SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 18b
Honorable Shella Deen, Presiding
Farris Bryant, Courtroom Clerk
191 North First Street, San Jose, CA 95113

DATE: October 29, 2024 TIME: 9:00 A.M.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E

****Please specify the issue to be contested when calling the Court and Counsel****

LAW AND MOTION TENTATIVE RULINGS

FOR APPEARANCES: Department 18 is fully open for in-person hearings. The Court strongly prefers **in-person** appearances for all contested law and motion matters. For all other hearings, the Court strongly prefers either **in-person or video** appearances. If you must appear virtually, you must use video. Audio-only appearances are permitted, but disfavored, as they cause significant disruptions and delays to the proceedings. Please use telephone-only appearances as a last resort. To access the courtroom, click or copy and paste this link into your internet browser and scroll down to Department 18:
https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml

SCHEDULING MOTION HEARINGS: Please go to https://reservations.scscourt.org or call 408-882-2430 between 8:30 a.m. and 12:30 p.m. (Mon.-Fri.) to reserve a hearing date for your motion before you file and serve it. You must then file your motion papers no more than five court days after reserving the hearing date, or else the date will be released to other cases.

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https://www.scscourt.org/general_info/court_reporters.shtml

RECORDING IS PROHIBITED: As a reminder, most hearings are open to the public, but state and local court rules prohibit recording of court proceedings without a court order. This prohibition applies to both in-person and remote appearances.

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LAW AND MOTION TENTATIVE RULINGS

LINE #	CASE #	CASE	RULING
LINE 1	23CV417149	B-Line Construction, Inc. v. Chow, Wen Lung	**Demurrer** This demurrer was CONTINUED to November 5, 2024, so that it can be heard in conjunction with a motion to strike.
LINE 2	23CV428385	Soulbrain CA, LLC et al vs Seung Pyo (Dominic) Lee et al	**Demurrer** Scroll down to LINES 2 and 3 for Tentative Ruling.
LINE 3	23CV428385	Soulbrain CA, LLC et al vs Seung Pyo (Dominic) Lee et al	**Motion to Strike** Scroll down to LINES 2 and 3 for Tentative Ruling.

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LAW AND MOTION TENTATIVE RULINGS

LINE 4	20CV364549	Faramarz Kiani vs Tom McNeil	**Motion for Summary Judgment** Defendant/Cross-Complainant Tom McNeil's Motion for Summary Judgment of his cross-complaint against Plaintiff/Cross-Defendant Faramarz Kiani is unopposed. Defendant filed his proof of service of the motion on August 2, 2024. Any opposition was due to be filed on October 15, 2024, and no opposition was filed. A failure to oppose a motion may be deemed a consent to the granting of the motion. (California Rules of Court, Rule 8.54(c); *Sexton v. Superior Court* (1997) 58 Cal.App.4th 1403, 1410.) Where a responding party does not file an opposition to a motion for summary judgment, the moving party must still meet its initial burden of proof. (*Thatcher v. Lucky Stores, Inc.* (2000) 79 Cal.App.4th 1081, 1086-1087, *CDF Firefighters v. Maldonado* (2008) 158 Cal.App.4th 1226, 1239, fn. 2). A motion for summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subdivision (c)). Defendant/Cross-Complainant has shown sufficient evidence to justify the grant of summary judgment in his favor; the Motion for Summary Judgment is GRANTED. Moving party to prepare order.
LINE 5	22CV409112	The Skinner Law Group APC vs TACOMANIA INC. et al	**Motion for Summary Judgment/Adjudication** Scroll down to LINE 5 for Tentative Ruling.

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LAW AND MOTION TENTATIVE RULINGS

LINE 6	23CV414246	Juanita McFerrin et al vs Valerie Barrientos et al	**Motion to Compel (Requests for Admission)** Defendant Valerie Barrientos' motion to compel Plaintiff Juanita McFerrin to provide responses to her Request for Admissions (Set One), or that the requests be deemed admitted, and a request for sanctions of $207.50. No opposition was filed. A failure to oppose a motion may be deemed a consent to the granting of the motion. CRC Rule 8.54c. Failure to oppose a motion leads to the presumption that Plaintiff has no meritorious arguments. (See *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal. App. 3d 481, 489.) Moving party meets her burden of proof. Good cause appearing, the Motion is GRANTED. Requests for Admission (Set One) served on Plaintiff by Defendant, are deemed admitted against Plaintiff. Sanctions in the amount of $207.50 are awarded to Defendant against Plaintiff, to be paid within 45 days of the formal order on this Motion. Moving party shall prepare a formal order after hearing, that repeats the admissions to be admitted verbatim.

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LAW AND MOTION TENTATIVE RULINGS

LINE 7	23CV414246	Juanita McFerrin et al vs Valerie Barrientos et al	**Motion to Compel (Statement of Damages)** Defendant Valerie Barrientos' motion to compel Plaintiff Juanita McFerrin to provide a statement of damages. Defendant demanded that Plaintiff furnish a Statement of Damages pursuant to Code of Civil Procedure §425.11(b). Plaintiff failed to provide any response. A defendant that wants to know the nature and amount of damages the plaintiff is seeking may at any time serve a written request for information on the plaintiff and the plaintiff must serve a responsive statement within 15 days. If plaintiff fails to serve any statement of damages within 15 days after service of the defendant's request, the defendant may, on noticed motion, obtain an order compelling the plaintiff to serve a statement. (Code Civ. Proc., §425.11 (b). Defendant propounded the Statement of Damages Demand on September 6, 2023. To date Plaintiff has still not provided any statement. Although it is not clear from the briefing, there is no evidence that any extension to provide the statement is in effect. Good cause appearing, the motion is GRANTED. Plaintiff shall serve a statement of damages within 15 days of the formal order on this motion. Moving party to prepare formal order.

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LAW AND MOTION TENTATIVE RULINGS

LINE 8	23CV416611	BLUE ARC ELECTRIC, INC. vs FERHAT ATAS et al	**Motion to Compel (Form Interrogatories)** Plaintiff and Cross-Defendant Blue Arc Electric, Inc.'s motion to compel Defendants Ferhat Atash and Atash Energy LLC to provide further responses to its first set of Form Interrogatories and a request for $1,950 in monetary sanctions. Blue Arc argues that Atash Energy LLC served objection-only responses to Form Interrogatory Nos. 7.1-7.3, 9.1-9.2, and 12.1-12.7 based on, *inter alia*, objections to the term "INCIDENT". The date by which Blue Arc was to compel further responses from Atash and responses from Ferhat Atash was July 17, 2024. Blue Arc sent Defendants a bare bones meet and confer letter in the late afternoon (after 4p.m.) of July 15, 2024. The motion was filed on July 17, 2024. Ferhat Atash served responses after the motion was filed. As such, the motion to compel against Ferhat Atash is rendered MOOT. With respect to the motion to compel against Atash Energy LLC, the motion is DENIED. The Court finds that Blue Arc's meet and confer effort on effectively the day before the motion filing deadline, was wholly inadequate and is not a meet and confer as required by the Code of Civil Procedure; a single boilerplate letter sent at the eleventh hour, requesting a response within 24 hours, does not constitute a reasonable or good faith effort to meet and confer. Blue Arc's request for sanctions is also DENIED. Defendant Atash Energy LLC has also sought sanctions for opposing this motion, such sanctions are GRANTED in the amount of $2,337.50 to be paid by November 18, 2024. Code of Civil Procedure section 2023.020 states: "the court shall impose a monetary sanction ordering that any party or attorney who fails to confer as required pay the reasonable expenses, including attorney's fees, incurred by anyone as result of that conduct." (*Moore v. Mercer* (2016) 4 Cal.App.5th 424, 448 (failure to participate in meet and confer process in good faith is independent discovery abuse for which sanctions are authorized by statute). Responding party to prepare formal order.

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LAW AND MOTION TENTATIVE RULINGS

LINE 9	22CV394300	Knights Flooring, Inc. vs FPC Builders, Inc. et al	**Motion to Consolidate** Plaintiff Knights Flooring, Inc.'s motion to consolidate this case with five other pending cases (22CV400735, 22CV40294, 22CV403943, 22CV406031 and 23CV410464), on the grounds that the issues of fact and law relating to the cases are common to all actions, and consolidation of these actions is appropriate, applying the standards set forth in California Code of Civil Procedure 1048(a) and California Rules of Court, Rule 3.300 (a). All six actions identified in the notice of motion, relate to the Silvery Tower project in San Jose. The motion seeks to consolidate cases that relate to other subcontractors employed by Defendant FPC Builders, Inc. for work at that project and a surety. Five of the subcontractors have stipulated to the consolidation. The Court has also reviewed the oppositions (Defendants Federal Insurance Company and FPC Builders, Inc and FPP MB LLC) and non-oppositions (Defendant Rynoclad and Yuanda USA) that were filed. Notices of this motion were filed in each of the cases in which consolidation was sought, as required by California Rule of Court, Rule 3.350. Good cause appearing, the motion is GRANTED. The parties are to appear to discuss setting a trial date for the consolidated case. The parties are to meet and confer regarding a trial date in July or August of 2025. Moving party to prepare formal order.

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LAW AND MOTION TENTATIVE RULINGS

LINE 10	22CV397550	Louis Lennard vs Traffic Dept/ City of San Jose 210 N. 4th St. San Jose,CA et al	**Motion to Amend Judgment** Defendant City of San Jose's motion to amend the judgment entered on June 5, 2024, on the ground that there is no entity named "Traffic Dept/City of San Jose 210 N 4th St. San Jose, CA"; the City, not the department, is the proper defendant. The motion was filed and served on Plaintiff on July 24, 2024. No opposition was filed. A failure to oppose a motion may be deemed a consent to the granting of the motion. (California Rules of Court, Rule 8.54(c); *Sexton v. Superior Court* (1997) 58 Cal.App.4th 1403, 1410.) Moving party has met its burden of proof. Good cause appearing, the motion is GRANTED. The June 5, 2024 judgment shall be amended to include judgment in favor of "Defendant City of San Jose, erroneously sued as Traffic Dept/ City of San Jose 210 N 4th St. San Jose, CA." Moving party to prepare formal order and amended judgment.
LINE 11	24CV429210	Neelima Naidu et al vs Deepika Jain et al	**Motion to Disqualify** Scroll down to LINE 11 for Tentative Ruling.

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Calendar Lines 2 and 3
Case Name: *Soulbrain CA, LLC, et al. v. Seung Pyo (Dominic) Lee, et al.*
Case No.: 23CV428385

Before the Court is the (1) demurrer of defendants Pyo (Dominic) Lee, CMD Advisor LLC, and Rak Gyu (Robert) Chung and (2) motion to strike time-barred allegations and punitive damage allegations against defendant Chung. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling as follows.

I. Background.

In October of 2020, plaintiff SB 125 Rio Robles, LLC ("SB125") purchased three buildings in Santa Clara located at 125 Rio Robles Drive ("Soulbrain B1"), 80 West Tasman Drive ("Soulbrain B2;" Soulbrain B1 and Soulbrain B2 are collectively referred to as the "Soulbrain Property"), and 10 W Tasman Drive ("Heritage Property;" the Heritage Property and Soulbrain Property are collectively referred to as the "Properties") for approximately $160,000,000. (First Amended Complaint ("FAC"), ¶10.)

Prior to plaintiff SB125's acquisition of the Properties, plaintiff SB125 and defendant Heritage 10 W Tasman, LLC ("Heritage") entered into an arrangement pertaining to the resale of the Heritage Property from plaintiff SB125 to defendant Heritage for $30,000,000. (*Id.*) During the acquisition process, plaintiff SB125 covered various closing costs (including taxes and broker fees) of approximately $458,000 for defendant Heritage for which defendant Heritage agreed to reimburse plaintiff SB125 ("Payment Agreement") which defendant Heritage never paid. (*Id.*) Defendant Heritage also agreed to reimburse plaintiff SB125 for costs related to maintenance of the Heritage Property including but not limited to operating expenses, taxes, and administrative expenses, but has failed to make such payments. (*Id.*)

Plaintiff SB125 was formed by plaintiff Soulbrain CA, LLC ("SBCA") for the sole purpose of holding title to SBCA's commercial properties in California. (FAC, ¶1.) Plaintiff SB125 is a wholly owned subsidiary of SBCA. (*Id.*) (Plaintiffs SBCA and SB125 are collectively referred to as "Soulbrain.")

Defendant Seung Pyo (Dominic) Lee is President of both plaintiff SBCA and SB125. (FAC, ¶¶2 and 17.) Following plaintiff SB125's purchase of the Properties, defendant Lee was tasked with managing the Properties including keeping the Properties in good order, staying

current on property taxes, and paying any bills owed for general administration and upkeep. (FAC, ¶11.) With Soulbrain's approval, defendant Lee delegated many of these tasks to Jones Lang LaSalle ("JLL"), a global real estate services company. (*Id.*)

In April 2021, plaintiff SB125 entered into a written purchase agreement ("Purchase Agreement") to sell the Heritage Property to defendant Heritage for $30,000,000. (FAC, ¶12.) The sale closed on November 9, 2022. (*Id.*) Under the Purchase Agreement, defendant Heritage was obligated to pay half of the closing costs but failed to make those payments which total approximately $16,600. (*Id.*)

Between April 22, 2021 and November 9, 2022, defendant Heritage leased the Heritage Property from plaintiff SB125 pursuant to a Property Lease Agreement which obligated defendant Heritage to pay base rent, operating expenses, taxes, maintenance, and insurance costs relating to the Heritage Property. (FAC, ¶13.) Defendant Heritage never made these payments and owes plaintiff SB125 approximately $1,180,000. (*Id.*)

In November 2022, defendant Lee caused plaintiff SB125 to enter into an agreement purporting to terminate the Property Lease Agreement and waive any liability owed by defendant Heritage to plaintiff Soulbrain under the Property Lease Agreement. (FAC, ¶14.) Defendant Lee signed this contract on behalf of plaintiff SB125 without plaintiff SB125's express authority and without proper disclosure to plaintiff SB125 thereby exceeding the scope of his authority to manage the Properties and breaching the fiduciary duty he owed to plaintiff SB125. (*Id.*)

The Properties all encroach on land owned by the City and County of San Francisco ("CCSF") as part of CCSF's Hetch Hetchy water pipeline. (FAC, ¶15.) The Properties are collectively charged a single ground lease fee which is assessed against all three properties. (*Id.*) Following sale of the Heritage Property to defendant Heritage, defendant Heritage was obligated to pay for the Heritage Property's portion of the Hetch Hetchy ground lease. (*Id.*). Defendant Heritage has failed to make those payments and continues to fail to contribute to the ground lease payments. (*Id.*) Plaintiff SB125 is forced to make this payment on behalf of all parties to avoid being penalized by CCSF. (*Id.*) At present, defendant Heritage's unpaid portion of the Hetch Hetchy ground lease fees totals approximately $100,000. (*Id.*)

During this time, defendant Lee was responsible for managing the Soulbrain Property in his capacity as President of plaintiffs Soulbrain. (FAC, ¶17.) Defendant Lee, through his personal company defendant CMD Advisor, LLC ("CMD"), was managing the Heritage Property on behalf of defendant Heritage. (*Id.*) As President of plaintiffs Soulbrain, defendant Lee had authority to pay bills and expenses owed by plaintiffs Soulbrain, but did not have authority to make payments for personal expenses or expenses owed by defendant Heritage to maintain the Heritage Property. (FAC, ¶18.) Defendant Lee inappropriately diverted plaintiffs Soulbrain's financial resources for defendant Heritage's benefit. (FAC, ¶19.) Defendant Lee directed more than $2.2 million of plaintiffs Soulbrain's funds to cover various advisory services provided by parent companies of defendant Heritage controlled or affiliated with defendant Lee's family. (FAC, ¶20.)

Despite plaintiffs Soulbrain having already engaged JLL as the property manager, defendant Lee orchestrated a situation in which JLL reported to defendant CMD without much contribution from CMD towards management of the Soulbrain Property. (FAC, ¶22.) This arrangement established a property management structure for plaintiffs Soulbrain that lacked transparency and fairness. (*Id.*)

Defendant Lee issued direct instructions to JLL to divert the owner's monthly service fee intended for plaintiff SB125 to defendant CMD. (FAC, ¶23.) This fee is equivalent to 2% of the monthly lease income from the Soulbrain Property. (*Id.*) This fee belonged to plaintiffs Soulbrain as the property owner and plaintiffs Soulbrain never authorized defendant Lee to divert the income to defendant CMD. (*Id.*) The total amount misappropriated by defendant Lee from plaintiffs Soulbrain to defendant CMD exceeds $400,000. (FAC, ¶24.)

As another instance of defendant Lee's misappropriation of plaintiffs Soulbrain's funds, on or about December 20, 2021, defendant Lee caused plaintiff SB125 to enter into an Asset Management Services Agreement ("AMSA") with defendant Interstellar CA Corp. ("Interstellar"), despite already having JLL as a property manager. (FAC, ¶26.) The AMSA purported to require plaintiff SB125 pay defendant Interstellar a $590,000 "sign-on bonus" and an annual fee equal to 0.4% of the purchase price of the Soulbrain Property. (FAC, ¶27.) Defendant Interstellar did not provide any real services to plaintiffs Soulbrain. (FAC, ¶28.) On

or about December 20, 2021, defendant Lee caused defendants Interstellar and CMD to enter into a Sub-Asset Management Services Agreement ("SAMSA") whereby defendant Interstellar would pay defendant CMD a "sub-asset management fee" of $300,000 a year and a "sign-on bonus" of $531,000, essentially funneling to defendant CMD (defendant Lee's company) the vast majority of money defendant Lee would cause to be transferred from plaintiffs Soulbrain to defendant Interstellar, with defendant Interstellar taking a small cut despite providing nothing of value to plaintiffs Soulbrain. (FAC, ¶28.)

On or about December 20, 2021, defendant Lee caused plaintiffs Soulbrain to pay defendant Interstellar a $590,000 sign-on bonus as well as the first $130,000 quarterly asset-management fee. (FAC, ¶30.) On or about December 21, 2021, defendant Lee then directed defendant Interstellar to pay defendant CMD $606,000 encompassing the sign-on bonus and first $75,000 quarterly installment of the annual sub-asset management fee. (FAC, ¶31.) After each of plaintiffs Soulbrain's quarterly asset-management fees was paid to defendant Interstellar under the AMSA, defendant Interstellar paid defendant CMD its $75,000 sub-asset management fee. (*Id.*) The total amount defendant Lee caused to be paid from plaintiffs Soulbrain to defendant Interstellar without authorization is $1,225,700. (FAC, ¶32.)

Defendant Lee also caused plaintiffs Soulbrain to issue him a company credit card which he had possession of from January 2021 to April 2023. (FAC, ¶33.) Defendant Lee was authorized to use this credit card to pay expenses incurred on behalf of plaintiffs Soulbrain or to cover defendant Lee's reasonable personal expenses when traveling for business purposes. (*Id.*) Defendant Lee misused the company credit card for his own personal ventures. (FAC, ¶34.) Defendant Lee established his own company to start a luxurious restaurant called Bon Mot in Cupertino. (*Id.*) Defendant Lee used the company credit card to spend thousands of dollars on expenses that intentionally enriched Bon Mot, thereby diverting plaintiffs Soulbrain's corporate funds for his own personal gain. (*Id.*)

On or about February 2, 2020, defendant Lee, acting through defendant CMD and without plaintiffs Soulbrain's authorization, purportedly appointed defendant Rak Gyu (Robert) Chung dba SVR Real Estate & Management ("Chung") as a real estate agent and broker for the initial purchase of the Properties agreeing to pay defendant Chung a fee equal to

1% of the ultimate purchase price ("Investor Representation Agreement"). (FAC, ¶37.) Defendant Chung provided no services to plaintiffs Soulbrain and played no role in the purchase of the Properties. (*Id.*) Defendant Chung never entered into a contract with plaintiffs Soulbrain and plaintiffs Soulbrain never signed an agreement to make payment to defendant Chung. (*Id.*) Plaintiffs Soulbrain already had a broker, JLL. (*Id.*) Defendant Lee caused plaintiff SB125 to pay defendant Chung $1.6 million under the guise of broker fees purportedly owed to defendant Chung related to the purchase of the Properties. (FAC, ¶39.) In order to have a disbursement of this size approved, defendant Lee misrepresented to plaintiff SB125 that the $1.6 million payment was the brokerage fee owed to JLL, plaintiff SB125's actual broker. (FAC, ¶¶40 and 42.) The fees owed to JLL, however, were to be paid by the seller. (*Id.*) Plaintiffs Soulbrain first discovered the discrepancy regarding the $1.6 million payment in November 2023. (FAC, ¶43.)

On December 29, 2023, plaintiffs Soulbrain filed a complaint against defendants Lee, CMD, Heritage, Interstellar, and Chung asserting causes of action for:

(1) BREACH OF FIDUCIARY DUTY

(2) FRAUD

(3) CONSPIRACY TO COMMIT FRAUD

(4) BREACH OF CONTRACT

(5) BREACH OF CONTRACT

(6) CONVERSION

(7) UNJUST ENRICHMENT

On February 5, 2024, defendant Heritage filed an answer to the plaintiffs' complaint.

On February 7, 2024, defendant Interstellar filed an answer to the plaintiffs' complaint.

On April 2, 2024, defendants Lee, CMD, and Chung filed a demurrer and motion to strike the plaintiffs' complaint.

On May 29, 2024, plaintiffs filed the operative FAC which asserts causes of action for:

(1) BREACH OF FIDUCIARY DUTY [AGAINST DEFENDANT LEE]

(2) FRAUD [AGAINST DEFENDANT LEE]

(3) CONSPIRACY TO COMMIT FRAUD [AGAINST DEFENDANTS HERITAGE, CMD, INTERSTELLAR, AND SVR]

(4) BREACH OF CONTRACT (PAYMENT AGREEMENT) [BY PLAINTIFF SB125 AGAINST DEFENDANT HERITAGE]

(5) BREACH OF CONTRACT (PROPERTY LEASE AGREEMENT) [BY PLAINTIFF SB125 AGAINST DEFENDANT HERITAGE]

(6) CONVERSION [AGAINST DEFENDANTS LEE, CHUNG, CMD, HERITAGE, AND INTERSTELLAR]

(7) UNJUST ENRICHMENT

On June 11, 2024, plaintiffs filed a request for dismissal of the complaint against defendant Heritage.[1]

On July 22, 2024, defendants Lee, CMD, and Chung filed the two motions now before the court: (1) a demurrer to the second, third, sixth, and seventh causes of action of the FAC and (2) motion to strike time-barred and punitive damages allegations against defendant Chung.

On October 2, 2024, defendant Interstellar filed an answer to plaintiffs' FAC.[2]

II. DEFENDANTS LEE, CMD, AND CHUNG'S DEMURRER TO PLAINTIFFS' FAC.

A. DEFENDANT LEE'S DEMURRER TO THE SECOND CAUSE OF ACTION [FRAUD] OF PLAINTIFFS' FAC IS SUSTAINED.

In the second cause of action, plaintiffs allege, in relevant part, that defendant "Lee made fraudulent misrepresentations and false promises to Soulbrain, which are detailed above, with the intention to induce Soulbrain to send money to Defendants. These representations include that Lee was qualified and experienced in real estate investments and would act in Soulbrain's best interests … and the payments and fees paid to CMD, Heritage, Interstellar, and [Chung] were legitimate and necessary for the acquisition and management of the

[1] Defendant Heritage previously filed a "Notice of Stay of Proceedings" on April 10, 2024 based upon its filing for Chapter 11 bankruptcy on April 5, 2024 in the United States Bankruptcy Court, Northern District of California.

[2] The court clerk previously entered default against defendant Interstellar upon the filing of plaintiffs' request for dismissal on August 26, 2024. On September 26, 2024, the court issued an order setting aside the entry of default against defendant Interstellar.

Soulbrain Property." (FAC, ¶51.) "Lee engaged in a course of conduct designed to mislead Soulbrain into paying millions of dollars to benefit Lee and others affiliated with Lee, and the other Defendants participated in these various schemes, and actively concealed them." (FAC, ¶52.)

"The elements of fraud, which give rise to the tort action for deceit, are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage." (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638 (*Lazar*).) "'Promissory fraud' is a subspecies of fraud and deceit. A promise to do something necessarily implies the intention to perform; hence, where a promise is made without such intention, there is an implied misrepresentation of fact that may be actionable fraud." (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 973 – 974; see also CACI, No. 1902.)

"Fraud actions are subject to strict requirements of particularity in pleading. … Accordingly, the rule is everywhere followed that fraud must be specifically pleaded." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 216.) "The pleading should be sufficient to enable the court to determine whether, on the facts pleaded, there is any foundation, prima facie at least, for the charge of fraud." (*Commonwealth Mortgage Assurance Co. v. Superior Court* (1989) 211 Cal.App.3d 508, 518.) The *Lazar* court did not comment on how these particular allegations met the requirement of pleading with specificity in a fraud action, but the court did say that "this particularity requirement necessitates pleading facts which 'show how, when, where, to whom, and by what means the representations were tendered.' A plaintiff's burden in asserting a claim against a corporate employer is even greater. In such a case, the plaintiff must 'allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written." (*Lazar*, *supra*, 12 Cal.4th at p. 645.)

In demurring to plaintiffs Soulbrain's second cause of action, defendant Lee contends the allegations leveled against him regarding fraud lack the requisite specificity. Nowhere in the FAC are there allegations which specify the content of the misrepresentation(s) or who within plaintiff Soulbrain the alleged misrepresentations were made to.

Although not clear from the allegations of the FAC, plaintiffs contend in their opposition to the instant demurrer that their focus is on their "primary theory of fraud [which] concerns Lee's ***concealment*** [rather than affirmative misrepresentation] of fraudulent schemes."[3] (Emphasis added.) The essential elements of a fraud cause of action based on concealment or nondisclosure are: (1) the defendant had a duty to disclose the concealed or suppressed fact to the plaintiff; (2) the defendant intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, and (3) the plaintiff was damaged as a result. (*Jones v. ConocoPhillips* (2011) 198 Cal.App.4th 1187, 1198.)

Plaintiffs direct the court's attention first to the $1.6 million brokerage fee that defendant Lee caused plaintiffs Soulbrain to pay to defendant Chung. Apparently, plaintiffs liken their allegations at paragraphs 39 – 40 of the FAC (i.e., "Lee caused SB 125 to pay [Chung] $1.6 million under the guise of the payment being for broker fees purportedly owed to [Chung] related to the purchase of the Properties. … in order to have a disbursement of this size approved, Lee necessarily represented to SB 125 that the $1.6 million payment was the brokerage fee owed to JLL, SB 125's actual broker for the purchase. The fees owed to JLL, however, were to be paid by the seller.") to the submission of a fake invoice. Plaintiffs summarize their position that "Lee and Chung lied to Soulbrain that they [Soulbrain] owed a broker's fee, [and] lied to Soulbrain about who the broker's fees was going to."[4]

The reasonable inference to be drawn from such allegations is that defendant Lee made some ***affirmative*** misrepresentation(s) [rather than concealment] in requesting a disbursement of $1.6 million by plaintiffs Soulbrain. First, defendant Lee affirmatively misrepresented to plaintiffs Soulbrain that Soulbrain owed a broker's fee when, in truth, the sellers of the Properties' paid the broker's fee. Second, defendant Lee affirmatively misrepresented that

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[3] See page 6, lines 11 – 12, and fn. 2 of Plaintiffs' Opposition to Defendants' Demurrer to First Amended Complaint ("Plaintiffs' Opposition MPA").
[4] See page 9, lines 3 – 5 of Plaintiffs' Opposition MPA.

Soulbrain owed a broker's fee to Chung when, in truth, the broker's fee was to be paid to JLL. Indeed, plaintiffs themselves allege, at paragraph 52(d) of the FAC, that "Lee made false statements to Soulbrain in order to have Soulbrain issue a $1,600,000 payment to [Chung]."

Even if the court reasonably infers that these are the misrepresentations which were made, defendant Lee persuasively argues that the allegations are not sufficiently specific in that plaintiffs do not identify who such misrepresentations were made to. The FAC alleges that "Lee necessarily represented to SB 125," without identifying the person within plaintiff SB125 the representations were directed to. Is it someone in accounting? Is it to another officer? Plaintiffs' own allegation is that a "disbursement of this size" needed approval, which reasonably suggests some level of scrutiny had to be exercised by someone with authority. Yet, plaintiffs do not offer any specifics. The FAC includes an allegation, at paragraph 18, that, "As President of the Soulbrain entities, Lee had authority to pay bills and expenses owed by Soulbrain." However, plaintiffs do not clearly and specifically allege whether defendant Lee requested and also authorized the subject $1.6 million disbursement to defendant Chung. The court will not draw such an inference because plaintiffs allege elsewhere that "Lee's job duties were limited and specific" and Lee delegated many of his tasks "with Soulbrain's approval," which suggests Lee required authorization and approval from someone other than himself. (FAC, ¶11.)

Apart from the $1.6 million broker fee, plaintiffs also contend the AMSA and SAMSA operated as a "fraudulent kick-back scheme between CMD and Interstellar whereby Lee made unauthorized payments from Soulbrain to Interstellar, who, in turn, transferred the majority of Soulbrain's money to CMD." (FAC, ¶52(c).) According to plaintiffs, "Lee concealed the material facts of this scheme from Soulbrain."[5] Likewise, plaintiffs allege, "Lee concealed from Soulbrain the material fact that he was diverting the monthly [service] fee to CMD," and "Lee actively and intentionally concealed … Heritage paying CMD for 'management services' [and] … that Heritage would not reimburse Soulbrain or pay its own expenses."[6]

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[5] See page 11, lines 10 – 11, of Plaintiffs' Opposition MPA.
[6] See page 11, line 27 to page 12, line 1 and lines 14 – 17, of Plaintiffs' Opposition MPA.

Plaintiffs' theory of concealment apparently rests upon the notion that, based upon his position as President of plaintiffs Soulbrain, defendant Lee acted with great autonomy without any accountability or oversight in perpetrating these schemes. If so, plaintiffs must plead this theory with more clarity and factual detail. Although the requirement of specificity is relaxed for a claim of fraudulent concealment[7], it is this court's opinion that plaintiffs can and should provide more factual detail. For instance, plaintiffs can provide more factual detail concerning their corporate structures and how such corporate structures allowed defendant Lee to take the actions he did with complete autonomy and without oversight. Furthermore, to the extent plaintiffs allege defendant Lee had a duty to disclose material facts, plaintiffs should identify the person(s) within the Soulbrain entities plaintiffs contend defendant Lee could and should have disclosed material facts to under these circumstances.

Accordingly, defendant Lee's demurrer to the second cause of action of plaintiffs' FAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for fraud is SUSTAINED with 10 days' leave to amend.

B. **DEFENDANTS CMD AND CHUNG'S DEMURRER TO THE THIRD CAUSE OF ACTION [CONSPIRACY TO COMMIT FRAUD] OF PLAINTIFFS' FAC IS SUSTAINED.**

"To allege a conspiracy, a plaintiff must plead '(1) formation and operation of the conspiracy and (2) damage resulting to plaintiff (3) from a wrongful act done in furtherance of the common design.' [Citation.]" (*Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1173 (*Daniels*).) Conclusory allegations of conspiracy will not suffice. (See *Daniels, supra,* 246 Cal.App.4th at p. 1173—conspiracy allegations too conclusory; no factual allegations about the nature of the agreement.)

"Conspiracy is not a cause of action. It is a theory of liability under which persons who, although they do not actually commit a tort themselves, share with the tortfeasor or tortfeasors a common plan or design in its perpetration. One who participates in a civil conspiracy, in effect, becomes liable for the torts of the coconspirators. But the conspiracy does not result in

[7] See *Alfaro v. Community Housing Imp. System & Planning Ass'n, Inc.* (2009) 171 Cal.App.4th 1356, 1384—"it is harder to apply this rule to a case of simple nondisclosure. 'How does one show "how" and "by what means" something didn't happen, or "when" it never happened, or "where" it never happened?'"

tort liability unless an actual tort is committed." (*Kenne v. Stennis* (2014) 230 Cal.App.4th 953, 968; see also *Daniels*, *supra*, 246 Cal.App.4th at p. 1172—liability for a conspiracy "must be activated by the commission of an actual tort.")

In light of the court's ruling above that plaintiffs have not sufficiently stated a cause of action for fraud, there can be no conspiracy without an accompanying actual tort. For that reason alone, defendants CMD and Chung's demurrer to the third cause of action of plaintiffs' FAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for conspiracy to commit fraud is SUSTAINED with 10 days' leave to amend.

C. **DEFENDANTS CHUNG'S DEMURRER TO THE SIXTH CAUSE OF ACTION [CONVERSION] OF PLAINTIFFS' FAC IS SUSTAINED.**

> "Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion claim are: (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages. Conversion is a strict liability tort. The foundation of the action rests neither in the knowledge nor the intent of the defendant. Instead, the tort consists in the breach of an absolute duty; the act of conversion itself is tortious. Therefore, questions of the defendant's good faith, lack of knowledge, and motive are ordinarily immaterial. [Citations.]" (*Burlesci v. Petersen* (1998) 68 Cal.App.4th 1062, 1066, [80 Cal.Rptr.2d 704].) The basis of a conversion action " 'rests upon the unwarranted interference by defendant with the dominion over the property of the plaintiff from which injury to the latter results. Therefore, neither good nor bad faith, neither care nor negligence, neither knowledge nor ignorance, are the gist of the action.' [Citations.]" (*Ibid*.)

(*Los Angeles Federal Credit Union v. Madatyan* (2012) 209 Cal.App.4th 1383, 1387; see also CACI, No. 2100.)

Defendant Chung demurs to the plaintiffs' sixth cause of action for conversion against him on the basis that plaintiffs have not alleged that he engaged in any "wrongful" conduct. In

opposition, plaintiffs point to the allegation (at paragraph 39 of the FAC) to assert that defendant Chung obtained the $1.6 million "as a result of the fraud perpetrated upon Soulbrain."[8] Defendant Chung's liability for conversion is, thus, dependent upon defendant Lee's fraud and defendant Chung's conspiracy. In light of the court's rulings above, plaintiffs have not sufficiently alleged fraud and conspiracy so plaintiffs have not sufficiently alleged the underlying "wrongful" conduct to support conversion.

Accordingly, defendant Chung's demurrer to the sixth cause of action of plaintiffs' FAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for conversion is SUSTAINED with 10 days' leave to amend.

D. **DEFENDANT LEE'S DEMURRER TO THE SEVENTH CAUSE OF ACTION [UNJUST ENRICHMENT] OF PLAINTIFFS' FAC IS SUSTAINED.**

In *Melchior v. New Line Productions, Inc.* (2003) 106 Cal.App.4th 779, 793, the court wrote, "[T]here is no cause of action in California for unjust enrichment. "The phrase 'Unjust Enrichment' does not describe a theory of recovery, but an effect: the result of a failure to make restitution under circumstances where it is equitable to do so." [Citations.] Unjust enrichment is "'a general principle, underlying various legal doctrines and remedies,' " rather than a remedy itself. [Citation.] It is synonymous with restitution." (See also *Jogani v. Superior Court* (2008) 165 Cal.App.4th 901, 911.)

In *McBride v. Houghton* (2004) 123 Cal.App.4th 379 (*McBride*), the court wrote, "Unjust enrichment is not a cause of action, however, or even a remedy, but rather a general principle, underlying various legal doctrines and remedies. It is synonymous with restitution. Unjust enrichment has also been characterized as describing the result of a failure to make restitution. [¶] In reviewing a judgment of dismissal following the sustaining of a general demurrer, we ignore erroneous or confusing labels if the complaint pleads facts which would entitle the plaintiff to relief. Thus, we must look to the actual gravamen of [plaintiff's] complaint to determine what cause of action, if any, he stated, or could have stated if given leave to amend. In accordance with this principle, we construe [plaintiff's] purported cause of

[8] See page 14, lines 9 – 11, of Plaintiffs' Opposition MPA.

action for unjust enrichment as an attempt to plead a cause of action giving rise to a right to restitution."

> There are several potential bases for a cause of action seeking restitution. For example, restitution may be awarded in lieu of breach of contract damages when the parties had an express contract, but it was procured by fraud or is unenforceable or ineffective for some reason. [Citations.] Alternatively, restitution may be awarded where the defendant obtained a benefit from the plaintiff by fraud, duress, conversion, or similar conduct. In such cases, the plaintiff may choose not to sue in tort, but instead to seek restitution on a quasi-contract theory (an election referred to at common law as "waiving the tort and suing in assumpsit"). [Citation.] In such cases, where appropriate, the law will imply a contract (or rather, a quasi-contract), without regard to the parties' intent, in order to avoid unjust enrichment. [Citation.]

(*McBride*, *supra*, 123 Cal.App.4th at pp. 387 – 388; internal citations and punctuation omitted.)

Restitution or unjust enrichment "may be awarded in lieu of breach of contract damages when the parties had an express contract, but it was procured by fraud or is unenforceable or ineffective for some reason. [Citations.] Alternatively, restitution may be awarded where the defendant obtained a benefit from the plaintiff by fraud, duress, conversion, or similar conduct." (*Durell v. Sharp Healthcare* (2010) 183 Cal. App. 4th 1350, 1370.)

Significantly, "there is no particular form of pleading necessary to invoke the doctrine of restitution." (*Dinosaur Development, Inc. v. White* (1989) 216 Cal.App.3d 1310, 1315 [internal quotation marks omitted].) As the *McBride* court instructs, the court should overlook the labels given by the plaintiff and instead focus on whether there is a basis for restitution.

Here, the alleged basis for restitution is based upon defendants obtaining "millions of dollars of Soulbrain's monies that were obtained through unlawful and wrongful means, including fraud … and conversion." (FAC, ¶80.) In light of the court's rulings above, plaintiffs have not sufficiently alleged fraud, conspiracy, and/or conversion.

Accordingly, defendants Lee, CMD, and Chung's demurrer to the seventh cause of action of plaintiffs' FAC on the ground that the pleading does not state facts sufficient to

constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for unjust enrichment is SUSTAINED with 10 days' leave to amend.

III. DEFENDANTS' MOTION TO STRIKE PORTIONS OF PLAINTIFFS' FAC IS DENIED.

A. TIME-BARRED ALLEGATIONS.

A court may sustain a demurrer on the ground of failure to state sufficient facts if "the complaint shows on its face the statute [of limitations] bars the action." (*E-Fab, Inc. v. Accountants, Inc. Services* (2007) 153 Cal.App.4th 1308, 1315 (*E-Fab*).) A demurrer is not sustainable on statute of limitations grounds if there is only a possibility that the cause of action is time-barred; the defense must be clearly and affirmatively apparent from the allegations of the pleading [and matters of which the court may properly take judicial notice]. (*Id.*, at pp. 1315-1316.)[9]

Where only a portion of a cause of action is subject to demurrer, a motion to strike may "be used as a scalpel—to cut out any 'irrelevant, false, or improper' matters inserted therein." (Weil & Brown et al., CAL. PRAC. GUIDE: CIV. PRO. BEFORE TRIAL (The Rutter Group 2024) ¶7:177, p. 7(I)-80 citing Code Civ. Proc. §436(a).)

When evaluating whether a claim is time-barred, the court must determine: (1) which statute of limitations applies, and (2) when the claim accrued. (*E-Fab, supra*, 153 Cal.App.4th at p. 1316.) The limitations period for a claim predicated on fraud is three years from the date of "the discovery, by the aggrieved party, of the facts constituting the fraud." (Code Civ. Proc., § 338, subd. (d); see *Britton v. Girardi* (2015) 235 Cal.App.4th 721, 734.) "The discovery rule 'postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action.' [Citations.] … By statute, the discovery rule applies to fraud actions. (Code Civ. Proc., § 338, subd. (d).)" (*E-Fab, supra*, 153 Cal.App.4th at p. 1318.)

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[9] See also *Heshejin v. Rostami* (2020) 54 Cal.App.5th 984, 992-993: "'[A] demurrer based on an affirmative defense will be sustained only where the face of the complaint discloses that the action is necessarily barred by the defense.'" (*Stella v. Asset Management Consultants, Inc.* (2017) 8 Cal.App.5th 181, 191 [213 Cal. Rptr. 3d 850]; accord, *Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191 [151 Cal. Rptr. 3d 827, 292 P.3d 871] [application on demurrer of affirmative defense of statute of limitations based on facts alleged in a complaint is a legal question subject to de novo review]; *Favila v. Katten Muchin Rosenman LLP* (2010) 188 Cal.App.4th 189, 224 [115 Cal. Rptr. 3d 274] ["'It must appear clearly and affirmatively that, upon the face of the complaint [and matters of which the court may properly take judicial notice], the right of action is necessarily barred.'"].)

> "A plaintiff whose complaint shows on its face that his claim would be barred without the benefit of the discovery rule must specifically plead facts to show (1) the time and manner of discovery and (2) the inability to have made earlier discovery despite reasonable diligence. The burden is on the plaintiff to show diligence, and conclusory allegations will not withstand demurrer."

(*E-Fab, supra*, 153 Cal.App.4th at p. 1319.)

Here, defendants contend the relevant date in the FAC is plaintiffs' allegation that Soulbrain purchased the Properties in October 2020. Since plaintiffs did not commence this action until December 29, 2023, more than three years after the acquisition date, allegations relating to any fraudulent payment in connection with the October 2020 purchase of the Properties is barred.

In relevant part, plaintiffs allege "Lee caused SB 125 to pay [Chung] $1.6 million under the guise of payment being for broker fees purportedly owed to [Chung] related to the purchase of the Properties." (FAC, ¶39.) The FAC does not allege when such payment was made, but does allege, "Soulbrain first discovered the discrepancy regarding this $1.6 million payment in November 2023." (FAC, ¶43.)

Defendants contend the FAC lacks any facts to support an inability for plaintiffs to have made earlier discovery despite reasonable diligence. As plaintiffs point out in their opposition, such allegations do exist. At paragraph 41, plaintiffs allege Lee communicated with Chung through personal email to make it more difficult for Soulbrain to discover his fraudulent scheme. The court also considers relevant plaintiffs' allegation that defendant Lee is President of the Soulbrain entities, "exploited his position as a Soulbrain executive for personal gain," and "cover[ed] up their fraudulent activities by manipulating accounting records." (FAC, ¶¶22 and 63.) This last allegation along with the use of the word "discrepancy" (at paragraph 43 of the FAC) gives rise to a reasonable inference that plaintiffs discovered this payment in a review of their accounting, which is at least factually suggestive of the manner in which plaintiffs discovered the fraud.

> "Resolution of the statute of limitations issue is normally a question of fact." (*Fox, supra*, 35 Cal.4th at p. 810.) More specifically, as to accrual, "once properly pleaded, belated discovery is a question of fact." (*Bastian v. County of San Luis Obispo, supra*, 199 Cal. App. 3d at p. 527.) As our state's high court has observed: "There are no hard and fast rules for determining what facts or circumstances will compel inquiry by the injured party and render him chargeable with knowledge. [Citation.] It is a question for the trier of fact." (*United States Liab. Ins. Co. v. Haidinger-Hayes, Inc., supra*, 1 Cal.3d at p. 597 [reversing judgment after demurrer].) "However, whenever reasonable minds can draw only one conclusion from the evidence, the question becomes one of law." (*Snow v. A. H. Robins Co.* (1985) 165 Cal. App. 3d 120, 128 [211 Cal. Rptr. 271] [reversing summary judgment].) Thus, when an appeal is taken from a judgment of dismissal following the sustention of a demurrer, "the issue is whether the trial court could determine as a matter of law that failure to discover was due to failure to investigate or to act without diligence." (*Bastian v. County of San Luis Obispo*, at p. 527.)

(*E-Fab, supra*, 153 Cal.App.4th at p. 1320.)

The factual allegations highlighted by plaintiffs in opposition are more than just a conclusory allegation of belated discovery. Although plaintiffs certainly could plead more, the court has not been asked to, nor could it if asked, resolve whether the fraud premised upon payment of a $1.6 million brokerage fee to defendant Chung is barred by the statute of limitations as a matter of law on the allegations as they exist in the FAC.

Consequently, defendants' motion to strike allegations regarding the October 2020 transaction is DENIED.

B. **PUNITIVE DAMAGE ALLEGATIONS.**

Defendant Chung argues essentially that since plaintiffs have not sufficiently stated any of the underlying tort claims against him, then plaintiffs' claim for punitive damages against him should also be stricken.

In light of the court's ruling above with regard to the demurrer, defendant Chung's motion to strike plaintiffs' claim for punitive damages against him is GRANTED with 10 days' leave to amend.

The Court will prepare the formal order.

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Calendar Line 5
Case Name: *The Skinner Law Group APC v. Tacomania Inc. et al.*
Case No.: 22CV409112

Before the Court is Defendants Tacomania, Inc., Josefina Flores, and Jose A. Romero's Motion for Summary Judgment or, in the alternative, Summary Adjudication. Pursuant to California Rules of Court, rule 3.1308, the Court issues its tentative ruling as follows:

I. Background

This action originates from an employment dispute between Defendants Tacomania, Inc. ("Defendant Tacomania") Josefina Flores ("Defendant Flores"), and Jose A. Romero ("Defendant Romero") (collectively "Defendants") and their former employees Jose Adan Vea Castro ("Mr. Castro") and Jose Valentine Loredo Valle ("Mr. Valle") for failure to pay overtime wages and minimum wage compensation, failure to maintain records, failure to furnish accurate wages statements, and failure to provide meal and rest breaks. (First Amended Complaint ["FAC"] at ¶¶ 16, 18.) Mr. Castro filed suit on July 15, 2022 in the Santa Clara County Superior Court in *Jose Vea Castro et al. v. Tacomania Inc. et al.*, Case No. 22CV403362, for violations of California Labor Code sections 510, 1194, 1198, 1198.5, 1174, 1174.5, 226, 226.7, and 201 through 203 in relation to his employment at Tacomania beginning in or about February 2021. (FAC at ¶ 16.) Likewise, Mr. Valle filed suit on July 19, 2022 in Santa Clara County Superior Court in *Jose Vea Castro et al. v. Tacomania Inc. et al.*, Case No. 22CV403362, for violations of California Labor Code sections 510, 1194, 1198, 1198.5, 1174, 1174.5, 226, 226.7, and 201 through 203 in relation to his employment at Tacomania beginning in or about October 2021. (*Id.* at ¶ 18.)

In connection with these lawsuits, Mr. Castro and Mr. Valle retained Plaintiff the Skinner Law Group APC ("Plaintiff"). (FAC at ¶¶ 16, 17, 18.) The operative First Amended Complaint ("FAC") in this case alleges that, on July 15 and 19, 2022 Plaintiff mailed records requests for both Mr. Castro and Mr. Valle to Defendants, but did not receive a response, and thus Plaintiff could not calculate the wage hour damages for each client. (*Id.* at ¶ 20.) Plaintiff served Defendant the summons and complaint for both Mr. Castro's and Mr. Valle's cases on October 4, 2022. (*Id.* at ¶ 24.) Plaintiff alleges that he was informed by Mr. Castro and Mr. Valle that they live in a vehicle in Columbus Park in San Jose close to the Tacomania food

truck on Taylor Street and Coleman Street in San Jose, where they had previously worked. (*Id.* at ¶ 21.) Mr. Castro and Mr. Valle showed Plaintiff pictures of checks that they had received from Defendants as wages. (*Id.* at ¶ 22.) Plaintiff alleges that those checks did not appear to have been subjected to Federal Insurance Contribution Act ("FICA") withholding. (*Ibid.*) On this basis, Plaintiff alleges on information and belief that "Defendants have a widespread felony practice of willful failing to pay FICA taxes and that Defendants failed to properly pay FICA taxes on Mr. Castro and Mr. Valle's wages throughout the course of their employment for Defendants." (*Ibid.*)

Plaintiff executed a contingency fee agreement with both Mr. Castro and Mr. Valle, which includes a provision granting Plaintiff a lien on all settlement funds received by Mr. Castro and Mr. Valle against any Defendants. (FAC at ¶¶ 17, 19.) Plaintiff alleges that when he was first retained, neither Mr. Castro nor Mr. Valle paid up front and both agreed to a contingency fee representation where Plaintiff would earn 40 percent of the amount recovered as well as reimbursement for costs incurred. (*Id.* at ¶ 23.) A copy of the contingency fee agreement is not attached to the First Amended Complaint or included as evidence. Plaintiff incurred $695.67 in costs for filing fees and service of process fees. (*Id.* at ¶ 25.)

On October 25, 2022, Defendants met with Mr. Castro and Mr. Valle outside the presence of counsel to resolve the employment claims at issue. (FAC at ¶ 26.) The parties signed and executed individualized settlement agreements in both English and Spanish. (*Ibid.*) Plaintiff alleges that "on or about November 15, 2022, counsel for Defendants, Hector Rodriguez advised Plaintiff for the first time of the alleged settlement agreements between Defendants and Plaintiff's clients . . . ." (*Id.* at ¶ 27.) Plaintiff alleges that, in the weeks following that conversation, he attempted to contact his former clients through text messages, WhatsApp messages, and phone calls to no avail. Plaintiff is unable to reach his former clients to date. (*Id.* at ¶ 28.) Plaintiff alleges. Mr. Castro and Mr. Valle breached their contingency fee agreements by failing to reimburse Plaintiff for expenses incurred in filing suit on their behalf. (*Id.* at ¶ 29.) Plaintiff further alleges "Defendants exploited the precarious homelessness of Mr. Vea Castro and Mr. Valle Loredo to induce them to breach their contracts with Plaintiff." (*Ibid.*)

On this basis, Plaintiff filed suit against Defendants on December 27, 2022 for (1) intentional interference with prospective economic relations; (2) negligent interference with prospective economic relations; and (3) intentional interference with contractual relations. This Court granted Defendants' Motion for Judgment on the Pleadings with leave to amend on June 23. 2023. Plaintiff filed the FAC on June 29, 2023. In the FAC, Plaintiff generally alleges with respect to each cause of action that Defendants were involved in a separate Fair Labor Standards Act ("FLSA") lawsuit in 2019 and were familiar with contingency fee representation because counsel for Defendants' former employees in that action represented the former employees on contingency and Defendants agreed to pay $70,000 in attorneys' fees. (FAC at ¶ 14.) Plaintiff further alleges that Defendants interfered with the economic relationship between Plaintiff and its clients for their own economic advantage, but to the disadvantage of Plaintiff and its clients. (*Id.* at ¶ 32.) Plaintiff further alleges that the settlement releases contain no provision to withhold FICA payroll taxes, and are thus independent wrongful acts in the form of Class E felony tax fraud in violation of Title 26, United States Code sections 3102(a) and (b) and 7202. (*Id.* at ¶ 37.) Plaintiff alleges Defendants' efforts to settle directly with its clients was also an independently wrongful act to conceal tax fraud. (*Ibid.*) Plaintiff cites *Levin v. Gulf Ins. Corp.* (1999) 69 Cal.App.4th 1282, 1287 in the FAC to support the proposition that"[p]ayment of the judgment or settlement in disregard of the lien, where the payor has knowledge of the lien, exposes the payor to a claim for intentional interference with prospective economic advantage." (*Id.* at ¶ 31.)

Defendants filed their Motion for Summary Judgment or in the alternative Summary Adjudication pursuant to Code of Civil Procedure section 437c with respect to each cause of action on August 14, 2024. Plaintiff filed its Opposition on October 11, 2024. Defendants filed their reply on October 24, 2024.

II. DISCUSSION

A. PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE

Pursuant to Evidence Code section 452, subdivision (d)[10], Plaintiff requests judicial notice of the Joint Notice of Motion and Motion for Order Approving Plaintiffs' Settlement of FLSA Claims and Dismissing the Action in its Entirety, with Prejudice, filed in United States District Court, Northern California, Case No. 5:17-cv-01691-EJD, on March 22, 2019 and attached as Exhibit A. (RJN at p. 1, Ex. A.) Plaintiff also seeks judicial notice of the Secretary of State website featuring records of Tacomania, Inc. and accessible on the Secretary of State's website and it is files pursuant to Evidence Code section 452, subdivision (h)[11] and attached as Exhibit B. (RJN at p. 2, Ex. B.)

For the reasons explained below, the Court may decline to consider these requests because are not relevant to resolving the issues raised on summary judgment. (See *Gbur v. Cohen* (1979) 93 Cal.App.3d 296, 301 [judicial notice is confined to those matters which are relevant to the issue at hand].) In any event, with respect to Exhibit B, "[s]imply because information is on the Internet does not mean that it is not reasonably subject to dispute." (*Huitt v. Southern California Gas Co.* (2010) 188 Cal.App.4th 1586, 1605, fn. 10 (*Huitt*).) "Although it might be appropriate to take judicial notice of *the existence* of Web sites, the same is not true for their factual content." (*Searless Minerals Operations, Inc. v. State Bd. Of Equalization* (2008) 160 Cal.App.4th 514, 519 [emphasis in original] (*Searless*).) Further, there is no " 'official Web site provision for judicial notice in California." (*Jolley v. Chase Home Finance, LLC* (2013) 213 Cal.App.4th 872, 889 (*Jolley*).)

Accordingly, the request for judicial notice is DENIED.

B. PLAINTIFF'S EVIDENTIARY OBJECTIONS

Plaintiff objects to Defendants' Undisputed Material Facts ("UMF") Nos. 16, 29, 22, 42, and 45 pursuant to California Rules of Court, rule 3.1350(d)[12] on the grounds that these

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[10] Evidence Code section 452, subdivision (d) provides that judicial notice may be taken of "Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States."

[11] Evidence Code section 452, subdivision (h) provides that judicial notice may be taken of "Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy."

[12] Rule 3.1350(d)(2) provides that "the separate statement should only include material facts and not any facts that are not pertinent to the disposition of the motion."

facts are not relevant to the issues raised on summary judgment. Plaintiff also objects to the Declaration of Hector Rodriguez on the grounds that it fails to comply with California Rules of Court, rule 3.1350(g).[13] (Plaintiff's Opposition to MSJ at p. 7:15-17.)

Objections to evidence made in connection with a motion for summary judgment must comply with the Rule of Court 3.1354. This rule requires the filing of two documents, objections, and separate proposed order on the objections, both of which must be in one of the approved formats set forth in the rule. The court is not required to rule on defendants' joint objections as they do not comply with Rule of Court 3.1354. (See *Vineyard Spring Estates v. Super. Ct.* (2004) 120 Cal.App.4th 633, 642 (*Vineyard Spring Estates*) [trial courts only have duty to rule on evidentiary objections presented in proper format]; *Hodjat v. State Farm Mutual Automobile Ins. Co.* (2012) 211 Cal.App.4th 1 (*Hodjat*) [trial court not required to rule on objections that do not comply with Rule of Court 3.1354 and not required to give objecting party a second chance at filing properly formatted papers].)

Here, Plaintiff objects to Defendants' UMFs in its responses and does not cite specific documents or exhibits quoting or setting forth the objectionable statement or material. Plaintiff's objections to the Declaration of Hector Rodriguez are made in the Conclusion section of its Memorandum of Points and Authorities. Plaintiff has not separately served and filed its objections with a separate proposed order. As a result of Plaintiff's failure to comply with Rule 3.1354, the Court need not rule on Plaintiff's objections. "Objections to evidence that are not ruled on for purposes of the motion shall be preserved for appellate review." (Code Civ. Proc. § 437c, subd. (q).)

C. DEFENDANTS' EVIDENTIARY OBJECTIONS

Defendants object to paragraph 3 of the Declaration of Joanna Molina ("Molina Declaration"), stating that "On July 15, 2022, Jose Adan Vea Castro provided me the phone number of Josefina Flores." Defendants' objection is based on Evidence Code section 1200 on hearsay grounds and Evidence Code section 702 that Plaintiff lacks personal knowledge of whether the number provided did in fact belong to Josefina Flores for lack of personal

[13] Rule 3.1350(g) provides, "If evidence in support or in opposition to a motion exceeds 25 pages, the evidence must be separately bound and must include a table of contents."

knowledge. Defendants' Objection No. 1 to paragraph 3 of the Molina Declaration is overruled because Ms. Molina has personal knowledge that the phone number was provided to her by Mr. Castro, and the statement is not offered for its truth as to whether the number in fact belonged to Josefina Flores.

Defendants object to paragraph 4 of the Molina Declaration, which provides that ". . . we had mailed [Defendant Flores] two letters on behalf of Jose Valentin Loredo Valle and Adan Vea Castro, but I'm informed that neither Ms. Flores nor Mr. Romero nor anyone else responded to those letters." Defendants' objection is based on Evidence Code section 1200 on hearsay grounds, and Evidence Code sections 401 and 402 for lack of personal knowledge. Defendants' Objection No. 2 to paragraph 4 of the Molina Declaration is overruled to the extent Ms. Molina attests that the letters were mailed to Defendant Flores as Ms. Molina has personal knowledge of preparing and sending those letters. However, Objection No. 2 is sustained as to the latter statement because Ms. Molina does not have personal knowledge of whether the letters were received.

Defendants object to paragraph 3 of the Declaration of Thomas P. Skinner ("Skinner Declaration"), indicating that "Whenever a client hires me to pursue their wage and hour claims, the first step I take is to request the client's personnel and payroll records from the client's employer. In a prior matter for a different client, an attorney from Littler Mendelson rejected my request for payroll and personnel records on behalf of a former employee because the attorney requested proof of representation by providing a copy of the worker's identification." Defendants' objection is based on Evidence Code sections 210 and 350 for lack of relevance. Defendants' Objection No. 3 is overruled because Mr. Skinner's statement is relevant to counsel's process for investigating the claims that underlie the circumstances giving rise to this case.

Defendants object to paragraph 4 of the Skinner Declaration, stating that "When I met with Mr. Vea Castro, he informed me he lived in a trailer with another employee of Defendants, Jose Valentine Valle Loredo, near a storefront operated by Defendants and that he didn't have a mailing address. Defendants' objection is based on Evidence Code sections 210, 350, 1200, and 702 for lack of relevance, hearsay, and lack of personal knowledge.

Defendants' Objection No. 4 is sustained as Mr. Castro and Mr. Valle's living conditions are not relevant to the underlying causes of action for tortious interference.

Defendants object to paragraph 5 of the Skinner Declaration, declaring that "Several days later on July 19, 2022, Jose Valentine Valle Loredo hired my firm to represent him in Defendants for the same illegal wage and hour practices that Mr. Vea Castro described to me, and for which Defendants settled the federal class action lawsuit in 2019." Defendants' objection is based on Evidence Code sections 210, 350, and 702 for lack of relevance, hearsay, and lack of personal knowledge. Defendants' Objection No. 5 is overruled. Mr. Skinner's statement is based on personal knowledge with respect to the interactions he had with Mr. Valle and Mr. Castro, and does not contain the specific statements made to him by Mr. Valle and Mr. Castro with respect to the wage and hour practices. The statement here largely concerns the fact that Mr. Skinner's law firm was retained to represent Mr. Castro and Mr. Vague for the claims they had discussed.

Defendants object to paragraph 6 of the Skinner Declaration, which declares that "The letters attached hereto as Exhibits A and B did not return to my office as undeliverable. As indicated in the concurrently filed Request for Judicial Notice, Exhibit B, Defendants changed their mailing address about two months after I sent these letters." Defendants' objection is based on Evidence Code sections 210 and 350 for lack of relevance. Defendants' Objection No. 6 to paragraph 6 of the Skinner Declaration is overruled to the extent the statement asserts that the letters showing proof of representation and an economic relationship between Plaintiff and its clients. However, the Court has declined to consider Exhibit B as part of Plaintiff's Request for Judicial Notice as the question of whether the letters were actually received is not at issue and sustains the objection in this regard.

Defendants object to paragraph 12 of the Skinner Declaration, providing that "Attached hereto as Exhibit C is a true and accurate copy of Defendants' Responses to Plaintiff's Request for Production of Documents, Set Two Request Nos. 13 through 18 of this set seek documents showing that Defendants compiled with applicable tax laws during the employment of Mr. Vea Castro and Mr. Valle Loredo, and specifically documentation showing the tax treatment of the settlement payments. Defendants refused to provide these documents, and since the court

already sanctioned me for seeking to compel relevant documents in the first set of RPDs, I did not move to compel documents in the second set." Defendants' objections are based on Evidence Code sections 210 and 350 for lack of relevance. Defendants' Objection No. 7 to paragraph 12 of the Skinner Declaration is overruled. The statement concerns the discovery propounded between the parties and Plaintiff's efforts to obtain evidence with respect to the issues raised by summary judgment.

Defendants object to paragraph 13 of the Skinner Declaration, which states that "Attached hereto as Exhibit D are true and accurate copies of the settlement agreements that Hector Rodriguez first sent me in November 2022. Unlike the copies provided in Defendants' moving apers in the instant motion, these are not redacted. Defendants redacted the clause stating these settlement amount and requiring a W-9, but the agreements purport to resolve wage claims, and thus at least a portion of the settlement should have been reported on a W-4 highlighted the portions of this agreement exhibiting Defendants' tax fraud." Defendants' objections are based on Evidence Code sections 210 and 350 for lack of relevance. Defendants' Objection No. 8 to paragraph 13 of the Skinner Declaration is overruled. These statements are relevant to paragraphs 2 and 37 if the FAC where Plaintiff asserts that the settlement agreements do not contain any provisions to withhold any FICA payroll taxes, and that the settlement releases are independent wrongful acts themselves.

The Court declines to consider Objection Nos. 9 and 10 as the Court has already deemed these documents not relevant in considering the Request for Judicial Notice.

D. LEGAL STANDARD

"A party may move for summary judgment in an action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding." (Code Civ. Proc. § 437c, subd. (a)(1).) A "motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc. § 437c, subd. (c).) Summary adjudication works the same way, except it acts on specific causes of action or affirmative defenses, rather than on the entire complaint. (§ 436c, subd. (f).) . . . Motions for summary

adjudication proceed in all procedural respects as a motion for summary judgment.'" (*Hartline v. Kaiser Foundation Hospitals* (2005) 132 Cal.App.4th 458, 464 (*Hartline*).)

A defendant moving for summary judgment or summary adjudication bears the initial burden "of showing that a cause of action has no merit" by "show[ing] one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to that cause of action." (Code Civ. Proc., § 437, subd. (p)(2).) If the defendant makes such a showing, the burden shifts to the plaintiff "to show that a triable issue of one or more material fact exists as to that cause of action or a defense thereto." (*Ibid.*)

Generally, the motion must be supported by evidence, such as declarations and discovery responses, and include a separate statement, listing all material facts the moving party contends are undisputed. (Code Civ. Proc., § 437c, subd. (b)(1); see also Rules of Court, rule 3.1350(c)(2).) The opposition shall also be supported by evidence and include a responsive separate statement. (Code Civ. Proc. § 437c, subd. (b)(2)-(3).) While a party can object to the admissibility of evidence presented (Cal. Rules of Court, rule 3.1352), a court cannot weigh the evidence or deny summary judgment or adjudication on the ground any particular evidence lacks credibility. (*Melorich Builders v. Superior Court* (1984) 160 Cal.App.3d 931, 935; see also *Lerner v. Superior Court* (1977) 70 Cal.App.3d 656, 600.)

"Under California's traditional rules, [the Court] determine[s] with respect to each cause of action whether the defendant seeking summary judgment has conclusively negated a necessary element of the plaintiff's case, or has demonstrated that under no hypothesis is there a material issue of fact that requires the process of trial, such that the defendant is entitled to judgment as a matter of law. [Citations.]" (*Guz v. Bechtel Nat. Inc.* (2000) 24 Cal.4th 317, 334-335 (*Guz*).) "Under the current version of the summary judgment statute, a moving defendant need not support his motion with affirmative evidence negating an essential element of the responding party's case. Instead, the moving defendant may (through factually vague discovery responses or otherwise) point to the absence of evidence to support the plaintiff's case. When that is done, the burden shifts to the plaintiff to present evidence showing there is a triable issue of material fact. If the plaintiff is unable to meet [his or her] burden of proof

regarding an essential element of [his or her] case, all other facts are rendered immaterial. [Citations.]" (*Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472, 482.)

"The defendant has shown that the plaintiff cannot establish at least one element of the cause of action by showing that the plaintiff does not possess, and cannot reasonably obtain, needed evidence[.]" (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843 (*Aguilar*).) The defendant must produce evidence on this point, not merely point out that the plaintiff does not possess and cannot reasonably obtain the evidence. (*Ibid.*) In ruling on the motion, "the court must 'consider all of the evidence' and 'all' of the 'inferences' reasonably drawn therefrom [citation], and must view such evidence [citations] and such inferences [citations], in the light most favorable to the opposing party." (*Ibid.*) "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Id.* at p. 850, fn. omitted.) Thus, a party "cannot avoid summary judgment by asserting facts based on mere speculation and conjecture, but instead must produce admissible evidence raising a triable issue of fact. [Citations.]" (*LaChapelle v. Toyota Motor Credit Corp.* (2002) 102 Cal.App.4th 977, 981.)

E. MERITS OF THE MOTION

Although Defendants raise individual issues for summary adjudication, Defendants in fact seek summary judgment with respect to the entirety of Plaintiff's First Amended Complaint. Defendants challenge all three causes of action, including the first cause of action for intentional interference with prospective economic relations, second cause of action for negligent interference with prospective economic advantage, and third cause of action for intentional interference with contractual relations. The elements for each of these causes of action are listed below:

To state a claim for intentional interference with prospective economic relations, Plaintiff must plead the following: " '(1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic

harm to the plaintiff proximately caused by the acts of the defendant.'" (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1153 (*Korea Supply Co.*).)

"The elements of negligent interference with prospective economic advantage are (1) the existence of an economic relationship between the plaintiff and a third party containing the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) the defendant's knowledge (actual or construed) that the relationship would be disrupted if the defendant failed to act with reasonable care; (4) the defendant's failure to act with reasonable care; (5) actual disruption of the relationship; and (6) economic harm proximately caused by the defendant's negligence." (*Redfearn v. Trader Joe's Co.* (2018) 20 Cal.App.5th 989, 1005 (*Redfearn*) [overruled in part on other grounds].)

"The elements which a plaintiff must plead to state the cause of action for intentional interference with contractual relations are (1) a valid contract between a plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach of disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage." (*Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126 (*Pacific Gas & Electric Co.*).)

In their Separate Statement of Undisputed Material Facts ("UMF"), Defendants categorize the facts collectively based on the overlapping elements for each of these claims. The Court adopts the same approach at least with respect to the elements that overlap for each of these causes of action based on the Issues stated in Defendants' Notice of Motion for Summary Judgment or in the alternative Summary Adjudication. The Court thus considers Issues 1, 5, and 8 together, Issues 2 and 6 together, and Issues 3, 7, and 10 together. The Court separately considers Issue 4 and Issue 9. Accordingly, the Court considers the parties' arguments raised on summary judgment below.

1. Issues 1, 5, and 8: Whether Defendants Had Knowledge of Plaintiff's Relationship and Contract with Mr. Valle and Mr. Castro

In Issues 1, 5, and 8, Defendants contend that all three causes of action fail because Plaintiff cannot establish that the Defendants were aware of any economic relationship

between Plaintiff and Mr. Valle or Mr. Castro. All three causes of action require knowledge of the contractual or economic relationship. (Defendants' MPA ISO MSJ at pp. 7:17-18; 15:12-14. (See *Korea Supply, supra,* 29 Cal.4th at p. 1153; *Redfearn, supra,* 20 Cal.App.5th at p. 1005; *Pacific Gas & Electric Co., supra,* 50 Cal.3d at p. 1126.)

"[T]he tort of intentional interference with prospective economic advantage does not require a plaintiff to plead that the defendant acted with the specific intent, or purpose, of disrupting the plaintiff's prospective economic advantage. Instead, to satisfy the intent requirement for this tort, it is sufficient to plead that the defendant knew that the interference was certain or substantially certain to occur as a result of its action." (*Korea Supply Co., supra,* 29 Cal.4th at p. 1153.) The only difference between intentional and negligent interference with prospective economic advantage is with respect to the defendant's intent; however, where summary judgment is directed to other elements, they are considered together. (See, e.g., *Crown Imports, LLC v. Superior* Court (2014) 223 Cal.App.4th 1395, 1404 (*Crown*).) Likewise, knowledge of a contractual relationship is sufficient to show knowledge for the tort of inducing breach of contract. (*I-CA Enterprises, Inc. v. Palram Americas, Inc.* (2015) 235 Cal.App.4th 257, 290 (*I-CA Enterprises*).)

Although Plaintiff argues Defendants knew of the relationship with Mr. Castro and Mr. Valle, Defendants maintain that it did not know of the contingency fee agreement between them. (Defendants' MPA ISO MSJ at p. 7:17-18.) In response to Defendants' UMFs and as part of Plaintiff's own Additional Material Facts ("AMF"), Plaintiff contends that Defendants are sophisticated employers who were sued in a similar FLSA class action for wage and hour claims in which they paid over $200,000 to settle and $70,000 in attorneys' fees based on the contingency fee agreement between the plaintiffs there and their counsel of record. (UMF Nos. 14, 40; Additional Material Facts ["AMF"] No. 46.) The Court does not find these facts material to the issues on summary judgment. At issue on summary judgment are the claims within the First Amended Complaint for tortious interference, and not the FLSA claims from 2019 that were filed in a different court entirely. Although the original lawsuits filed by Mr. Castro and Mr. Valle in 2022 give rise to the facts of this case, that case has since settled, and the claims contained therein are no longer at issue. While Plaintiff relies on that lawsuit to

assert that Defendants are familiar with contingency fee agreements, Defendants' general knowledge or understanding of the concept of a contingency fee agreement does not show that they were aware of the fee agreement between Plaintiff and its clients in this case. Moreover, Plaintiff's arguments are speculative because a fee arrangement between attorney and client can take several different forms. The Court has denied Plaintiffs' Request for Judicial Notice of Exhibit A for this very reason.

Defendants rely on *Winchester Mystery House, LLC v. Global Asylum, Inc.* (2012) 210 Cal.App.4th 579, 597 (*Winchester*) to support the notion that "the *extent* of a party's knowledge of the contract or economic relationship can determine whether there is a triable issue of fact." (Defendant's MPA ISO MSJ at p. 7:23-24.) There, the owner of the Winchester Mystery House ("Winchester") sued a filmmaker for the unauthorized use of its trademark, unfair competition, and interference with contract and economic advantage. (*Winchester, supra,* 210 Cal.App.4th at p. 586.)

In determining whether the defendant knew of Winchester's agreement to provide an exclusive story to an unidentified third party, the Sixth District Court of Appeal considered e-mails and cease and desist letters exchanged between the parties. (*Winchester, supra,* 210 Cal.App.4th at pp. 596-597.) In disclosing that Winchester had signed a contract with another company for exclusive rights to its story, the court noted that the "e-mail did not identify the production company, the terms, or indicate that the contract related to the use of any trademarks. It also did not indicate the type of production company or whether the contract related to the production of a feature film, a documentary, a cartoon, a commercial, and in-house video or audio tour, a novel, or a television show." (*Id.* at p. 597.) The court concluded that "based on this information, defendant could not have determined that producing and distributing this film would interfere with plaintiff's contractual obligation to provide exclusive story rights to an unidentified third party." (*Ibid.*)

Likewise, the court noted that the cease-and-desist letters "did not refer to any contractual or other economic relationship between plaintiff and any third party, this evidence does not establish either the knowledge or intent elements of the interference claims, that is, that defendant was aware of plaintiff's commercial relationships with either IDW or any other

third party and that distribution of is film would disrupt these relationships." (*Winchester, supra,* 210 Cal.App.4th at p. 597.) The court's holding was specific to the fact that the defendant there did not know of any contractual or economic relationship with any third party. (*Ibid.*) It remains unclear, however, whether *Winchester's* holding is limited to this circumstance or extends where a defendant knows of the Plaintiff's relationship with a specific third party, but does not know of the terms or circumstances defining that relationship.

However, at least with respect to intentional interference with contractual relations, "[t]o recover damages for inducing a breach of contract, the plaintiff need not establish that the defendant had full knowledge of the contract's terms. Comment i to Restatement Second of Torts, section 766, . . . states: 'To be subject to liability [for inducing a breach of contract], the actor must have knowledge of the contract with which he is interfering and of the fact that he is interfering with the performance of the contract." (*Little v. Amber Hotel Co.* (2011) 202 Cal.App.4th 280, 302 (*Little*).)

At issue here is whether Defendant knew of the contingency fee agreement between Plaintiff and Mr. Valle and Mr. Castro and whether such specific knowledge is material to the inquiry on Issues 1, 5, and 8. Plaintiff has not offered any facts to show that Defendant had knowledge of the contingency fee agreement between it and its clients. Much like *Winchester*, the letters sent to Defendants, calls made by Plaintiff's staff, and the complaints served upon them make no mention of the contingency fee agreement between Plaintiff and its clients. (UMF Nos. 7 and 8; Declaration of Joanna Molina ["Molina Decl."] at ¶ 4; Declaration of Thomas P. Skinner ["Skinner Decl."] at ¶¶ 3, 5, 6, Ex. A, and Ex. B.) Defendants Flores and Romero also attest in their declarations that Mr. Castro and Mr. Valle did not share any details regarding the nature and/or scope of their relationship with Plaintiff. (UMF No. 8.) Thus, Plaintiffs point to no evidence Defendants knew of the contingency arrangement between Plaintiff, Mr. Valle, and Mr. Castro.

However, as stated above, Plaintiff need not establish Defendant had knowledge of the contract's specific terms. (*Little, supra,* 202 Cal.App.4that p. 302.) Knowledge of the contractual relationship is enough. (*I-CA Enterprises, supra,* 235 Cal.App.4th at p. 290.) Here, unlike in *Winchester*, Plaintiff's efforts to communicate with Defendants at least made the

nature of their relationship known; whereas, no specific third parties were identified in the communications with Winchester.

Defendants' own evidence submitted in support of summary judgment demonstrates that they at least knew of the attorney-client relationship between Plaintiff and their former employees. The First Amended Complaint and Plaintiff's discovery responses provide that Plaintiff served the complaints filed on behalf of Mr. Valle and Mr. Castro on October 4, 2022, with Plaintiff's name on the summons and complaint. (UMF No. 3.) The declarations submitted by Plaintiff in opposition to summary judgment likewise confirm that Defendants at least knew of the relationship between them because Plaintiff mailed letters to Defendants informing them that he had been hired to represent Mr. Castro and Mr. Valle. (Skinner Decl. at ¶¶ 3, 5, Ex. A, Ex. B.) Joanna Molina ("Ms. Molina"), Plaintiff's former employee, also attests that she attempted to call Defendant Flores and spoke to her briefly to inquire about the letters that had been sent to from Plaintiff on behalf of Mr. Valle and Mr. Castro. (Molina Decl. at ¶¶ 3, 4, 5.) Even if Defendants did not know of the contingency fee agreement between Plaintiff and its clients, a triable issue of fact exists because the evidence demonstrates Defendants at least knew of the attorney-client relationship between them. The Court thus rejects the arguments raised in Issues 1, 5, and 8.

2. ISSUES 2 AND 6: INDEPENDENTLY WRONGFUL CONDUCT

In Issues 2 and 6, Defendants contend that the first and second causes of action for intentional and negligent interference with prospective economic c advantage fail because Plaintiff cannot establish that Defendants engaged in any independently wrongful acts. Both causes of action require independently wrongful acts separate from the interference itself. (Defendants' MPA ISO MSJ at pp. 9:10-14, 15:12-14;see, also, *Korea Supply, supra,* 29 Cal.4th at p. 1153; *Redfearn, supra,* 20 Cal.App.5th at p. 1005; *Pacific Gas & Electric Co., supra,* 50 Cal.3d at p. 1126; *Crown, supra,* 223 Cal.App.4th at p. 1404.)

As noted above, Plaintiff cites *Levin v. Gulf Ins. Corp.* (1999) 69 Cal.App.4th 1282, 1285 (*Levin*) in the FAC to support the proposition that "[p]ayment of the judgment or settlement in disregard of the lien, where the payor has knowledge of the lien, exposes the payor to a claim for intentional interference with prospective economic advantage." (FAC at

¶ 31.) However, as indicated in the prior section, there is no evidence Defendants had knowledge of the lien or contingency fee agreement. Moreover, mere exposure to a claim for intentional interference of prospective economic advantage is not enough, as a plaintiff must prove all elements of the claim, including independently wrongful conduct as in this instance.

A plaintiff must plead that "the defendant's conduct was 'wrongful by some legal measure other than the fact of interference itself.'" (*Ixchel Pharma, LLC v. Biogen, Inc.* (2020) 9 Cal.5th 1130, 1142 (*Ixchel*); see also *LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 342 (*LiMandri*) ["plaintiff seeking to recover for alleged interference with prospective economic relations has the burden of pleading . . . that the defendant's interference was wrongful by some other measure beyond the fact of the interference itself'"][emphasis omitted].) While the California Supreme Court has held that "an action will lie for the intentional interference by a third person with a contractual relationship either by unlawful means *or* by means otherwise lawful when there is a lack of sufficient justification,"[14] the Court has also addressed "the need to draw and enforce a sharpened distinction between claims for tortious disruption of an *existing* contract and claims that a *prospective* contractual or economic relationship has been interfered with by the defendant." (*Della Penna v. Toyota Motor Sales, USA* (1995) 11 Cal.4th 376, 392 (*Della Penna*) [emphasis in original].)

The *Della Penna* court emphasized that the two torts are distinct, explaining "[t]he courts provide a damage remedy against third party conduct intended to disrupt an existing contract precisely because the exchange of promises resulting in such a formally commenced economic relationship is deemed worthy of protection from interference by a stranger to the agreement. Economic relationships short of contract, however, should stand on a different legal footing as far as the potential for tort liability is reckoned." (*Ibid.*) The Court concluded that a "plaintiff seeking to recover for an alleged interference with prospective contractual or economic relations must plead and prove as part of its case-in-chief that the defendant not only interfered with the plaintiff's expectancy but engaged in conduct that was wrongful by some legal measure other than the fact of interference itself." (*Id.* at p. 393.)

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[14] *Herron v. State Farm Mut. Ins. Co.* (1961) 56 Cal.2d 202, 205 (emphasis added).

Plaintiff's FAC alleges the wrongful acts as Defendants' efforts to settle directly with its clients and conceal tax fraud. (FAC at ¶ 37.) Specifically, Plaintiff alleges that the settlement releases contain no provisions to withhold FICA payroll taxes, and are thus independent wrongful acts in the form of Class E felony tax fraud in violation of Title 26 of the United States Code, section 3102, subdivisions (a) and (b), and section 7202. (*Ibid.*) Defendants' evidence supports that on October 25, 2022, they conducted settlement negotiations directly with Mr. Valle and Mr. Castro and reached an agreement in the absence of any attorneys. (UMF No. 13.) Mr. Valle and Mr. Castro signed a settlement agreement in their native Spanish language resolving all claims alleged in the complaints filed by Plaintiff on their behalf. (*Ibid.*) Although it is disputed whether Mr. Valle and Mr. Castro informed Defendants that they had an economic or contractual relationship with Plaintiff (UMF No. 15), the letters, phone calls, and complaint made by Plaintiff indicate that Defendants nevertheless knew of the relationship. (Molina Decl. at ¶ 4; Skinner Decl. at ¶¶ 3, 5, 6, Ex. A, Ex. B.)

However, the declarations provided by Defendant Flores and Defendant Romero state that in meeting with Mr. Valle and Mr. Castro, Defendants did not intend to disrupt any economic or contractual relationship between Plaintiff and its clients. (UMF No. 14.) Both Defendants attest that "from our perspective, the settlements were made to save money on fees and costs and to keep our struggling business, into which we have invested countless hours of work, alive. If costs had not been so high and the impact of that on our business so severe, we would have fought those cases to prove that we engaged in no wrongdoing." (Declaration of Josefina Flores ["Flores Decl."] at ¶ 9; Declaration of Jose A. Romero ["Romero Decl."] at ¶ 9.)

Plaintiff offers no authorities or additional facts to raise a triable issue as to whether settling directly with its clients constitutes an independently wrongful act. Plaintiff instead states, "Defendant misreads Plaintiff's First Amended Complaint: the act of settling with Mr. Loredo Valle and Mr. Vea Castro is *both* an act of interference with Plaintiff's prospective advantage, and independent from the interference, an act of tax fraud." (Plaintiff's Opposition to MSJ at p. 4:14-16.) As addressed in this Court's order granting Defendants' Motion for Judgment on the Pleadings with leave to amend, "Plaintiff has not directed the Court to any

additional authority that states in a cause of action for intentional interference with prospective economic relations, a plaintiff is not required to allege defendant's wrongful conduct if an attorney's contingency fees are at issue." (06/23/23 Order Granting MJOP at p. 6:22-24.) This Court discussed and dismissed the authorities cited by Plaintiff and further noted that Plaintiff had conceded that it had not alleged wrongful conduct outside of the interference itself. (*Id.* at pp. 6:25-7:8.) Thus, the act of settling directly with Plaintiff's clients is the alleged interference and not an independently wrongful act on its own.

Plaintiff has since amended its complaint to allege that the checks its clients received as wages were not subject to FICA withholding and that Defendants have a widespread felony practice of failing to pay FICA taxes. (FAC at ¶ 37.) "The pleadings play a key role in a summary judgment motion and 'set the boundaries of the issues to be resolved at summary judgment.'" (*Jacobs v. Coldwell Banker Residential Brokerage Co.* (2017) 14 Cal.App.5th 438, 444[quoting *Nativi v. Deutsche Bank National Trust Co.* (2014) 223 Cal.App.4th 261, 289].)

In support of its opposition to the motion, Plaintiff provides the declaration of its principal and counsel of record, Thomas P. Skinner ("Mr. Skinner"). Therein, Mr. Skinner states that in the original lawsuits, he requested the production of documents for the time records and payroll statements of his clients, but that Defendants refused to provide them, and this Court sanctioned him for moving to compel the production of these documents. (Skinner Decl. at ¶ 11.) In this matter, Plaintiff has likewise requested documents showing that Defendants complied with applicable tax laws during the employment of his clients, but Defendants have again refused to provide these documents. (Skinner Decl. at ¶ 12.) Mr. Skinner states that he did not move to compel these documents this time around because this Court has previously sanctioned him. (*Ibid.*) Plaintiff attaches Defendants' Responses to Request for Production of Documents (Set Two) as Exhibit C to Mr. Skinner's declaration and specifically cites Request Nos. 13 through 18 seeking documents pertaining to both the settlement agreement and FICA payments made for work performed by both Mr. Castro and Mr. Valle. (Skinner Decl. at ¶ 12, Ex. C.) Defendants have objected to each of these requests. (*Ibid.*) Plaintiff has not moved to compel these documents and he points to no evidence to

establish a triable issue of fact as to whether Defendants have a widespread felony practice of failing to pay FICA taxes, including with respect to Mr. Castro and Mr. Valle's wages.

In opposition, Plaintiff's argument instead shifts to the notion that "Defendants should have paid the settlement payments to Mr. Loredo Valle and Mr. Vea Castro via a W2 form, which would have withheld and remitted FICA and federal income taxes, and should have requested a Form W4 from them, but instead they requested a Form W9, which would provide Defendants the ability to issue Form 1099s, to Mr. Loredo Valle and Mr. Vea Castro to deduct such payments from Defendants' income taxes without complying with their duty to withhold and remit the federal income and FICA taxes." (Plaintiff's Opposition to MSJ at p. 4:16-22.) Plaintiff points to the fact that Defendants redacted the portions of the settlement agreements instructing Mr. Valle and Mr. Castro to provide a Form W9 to resolve claims for unpaid wages, when Defendants should have required a Form W4 to remit FICA taxes from the unpaid wages. (Skinner Decl. at ¶¶ 12, 13, 14, Ex. C, Ex. D.) In support, Plaintiff provides an unredacted version of the settlement agreement that is in Spanish. (Skinner Decl., Ex. D.) Plaintiff has not provided the Court with an English translation of this agreement.

Moreover, Plaintiff provides no authorities or facts to raise a triable issue as to whether the execution of the settlement agreement in fact constitutes tax fraud or a Class E felony. Although Defendants provide Plaintiff's discovery responses and attempt to construe the allegations based on a check from June 29, 2022 pre-dating the settlement, (Declaration of Hector Rodriguez ["Rodriguez Decl,"] at ¶ 13, Ex. H), Defendant is not required to go "beyond the allegations of the pleading, with respect to new theories that could have been pled, but for which no motion to amend or supplement the pleading was brought, prior to the hearing on the dispositive motion." (*Howard v. Omni Hotels Management Corp.* (2012) 203 Cal.App.4th 403, 421, see *California Bank & Trust v. Lawlor* (2013) 222 Cal.App.4th 625, 637, fn. 3 ["[a] party may not oppose a summary judgment motion based on a claim, theory, or defense that is not alleged in the pleadings," and "[e]vidence offered on an unpleaded claim, theory, or defense is irrelevant because it is outside the scope of the pleadings"].)

In providing Plaintiff's discovery responses, Defendants have shown that Plaintiff does not have needed evidence to establish this element. (See *Aguilar, supra,* 25 Cal.4th at p. 843.)

As evaluated above, Plaintiff cannot raise a triable issue of fact as to whether Defendants engaged in any independently wrongful acts. Since the disposition of these issues negate the first and second causes of action in their entirety, the Court grants summary adjudication as to the first and second causes of action. Thus, the Court need not consider Issues 3, 4, and 7 with respect to these claims.

3. ISSUE 9: DISRUPTION OF CONTRACTUAL RELATIONSHIP

As framed in the Notice of Motion, Issue 9 is that "Plaintiff's Third Cause of Action for Intentional Interference with Contractual Relations fails because Plaintiff cannot establish that the Defendants' acts were designed to disrupt any contractual relationship between Plaintiff and Jose Valentin Loredo Valle and Jose Adan Vea Castro." (Defendant's Notice of MSJ at p. 2:22-26.) While stated in the Notice, Defendants do not separately address or state facts with respect to Issue 9 in their Separate Statement. However, in the moving papers, Defendants argue Plaintiff has not identified any evidence proving that the settlement negotiations were intended to disrupt the contract. (Defendant's MPA ISO MSJ at p. 19:22-20:1.) Defendants argue there are no facts that their independent efforts to settle resulted in Mr. Valle and Mr. Castro's breach of their contingency fee agreement. (*Ibid.*)

On this element, however, "plaintiff need not allege an actual breach, but only interference with or disruption of his or her contractual relations." (*LiMandri, supra,* 52 Cal.App.4th at p. 344.) "[T]he tort of intentional interference with performance of a contract does not require that the actor's primary purpose be disruption of the contract." (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 56.) It is enough that "the actor does not act for the purpose of interfering with the contract or desire it but knows that the interference is certain or substantially certain to occur as a result of his action." (*Ibid.*) "The fact that this interference with the other's contract was not desired and was purely incidental in character is, however, a factor to be considered in determining whether the interference was improper." (*Ibid.*) Moreover, a "cause of action for interference with contractual relations is distinct and requires only proof of interference."

As stated in this Court's order granting Defendants' Motion for Judgment on the Pleadings, although the California Supreme Court has held that a plaintiff must allege an

independently wrongful act for interference with at-will contracts, "[t]he right of a client to terminate the attorney-client relationship at will does not justify breach inducement by a third party. [Citation.]" (*Abrams v. Fox* (1974) 39 Cal.App.3d 604, 607-608 (*Abrams*); *Ixchel, supra,* 9 Cal.5th at p. 1142.) "It is well established that an action will lie for the intentional interference by a third person with a contractual relationship either by unlawful means or by means otherwise lawful when there is a lack of sufficient justification for such interference . . ." (*Abrams, supra,* 39 Cal.App.3d at p. 607.) This Court has recognized that in *Herron, supra,* 56 Cal.2d at p. 205, the California Supreme Court determined that there "is no valid reason why this rule should not be applied to an attorney's contingent fee contract." (06/23/23 Order Granting MJOP at p. 12:23-13:26.)

Here, the Court has already determined that a triable issue of fact exists as to Issue 8 regarding Defendants' knowledge of the attorney-client relationship and the contract ensuing therefrom even if they did not know the specific terms of the agreement pertaining to the contingency fee. It is undisputed that Defendants settled their claims with Plaintiff's clients without involving Plaintiff, despite receiving notice of Plaintiff's representation through letters, phone calls, and the complaint. (UMF Nos. 4, 12, 26, 38.) Although settling without attorneys is not independently wrongful as discussed above, this act of interference is enough for intentional interference with contractual relations, unlike the other claims. Defendants have not offered any evidence to negate this element. Although Defendants Flores and Romero attest that they did not intend to interfere with Plaintiff's contractual relationship, and that they only settled in the absence of attorneys to save costs, this is not enough. (Flores Decl. at ¶ 9; Romero Decl. at ¶ 9.) While settling in the absence of attorneys may have also saved costs for Mr. Valle and Mr. Castro, it nonetheless resulted in the loss of fees for Plaintiff as alleged in the FAC. Thus, the undisputed material facts here are sufficient for creating a triable issue of material fact with respect to whether it was substantially certain that Defendant's conduct would disrupt Plaintiff's contractual relationship with its clients. Nonetheless, the Court rejects the arguments raised with respect to Issue 9.

4. ISSUE 10: PROXIMATE CAUSATION

In Issues 10, Defendants contend that the third cause of action for intentional interference with contractual relations fails because Plaintiff cannot establish causation or that Defendant's conduct was a substantial factor in inducing breach of the contingency fee agreement. (Defendants' MPA ISO MSJ at p 20:10-15.)

"Determining whether a defendant's misconduct was the cause in fact of a plaintiff's injury involves essentially the same inquiry in both contract and tort cases. 'The test for causation in a breach of contract . . . action is whether the breach was a substantial factor in causing the damages.' Similarly, in tort cases, 'California has definitively adopted the substantial factor test . . . for cause-in-fact determinations. Under that standard, a cause in fact is something that is a substantial factor in bringing about the injury.'" (*Tribeca Companies, LLC v. First American Title Ins. Co.* (2015) 239 Cal.App.4th 1088, 1103 [internal citations omitted]; see *Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 968-969 (*Rutherford*); *Franklin v. Dynamic Details, Inc.* (2004) 116 Cal.App.4th 375, 391 [applying the substantial factor test to causes of action for interference with contractual relations and interference with prospective economic relations].)

"The term 'substantial factor' has not been judicially defined with specificity, and indeed it has been observed that it is 'neither possible nor desirable to reduce it to any lower terms.'" (*Rutherford, supra,* 16 Cal.4th at p. 969 [internal citations omitted].) "[A] force which plays only an 'infinitesimal' or 'theoretical' part in bringing about injury, damage, or loss is not a substantial factor. Undue emphasis should not be placed on the term 'substantial'" (*Ibid.*) "Further, a substantial factor need not be the only factor contributing to the plaintiff's alleged harm." (*Jenni Rivera Enterprises, LLC v. Latin World Entertainment Holdings, Inc.* (2019) 36 Cal.App.5th 766, 792 (*Jenni*).)

The substantial factor test, originating from the Restatement Second of Torts, provides that an actor's conduct "is not a substantial factor in bringing about harm to another if the harm would have been sustained" in the absence of the actor's conduct. (Rest.2d Torts, § 432(1).) "In the context of a cause of action for inducing interference with contractual relations, some courts have stated that causation exists where plaintiff can show the contract would have been

performed in the absence of defendant's alleged inducements." (*Jenni, supra,* 36 Cal.App.5th at p. 792.) "It must be alleged and proved that defendant's act caused the breach, i.e., that otherwise the contract would have been performed." (5 Witkin Summary of Cal. Law (11th ed. 2018) Torts, § 850, p. 1156.)

While causation is ordinarily a question of fact, it can be decided as a matter of law where the undisputed material facts only permit one reasonable conclusion. (*Slovensky v. Friedman* (2006) 142 Cal.App.4th 1518, 1528.) The plaintiff bears the burden of proof on causation. (*Perez v. Ow* (1962) 200 Cal.App.2d 559, 561.) "The plaintiff must introduce evidence which affords a reasonable basis for the conclusion that it is more likely than not the conduct of the defendant was a cause in fact of the result. A mere possibility of such causation is not enough; and when the matter remains one of pure speculation or conjecture, or the probabilities are at best evenly balanced, it becomes the duty of the court to direct a verdict for the defendant." (*Ortega v. Kmart Corp.* (2001) 26 Cal.4th 1200, 1205.) Thus, Plaintiff bears the burden of proving a triable issue of fact exists with respect to causation.

In the FAC, Plaintiff alleges that Mr. Valle and Mr. Castro breached their contingency fee agreements with Plaintiff by not paying a contingency fee and reimbursing Plaintiff for costs related to the lawsuit it filed on their behalf. (FAC at ¶ 29.) However, Defendants Flores and Romero both provide in their declarations that Defendants did not prevent Plaintiff from meeting with its clients prior to after meeting with them on October 25, 2022. (Flores Decl. at ¶ 14; Romero Decl. at ¶ 14.) In addition to these declarations, Defendants have also indicated through their discovery responses that they did not prevent or obstruct Mr. Valle or Mr. Castro from paying Plaintiff its fees or costs associated with the lawsuit Plaintiff filed on their behalf. (*Ibid.*) Thus, Defendants maintain they are not the reason Mr. Castro and Mr. Valle failed to honor their contingency fee agreements.

Plaintiff, on the other hand, has not put forth any evidence to meet its burden of proof and create a triable issue as to causation. Plaintiff cannot establish that but for Defendants' insistence to settle without attorneys, Mr. Castro and Mr. Valle would have paid their fees. Mr. Castro and Mr. Valle could have abandoned their claims, sought new counsel, or equally reached out to Defendants to resolve these claims themselves. Thus, the contingency

agreement could have been breached even in the absence of Defendants' alleged interference. As stated, Plaintiff has provided no authorities that would prohibit its clients from directly settling their claims without the presence of attorneys to establish breach of the contingency agreement in the first place.

More importantly, Plaintiff has not provided a copy of the contingency fee agreement as part of its evidence in opposition to summary judgment or even with the FAC. Defendants, on the other hand, have included a copy of the contingency agreement as part of the documents produced by Plaintiff in discovery. (Rodriguez Decl. at ¶ 13, Ex. H.) However, the copy produced by Defendants is in Spanish with no English translation offered for the Court's consideration. (*Ibid.*) As stated, Plaintiff bears the burden of proof for causation and must go beyond the pleadings and set forth specific facts to show that a triable issue of material fact exists. (Code Civ. Proc. § 437c, subd. (p)(2).) Plaintiff does not go beyond the pleadings in establishing the terms of the contingency agreement in the first place. In the absence of specific facts and the agreement itself, Plaintiff has not met its burden of proof in showing Defendants more likely than not induced breach. The absence of a translated agreement also makes it difficult for the Court to determine whether actual breach has occurred. That the contract would have been performed in the absence of Defendants' conduct is speculative at best and not enough to raise a triable issue of fact with respect to causation.

Thus, the Court GRANTS summary adjudication with respect to the third cause of action.[15]

III. CONCLUSION

Since Defendants have negated all three causes of action and Plaintiff cannot show any triable issues of material fact exist, the Court GRANTS summary judgment in favor of Defendants with respect to the First Amended Complaint in its entirety.

The Court will prepare the formal order.

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[15] The Court notes that the first and second causes of action for intentional and negligent interference with prospective economic advantage would have also been adjudicated on causation if not already resolved on wrongful conduct. Even if Plaintiff were able to raise a triable issue as to the allegations of tax fraud, it would not be able to establish a causal connection between Defendants' acts of alleged fraud and Plaintiff's breach of the contingency fee agreement.

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Calendar Line 11
Case Name: *Neelima Naidu et al. v. Deepika Jain et al. (and related cross-action)*
Case No.: 24CV429210

I. FACTUAL AND PROCEDURAL BACKGROUND

Cross-complaints/Defendants Deepika Jain ("Dr. Jain") and Ajay Jain ("Mr. Jain") (collectively, "Defendants") bring this motion to disqualify Channaveerappa & Phipps, LLP ("CPL") from representing Deepika Jain DDS and Neelima Naidu DDS Inc. dba Blossom Hill Dental Center ("Blossom Hill"). CPL also represents plaintiffs/cross-defendants Neelima Naidu ("Dr. Naidu") and Prashanth Naidu ("Mr. Naidu") (collectively, "Plaintiffs").

On September 14, 2020, Dr. Jain and Dr. Naidu incorporated Blossom Hill and each owned 50 percent of the shares. During the last quarter of 2022, Dr. Naidu informed Dr. Jain that she no longer wanted to be involved in Blossom Hill and they planned to sell Blossom Hill. In December 2022, Dr. Jain learned that all major treatments were being transferred to Dr. Naidu's other dental group and discovered numerous financial improprieties committed by Plaintiffs. Dr. Naidu and Dr. Jain attempted to resolve their disputes without litigation but were unable to do so. On June 9, 2023, Dr. Naidu sold her Blossom Hill shares to Pratiksha Agrawal.

On January 12, 2024, Plaintiffs filed, but did not serve, their underlying form complaint and also claim the right to represent Blossom Hill, despite Dr. Jain's 50 percent ownership.

On July 23, 2024, Defendants filed this motion to disqualify. Plaintiffs oppose the motion. Defendants filed a reply.

II. REQUESTS FOR JUDICIAL NOTICE

a. DEFENDANTS' REQUEST

In support of their motion, Defendants request the Court take judicial notice of the following:

1) **ARTICLES OF INCORPORATION FOR DEEPIKA JAIN DDS AND NEELIMA NAIDU DDS, INC.;**
2) **JANUARY 18, 2023 STATEMENT OF INFORMATION FILED FOR DEEPIKA JAIN DDS AND NEELIMA NAIDU DDS, INC.;**
3) **SEPTEMBER 13, 2024 STATEMENT OF INFORMATION FILED FOR DEEPIKA JAIN DDS AND NEELIMA NAIDU DDS, INC.; AND**
4) **2010 FORM IRS US 1120S FOR DEEPIKA JAIN DDS AND NEELIMA NAIDU DDS, INC.**

While the Court may properly take judicial notice of the existence of these items, it may not take judicial notice of their contents. (See *Gerawan Farming, Inc. v. Agr. Labor Relations Bd.*, (2018) 23 Cal.App.5th 1129, 1155, fn. 35 [declining to take judicial notice of the "truth of any findings or assertions" in public agency records].) The Court does not see how the existence of these records is relevant to the disposition of the motion, and judicial notice is limited to relevant items. (See *Gbur v. Cohen* (1979) 93 Cal.App.3d 296, 301.) Thus, judicial notice is DENIED. With that said, currently before the Court is an evidentiary motion. Therefore, the Court will consider these documents as evidence before the Court.

b. **PLAINTIFFS' REQUEST**

In support of their opposition, Plaintiffs request judicial notice of the following:

1) **PLAINTIFFS' FIRST AMENDED COMPLAINT;**
2) **DEFENDANTS'/CROSS-COMPLAINANTS CROSS-COMPLAINT;**
3) **DEFENDANTS' MOTION TO DISQUALIFY;**
4) **DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THEIR MOTION TO DISQUALIFY; AND**
5) **DECLARATION OF DALE B. RATNER IN SUPPORT OF DEFENDANTS' MOTION TO DISQUALIFY.**

As noted above, while the Court may take judicial notice of Item Nos. 1-5 as documents on file with the Court, it would be as to their existence only, and the Court finds this unnecessary. (See *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 748, fn. 6 [declining to take judicial notice of materials not "necessary, helpful, or relevant"].) Accordingly, the request for judicial notice is DENIED.

III. **OBJECTIONS**

In opposition, Plaintiffs object to the exhibits attached to the Declaration of Dale B. Ratner ("Ratner Decl.") and the declaration itself, in support of Defendants' motion to disqualify, on the grounds they lack foundation and contain hearsay. The objections are OVERRULED. However, even if the Court were to sustain Plaintiffs' objections, it would still consider the exhibits attached to Defendants' request for judicial notice.

IV. **LEGAL STANDARD**

A trial court's authority to disqualify an attorney derives from the power inherent in every court '[t]o control in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter pertaining thereto.'" (*People ex rel. Dept. of Corporations v. SpeeDee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1145.) "Ultimately, disqualification motions involve a conflict between the clients' right to counsel of their choice and the need to maintain ethical standards of professional responsibility." (*Ibid*.; see also *Kirk v. First American Title Ins. Co*. (2010) 183 Cal.App.4th 776, 792 ["[d]isqualification motions involve 'a conflict between the clients' right to counsel of their choice and the need to maintain ethical standards of professional responsibility'"].) "The paramount concern must be to preserve public trust in the scrupulous administration of justice and the integrity of the bar." (*Ibid*.) "The important right to counsel of one's choice must yield to ethical considerations that affect the fundamental principles of our judicial process." (*Ibid*.)

"*Exercise of [the trial court's] power [to disqualify counsel] requires a cautious balancing of competing interests*. The court must weigh the combined effect of a party's right to counsel of choice, an attorney's interest in representing a client, the financial burden on a client replacing disqualified counsel and any tactical abuse underlying a disqualification proceeding against the fundamental principle that the fair resolution of disputes with our adversary system requires vigorous representation of parties by independent counsel." (*Mills Land & Water Co. v. Golden W. Ref. Co.* (1986) 186 Cal.App.3d 116, 126 [superseded by statute on other grounds, internal citations and quotations omitted, emphasis original].)

V. ANALYSIS

Defendants' motion to disqualify is based on the argument that California Rules of Professional Conduct, rule 1.7 prohibits dual representation of a corporation and directors in a shareholder derivative suit where the directors or shareholders are alleged to have committed fraud. (Motion, p. 5:7-10, citing *Forrest v. Baeza* (1997) 58 Cal.App.4th 65, 74-75 (*Forrest*).) Defendants assert the following arguments in support of their motion: 1) Dr. Jain did not consent to CPL representing Blossom Hill in a lawsuit against herself; 2) Dr. Naidu did not have the authority to grant consent for CPL to represent Blossom Hill; and 3) California forbids attorneys from representing shareholders and the closed corporation in lawsuits against other shareholders.

As an initial matter, the Court notes that as stated in their opposition, Plaintiffs indicate they do not contest the authority cited by Defendants, but instead argue that Dr. Jain has no shares in Blossom Hill. Thus, the only issue truly before the Court is whether Defendants have proffered sufficient evidence to show that Dr. Jain was a 50 percent shareholder in Blossom Hill such that her written consent of CPL's representation was required. (See Opposition, p. 5:12-13.) As will be explained below, the Court finds that Defendants have met their burden.

Defendants argue that Dr. Jain did not consent to representation by CPL in writing, as required, given that she is a 50 percent shareholder in Blossom Hill. (Motion, p. 6:6-7, 10-11, citing *Ontiveros v. Constable* (2016) 245 Cal.App.4th 686, 698.) To support the assertion that Dr. Jain was a 50 percent shareholder, Defendants proffer an IRS 1120S Form, which states that Deepika Jain DDS has a 50 percent ownership interest in Blossom Hill during the calendar year of 2010. (See Ratner Decl., Ex. A, p. 2.) Additionally, Defendants proffer a memorandum of understanding that indicates that half of the Blossom Hill dental practice belongs to Dr. Jain, signed by both Dr. Jain and Dr. Naidu in March 2023. (See Ratner Decl., Ex. B, pp. 1 and 4.)

In opposition, Plaintiffs argue that Dr. Jain has no interest in Blossom Hill because she never paid for her shares of the corporation. (Opposition, p. 5:20-22.) Plaintiffs contend that a central part of their claims in the underlying action is that Dr. Jain failed to pay for her interest in the corporation and that Dr. Jain has provided no evidence of payments for her shares. Further, Plaintiffs argue, the evidence Defendants have presented with their motion are not evidence of actual payment. (*Id.* at p. 5:22-24.)

As Defendants note in their reply, Plaintiffs' allegations in their first amended complaint do not constitute evidence sufficient to support their argument. (See *Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 173 ["A complaint measures the materiality of the facts asserted as a cause of action. It ordinarily does not assert an evidentiary fact."]; see also Reply, p. 3:13-16, citing *Brockett v. Kitchen Boyd Motor Co.* (1968) 264 Cal.App.2d 69, 72 ["The pleading in this case, of course, is not evidence . . ."].) Here, Defendants have provided evidence that Dr. Jain is a 50 percent shareholder of Blossom Hill and Plaintiffs have presented no contrary evidence. Accordingly, the Court may grant Defendants' motion to disqualify CPL. (See e.g., Cal. Rules of Prof'l. Conduct, rule 1.13(g); *Jarvis v. Jarvis* (2019) 33 Cal.App.5th 113, 133 ["the undertaking by the attorney to represent the partnership, 'imposed upon him an obligation of loyalty to the partnership and to all partners in terms of their entitlement to benefits from the partnership. . . . [The attorney] had a duty to the partnership to look out for all the partners' interests, and if this could not be accomplished because of conflicts of interest among them he had a duty to terminate the representation.'"]; *Forrest, supra,* 58 Cal.App.4th at p. 74 ["Current case law clearly forbids dual representation of a corporation and directors in a shareholder derivative suit, at least where, as here, the directors are alleged to have

committed fraud."]; *Blue Water Sunset, LLC v. Markowitz* (2011) 192 Cal.App.4th 477, 481; *La Jolla Cove Motel & Hotel Apartments, Inc. v. Superior Court* (2004) 121 Cal.App.4th 773, 785.)

Based on the foregoing, the motion to disqualify CPL is GRANTED. Defendants shall prepare the final order.

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