1. MAISEL v. BUSSELL, ET AL., 23CV1464

Cross-Complainant Bussell's Motion to Serve by Publication

On January 22, 2026, defendant / cross-complainant Ryan Bussell ("cross-complainant") filed the instant motion for an order authorizing service of summons and cross-complaint upon cross-defendants Dave Peters and Laura Peters (collectively, "cross-defendants") by publication.

Code of Civil Procedure section 415.50, subdivision (a) provides for service by publication "if upon affidavit it appears to the satisfaction of the court in which the action is pending that the party to be served cannot with reasonable diligence be served in another manner" and that either: (1) a cause of action exists against the party upon whom service is to be made or he or she is a necessary or proper party to the action, or (2) the party to be served has or claims an interest in real or personal property in this state that is subject to the jurisdiction of the court or the relief demanded in the action consists wholly or in part in excluding the party from any interest in the property. (Code Civ. Proc., § 415.50, subd. (a).) Subdivision (b) mandates that "[t]he court shall order the summons to be published in a named newspaper, published in this state, that is most likely to give actual notice to the party to be served." (Code Civ. Proc., § 415.50, subd. (b).)

Having reviewed and considered the declarations submitted by cross-complainant in support of this motion, the court finds that a cause of action exists against cross-defendants (i.e., conversion), and that cross-complainant has demonstrated reasonable diligence in attempting methods of service other than publication. Between March 20, 2025, and April 2, 2025, a registered process server made six different attempts, at various times, to serve cross-defendants at their residence. (Miller Decl., ¶ 4.) Between July 21, 2025, and July 24, 2025, a registered process server made four additional attempts, at various times, to serve cross-defendants at their residence. During the attempt on July 24, 2025, a "John Doe," presumed to be cross-defendant

Dave Peters, pointed a rifle in the direction of the process server. Thereafter, cross-complainant hired the Tehama County Sheriff's Department to effectuate service of process. Between August 7, 2025, and August 15, 2025, a Tehama County Sheriff made four different attempts to serve cross-defendant Dave Peters; however, each attempt was unsuccessful and the deputy completed Proof of Unsuccessful Service.

TENTATIVE RULING # 1: THE MOTION IS GRANTED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

2. SLATER v. RALEY'S SOUTH Y CENTER, SC20210019

Motion to Dismiss

On February 3, 2026, pursuant to Code of Civil Procedure sections 583.310 and 583.360, defendant Raley's South Y Center ("defendant") filed the instant motion to dismiss for failure to bring the action to trial within five years.

On March 16, 2026, plaintiff Brian Slater ("plaintiff") filed a timely opposition. Defendant filed no reply.

1. Background

Plaintiff commenced this personal injury action on February 1, 2021. A trial date was set for April 28, 2025. During the settlement conference on March 25, 2025, plaintiff's counsel informed the court that plaintiff would be undergoing an MRI to determine whether plaintiff needed surgery on his shoulder as a result of the underlying incident. The court vacated the trial date.

On October 1, 2025, the matter was before the court for re-setting of trial. A specially-appearing attorney for Mr. Woelfel indicated Mr. Woelfel was on medical leave and had instructed the attorney to request a continuance of 30 to 60 days to come back and re-set trial. Defendant did not object. The court granted plaintiff's request and continued the matter to January 6, 2026.

Defense counsel failed to appear at the January 6, 2026, hearing, as well as the next hearing on January 20, 2026. The court has reviewed the audio recordings of both hearings.

During the January 6 hearing, the court noted the upcoming five-year deadline under Code of Civil Procedure section 583.310, and pointed out that neither party had filed the required Case Management Conference Statement prior to the hearing. Mr. Woelfel stated that, since the October 1, 2025, hearing, he had not heard from defense counsel and had not reached out to defense counsel. The court continued the

matter for two weeks, and issued an Order to Show Cause regarding defense counsel's failure to appear. The court directed the clerk to serve notice upon defendant.

During the January 20 hearing, the court clerk indicated that notice had not been served upon defendant, as directed by the court on January 6. Again, the court raised the issue of the five-year deadline. Mr. Woelfel made an oral request to set trial as soon as possible and grant an extension for the five-year deadline due to (1) the non-appearance of defense counsel, and (2) the prior good-cause determination to vacate the April 28, 2025, hearing based on the uncertainty of whether plaintiff required shoulder surgery. Mr. Woelfel informed the court that, ultimately, plaintiff and his doctors determined he did not need surgery. The court indicated it would continue the matter to February 3, 2026, and asked Mr. Woelfel if that date would work. Mr. Woelfel raised no objection. Instead, he responded, "I will make that work, Your Honor." The court continued the matter to February 3, 2026.

To date, plaintiff has not brought the case to trial.

2. Legal Principles

"An action shall be brought to trial within five years after the action is commenced against the defendant." (Code Civ. Proc., § 583.310.) "This dismissal requirement is mandatory and 'not subject to extension, excuse, or exception except as expressly provided by statute.' [Citation.] 'Under the press of this statutory requirement, anyone pursuing an "action" in the California courts has an affirmative obligation to do what is necessary to move the action forward to trial in timely fashion.' [Citation.]" (*Seto v. Szeto* (2022) 86 Cal.App.5th 76, 85.)

If a plaintiff does not bring an action to trial within the time prescribed, the action "shall be dismissed by the court on its own motion or on motion of the defendant, after notice to the parties." (Code Civ. Proc., § 583.360, subd. (a).) To determine whether the prescribed period has expired, the court must exclude any time when, amongst other reasons, "[b]ringing the action to trial … was impossible, impracticable, or futile." (Code

Civ. Proc., § 583.340, subd. (c).) The plaintiff bears the burden of proving that the circumstances warrant applications of the exception to the five-year rule; the trial court has discretion to determine whether the exception applies. (*Bruns v. E-Commerce Exchange*, *Inc.* (2011) 51 Cal.4th 717, 731.) Applicability of the Code of Civil Procedure section 583.340, subdivision (c) exception "is generally fact specific, depending on the obstacles faced by the plaintiff in prosecuting the action and the plaintiff's exercise of reasonable diligence in overcoming the obstacles." (*Howard v. Thrifty Drug & Discount Stores* (1995) 10 Cal.4th 424, 438.)

"What is impossible, impracticable or futile must be determined in light of all the circumstances in the individual case, including the acts and conduct of the parties and the nature of the proceedings themselves. [Citations.] The critical factor in applying these exceptions to a given factual situation is whether the plaintiff exercised reasonable diligence in prosecuting his or her case." (*Moran v. Superior Court* (1983) 35 Cal.3d 229, 238.) " ' " Reasonable diligence places on a plaintiff the affirmative duty to make every reasonable effort to bring a case to trial within five years, even during the last month of its statutory life." ' " (*Sanchez v. City of Los Angeles* (2003) 109 Cal.App.4th 1262, 1270, italics omitted.) "The exercise of reasonable diligence requires a plaintiff to ' "keep track of the pertinent dates which are crucial to maintenance of his lawsuit, and to see that the action is brought to trial within the five-year period." ' " (*Wilcox v. Ford* (1988) 206 Cal.App.3d 1170, 1175.) A plaintiff "has an affirmative obligation to do what is necessary to move the action forward to trial in timely fashion." (*Tanguilig v. Neiman Marcus Group*, *Inc.* (2018) 22 Cal.App.5th 313, 322.) It is not the trial court's job to ensure a case is brought to trial within the five-year period. Instead, "if a trial court does not take any action," it is the plaintiff's obligation " 'to seek an order from the trial court' " scheduling the trial by the statutory deadline. (*Oswald v. Landmark Builders*, *Inc.* (2023) 97 Cal.App.5th 240, 249.)

3. Discussion

Based on the filing date of February 1, 2021, the five-year deadline to bring the case to trial would regularly expire on January 31, 2026.

Plaintiff argues it was impossible, impracticable, or futile to bring the action to trial within the required time period because (1) defendant repeatedly failed to appear at status conferences to set trial (Opp. at 1:21–24); and (2) the uncertainty of whether plaintiff needed to undergo shoulder surgery "made it extremely uncertain and impractical to try the case or settle at that time due to the huge difference in damages should the shoulder surgery have been necessary."[1] (Opp. at 2:8–12.)

The court finds that plaintiff has not established it was impossible, impracticable, or futile to bring the action to trial. Ultimately, plaintiff did not require surgery on his shoulder. It appears that this determination was made prior to the October 1, 2025, hearing, but, at any rate, Plaintiff's attorney made this point clear to the court on January 6, 2026, stating plaintiff was ready for trial. Plaintiff raised no objection to the court continuing the January 6 Case Management Conference, or even the January 20 Case Management Conference, despite the court repeatedly mentioning the five-year deadline.

Despite defense counsel's failure to appear on January 6, and the court's clerical error of failing to serve defendant notice of the January 20 hearing, it was plaintiff's obligation to seek an order from the trial court scheduling trial by the statutory deadline. He did not do so.

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[1] Plaintiff does not identify the alleged time period he claims it was impossible, impracticable, or futile to bring the case to trial due to plaintiff's shoulder injury, but surgery appears to have been contemplated in 2025.

There being no applicable exception to the five-year deadline under Code of Civil Procedure section 583.310, the court grants the motion to dismiss with prejudice.

TENTATIVE RULING # 2: THE MOTION TO DISMISS IS GRANTED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

3. SULLIVAN & ASSOCIATES, INC. v. DIV 15 TECH, INC., ET AL., 25CV1991

Motion to Compel Arbitration

On January 14, 2026, pursuant to Code of Civil Procedure section 1281.2, defendant DIV 15 Tech, Inc. ("defendant") filed the instant motion to compel arbitration and stay the action.

On March 16, 2026, plaintiff Kevin M. Sullivan & Associates, Inc. ("plaintiff") filed a timely opposition. On March 20, 2026, defendant filed a timely reply.

1. Notice Issues

It is unclear from defendant's moving papers whether defendant moves to compel all parties to arbitration, or just the plaintiff. Based on the notice of motion, which is directed "to each party and their counsel of record," as well as defendant's reply brief, which presents new argument of why certain other defendants should be compelled to arbitrate, it appears that defendant seeks to compel all parties to arbitration.

A motion to compel must be accompanied by a notice of hearing. (Code Civ. Proc., § 1290.2) Where, as here, "the arbitration agreement does not provide the manner in which service shall be made and the person on whom service is to be made … has previously been served in accordance with subdivision (b) of this section, service shall be made in the manner provided in Chapter 5 (commencing with Section 1010) of Title 14 of Part 2 of this code." (Code Civ. Proc., § 1290.4, subd. (c).)

To date, there is no proof of service of the instant motion upon defendant Harco National Insurance Company, which made a general appearance in this case on October 6, 2025.

TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, MARCH 27, 2026, IN DEPARTMENT FOUR, AT WHICH TIME, THE COURT WILL ASK DEFENDANT DIV 15 TECH, INC., FOR CLARIFICATION ON THE NOTICE ISSUES OUTLINED HEREIN AND THE SCOPE OF ITS MOTION.

4. SULLIVAN & ASSOCIATES, INC. v. CITY OF SOUTH LAKE TAHOE, ET AL., 25CV3051

Motion to Compel Arbitration

On January 14, 2026, pursuant to Code of Civil Procedure section 1281.2, defendant DIV 15 Tech, Inc. ("defendant") filed the instant motion to compel arbitration and stay the action.

On March 16, 2026, plaintiff Kevin M. Sullivan & Associates, Inc. ("plaintiff") filed a timely opposition. On March 20, 2026, defendant filed a timely reply.

1. Notice Issues

It is unclear from defendant's moving papers whether defendant moves to compel all parties to arbitration, or just the plaintiff. Based on the notice of motion, which is directed "to each party and their counsel of record," as well as defendant's reply brief, which presents new argument of why certain other defendants should be compelled to arbitrate, it appears that defendant seeks to compel all parties to arbitration.

A motion to compel must be accompanied by a notice of hearing. (Code Civ. Proc., § 1290.2) Where, as here, "the arbitration agreement does not provide the manner in which service shall be made and the person on whom service is to be made … has previously been served in accordance with subdivision (b) of this section, service shall be made in the manner provided in Chapter 5 (commencing with Section 1010) of Title 14 of Part 2 of this code." (Code Civ. Proc., § 1290.4, subd. (c).)

To date, there is no proof of service of the instant motion upon any of the other named defendants: (1) Roebbelen Contracting, Inc.; (2) City of South Lake Tahoe; and (3) Western Surety Company. Proofs of service of summons filed by plaintiff on December 3, 5, and 8, 2025, respectively, show that each of these defendants was served with the Summons and Complaint.

TENTATIVE RULING # 4: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, MARCH 27, 2026, IN DEPARTMENT FOUR, AT WHICH TIME, THE COURT WILL ASK

DEFENDANT DIV 15 TECH, INC., FOR CLARIFICATION ON THE NOTICE ISSUES OUTLINED HEREIN AND THE SCOPE OF ITS MOTION.

5. REYES, ET AL. v. DEPT. OF TRANSPORTATION, SC20200027

Motion to Enforce

On February 3, 2026, defendants Department of Transportation and Nicholas Hudspeth (collectively, "defendants") filed the instant motion to (1) enforce this court's April 11, 2025, order requiring Nicholas Wagner (attorney for plaintiff Maria Reyes) to pay defendants $1,760.00 in sanctions no later than May 9, 2025; and (2) rule on defendants' motion for sanctions under Code of Civil Procedure section 128.7, which defendants filed on April 7, 2025, and the court allegedly took under submission on April 11, 2025.

On March 17, 2026, plaintiff Maria Reyes filed a timely opposition stating that the motion to enforce this court's April 11, 2025, order is moot as a result of Mr. Wagner paying the required sanctions in full on March 16, 2026.

Defendants filed no reply.

With respect to defendants' motion to enforce the April 11, 2025, order, the court denies the motion as moot.

With respect to defendants' request that the court issue a ruling on defendants' motion for sanctions under Code of Civil Procedure section 128.7 ("Section 128.7"), the court notes that defendants incorrectly claim that the court took the matter under submission on April 11, 2025. The court has reviewed the audio recording of the April 11, 2025, hearing. There were four motions on calendar for hearing that day: (1) plaintiff Reyes's motion to disqualify defense counsel; (2) plaintiff Fernando Gonzalez's motion to enforce Local Court Rule 7.12.11; (3) plaintiff Gonzalez's ex parte application to re-open discovery; and (4) defendants' motion for sanctions under Code of Civil Procedure section 128.5 (filed December 11, 2024). With respect to each of these four motions, the court adopted its tentative ruling.

On April 3, 2025, defendants filed an ex parte application for an order shortening time to hear their intended motion for sanctions under Code of Civil Procedure

sections 128.5 and 128.7; defendants did not file said motion until April 7, 2025 (the court notes that the motion included a request for sanctions under Code of Civil Procedure section 128.7 only; there was ultimately no request for sanctions under Code of Civil Procedure section 128.5).

During the hearing on April 11, 2025, defense counsel asked the court to rule on its Section 128.7 sanctions, noting that the court did not address the issue in its tentative ruling issued April 10, 2025. The court indicated that the Section 128.7 request was not properly before the court for hearing. The court set a hearing on the request for Section 128.7 sanctions for April 18, 2025. The court did not take any matter under submission during the April 11, 2025, hearing.

The court acknowledges that each of the four minute orders issued on April 11, 2025, incorrectly state: "Sanctions not addressed at the last hearing as requested by the defendant(s) presented by parties and matter is submitted." The court has directed the clerk to issue amended minute orders to correctly reflect the record.

On April 14, 2025, plaintiff Reyes filed a notice of appeal challenging the court's denial of her motion to disqualify defense counsel. The filing of plaintiff's appeal prompted the court to vacate all hearing dates, including the April 18, 2025, hearing on defendants' request for Section 128.7 sanctions. After the remittitur issued, defense counsel did not ask to place the request for Section 128.7 sanctions back on calendar. Thus, there is no motion pending before the court.

Based on the above, the court denies defendants' request for a ruling on the Section 128.7 sanctions.

TENTATIVE RULING # 5: DEFENDANTS' MOTION TO ENFORCE IS DENIED AS MOOT. DEFENDANTS' REQUEST THAT THE COURT RULE ON DEFENDANTS' MOTION FOR CODE OF CIVIL PROCEDURE SECTION 128.7 SANCTIONS (FILED APRIL 7, 2025) IS DENIED AS THERE IS NO MOTION PENDING. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS*

***v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.**

6. ON SKI RUN, LLC, ET AL. v. MOUNTAIN MEN, LLC, ET AL., 24CV1953

(A) Demurrer

(B) Motion to Strike

Demurrer

Pursuant to Code of Civil Procedure section 430.10, subdivision (e), plaintiffs / cross-defendants On Ski Run LLC, Thanya Starr, and Oliver Starr (collectively, "cross-defendants") generally demur to the fourth, fifth, sixth, and seventh[2] causes of action in defendants / cross-complainants Mountain Men LLC's, Lynn Odvody's, and Joshua Hepburn's (collectively, "cross-complainants") third-amended cross-complaint ("TACC") filed July 21, 2025.

Counsel for cross-defendants declares she met and conferred with opposing counsel in compliance with Code of Civil Procedure section 430.41, subdivision (a). (Corliss Decl., ¶¶ 3, 5, 6 & Exs. A, B.)

On March 16, 2026, cross-complainants filed a timely opposition. On March 19, 2026, cross-defendants filed a timely reply.

1. Background

Cross-defendants Thanya Starr and Supaporn Phillips are the managing members of On Ski Run, LLC. (TACC, ¶ 6.) Cross-defendant Oliver Starr has represented himself to be an agent authorized to act on behalf of On Ski Run, LLC. (TACC, ¶ 7.)

1.1. Contractual Terms

In October 2018, Thanya Starr and Supaporn Phillips, as lessees, executed the Commercial Lease and Deposit Receipt (the "Lease") with Maguranyi Szabolcs, as lessor. (TACC, Ex. B.) As relevant here, the Lease provides: "Lessee will comply with all statutes, ordinances, and requirements of all municipal, state and federal authorities now in

[2] On page 74 of the TACC, the seventh cause of action for "Fraud: Negligent Misrepresentation" is incorrectly labelled as the sixth cause of action.

force, or which may later be in force, regarding the use of the premises. The commencement or pendency of any state or federal court abatement proceeding affecting the use of the premises will at the option of the Lessor is [sic] deemed a breach of this Lease[.]" (TACC, Ex. B, ¶ 6.) Additionally, "[t]his Lease is binding upon and inures to the benefit of the heirs, assigns, and successor of the parties." (TACC, Ex. B, ¶ 31.) Under the paragraph entitled, "Americans with Disabilities Act" ("ADA") the Lease provides: "Lessee accepts the premises in its current 'as is' conditions and shall be responsible for all costs associated with meeting the requirements of the Americans with Disabilities Act." (TACC, Ex. B, ¶ 34.) "In the event of a transfer of Lessor's title or interest to the property during the term of this Lease, Lessee agrees that the grantee of such title or interest will be substituted as the Lessor under this Lease." (TACC, Ex. B, ¶ 35.) "On ten (10) days' prior written notice from Lessor, Lessee will execute, acknowledge, and deliver to Lessor a statement in writing: (1) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect)[,] the amount of any security deposit, and the date to which the rent and other charges are paid in advance, if any; and (2) acknowledging that there are not, to Lessee's knowledge, any uncured defaults on the part of Lessor, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective buyer or financier of the premises." (TACC, Ex. B, ¶ 36(a).)

Addendum No. 1 to the Lease provides: "Lessee shall prove to Lessor's satisfaction that all bills have been paid upon completion of any construction on the premises. … Also, Lessee shall obtain and deliver to Lessor a Certificate of Occupancy from the City, if applicable[,] prior to initiating restaurant operations." (TACC, Ex. B at Addendum No. 1, ¶ 7.) "During construction and operation of the restaurant, Lessee must conform to the requirements of any federal, state and local governmental entity having authority over the restaurant and/or Lessor's property. In addition, Lessee shall operate the restaurant

in such a manner that it conforms with any and all permits and ordinances in effect, which govern said operation[.]" (TACC, Ex. B at Addendum No. 1, ¶ 8.)

Exhibit 1.a. to the Lease provides: "Lessor shall contribute no more than $35,000 in the form of future rent credits… to complete" various ADA issues, amongst other items. (TACC, Ex. B at Ex. 1.a.) "The work items listed above in Exhibit 1.a. and 1.b. are to be completed by Lessee as may be required by the City of South Lake Tahoe and to Lessor's reasonable satisfaction." (TACC, Ex. B at Ex. 1.a.) "Lessee shall be obligated to complete and pay for any additional work required to complete necessary or desired improvements for the subject Premises and associated Class A Restaurant and Bar, including the following: 1. The remainder of any work items listed in the preceding sections (Exhibits 1.a. and 1.b.) that were not paid or payable from Lessor's specified $35,000 and $15,000 contributions…." (TACC, Ex. B at Ex. 1.)

The First Amendment to Commercial Lease, executed by Thanya Starr, Supaporn Phillips, and Maguranyi Szabolcs on August 15, 2019, states that the purpose of said amendment is to accommodate the sale of the Property to Infinity Investment Group, LLC (referencing Escrow # NSC 967079). (TACC, Ex. D.) Except as provided for in the amendment, the Lease shall remain unmodified and in full force and effect. (TACC, Ex. D.)

1.2. Additional Background

On April 4, 2019, the city of South Lake Tahoe (the "City") issued a tenant commercial improvement permit to cross-defendants, entitling them to commence renovations at the premises. (TACC, ¶ 24.) The permit stated it would expire after 12 months on April 4, 2020. (TACC, ¶ 24.)

On August 26, 2019, Infinity Investments, LLC purchased the property. (TACC, ¶ 38.)

On October 3, 2019, the City issued the first of two "Correction Notices" related to cross-defendants' renovation projects. (TACC, ¶ 42 & Ex. E.) Said notice identifies 22 items that "shall be corrected, reinspected, and approved prior to covering,"

including: (19) "provide all required ADA signage, front door, bathrooms, etc." (TACC, Ex. E.)

On October 7, 2019, the City issued its second Correction Notice. (TACC, ¶ 43 & Ex. F.) This notice states the following item, amongst others, shall be corrected, reinspected, and approved prior to covering: "complete all exterior ADA site requirements, parking stalls, path of travel, sinage [sic], etc." (TACC, Ex. F.)

After receiving these correction notices, cross-defendants refused to pay certain invoices issued by their contractor, Mike Bailey, and ceased communications with his construction company, MB Construction. (TACC, ¶ 44.)

On October 8, 2019, the City informed Thanya Starr that the City would only be issuing a Temporary Certificate of Occupancy given the incomplete nature of the renovations. (TACC, ¶ 46 & Ex. G.) The City further stated that the "Dig Season is coming to an end as of 10/15/2019[.]" (TACC, Ex. G.) "The intension [sic] is to acquire and finish the exterior portion of our Permit in the beginning of the Spring when Dig Season starts. 05/01/2020[.] … [¶] All other items on the Correction Notice should be addressed and or completed within (2) weeks. 10/18/2019[.]" (TACC, Ex. G.) Cross-defendants allegedly completed most of the other correction items identified by the City in October 2019. (TACC, ¶ 46.)

On October 21, 2019, "after [Mike Bailey] completed the majority of the punch list items, excepting the exterior ADA work and the hanging of one of the doors," cross-defendants fired Mike Bailey and refused to pay his outstanding invoices or hire him for the final items on the correction notices. (TACC, ¶ 49.)

Cross-defendants then refused to pay several other contractors who had worked on their project, including Arctic Electric and Riley Plumbing and Heating. (TACC, ¶ 49.) Cross-complainants allege this constituted a breach of the Lease. (TACC, ¶ 49.)

When the dig season resumed in May 2020, cross-defendants allegedly "did not perform, or attempt to perform, any of the work to complete their project, even though

all of the outstanding exterior ADA work remained to be completed pursuant to … the October 7, 2019 correction notice." (TACC, ¶ 50.)

On January 14, 2022, the City posted a "FINAL NOTICE OF PERMIT EXPIRATION" at the premises. (TACC, ¶ 62.) Soon after, cross-defendants' temporary occupancy permit expired due to their failure to close out their building permit and/or address the exterior ADA renovations. (TACC, ¶ 54.)

1.3. Fraud Allegations

On May 10, 2023, Thanya Starr, as owner of On Ski Run, executed a Tenant Estoppel Certificate certifying various information to Lynn Odvody and Joshua Hepburn, who were in the process of purchasing the Property from Infinity Investment Group, LLC. As relevant here, On Ski Run made the following statements in the Tenant Estoppel Certificate: (1) Thai on Ski Run was the tenant under the lease with Infinity Investment; (2) "Tenant is not in default under the Lease, Tenant has not received any notices of default under the Lease which have not been cured, and there are no events which have occurred that with the giving of notice or the passage of time, or both, would result in a default by Tenant under the Lease;" (3) "Tenant is not using the Premises in violation of any applicable laws, rules, ordinances, or regulations, including but not limited to, any applicable environmental laws, rules, or regulations (collectively, 'Laws') and there are no actions or other claims pending or threatened against Tenant in connection with any such Laws, nor has Tenant received any notices alleging Tenant's violation of any such Laws;" (4) "The Lease represents the entire agreement between the parties thereto regarding the Premises;" and (5) "Tenant hereby executes this Certificate, intending reliance hereon by Purchaser." (TACC, Ex. I.) Attached to the Tenant Estoppel Certificate as Exhibit A is: (1) the Commercial Lease and Deposit Receipt, executed on October 18, 2018; and (2) First Amendment to Commercial Lease, executed on August 15, 2019.

Escrow closed on May 18, 2023.

On July 13, 2023, David Chapman performed a site assessment for cross-complainants. (TACC, ¶ 227.) Mr. Chapman identified the work needed to bring the Property into full ADA compliance. (TACC, ¶ 227.) Mr. Chapman did not state that the building permit or occupancy permit had expired. (TACC, ¶ 228.)

In October 2023, cross-defendants promised to close out their ADA/Building permits but allegedly, they "did not intend to perform on this promise when it was made." (TACC, ¶¶ 241, 242.)

On October 26, 2023, cross-complainants entered into a Lease Modification with cross-defendants Thanya and Oliver Starr. (TACC, ¶ 237.)

2. Legal Principles

"[A] demurrer challenges only the legal sufficiency of the complaint, not the truth or the accuracy of its factual allegations or the plaintiff's ability to prove those allegations." (*Amarel v. Connell* (1998) 202 Cal.App.3d 137, 140.) A demurrer is directed at the face of the complaint and to matters subject to judicial notice. (Code Civ. Proc., § 430.30, subd. (a).) All properly pleaded allegations of fact in the complaint are accepted as true, however, improbable they may be, but not the contentions, deductions or conclusions of facts or law. (*Blank v. Kirwan* (1985)39 Cal.3d 311, 318; *Del E. Webb Corp. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) A judge gives "the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (*Blank*, *supra*, 39 Cal.3d at p. 318.)

3. Discussion

3.1. Fourth C/A for Fraud: Intentional Misrepresentation

The fourth cause of action in the TACC is based upon On Ski Run's written statements in the Tenant Estoppel Certificate that was executed on May 10, 2023, and delivered to Mountain Men in connection with Mountain Men's acquisition of the Property. (TACC, ¶ 200.) Specifically, the TACC alleges cross-defendants intentionally misrepresented that they were not in default under the Lease, despite the fact that

cross-defendants: (1) had not completed their mandatory exterior ADA renovations (TACC, ¶ 202); (2) were not operating with a valid Certificate of Occupancy (TACC, ¶ 203); (3) had an expired building permit (TACC, ¶ 204); (4) owed several contractors monies in connection with their renovations (TACC, ¶ 204); and (5) were using the Premises in violation of various Health Code sections (TACC, ¶ 205). Additionally, the TACC alleges that On Ski Run misrepresented that it was the tenant under the Lease and that the Lease " 'represents the entire agreement between the parties thereto regarding the Premises.' "

Cross-defendants first argue this cause of action is barred by the economic loss rule. Economic loss consists of " ' " 'damages for inadequate value, costs of repair and replacement of the defective product or consequent loss of profits–without any claim of personal injury or damages to other property….' " ' [Citation.]" (*Jimenez v. Superior Court* (2002) 29 Cal.4th 473, 482.) "The economic loss rule requires a purchaser to recover in contract for purely economic loss due to disappointed expectations, unless he can demonstrate harm above and beyond a broken contractual promise." (*Robinson Helicopter Co. v. Dana Corp.* (2004) 34 Cal.4th 979, 988.)

However, as cross-complainants point out, they were not parties to any contract with cross-defendants at the time the statements were made in the Tenant Estoppel Certificate on May 10, 2023. Mountain Men had not yet purchased the Property or entered into an agreement with cross-defendants. Therefore, the court concludes that the economic loss rule does not apply.

Even if the economic loss rule did apply, the court agrees with cross-complainants that the fraudulent inducement exception would apply. (*Robinson Helicopter*, *Co.*, *Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, 989–990; see also, *Harris v. Atlantic Richfield Co.* (1993) 14 Cal.App.4th 70, 78 ["when one party commits a fraud during the contract formation or performance, the injured party may recover in contract and tort"].) Cross-defendants claim the exception does not apply where the TACC indicates Mountain Men

received notice from the City in July 2023 of On Ski Run's failure to complete certain ADA work. Therefore, cross-defendants argue, by entering into the Lease Modification in October 2023, Mountain Men waived all claims for damages arising from the alleged fraud. (Mtn. at 7:4–8.)

However, liberally construing the allegations of the TACC (as the court must do in considering the demurrer), the court finds the TACC alleges that cross-defendants intended to induce cross-complainants to rely on the misrepresentations to purchase the building without the ADA renovations they were expecting, all while cross-defendants recouped the monies they had received for ADA renovations from the previous owner. (See, e.g., TACC, ¶ 60.) Said purchase was completed on May 18, 2023. Accepting these allegations as true, the court finds cross-complainants have sufficiently alleged a cause of action for fraud based on intentional misrepresentation.

The demurrer is overruled.

3.2. Fifth C/A for Fraud: Concealment / Deceit

The required elements for fraudulent concealment are (1) concealment or suppression of a material fact; (2) by a defendant with a duty to disclose the fact; (3) the defendant intended to defraud the plaintiff by intentionally concealing or suppressing the fact; (4) the plaintiff was unaware of the fact and would have acted differently if the concealed or suppressed fact was known; and (5) plaintiff sustained damage as a result of the concealment or suppression of the material fact. [Citations.] A duty to disclose a material fact can arise if (1) it is imposed by statute; (2) the defendant is acting as plaintiff's fiduciary or is in some other confidential relationship with plaintiff that imposes a disclosure duty under the circumstances; (3) the material facts are known or accessible only to defendant, and defendant knows those facts are not known or reasonably discoverable by plaintiff (i.e., exclusive knowledge); (4) the defendant makes representations but fails to disclose other facts that materially qualify the facts disclosed or render the disclosure misleading (i.e., partial concealment); or (5) defendant actively

conceals discovery of material fact from plaintiff (i.e., active concealment). [Citations.] Circumstances (3), (4), and (5) presuppose a preexisting relationship between the parties, such as 'between seller and buyer, employer and prospective employee, doctor and patient, or parties entering into any kind of contractual agreement. [Citation.] All of these relationships are created by transactions between parties from which a duty to disclose facts material to the transaction arises under certain circumstances. [Citation.]" (*Rattagan v. Uber Technologies*, *Inc.* (2024) 17 Cal.5th 1, 40–41.)

The fifth cause of action in the TACC alleges that cross-defendants concealed the following facts in their Tenant Estoppel Certificate that was executed May 10, 2023, and delivered to cross-complainants:[3] (1) that cross-defendants had not completed or attempted to complete their exterior ADA work, as required under the operative Lease; (2) that cross-defendants' occupancy certificate had expired; (3) that cross-defendants' building permit had expired; and (4) that cross-defendants had received Health Code violation notices, and been closed at least twice, during the period of 2019 through 2022. (TACC, ¶¶ 218, 223.)

For the same reasons as discussed under the fourth cause of action, the court finds that the economic loss rule does not prohibit the claim of fraud in this case.

Cross-defendants also argue that their demurrer should be sustained because the fifth cause of action is duplicative of the fourth cause of action: both causes of action claim fraud, albeit under different theories. Given the number of alleged statements, and the complexity of the allegations, the court exercises its discretion to overrule the demurrer on these grounds and keep the claims separate.

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[3] The TACC alleges, "Cross-Defendants further engaged in conduct of deceit and concealment throughout the discussions, negotiations, and execution of the Lease Modification Agreement." However, "fraud must be pled specifically." (*Lazar*, *supra*, 12 Cal.4th at p. 645.) The court finds that the fifth cause of action does not specifically plead fraud based on concealment at any time period after the May 10, 2023, Tenant Estoppel Certificate was issued.

The demurrer is overruled.

3.3. Sixth C/A for Fraud: False Promises

"A promise to do something necessarily implies the intention to perform; hence, where a promise is made without such intention, there is an implied misrepresentation of fact that may be actionable fraud. [Citations.] [¶] An action for promissory fraud may lie where a defendant fraudulently induces the plaintiff to enter into a contract." (*Lazar*, *supra*, 12 Cal.4th at p. 638.)

The TACC alleges cross-defendants "promised to close out their ADA/Building permits in October 2023" but "did not intend to perform on this promise when it was made." (TACC, ¶¶ 241, 242.) Allegedly, cross-defendants "intended Cross-Complainants to rely on this promise in order to gain favorable rent concessions in the Lease Modification Agreement."

The court finds that this cause of action is not barred by the economic loss rule. Additionally, it is not duplicative of the fourth cause of action for fraud based upon statements made in the Tenant Estoppel Certificate executed May 10, 2023.

Because the TACC sufficiently alleges promissory fraud, the demurrer to this cause of action is overruled.

3.4. Seventh C/A for Fraud: Negligent Misrepresentation

The elements of negligent misrepresentation are (1) the defendant made a false representation as to a past or existing material fact; (2) the defendant made the representation without reasonable ground for believing it to be true; (3) in making the representation, the defendant intended to deceive the plaintiff; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages. (*West v. JPMorgan Chase Bank*, *N.A.* (2013) 214 Cal.App.4th 780, 792.)

The seventh cause of action alleges cross-defendants negligently set forth the following facts as true to the cross-complainants from May 10, 2023, to April 2025: (1) that cross-defendants were lawfully operating as of May 10, 2023; (2) that cross-

defendants had no notice of their lease defaults as of May 2023; (3) that cross-defendants had an open building permit in connection with their obligated ADA exterior improvements; (4) that cross-defendants intended to close their building permit in connection with their obligated ADA exterior improvements; (5) that cross-defendants intended to complete the exterior ADA improvements; (6) that cross-defendants believed the roof of the Premises needed to be replaced; (7) that cross-defendants believed cross-complainants conduct was the cause of the rodent infestation at their premises; (8) that cross-defendants believed their outstanding exterior ADA scope of work only involved repaving the parking lot and re-striping the ADA space; and (9) that cross-defendants did not believe their renovation and/or their lease obligations required them to bring the Premises and ADA paths into full ADA compliance. (TACC, ¶ 249.)

For the same reasons as discussed under the fourth cause of action, the court finds that the economic loss rule does not prohibit the claim of negligent misrepresentation in this case.

The demurrer is overruled.

Motion to Strike

Pursuant to Code of Civil Procedure sections 435 and 436, cross-defendants move to strike various portions of the TACC related to cross-complainants' claim for punitive damages. Cross-defendants challenge the following paragraphs of the TACC under the fourth and fifth causes of action for fraud: 212, 213, 220, 239; and the following paragraphs of the TACC under the tenth cause of action for defamation: 283 and 284. Additionally, cross-defendants challenge Line Item Number 1 in the Prayer for relief.

On March 16, 2026, cross-complainants filed a timely opposition. On March 19, 2026, cross-defendants filed a timely reply.

1. Request for Judicial Notice

Pursuant to Evidence Code section 452, the court grants cross-defendants' unopposed request for judicial notice.

2. Legal Principles

A motion to strike is generally used to address defects appearing on the face of a pleading that are not subject to demurrer. (*Pierson v. Sharp Memorial Hospital* (1989) 216 Cal.App.3d 340, 342.) "The court may, upon a motion [to strike] …, or at any time in its discretion … [¶] … [s]trike out any irrelevant, false, or improper matter inserted in any pleading." (Code Civ. Proc., § 436, subd. (a).) Like a demurrer, the grounds for a motion to strike must appear on the face of the pleading or from any matter which the court is required to take judicial notice. (Code Civ. Proc., § 437, subd. (a).) On a motion to strike the trial court must read the complaint as a whole, considering all parts in their context, and must assume the truth of all well-pleaded allegations. (*Courtesy Ambulance*, *supra*, 8 Cal.App.4th at p. 1519.)

3. Discussion

Civil Code section 3294 allows a plaintiff to recover exemplary (or "punitive") damages "[i]n an action for the breach of an obligation not arising from contract, where it is proven be clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice." (Civ. Code, § 3294, subd. (a).) For the purposes of awarding exemplary damages, " '[m]alice' means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (Civ. Code, § 3294, subd. (c)(1).) " 'Oppression' means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (Civ. Code, § 3294, subd. (c)(2).) " 'Fraud' means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on

the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury." (Civ. Code, § 3294, subd. (c)(3).)

With respect to the claim for punitive damages under the fourth and fifth causes of action for fraud, the allegations of the TACC demonstrate, at most, that cross-defendants made the alleged statements for purely financial gain (i.e., with the intent to recoup monies they received from the previous owners for ADA renovations). This does not rise to the level of oppression, fraud, or malice.

With respect to the claim for punitive damages under the tenth cause of action for defamation, the court previously granted cross-defendants' motion to strike the claim for punitive damages with leave to amend. The court finds that the TACC still fails to allege cross-defendants acted with oppression, fraud, or malice.

The court grants the motion to strike as requested.

TENTATIVE RULING # 6: THE DEMURRER IS OVERRULED. THE MOTION TO STRIKE IS GRANTED AS REQUESTED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

7. CIANCI, ET AL. v. GEISLER, 23CV0290

Motion to Change Venue

On February 3, 2026, defendant Marcus Geisler ("defendant"), who is representing himself in *pro per*, filed the instant motion to change venue to Ventura County. Proof of service attached to the motion shows it was electronically served upon counsel for both plaintiffs, Phil Cianci and Susan Cianci (collectively, "plaintiffs"), that same day. The court notes that neither of the other two named defendants – Marcus Smith and Auto Image[4] – have appeared in the action and therefore, service of the moving papers is not required on those parties. (See Code Civ. Proc., § 1014; see also, *Winikow v. Superior Court* (2000) 82 Cal.App.4th 719, 727 [service of notice not required on defendants who have not yet appeared in the action].)

1. Background

This case arises from the private sale of a 1956 GMC Panel automobile. The complaint alleges defendants advertised the vehicle in the County of El Dorado and the parties entered an oral sale agreement in the County of El Dorado.

Defendant declares he is a resident of Ventura County and conducts business in Ventura County. (Geisler Decl., ¶ 1.) He advertised the vehicle on Facebook Market Place; he advertised "locally" and did not select any county other than Ventura County. (Geisler Decl., ¶ 2.) Defendant was contacted in Ventura County at his place of business by plaintiffs' son. (Geisler Decl., ¶ 3.) Subsequently, plaintiff Phil Cianci mailed defendant a check toward the purchase of the vehicle. (Geisler Decl., ¶ 3.) Plaintiff later arrived in Ventura County to pay the remaining balance and take delivery of the vehicle. (Geisler, ¶ 4.) After test driving the vehicle, however, plaintiff elected not to complete the purchase. (Geisler, ¶ 4.)

[4] Plaintiffs' complaint alleges that "Marcus Smith" is an alter ego for defendant; and defendant is the owner, or an owner, of "Auto Image." (Compl., ¶ 2.)

Plaintiffs' complaint alleges breach of contract, promissory fraud, and declaratory relief.

2. Legal Principles

Code of Civil Procedure section 396b, subdivision (a) provides, in relevant part, "if an action or proceeding is commenced in a court having jurisdiction of the subject matter thereof, other than the court designated as the proper court for the trial thereof, under this title, the action may, notwithstanding, be tried in the court where commenced, unless the defendant, at the time he or she answers, demurs, or moves to strike, or at his or her option, without answering, demurring, or moving to strike and within the time otherwise allowed to respond to the complaint, files with the clerk, a notice of motion for an order transferring the action or proceeding to the proper court, together with proof of service, upon the adverse party, of a copy of those papers. Upon the hearing of the motion the court shall, if it appears that the action or proceeding was not commenced in the proper court, order the action or proceeding transferred to the proper court." (Code Civ. Proc., § 396b, subd. (a).)

3. Discussion

"It is well established that a defendant is entitled to have an action tried in the county of his or her residence unless the action falls within some exception to the general venue rule. [Citations.]" *(Brown v. Superior Court* (1984) 37 Cal.3d 477, 483.) Here, defendant declares he was contacted at his place of business in Ventura County by plaintiffs' son. Plaintiff later arrived in Ventura County to pay the remaining balance of the vehicle and take delivery of the vehicle. Pursuant to Code of Civil Procedure section 395, the court finds Ventura to be a proper county for trial.

Also, as previously noted, plaintiffs filed no opposition. If opposition papers are not timely filed, the court, in its discretion, may deem it a waiver of any objections and treat it as an admission that the motion is meritorious and may grant the motion. (Local Court Rule 7.10.02(B).)

The court deems plaintiffs' failure to oppose as an admission that the motion is meritorious. The motion is granted.

TENTATIVE RULING # 7: THE COURT GRANTS DEFENDANT'S MOTION TO CHANGE VENUE TO VENTURA COUNTY. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.