TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, September 23, 2026 3:00 p.m.
Courtroom 17 – Hon. Jane Gaskell
3035 Cleveland Avenue, Santa Rosa

PLEASE NOTE: In accordance with the Order of the Presiding Judge, a party or representative of a party may appear in Department 17 in person or remotely by Zoom, a web conferencing platform.

CourtCall is not permitted for this calendar.

If the tentative ruling is accepted, no appearance is necessary via Zoom unless otherwise indicated.

TO JOIN D17 ZOOM ONLINE:
Meeting ID: 161 126 4123
Passcode: 062178
https://sonomacourt-org.zoomgov.com/j/1611264123

TO JOIN ZOOM BY PHONE:
By Phone (same meeting ID and password as listed for each calendar):
+1 669 254 5252

The following 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 as to any motion, **YOU MUST NOTIFY** Judge Gaskell's Judicial Assistant by telephone at **(707) 521-6723**, and all other opposing parties of your intent to appear, and **whether that appearance is in person or via Zoom**, by ***4:00 p.m. the court day immediately preceding the day of the hearing.***

1. 24CV05882, Kipperman v. Cole

Defendant William L. Cole ("Defendant") moves for the Court to impose issue, evidence, and monetary sanctions against Plaintiff Allan L. Kipperman for failure to comply with this Court's Order dated July 29, 2026. The Motion is **GRANTED in part**.

1. Any evidence that has not previously been provided to Defendant that was requested in the discovery that is the subject of this Motion shall be precluded from being introduced at trial. This includes any evidence, testimony, document, exhibit, demonstrative, expert opinion or argument in support of any claim for past lost earnings, future lost earnings, loss of earning capacity, lost profits, or diminished business income that was not produced in response to Defendant's discovery requests.

2. Any opinion from any witness, including Louis Plumly, Jr., is precluded from being offered at trial if it should be premised in whole or in part on earnings records that Plaintiff was ordered to produce and did not produce.

3. As Plaintiff's lack of previous compliance with the Court's prior Order necessitated this Motion, the Court will in its discretion award sanctions as requested in the Motion for a total amount of **$5,485.00**. The Court does not award the increased amount requested in the Reply.

I. PROCEDURAL HISTORY

On July 29, 2026, the Court granted Defendant's Motion to Compel Plaintiff's further responses to Requests for Production, Set Two, for Requests Nos. 1 through 6, 30, and 31. (See Minute Order dated July 29, 2026.) The Court also ordered that any responsive documents or a privilege log shall be served within 20 days of the Court's Order and that sanctions were awarded in the amount of $2,860.00. (*Ibid*.)

Although Plaintiff did serve further responses, Defendant argues that the further responses did not comply with the Court's Order because Request Nos. 2 and 4 remained unanswered, no tax returns were produced, the responses were unverified, and documents provided in response to Request Nos. 5, 6, and 31 were not responsive. (Motion, 4:13-17.) Defendant met and conferred with Plaintiff to request Plaintiff to cure these further responses, but Plaintiff did not fix the issues. (Motion, 4:24-27.)

As monetary sanctions granted in the prior Order were not effective, Defendant now seeks issue, evidentiary, and monetary sanctions against Plaintiff under Code of Civil Procedure ("C.C.P.") section 2023.030. Plaintiff opposed this motion, to which Defendant replied.

II. ANALYSIS

Legal Standard

Conduct that misuses the discovery process is subject to sanctions. (C.C.P. § 2023.010.) The Court may impose the following sanctions against anyone engaging in conduct that is a misuse of the discovery process: (1) monetary sanctions to pay reasonable expenses, including attorney's fees, incurred by anyone as a result of the conduct; (2) issue sanctions ordering that designated facts shall be taken as established in according with the claim of the party adversely affected by the conduct; (3) evidence sanctions prohibiting any party engaging in the conduct from introducing designated matters in evidence; (4) terminating sanctions; and (5) contempt sanctions. (C.C.P. § 2023.030.)

Defendant's Motion

Defendant moves for an order that:

1. Precludes Plaintiff from introducing at trial any evidence, testimony, document, exhibit, demonstrative, expert opinion or argument in support of any claim for past lost earnings, future lost earnings, loss of earning capacity, lost profits, or diminished business income;

2. Establishes, for all purposes in this action, that Plaintiff sustained no compensable loss of

earnings and no compensable loss of earnings capacity as a result of the collision of August 25, 2024;

3. Precluding any witness, including Louis Plumly, Jr., from offering any opinion premised in whole or in part on earnings records that Plaintiff was ordered to produce and did not produce; and

4. Awarding Defendant additional monetary sanctions of $5,485.00 for fees and costs incurred in bringing this motion. (Motion, 2:5-18.)

Defendant notes that Plaintiff's own custodian of records already testified to confirm that some of the discovery sought does exist and can be produced, but that it has not been to date. (Motion, 10:3-26.) Defendant also points out that trial begins October 2, 2026, and Plaintiff is expected to testify to a loss of $545,391.60 based on withheld records that have never been produced or identified in any privilege log to Defendant. (*Id*. at 11:2-9.) Defendant argues that allowing such evidence in the trial would be prejudicial because even further production at this stage would not allow sufficient to analyze any of the information provided to prepare for trial. (Motion, 11:10-15.)

The sanctions requested include: (1) 13.5 hours of counsel's fees at a rate of $310.00 per hour incurred preparing the meet and confer letter, this Motion, the concurrently filed ex parte application, and anticipated to incur for 4 hours to review any opposition, prepare a reply, and attend the hearing; and (2) $60.00 filing fee. (Motion, pp. 14-15; Brown Decl., ¶¶ 26-27.)

<u>Plaintiff's Opposition</u>

Plaintiff requests that the Court deny the Motion because Plaintiff substantially complied with the Court's Order. (Opposition, 5:12-15.) Plaintiff argues that Defendant cannot establish willful misuse of discovery or that prejudice will or has resulted such that the extreme sanctions requested be granted. (*Id*. at pp. 5-6.) Plaintiff claims that the further responses served and material produced on August 18, 2026, included an accrual-basis profit-and-loss statement for Plaintiff, federal tax materials for multiple years, Schedule C materials, CPT payment reports, and a 2024 profit-and-loss statement. (*Id*. at 3:15-24.)

<u>Reply</u>

The Reply notes that Plaintiff served a second set of further responses on the date that the Opposition was filed, which included the California tax returns, federal schedules, Schedule C part V expense statements, and monthly payment reports in place of annual summaries. (Reply, 2:7-14.) Otherwise, the Reply attacks the further responses and production. (*Id*. at pp. 2-7.) Defendant requests an increased amount of sanctions of $7,097.00. (*Id*. at pp. 8-9.)

<u>Application</u>

The Court has imposed less severe sanctions previously in an attempt to resolve the parties' discovery issues brought before the Court and Plaintiff has failed to wholly comply with the prior Order. However, Plaintiff did partially comply with the Order by producing some of the documents requested and providing some of the further responses requested.

The Court finds that not granting Defendant any relief pursuant to this Motion on the eve of trial when Plaintiff has failed to wholly comply with the Court's Order entered in July will prejudice Defendant at trial. As a result, the Court will partially grant this motion in the following manner:

1. Any evidence that has not previously been provided to Defendant that was requested in the discovery that is the subject of this Motion shall be precluded from being introduced at trial. This includes any evidence, testimony, document, exhibit, demonstrative, expert opinion or argument in support of any claim for past lost earnings, future lost earnings, loss of earning capacity, lost profits, or diminished business income that was not produced in response to Defendant's discovery requests.

2. Any opinion from any witness, including Louis Plumly, Jr., is precluded from being offered at trial if it should be premised in whole or in part on earnings records that Plaintiff was ordered to produce and did not produce.

4. As Plaintiff's lack of previous compliance with the Court's prior Order necessitated this Motion, the Court will in its discretion award sanctions as requested in the Motion for a total amount of **$5,485.00**. The Court does not award the increased amount requested in the Reply.

III. CONCLUSION

The motion is **GRANTED in part** in the manner described above. 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).

2. 25CV02237, Capital One N.A. v. Wright

Plaintiff Capital One Bank (USA), N.A.'s ("Plaintiff" or "Capital One") unopposed motion to vacate the dismissal and entered judgment pursuant to Code of Civil Procedure ("C.C.P.") section 664.6 is **GRANTED**. Judgment shall be entered in the amount of **$4,271.61** against Defendant Rebecca L. Wright ("Wright") for the outstanding debt plus costs. Capital One's request for judicial notice of the parties' Stipulation Agreement filed with the Court is **GRANTED**.

I. PROCEDURAL HISTORY

Capital One brought this action against Wright to collect payment on credit card debt owed. The parties entered into a Stipulation Agreement Pursuant to C.C.P. § 664.6 (the "Stipulation"), according to which Wright agreed to pay Capital One $5,490.46 plus court costs to satisfy the debt and have the action dismissed. (Request for Judicial Notice, Exhibit B.) Per the Stipulation, Wright agreed to make a one-time payment of $223.46, then monthly payments of $229.00 on or before the 10th day of every consecutive month until fully satisfying the judgment. (Request for Judicial Notice, Exhibit B, ¶ 4.) If Wright defaulted on making payments, the entire remaining balance minus the amount already paid would be owed to Capital One plus court costs. (*Id*. at Exhibit B, ¶ 7.) Wright paid a total of $1,597.46 before defaulting on payments. (Cox Declaration, ¶ 6.) Capital One sent Wright a 10-day written notice of failure to make agreed upon payments, but no other payments have been made since April 13, 2026. (*Id*. at ¶¶ 4-5.)

II. ANALYSIS

If parties to a pending litigation agree to sign a written stipulation for settlement of the case, then the court may upon noticed motion enter judgment pursuant to the terms of the settlement. (C.C.P. § 664.6(a).) The court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement if the parties request it. (*Ibid*.) "Section 664.6 was enacted to provide a summary procedure for specifically enforcing a settlement contract without the need for a new lawsuit." (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 809, 71 Cal.Rptr.2d 265.)

Capital One requests to vacate the dismissal and moves for entry of judgment per the Stipulation and section 664.6. (Cox Declaration, 5:4-6.) Capital One has properly served notice of this motion on Wright, who has not opposed. (See Proof of Service dated July 29, 2026.) Capital One requests a judgment in the amount of $4,271.61 against Wright, which includes the $3,893.00 balance remaining on the debt and $378.61 for court costs. (Cox Declaration, ¶ 7; See generally Memorandum of Costs dated July 8, 2026.)

Based on the above, Capital One has sufficiently shown that the parties entered into a valid written and signed Stipulation, under the terms of which Wright has defaulted on making payments and continues to owe Capital One. Per the motion, the parties' Stipulation, and C.C.P. section 664.6, the Court finds it reasonable to enter judgment in the amount of $4,271.61 against Wright for the remaining debt owed plus court costs.

III. CONCLUSION

Accordingly, the motion is **GRANTED**. Capital One's request for judicial notice is **GRANTED**. Judgment shall be entered in the amount of **$4,271.61** against Wright for the outstanding debt plus costs. Unless the parties request and appear for oral argument, the Court will sign the proposed order and proposed judgment lodged with the motion.

3. 25CV04562, McCabe v. Grand Design RV, LLC

Defendants Grand Design RV, LLC ("Grand Design") and A&B RV Sales, LLC ("A&B")(together "Defendants") move for summary adjudication against Plaintiff Tracy McCabe's First Cause of Action for relief under the Song-Beverly Consumer Warranty Act ("Song-Beverly") alleged in the Complaint. The motion is **GRANTED** per Code of Civil Procedure ("C.C.P.") section 437c(f).

I. PROCEDURAL BACKGROUND

The Complaint alleges that Plaintiff purchased a 2025 Grand Design RV ST391 DL ("Trailer") on or about December 15, 2024, from Blue Compass RV which is located in Reno, Nevada. (Undisputed Material Fact ["UMF"] No. 1.) This Trailer was not sold in California, but was delivered to Grass Valley, California. (UMF Nos. 3-6.) Defendants argue that the purchase and sale of the Trailer did not require Blue Compass RV to deliver the Trailer to a specific destination and that the purchase contract is governed by Nevada state law and applicable federal law, not California law. (UMF Nos. 4-5.)

On that basis, Defendants move for summary adjudication of Plaintiff's Song-Beverly claim in Defendants' favor arguing that Plaintiff lacks standing to pursue the claim as the Trailer was not sold in California. (Amended Notice of Motion, 1:25-28, 2:1-2.) Plaintiff opposes the motion and Defendants replied to the opposition. The parties' arguments are considered below.

II. ANALYSIS

Legal Standard

Per C.C.P. section 437c(f), a party may move for summary adjudication "as to one or more causes of action within an action, one or more affirmative defenses…if the party contends that… that there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs."

An issue of fact exists if "the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 845.) A moving party does not meet the initial burden if some "reasonable inference" can be drawn from the moving party's own evidence which creates a triable issue of material fact. (*Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 840.) If the moving defendant cannot meet the initial burden, the plaintiff has no evidentiary burden. (C.C.P. § 437c(p)(2).)

Defendants' MSA

Defendants argue that Song-Beverly only applies to consumer goods sold in California, citing to the plain language of multiple sections under Song-Beverly and also to the California Supreme Court case *Cummins, Inc. v. Superior Court* (2005) 36 Cal.4th 478, which specifically held that Song-Beverly's "structure and language of the existing statutory provisions indicate that the Legislature intended the Act to apply only to vehicles sold in California." (Memorandum of Points and Authorities, pp. 5-6.) Based on the plain language of the statute and the case law, Defendants argue

Plaintiff has no standing to pursue the Song-Beverly claim because the Trailer was not sold in California pursuant to the definition of a "sale" under California Civil Code section 1791(n), which is the passing of title from seller to buyer for a price. (*Id*. at 7:2-7.) Here, Defendants argue that the undisputed facts show that the title for the Trailer did not pass to Plaintiff in California, but rather passed to Plaintiff in Nevada when she signed the purchase contract at Blue Compass RV. (*Id*. at 8:4-12.) Plaintiff testified that nothing in the Contract required Blue Compass RV to deliver the Trailer to her in California. (UMF Nos. 4, 8.)

Based on the above, Defendants request that the Court grant summary adjudication as to the Song-Beverly claim.

<u>Opposition</u>

Plaintiff argues that Blue Compass RV never completed a pre-delivery inspection and delivered the Trailer to Plaintiff in an unmerchantable condition, so based off these new facts discovered through written discovery, Plaintiff filed a Motion for Leave to Amend to add claims under Violations of Magnuson-Moss Consumer Warranty Act, Negligence, and Violations of Consumer Legal Remedies Act. (Opposition, 2:1-25.) Mainly, Plaintiff requests that summary judgment not be granted as only the Song-Beverly Claim has been attacked.

<u>Reply</u>

The Reply points out that the Opposition concedes there is no triable issue of fact as to the Song-Beverly claim against Defendants and that Plaintiff cannot defeat summary adjudication by pointing to a motion that is not before the Court currently and relying on claims that are not yet pleaded. (Reply, pp. 3-7.)

<u>Application</u>

First, the Motion for Leave to Amend is not before the Court, so the Court will not consider any of its arguments or content when ruling on this Motion for Summary Adjudication which is before Court.

Second, Plaintiff requests the Court to not grant summary judgment against the Complaint, but that is not what is being requested in this Motion. Defendants only request summary adjudication as to the Song-Beverly claim, so the Court will only issue an order limited to that claim.

Third, the Court finds that the Opposition conceded that the Trailer was not sold in California and that Blue Compass RV, which is not a moving defendant for this Motion, failed to complete pre-delivery inspections in Nevada. It is clear to the Court based on this that there is no triable issue of fact as to whether the sale of the Trailer was completed in California or Nevada; it was sold in Nevada and Song-Beverly does not apply.

Based on the foregoing, the Court will grant the MSA in its entirety as to the Song-Beverly claim against Defendants Grand Design RV, LLC and A&B RV Sales, LLC. The Court will later consider whichever arguments Plaintiff intends to make for the proposed amendment to the Complaint at the hearing on Plaintiff's Motion for Leave to Amend.

III. CONCLUSION

The MSA is **GRANTED**. Unless oral argument is requested, the Court will sign the proposed order lodged with this motion.

4-5. 25CV04755, Castro v. Crazy 8, LLC

The Court **GRANTS** Defendant Crazy 8, LLC's ("Defendant") unopposed discovery motions against self-represented Plaintiff Wendy Castro ("Plaintiff") as follows:

1. Plaintiff's Motion to Compel Responses to Form Interrogatories, Set No. Two is **GRANTED**, except sanctions which are addressed below.

2. Motion for Order Deeming Admitted Truth of Facts and Genuineness of Documents is **GRANTED**, except sanctions which are addressed below.

3. Sanctions are, in the Court's discretion, awarded for the amount of $660.00 for the Motion to Deem Admitted and $840.00 for the Motion to Compel as no opposition was filed and no reply or appearance was required.

Castro shall serve objection-free responses to the outstanding interrogatories mentioned above and within 20 days of this Court's order.

I. PROCEDURAL HISTORY

On May 15, 2026, Defendant served Castro with Set Two of Form Interrogatories and Set One of Request for Admissions, to which thus far Castro has failed to provide any responses. (Danna Declarations, ¶ 5.) The Court granted Castro's prior attorney's motion to be relieved as counsel on May 20, 2026, and as yet Castro remains unrepresented.

Defendant now moves to compel responses to the outstanding interrogatories and for the Court to deem the requests for admissions as admitted against Castro. Defendant served the moving papers on Castro via mail and e-mail, but Castro did not file any opposition. Defendant filed a Notice of Non-Opposition.

II. ANALYSIS

Motion to Compel Form Interrogatories

A party who fails to serve a timely response to interrogatories absent evidence showing mistake, inadvertence, or excusable neglect, waives any right to object to the interrogatory, including objections based on privilege or work product, and the court shall impose monetary sanctions upon the party who unsuccessfully opposes a motion to compel initial the responses. (C.C.P. § 2030.290.)

As Castro never responded to Plaintiff's interrogatories and also failed to oppose the motion to offer any justification for the lack of response, the Court will **GRANT** the motion with reduced sanctions which are addressed below.

Motion to Deem As Admitted

Where there is a lack of any response to a request for admission, the requesting party can move for an order "that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted." (C.C.P. § 2033.280(b).) A party who "fails to serve a timely response" to requests for admissions waives any objection to those requests. (C.C.P. § 2033.280(a).) However, the court may relieve a party from this waiver if the court determines that: (1) the party has subsequently served a response that is in substantial compliance with C.C.P. sections 2033.210, 2033.220, and 2033.230; and (2) the party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect. (C.C.P. § 2033.280(a)(1)-(2); *Katayama v. Cont'l Inv. Grp.* (2024) 105 Cal. App. 5th 898, 906–07, reh'g denied (Oct. 30, 2024), review denied (Jan. 15, 2025).)

Here, there was no response at all and there was no opposition filed to explain the lack of response to Defendant's Request for Admissions. As such, the Court will **GRANT** the motion and award reduced sanctions which are addressed below.

Sanctions

Defendant requests the following sanctions for each motion:

1. $2,050.00 for the Motion to Compel, which includes $780.00 in attorney's fees incurred for 2.6 hours of preparing the motion at a rate of $300.00 per hour, 4 hours of anticipatory fees at the same rate for reviewing any opposition, drafting a reply, and attending the hearing, and filing costs of $60.00; and

2. $1,860.00 for the Motion to Deem Admitted, which includes $600.00 in attorney's fees incurred for 2.0 hours of preparing the motion at a rate of $300.00 per hour, 4 hours of anticipatory fees at the same rate for reviewing any opposition, drafting a reply, and attending the hearing, and filing costs of $60.00.

None of the anticipatory fees are warranted as there was no opposition filed to either motion, so a reply was not necessary and likely a hearing will not be either. The Court will only award the fees incurred and the filing costs, so for the Motion to Compel the Court will award $840.00 and for the Motion to Deem Admitted the Court will award $660.00. Defendant's counsel did meet and confer with Castro on the outstanding discovery, at which meet and confer Castro indicated she was still trying to find legal representation but did not indicate she would provide any discovery responses. (Danna Declarations, ¶¶ 4-5.)

III. CONCLUSION

Based on the above, the Court grants both of Defendant's unopposed motions and awards reduced sanctions of **$840.00** for the Motion to Compel and **$660.00** for the Motion to Deem Admitted. Castro shall serve objection-free responses to the outstanding interrogatories within 20 days of this Court's order. Defendant shall submit a written order on its motions to the Court consistent with this tentative ruling and in compliance with California Rules of Court, Rules 3.1312(a) and (b).

6-7. 26CV02694, Schornack v. Combs

Defendant Carl Combs ("Defendant") demurs to each and every cause of action in Plaintiffs Suzanna Schornack and Giovanni Cincotta's ("Plaintiffs") Complaint, pursuant to California Code of Civil Procedure ("C.C.P.") sections 430.10 and 430.30. The unopposed demurrer is **SUSTAINED with leave to amend** in its entirety. Plaintiffs shall file their First Amended Complaint within 10 days of receiving notice of this Court's Order.

The concurrently filed unopposed motion to strike is **DENIED** as moot at this time due to the sustaining of the demurrer in its entirety with leave to amend.

I. PROCEDURAL HISTORY

Plaintiffs entered into a lease for unspecified real property allegedly located in Sonoma County and owned by Defendant. (Complaint, ¶¶ 6-7.) Plaintiffs allege that Defendant continuously in bad faith violated the warranty of habitability with regard to the leased property and engaged in a pattern of harassment, intimidation, trespass, defamation, violation of the covenant of quiet enjoyment and invasion of privacy against Plaintiffs. (Complaint, ¶ 9.) The Complaint alleges the following causes of action against Defendant: (1) Violation of Implied Warranty of Habitability; (2) Breach of Contract; (3) Breach of Implied Covenant of Good Faith and Fair Dealing; (4) Fraudulent Misrepresentation; (5) Deceit/Negligent Misrepresentation; (6) Wrongful Eviction; (7) Harassment; (8) Trespass; (9) Invasion of Privacy; (10) Defamation; (11) Slander; (12) Libel; (13) Violation of State and Local Housing Laws; (14) Violation of Covenant of Quiet Enjoyment; (15) Intentional Infliction of Emotional Distress; (16) Negligence; and (17) Negligence or Assault. (Complaint, ¶¶ 11-110.)

Defendant identifies multiple issues with the Complaint. First, Plaintiff Schornack advised that she is representing both herself in pro per and also Plaintiff Cincotta in this action, yet there is no indication on the face of the Complaint that she is Plaintiff Cincotta's counsel and Plaintiff Cincotta did not verify the Complaint with a signature. (Demurrer Memorandum of Points and Authorities ["Demurrer"], 1:22-26.) Second, the address for the subject property was not identified. (*Id*. at 1:27-28, 2:1-2.) Third, no written agreement was attached to the Complaint and the Complaint is vague as to whether the alleged lease was written or oral. (*Id*. at 2:4-7.) Defendant's counsel met and conferred with Plaintiff Schornack, who both confirmed that she was representing the other Plaintiff in this matter and that she would not dismiss any of the causes of action or strike her request for attorneys' fees. (Jaffee Decl., ¶¶ 3-5.)

Defendant filed the Demurrer and Motion to Strike against the Complaint, which were both timely and properly served with the notice of hearing date on Plaintiff Schornack, self-represented and as counsel for Plaintiff Cincotta. (See Proofs of Service dated July 27, 2026.) No opposition or objection has been filed. Defendant filed a Reply to Non-Opposition for both motions.

II. REQUEST FOR JUDICIAL NOTICE

The Court **GRANTS** Defendant's request for judicial notice per Evidence Code sections 452 and 453 of:

1. Attorney Profile for Suzanna M. Schornack, Bar Number 281981, from the State Bar of California website.

2. Plaintiffs' Complaint filed on April 27, 2026.

III. ANALYSIS

Legal Standard

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. (C.C.P. § 430.30(a).) At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) Similarly, opinions, speculation, or allegations contrary to law or judicially noticed facts are also disregarded. (*Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 702.) 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, but the distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) 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 burden of proving that there is a reasonable possibility to cure the defect is squarely on the party that filed the pleading, but if that burden is met and leave to amend is not granted, then that constitutes an abuse of discretion by the trial court. (*Ibid*.)

Motion to Strike

The Court may strike a pleading that contains "irrelevant, false, or improper matter[s]" or is "not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (C.C.P. §§ 435, 436(b).)

Defendant’s Demurrer

The Demurrer attacks each cause of action in the Complaint arguing that:

1. The contract-based claims are insufficient because no written agreement was attached to the Complaint and the Complaint failed to allege whether the contract was written or oral. (Demurrer, pp. 4-5.)

2. The misrepresentation claims fail because Plaintiffs failed to plead all of the necessary elements of fraud, much less plead them with the requisite particularity. (*Id*. at pp. 5-7.)

3. Though the Complaint alleges wrongful eviction, it never alleges that Defendant actually evicted Plaintiffs. (*Id*. at 7:6-8.)

4. The claim for harassment fails against Defendant because no facts have been alleged to place Defendant on notice of his own conduct that could constitute harassment because only Patty Combs, Mike Adams, and “Greg” were alleged to have harassed Plaintiffs. (*Id*. at 7:10-15.)

5. The Complaint failed to allege any facts to support the trespass or invasion of privacy claims too because the alleged property that was trespassed or invaded was never defined in the Complaint. (*Id*. at 7:18-20.)

6. The defamation, slander, and libel claims fail because, while they allege that “Defendants” did not allow Plaintiffs to remain on the property, the Complaint fails to allege any defamatory statements that are attributed to Defendant. (Demurrer, 7:21-27.)

7. As to the claim for violation of state and local housing laws, Defendant claims that no actual state or local laws were cited in the Complaint. (*Id*. at 8:1-3.)

8. The claim for violation of covenant of quiet enjoyment fails because Plaintiffs failed to allege any conduct that violated their quiet enjoyment and rather just recite the elements of the claim. (Demurrer, 8:4-7.)

9. The claim for intentional infliction of emotional distress fails because Plaintiffs fail to allege what conduct Defendant engaged in that caused the emotional distress or even that Plaintiffs were emotionally distressed. (*Id*. at 8:10-24.)

10. The two negligence claims fail to allege what duty Defendant had that was breached and caused injury to Plaintiffs. (*Id*. at pp. 8-9.) In the caption, the Seventeenth Cause of Action is listed as “Assault” but in the Complaint allegations, it is listed as a second claim for negligence.

Plaintiffs did not oppose to defend against any of the above deficiencies raised against the Complaint. As such, the Demurrer is **SUSTAINED with leave to amend** in its entirety.

Defendant’s Motion to Strike

Due to the sustaining of the Demurrer in its entirety with leave to amend, the Court will deny the unopposed Motion to Strike as moot at this time.

IV. CONCLUSION

Based on the above, the Demurrer is **SUSTAINED with leave to amend** in its entirety. The motion to strike is **DENIED** as moot due to the sustaining of the Demurrer with leave to amend. Plaintiff shall file and serve the First Amended Complaint within 10 days of receiving notice of this Court's order.

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