TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, September 24, 2025 3:00 pm
Courtroom 19 –Hon. Oscar A. Pardo
3055 Cleveland Avenue, Santa Rosa

The tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument, **YOU MUST NOTIFY** the Judge's Judicial Assistant by telephone at **(707) 521-6602**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

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

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1-2. 24CV02049, Cederborg v. Hanford Applied Restoration & Conservation

Plaintiff Mark Cederborg ("Plaintiff") filed the complaint in this action against Hanford Applied Restoration and Conservation ("HARC"), Douglas Hanford ("Hanford", together with HARC "Defendants") and Does 1-10 with causes of action for breach of contract and declaratory relief (the "Complaint"). Defendants have in turn filed a cross-complaint against Plaintiff (the "Cross-Complaint"). Defendants had also filed an action in Solano County (case CU24-07002, the "Consolidated Action") now under the current operative first amended consolidated complaint (the "FACC") against EIP III Credit Co., LLC ("EIP"), Ecosystem Investment Partners III, LP ("Eco Investment"), EIP Partners III LP ("EIP Partners"), U.S. Specialty Insurance Company ("USS Insurance"), the State of California Department of Water Resources (the "DOWR", together with other Consolidated Action FACC defendants, "Consolidated Action Defendants"), and Does 1-100. EIP has in turn filed a cross-complaint in the Consolidated Action against Defendants (HARC and Hanford) and Does 1-10 (the "Consolidated Cross-Complaint", or "CXC").

This matter is on calendar for Defendants' Hanford and HARC's demurrer to each cause of action in the Consolidated Cross-Complaint.

I. Procedural and Evidentiary Issues

The demurrer and motion to strike initially came for hearing on July 23, 2025. The Court then issued a ruling requesting the parties provide supplemental briefing on the applicability of Business & Professions Code §7049. In response, EIP made a request for judicial notice in the body of their brief. Defendants in turn objected to the request for judicial notice, arguing that the requested notice exceeded what was permissible under Evidence Code § 452. EIP has in turn moved to strike the objection as not allowed by the Court's briefing schedule.

First, to address the request for judicial notice ensconced in a footnote (See EIP's 8/20/2025 Supplemental Brief, pg. 4, fn. 6), the objection and the motion to strike, the Court considers none. As is noted below, what is subject to judicial notice is narrow. To the degree the request for judicial notice seeks to supplement a manner in which the CXC may be found deficient, as the footnote request states, that is a matter the Court finds more appropriate for amendment. The Request for judicial notice not being considered on the Court's reasoning, the objection and motion to strike are superfluous and not necessary to disposition of the demurrer and motion to strike. They are also not contemplated by the Court's allowance of narrow supplemental pleading.

Second, to the requests for judicial notice by Defendants, 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.* EIP requests that the Court take judicial notice of various public documents, mostly deeds and public documents related to the establishment of the project. Their existence and content are judicially noticed, but the truth of what is contained thereon is not.

II. Governing Law

A. Demurrers Generally

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 when 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. Contractor's License

The Contractors' State License Law at Business and Professions Code § 7000 et seq. ("CSLL") provides "a comprehensive scheme which governs contractors doing business in California." *Asdourian v. Araj* (1985) 38 Cal.3d 276, 282; *Judicial Council of California v. Jacobs Facilities, Inc.* (2015) 239 Cal.App.4th 882, 894. Contractors are broadly defined under Business and Professions Code § 7026. Business and Professions Code § 7031 bars unlicensed contractors from bringing or maintaining an action to recover compensation for any work for which a contractors' license is required.

As the court explained in *Hydrotech Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal.3d 988, at 995, "The purpose of the licensing law is to protect the public from incompetence and dishonesty in those who provide building and construction services. [Citation.] The licensing requirements provide minimal assurance that all persons offering such services in California have the requisite skill and character, understand applicable local laws and codes, and know the rudiments of administering a contracting business." The "limited defense of substantial compliance, via subdivision (e)… is the exclusive means for avoiding forfeiture in the event of a violation of CSLL. [Citation.]" *Judicial Council of California v. Jacobs Facilities, Inc.* (2015) 239 Cal.App.4th 882, 896. Section 7031 is held to apply ' " '[r]egardless of the equities' " [Citation], [so] unlicensed contractors are prohibited from asserting equitable defenses, such as estoppel, to forfeiture. [Citation.]' Judicial Council, 897. The result is that "[f]or a contractor failing to qualify under the statutory safe harbor of subdivision (e), section 7031 is truly a strict liability statute." *Ibid.*

Nonetheless, the licensing requirement is subject to various exceptions under the CSLL. "An owner who builds or improves a structure on his or her property," is exempt, "provided that both of the following conditions are met: (A) The owner directly contracts with licensees who are duly licensed to contract for the work of the respective trades involved in completing the project. (B) For projects involving single-family residential structures, no more than four of these structures are intended or offered for sale in a calendar year. This subparagraph shall not apply if the owner contracts with a general contractor for the construction." Bus. & Prof. Code, § 7044 (a)(2). Similarly, the CSLL "does not apply to any construction or operation incidental to the construction and repair of irrigation and drainage ditches of regularly constituted irrigation districts, reclamation districts, or to farming, dairying, agriculture, viticulture, horticulture, or stock or poultry raising, or clearing or other work upon the land in rural districts for fire prevention purposes, except when performed by a licensee under this chapter." Bus. & Prof. Code, § 7049.

C. Fraud and Economic Loss Rule

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

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

To establish reliance on fraud, reliance upon the truth of the fraudulent misrepresentation does not have to be a predominant factor, but it must be a substantial factor in the plaintiff's subsequent conduct. *OCM Principal Opportunities Fund, L.P. v. CIBC World Markets Corp.* (2007) 157 Cal.App.4th 835, 864. Plaintiffs in fraud by concealment claims must show that if the information had not been omitted, plaintiff would have been aware of it and therefore would have behaved differently. *Id.* The pleading must be adequately specific to show actual reliance on the omission, and that the damages causally resulted therefrom. *Id*. California law "requires a plaintiff to allege specific facts not only showing he or she actually and justifiably relied on the defendant's misrepresentations, but also how the actions he or she took in reliance on the defendant's misrepresentations caused the alleged damages." *Rossberg v. Bank of America, N.A.* (2013) 219 Cal.App.4th 1481, 1499. Reasonable reliance may, where the facts are clear, be determined as a matter of law. *Home Ins. Co. v. Zurich Ins. Co.* (2002) 96 Cal.App.4th 17, 22. "Reliance on an alleged misrepresentation is not reasonable when plaintiff could have ascertained the truth through the exercise of reasonable diligence." *Rowland v. PaineWebber Inc.* (1992) 4 Cal.App.4th 279, 286 (disapproved on other grounds by *Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 415).

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

"The elements of a negligent misrepresentation are '(1) the misrepresentation of a past or existing material fact, (2) without reasonable ground for believing it to be true, (3) with intent to induce another's reliance on the fact misrepresented, (4) justifiable reliance on the misrepresentation, and (5) resulting damage.'" *Borman v. Brown* (2020) 59 Cal.App.5th 1048, 1060; *Tindell v. Murphy* (2018) 22 Cal.App.5th 1239, 1252; see also, *Hasso v. Hapke* (2014) 227 Cal.App.4th 107, 127; *Ragland v. U.S. Bank National Assn.* (2012) 209 Cal.App.4th 182, 196. A cause of action for negligent misrepresentation sounds in fraud and therefore, "each element must be pleaded with specificity." *Daniels v. Select Portfolio Servicing, Inc*. (2016) 246 Cal.App.4th 1150, 1166; see also, *Charnay v. Cobert* (2006) 145 Cal.App.4th 170, 185, fn. 14 [the elements of negligent misrepresentation "must be pled with particularity…"]. This means "a plaintiff must allege facts showing how, when, where, to whom, and by what means the representations were made, and, in the case of a corporate defendant…the names of the persons who made the representations [and] their authority to speak on behalf of the corporation..." *West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 793; see also, *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645. Thus, "general and conclusory allegations do not suffice," and "the policy of liberal construction of the pleadings...will not ordinarily be invoked to sustain a pleading defective in any material respect." *Lazar, supra,* 12 Cal.4th at 645.

"The (economic loss rule) itself is deceptively easy to state: In general, there is no recovery in tort for negligently inflicted "purely economic losses," meaning financial harm unaccompanied by physical or property damage. *Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal.5th 905, 922. The economic loss rule "functions to bar claims in negligence for pure economic losses in deference to a contract between litigating parties." *Ibid*. "[T]here is no liability in tort for economic loss caused by negligence in the performance or negotiation of a contract between the parties." *Id.* at 923, quoting Restatement 3d Torts, § 3. Under California law,
"the economic loss rule provides: Where a purchaser's expectations in a sale are frustrated because the product he bought is not working properly, his remedy is said to be in contract alone, for he has suffered only economic losses. This doctrine hinges on a distinction drawn between transactions involving the sale of goods for commercial purposes where economic expectations are protected by commercial and contract law, and those involving the sale of defective products

to individual consumers who are injured in a manner which has traditionally been remedied by resort to the law of torts." *Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979. 988. "[T]ort recovery for breach of a contract duty is generally barred ([…]) unless two conditions are satisfied. A plaintiff must first demonstrate the defendant's injury-causing conduct violated a duty that is independent of the duties and rights assumed by the parties when they entered the contract. Second, the defendant's conduct must have caused injury to persons or property that was not reasonably contemplated by the parties when the contract was formed." *Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1, 20–21.

D. Accounting

"A cause of action for accounting requires a showing of a relationship between the plaintiff and the defendant, such a fiduciary relationship, that requires an accounting or a showing that the accounts are so complicated they cannot be determined through an ordinary action at law." *Fleet v. Bank of America N.A.* (2014) 229 Cal.App.4th 1403, 1413. "An action for accounting is not available where the plaintiff alleges the right to recover a sum certain or a sum that can be made certain by calculation." *Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 179

E. Unfair Competition Law

Business & Professions Code section 17200 prohibits "any unlawful, unfair or fraudulent" business practices. Bus. & Prof. Code §17200. "Since section 17200 is [written] in the disjunctive, it establishes three separate types of unfair competition" and "prohibits practices that are either 'unfair' or 'unlawful,' or 'fraudulent.'" *Pastoria v. Nationwide Ins.* (2003) 112 Cal.App.4th 1490, 1496; see also *CelTech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co.*, (1999) 20 Cal.4th163, 180 (1999).

The purpose of the UCL "is to protect both consumers and competitors by promoting fair competition in commercial markets for goods and services." *McGill v. Citibank, N.A.* (2017) 2 Cal.5th 945, 954. Where the plaintiff is an intercessor between the defendant and the consumer, they are not a plaintiff contemplated by the protections of the UCL. *Linear Technology Corp. v. Applied Materials, Inc.* (2007) 152 Cal.App.4th 115, 135. "By purporting to act as their self-appointed representative and asserting claims on their behalf in a UCL action, [plaintiff] could in fact deprive [defendants's] alleged victims of the individual opportunity to seek remedies far more extensive than those available under the UCL, which limits the plaintiffs to injunctive relief and restitution." *Rosenbluth Internat., Inc. v. Superior Court* (2002) 101 Cal.App.4th 1073, 1079.

A party may bring a section 17200 claim only if he or she shows that he or she "suffered injury in fact and has lost money or property as a result of the unfair competition." Bus. & Prof. Code § 17204. To have standing, a plaintiff must sufficiently allege that (1) he has "lost 'money or property' sufficient to constitute an 'injury in fact' under Article III of the Constitution" and (2) there is a "causal connection" between the defendant's alleged UCL violation and the plaintiff's injury in fact. See, *Rubio v. Capital One Bank* (9th Cir. 2010) 613 F.3d 1195, 1203-1204. The UCL incorporates other laws and treats violations of those laws as unlawful business practices independently actionable under state law. *Chabner v. United Omaha Life Ins. Co.* (9th Cir. 2000)

225 F.3d 1042, 1048. Violation of almost any federal, state, or local law may serve as the "unlawful" basis for a UCL claim. *Saunders v. Superior Court* (1994) 27 Cal.App.4th 832, 838-839. In addition, a business practice may be "unfair or fraudulent in violation of the UCL even if the practice does not violate any law." *Olszewski v. Scripps Health* (2003) 30 Cal.4th 798, 827. Where plaintiff's UCL claim is entirely derivative of other fatally flawed causes of action, the UCL claim also fails. See, *Hawran v. Hixson* (2012) 209 Cal.App.4th 256, 277 [finding plaintiff's "UCL claim is derivative of [his] defamation cause of action, that is, it is based on the same [allegations] and likewise that cause of action stands or falls with that underlying claim."]. "A breach of contract may ... form the predicate for Section 17200 claims, *provided it also constitutes conduct that is 'unlawful, or unfair, or fraudulent.*" *Puentes v. Wells Fargo Home Mortgage, Inc.* (2008) 160 Cal.App.4th 638, 645 (internal quotations omitted, emphasis original).

"With respect to the *unlawful* prong, virtually any state, federal or local law can serve as the predicate for an action under section 17200." *People ex rel. Bill Lockyer v. Fremont Life Ins. Co.* (2002) 104 Cal.App.4th 508, 515 (internal quotations omitted). "Unlike common law fraud, a UCL fraud claim "can be shown even without allegations of actual deception, reasonable reliance and damage"; what is required to be shown is that members of the public are likely to be deceived." *Collins v. eMachines, Inc.* (2011) 202 Cal.App.4th 249, 258 (internal quotations omitted) ("*Collins*"). Fraud claims under the UCL must be stated with "reasonable particularity". *Gutierrez v. Carmax Auto Superstores California* (2018) 19 Cal.App.5th 1234, 1261; *Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 619.

III. Demurrer

A. Contractor's License

Defendants argue the EIP requires a contractor's license for the work performed, and therefore they cannot maintain an action based on any work performed, citing to Business and Professions Code § 7031. EIP argues several reasons why this rule does not apply. As an initial framing of the matter, at demurrer, it must be apparent from the CXC that the nature of the claims alleged by EIP require them to have a contractor's license, and if so, that no exception applies.

The Court asked the parties for supplemental briefing on the issue of Business and Professions Code § 7049, and the exception applicable to "any construction or operation incidental to the construction and repair of irrigation and drainage ditches of regularly constituted irrigation districts, [and] reclamation districts…". While the Court appreciates the briefing of the parties, based on the allegations within the Consolidated Cross-Complaint, there is not sufficient factual basis to find that the alleged work is *incidental* to the project. EIP argues that some of the contracted work is incidental. Both parties note that there is no case applying this section to reclamation districts as is at issue here. As Defendants persuasively point out, the exception is *limited* to work incidental to the development of such properties. *Kelly v. Hill* (1951) 104 Cal.App.2d 61, 63. While the statute appears ambiguous in this regard, the finding of the court in *Kelly v. Hill* is not. Accordingly, the Court turns to EIP's originally argued exceptions.

EIP also argues that they are an owner-builder as required by Business and Professions Code § 7044, and as such they are subject to the owner-builder exception under subdivision (a)(2). EIP is correct that their own contract with Defendants refers to them as "owner", and that Resolution No. 2019-03-08 states that the land is owned by EIP California, LLC, called therein EIP's sister company. The CXC itself has no express allegations regarding the ownership of the project site. Defendants are persuasive that this appears insufficient to have pled facts to show that EIP is subject to the owner-builder exception under Business and Professions Code § 7044 (a)(2). The undefined averment that EIP California, LLC (a non-party to this case), is EIP's "sister company" (see CXC, pg. 190) does not appear to facially meet the standard of "owner" without allegations either clarifying the nature of who owned the project site at the time of the contract, or the nature of the legal relationship between EIP (as a party to the action) and EIP California, LLC (as the only entity purported to be the legal owner in the CXC), or both.

Furthermore, the owner-builder exception required EIP to show that they contracted with a duly licensed contractor to perform the work at issue. Notably absent is any allegation that Defendants are licensed, and as such EIP has failed to plead a fact necessary to fall under the exception they plead. Neither party provides caselaw opinion on the definition of "structure" for the purpose of this section.

On this basis, it appears appropriate to **SUSTAIN with leave to amend** Defendants' Demurrer to the Consolidated Cross-Complaint in its entirety, as EIP has not pled an exception to the contractors' licensing requirement in performing the work on the Project. This appears to be a matter which may be curable on amendment, and therefore leave to amend is granted.

Regardless, it appears appropriate to analyze Defendants' other bases for demurrer, as leave to amend appears appropriate.

B. Alter Ego

Defendants argue that Hanford cannot be held personally liable for the actions alleged against HARC. The allegations within the Complaint are sufficiently pled to allege alter ego liability. First, it is clear that Hanford's personal conduct is repeatedly incorporated into the allegations. EIP alleges that Hanford used HARC's assets as its own, that there is a unity of interest and ownership, and that HARC is now so undercapitalized that it may be unable to pay any judgment. Further, Hanford personally made the misrepresentations at issue for the fraud causes of action. This is sufficient to show that Hanford is an appropriate defendant at demurrer.

C. Breach of Contract

Defendants also contend that EIP's allegation that Defendants were terminated for both convenience and cause forecloses any breach of contract claim. For this proposition, they cite only to Bruner & O'Connor, Construction Law § 18:25. That proposition has multiple matters which raise concern. First, § 18:25 does not appear to be an accurate citation. The proposition relied upon by Defendants appears at § 18:45. Contract termination for convenience, 7 Bruner & O'Connor Construction Law. Second, as EIP argues in opposition, that section relies on various findings of courts of other states, but provides no California authority on which this Court may rely. While Defendants urge us on Reply to follow this persuasive authority, they provide no California sources to support application of this to the instant case.

Third, California does not appear to have any such hard and fast rule regarding termination of contracts for or without cause. Contracts in California are extinguished through recission either in whole or in part. Civ. Code § 1688. “A claim for damages is not inconsistent with a claim for relief based upon rescission.” Civ. Code, § 1692. “The terms of the contract and the other circumstances of the case, not a mechanical rule as to election of remedies, are determinative.” *Budget Finance Plan v. Sav-On Food Club* (1955) 44 Cal.2d 565, 568 (finding that suing for repossession as a remedy did not foreclose also asking for sale price in the prayer).

EIP has alleged that Defendants were already in breach of the fixed price terms of the contract at the time of termination. CXC ¶ 28. This was followed by threats that Defendants would not honor the fixed price nature of the contract and would not complete the work contracted for absent repeatedly increasing demands for additional payments. CXC ¶ 29-31. As a result, EIP terminated the contract both for cause, and for convenience on March 4, 2024. CXC ¶ 31. There certainly might be factual circumstances where termination for convenience would foreclose the ability of EIP to recover, but that does not appear to be reflected in the facts as pled. EIP has alleged that Defendants breached the contract in various manners, including billing for matters they had not yet completed. This appears sufficient to show termination for cause at the pleading stage, to say nothing of the multitudinous alleged breaches discovered thereafter.

On Reply, Defendants contend that Ex. B to the CXC forecloses any argument that Defendants’ contract was fixed price. EIP is persuasive that Exhibit B is unambiguous that it authorizes Defendants to “perform the Scope of Work described above and for the amount stated above…” This is most reasonably interpreted as setting the work to be performed by HARC and the price thereon. Any variation from that would therefore be a modification which would require further agreement. EIP has adequately pled a fixed price contract for the work to be performed. Given that the contract was fixed price, anticipatory breach is adequately alleged.

The demurrer based on failure to state a claim and uncertainty on breach of contract is **OVERRULED**, though not exempt from the above sustaining of the demurrer to the entire complaint if no Bus. & Prof. § 7409 exception is properly alleged on amendment.

D. Fraud and Negligent Misrepresentation

Defendants argue that EIP has failed to state the elements of fraud with adequate specificity to state a cause of action, and that the cause of action is precluded by the economic loss rule.
EIP adequately states the elements of fraud with specificity to survive demurrer. EIP specifically alleges that Defendants misrepresented the work completed in the September 2023 invoice in order to induce payment, only to attempt to bill additional amounts in January 2024 to pay for completion of that same work. CXC ¶ 69. Furthermore, Defendants severely misrepresented the scope of the work left to complete, with actual conditions revealing a discrepancy of over 300,00 cubic yards of excavation. CXC ¶ 48.

The CXC is adequately clear that Defendants are alleged to have "strung along" EIP in an effort to continue extracting money for work they had not yet performed. The inherent question is whether such conduct is actionable as outside the contemplated bounds of the contractual relationship.

While Defendants urge that the economic loss rule is preclusive, they urge the Court to follow the factors. However, the *Rattagan* court spends significant effort exploring the preceding case of *Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, the facts of which are far more illuminative than the *Rattagan* decision.

In *Robinson*, the defendant produced defective products in the course of a contract which it passed along to plaintiff for use in helicopter production. *Robinson, supra,* 34 Cal.4th at 986. The defect forced a recall of the helicopters produced with the faulty part. *Ibid*. Plaintiff demanded serial and lot numbers from defendant to identify the products at issue, but defendant refused to produce serial numbers, or to replace the defective part. *Id* at 987. Plaintiff was awarded compensatory and punitive damages by a jury. *Ibid*. The Supreme Court approved the jury award, noting that each part was accompanied by an affirmative misrepresentation in the form of certificates that accompanied the faulty parts. *Id*. at 991. Accordingly, between the affirmative misrepresentations and the recalls that followed, the fraud alleged exceeded what was contemplated by the parties in entering the contract. *Ibid*.

Nothing within the *Rattagan* decision purports to overturn our supreme court's prior holding in *Robinson*. *Rattagan* merely further delineates factors already incorporated in the decision in *Robinson*. As the high court explained:

> The lesson to be drawn from this review is that contract and tort obligations are different. (See, generally *Applied Equipment*, *supra*, 7 Cal.4th at pp. 515–518, 28 Cal.Rptr.2d 475, 869 P.2d 454.) The "independent tort principle," and its specific application in our economic loss rule cases, honors those differences. The law of contracts protects the interests of parties who enter into an agreement that secures rights and obligations of their choosing. The parties make clear those rights and obligations by the terms they put in the contract. Contract law functions to facilitate commerce by enforcing the agreement the parties adopt. Tort law operates on a different principle. A tort remedy arises, not based on an agreement between the parties, but because the defendant has violated a societal duty that the law itself imposes on everyone. A tortfeasor is held liable not for violating a contract, but for violating an independent legal duty.
>
> But to be held liable in tort, a defendant must commit a tort. If all the defendant has allegedly done is violate the terms of the parties' contract, depriving the plaintiff of the benefits the contract ensures, the defendant's liability is limited by the contract. Broader tort liability only arises if a defendant violates an independent legal duty and the type of harm that ensues was not reasonably contemplated or accounted for by the contractual parties.

Rattagan v. Uber Technologies, Inc. (2024) 17 Cal.5th 1, 37.

Here, EIP alleges that Defendants affirmatively misrepresented that they would continue to honor the original contract[1]. That itself appears to be a misrepresentation entirely within the scope of the contractual duties thereon, and no fraud claims may be derived from it. However, the fraudulent overstatement of completed work in order to extract additional early payments appears to exceed the reasonable expectations of parties entering into a contract. As the *Robinson* court noted, "Simply put, a contract is not a license allowing one party to cheat or defraud the other." *Robinson, supra,* 34 Cal.4th at 992 (quoting *Grynberg v. Citation Oil & Gas Corp.* (S.D.1997) 573 N.W.2d 493, 501.). Fraud exceeds the reasonable expectations of the parties. The conduct alleged here passes the first stage of the analysis as a result.

However, to the degree that EIP sufficiently pleads the basis for fraud on the misrepresentation of the work that had already been completed, those allegations fail at the second step in avoiding the economic loss doctrine. The allegation that Defendants had failed to complete the amount of work they were representing had already been finished does not appear to expose EIP to damages not contemplated by the contract. Nor does EIP allege, despite Defendants' attempt to bill again for work already completed in January 2024, that those additional amounts were paid. Therefore, the specific misrepresentations made do not result in damages that exceed the scope of the contract.

In contrast, EIP makes allegations of other misrepresentations that are sufficiently outside the damages contemplated by the contract, but it fails to make those allegations with sufficient specificity to be a viable fraud claim. Certainly, money remitted to Defendants for the specific purpose of paying subcontractors, which was then retained by Defendants rather than paid as required, would be damages exceeding the contractual contemplations of the parties. CXC ¶ 37. EIP details the various effects of these misrepresentations. CXC ¶ 38-46. However, none of these allegations detail what was represented to EIP, when, and by who, as would be required to meet the pleading standard for fraud. Accordingly, between the required specificity of allegations for fraud, and application of the economic loss doctrine, EIP has not adequately pled a fraud cause of action.

Whether the negligent misrepresentation cause of action survives is subject to different analysis as to only the first step of the test in *Rattagan* because the harms alleged are the same. Negligent misrepresentation claims are also potentially exempt from the economic loss doctrine depending on the facts of a case. See *Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal.5th 905, 943. Given that the sufficiently specific fraud allegations fail to survive the second step of the test to avoid application of the economic loss doctrine, the negligent misrepresentation cause of action also fails at this step.

The demurrer to the second and third causes of action for failure to state a claim is an alternative basis on which the demurrer is **SUSTAINED with leave to amend** on those causes of action**.**

[1] The Court notes a typographical error on this paragraph rendering it confusing in terms of timeline. However, the confusion does not impact the result, because as noted this misrepresentation itself does not appear actionable.

E. Accounting

Defendants assert that the CXC fails to state a claim for accounting because there is no statement of moneys owed which is sufficiently complicated to require accounting. EIP merely asserts they are entitled to accounting because if the finder of fact is not persuaded that this was a fixed price contract. Additionally, EIP does not know the fiscal effect of the various decisions made by the parties under the contract that is why a statement of money owed cannot be provided. To this effect, EIP argues that they have permitted Defendants to undertake various cost saving measures without consideration because of their understanding of a fixed price contract, and that an accounting is required to "square up" the amounts. This does not seem to be anything more than proving the alleged damages if Defendants were to prevail on their cross-complaints, and matters that are best proven through discovery, not accounting. This does not appear to be an appropriate fact pattern for an accounting claim.

Therefore, as to the accounting claim, the demurrer is **SUSTAINED with leave to amend**.

F. Unfair Competition Law

The Court is generally unpersuaded that EIP has failed to plead causation. The allegations sufficiently state that there were payments that otherwise would not have been made, for services that Defendants then failed to perform. See, e.g., *Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 323 (where a manufacturer fails to deliver products as promised, there is no benefit of the bargain, and a UCL claim will lie for the misrepresentation).

However, as a matter of policy, the Court finds the argument that EIP is not the intended beneficiary of the statute persuasive. EIP attempts to argue around this issue by stating that the project is otherwise driven by public funds, and therefore the taxpayer is the eventual victim of the conduct at issue. However, neither the taxpayer nor the state government were the parties that entered into a contract with Defendants based on the allegations within the CXC. It was EIP alone who contracted with Hanford, and accordingly was victimized by the alleged conduct. EIP is an out of state corporation utilizing sophisticated corporate relationships to enter into large scale projects such as the one at issue here. Simply put, EIP is not the type of party contemplated by the statue enacting consumer protections. "In these circumstances, where a UCL action is based on contracts not involving either the public in general or individual consumers who are parties to the contract, a corporate plaintiff may not rely on the UCL for the relief it seeks." *Linear Technology Corp. v. Applied Materials, Inc.* (2007) 152 Cal.App.4th 115, 135. EIP fails to state a claim under the UCL.

Therefore, the demurrer to the fifth cause of action is **SUSTAINED with leave to amend.**

III. Motion to Strike

Defendant's entire basis for the motion to strike is predicated almost entirely on the EIP's failure to state a basis for the fraud claims. Given that the Court has thoroughly analyzed those claims above, the deficiently of the claims for punitive damages comes to the same conclusion.

The motion to strike is **GRANTED** with leave to amend.

IV. Conclusion

Based on the foregoing, the Demurrer by Defendants to the CXC is **SUSTAINED with leave to amend as to the entire complaint** under Business and Professions Code § 7031. The demurrer is also **SUSTAINED with leave to amend as to the second through fifth causes of action and OVERRULED as to the failure to state a claim for breach of contract.**

The Motion to Strike is **GRANTED with leave to amend.**

Defendants 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. 24CV02518, Looney v. Squirrel Nugger, LLC

Plaintiff Gary E. Looney dba Collectronics of California ("Plaintiff") obtained a default judgment against defendant Squirrel Nugger, LLC ("Defendant"). This matter is on calendar for Plaintiff's motion to appoint a receiver, namely Landon McPherson ("Receiver"), to seize and sell liquor license number 614349 to satisfy the Judgment. The motion is **GRANTED**.

I. Governing Law

Appointment of a receiver is generally controlled by CCP §§ 564*, et seq*. A judgment debtor's interest in an alcoholic beverage license is not subject to execution (Cal. Civ. Proc. Code ("CCP") § 699.720(a)(1)) and therefore may be applied to the satisfaction of a money judgment only by appointment of a receiver under CCP § 708.630. CCP § 708.630(b) provides that the Court may appoint a receiver to transfer the debtor's interest in the license, unless the debtor establishes that the amount of delinquent taxes and claims of prior creditors exceed the probable sale price of the license. Generally speaking, a receiver may be appointed to enforce a judgment where the judgment creditor shows that, considering the interests of both the creditor and the judgment debtor, the appointment of a receiver is a reasonable method to obtain the fair and orderly satisfaction of the judgment. CCP § 709.620. The legislative committee notes confirm that it is no longer a prerequisite for the judgment creditor to show that the judgment debtor "refuses to apply property in satisfaction of the judgment," but the committee notes also state that "a receiver may be appointed where a writ of execution would not reach certain property *and other remedies appear inadequate*." (Emphasis added). The availability of other remedies "does not, in and of itself, preclude the use of a receivership. [citation] Rather, a trial court must consider the availability and efficacy of other remedies in determining whether to employ the extraordinary remedy of a receivership." *City & Cty. of San Francisco v. Daley* (1993) 16 Cal.App.4th 734, 745. In making this decision, the court must depend upon competent and admissible evidence submitted by the parties, and not conclusions and hearsay. *McCaslin v. Kenney* (1950) 100 Cal.App.2d 87, 94.

An order to show cause is a citation to a party to appear at a stated time and place to show why the requested relief should not be granted. *Green v. Gordon* (1952) 39 Cal.2d 230, 231. An order to show cause hearing does not shift the burden away from a party moving for appointment of a receiver. *Moore v. Oberg* (1943) 61 Cal.App.2d 216, 221. An order to show cause why a receiver should not be appointed is appropriate where the court has granted appointment of the receiver ex parte, as the court must have a hearing as to why the receiver who has been appointed by ex parte should not be confirmed. Cal. Rule of Court 3.1176.

II. Analysis

The supporting Looney Declaration states that there has been no response to post-judgment letters or interrogatories. Looney Decl. ¶ 8-10. Plaintiff has filed a motion to compel, which the Court granted via order on April 17, 2025. Court's 4/17/2025 Order on Plaintiff's Motion to Compel. Plaintiff claims to have "investigated the Defendants [sic] finances" but claims to have not received any useful information for collecting on the Judgment. Looney Decl. ¶ 6. And similarly, the brief argues that all other assets are essentially valueless, that its sole remaining asset is the liquor license and that as a result, the Judgment may never be satisfied absent the appointment of a receiver Looney Decl. ¶¶ 11-12. Plaintiff states that he has been unable to locate any financial assets, although the business is open. Looney Decl. ¶¶ 4, 7, & 12. Plaintiff requests the Court appoint Receiver to take possession of and sell Defendant's liquor license, license number 614349, in order to satisfy the Judgment of $9,125.99.

Plaintiff has obtained a Court order compelling responses to post-judgment discovery. The order was served on May 20, 2025, which allowed Defendant 30 days from notice of the order within which to respond to the order. Court's 4/17/2025 Order on Plaintiff's Motion to Compel; Plaintiff's 5/21/2025 Proof of Service. Defendant has continued to fail to respond, despite court orders compelling that response. Defendant's failure to respond evidences a general intractability in engaging with this matter, and the judgment thereon. Plaintiff has demonstrated that "considering the interests of both the judgment creditor and the judgment debtor, the appointment of a receiver is a reasonable method to obtain the fair and orderly satisfaction of the judgment." See CCP § 708.620.

Plaintiff has sufficiently shown that the appointment of a receiver is warranted and therefore, the motion is GRANTED.

The Receiver shall post an undertaking in the amount of $1,000.00 upon his appointment.

III. Conclusion

The motion is GRANTED. The Receiver shall post an undertaking in the amount of $1,000.00 upon his appointment.

Plaintiff shall submit an order to the Court consistent with the proposed order attaching this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

4-5. 24CV03208, Joost, III v. Joost, Jr.

Plaintiff Wendell Joost, III ("Plaintiff"), both individually and derivatively on behalf of Joost Family Development Company (the "Company") initiated this action on May 24, 2024 by filing the complaint against defendants Wendell Joost, Jr. ("Defendant") and nominal defendant the Company, with causes of action for breach of fiduciary duty, breach of the covenant of good faith and fair dealing, false promise, accounting, conversion, concealment, UCL violations, and a derivative cause of action for breach of fiduciary duty (the "Complaint").

This matter is on calendar for the motions by Plaintiffs to compel further responses from Defendant to special interrogatories ("SIs"), and requests for production of documents ("RPODs"), pursuant to CCP § 2031.310 (relating to RPODs) and CCP § 2030.300 (relating to interrogatories). The motion to compel is **GRANTED**. The request for sanctions is **GRANTED** in part.

I. 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.

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

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. Sanctions

CCP § 2030.290(c) (relating to interrogatories), and CCP § 2031.300(c) (relating to requests for production of documents) provide that a monetary sanction "shall" be imposed against the party losing a motion to compel further responses unless the court finds "substantial justification" for that party's position or other circumstances making sanctions "unjust." There is no requirement that the failure to comply with discovery be willful for the court to impose monetary sanctions. *Ellis v. Toshiba America Information Systems, Inc.* (2013) 218 Cal.App.4th 853, 878. For the court to order sanctions against an attorney, the Court must find that the attorney advised their client to engage in discovery misconduct. *Kwan Software Engineering, Inc. v. Hennings* (2020) 58 Cal.App.5th 57, 81. Additionally, the motion must advise the attorney that joint and several liability against the attorney is sought for the sanctions. *Blumenthal v. Superior Court* (1980) 103 Cal.App.3d 317, 319.

II. <u>Analysis</u>

<u>A. The Motion is Timely and Defendant Offers no Substantive Opposition</u>

Plaintiff moves to compel further responses from Defendant for both RPODs ¶ 1-21 and SIs ¶ 1-2. Defendant contends that the motion is untimely, and therefore the Court has no jurisdiction to compel further responses. Plaintiff served discovery requests on April 17, 2025. Defendant served late responses via email on May 30, 2025. Plaintiff subsequently served and filed their motions to compel further responses on July 16, 2025, 47 days after the service of discovery responses. It was accompanied by all supporting documents. The motion as served did not have a hearing date, which was assigned by the Court's clerk on July 28, 2025. The hearing date assigned was September 24, 2024. Plaintiff subsequently served the motion with hearing date on July 31, 2025.

Defendant's initial contention that 47 days cannot be a timely motion is not reflective of the statutory scheme around discovery. Both statutes at issue require notice of the motion to be served within 45 days of service of deficient responses. CCP §§ 2030.300 (c) and 2031.310 (c). However, the timeline for moving to compel is automatically extended according to whatever service method was used for the discovery responses. CCP § 2016.050; CCP §§ 1013 and

1010.6. Although the opposition makes no mention of this, Defendants' responses were served by email. Plaintiff's Reply Declaration, ¶ 2. Service by email increases the time by two court days. CCP § 1010.6. Accordingly, Defendant's argument regarding the 47-day time period miscalculates the timeline and is therefore without merit.

Defendant also raises, without citation to any jurisprudence on the matter, that the service of the motion was not within the 45-day period because the motion as served on July 16, 2025, did not have the hearing date. As an initial matter, Defendant's counsel's incredulity and allegations of malfeasance and unsupported claims of fraud are not well taken. Defendant's counsel is a locally practicing attorney, well aware of the processes of this Court. Motions filed in the Sonoma Superior Court have their hearing dates assigned by the clerk at the time of filing. See Local Rule 5.1 (B). For Plaintiff to serve Defendant with a motion bereft of the hearing date, prior to filing it with the Court, is not just appropriate, but necessary to avoid the appearance of ex parte communication.

Despite Defendant's lack of citations to support the contention that the service of the motion without hearing date renders the motion untimely, the Court attempts to resolve the contention on the merits, the question being one of procedure and not substance.

The Court finds only one relevant case, which appears factually distinguishable, *Golf & Tennis Pro Shop, Inc. v. Superior Court* (2022) 84 Cal.App.5th 127 ("*Golf & Tennis Pro Shop*"). There, the party served substantive responses, along with objections, but without verifications. *Id*. at 132. The propounding party moved to compel, serving only a notice of motion with a hearing date, but without any separate statement, memoranda, or even a delineation of what discovery responses were at issue. *Id*. at 136. Substantive documents were not served until more than 45 days after verified responses were served. *Ibid.* The trial court determined that the time to compel had passed. *Ibid.* The court of appeal agreed, as the notice of motion served within the 45-day motion period was devoid of any substance sufficient to put the responding parties on notice of the issues to be raised. *Id*. at 138. The *Golf and Tennis Pro Shop* court largely couched its reasoning on the definition of notice ensconced in CCP § 1010. *Id*. at 137-138. The court found that the failure to serve the substance of the motion within 45 days of the responses was jurisdictional. *Id*. at 138-139. However, the court did note that CCP § 1010 is subject to the consideration of "substantial compliance" which may sit as an exception in other factual circumstances. *Ibid*.

The facts here sit in reverse. Plaintiff did not serve the hearing date within the 45 day period but rather served the full substance of the motion without the hearing date, knowing that one had yet to be assigned by the Court Clerk. The hearing date was assigned by the clerk more than twelve days later, and Plaintiff served the documents with hearing dates just a couple days thereafter, and substantially over the time periods required by CCP § 1005.

While it could be argued that CCP § 1010 applies directly to the language of CCP §§ 2031.310 (c) and 2030.300 (c), the Court is not persuaded by an argument Defendant does not make. Other statutes where CCP § 1010 has been strictly construed to apply to include the hearing date are subject to various considerations of notice and timing. *Contra*, CCP § 128.7; *Galleria Plus, Inc. v. Hanmi Bank* (2009) 179 Cal.App.4th 535, 538. Motions to compel further responses are required to be preceded by substantive meet and confer efforts which put the party on notice that there are discovery responses at issue. CCP § 2016.040. The motion served to start the safe harbor for CCP § 128.7 *is* the notice of the "frivolous conduct" at issue and providing the opportunity to withdraw that motion before the sanctions motion is heard. CCP § 128.7 (c)(1). That statute explicitly requires "Notice of motion shall be served as provided in Section 1010". *Ibid*. No such explicit language is incorporated into the statutes to compel further responses. While the *Golf & Tennis Pro Shop* court determined that the notice required must be substantive in nature, that court was not confronted with nor did it address the instant issue. Even if they addressed the lack of hearing date as part of that decision, it would have been dicta, because the date was the only notice requirement the moving party *had* served. Nonetheless, the court opined that the purpose of notice is "to make [responding party] aware of the issues to be raised in the motion." *Golf & Tennis Pro Shop, Inc. v. Superior Court* (2022) 84 Cal.App.5th 127, 137. Here, the Court finds that the notice of the motion was substantive in nature, even without the hearing date assigned by the Clerk. As such, the notice appears sufficient to be timely within the 45- day period to compel (extended as noted above).

To find the opposite would result in potentially illogical results. In this case it took the Clerk twelve days to assign a hearing date, but Plaintiff would have no way of knowing how long it was going to take. How can parties moving to compel further responses do so with any certainty not knowing when the motion will be processed, and a hearing date assigned? So long as the responding party is appraised of the issues to be raised, the Local Rules make sufficiently clear that the hearing date will be assigned by the clerk. Notice of the motion with all supporting documents but without a date appears to be in substantial compliance with CCP § 1010 for the purposes of the discovery statutes, and so Plaintiffs' motion is timely.

B. Plaintiff's Meet and Confer Efforts Were Sufficient

Defendant also contends that Plaintiff's meet and confer efforts were insufficient because they failed to press Defendant for substantive meet and confer. Plaintiff sent a detailed meet and confer letter by email. See Kim Declaration in Support, Ex. C. Defendant responded with a single line email, not addressing the merits of the alleged deficiencies. The Court finds Plaintiff's proposition that a plaintiff must repeatedly harangue a defendant to participate in substantive meet and confer efforts as patently unpersuasive. Defendant's counsel now contends that there was no attached document to Plaintiff's meet and confer efforts and as such no substantive issues were raised by the original email, but his own evidence does not appear credible. Defendant provides the relevant email exchange, which shows that Plaintiff's counsel sent an email stating only "Please see our correspondence attached." Defendant's Exhibit F in Opposition. Defendant's counsel responded to the email "They were all served on 8-30-2025. So what are you talking about"[1] . *Ibid.* The email by Defendant's counsel does not state that there is no attachment to the Plaintiff's email. The more reasonable interpretation is that Defendant disagreed that the responses were insufficient, because they contend there was nothing more to produce. Accordingly, the Court is not persuaded that meet and confer efforts were insufficient.

[1] The Court presumes that Defendant's email has a typographical error, and that Defendant's counsel intended to state May 30, 2025 (the date the responses were provided).

Defendant asserts no meritorious objection to the discovery requests. Indeed, the responses were served late, and all objections were waived. Defendant's "substantive" responses are not code compliant. Defendant vaguely articulates that responsive documents were already provided, but those documents are not identified as required by the code. See CCP § 2031.280. None of the responses affirm that a diligent search has occurred. To the SIs, Defendant waived the opportunity to provide documents in lieu of substantive responses when responses were served late. CCP § 2030.290(a). There is good cause to compel further responses as to both RPODs and SIs.

III. Sanctions

Sanctions are mandatory under the CCP for discovery abuses, absent substantial justification or other circumstances that would make sanctions unjust for interrogatories and RPODs. Absent substantial justification, the Court must grant compensatory monetary sanctions which represent reasonable and actual costs to Plaintiff. Defendant's counsel has failed to engage with Plaintiff in any substantive way, and as such the necessity of the motion appears to fall in part from counsel's advice. Joint liability is proper.

Plaintiff requests sanctions of $11,430 jointly and severally against Defendant and his counsel across the two motions. See, Notice of Motion to Compel RPODs ($7,620); Notice of Motion to Compel SIs ($3,810).

Plaintiff requests a billing rate of $635 per hour for ten hours for the RPODs, four hours for the SIs, plus two hours per motion for appearing at the hearing. The time on the motions exceeds what is reasonable. Counsel is experienced and asks for a substantial rate which otherwise should be indicative of expertise sufficient that 14 hours across two motions to compel further responses **without objections** is excessive. A reasonable amount of time expended on a discovery motions with this chronology is seven hours jointly. The time for the hearing is speculative, as no opposition was filed, the hearing has not yet occurred and will not require the total requested four hours. Plaintiff provides no update on how long the reply required with the declaration accompanying that filing. The Court will accordingly credit one hour for the reply. The request for prospective time is improper, as discovery monetary sanctions are required to be reasonable **and actual**, and as at this time there is no hearing at which to appear. *See Kwan Software Engineering, Inc. v. Hennings* (2020) 58 Cal.App.5th 57, 74; *Argaman v. Ratan* (1999) 73 Cal.App.4th 1173, 1181. Plaintiff is only entitled to $635 per hour for 8 hours across the two motions. Court approves sanctions for attorney's fees of $5,080.00. The Court **GRANTS** Plaintiff's request for monetary sanctions in the amount of $5,080.00. Defendant and/or counsel shall pay $5,080.00 to Plaintiff within 30 days' notice of this order.

IV. Conclusion

Plaintiff's motions are **GRANTED**. Defendant shall produce objection-free responses to RPODs ¶ 1-21, and SIs ¶ 1-2 within 30 days of notice of this order. Plaintiff's request for sanctions is GRANTED. Defendant and/or counsel shall pay $5,080.00 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). Thereafter, Plaintiffs shall provide notice of the order per CCP § 1019.5.

6. <u>24CV05843, Sahouria v. Board of Trustees of California State University</u>

Plaintiffs Jad Sahouria and Julia Sahouria (together "Plaintiffs"), in their capacity as trustees of the Jad S. and Julia J. Sahouria Trust dated 9/01/2005, filed the currently operative first amended complaint (the "FAC") in this action against defendants the Board of Trustees of the California State University ("Defendant") and Does 1-50, for two alleged causes of action arising out of damage following flooding of Plaintiffs' property.

This matter is on calendar for the motion by Plaintiffs pursuant to Cal. Code Civ. Proc. ("CCP") § 473 for leave to amend the Complaint. The Motion is **DENIED without prejudice**.

I. <u>Procedural Issues</u>

Plaintiff contends that Defendant served the Opposition late, and therefore the Court should disregard the opposition in totality. Plaintiff claims that it prejudiced their ability to prepare a reply. However, the Court notes that Plaintiff submitted their reply a full day early. The Court does not find claims of prejudice therefore persuasive, and exercises discretion to consider the opposition on its merits, akin to a late filing.

II. <u>Governing Authorities</u>

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

III. <u>Analysis</u>

Plaintiffs file voluminous evidence to support the amendment, but it nonetheless omits some necessary elements presented by the Rule of Court. The motion (and accompanying declarations) fail to show the effect of the amendment, why the amendment is necessary and proper, when the facts giving rise to the allegations were discovered, and why the request for amendment was not made earlier. Cal Rule of Court, Rule 3.1324(b)(1-4). Defendant is correct that Plaintiff is required to show "(w)hen the facts giving rise to the amended allegations were discovered." Cal Rule of Court, Rule 3.1324(b)(3). Plaintiff attempts to cure these deficiencies on reply, but these are moving requirements of the motion, not mere legal argument to be engaged on reply. Were this the only issue, that might otherwise be overlooked. It is not. Only the declaration of counsel provided, and the standard is when Plaintiffs discovered the facts. The reply does not introduce competent evidence of these requirements.

Similarly, Plaintiffs are required to show what allegations were deleted and what allegations are to be added with page, paragraph and line numbers. *Id*. at subd. (a). These requirements exist because the burden should not be on either the Court or the Defendant to attempt to augur the particularized changes inserted into the Proposed Amended Complaint. The burden is on Plaintiffs to present the proposed changes in a clear manner for assessment by both the Defendant and the Court. They have not done so, and this is a procedural defect in the motion. The most common effective method is inclusion of a "redline" version, showing the changes in context, and a clean copy like that presented by Plaintiff as Exhibit 1. Whatever method Plaintiff elects, what was submitted fails to meet this particularity.

The Court does not agree with Defendant's construal of the Demurrer order, nor the contention that the demurrer should be reconsidered. While the Court's attempt to clarify that Plaintiff's Proposed Amended Complaint was not a method by which they could remedy a sustained demurrer, nothing within the Demurrer order precluded the capability of Plaintiffs to have a noticed motion to amend under CCP § 473. The very point of the demurrer order was that leave to amend on noticed motion and after a demurrer was sustained are **substantially different**. To the request that the Court somehow come to the opposite conclusion on the already adjudicated demurrer, it is improper. A motion for reconsideration has very particular requirements, and given that the FAC was found to be sufficient as to the alleged duty, there is no cause to revisit the merits of that decision. Defendant's argument to this effect is not well taken.

Nor does the Court find that there is cause to deny the motion on its merits based on what it interprets to be the proposed amendments. As is noted, the Court can in part extrapolate the intended effect of the amendment, and neither Plaintiffs nor Defendant particularly identify substantial factual changes. Plaintiff contends that there are clarification of previously pled facts, but the nature of those is not clear based on the failure to specify the amendment. Nor does there appear to be evidence of undue delay. The pleadings in this case have barely settled, there is no evidence that discovery would be unduly expanded at this early stage, and Defendant identifies no persuasive form of prejudice. Defendant decries the "conclusion" of prejudice, but makes no showing as to those matters which are identified by the jurisprudence as prejudicial. See *Magpali v. Farmers Group, Inc.* (1996) 48 Cal.App.4th 471, 486-488. Most of the proposed amendment appears to simply attempt to include new theories of liability predicated on the same factual allegations of flooding. Again, this is unnecessarily obscured by the failure to delineate the particular changes to the complaint, and as such is not a final determination on the merits of the Plaintiffs' requested amendment. It is merely an assessment of whether the motion should be denied with prejudice based on the showings of the parties at this stage.

Therefore, Plaintiffs' motion to amend is **DENIED without prejudice**.

7. <u>24CV08002, City of San Rafael v. Kimley-Horn & Associates, Inc.</u>

Plaintiff the City of San Rafael ("Plaintiff") filed the currently operative second amended complaint (the "SAC") in this action against Kimley-Horn and Associates, Inc. ("Defendant") and Does 1-10, for express contractual indemnity resulting from a contract to design a public transportation project. This matter is on calendar for Defendant's demurrer to the SAC 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 **OVERRULED**.

I. Governing Law

A. Standards on the Demurrer

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. CCP § 430.30(a). 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. A demurrer tests whether the complaint sufficiently states a valid cause of action. *Hahn v. Merda* (2007) 147 Cal.App.4th 740, 747. Complaints are read as a whole, in context and are liberally construed. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; see also, *Stevens v. Superior Court* (1999) 75 Cal.App.4th 594, 601.

In reviewing the sufficiency of a complaint, courts accept as true all material facts properly pleaded, but not contentions, deductions, or conclusions of fact or law, or the construction of instruments pleaded, or facts impossible in law. *Serrano v. Priest* (1971) 5 Cal.3d 584, 591; *Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 43; see also, *South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 732. Matters which may be judicially noticed are also considered. *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.

"On a demurrer a court's function is limited to testing the legal sufficiency of the complaint. [Citation.] 'A demurrer is simply not the appropriate procedure for determining the truth of disputed facts.' [Citation.] The hearing on demurrer may not be turned into a contested evidentiary hearing through the guise of having the court take judicial notice of documents whose truthfulness or proper interpretation are disputable. [Citation.]"). *Bounds v. Sup. Ct.* (2014) 229 Cal.App.4th 468, 477-478. "(A) court cannot by means of judicial notice convert a demurrer into an incomplete evidentiary hearing in which the demurring party can present documentary evidence and the opposing party is bound by what that evidence appears to show." *Fremont Indem. Co. v. Fremont Gen. Corp*. (2007) 148 Cal.App.4th 97, 115.

B. Express Indemnity and Public Entities

"Indemnity" refers to the right of a party to be compensated for loss or damage he has incurred. Civ. Code, § 2772; *Rossmoor Sanitation, Inc. v. Pylon, Inc.* (1975) 13 Cal.3d 622, 628. Civil Code section 2778 sets forth general rules for the interpretation of indemnity contracts, "unless a contrary intention appears." Civ. Code §2778. When a duty to indemnify arises from express contractual language, the extent of that duty must be determined from the contract. *Rossmoor, supra*, 13 Cal.3d at 628; see also, *Markley v. Beagle* (1967) 66 Cal.2d 951, 961. Indemnity agreements covering negligence must be clear and explicit, and must be construed strictly against the indemnitee. *Goldman v. Ecco-Phoenix Elec. Corp.* (1964) 62 Cal.2d 40, 44. "(W)here the plaintiff's complaint alleges facts embraced by the indemnity agreement, the indemnitor has a duty to defend throughout the underlying tort action unless it can conclusively show by undisputed facts that plaintiff's action is not covered by the agreement." *Centex Homes v. R-Help Construction Co., Inc.* (2019) 32 Cal.App.5th 1230, 1237.

"(T)he parties to an express indemnity provision may, by the use of sufficiently specific language, establish a duty in the indemnitor to save the indemnitee harmless from the results of even active negligence on the part of the latter (citations), in the absence of this a provision will be construed to provide indemnity to the indemnitee only if he has been no more than passively negligent." *E. L. White, Inc. v. City of Huntington Beach* (1978) 21 Cal.3d 497, 507. Contract language imposing liability indemnifying for active negligence "must be express and unequivocal so that the contracting party is advised fully in definite terms that it has agreed to indemnify the active negligence of the other party." *Edmondson Property Management v. Kwock* (2007) 156 Cal.App.4th 197, 208; see also *Continental Heller Corp. v. Amtech Mechanical Services, Inc.* (1997) 53 Cal.App.4th 500, 505 (indemnification clause at issue was sufficiently specific to cover active negligence). Determining whether conduct constitutes passive or active negligence is generally an issue for a finder of fact, unless the undisputed facts are so dispositive as to leave no possibility that reasonable persons would disagree. *Rossmoor Sanitation, Inc. v. Pylon, Inc.* (1975) 13 Cal.3d 622, 629.

Indemnity provisions are also subject to various limitations by statute. "For all contracts, and amendments thereto, entered into on or after January 1, 2007, with a public agency for design professional services, all provisions, clauses, covenants, and agreements contained in, collateral to, or affecting any such contract, and amendments thereto, that purport to indemnify, including the duty and the cost to defend, the public agency by a design professional against liability for claims against the public agency, are unenforceable, except for claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional." Civ. Code, § 2782.8, eff. 1/1/2011, amended effective 1/1/2018. Similarly, "provisions, clauses, covenants, or agreements contained in, collateral to, or affecting any construction contract with a public agency entered into after January 1, 2013, that purport to impose on the contractor, or relieve the public agency from, liability for the active negligence of the public agency are void and unenforceable." Civ. Code, § 2782 (b)(2).

C. Statute of Limitations

Demurrers shall not be sustained based on statute of limitations unless the complaint shows clearly and affirmatively that the action is so barred. *Geneva Towers Ltd. Partnership v. City of San Francisco* (2003) 29 Cal.4th 769, 780. "It is not enough that a complaint shows that the action may be barred." *Id*. If the failure of the cause of action due to the statute of limitations is apparent on the face of the complaint, the demurrer must be sustained. *SLPR, L.L.C. v. San Diego Unified Port District* (2020) 49 Cal.App.5th 284, 321. Where the demurrer based on statute of limitations is argued from judicially noticed documents, the truth of dates within those documents is inadmissible hearsay, and is not appropriate for judicial notice. *Richtek USA, Inc. v. uPI Semiconductor Corp.* (2015) 242 Cal.App.4th 651, 660-661. To sustain demurrer on such judicially noticed material is error. *Id*.

"Generally speaking, a cause of action accrues at 'the time when the cause of action is complete with all of its elements.' (*Citation*.) An important exception to the general rule of accrual is the "discovery rule," which postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action." *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806–807 (internal citations omitted). Indemnity actions are "separate and distinct" from tort actions between the same parties. *People ex rel. Dept. of Transportation v. Superior Court* (1980) 26 Cal.3d 744, 748. "(A) cause of action for indemnity does not accrue until the indemnitee has suffered a loss through payment of an adverse judgment or settlement." *Valley Circle Estates v. VTN Consolidated, Inc.* (1983) 33 Cal.3d 604, 611.

II. <u>Demurrer</u>

To summarize the allegations at issue, the SAC alleges that the parties entered into a contract to design portions of the Sonoma-Marin Area Rail Transit ("SMART"). See SAC, Ex. A (the "Contract"). Defendant was required to perform "field reconnaissance, preparation of base data, review of as-built drawings and other records of the project area, and development of all design plans and specifications for the Project." SAC ¶ 10. The Contract contains two prominent indemnification clauses. SAC ¶ 11-12. Defendant allegedly negligently created plans which had a design error which forced the Plaintiff to defend a case for inverse condemnation. SAC ¶ 13-18. Defendant admitted the error on May 11, 2018. SAC ¶ 17. The case against Plaintiff was filed August 23, 2021. SAC ¶ 20. Plaintiff paid the settlements related to that case in 2023. SAC ¶ 21. This case was subsequently filed on October 10, 2024.

A. <u>Defendant Contends that the Indemnity Provisions are Void</u>

Defendant argues that the indemnity provisions contained in the Contract are rendered void by application of Civil Code § 2782 and Civil Code § 2782.8. Plaintiff argues that Civil Code § 2782 does not apply here, and that the indemnity provisions do not violate Civil Code § 2782.8.

1. Civil Code § 2782 (b)(2)

As an initial matter, Defendant is not initially persuasive that Civ. Code § 2782(b)(2) applies to the Contract. Defendant argues that the design services were for the design of a construction project, and therefore the indemnity clauses are void as a result of the improvident inclusion of "active negligence" in Article I, Section C. First, the Contract is clearly one for the design of the project and not provision of actual construction. Defendant identifies no provision of the Contract which indicates the contrary. The Contract separates Defendant from any "construction contractor". See Contract, Article XXVII. The Contract "Scope of Work" contains no reference to construction to be performed by Defendant.

The Contract expressly states that application of Civil Code § 2782.8 applies to this contract for professional design services. See Contract, Article I, Section D. There is no cause to interpret Civil Code § 2782 as entering into the scope of services (and indemnity provisions thereon) which seem fully occupied by Civil Code § 2782.8. Civil Code § 2782.8 deals particularly with design services contracts, and is therefore the more specific and applicable statute. Defendant offers no justification for why these statutes would overlap when only design services are at issue, regardless of the subject of those services. The SAC is subject to liberal interpretation at demurrer, and nothing contained therein appears to be a concession that this is a construction contract. However, only on reply does Defendant cite to Civil Code § 2783, which defines a construction contract as applying to "any agreement or understanding, written or oral, respecting the construction, surveying, design, [or] specifications, … of any building, highway, road, … [or] railroad, … or other improvement to real or personal property…" Civ. Code, § 2783. While the Court would not normally consider such substantive argument on reply, demurrers are generally capable of being reraised as motions for judgment on the pleading, and so disposing of the resulting merits of the argument appears appropriate.

The demurrer still fails, as Plaintiff is persuasive that the provision at issue in Article I Section C is only void as to the indemnity at issue, and not the clause as a whole. Civil Code § 2782 applies as a limitation on what may be indemnified, and violations of that limit are void. *Heppler v. J.M. Peters Co.* (1999) 73 Cal.App.4th 1265, 1277 (Civ. Code § 2782 is an example of the limitations of public policy applied to indemnity clauses). The Contract has a severance clause. Defendant offers no persuasive reason why severance is improper as a matter of law. *If* this were a construction contract, indemnity of active negligence would be void, but Defendant does not offer any reason why this renders the entirety of the contract "illegal", and as such why severance should not occur. *Marathon Entertainment, Inc. v. Blasi* (2008) 42 Cal.4th 974, 996 (where illegality is collateral to the purpose of the contract, severance is appropriate). While Defendant's reply argues that this case is too general to apply, they provide no authority showing that courts have previously found striking the entire indemnity provision appropriate. Defendant urges the Court to examine the statute language, but this does not assist Defendant's position. Civil Code § 2782(b)(2) particularly states that in renders such "provisions, clauses, covenants, or agreements" void. Application of the statute to the clause indemnifying active negligence appears to comport with the statutory intent.

Moreover, even if Civil Code § 2782 did apply, and did result in making Article I, Section C void in its entirety, the same considerations cannot be applied to Article I, Section D. That indemnification clause does not purport to indemnify Plaintiff against their own active negligence. Indemnification against active negligence must be express. *Edmondson Property*

Management v. Kwock (2007) 156 Cal.App.4th 197, 208 (general language insufficient to cover active negligence); see also *Continental Heller Corp. v. Amtech Mechanical Services, Inc.* (1997) 53 Cal.App.4th 500, 505 (active negligence was covered by the indemnity provision). Therefore, there is no basis to interpret Article I, Section D as indemnifying against Plaintiff's active negligence. Accordingly, there is no reason to find Section D void. Defendant's reply offers no coherent reason for their conclusion to the contrary. The cause of action for express indemnity therefore is adequately stated even if it were appropriate to apply Civil Code § 2782.

2. Civil Code § 2782.8

Defendant offers no reason why § 2782.8 would render Article I, Section D void. No portion of that provision purports to make Defendant liable where they are not negligent. In fact, Section D provides precisely the opposite.

> "CONSULTANT shall, to the fullest extent permitted by law, indemnify, release, defend, and hold harmless the LOCAL AGENCY Indemnitees from and against any CLAIMS that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT in the performance of its duties and obligations under this Agreement or its failure to comply with any of its obligations contained in this Agreement, except to such CLAIM which is caused by the sole negligence or willful misconduct of LOCAL AGENCY."

Contract, Article I, Section D.

Section D by its own verbiage requires the indemnified conduct to "arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional." Civ. Code, § 2782.8(a). Defendant's argument to the contrary is frivolous. Defendant's citation to *Whitmire v. H. K. Ferguson Co.* (1968) 261 Cal.App.2d 594, 602-603 is unpersuasive and inapposite. It does not analyze Civil Code § 2782.8, does not deal with application of either § 2782 or § 2782.8, except to say that the enactment § 2782 prospective in operation.

The demurrer predicated on Civil Code §§ 2782(b)(2) and 2782.8 is **overruled.**

B. Defendant Argues that the Statute of Limitations has Passed

Defendant also argues that the cause of action accrued when the negligence was discovered, and that application of the professional negligence statute of limitations shows that the claims are not timely, because the SAC concedes that the underlying property ownership issue was apparent in 2018.

Defendant misapprehends the basis for indemnity. Indemnity is a contractual claim which "accrues when the indemnitor sustains the loss by paying the money sought to be indemnified from the indemnitee." *Valley Crest Landscape Development, Inc. v. Mission Pools of Escondido, Inc.* (2015) 238 Cal.App.4th 468, 481. Other statutes of limitations for causes of action for design services do not override the nature of the accrual of the indemnity claim, or the application of the breach of contract statute of limitations. *Id* at 480-481. Plaintiff did not make payment in the underlying case until 2023. This case was filed in 2024. The SAC clearly alleges facts sufficient to find this matter timely.

The demurrer for failure to state a claim based on statute of limitations is **OVERRULED**.

IV. Conclusion

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

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

8. 25CV01536, Gerst v. General Motors, LLC

Plaintiffs Michelle Gerst ("Plaintiff") filed the complaint (the "Complaint") against defendants General Motors, LLC ("Defendant")) and Does 1-10 for claims arising out of alleged violations of the Song-Beverly Consumer Warranty Act, Civ. Code § 1790 et seq. (the "Act") and fraudulent inducement – concealment. The matter is on calendar for the demurrer to the Complaint filed by Defendant under Code of Civil Procedure ("CCP") § 430.10 to the cause of action for fraudulent inducement.

The instant Demurrer was filed on July 2, 2025. On September 11, 2025. Plaintiff filed a first amended complaint ("FAC"). Therefore, the Demurrer is rendered as **MOOT** and accordingly will be dropped from calendar.

9. MCV-259190, Discover Bank v. Rand

This matter comes before the Court for hearing on Defendant Robert Rand's (references herein as "Judgment Debtor") Claim of Exemption. Plaintiff Discover Bank's (referenced herein as "Judgment Creditor") has filed a timely opposition.

APPEARANCES ARE REQUIRED. The Court did not receive any documentation supporting the income and expenses identified in the Claim of Exemption. Judgment Debtor is required to bring all supporting documents to the hearing. This supporting documentation is critical to the Court's analysis and determination of this Claim.

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