ed. Code § 49076. Ed. Code, § 49076(a). Given that directory information is all that is requested in FI ¶ 12.1 and SIs ¶ 1 and 3, those disclosures are not protected and no notice is required. Furthermore, to the District's generalized privacy claim, the burden is on the District to establish the extent of the privacy interest. *Williams v. Superior Court* (2017) 3 Cal.5th 531, 557. They fail to do so. The only information requested is basic contact information as would be necessary for Plaintiff to assess whether there are witnesses who may be questioned for additional factual information. Plaintiff does not establish a legitimate privacy interest, and therefore there is nothing to add to the balancing test. Even if the Court were to engage in a balancing test, the information potentially held by these individuals far outweighs the privacy rights associated with mere presence at a school outing. Further responses to FI ¶ 12.1 and SIs ¶ 1 and 3 are appropriate.

FI ¶ 7 requests that the District identify all "communications"[1] about the incident. The District in turn identified all written communications. Plaintiff argues that the omission of any detail regarding oral communications is improper. The District's obligation is to answer the question as completely as possible. The District is correct that they do not necessarily have an obligation to catalogue every discussion which occurs as a result of the incident, but neither do they provide any specification of any oral communication which occurred. The burden of the District is to provide all responses in as complete a manner as possible. The District is required to adequately assess the information it has, regardless of whether it is written or oral. Only where the information held by the District is incomplete may they answer so generally regarding "other conversations". The response fails to address this requirement, and therefore further responses are required.

D. RPODs

Plaintiff's assertion of failure to identify documents under CCP § 2031.280 as to requests Nos. 2, 13, 14, 15, 16, 1,7, and 19 is both inadequately shown in the separate statement and precluded by the failure to identify the appropriate motion in the notice of motion. See CCP § 2031.320. Accordingly, these two defects prevent the Court reaching the substance of the request. Therefore, Plaintiff's request for responses which identify documents in these requests is DENIED.

Plaintiff requests for a further response to RPOD ¶ 2 is incomplete. In the separate statement, Plaintiff identifies multiple documents that the District had previously produced, but they have not produced here. The District has identified no basis for withholding the documents, as any privilege related to those documents has been waived due to previous disclosure to Plaintiff. While Plaintiff correctly identifies that communications with insurance carriers may be folded into attorney client privilege in some instances, disclosure to Plaintiff has clearly waived the privilege as to these documents. Plaintiff must produce the withheld documents.

IV. Conclusion

[1] A term which is not defined, but to which there is no objection.

Plaintiffs' motions are **GRANTED in part**. The District shall produce further objection-free responses to FIs ¶¶ 4.1, 4.2 and 12.1, and SIs ¶ 1, 3, and, 7, and RPOD ¶ 2 within 30 days of notice of this order. All other requests for further responses and/or production are otherwise DENIED.

Plaintiff's 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). Thereafter, Plaintiffs shall provide notice of the order per CCP § 1019.5.

6. 24CV05158, Sanchez v. Nocal AG, Inc.

Plaintiffs Artemio Montano Sanchez ("Plaintiff") filed the currently operative first amended complaint (the "FAC") in this action against defendants the Nocal AG, Inc ("Nocal"), FCA US LLC ("FCA", together with Nocal, "Defendants"), and Does 1-25, for multiple alleged causes of action arising out of repairs and warranties related to Plaintiff's vehicle, a 2014 Chrysler Town and Country (the "Vehicle"). The causes of action include (1) breach of contract, (2) breach of the implied covenant of good faith and fair dealing, (3) breach of contract [Nocal], (4) breach of the implied covenant of good faith and fair dealing [Nocal], and (5) misrepresentation [Nocal].

This matter is on calendar for the Defendants' demurrer to causes of action three through five within the Complaint pursuant to Cal. Code Civ. Proc. ("CCP") § 430.10(e) for failure to state facts sufficient to constitute a cause of action. The Demurrer is **SUSTAINED with leave to amend as to the Fifth cause of action. The Demurrer is OVERRULED as to causes of action Three and Four.**

I. Legal Standards

A. General Demurrers

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

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. *Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 702. Generally, the pleadings "must allege the ultimate facts necessary to the statement of an actionable claim. It is both improper and insufficient for a plaintiff to simply plead the evidence by which he hopes to prove such ultimate facts." *Careau & Co. v. Security Pac. Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1390; *FPI Develop., Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384. Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. *C.A. v. William S. Hart Union High School Dist*. (2012) 53 Cal.4th 861, 872. Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. *Perkins v.*

Superior Court (1981) 117 Cal.App.3d 1, 6. "The distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree." *Burks v. Poppy Const. Co.* (1962) 57 Cal.2d 463, 473. Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.

B. Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing

"A contract is an agreement to do or not to do a certain thing." Civ. Code, § 1549. Contracts require capable parties, the consent of those parties, a lawful object, and mutual consideration. Civ. Code § 1550. "The object of a contract is the thing which it is agreed, on the part of the party receiving the consideration, to do or not to do." Civ. Code, § 1595. "The object of a contract must be lawful when the contract is made, and possible and ascertainable by the time the contract is to be performed." Civ. Code, § 1596. "An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." *City of Moorpark v. Moorpark Unified School Dist.* (1991) 54 Cal.3d 921, 930, quoting Restatement 2d Contracts § 24. "To be enforceable, a promise must be definite enough that a court can determine the scope of the duty and the limits of performance must be sufficiently defined to provide a rational basis for the assessment of damages." *Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 770.

The elements of a cause of action for breach of contract are: "'(1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff.'" *See Coles v. Glaser* (2016) 2 Cal.App.5th 384, 391; quoting *Hamilton v. Greenwich Investors XXVI, LLC* (2011) 195 Cal.App.4th 1602, 1614, 126 Cal.Rptr.3d 174. "It is the general rule that if an instrument is ambiguous the party pleading is required to set forth the meaning of the writing. The meaning attributed to the writing must be one to which it is reasonably acceptable, and where 'a pleaded instrument is, because of the uncertainty of the language in which it is expressed, susceptible of more than one construction As to its nature or as to the purpose intended by the parties to be attained by it, … the construction of the party pleading it should be accepted, if such construction be reasonable' in considering a pleading attacked by general demurrer." *Connell v. Zaid* (1969) 268 Cal.App.2d 788, 794–795 (internal citations omitted).

"Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement." *Carma Developers (Cal.), Inc. v. Marathon Development California, Inc.* (1992) 2 Cal.4th 342, 371-372; *Foley v. Interactive Data Corp.* (1988) 47 Cal.3d 654, 683–684; *Thrifty Payless, Inc. v. The Americana at Brand, LLC* (2013) 218 Cal.App.4th 1230, 1244. "The covenant of good faith and fair dealing, implied by law in every contract, exists merely to prevent one contracting party from unfairly frustrating the other party's right to receive the *benefits of the agreement actually made.*" *Guz v. Bechtel Nat. Inc.* (2000) 24 Cal.4th 317, 349 (emphasis original). The covenant requires each contracting party to refrain from doing "anything which will injure the right of the other to receive the benefits of the agreement." *Kransco v. American Empire Surplus Lines Ins.* Co. (2000) 23 Cal.4th 390, 400; *see also, Egan v. Mutual of Omaha Ins. Co.* (1979) 24 Cal.3d 809, 818. The implied covenant rests upon the existence of a specific contractual obligation and "cannot impose substantive duties or limits on the contracting parties beyond those incorporated in the specific terms of their agreement."

Agosta v. Astor (2004) 120 Cal.App.4th 596, 607; *see also, Racine & Laramie, Ltd. v. California Dept. of Parks & Rec.* (1992) 11 Cal.App.4th 1026, 1031-32.

A written estimate under Business and Professions Code § 9884.9 is a necessary element for recovery by an automotive repair dealer in an action under a repair contract. *Donaldson v. Abot* (1987) 194 Cal.App.3d 817, 820. Failure to provide a customer with a written estimate renders the contract unenforceable. *Ibid*. While subsequent oral modifications are allowable, they must rest upon the initial issuance of a written estimate, or recovery is barred, as they represent mere subsequent modifications of an existing contract. *Schreiber v. Kelsey* (1976) 62 Cal.App.3d Supp. 45, 50.

C. Fraud

"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; see also Civ. Code §§ 1571-1574. "'[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. In pleading fraud claims, "(e)very element of the cause of action must be alleged in full, factually and specifically." *Tindell v. Murphy* (2018) 22 Cal.App.5th 1239, 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).

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. 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." *Rossberg v. Bank of America, N.A.* (2013) 219 Cal.App.4th 1481, 1499." "A plaintiff asserting fraud by misrepresentation is obliged to plead and prove actual reliance, that is, to "establish a complete causal relationship" between the alleged misrepresentations and the harm claimed to have resulted therefrom.'" *OCM Principal Opportunities Fund, L.P. v. CIBC*

World Markets Corp. (2007) 157 Cal.App.4th 835, 864, quoting *Mirkin v. Wasserman* (1993) 5 Cal.4th 1082, 1092.

II. Procedural and Evidentiary Issues

Nocal objects to three representations in Counsel's declaration. The Court first notes that the declaration of Plaintiff's counsel has no material relevance to the determination on the motion, which is exclusively controlled by the pleadings and matters judicially noticeable. There is no request for judicial notice.

However, Nocal's counsel appears to be under some misapprehension of the purpose of the meet and confer efforts required by the parties before a demurrer is filed. Nocal boldly declares that all that is required is for the parties to "set forth their own positions". This understates the duties of counsel in meeting and conferring. The Legislature has proscribed the Court's ability to deny demurrers for inadequate efforts in meeting and conferring. See CCP § 430.41(a)(4). The Court may, however, order counsel to "meaningfully discuss the pleadings". *Dumas v. Los Angeles County Bd. of Supervisors* (2020) 45 Cal.App.5th 348, 356, fn. 3. The purpose of meet and confer efforts is for both sides to meaningfully consider the points raised by the other party. Were the Court to determine it was to be productive, it appears to the Court that *neither* party was receptive to the position on the other side.

The Court only considers the declaration of counsel for the purpose of determining the sufficiency of meet and confer efforts. To that effect, Nocal does not present a persuasive objection. The objections are OVERRULED.

III. Analysis

A. Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing

Plaintiff alleges that the Vehicle was tendered to Nocal with a "Date/Time Promised" of July 31, 2023, for return of the vehicle. FAC ¶ 58. Nocal was required to perform a diagnosis of the vehicle. FAC ¶ 57. Nocal did not return the Vehicle, or perform the promised diagnosis, until December 20, 2023. FAC ¶ 58. Plaintiff has included the repair estimate as an exhibit to the FAC. See FAC, Ex. E (the "Estimate"). Nocal argues that the causes of action for breach of contract and breach of the covenant of good faith and fair dealing are not adequately expressed because a contract is not pled, and therefore the causes of action derived from contract both fail.

Nocal's position is unpersuasive. The Estimate appears to be an offer under California law and jurisprudence. The Estimate provides the services to be performed by Nocal, the time in which it was expected to be performed, and the payment that Plaintiff would have to tender in return for the services included in the Estimate. These meet the essential elements of a contract. Moreover, there is authority specific to automotive repairs which further supports this conclusion. Nocal was required, if they had any intent to recover the $199 included in the Estimate, to provide the Estimate in written form. Bus. & Prof. Code, § 9884.9. Failure to do so would have rendered any claim thereon unenforceable. *Donaldson v. Abot* (1987) 194 Cal.App.3d 817, 820. Courts have found that an initial estimate is necessary to the formation of a repair contract, and absent that written estimate, subsequent oral modifications to an agreement to repair are not enforceable.

Schreiber v. Kelsey (1976) 62 Cal.App.3d Supp. 45, 50. Accordingly, an estimate appears to be sufficient to form a contract under California law.

Nocal fares no better on the breach of implied covenant of good faith and fair dealing. Nocal's entire articulated argument in this regard is predicated on there being no contract. There being a contract, there is no articulable argument against the application of the implied rules thereon. Nocal also makes a confusing and disjointed reference to the economic loss rule and *Robinson Helicopter Co. v. Dana Corp*. (2004) 34 Cal. 4th 979, 988. This is not applicable to breach of implied covenant of good faith and fair dealing. Breach of implied covenant claims are claims in contract, not tort as asserted by Nocal. They are the duties "implied by law in every contract". *Guz v. Bechtel Nat. Inc.* (2000) 24 Cal.4th 317, 349. "Although breach of the implied covenant often is pleaded as a separate count, a breach of the implied covenant is necessarily a breach of contract." *Digerati Holdings, LLC v. Young Money Entertainment, LLC* (2011) 194 Cal.App.4th 873, 885. They are contractual claims, not tortious ones, and Nocal provides no citation to the contrary. Therefore, the economic loss rule has no application.

The demurrer to the third and fourth causes of action are **overruled**.

B. Fraud

Norcal also argues that Plaintiff has not adequately pled fraud because the fraud claim lacks specificity. Plaintiff points the Court to FAC ¶ 76-78, arguing that these sections are adequately specific to meet each contention of fact required for fraud.

The alleged misrepresentation is adequately clear to survive demurrer. Plaintiff alleges that the Vehicle was to be returned on a date certain, and Nocal failed to return the car on that date. This satisfies the misrepresentation element.

Defendant also argues that it is not clear who made the misrepresentation. Plaintiff's contention regarding the willingness of counsel to provide the names of the individuals who made fraudulent statements is neither constructive, nor relevant. As Plaintiff notes, the Estimate contains that information. The salesperson and the "Advisor" are both identified on the document. Absent contrary information, this appears sufficient for the document to control the pleading. Nocal's claim of lack of specificity is not persuasive as a result.

The Court also agrees that generally, fraudulent intent is an issue for a trier of fact. However, the same liberality does not apply to allegations of reliance, which Plaintiff has pled in a conclusory and vague fashion. Plaintiff rotely states that they "reasonably relied" on the promise of Norcal, but that is not what is necessary to satisfy the pleading of reliance. Plaintiff pleads no action undertaken in reliance on the misrepresentation and therefore cannot relate the alleged fraud to any damages. This does not meet the pleading requirements of fraud.

The demurrer to the fraud cause of action is SUSTAINED with leave to amend.

C. Plaintiff's Request for Sanctions

In their opposition, Plaintiff requests that the Court issue an order to show cause for sanctions under CCP § 128.7. Plaintiff has not raised this point in a motion, and certainly has not displayed the necessary compliance with the safe harbor provisions of CCP § 128.7 (c)(1). These safe harbor provisions are construed strictly, and failure to serve a full motion in compliance with CCP § 1010 renders any request thereon deficient. Moreover, this is a matter within Plaintiff's power to raise, as the statute provides Plaintiff with the opportunity to file such a motion. Accordingly, the Court will not *sua sponte* undertake what Plaintiff did not see fit to perform himself. Plaintiff's request for an OSC re: sanctions is DENIED.

IV. Conclusion

Based on the foregoing, **the Demurrer is SUSTAINED with leave to amend as to the Fifth cause of action. The Demurrer is OVERRULED as to causes of action Three and Four.**

Defendant's 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).

7. MCV-258332, Creditors Adjustment Bureau, Inc. v. Sanders

Plaintiff Creditor Adjustment Bureau, Inc ("Plaintiff"), has obtained a default judgment against defendant Calvin Paul Sanders ("Defendant", or "Judgment Debtor") in the amount of $20,785.08 (the "Judgment"). This matter is on calendar for the motion by Plaintiff under Code Civ. Proc. ("CCP") § 706.109 to issue a wage attachment against Judgment Debtor's spouse, Melissa Sanders ("Spouse").

I. Governing Law

"If a writ of execution has been issued to the county where the judgment debtor's employer is to be served and the time specified in subdivision (b) of Section 699.530 [180 days] for levy on property under the writ has not expired, a judgment creditor may apply for the issuance of an earnings withholding order by filing an application with a levying officer in such county who shall promptly issue an earnings withholding order." CCP § 706.102(a).

"An earnings withholding order may not be issued against the earnings of the spouse of the judgment debtor except by court order upon noticed motion." CCP § 706.109. "Section 706.109 recognizes that despite the general rule that community property is liable for debts of a spouse, community property earnings are unique and may not be liable in some situations. See, e.g., Civil Code § 5120.110 (liability of community property). For this reason, an earnings withholding order against the spouse of the judgment debtor may only be issued upon noticed motion." 17 Cal.L.Rev.Comm. Reports 1 (1984); 18 Cal.L.Rev.Comm. Reports 61 (1984). "If the defendant has not appeared in the action and legal process is required to be personally served on the defendant under this title, service shall be made in the same manner as a summons is served under Chapter 4 (commencing with Section 413.10) of Title 5." CCP, § 482.070 (d). Accordingly, in actions to issue attachment orders against a nondebtor spouse, "(t)he motion and supporting papers should be **personally served** on both the judgment debtor and the nondebtor

spouse. Cal. Prac. Guide Enf. J. & Debt Ch. 6F-3, 3. Issuance and Service of Earnings Withholding Orders.

II. Application

The motion has several procedural deficiencies. As an initial matter, the request for attachment must occur within the 180-day duration of the writ of execution. CCP § 706.102. This runs "from the date the writ issued." CCP § 699.530. Plaintiff's most recent writ of execution was issued on September 12, 2024, in Los Angeles County. The instant motion was filed on May 7, 2025, and the motion was served by mail to Defendant and Spouse at an address in Sonoma County. This is more than 180 days after the issuance of the writ. Second, the writ was issued for a county in which there is no evidence the writ should have been applied. There is no indication that the writ was "issued to the county where the judgment debtor's employer is to be served". CCP § 706.102(a). Accordingly, the Court has no power to issue the requested attachment.

Plaintiff has served the motion by mail. There is no proof of personal service as to either the Judgment Debtor or the spouse. As an initial matter, Plaintiff obtained the judgment by default, and Defendant never appeared in the action. Accordingly, it appears necessary that he be personally served with any motion for attachment. CCP, § 482.070 (d). However, even more relevant is that there has been no personal service of the motion on Spouse. Given that fact, the Court has no jurisdiction over her, and the motion fails for due process reasons. Spouse **must** be personally served with the motion.

Plaintiff's motion is DENIED without prejudice.

The minutes will serve as the Court's order on this matter.

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