February 27, 2026,
Dept. 9
Tentative Rulings

1.	25CV0626	LEWIS ET AL vs. GENERAL MOTORS LLC
To Determine Amount of Attorneys' Fees & Costs		

As the prevailing party in this action, Plaintiff moves to determine the amount of attorneys' fees and costs to be paid by Defendant pursuant to Code of Civil Procedure § 1794(d).

The amounts claimed include:

- $250 per hour for paralegal time;
- One hour at $850 per hour for Jon Jacobs, the owner of the firm with more than 25 years' experience in consumer protection law
- A total of 58.6 billable hours ($19,805) for the firm, including $3,600 for future time anticipated to be spent by attorney Morano to enforce the settlement terms. This includes:
    - $450 per hour for attorney Christine Morano, admitted to the California Bar in 2024.
    - $650 per hour for attorney Chad David
- The additional amount of $1,051.91 for costs and expenses (Jacobs Declaration, Exhibit C)

General Motors ("GM") opposes the amount of fees, claiming that attorneys and paralegals billed more time than was required or routine tasks. For example, in 145 instances, billing 0.2 hours instead of 0.1 hours for routine or ministerial tasks such as forwarding or receiving an email, updating a calendar or spreadsheet. GM also argues that attorney billing rates are excessive, that attorneys spent time doing tasks that paralegals could have done, that time spent preparing the fees motion should not be included, and that anticipated time for future work should be disallowed.

The Court agrees that 145 entries for 0.2 hours could be reduced to 0.1 hours for a total reduction of 14.5 hours at the paralegal rate of $250, for a total reduction of $3,625.

The Court disagrees that hourly rates are excessive, that attorneys billed excessively for tasks that paralegals could have performed, or that the time spent preparing this motion for fees should be disallowed.

The Court does agree that anticipated billing hours should be reduced by half to four hours, for a reduction of $1,800.

Accordingly, the attorneys' fee award should be reduced to $14,380, plus $1,051.91, for a total award of $15,431.91.

TENTATIVE RULING #1: PLAINTIFF'S MOTION TO DETERMINE THE AMOUNT OF REASONABLE ATTORNEYS' FEES COSTS AND EXPENSES TO BE PAID BY DEFENDANT IS GRANTED, AND THAT DEFENDANT REMIT TO PLAINTIFF ATTORNEYS' FEES, COSTS AND EXPENSES IN THE TOTAL AMOUNT OF $15,431.91 WITHIN 30 CALENDAR DAYS FROM THE DATE OF SERVICE OF THIS ORDER.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING.

2.	**25CV2641**	**KAUPPI vs. EL DORADO HILLS FIRE DEPARTMENT,**
Demurrer / Motion to Strike		

According to the Complaint, Plaintiff was employed by Defendant as a Fire Inspector from February 2022 until April 2025. (Complaint, paras. 1, 10.) His duties included inspecting local businesses for compliance with fire safety regulations. (Id. para.11.) In January 2025, the Fire Chief allegedly directed inspectors to adopt a more lenient approach to enforcement and "look the other way" during inspections. (Id. para.12.) Plaintiff alleges that he requested and took paternity leave under the CFRA in late January 2025, scheduled to return in March 2025. (Id. para.13.) While on leave, Plaintiff claims he was placed on administrative leave, and was later informed that his employment would be terminated. (Id. para.15.) Plaintiff asserts that the termination was motivated by his association with his wife, who was "disabled by pregnancy," his refusal to relax enforcement of fire safety laws, and his complaints about unsafe conditions. (Id. paras. 16, 22, 45.) Plaintiff filed a charge with the Civil Rights Department and received a Right-to-Sue notice dated August 27, 2025. (Id. para.17) He also presented a government claim, which was rejected on August 22, 2025. (Id.) Plaintiff now seeks damages, reinstatement, and attorneys' fees under FEHA, CFRA, and various Labor Code provisions. (Id. paras. 19, 24, 29, 35, 42, 48.)

The Complaint alleges 1) discrimination, harassment and retaliation in violation of Government Code § 12940, 2) retaliation for exercising right to California Family Rights Act ("CFRA") leave in violation of California Code of Regulations § 11094, 3) failure to prevent discrimination, harassment and retaliation in violation of Government Code § 12940, 4) retaliation in violation of Labor Code § 1102.5, and 5) retaliation in violation of Labor Code § 6310.

Standard of Review

> A demurrer tests the sufficiency of a complaint by raising questions of law. (*Rader Co. v. Stone* (1986) 178 Cal.App.3d 10, 20, 223 Cal.Rptr. 806.) In determining the merits of a demurrer, all material facts pleaded in the complaint and those that arise by reasonable implication, but not conclusions of fact or law, are deemed admitted by the demurring party. (*Moore v. Conliffe, supra,* 7 Cal.4th at p. 638, 29 Cal.Rptr.2d 152, 871 P.2d 204; *Interinsurance Exchange v. Narula, supra,* 33 Cal.App.4th at p. 1143, 39 Cal.Rptr.2d 752.) The complaint must be construed liberally by drawing reasonable inferences from the facts pleaded. (*Flynn v. Higham* (1983) 149 Cal.App.3d 677, 679, 197 Cal.Rptr. 145.)

Rodas v. Spiegel, 87 Cal. App. 4th 513, 517 (2001).

First & Third Causes of Action: Discrimination and Harassment

Defendant demurs to the First and Third Causes of Action because they do not allege facts detailing the allegation that Plaintiff's spouse was "disabled by pregnancy", but only allege that Plaintiff took paternity leave under the CFRA between January and March, 2025 (Complaint, para. 13), and that he was terminated "because of his association with a disabled person, his wife, because Plaintiff requested leave to care for his wife, she was disabled by pregnancy, and because Defendant, Employer, [was] irritated at Defendant for taking time off work to care for his wife, who was disabled by pregnancy, childbirth or related conditions." Complaint, para. 22.

Government Code § 12940(a) prohibits an employer from discharging or discriminating against an employee because of "physical disability" which, in this context, include any condition that affects the reproductive system and which limits a major life activity. Government Code § 12926(m)(1). Defendant argues that the mere condition of pregnancy does not fall within this definition because it does not necessarily "limit a major life activity," which is defined to include "physical, mental, and social activities and working."[1] Id. Plaintiff responds that "[c]ommon knowledge dictates that pregnancy and the childbirth that results from it inherently affect the ability to do a multitude of major life activities, including caring for oneself, which is one of the reasons why the California Legislature made sure that employees like Plaintiff can take medical leave when their spouse is pregnant." Opposition, p.4:9-12. While that may be true to some extent, it does not necessarily follow that every pregnant person is limited in carrying out major life activities in all stages of pregnancy. Nevertheless, the Court is bound to construe the Complaint liberally by drawing reasonable inferences from the facts pleaded. Plaintiff alleges that his wife was "disabled by pregnancy", and for the purpose of demurrer the Court assumes this fact to be true. Whether the allegation can be proven is an issue to be determined at later stages of the proceedings.

This analysis also addresses Defendant's demurrer with respect to the charge of illegal retaliation alleged within the First Cause of Action, and the allegation of failure to prevent illegal discrimination and retaliation in the Third Cause of Action.

Defendant further argues that the Complaint must allege a nexus between the protected behavior and the adverse employment decision. In the Rope v. Auto-Chlor Sys. of Washington, Inc. case[2], the Court held that "in some cases, a close temporal proximity between an

[1] "Being unable to work during pregnancy is a disability for the purposes of section 12940. (See § 12926, subd. (I) [defining "[p]hysical disability" as including any physiological condition that impairs a major life activity, such as working].) Sanchez v. Swissport, Inc., 213 Cal. App. 4th 1331, 1340 (2013).

[2] The legislative findings contained within the 2015 amendment to Government Code § 12940(l) (A.B. 987) state that the case of Rope v. Auto-Chlor Sys. of Washington, Inc. "remains good law" except to the extent that it fails to

employee's resistance or opposition to unlawful conduct and an adverse employment action will support an inference that the action was retaliatory." Rope v. Auto-Chlor Sys. of Washington, Inc., 220 Cal. App. 4th 635, 653 (2013). *See also*, Taylor v. City of Los Angeles Dep't of Water & Power, 144 Cal. App. 4th 1216, 1235 (2006), *disapproved of on other grounds by* Jones v. Lodge at Torrey Pines P'ship, 42 Cal. 4th 1158 (2008):

> To establish a prima facie case, the plaintiff must show that there is a causal link between the protected activity and the employer's action. (*Flait v. North Am. Watch Corp., supra,* 3 Cal.App.4th at p. 476, 4 Cal.Rptr.2d 522.) Close proximity in time of an adverse action to an employee's resistance or opposition to unlawful conduct is often strong evidence of a retaliatory motive. (*Strother v. Southern California Permanente Medical Group* (9th Cir.1996) 79 F.3d 859, 868–869 [plaintiff made prima facie showing of retaliatory termination under the Act where employee was fired one day after filing a complaint with the DFEH]; *Flait, supra,* 3 Cal.App.4th at p. 476, 4 Cal.Rptr.2d 522 [plaintiff made prima facie showing of retaliatory termination where employee was terminated a short time after complaining to supervisor of the supervisor's sexual harassment of a co-worker, and harassing supervisor was responsible for termination]).

The allegation of harassment is a separate issue from termination. While a termination decision is an employer's action that may "arise out of the performance of necessary personnel management duties" Janken v. GM Hughes Elecs., 46 Cal. App. 4th 55, 63 (1996), "[h]arassment is not conduct of a type necessary for management of the employer's business or performance of the supervisory employee's job." Id. Harassment is defined by California Code of Regulations § 11019(b)(2) as follows:

> (A) Verbal harassment, e.g., epithets, derogatory comments or slurs on a basis enumerated in the Act;
>
> (B) Physical harassment, e.g., assault, impeding or blocking movement, or any physical interference with normal work or movement, when directed at an individual on a basis enumerated in the Act;
>
> (C) Visual forms of harassment, e.g., derogatory posters, cartoons, or drawings on a basis enumerated in the Act; or
>
> (D) Sexual favors, e.g., unwanted sexual advances, which condition an employment benefit upon an exchange of sexual favors. [See also section 11034(f)(1).]
>
> (E) In applying this subsection, the rights of free speech and association shall be accommodated consistently with the intent of this subsection.

recognize that a request for reasonable accommodation is protected under the statute, regardless of whether the accommodation was granted.

In the Complaint, Plaintiff alleges that he was put on administrative leave and then terminated for reasons that Plaintiff alleges were based on illegal motivations. However, apart from the challenged personnel decisions, the Complaint does not include any allegations of conduct by any person associated with Plaintiff's employer that falls within the definition of "harassment." Accordingly, Defendant's demurrer as to alleged harassment in both the First and Third Causes of Action is sustained based upon the lack of any supporting allegations.

Second Cause of Action

The Second Cause of Action alleges retaliation for Plaintiff's exercise of the right to take leave from work under the California Family Rights Act ("CFRA"), 2 C.C.R. § 11094. Defendant argues that the Complaint fails to allege that Plaintiff was eligible for leave under the CFRA; however, Plaintiff correctly notes that the Complaint alleges that he did take such leave, which presumes that his employer concluded that he did qualify to take CFRA leave. The issue is not whether Plaintiff took leave without being eligible; the issue is whether Plaintiff has alleged a prima facie case of retaliation against Plaintiff for having taken CFRA leave.

> No California court has yet articulated the elements of a cause of action for retaliation in violation of this provision of CFRA. (See *Mora v. Chem–Tronics, Inc.* (S.D.Cal.1998) 16 F.Supp.2d 1192, 1232.) However, several federal courts have articulated the elements of such a cause of action under the Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601 et seq., the federal counterpart to CFRA. (See *Pang v. Beverly Hospital, Inc.* (2000) 79 Cal.App.4th 986, 993, 94 Cal.Rptr.2d 643 [referring to FMLA as the "federal law counterpart" of CFRA].) To make out a prima facie case of retaliation in violation of FMLA, a plaintiff must show that "(1) he availed himself of a protected right under the FMLA; (2) he was adversely affected by an employment decision; [and] (3) there is a causal connection between the employee's protected activity and the employer's adverse employment action." (*Hodgens v. General Dynamics Corp.* (1st Cir.1998) 144 F.3d 151, 161; *Morgan v. Hilti, Inc.* (10th Cir.1997) 108 F.3d 1319, 1325; see also *Sharpe v. MCI Telecommunications Corp.* (E.D.N.C.1998) 19 F.Supp.2d 483, 488; *Beno v. United Telephone Co. of Florida* (M.D.Fla.1997) 969 F.Supp. 723, 725.)

Dudley v. Dep't of Transp., 90 Cal. App. 4th 255, 261 (2001).

The Complaint in this alleges all three elements of a prima facie case as described in the Dudley decision, including a causal connection between Plaintiff's exercise of his rights and the termination of his employment. Complaint, paras. 16, 26-29. These allegations are sufficient for the purposes of a demurrer.

Fifth Cause of Action

The Complaint alleges that among the wrongful motivations that led to his termination was retaliation for reporting unsafe working conditions/work practices in violation of Labor Code § 6310, which prohibits discrimination in the terms or conditions of employment against an employee "because the employee has made a bona fide oral or written complaint . . . , of unsafe working conditions, or work practices, in their employment or place of employment, . . ." Labor Code § 6310(b).

The Complaint alleges that "[n]oncompliance with the types of fire safety regulations that Plaintiff insisted on enforcing would place Plaintiff, his co-worker firefighters, and members of the local community at an increased risk of fires, which threatened their safety." Complaint, para. 45. Defendant demurs on the grounds that Plaintiff's alleged insistence on strict enforcement of fire safety regulations does not involve his own "employment or place of employment," which is what the statute is designed to protect.

Plaintiff's job involved inspection of private premises to enforce regulations for fire prevention. To inspect private premises for compliance with safety regulations does not in itself result in a safer premises for the fire inspector. Preventing fires in the larger community may make the community safer, but it does not relate to the work place or work practices of employees of a fire department. The work of a fire safety inspector to prevent fires is a function that is separate from the work of fire fighters who respond after a fire has broken out. In short, the protections offered by Labor Code § 6310 are not implicated by Defendant's alleged failure to fully enforce fire safety regulations. For this reason, as to the Fifth Cause of Action Defendant's demurrer should be sustained.

Motion to Strike

The Complaint, para. 48, seeks recovery of attorneys' fees under Labor Code § 2699. Defendant moves to strike "[a]ll references to Labor Code §2699 and any implication of PAGA penalties or fee-shifting (Complaint, paras. 19, 42, 48), which are legally inapplicable to a public entity and prejudicial." Defendant's position is confirmed by Stone v. Alameda Health Sys., 16 Cal. 5th 1040 (2024), in which the California Supreme Court held the Private Attorneys General Act (Labor Code § 2698, et seq.) does not apply to public agencies.

Although Plaintiff has submitted an amended Complaint to attempt to clarify this point, the amended Complaint was not filed timely under Code of Civil Procedure § 472, and Plaintiff did not request leave of Court under Code of Civil Procedure § 473. Accordingly, while the Court may take judicial notice of the fact that the document was filed, Evidence Code §§ 452(d), it does not supplant the original Complaint, and so the Court is bound to address the original Complaint as filed.

TENTATIVE RULING #2: DEFENDANT'S DEMURRER IS OVERRULED AS TO THE FIRST AND THIRD CAUSES OF ACTIONS' ALLEGATIONS OF DISCRIMINATION AND RETALIATION; DEFENDANT'S DEMURRER IS SUSTAINED AS TO THE FIRST AND THIRD CAUSES OF ACTIONS' ALLEGATIONS OF HARASSMENT. DEFENDANT'S DEMURRR IS SUSTAINED AS TO THE FIFTH CAUSE OF ACTION. DEFENDANT'S MOTION TO STRIKE IS GRANTED. PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE IS GRANTED. PLAINTIFF HAS LEAVE TO AMEND THE COMPLAINT WITHIN TEN DAYS OF SERVICE OF THIS ORDER.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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3.	**24CV1219**	**VELOCITY INVESTMENTS LLC vs. BIGGS**
Compel Arbitration / Stay Proceedings		

Defendant moves to compel arbitration and stay these proceedings based upon the terms contained in the consumer loan agreement between Defendant and Upstart network, Inc. that is in effect between the parties. The motion is unopposed.

The parties' agreement (the "Note") provides in Section 17(C) that either party can elect to refer disputes binding arbitration. Section 12 provides that "any sale or transfer of my Note does not affect my rights and duties under this Note." Section 17(A) specifies that the agreement to arbitrate "is governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq." Declaration of Melissa Biggs, dated January 5, 2026, Exhibit A.

The applicable federal law provides that:

> If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

9 U.S.C. § 3.

Accordingly, the motion to compel arbitration is granted and the matter is stayed in this Court.

TENTATIVE RULING #3: THE MOTION TO COMPEL ARBITRATION IS GRANTED. THE MATTER IS STAYED IN THIS COURT.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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4.	**PC20200294**	**ALL ABOUT EQUINE ANIMAL RESCUE v. ALEXANDER BYRD**
Demurrer to Third Amended Cross-Complaint		

TENTATIVE RULING #4: THIS MATTER IS CONTINUED TO 8:30 A.M. ON MAY 15, 2026, IN DEPARTMENT NINE.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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5.	**26CV0045**	**OVERHOLTZER vs. GRAY**
Release of Lien		

This is a Petition to release a lien on Petitioner's property. The lien at issue was recorded against Petitioner's property on April 12, 2024, for labor, materials and services. Petition, Exhibit B. The lien holder did not bring an enforcement action before the statutory period expired on July 11, 2024. Petitioner requested the lien holder remove the lien in correspondence dated December 9, 2025. Petition, Exhibit C.

A claimant under a lien recorded against property is required to commence enforcement within 90 days after recording the lien:

> The claimant shall commence an action to enforce a lien within 90 days after recordation of the claim of lien. If the claimant does not commence an action to enforce the lien within that time, the claim of lien expires and is unenforceable.

Civil Code § 8460(a).

If the lien claimant does not commence enforcement within the statutory time period, the owner of the property that is subject to the lien may petition the Court to remove the lien from the property:

> The owner of property or the owner of any interest in property subject to a claim of lien may petition the court for an order to release the property from the claim of lien if the claimant has not commenced an action to enforce the lien within the time provided in Section 8460.

Civil Code § 8480(a).

TENTATIVE RULING #5: THE PETITION IS GRANTED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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6.	24CV1592	MAIER ET AL vs. SPRINGER ET AL
Motion to Compel Discovery Responses / Sanctions		

On November 10, 2025, Plaintiffs filed a Motion to Compel Compliance with Request for Production of Documents, Set One as to Defendants Terrance Springer, Lucy Naser, Norcal Gold, Salameh Naser, and Evelyn Calopiz-Springer, and request sanctions for the failure to respond to these discovery requests. The motions are brought pursuant to Code of Civil Procedure §§ 2023.030 (sanctions for misuse of discovery) and 2031.320[1] (failure to respond to a request for inspection, copying, testing, or sampling).

Defendant Terrance Springer

With respect to Defendant Terrance Springer, the motion is brought "on the grounds that Defendant Springer failed to produce all documents that he agreed to produce and/or redacted his document production without sufficient legal grounds or a privilege log." Plaintiff further seeks monetary sanctions against Defendant Springer and his counsel in the amount of $2,275.00.

Defendant Springer ("Springer") responds that the motion is incorrectly characterized as a motion to compel a response under Code of Civil Procedure § 2031.320 (failure to respond),

[1] Code of Civil Procedure § 2031.320:

(a) If a party filing a response to a demand for inspection, copying, testing, or sampling under Sections 2031.210, 2031.220, 2031.230, 2031.240, and 2031.280 thereafter fails to permit the inspection, copying, testing, or sampling in accordance with that party's statement of compliance, the demanding party may move for an order compelling compliance.

(b) Except as provided in subdivision (d), the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel compliance with a demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(c) Except as provided in subdivision (d), if a party then fails to obey an order compelling inspection, copying, testing, or sampling, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of or in addition to that sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010).

(d)(1) Notwithstanding subdivisions (b) and (c), absent exceptional circumstances, the court shall not impose sanctions on a party or any attorney of a party for failure to provide electronically stored information that has been lost, damaged, altered, or overwritten as the result of the routine, good faith operation of an electronic information system.

(2) This subdivision shall not be construed to alter any obligation to preserve discoverable information.

whereas it should have been characterized as a motion to compel <u>further</u> responses under Code of Civil Procedure § 2031.310[1].

Reproduced below are the Requests for Production ("RFPs") that, according to Plaintiff's Separate Statement, are placed at issue by this motion, followed by Plaintiff's statement as to why Springer's responses are inadequate:

<u>Request for Production No. 3</u>: Any and all COMMUNICATIONS between [Terrance Springer] and Defendant NorCal Gold, Inc. RELATED TO the PROPERTY;

<u>Request for Production No. 4</u>: Any and all COMMUNICATIONS between [Terrance Springer] and Defendant Salameh J. Naser RELATED TO the PROPERTY.

<u>Request for Production No. 5</u>: Any and all COMMUNICATIONS between [Terrance Springer] and Defendant Lucy S. Naser RELATED TO the PROPERTY.

Request for Production No. 9: Any and all COMMUNICATIONS between [Terrance Springer] and Defendant NorCal Gold, Inc. RELATED TO the TRANSACTION.

<u>Request for Production No. 10</u>: Any and all COMMUNICATIONS between [Terrance Springer] and Defendant Salameh J. Naser RELATED TO the TRANSACTION.

<u>Request for Production No. 15</u>: Any and all COMMUNICATIONS between [Terrance Springer] and Defendant NorCal Gold, Inc. RELATED TO the ADDENDUM.

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[1] Code of Civil Procedure - CCP § 2031.310(a), (c) and (h) provide:

(a) On receipt of a response to a demand for inspection, copying, testing, or sampling, the demanding party may move for an order compelling further response to the demand if the demanding party deems that any of the following apply:

(1) A statement of compliance with the demand is incomplete.
(2) A representation of inability to comply is inadequate, incomplete, or evasive.
(3) An objection in the response is without merit or too general.

* * *

(c) Unless notice of this motion is given within 45 days of the service of the verified response, or any supplemental verified response, or on or before any specific later date to which the demanding party and the responding party have agreed in writing, the demanding party waives any right to compel a further response to the demand.

* * *

(h) Except as provided in subdivision (j), the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel further response to a demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

Request for Production No. 16: Any and all COMMUNICATIONS between [Terrance Springer] and Defendant Salameh J. Naser RELATED TO the ADDENDUM.

Request for Production No. 21: Any and all COMMUNICATIONS between [Terrance Springer] and Defendant NorCal Gold, Inc. RELATED TO the PROJECT.

Request for Production No. 23: Any and all COMMUNICATIONS between [Terrance Springer] and Defendant Salameh J. Naser RELATED TO the PROJECT.

With respect to RFPs Nos. 3-5, 9-10, 15-16, 21 and 23, Plaintiffs assert the responses were inadequate because:

> Defendant Springer responded to this request three times: the original response asserting boilerplate objections without a Code-compliant response; an amended response with a partially Code-compliant response; and finally a supplemental response with inapplicable objections and production of heavily redacted documents without a privilege log.
>
> Meritless objections based on attorney work product and attorney-client communications; incomplete production with unsupported redactions without a privilege log.

Request for Production No. 17: Any and all COMMUNICATIONS between [Terrance Springer] and Defendant Lucy S. Naser RELATED TO the ADDENDUM.

> With respect to RFPs No. 17, Plaintiffs assert the responses were inadequate because:
>
> Defendant Springer responded to this request three times: the original response asserting boilerplate objections without a Code-compliant response; an amended response with a partially Code-compliant response; and finally a supplemental response with inapplicable objections and production of heavily redacted documents without a privilege log.
>
> Meritless objections based on attorney work product, attorney-client communications and marital privilege; incomplete production with unsupported redactions without a privilege log.
>
> Documents produced are not responsive to request.

Request for Production No. 26: Any and all DOCUMENTS RELATED TO any and all payments [Terrance Springer] received from Defendant Evelyn Calopiz-Springer RELATED TO the TRANSACTION.

Request for Production No. 27: Any and all DOCUMENTS RELATED TO any and all payments [Terrance Springer] received from Defendant NorCal Gold, Inc. RELATED TO the TRANSACTION.

With respect to RFPs Nos. 26-27, Plaintiffs assert the responses were inadequate because:

> Original response was not Code-compliant; amended response was partially Code-compliant stating that there are no responsive documents, and third supplemental response indicates responsive documents have already been produced, indicating documents responsive to other requests that are heavily redacted without a privilege log.
>
> Meritless objections based on attorney work product, attorney-client communications and marital privilege; incomplete production with unsupported redactions without a privilege log.
>
> Responsive documents not produced.

Request for Production No. 29: Any and all DOCUMENTS RELATED TO any and all payments [Terrance Springer] received from Defendant Salameh J. Naser RELATED TO the TRANSACTION.

> With respect to RFPs No. 29, Plaintiffs assert the responses were inadequate because:
>
> Original response was not Code-compliant; amended response was partially Code-compliant stating that there are no responsive documents, and third supplemental response indicates responsive documents have already been produced, indicating documents responsive to other requests that are heavily redacted without a privilege log.
>
> Meritless objections based on attorney work product, attorney-client communications, marital privilege, oppressive and burdensome, equally available; incomplete production with unsupported redactions without a privilege log.
>
> Responsive documents not produced.

Request for Production No. 33: Any and all DOCUMENTS RELATED TO any and all payments [Terrance Springer] received from Defendant NorCal Gold, Inc. RELATED TO the ADDENDUM.

> With respect to RFPs Nos. 33, Plaintiffs assert the responses were inadequate because:
>
> Original response was not Code-compliant; amended response was partially Code-compliant stating that there are no responsive documents, and third supplemental response indicates responsive documents have already been produced, indicating

documents responsive to other requests that are heavily redacted without a privilege log.

Meritless objections based on attorney work product, attorney-client communications, marital privilege; incomplete production with unsupported redactions without a privilege log.

Responsive documents not produced.

Request for Production No. 34: Any and all DOCUMENTS RELATED TO any and all payments [Terrance Springer] received from Defendant Lucy S. Naser RELATED TO the ADDENDUM.

Request for Production No. 35: Any and all DOCUMENTS RELATED TO any and all payments [Terrance Springer] received from Defendant Salameh J. Naser RELATED TO the ADDENDUM.

Request for Production No. 40: Any and all DOCUMENTS RELATED TO any and all payments [Terrance Springer] received from Defendant Lucy S. Naser RELATED TO the PROJECT.

Request for Production No. 41: Any and all DOCUMENTS RELATED TO any and all payments [Terrance Springer] received from Defendant Salameh J. Naser RELATED TO the PROJECT.

With respect to RFPs Nos. 34-35, 40-41 Plaintiffs assert the responses were inadequate because:

Original response was not Code-compliant; amended response was partially Code-compliant stating that there are no responsive documents, and third supplemental response indicates responsive documents have already been produced, indicating documents responsive to other requests.

Meritless objections based on attorney work product, attorney-client communications, marital privilege, oppressive and burdensome, equally available; incomplete production with unsupported redactions without a privilege log.

Responsive documents not produced.

It is patently obvious from the Separate Statement that Springer in fact did respond to the RFPs, even though Plaintiffs argue that the responses were incomplete, inadequate and/or relied upon inapplicable privileges or objections. Plaintiffs nevertheless characterize this motion as one brought for failure to respond, as opposed to responding incompletely or inadequately because, Plaintiffs argue, Springer agreed to comply with the RFPs but thereafter failed to permit the inspection, copying, testing or sampling, allowing "the demanding party [to] move for an order compelling compliance", citing Code of Civil Procedure § 2031.320. Plaintiffs' Reply at p.2:13-14.

To adopt Plaintiff's interpretation of the discovery statutes would be to convert all incomplete responses to Requests for Production and contested objections into a complete failure to respond, and would render Code of Civil Procedure § 2031.310 inapplicable to any discovery dispute where a party has attempted to respond, responded incompletely, or responded by asserting objections with which the other party disagrees. This interpretation would accordingly convert the 45-day deadline for responding to incomplete discovery responses into a nullity.

The parties engaged in an extensive back and forth of correspondence between June 16, 2025 and November 5, 2025. Declaration of Kelly Moir, dated November 10, 2025 ("Moir Declaration"), Exhibit 1. Verified responses were served on September 22, 2025. Moir Declaration, para. 6. On October 31, 2025, before the deadline to file a motion to compel further responses had passed, Defendant Springer's counsel sent a three-page letter with detailed responses to Plaintiffs' counsel's October 22, 2025, arguments about the adequacy of the discovery responses submitted in September. Declaration of Gregory Wayland, dated December 26, 2025 ("Wayland Declaration"), Exhibit 1; Moir Declaration, Exhibit 6.

On November 5, 2025, after business hours, Plaintiffs' counsel offered Defendant Springer's counsel an opportunity to extend the deadline for Plaintiffs to file a motion to compel, but Defendant's counsel did not agree to such extension. Declaration of Gregory Wayland, dated December 26, 2025 ("Wayland Declaration"), Exhibit 2.

This motion was filed on November 10, 2025, 49 days after the service of the verified responses. Plaintiffs claim an additional two days for electronic service pursuant to Code of Civil Procedure § 1010.6(a)(3)(B) ("Any period of notice, or any right or duty to do any act or make any response within any period or on a date certain after the service of the document, which time period or date is prescribed by statute or rule of court, shall be extended after service by electronic means by two court days, . . .") However, even allowing for the additional two days, the motion was filed after the statutory deadline. The statute requires that "notice of the motion be given" which even if interpreted to be satisfied by filing with the Court would have been past the deadline. The Court notes that the proof of service of notice of the motion was not transmitted to Defendant Springer until December 12, 2025, a month after it was filed.

Sanctions

Code of Civil Procedure § 2031.310(h) requires a court to impose monetary sanctions under § 2023.010 "against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel further response to a demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust."

Section 2023.010, in turn, defines "misuse of discovery" to include: "[m]aking or opposing, unsuccessfully and without substantial justification, a motion to compel or to limit discovery."

Defendant Springer requests sanctions in the amount of $1,050, representing three hours spent in opposing the motion.

Defendants Lucy Naser, Norcal Gold, Salameh Naser, Evelyn Calopiz-Springer

Plaintiffs filed amotion to compel responses as to Defendants Lucy Naser, Norcal Gold, Salameh Naser, Evelyn Calopiz-Springer pursuant to Code of Civil Procedure § 2031.300, for failure to respond to a discovery request.

These Defendants' response to the motion is that it is now moot because they fully complied and produced all requested responses three weeks before the date of the hearing on the motion.

Plaintiffs take issue with this response, arguing that serving responses in advance of the hearing does not prevent the Court from ruling on the motion to compel. To the extent that there is now an issue of whether the discovery responses are compliant with the discovery requests, the Court may be empowered to review the nearly 1600-page response for sufficiency with the discovery requests, Sinaiko Healthcare Consulting, Inc. v. Pac. Healthcare Consultants, 148 Cal. App. 4th 390, 405 (2007), but is not required to do so without the inclusion of a separate statement, as required by California Rule of Court, Rule 3.1345.

"Whether the trial court should proceed with a motion to compel responses . . . when there has been an untimely . . .. response is within the sound discretion of the trial court. Sinaiko Healthcare Consulting, Inc., 148 Cal. App. 4th 390, 396. "Civil discovery is intended to operate with a minimum of judicial intervention. '[I]t is a "central precept" of the Civil Discovery Act ... that discovery "be essentially self-executing[.]"' (*Obregon v. Superior Court* (1998) 67 Cal.App.4th 424, 434, 79 Cal.Rptr.2d 62, quoting *Townsend v. Superior Court* (1998) 61 Cal.App.4th 1431, 1434, 72 Cal.Rptr.2d 333.)" Sinaiko at 402. It is the propounding party's obligation to "demonstrate that the responses were incomplete, inadequate or evasive, or that the responding party asserted objections that are either without merit or too general." Sinaiko Healthcare Consulting, Inc., 148 Cal. App. 4th at 403.

As to sanctions, Code of Civil Procedure § 2023.010, in pertinent part, authorizes the imposition of sanctions on a responding party for the following conduct:

(d) Failing to respond or to submit to an authorized method of discovery.
(e) Making, without substantial justification, an unmeritorious objection to discovery.
(f) Making an evasive response to discovery.

(g) Disobeying a court order to provide discovery.
(h) Making or opposing, unsuccessfully and without substantial justification, a motion to compel or to limit discovery.

In this case, the Defendants have not failed to respond, opposed the motion to compel, or disobeyed a court order to provide discovery, and it remains to be seen whether their production is evasive or their objections are unmeritorious. Accordingly, the Court has no statutory basis on which to impose sanctions.

Motion to Strike Cross-Complaints

Defendants Norcal Gold, S. Naser, L. Naser and Calopiz-Springer ("Defendants" or "Cross-Complainants") filed a Cross-Complaint against Plaintiffs P. Maier, T. Maier, V. Maier and Clark ("Plaintiffs" or "Cross-Defendants"), who now move the strike the Cross-Complaint as untimely under the requirements of Code of Civil Procedure § 428.50, which provides as follows:

(a) **A party shall file a cross-complaint against any of the parties who filed the complaint or cross-complaint against him or her before or at the same time as the answer to the complaint or cross-complaint.**
(b) Any other cross-complaint may be filed at any time before the court has set a date for trial.
(c) **A party shall obtain leave of court to file any cross-complaint except one filed within the time specified in subdivision (a) or (b).** Leave may be granted in the interest of justice at any time during the course of the action.

(Emphasis added).

Code of Civil Procedure § 417.5 requires an Answer to an amended Complaint to be filed within 30 days following service of the amended Complaint.

Plaintiffs filed their Complaint on July 24, 2024, a First Amended Complaint on February 20, 2025, and a Second Amended Complaint ("SAC") on August 11, 2025. The proof of service of the SAC indicates service was effectuated electronically on August 11, 2025. The Answer to this SAC would be due 30 days thereafter, on September 12, 2025.

Defendants filed an Answer on August 22, 2025, and subsequently filed their Cros-Complaint against Plaintiffs on October 1, 2025, after the statutory deadline.

The parties engaged in a meet and confer process regarding Plaintiff's intention to file this motion but did not resolve the issue.

In opposing the motion, Defendants argue that the motion to strike itself, which was filed on December 11, 2025, is untimely pursuant to Code of Civil Procedure § 435(b)(1), which states: "Any party, within the time allowed to respond to a pleading may serve and file a notice of

motion to strike the whole or any part thereof, . . .” Accordingly, Defendants argue, Plaintiffs have waived their objection to the timeliness of the Cross-Complaint by filing an untimely motion.

To this assertion Plaintiffs respond that the time for filing the motion was extended by agreement during the meet and confer process. *See* Declaration of Kelly S. Moir, dated December 3, 2025, and filed December 11, 2025, (“Moir Declaration”). Paragraph 5 of the Moir Declaration states: “The parties agreed to the 30-day extension to continue their meet and confer efforts, and Plaintiffs filed the Declaration of Demurring or Moving Party in Support of Automatic Extension on November 4, 2025.” Exhibit 4 of the Moir Declaration is a letter from Defendants’ counsel, dated October 31. 2025, discussing the proposed motion to strike and stating “we are willing to extend the time for response to 30 days after receipt of this meet and confer.” To memorialize this agreement, Plaintiff’s counsel Plaintiffs filed the Declaration of Demurring or Moving Party in Support of Automatic Extension on November 4, 2025.

Plaintiff’s Reply argues that the stipulated extension of time to file the motion to strike was extended to December 11, 2025. However, Exhibit 4 of the Moir Declaration, a letter from Defendants’ counsel, dated October 31, 2025, states that Defendants “are willing to extend the time for response to 30 days after receipt of this meet and confer.” Plaintiffs’ counsel acknowledged receipt of that letter in a responsive communication dated November 4, 2025. The Declaration of Demurring or Moving Party in Support of Automatic Extension specified that the original filing deadline for the motion was November 4, 2025. Thirty days after that date would be December 4, 2025, and the motion to strike was not filed and served until December 11, 2025.

The Plaintiffs’ documents supporting this motion do not explain their conclusion that the 30-day extension dating from November 4, 2025, authorizes a motion filed and served on December 11, 2025. Plaintiffs’ own failure to meet the deadline for filing this motion effectively waives their objection to Defendant’s failure to meet the deadline for filing a Cross-Complaint.

TENTATIVE RULING #6:

AS TO DEFENDANT TERRANCE SPRINGER, THE MOTION TO COMPEL DISCOVERY RESPONSES IS DENIED; SANCTIONS ARE AWARDED TO DEFENDANT SPRINGER IN THE AMOUNT OF $1,050.

AS TO ALL OTHER DEFENDANTS, PLAINTIFFS’ MOTION TO COMPEL IS DENIED; PLAINTIFFS MOTION FOR SANCTIONS IS DENIED.

AS TO THE MOTION TO STRIKE, APPEARANCES ARE REQUIRED AT 8:30A.M. ON FRIDAY, FEBRUARY 27, 2026, IN DEPARTMENT NINE.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING.

7.	25CV2052	NOLL vs. EMIGH ET AL
Demurrer to Cross-Complaint /Motion to Strike Cross-Complaint		

The Cross-Complaint asserts causes of action for 1) Breach of Contract, 2) Fraud and Intentional Misrepresentation, 3) Breach of Implied Covenant of Good Faith and 4) Fair Dealing, and Concealment. Cross-Complainants Emigh, Bracher and Hagemann are investors and partners in Pro Building Supplies, Inc. Cross-Defendant Noll, Executor of the estate of Johnson, was, along with Johnson, a seller of Pro Building Supplies, Inc. (the "Business").

The Cross-Complaint alleges that Noll made representations to Emigh about the profitability of the Business, and offered to sell it to Cross-Complainants for $500,000, with $250,000 to be paid up front. Cross-Complaint, paras. 13-14, 23. When asked for documentation about the profitability of the Business Noll and Johnson provided a profit and loss statement showing that the Business was profitable over the period January-September 2022, but represented that information from prior years couldn't be produced because there were inventory related errors from prior years. Cross-Complaint, para. 15. Cross-Complainants initially understood Noll to the be owner of the Business, but were later informed by Noll that the Business had been placed in the name of Johnson for tax purposes. Cross-Complaint, para. 16. Further investigation revealed that Noll had been utilizing the Business to procure materials for home renovation projects, then sold the homes, reinvested the proceeds of the home sales into the Business and represented these deposits as profits of the Business. Cross-Complaint, para. 17. In late 2022, Noll told Cross-Complainants that another buyer was interested in the Business and created a sense of urgency to enter the transaction, which required an initial $20,000 deposit. Cross-Complaint, para. 18-19, Exhibit B. Cross-Complainants first discovered that the Business was owned by Johnson at the time they made this deposit. Cross-Complaint, para. 19.

In early 2023 Emigh began working at the Business without compensation under Noll's supervision, and was told at that time that the Business held $680,000 in inventory, and Emigh relied on Noll's expertise in accepting that representation. Cross-Complaint, para. 20. During this time, Noll began to express urgency about receiving the first installment of the sale price in order to preserve the rights of Cross-Complainants to conclude the sale in light of interest expressed by other entities, requested an additional $20,000 deposit and unilaterally raised the price from $500,000 to $510,000. Cross-Complaint, para. 21. Cross-Complainants asked the businesses the Noll had named and learned that in fact they had not expressed interest in buying the Business. Id. Emigh received a loan from his father, secured against his father's personal business, to make the initial payment. Cross-Complaint, para. 22. On May 12, 2023, the parties executed the Business Sale Agreement ("Agreement") and a promissory note ("Note")

for payment of the balance of the purchase price over time. Cross-Complaint, para. 23, Exhibits A and C. Thereafter Cross-Complainants heard from a Business employee and a customer of the Business that Noll had been heard disparaging Cross-Complainants and boasting that he had taken advantage of them. Cross-Complaint, para. 24.

In late 2023, a flood damaged the Business inventory and Noll received insurance proceeds for the loss, but cleaned and reshelved the damaged items, representing to Emigh that these items were sellable inventory without documenting inspection or replacement of damaged items. Cross-Complaint, para. 25. At the same time, Johnson was performing bookkeeping for the Business and paying herself $500 per week while characterizing these payments as office supplies. Cross-Complaint, para. 26. Noll and Johnson also paid $25,000 to a third party to "fix" the financial records for the Business, including inventory adjustments that did not match the actual inventory. Id. When Johnson became ill, and after the Agreement had been executed, Hagemann took over bookkeeping but was denied access to the personal computer where the Business records had been kept, with Noll representing that the Business bank account included personal transactions of Noll and Johnson that they wanted to keep private. Cross-Complaint, para. 27. Noll and Johnson also denied access to the Business' email and social media accounts. Cross-Complaint, para. 28.

After the Agreement was executed, Cross-Complainants began to hear from vendors of the Business about unpaid invoices and other financial and reputational problems with the Business that had not been disclosed before the sale. Cross-Complaint, para. 29. Noll represented at the time of the sale that the Business had $50,000 in accounts receivable and $80,000 in accounts payable, but that Cross-Complainants later discovered that $12,000 of the accounts payable were uncollectible. Cross-Complaint, para. 30.

After Johnson died in 2024, a third party began remotely accessing the Business' computer to assist Noll with his personal finances, and left the computer software open where Cross-Complainants could see the Business' financial records. Cross-Complaint, para. 32-33. This is when Cross-Complainants discovered that proceeds from the sale of homes renovated with materials procured from the Business and outside loans were sustaining the Business, and that the Business was not profitable as Cross-Defendants had represented. Cross-Complainants, para. 33. When Cross-Complainants discovered that the Business' profitability and debt had been mis-represented they ceased making the payments under the Agreement. Cross-Complainants, para. 35.

Defendant Noll, in his capacity as Executor for the estate of Johnson, demurs to all four Causes of Action in the Cross-Complaint.

Standard of Review

> A demurrer tests the sufficiency of a complaint by raising questions of law. (*Rader Co. v. Stone* (1986) 178 Cal.App.3d 10, 20, 223 Cal.Rptr. 806.) In determining the merits of a demurrer, all material facts pleaded in the complaint and those that arise by reasonable implication, but not conclusions of fact or law, are deemed admitted by the demurring party. (*Moore v. Conliffe, supra,* 7 Cal.4th at p. 638, 29 Cal.Rptr.2d 152, 871 P.2d 204; *Interinsurance Exchange v. Narula, supra,* 33 Cal.App.4th at p. 1143, 39 Cal.Rptr.2d 752.) The complaint must be construed liberally by drawing reasonable inferences from the facts pleaded. (*Flynn v. Higham* (1983) 149 Cal.App.3d 677, 679, 197 Cal.Rptr. 145.)

Rodas v. Spiegel, 87 Cal. App. 4th 513, 517 (2001).

In addition to the facts actually pleaded, the court considers facts of which it may or must take judicial notice. Cantu v. Resolution Trust Corp., 4 Cal.App.4th 857, 877 (1992).

First Cause of Action: Breach of Contract

> The elements of a breach of oral contract cause are: "(1) existence of the contract; (2) plaintiff's performance or excuse for nonperformance; (3) defendant's breach; and (4) damages to plaintiff as a result of the breach." (*CDF Firefighters v. Maldonado* (2008) 158 Cal.App.4th 1226, 1239, 70 Cal.Rptr.3d 667 [elements of breach of contract]; *Stockton Mortgage, Inc. v. Tope* (2014) 233 Cal.App.4th 437, 453, 183 Cal.Rptr.3d 186 [elements of breach of oral contract and breach of written contract claims are the same].)

Aton Ctr., Inc. v. United Healthcare Ins. Co., 93 Cal. App. 5th 1214, 1230 (2023).

Defendant demurs to the First Cause of Action for Breach of Contract on the grounds that 1) the Cross-Complaint does not specify whether it is the Business Agreement or the Note that is alleged to have been breached; 2) the Cross-Complaint does not specify which provisions of either contract were breached, and 3) the Cross-Complaint does not specify who, Johnson or Noll, breached the contract.

Cross-Defendant is correct that the Cross-Complaint does not specify any particular provision of either agreement that either Noll or Johnson has breached. The alleged misrepresentations, concealments and omissions are outside of the scope of both documents, and the Agreement for the sale of the Business does not make any representations of warranties that are relevant to Cross-Complainants' allegations regarding Noll's misrepresentations, concealments and omissions about the viability of the business, the value of the inventory and collectible accounts or the state of vendor relationships. The Agreement expressly disclaims any express or implied representations of warranty not contained in the Agreement. The Agreement specifies that the buyer "is an experienced and knowledgeable investor . . . and is aware of the risks", and further specifies that "there are no other promises or conditions in any other

agreement whether oral or written" concerning the subject matter of the contract, and that it "supercedes any prior written or oral agreements between the parties."

Under these facts Cross-Defendant's demurrer must be sustained.

Second Cause of Action: Fraud and Intentional Misrepresentation

The elements of fraud 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. Witkin, Summary 11th Torts § 890 (2023). A promise to do something necessarily implies the intention to perform, and where that intention is absent, there is an implied misrepresentation of fact, which is actionable fraud. Id. § 899.

In 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." Lazar v. Superior Ct., 12 Cal. 4th 631, 645 (1996).

Cross-Defendant argues that the Cross-Complaint does not plead the elements of fraud with the requisite specificity. The Court disagrees; the Cross-Complaint is replete with allegations of specific misrepresentations. *See, e.g.* Cross-Complaint paras. 13 (Noll was the owner of the business and that it was profitable), 15 (failure to produce complete financial records), 18-19 (the imminent potential purchase of the Business by other buyers), 20 (the value of the inventory), 21(misrepresentation about the interest of other entities to buy the business), 25 (concealment of water damage), 26 (false inventory valuation), 27 (concealment of business records), 29 (non-disclosure of vendor relationships), 30 (misrepresentation of accounts receivable). The Cross-Complaint also alleges intent to defraud/induce reliance. *See, e.g.* Cross-Complaint paras. 13, 18-21, 24, 36-37, 55-57. Similarly, the Cross-Complaint alleges that Cross-Complainants reasonably relied on the alleged misrepresentations and that they suffered substantial damages as a result.

Cross-Defendant further cites the "economic loss" rule that prevents recovery in tort for negligently inflicted purely economic losses, citing Rattagan v. Uber Techs., Inc., 17 Cal. 5th 1, (2024) for the principle that emotional distress and punitive damages are not available in contract actions. The Rattagan case is indeed instructive for the case at bar, but not for the reason Cross-Defendant has invoked it.

The Rattagan case considered whether, under California law, a plaintiff assert a tort claim for fraudulent concealment arising from or related to the performance of a contract. The Court concluded that such a claim was possible if: 1) the plaintiff can establish the elements of the claim independently of the parties' contractual rights, and 2) if the tortious conduct exposes the plaintiff to a risk of harm beyond the reasonable contemplation of the parties when they entered into the contract. Rattagan at 13.

In the Rattagan case, an Argentinian attorney was retained by Dutch subsidiaries of Uber to launch its operations in Argentina. The complaint in that case alleged that the Dutch subsidiaries of Uber acted as agents of Uber, their principal. In addition to providing legal services, the attorney was also retained to serve as the Dutch subsidiaries' registered legal representative in Argentina. Because that additional role exposed the attorney to some personal exposure if the Dutch subsidiaries violated Argentinian law, and the parties executed indemnification agreements to reduce that exposure.

The Rattagan plaintiff contended that Uber determined to secretly launch its services in Argentina notwithstanding having been directly informed by government officials that the service would be illegal without securing transportation related permits. Uber did not disclose these communications or its operational plans to the plaintiff. Following the launch of operations plaintiff were raided by police with search warrants, he was served with a cease and desist order by local authorities, and his offices became the focus of protests and media attention. Although plaintiff requested his clients to remove him as the registered legal representative, the clients delayed doing so and continued to use his name and address in their official correspondence. He was later criminally charged, temporarily banned from foreign travel and suffered associated reputational damage.

Rattagan sued Uber in U.S. federal court, because as a foreign national he could not sue the Dutch subsidiaries in a U.S. court. Uber challenged the lawsuit because Rattagan's clients were the Dutch subsidiaries, not the parent corporation. The complaint alleged, among other things, fraudulent concealment, and breach of the implied covenant of good faith and fair dealing. The economic loss rule was raised as a defense in that case, and the plaintiff contended that Uber's tortious conduct was independent of the contractual relationship. The Ninth Circuit federal court certified the question of first impression to the California Supreme Court to render a decision according to California law. The Court articulated the economic loss rule as follows:

> "The 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, supra,* 12 Cal.5th at p. 922, 290 Cal.Rptr.3d 834, 505 P.3d 625, italics added.) Or, as *Robinson* phrased the rule: "[t]he economic loss rule requires a [contractual party] to recover in contract for purely economic loss due to disappointed expectations, unless [the party] can demonstrate harm above and beyond a

> broken contractual promise." (*Robinson*, *supra*, 34 Cal.4th at p. 988, 22 Cal.Rptr.3d 352, 102 P.3d 268.)

Rattagan v. Uber Techs., Inc., 17 Cal. 5th 1, 20.

The California Supreme Court reviewed the history of the economic loss rule in its analysis:

> "Whereas contract actions are created to enforce the intentions of the parties to the agreement, tort law is primarily designed to vindicate 'social policy.' " (*Foley v. Interactive Data Corp.* (1988) 47 Cal.3d 654, 683, 254 Cal.Rptr. 211, 765 P.2d 373 (*Foley*), citing Prosser, Law of Torts (4th ed. 1971) p. 613.) In contrasting contract and tort law, the court in *Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 515, 28 Cal.Rptr.2d 475, 869 P.2d 454 (*Applied Equipment*) observed: " 'The law imposes the obligation that "every person is bound without contract to abstain from injuring the person or property of another, or infringing upon any of his rights." (Sec. 1708, Civ. Code.) This duty is independent of the contract .... "[A]n omission to perform a contract obligation is never a tort, unless that omission is also an omission of a legal duty." ' " (*Id.* at p. 514, 28 Cal.Rptr.2d 475, 869 P.2d 454, quoting *Jones v. Kelly* (1927) 208 Cal. 251, 255, 280 P. 942.)

Rattagan v. Uber Techs., Inc., 17 Cal. 5th 1, 19.

The Rattagan Court reviewed the appellate court's holding, based on the case of Robinson Helicopter v. Dana Corp., 34 Cal.4th 979 (2004), that only affirmative misrepresentations could overcome the economic loss rule to hold a defendant liable for fraud that is separate from the parties' contractual relationship. The Rattagan Court held that fraudulent concealment could also be asserted in a case involving contractual relationships, and instructed reviewing courts to apply three questions to the alleged facts:

> First, applying standard contract principles, it must ascertain the full scope of the parties' contractual agreement, including the rights created or reserved, the obligations assumed or declined, and the provided remedies for breach. Second, it must determine whether there is an independent tort duty to refrain from the alleged conduct. Third, if an independent duty exists, the court must consider whether the plaintiff can establish all elements of the tort independently of the rights and duties assumed by the parties under the contract.

Rattagan v. Uber Techs., Inc., 17 Cal. 5th 1, 26 (footnote omitted).

In this case, the allegations of the Cross-Complaint do not establish any breach of contract and Cross-Complainants have no remedy for breach. The allegations of fraud relate to affirmative misrepresentations made by Cross-Defendant to induce Cross-Complaints to enter into the contract, and concealment of information that frustrated Cross-Complaints' ability to realize the benefit of the bargain they had made, such as the refusal to provide access to the businesses accounts and the concealment of the state of accounts receivable and the status of payments to vendors.

As to the second element, "the independent tort duty to refrain from engaging in fraudulent conduct is well established by statute and common law." Rattagan, 17 Cal. 5th at 38.

As to the third element, as discussed above, the Cross-Complaint sufficiently alleges all of the elements of fraud with specificity.

Having established that the Cross-Complainants are able to establish the elements of the claim independently of the parties' contractual rights, the second question is whether the tortious conduct exposes the plaintiff to a risk of harm beyond the reasonable contemplation of the parties when they entered into the contract. Rattagan at 13. The Cross-Complaint alleges emotional distress, reputational damage, lost opportunities and legal expenses, which for the purpose of a demurrer are sufficient at this stage of the proceedings.

Third Cause of Action: Breach of Implied Covenant of Good Faith Fair Dealing

The elements for a breach of implied covenant of good faith and fair dealing cause of action are: (1) the parties entered into a valid contract; (2) a party unfairly prevented the other from receiving the benefits it was entitled to under the contract; and (3) damages as result of defendant's conduct. (Guz v. Bechtel National, Inc. (2000) 24 Cal. App. 4th 317, 349.) There is an implied covenant of good faith and fair dealing in every contract that neither party will do anything which will injure the right of the other to receive the benefits of the agreement. (Comunale v. Traders & General Ins. Co. (1958) 50 Cal. App. 2d 654, 658.)

Cross-Defendant argues that the Cross-Complaint does not allege facts showing that he acted in bad faith to frustrate the buyer's rights under the contract. The Court disagrees. The allegations related to the withholding of financial records, the alleged misrepresentation of the value of inventory, the status of vendor payments and of accounts receivable are all violative the implied covenant, as well as of the express duty to "cooperate fully with each other . . . to carry into effect the intents and purposes of this Agreement" that is written into the parties' contract.

Fourth Cause of Action: Concealment

> Concealment is a species of fraud or deceit. (See Civ.Code, §§ 1710, subd. (3), 1572, subd. (3); *Lovejoy v. AT & T Corp.* (2004) 119 Cal.App.4th 151, 158, 14 Cal.Rptr.3d 117 (*Lovejoy*).) "[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, 7 Cal.Rptr.2d 859; *Lovejoy, supra,* 119 Cal.App.4th at pp. 157–158, 14 Cal.Rptr.3d 117.)

Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC, 162 Cal. App. 4th 858, 868 (2008).

Cross-Defendant's argues that this cause of action fails for lack of specificity and based on the economic loss rule are addressed in detail above. The Court has already found that the allegations are sufficiently specific to support claims for fraudulent conduct, and that both affirmative misrepresentations and concealment may be found to overcome the economic loss rule. Rattagan, 17 Cal. 5th 1, 39.

With respect to the Fourth Cause of Action, Cross-Defendant argues that Noll has no duty to Cross-Complainants as a seller of the business or a party to the contract because it was his deceased spouse, Johnson, who owned the business and executed the contract. Taking, as the Court must, the allegations in the Cross-Complaint as true, Noll cannot claim to be a stranger to the transaction when he held himself out as an owner of the businesses for all purposes except for the technicality of executing the written agreement, which he represented to be done in his wife's name only as a convenience for the purpose of evading taxes. The causes of action in the Cross-Complaint are thoroughly based upon fraud, not on the narrow lens of the identities of the signatories in a contractual relationship. Even though Johnson was the only signatory to the contract, Noll presented himself as the face of the business, worked to create a sense of urgency in the minds of the buyers to act on the transaction, made representations about business operations and finances, prevented the buyers from having access to the business' financial records, and was a financial beneficiary of the business through the economic partnership of his marriage. Considering the law on the agency relationship between husband and wife:

> To begin with, we note that the distinguishing features of an agency are representative character and derivative authority. (*Store of Happiness v. Carmona & Allen, Inc*., 152 Cal.App.2d 266, 269, 312 P.2d 1104.) The relationship can be established either by agreement between the agent and the principal, that is, a true agency (*De Leonis v. Etchepare*, 120 Cal. 407, 409, 52 P. 718), or it can be founded on ostensible authority,

> that is, some intentional conduct or neglect on the part of the alleged principal creating a belief in the minds of third persons that an agency exists, and a reasonable reliance thereon by such third persons. (*Walsh v. American Trust Co*., 7 Cal.App.2d 654, 660, 47 P.2d 323; *County etc. Bank v. Coast Dairies & Land Co*., 46 Cal.App.2d 355, 363–364, 115 P.2d 988; see also § 2317.) In the case of dealings which involve a husband and wife, it is well established that an agency cannot be implied from the marriage relation alone. (*Williams v. Tam*, 131 Cal. 64, 67, 63 P. 133; *Brown v. Oxtoby,* 45 Cal.App.2d 702, 708, 114 P.2d 622.) However, it is also true that much less evidence is required to establish a principal and agent relationship between husband and wife than between nonspouses. (*Wagoner v. Silva*, 139 Cal. 559, 563, 73 P. 433; *Stegeman v. Vandeventer*, 57 Cal.App.2d 753, 759, 135 P.2d 186.)

Lovetro v. Steers, 234 Cal. App. 2d 461, 474–75 (Ct. App. 1965).

It is true that the Cross-Complaint is addressed to Noll as the Executor of Johnson's estate, and not as an independent party, which creates some confusion. The matter would be clearer if Noll was added as a separate party. However, that defect is not fatal to the pleading. the Court finds that the allegations in the Cross-Complaint are sufficient to establish that Noll's conduct created a belief in the minds of the buyers that an agency existed between Noll and Johnson, upon which the buyers reasonably relied.

Motion to Strike

Cross-Defendant moves to strike all claims for emotional distress and punitive damages from the Cross-Complaint based on the "economic loss rule" discussed above. We have already addressed this argument above. Non-economic and punitive damages are available in cases involving fraud, which includes inducing consent to contract through fraud. Civil Code §§ 1567, 1709, 3294; Rattagan, 17 Cal. 5th 1, 33.

TENTATIVE RULING #7: CROSS-DEFENDANT'S DEMURRER IS SUSTAINED AS TO THE FIRST CAUSE OF ACTION, WITH LEAVE TO AMEND WITHIN TEN DAYS OF SERVICE OF THIS ORDER; CROSS-DEFENDANT'S DEMURRER IS OVERRULED AS TO THE SECOND, THIRD AND FOURTH CAUSES OF ACTION. CROSS-DEFENDANT'S MOTION TO STRIKE IS DENIED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO

COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING.