December 12, 2025
Dept. 9
Tentative Rulings

1.	**24CV0144**	**VAN SKIKE, et al. v. COUNTY OF EL DORADO et al**
Good Faith Settlement		

TENTATIVE RULING #1: AN ORDER DETERMINING GOOD FAITH SETTLEMENT HAVING BEEN ENTERED BY THE COURT ON NOVEMBER 17, 2025, THIS MATTER IS TAKEN OFF CALENDAR.

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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2.	**PC20200622**	**MANSOUR v. STONE**
Motion to Bifurcate		

This is a negligence case involving extensive and permanent injuries to a minor from a devastating collision between a truck hauling a trailer and a bicycle. Complaint, paras. 10-12. The defense in this case relies on a determination by a responding California State Parks Officer that the Plaintiff had been at fault for failing to yield the right of way as required by Vehicle Code § 21954(a).[1] Defendant argues that the liability and damages phases of the trial should be bifurcated against the likelihood that Plaintiff will rely on the emotional impact of the Plaintiff's injuries to sway the jury on the issue of liability.

Plaintiff opposes bifurcation because, Plaintiff argues, it will create duplication and does not serve judicial economy.

California Code of Civil Procedure § 598 provides, in pertinent part:

> The court may, when the convenience of witnesses, the ends of justice or the economy and efficiency of handling the litigation would be promoted thereby, on motion of a party, after notice and hearing, make an order ... that the trial of any issue or any part thereof shall precede the trial of any other issue or any part thereof in the case . . . .

The Court finds that there would be no significant impact to judicial economy to hear evidence regarding causation and evidence related to damages separately in this case.

TENTATIVE RULING #2: DEFENDANT'S MOTION TO BIFURCATE THE LIABILITY AND DAMAGES PORTIONS OF THE TRIAL IS GRANTED. APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, DECEMBER 12, 2025, IN DEPARTMENT NINE TO SELECT NEW TRIAL AND RELATED DATES. NO ORAL ARGUMENT ON THE MOTION TO BIFURCATE WILL BE PERMITTED UNLESS A PARTY SPECIFICALLY REQUESTS ORAL ARGUMENT ON THIS ISSUE PER THE LOCAL RULES.

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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[1] "(a) Every pedestrian upon a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway so near as to constitute an immediate hazard."

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3.	**25CV2051**	**GOLDEN PLAZA PARTNERS v. SUMMITVIEW CHILD & FAMILY SERVICES, INC.**
Motion to Compel Arbitration		

The Complaint in this matter includes two causes of action: breach of lease agreement and waste. Plaintiff is a landlord and Defendant is the tenant. The Complaint alleges that Defendant failed to maintain insurance coverage and failed to maintain the premises in good repair, in violation of the terms of the lease. There is no allegation in the Complaint that Defendant has failed to make lease payments.

Defendant's unopposed motion seeks an Order dismissing or staying this action and compelling arbitration of the dispute based upon paragraph 25(p) of a lease agreement signed by the parties, which is set forth in full below:

> **Arbitration**. In the event of any dispute between Landlord and Tenant **other than with respect to any alleged monetary default by Tenant in the payment of Base Rent**, such dispute **shall be resolved through binding arbitration** pursuant to a commercial arbitration panel of the American Arbitration Association with commercial real estate leasing and accounting expertise. Any such arbitration shall be held and conducted, within thirty (30) days after the selection of an arbitrator under the provisions of the Commercial Arbitration Rules of the American Arbitration Association which shall apply and govern such arbitration. Any demand for arbitration shall: (i) be in writing and must be made and served within a reasonable time after the claim, dispute or other matter in questions has arisen; (ii) in no event shall the demand for arbitration be made after the date that institution of legal or equitable proceedings based on such claim, dispute, or other matter would be barred by the applicable statute of limitations; (iii) all proceedings involving the parties shall be reported by a certified shorthand court reporter and written transcripts of the proceedings shall be prepared and made available to the parties. The final decision by the arbitrator must be provided to the parties within thirty (30) days from the date on which the matter is submitted to the arbitrator. The prevailing party (as defined below) shall be awarded reasonable attorneys' fees, expert and nonexpert witness costs and expenses (including without limitation the fees and costs of the court reporter described in Subparagraph (b) above), and other costs and expenses incurred in connection with the arbitration, unless the arbitrator for good cause determines otherwise. As used herein, the term "prevailing party" shall mean the party, if any, that the arbitrator determines is "clearly the prevailing party." Costs and fees of the arbitrator shall be borne by the nonprevailing party, unless the arbitrator for good cause determines otherwise. If there is no prevailing party, the parties shall bear their own fees and costs and split the fees and costs of the arbitrator and court reporter.

> Code of Civil Procedure section 1281.2 requires the trial court to order arbitration of a controversy "[o]n petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party to the agreement refuses to arbitrate that controversy ... if it determines that an agreement to arbitrate the controversy exists." Accordingly, the threshold question is whether there is an agreement to arbitrate. (*American Express Co. v. Italian Colors Restaurant* (2013) 570 U.S. 228, 233 [186 L.Ed.2d 417, 133 S.Ct. 2304] ["arbitration is a matter of contract"]; *Pinnacle Museum Tower Assn. v. Pinnacle Market Development (U.S.), LLC* (2012) 55 Cal.4th 223, 236 [145 Cal.Rptr.3d 514, 282 P.3d 1217] [" ' "[A] party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." ' "]; *Trinity v. Life Ins. Co. of North America* (2022) 78 Cal.App.5th 1111, 1120 [293 Cal.Rptr.3d 899] ["As the language of this section makes plain, the threshold question presented by every petition to compel arbitration is whether an agreement to arbitrate exists."].)
>
> Under state and federal state law, there is a public policy in favor of arbitration. (*Morgan v. Sundance, Inc.* (2022) 596 U.S.411, 418 [212 L.Ed.2d 753, 142 S.Ct.1708, 1713]; *OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 125 [251 Cal.Rptr.3d 714, 447 P.3d 680] [acknowledging strong public policy favoring arbitration under state law]; *DMS Services, LLC v. Superior Court* (2012) 205 Cal.App.4th 1346, 1352 [140 Cal.Rptr.3d 896] (*DMS Services*) [recognizing strong state and federal policy favoring arbitration].)

Montemayor v. Ford Motor Co., 92 Cal. App. 5th 958, 967 (2023).

In this case it is undisputed that there is an arbitration provision in place that has been executed by both parties and that the scope of that provision covers the facts of this case.

However, the matter cannot be heard until Defendant, a corporation, obtains counsel to represent it before the Court. Merco Constr. Eng'rs, Inc. v. Mun. Ct., 21 Cal. 3d 724, 581 P.2d 636 (1978).

TENTATIVE RULING #3: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, JANUARY 9, 2026, IN DEPARTMENT NINE.

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

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4.	**24CV0481**	**IN THE MATTER OF TIMOTHY SAUER**
Motion to Quash		

Petitioner Sauer sought and received Court authorization to conduct pre-trial discovery under Code of Civil Procedure section 2035.010 et seq. in his effort to recover funds lost in a wire transfer and crypto-currency scheme. The original Court Order, dated July 19, 2024, named several banks and businesses. In January, 2025, Petitioner filed an action for damages against JPMorgan Chase Bank, US Jiarong Trading Company (owner of the Chase bank account where Petitioner's funds were deposited) and Kenneth Cheng X Lu, an individual (25CV0120). That case (Sauer v. JPMorgan Chase Bank, N.A., et. al., Case No. 2:25- cv-00673-DAD-JDP (E.D. Cal.)) was removed to federal court by Defendants where it is currently pending.

On June 26, 2025, Petitioner amended the Petition, and following a hearing, the Court issued an Amended Order dated August 27, 2025. That Order named the individual Jia Dai and the business "Winger" ("Movants") as a potential recipients of subpoenas for oral deposition and/or production of business records. Winger Co., was named because it is "believed to be associated with Jia Dai". The reason they were both named was because Petitioner's pre-trial discovery indicated that they had purchased a Mercedez Benz vehicle together, and Petitioner alleges that the vehicle was paid for by funds from the JPMorgan Chase bank accounts holding Petitioner's stolen funds. Petitioner's discovery sought to understand the parties to and funds used in the transaction in his ongoing effort to identify the perpetrators of the fraud against him and the current location of his stolen funds.

The subpoena at issue was served on Movant on September 26, 2025, setting a date for a deposition on November 6, 2025. The parties communicated prior to the deposition date, and Movant filed this motion to quash on the date the deposition was scheduled. A deposition for Jia Dia was scheduled in the federal action for December 10, 2025. Reply at page 5.

Movants seek an Order:

1. Quashing in its entirety the subpoena for personal appearance and production of documents dated on or about September 26, 2025, and commanding Jia Dai's appearance on November 6, 2025;
2. Declaring the order dated August 27, 2025, granting the Verified Petition for Pre-Commencement Discovery to be void as to Jia Dai due to lack of notice, lack of jurisdiction, and violation of due process;
3. Issuing a protective order prohibiting any further discovery directed at Jia Dai under this case number;
4. Awarding Jia Dai her costs and attorney fees incurred in bringing this motion pursuant to Code of Civil Procedure section 1987.2.

The parties argue various substantive points regarding the legal limitations and requirements for pre-trial discovery petitions under Code of Civil Procedure § 2035.010 et seq. However, in the larger context, the petition filed in this matter predates Petitioner's lawsuit, which is now underway.

"[A] petition to preserve evidence will not lie once a lawsuit is pending and traditional discovery methods are available. (See *New York etc. Co. v. Superior Court* (1938) 30 Cal.App.2d 130, 133.)" Orr v. City of Stockton 150 Cal.App.4th 622, 631 (2007). Movant's deposition is scheduled in that action and may have already taken place by the time of this hearing. Any issues with compliance with discovery requests must take place within the active federal court action, and not in a duplicative and now outdated pre-litigation procedure.

The Petition may or may not be moot as to other parties named in the August 27, 2025, Order; however, they are not before the Court and it is possible that there are differing considerations with respect to those businesses and individuals. Accordingly, the Court only rule on the August 27, 2025, Order to the extent that it is addressed by the instant Motion and the moving parties.

The parties to bear their own attorney's fees.

TENTATIVE RULING #4: THE SUBPOENA IS QUASHED AND THE COURT'S AUGUST 27, 2025, ORDER GRANTING THE VERIFIED PETITION FOR PRE-COMMENCEMENT DISCOVERY IS VACATED TO THE EXTENT IT APPLIES TO MOVANTS JIA DAI AND WINGER, CO. THE PARTIES TO BEAR THEIR OWN ATTORNEYS FEES.

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5.	**25CV0713**	**ELDRIDGE v. MARSHALL MEDICAL CENTER**
Motion to Compel Further Responses		

This is an action, filed on March 19, 2025, for age discrimination and wrongful termination. The contested discovery responses include Form Interrogatories (FI), Special Interrogatories (SI) and Request for Production of Documents (RPD) and Requests for Admissions (RFA). Plaintiff served RFAs on May 27, 2025. Defendant served responses on August 1, 2025.

Defendant's Opposition contends that Plaintiff has failed to meet and confer in good faith, as required by a Code of Civil Procedure §2016.040. The Declaration of Joan C. Woodard, dated December 1, 2025, and the Declaration of Amanda Malucchi, dated October 31, 2025, as well as the parties' pleadings on this Motion, document a long history of communications between counsel for the parties on the subject of these discovery requests. The fact that there are now dozens of filings in the case just to document this discovery dispute is a tangible testament to the failure of the parties' capacity to agree on a definition of "accounting error" and "incident" without judicial intervention. But the utter lack of useful results does not require a finding that no meet and confer efforts were made.

Defendant further argues that the Court should deny the motion to compel because Defendant has filed a stay of the action pending resolution of a motion to compel arbitration. However, there is no motion to compel arbitration or to stay the proceedings in the Court's file, and even if there was, the issue of a stay of proceedings is not before the Court in the context of this motion.

Requests for Admission

Plaintiff alleges Defendant's answers are non-responsive, consisting of boilerplate objections that the requests were "vague and ambiguous," and that the phrase "the accounting error" referred to a "discreet event" without providing sufficient information to admit or deny. Plaintiff argues that Defendant failed to make a reasonable inquiry or responding to the extent possible, as required under Code of Civil Procedure § 2033.220:

> (a) Each answer in a response to requests for admission shall be as complete and straightforward as the information reasonably available to the responding party permits.
> (b) Each answer shall:
> (1) Admit so much of the matter involved in the request as is true, either as expressed in the request itself or as reasonably and clearly qualified by the responding party.
> (2) Deny so much of the matter involved in the request as is untrue.
> (3) Specify so much of the matter involved in the request as to the truth of which the responding party lacks sufficient information or knowledge.
> (c) *If a responding party gives lack of information or knowledge as a reason for a failure to admit all or part of a request for admission, that party shall state in the answer that a*

reasonable inquiry concerning the matter in the particular request has been made, and that the information known or readily obtainable is insufficient to enable that party to admit the matter.

Defendant asserts that its objections to the RFAs were "specific, tailored and appropriate objections".

The Complaint alleges that Plaintiff reported an "accounting error" in the workplace in July 2024, and that she developed a written recommendation to address the problem in August, 2024, which was the subject of a follow up meeting on September 4, 2024. On September 13, 2024, according to the Complaint, Defendant terminated Plaintiff "because of the accounting error." In correspondence dated August 29, 2025, the Plaintiff, in writing, clarified: "the terms "accounting error" and "accounting error in the 340B Contract Pharmacy Program" shall mean the duplicate or improper revenue entries made in or about 2024 by Defendant's accountants in connection with Defendant's 340B Contract Pharmacy Program, which resulted in an inflated appearance of revenue."

Defendant, when encountering the phrase "accounting error" in the RFAs objects that the phrase is vague and ambiguous and seemingly cannot formulate any part of a substantive answer notwithstanding written clarifications provided by Plaintiff during the parties' meet and confer efforts. Specifically, the RFAs and responses were as follows:

- REQUEST FOR ADMISSION NO. 3: Admit that Plaintiff did not personally make the accounting error referenced in Paragraph 10 of the Complaint.
- REQUEST FOR ADMISSION NO. 4: Admit that Plaintiff did not directly supervise the employees who made the accounting error referenced in Paragraph 10 of the Complaint.
- REQUEST FOR ADMISSION NO. 5: Admit that YOU did not terminate the accounting employees involved in the accounting error referenced in Paragraph 10 of the Complaint.
- REQUEST FOR ADMISSION NO. 6: Admit that YOU did not terminate the direct supervisors of the employees referenced in Request for Admission No. 5.
- REQUEST FOR ADMISSION NO. 7: Admit that YOU did not terminate the directors above the supervisors referenced in Request for Admission No. 6.

Defendant's cut-and-paste response to RFAs 3, 4, 5, 6, 7: "Defendant objects that the request is vague and ambiguous. Defendant further objects that the request appears to reference a discreet event 'the accounting error,' but does not provide information sufficient upon which to admit or deny the request and on that basis denies the request."

- REQUEST FOR ADMISSION NO. 12: Admit that Plaintiff was the individual that initially questioned the accounting variance referenced in Paragraph 10 of the Complaint.

Defendant response to RFA 12: "Defendant objects that the request is vague and ambiguous as to the phrases 'initially questioned,' and 'accounting variance', and on that basis denies the request".

The Court finds Defendant's identical, non-specific responses to be non-compliant with the requirement that Defendant make a reasonable inquiry as to the references in the RFAs. Defendant's claims of burdensome discovery do not have the benefit of any supporting information that the Court could use to evaluate its claim.

Form Interrogatories

Code of Civil Procedure § 2030.220 governs the requirements for a response to form interrogatories:

> (a) Each answer in a response to interrogatories shall be as complete and straightforward as the information reasonably available to the responding party permits.
> (b) If an interrogatory cannot be answered completely, it shall be answered to the extent possible.
> (c) *If the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall make a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations, except where the information is equally available to the propounding party.*

Plaintiff argues that Defendant did not state whether any it lacked responsive information, nor did it conduct a reasonable inquiry as required by the statute. As to the form interrogatories, Defendant objected on the grounds that the term "incident" is vague and undefined. As discussed above, during the meet and confer process Plaintiff defined "incident" to clarify the request. Nevertheless, Defendant did not provide any further responses.

Defendant's specific responses to form interrogatories at issue are as follows:

> FORM INTERROGATORY NO. 12.4: Do YOU OR ANYONE ACTING ON YOUR BEHALF know of any photographs, films, or videotapes depicting any place, object, or individual concerning the INCIDENT or plaintiff's injuries? If so, state: (a) the number of photographs or feet of film or videotape; (b) the places, objects, or persons photographed, filmed, or videotaped; (c) the date the photographs, films, or videotapes were taken; (d) the name, ADDRESS, and telephone number of the individual taking the photographs, films, or videotapes; and (e) the name, ADDRESS, and telephone number of each PERSON who has the original or a copy of the photographs, films, or videotapes
>
> Defendant's Response: Form Interrogatory No. 12.4 is tailored to address physical accidents and injuries. Plaintiff's definition of incident as set forth in her meet and

> confer letter creates even further ambiguity as it describes multiple "circumstances" as opposed to discreet physical acts. This interrogatory is rendered incapable of a response based on Plaintiff's definition of "incident."

FORM INTERROGATORY NO. 12.6: Was a report made by any PERSON concerning the INCIDENT? If so, state: (a) the name, title, identification number, and employer of the PERSON who made the report; (b) the date and type of report made; (c) the name, ADDRESS, and telephone number of the PERSON for whom the report was made; and (d) the name, ADDRESS, and telephone number of each PERSON who has the original or a copy of the report.

Defendant's Response: Defendant objects to the word "Incident" as vague. Further, Plaintiff's definition of the phrase "Incident" relates to multiple allegations rather than a discrete act or event for which purpose these interrogatories were created. Plaintiff has made multiple allegations in five identified paragraphs of the Verified Complaint, pertaining to two causes of action. Defendant also objects to the extent this interrogatory seeks any reports made by, or at the request, of counsel as such information is protected by the attorney-client privilege or the work product doctrine.

FORM INTERROGATORY NO. 201.2: Are there any facts that would support the EMPLOYEE'S TERMINATION that were first discovered after the TERMINATION? If so: (a) state the specific facts; (b) state when and how EMPLOYER first learned of each specific fact; (c) state the name, ADDRESS, and telephone number of each PERSON who has knowledge of the specific facts; and (d) identify all DOCUMENTS that evidence these specific facts.

> Defendant's Response: Defendant objects that this request seeks information protected by the attorney-client privilege and attorney work product doctrine. Discovery is continuing and Defendant reserves the right, but not the obligation to provide a supplemental response. Defendant takes the position that this is a complete response to the Interrogatory.

Plaintiff argues that Defendant's response to Form Interrogatory No. 201.2 directly addresses the after-acquired evidence doctrine, which Defendant has pled as an affirmative defense, citing Burke v. Superior Court of Sacramento County, 71 Cal.2d 276, 281 (1969): ("[A] defendant in California courts may be required through discovery to disclose not only the evidentiary facts underlying his affirmative defenses (*Singer v. Superior Court, supra,* 54 Cal.2d 318, 323-325 [defendant required to disclose the facts underlying his allegations of contributory negligence and assumption of risk]) and denials (*Durst v. Superior Court,* 218 Cal.App.2d 460, 464-465 [32 Cal.Rptr. 627] [defendant required to disclose the facts underlying his denial that plaintiff had been injured or disabled]) but also whether or not he makes a particular contention, either as to the facts or as to the possible issues in the case.")

FORM INTERROGATORY NO. 216.1: Identify each denial of a material allegation and each special or affirmative defense in your PLEADINGS and for each: (a) state all facts upon which you base the denial or special or affirmative defense; (b) state the names, ADDRESSES, and telephone numbers of all PERSONS who have knowledge of those facts; and (c) identify all DOCUMENTS and all other tangible things, that support your denial or special or affirmative defense, and state the name, ADDRESS, and telephone number of the PERSON who has each DOCUMENT.

RESPONSE TO FORM INTERROGATORY NO. 216.1: Defendant objects to this interrogatory. Under the provisions of the California Code of Civil Procedure section 431.30, a general denial puts in issue all of the material allegations of an unverified complaint and places the burden on claimant to show facts constituting the causes of action alleged. Defendant further objects to the portion of this interrogatory concerning its affirmative defenses on the basis that the failure to state a cause of action is a statutory defense putting in issue jurisdiction, which may be raised at any time. Additionally, this interrogatory is overly burdensome, harassing, and seeks to invade the attorney-client privilege as well as the attorney work product privilege, in that it attempts to seek the thought processes of defense counsel. All facts and data which Defendant intends to offer at trial is protected by the attorney work product privilege. (Singer v. Superior Court (1960) 54 Cal.2d 318.) Further, this interrogatory seeks Defendant's interpretation of data presented or referred to, and as such, the question is argumentative, oppressive, and invades the attorney work product privilege. (Sheets v. Superior Court (1967) 257 Cal.App.2d 1.) Additionally, this interrogatory invades Defendant's counsel's work product privilege in that it seeks to obtain information through counsel's personal though processes. (Rumac. Inc. v. Botomley (1983) 143 Cal.App.3d 810.) Furthermore, this interrogatory invades the attorney-client privilege which protects the disclosure of the information sought. (Brown v. Superior Court (1963) 218 Cal.App.2d 430.) Defendant directs propounding party to the Answer filed in response to Plaintiff's Complaint and served by Defendant in this action.

REASON WHY A FURTHER RESPONSE TO FORM INTERROGATORY NO. 216.1 SHOULD NOT BE COMPELLED: Defendant stands by its objections and response including the fact that Defendant filed a verified Answer to the Verified Complaint.

The Court agrees with Plaintiff that Defendant may not refer to its Answer as a substitute for discovery, and that Defendant's assertions of privilege are generally not effective to shield underlying facts, witnesses, or documents. The interrogatory does not ask for counsel's mental impressions or legal theories; it asks for the factual bases supporting Defendant's denials and defenses. (See Burke v. Superior Court of Sacramento County (1969) 71 Cal.2d 276, 281 [a defendant in California courts may be required through discovery to disclose not only the evidentiary facts underlying his affirmative defenses] Singer v. Superior Court of Contra Costa

County (1960) 54 Cal.2d 318 [defendant required to disclose the facts underlying denials and affirmative defenses].)

As to the objection that the interrogatory is "burdensome," "harassing," or "oppressive" the Court's response is summed up neatly in the case of Williams v. Superior Ct.:

> A trial court "shall limit the scope of discovery if it determines that the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence." (Code Civ. Proc., § 2017.020, subd. (a).) However, as with other objections in response to interrogatories, the party opposing discovery has an obligation to supply the basis for this determination. An "objection based upon burden must be sustained by evidence showing the quantum of work required." (*West Pico Furniture Co. v. Superior Court*, *supra*, 56 Cal.2d at p. 417, 15 Cal.Rptr. 119, 364 P.2d 295.) As the objecting party, Marshalls had the burden of supplying supporting evidence, but in response to Williams's motion to compel it offered none. Given this, the trial court had nothing in the record upon which to base a comparative judgment that any responsive burden would be undue or excessive, relative to the likelihood of admissible evidence being discovered.

Williams v. Superior Ct. (2017) 3 Cal. 5th 531, 549–50 (footnotes omitted).

Defendant has made no showing of burden that would excuse its non-responsive answers to the interrogatory.

Special Interrogatories

Defendant largely declined to answer any of the Special Interrogatories propounded. The objections fall into the following categories:

1. Overbroad and burdensome. As discussed above, without declaring how these requests are burdensome the Defendant has not provided any basis for the Court to provide it with relief from having to respond.
2. Vague and ambiguous. During the parties' meet and confer efforts, Plaintiff provided more than four pages of explanatory clarifications to Defendant on the scope of the Special Interrogatories. There is nothing in the record to indicate any follow-up conversation or questions on the special interrogatories. The Court finds that Defendant failed to make "reasonable and good faith effort to obtain the information" needed to provide responses to these interrogatories.
3. The responses to Special Interrogatories Nos. 12-13 are incomplete.

Request for Production

REQUEST FOR PRODUCTION NO. 11: All COMMUNICATIONS that refer or relate to the accounting error in the 340B Contract Pharmacy program referenced in Paragraph 10 of Plaintiff's Complaint.

RESPONSE TO REQUEST NO. 11: Defendant objects that the request is vague and ambiguous. Defendant further objects that the request appears to reference a discreet event "the accounting error," which does not describe the documents with sufficient particularity

Defendant's argument that no further response is required: that Plaintiff requests all communications regarding an accounting error which Plaintiff qualifies as "duplicate or improper revenue entries made in or about 2024.. . .in connection with Defendant's 340B Contract Pharmacy Program." Plaintiff assumes and is alleging a specific type of "error" occurred which is vague and ambiguous. Plaintiff is asking Defendant to adopt a limited definition of "error" but does not describe the documents sought with reasonable particularity. There is a vast amount of documents related the 340B Contract Pharmacy Program and its administration which could be implicated in Plaintiff's definition and request.

The Court refers back to the discussion of the meet and confer process, when the Plaintiff unsuccessfully attempted to assist Defendant in understanding the specific factual circumstances behind the request in the context of the Complaint. By asserting its inability to comprehend the subject matter of the inquiry, and without any evidence of a reasonable inquiry on Defendant's part, Defendant has avoided the statutory requirements for a Code-compliant response as set forth in Code of Civil Procedure §§ 2031.210-2031.240.

Sanctions:

Plaintiff requests sanctions in the amount of $1,050 (Request for Production), $1,260 (Form Interrogatories), $2,380 (Special Interrogatories), $1,400 (Request for Admissions).

Code of Civil Procedure § 2033.290(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 further response [to RFAs], 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.

Code of Civil Procedure § 2030.290(c) "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 a response to interrogatories, 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. If a party then fails to obey an order compelling answers, 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)."

Code of Civil Procedure § 2031.300(c): "[T]he 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 a response to a demand for inspection, copying, testing, or sampling, 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."

Code of Civil Procedure § 2030.300(d): "If a motion to compel further responses is granted, the Court shall impose a monetary sanction against the party or attorney—or both—who opposed the motion . . . ."

Code of Civil Procedure § 2023.010: "Misuses of the discovery process include, but are not limited to, . . . (d) Failing to respond or to submit to an authorized method of discovery; (e) Making, without substantial justification, an unmeritorious objection to discovery."

TENTATIVE RULING #5: PLAINIFF'S MOTION IS GRANTED. DEFENDANT IS INSTRUCTED TO PROVIDE CODE-COMPLIANT RESPONSES TO PLAINTIFF'S DISCOVERY REQUESTS BY JANUARY 9, 2026. PLAINTIFF IS AWARDED SANCTIONS IN THE AMOUNT OF $6,090.00, WHICH DEFENDANT SHALL PAY TO PLAINTIFF NO LATER THAN JANUARY 9, 2026.

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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IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

6.	**23CV1110**	**WINN v. CHARITABLE SOLUTIONS, LLC**
OSC - Contempt		

Defendants Safari Wineries and Yes 2 Ventures ("Defendants") have filed this motion for an Order to Show Cause re: Contempt for failure to pay sanctions imposed by this Court on February 7, 2024 and April 17, 2024, awarding sanctions in the amount of $38,605.99 to be paid to Defendants no later than May 17, 2024.

Defendants served a Notice of Intent to Move for Orders of Contempt of Court served on or around August 2, 2024, but Plaintiff has not paid any amount of sanctions to Defendants.

Code of Civil Procedure Sections 128(a) authorizes the Court to compel compliance with Court Orders:

> (a) Every court shall have the power to do all of the following:
>
> * * *
>
> (4) To compel obedience to its judgments, orders, and process, and to the orders of a judge out of court, in an action or proceeding pending therein.
>
> * * *

Code of Civil Procedure § 1209(a) provides:

> (a) The following acts or omissions in respect to a court of justice, or proceedings therein, are contempts of the authority of the court:
>
> * * *
>
> (5) Disobedience of any lawful judgment, order, or process of the court.
>
> * * *

Finally, Code of Civil Procedure § 1218(a) sets forth the authorized penalties for contempt in these circumstances:

> Upon the answer and evidence taken, the court or judge shall determine whether the person proceeded against is guilty of the contempt charged, and if it be adjudged that the person is guilty of the contempt, a fine may be imposed on the person not exceeding one thousand dollars ($1,000), payable to the court, or the person may be imprisoned not exceeding five days, or both. In addition, a person who is subject to a court order as a party to the action, or any agent of this person, who is adjudged guilty of contempt for violating that court order may be ordered to pay to the party initiating the contempt proceeding the reasonable attorney's fees and costs incurred by this party in connection with the contempt proceeding.

Upon review of the file, there is no proof of service indicating personal service of the contempt complaint on Plaintiff, which would be required to proceed on the contempt. However, if Defendants are merely seeking for the court to issue the contempt complaint, it can do so at the hearing and set another court date before which Plaintiff must be personally served in order to proceed. The parties are ordered to appear to address how to proceed.

TENTATIVE RULING #6: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, DECEMBER 12, 2025, 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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7.	**25CV0816**	**RIBEIRO CALIFORNIA II LLC v. EL DORADO FILMS, LLC et al**
Motion to Compel Further Responses		

TENTATIVE RULING #7: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, DECEMBER 19, 2025, 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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8.	**PC20160336**	**WESTMAN v. MISSION DENTAL, et al**
Add Successor Corporation		

Sommers ("Assignee"), in *pro per*, is the assignee of a 2016 judgment pursuant to Code of Civil Procedure § 673, currently in the amount of $58,454.59, which he seeks to enforce. The Motion seeks to add Tooth Travelers, Travelers' Health and Dental and Julie Day, Julie A. Day and Julie Ann Day as parties.

Julie Day was the founder, Executive Director, CEO, Secretary, CFO and agent for the service of process for the judgment debtor, Mission Dental Corporation ("MDC"). Day formed the original MDC in 2014 (Declaration of Julie Day, dated December 1, 2025, ["Day Declaration"] at para. 5). Day appeared at the Labor Board hearing following which the judgment was entered. That corporation became inactive in 2016. Id. at paras. 5-7.

Day formed another corporation, Tooth Travelers, in 2010, for which she was also the was the founder, Executive Director, CEO, Secretary, CFO and agent for the service of process. Tooth Travelers ceased operations and has remained inactive since 2014. (Day Declaration at paras. 2-4).

In 2024 Day formed a new corporation, Travelers Health & Dental, and that corporation is currently active. Day Declaration at para. 9.

This matter was initially heard on October 10, 2025, and was continued at that hearing to allow Ms. Day an opportunity to obtain counsel. According to a stipulation filed on October 27, 2025, the parties agreed to a continuance to allow Ms. Day's new counsel to prepare for the hearing.

An Opposition was filed on December 1, 2025. The Opposition raises the following points:

1. Petitioner has not established the assignment of the judgment and so lacks standing.
2. Petitioner has not established any nexus between the judgment debtor and the proposed successor corporations other than the fact that they were owned by the same person in the same geographical region and performed similar services.

Judicial Notice

Movant questions the format of Assignee's judicial notice request, stating that it is not legally sufficient because it does not comply with the following requirements:

California Rules of Court, Rule 3.1113: "Any request for judicial notice must be made in a separate document listing the specific items for which notice is requested and must comply with rule 3.1306(c)."

Rule 3.1306(c): "A party requesting judicial notice of material under Evidence Code sections 452 or 453 must provide the court and each party with a copy of the material. If the material is part of a file in the court in which the matter is being heard, the party must:

(1) Specify in writing the part of the court file sought to be judicially noticed; and
(2) Either make arrangements with the clerk to have the file in the courtroom at the time of the hearing or confirm with the clerk that the file is electronically accessible to the court.

Assignee did provide copies of Secretary of State Statements of Information related to the three corporations at issue in this case. Assignee did provide legal authority for the Court to take judicial notice of those official documents pursuant to Evidence Code § 452. Movant had notice of the request and the materials for which judicial notice was requested, as evidenced by the fact that Movant in fact filed a written opposition to the request for judicial notice. However, in order to give Assignee an opportunity to file the Request for Judicial Notice as a separate motion in order to comply with the formatting requirements of the California Rules of Court, the matter will be continued.

TENTATIVE RULING #8: THIS MATTER IS CONTINUED TO JANUARY 16, 2026, IN ORDER TO ALLOW ASSIGNEE AN OPPORTUNITY TO FILE A REQUEST FOR JUDICIAL NOTICE AS A SEPARATE PLEADING.

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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9.	**23CV0395**	**VELLA v. PELA**
Motion to Set Aside		

Following hearing on May 9, 2025, and following a series of hearings and escalating sanctions required by Plaintiff's failure to respond to discovery notwithstanding a Court Order to do so, the Court granted Defendant Pela's motion for sanctions as to Plaintiff and Cross-Defendant Vella, pursuant to California Code of Civil Procedure §2023.030. On May 12, 2025, the Court awarded an issues sanction, an evidentiary sanction and a terminating sanction as to Plaintiff's Complaint and his Answer to Defendant's Cross-Complaint.

The authority for those sanctions derives from Code of Civil Procedure §2023.030:

> (a) The court may impose a monetary sanction ordering that one engaging in the misuse of the discovery process, or any attorney advising that conduct, or both pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct. The court may also impose this sanction on one unsuccessfully asserting that another has engaged in the misuse of the discovery process, or on any attorney who advised that assertion, or on both. If a monetary sanction is authorized by any provision of this title, the court shall impose that sanction 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.
>
> (b) The court may impose an issue sanction ordering that designated facts shall be taken as established in the action in accordance with the claim of the party adversely affected by the misuse of the discovery process. The court may also impose an issue sanction by an order prohibiting any party engaging in the misuse of the discovery process from supporting or opposing designated claims or defenses.
>
> (c) The court may impose an evidence sanction by an order prohibiting any party engaging in the misuse of the discovery process from introducing designated matters in evidence.
>
> (d) The court may impose a terminating sanction by one of the following orders:
>
> > (1) An order striking out the pleadings or parts of the pleadings of any party engaging in the misuse of the discovery process.
> > (2) An order staying further proceedings by that party until an order for discovery is obeyed.
> > (3) An order dismissing the action, or any part of the action, of that party.
> > (4) An order rendering a judgment by default against that party.

Plaintiff now moves that the Court set aside these sanctions under Code of Civil Procedure § 473(b), and in particular under the language that requires the Court to grant relief based upon the declaration that it was not the client's but the attorney's mistake, inadvertence, surprise, or neglect that led to the dismissal of the action:

> (b) The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. . . . Notwithstanding any other requirements of this section, **the court shall, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect, vacate any (1) resulting default entered by the clerk against his or her client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against his or her client, unless the court finds that the default or dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise, or neglect.** The court shall, whenever relief is granted based on an attorney's affidavit of fault, direct the attorney to pay reasonable compensatory legal fees and costs to opposing counsel or parties. . . .

Code of Civil Procedure § 473(b) (emphasis added).

The Plaintiff's Complaint and Answer to Cross-Complaint were struck as a terminating sanction following the hearing of May 9, 2025, in an Order dated May 12, 2025. Counsel has filed a Declaration, dated November 8, 2025, explaining his failure to file an Opposition to the Motion for Sanctions, his absence at the May 9 hearing on that Motion and the failure to request oral argument to be the result of an ongoing medical condition. He declares that he is now recovered and able to resume representation of his client in this matter.

Defendant argues that Code of Civil Procedure § 473(b) does not apply to the sanctions ordered by the Court. The Court's Order resulted in the striking of pleadings, not the dismissal of any action. Defendant notes the distinction between the statute's provisions available to a party, which apply to a "a judgment, dismissal, order, or other proceeding taken against him", as compared to the scope of the language governing an attorney's mistake, which is triggered by and must be brought within six months of a "judgment" (not an "order") and is available to vacate a "dismissal" or a "resulting default entered by the clerk".

Code of Civil Procedure § 2023.030(d) clearly distinguishes between "striking out the pleadings" (§ 2023.030(d)(1)), "dismissing the action" (§ 2023.030(d)(3)), and "rendering a judgment by default against that party" (§ 2023.030(d)(4)). This matter has not proceeded to the point of dismissal or default of the case, and so resort to the procedures of Section 473(b) is premature.

Further, even if the statute did apply, it leaves open the possibility that a court might find that **"**the default or dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise, or neglect." Although the terminating sanctions were issued after the May 9, 2025, hearing, at which counsel did not appear, it was not his non-appearance at that hearing that

resulted in the sanctions. It was Plaintiff's long-continuing course of conduct that required a drastic remedy.

The first hearing on motions to compel Plaintiff's discovery responses was held in August 2024, and Plaintiff was ordered to respond. Plaintiff filed no Opposition to that motion to compel. Plaintiff also did not comply with the Court's Order, and so the Court was required to impose monetary sanctions for failure to respond to discovery after a hearing held on October 11, 2024. Plaintiff has not made appearances at subsequent discovery compliance review hearings held on December 13, 2024, January 24, 2025, and April 4, 2025. The original discovery requests that have been the subject of this long controversy were served by mail on Plaintiff on February 15, 2024. The Declaration filed by counsel addresses a single hearing date. That does not suffice to establish the attorney's mistake, inadvertence, surprise, or neglect over the course of nearly two years or the Plaintiff's ongoing failure to cooperate in discovery.

TENTATIVE RULING #9: PLAINTIFF'S MOTION TO SET ASIDE THE COURT'S MAY 12, 2025, ORDER 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).

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10.	**25CV1092**	**KENDRICK ET AL v. UNITED DOMESTIC WORKERS OF AMERICA, UDW/AFSCME LOCAL 3930**
Demurrer		

This is an action by eight public employees against Defendant union for deducting membership dues from their paychecks without their consent. The single cause of action in Plaintiff's First Amended Complaint (FAC) is an alleged violation of the California Unfair Competition Law, Business Code § 17200, *et. seq.* (UCL).

The grounds for Defendant's demurrer are:

1. The Court lacks jurisdiction over violations of the Meyers-Milias-Brown Act (MMBA), Government Code § 3500 et seq., which is under the exclusive jurisdiction of the Public Employee Relations Board (PERB), notwithstanding the framing of the FAC as a Business and Professions Code violation.
2. The UCL does not apply because it is limited to "business act[s] and practice[s]" but Defendant "does not participate as a business in the commercial market" Dinh Ton That v. Alders Maint. Assn. (2012) 206 Cal.App.4th 1419, 1427, so the UCL does not apply.

Request for Judicial Notice

Defendant has filed a Request for the court to take judicial notice of a Fresno Superior Court Minute Order and Tentative Ruling in Marsh v. Service Employees International Union, Local 2015, No. 25CECG02038 (November 4, 2025). Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. Evidence Code Section 452 lists matters of which the court may take judicial notice, including "records of (1) any court in this state or (2) any court of record of the United States." Evidence Code § 452(d). A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. Evidence Code § 453. Accordingly, Defendant's request for judicial notice is granted.

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).

Exclusive PERB Jurisdiction

Plaintiff first argues that the terms of the UCL require this Court to hear the case: "Actions for relief pursuant to this chapter shall be prosecuted exclusively in a court of competent jurisdiction . . . ." Business and Professions Code § 17204. Plaintiff's primary authority for this proposition is Greenlining Inst. v. Pub. Utilities Com., 103 Cal. App. 4th 1324 (2002). In that case, alleging false and deceptive advertising practices directed at consumers by a telephone company, the appellants sought to force the Public Utilities Commission (PUC) to consider and act upon claims brought pursuant to the UCL, which the PUC had declined to address in an administrative hearing. In its opinion on a rehearing request the PUC stated: "Our disposition of the instant complaint rests on Public Utilit[ies] Code issues, and we do not adjudicate the Unfair Competition Law claims. (See Business and Profession[s] Code § 17204.)" Id., 103 Cal. App. 4th at 1328-1329. Accordingly, UCL claims *must* be brought in court. However, the Court does not agree that the Legislature intended to allow a Plaintiff to frame facts as UCL claims that would otherwise come under the exclusive jurisdiction of PERB and thus choose the venue as between PERB and the superior court by electing a name for the cause of action.

The single central fact around which the FAC revolves is the allegation that Defendant illegally caused withholdings of earned income from the Plaintiffs' paycheck, without Plaintiffs' authorization and in spite of Plaintiffs express rejection of union membership. Every other factual allegation of any wrongful action in the FAC leads up to that ultimate fact: that money has been illegally withheld from paychecks to pay for unwanted union memberships.

Government Code § 3509(b) grants PERB exclusive jurisdiction over MMBA violations:

> A complaint alleging any violation of this chapter or of any rules and regulations adopted by a public agency pursuant to Section 3507 or 3507.5 shall be processed as an *unfair practice* charge by the board. The initial determination as to whether the charge of unfair practice is justified and, if so, the appropriate remedy necessary to effectuate the purposes of this chapter, *shall be a matter within the exclusive jurisdiction of the board*, ...

Emphasis added.

This case is a claim by public employees against an employee organization to contest paycheck deductions that are justified by essentially forcing Plaintiffs to become union members without their knowledge and/or against their will. These matters are covered by the MMBA, in particular the right to refuse to join or participate in the activities of the employee organization. Government Code § 3502. Government Code § 3509 grants PERB exclusive initial jurisdiction of violations of Section 3502.

Plaintiffs explain that bringing the case before PERB will rob them of the benefits of maintaining a class action for the judicial economy of resolving the claims of a large numbers of similarly situated individuals. Whether or not Plaintiffs are able to represent themselves as a class before the PERB does not alter the agency's statutory jurisdiction over this employment-related claim.

Plaintiffs encourage the Court to hear the matter because the six-month statute of limitations for filing a claim before the PERB may have already passed. Again, this disadvantage to Plaintiffs does not suffice to create jurisdiction where none exists.

Business Activities

Given that the PERB has exclusive jurisdiction over this matter, it is not necessary to decide whether Defendants' activities come within the definition of "business activities" for the purpose of the UCL.

Plaintiffs argue that the Defendant's demurrer cannot succeed on this issue because whether the contested conduct is a "business activity" is a question of fact, citing People v. McKale. Defendant counters that People v. McCale held that *whether the public is likely to be deceived* is a question of fact, not whether the conduct at issue is a "business activity:"

> 'Unfair competition' and 'unfair or fraudulent business practice' [see Bus. & Prof. Code, § 17200] are generic terms." (*People* ex rel. *Mosk v. National Research Co. of Cal*. (1962) 201 Cal.App.2d 765, 772 [20 Cal.Rptr. 516].) "What constitutes 'unfair competition' or 'unfair or fraudulent business practice' under any given set of circumstances is a question of fact ... the essential test being whether the public is likely to be deceived ...." (*Id*.)

People v. McKale, 25 Cal. 3d 626, 635 (1979).

A case involving public school teachers and the teachers union held that an employee union specifically is not a "business" under the California UCL: "[E]ven if it were not barred by § 1159, the UCL claim fails because the Union Defendants are not a 'business' and collecting agency fees in compliance with state law is not a 'business act or practice.'". Babb v. California Tchrs. Ass'n, 378 F. Supp. 3d 857, 882 (C.D. Cal. 2019), aff'd sub nom. Martin v. California Tchrs. Ass'n, No. 19-55761, 2022 WL 256360 (9th Cir. Jan. 26, 2022), and aff'd, No. 19-55692, 2022 WL

262144 (9th Cir. Jan. 26, 2022), and aff'd sub nom. Wilford v. Nat'l Educ. Ass'n of United States, No. 19-55712, 2022 WL 256724 (9th Cir. Jan. 26, 2022).

> "The UCL's purpose is to protect both consumers and competitors by promoting fair competition in commercial markets for goods and services. [Citation.]" (*Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 949, 119 Cal.Rptr.2d 296, 45 P.3d 243.) An association does not participate as a business in the commercial market, much less compete in it. The dispute here is not related to any activity that might be deemed in the least bit commercial.

That v. Alders Maint. Assn., 206 Cal. App. 4th 1419, 1427 (2012).

Accordingly, under either theory asserted by Defendant the demurrer is sustained without leave to amend, either because the Court must defer to the exclusive jurisdiction of PERB, or because the conduct that is the gravamen of the UCL cause of action in the FAC is outside the scope of the definition of "business activity" under the UCL.

TENTATIVE RULING #10: DEFENDANT'S REQUEST FOR JUDICIAL NOTICE IS GRANTED. DEFENDANT'S DEMURRER IS SUSTAINED WITHOUT LEAVE TO AMEND.

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.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.