

**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: July 18, 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](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.

**FOR COURT REPORTERS:** The Court is no longer able to provide official court reporters for civil proceedings (as of July 24, 2017). If you want to have a court reporter to report your hearing, you must submit the appropriate form, which can be found here:

[https://www.scscourt.org/general\\_info/court\\_reporters.shtml](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 TITLE	RULING
<a href="#">LINE 1</a>	21CV382130	Ezequiel Ciappolino et al vs Mayela Martin et al	<b>Order of Examination (Mayela Martin).</b> No Proof of service on file. If there is no appearance, the matter will be ordered OFF CALENDAR.
<a href="#">LINE 2</a>	20CV369138	Chicago Title Company vs. 28th ST Villa Apts LLC	<b>Motion for Summary Judgment/ Adjudication.</b> Scroll down to <a href="#">Line 2</a> for Tentative Ruling.

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**LAW AND MOTION TENTATIVE RULINGS**

<a href="#">LINE 3</a>	20CV369138	Chicago Title Company vs. 28th ST Villa Apts LLC	<p><b>Motion to Substitute.</b> Defendant/Cross-Complainant Green Villa Apartments, LP's ("Green Villa") motion for an order substituting Green Villa Apartments, LLC for Green Villa Apartments, LP, brought pursuant to Code of Civil Procedure section 473. Green Villa's motion is missing (1) a factual statement, (2) a referenced counsel declaration, and (3) although multiple exhibits are identified in the declaration in support of the motion, <u>no</u> exhibits were attached. Defendants and Cross-Defendants Nobel Homes LLC, 28<sup>th</sup> St Villa Apts, LLC, Hui Jun Li and Gregory Malley ("28<sup>th</sup> St Villa") oppose the motion arguing that such a substitution would amend substantive allegations, the motion is not supported by any admissible evidence, Green Villa's registration status was terminated on September 8, 2021, and 28<sup>th</sup> St Villa will suffer prejudice. The Court agrees. The moving papers are devoid of a factual statement and any competent evidence to support the motion. Green Villa did file a reply brief that contained new evidence and argument – such a filing is improper and will not be considered by the Court. Any arguments and supporting evidence should have been submitted <i>with the moving papers and not newly in a reply brief</i>. The motion is DENIED, without prejudice. There is also a lack of diligence by Green Villa in bringing this motion, given that it was advised of an issue with the entity on April 3, 2024, and its registration was terminated in September 2021.</p> <p>28<sup>th</sup> St Villa to prepare the formal order.</p>
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**LAW AND MOTION TENTATIVE RULINGS**

<a href="#">LINE 4</a>	23CV414579	Bahareh Olfatpour et al vs Subaru of America, Inc.	<b>Motion to Compel. OFF CALENDAR.</b>
<a href="#">LINE 5</a>	23CV414579	Bahareh Olfatpour et al vs Subaru of America, Inc.	<b>Motion to Compel. OFF CALENDAR.</b>

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**LAW AND MOTION TENTATIVE RULINGS**

<a href="#">LINE 6</a>	23CV415947	James Fok et al vs Peter Wong et al	<p><b>Motion to Compel (Discovery).</b> Defendants Tung Kuen Lau and Peter Wong's motion to compel responses to demand for identification and inspection of documents from Plaintiff James Fok and request for sanctions in the amount of \$572. Defendants' document request (set one) was served on Plaintiff on February 29, 2024. Defendant wrote a meet and confer letter on April 23, 2024, to which no response was received. The motion to compel was filed and served on May 15, 2024 to Plaintiff's counsel's email address, <a href="mailto:eric@gruberlawgroup.com">eric@gruberlawgroup.com</a>, the same email address listed by Plaintiff's counsel on the Complaint. No opposition to this motion was filed by Plaintiff. 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. (<i>Laguna Auto Body v. Farmers Ins. Exchange</i> (1991) 231 Cal. App. 3d 481, 489.) There is also good cause to grant this motion. Plaintiff should have served a response and produced documents within 30 days of service of the document request (Code Civ. Proc., §2031.260 (a)). Moving parties meet their burden of proof. Good cause appearing, the Motion is GRANTED and sanctions of \$250 are awarded to Defendants. (Code Civ. Proc., §§2031.300 (b) and (c)). Plaintiff James Fok shall serve verified, code-compliant responses and responsive documents to the document request and shall pay the sanctions awarded – all within 10 days of service of this order.</p> <p>Defendants shall prepare a formal order.</p>
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**LAW AND MOTION TENTATIVE RULINGS**

<a href="#"><u>LINE 7</u></a>	23CV419353	Skylars, LLC vs TERRY KNICKERBOCKER et al	<p><b>Motions to Compel (multiple).</b> Cross-Complainant Daniel Ryan brings four motions to compel (form interrogatories, special interrogatories, request for production of documents, and requests for admission). First, Cross-Complainant Daniel Ryan is admonished that this motion <b>should have been filed as four separate motions, not one motion.</b></p> <p>There is a valid proof of service for the motions to counsel for Defendants Terry Knickerbocker and Silicon Valley Sports LLC. 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 Defendants have no meritorious arguments. (See <i>Laguna Auto Body v. Farmers Ins. Exchange</i> (1991) 231 Cal. App. 3d 481, 489.) Moving party has met its burden of proof for each of the motions. Good cause appearing, the motions are GRANTED. Defendants Terry Knickerbocker and Silicon Valley Sports LLC. shall serve verified, code-compliant responses and responsive documents within 15 days of the formal order on this motion and pay Cross-Complainant Daniel Ryan sanctions in the amount of \$1500, also within 15 days of the formal order.</p> <p>Moving parties shall prepare a formal order after hearing.</p>
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**LAW AND MOTION TENTATIVE RULINGS**

<a href="#">LINE 8</a>	19CV360733	Edward Kellar et al vs Central Investments et al	<b>Motion for Trial Preference.</b> Motion for trial preference by Plaintiffs. Plaintiffs have met their burden. Good cause appearing, the motion is GRANTED. (Code Civ. Proc., § 36 subdivision (a).) Trial is set for November 12, 2024, at 8:45 a.m. with a Mandatory Settlement Conference to take place on November 6, 2024, at a time TBD by the court (either 9 a.m. or 1:30p.m.). The matter is also set on the Trial Assignment Calendar on November 7, 2024, at 1:30p.m. in Department 6.  Moving parties to prepare the formal order.
<a href="#">LINE 9</a>	23CV410545	David Martin vs GOOGLE LLC et al	<b>(1) Motion to Tax (City of West Sacramento), (2) Motion to Tax (Emalee Ousley) and (3) Motion Regarding Proposed Judgment (City of West Sacramento).</b> Scroll down to <u>Line 9</u> for Tentative Ruling.

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**LAW AND MOTION TENTATIVE RULINGS**

<a href="#"><u>LINE 10</u></a>	20CV370043	Ford Motor Credit Company LLC vs Monica Garcia et al	<p><b>Motion to Set Aside.</b> Plaintiff Ford Motor Credit Company's motion to set aside and vacate its prior order of dismissal and for entry of judgment in the amount of \$6,495.86 against Defendant Monica Ann Garcia pursuant to stipulation. Defendant has defaulted under the terms of the stipulation by failing to make timely payments. The order of dismissal without prejudice pursuant to Code Civ. Proc., §664.6 was filed December 20, 2023, and included an order that the court would retain jurisdiction to enforce the terms of the Stipulation for Entry of Judgment in the event of default by either party. The motion was served on Defendant on May 23, 2024. 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 Defendant has no meritorious arguments. (See <i>Laguna Auto Body v. Farmers Ins. Exchange</i> (1991) 231 Cal. App. 3d 481, 489.) Moving party has met its burden of proof. Good cause appearing, the motion is GRANTED. The December 20, 2023, order of dismissal is SET ASIDE and VACATED, and this case is REINSTATED. Judgment is ENTERED against Defendant Monica Ann Garcia in the amount of \$6,495.86.</p> <p>Moving party to prepare formal order and judgment.</p>
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**Calendar Line 2**

**Case Name:** *Chicago Title Company v. 28th St Villa Apts LLC, et al.*

**Case No.:** 20CV369138

Before the court is Roygbiv Real Estate Development LLC and Loida Kirkley's motion for summary judgment, or in the alternative, summary adjudication. Pursuant to California Rule of Court 3.1308, the court issues its tentative ruling as follows.

**I. Background.**

*First Amended Complaint*

In the operative first amended complaint ("FAC"), plaintiff Chicago Title Company ("CTC") alleges on or about July 27, 2019, defendant 28th St Villa Apts, LLC ("Buyer") and defendant Green Villa Apartments, LP ("Seller") entered into an agreement for the sale of real property located at 1319 Tripp Avenue in San Jose ("Property") from Seller to Buyer. (FAC, ¶¶9 – 10.) Between July 2019 and November 2019, plaintiff CTC received several deposits for a combined total of \$300,000 from defendants Hui Jun Li ("Li"), Roygbiv Real Estate Development LLC ("Roygbiv"), and Nobel Homes LLC ("Nobel") for the subject sale and purchase transaction. (FAC, ¶11.)

The sale and purchase transaction was never consummated and \$300,000 of defendants' deposit remains in escrow. (FAC, ¶12.) Plaintiff CTC received conflicting claims from defendants regarding the escrow funds. (FAC, ¶13.) On or about May 24, 2020, plaintiff CTC sent a letter to defendants Buyer and Seller advising of the conflicting demands and that in the event plaintiff CTC did not receive mutually signed instructions regarding disbursement, the funds would be submitted to legal counsel for filing of an interpleader action. (FAC, ¶14.) As of August 5, 2020, plaintiff CTC has not received mutual instructions regarding disbursement of the funds and a dispute has arisen between the parties concerning their disposition. (FAC, ¶15.) Plaintiff CTC is unable to determine who should receive the disputed funds. (*Id.*) Plaintiff CTC claims no interest in the funds except for attorneys' fees and costs incurred in having to file this action. (*Id.*)

On August 5, 2020, plaintiff CTC filed a complaint in interpleader against defendants Buyer, Seller, Li, Roygbiv, and Nobel.

All the defendants (except Li) filed answers to plaintiff CTC's complaint by November 17, 2020.

On April 8, 2021, plaintiff CTC filed a motion for leave to file an amended complaint.

On April 19, 2021, defendant Seller filed a cross-complaint naming Buyer, Roygbiv, Nobel, Li, Greg Malley ("Malley"), Loida Kirkley ("Kirkley"), and 28th Street Bart 2, LLC ("Bart 2") as cross-defendants. On that same date, defendant Seller also filed a motion for leave to file a cross-complaint against plaintiff CTC.

On July 12, 2021, the court issued an order granting plaintiff CTC leave to file a FAC. Plaintiff CTC filed the operative FAC on that same date.

Also on July 12, 2021, the court issued an order granting defendant Seller leave to file a cross-complaint against plaintiff CTC. On July 13, 2021, defendant/cross-complainant Seller filed an amendment to its cross-complaint substituting CTC for a fictitiously named Roe cross-defendant.

On July 21, 2021, defendants Nobel, Li, and Buyer filed an answer to plaintiff CTC's FAC.

On August 2, 2021, defendant Seller filed an answer to plaintiff CTC's FAC.

*First Amended Cross-Complaint*

On August 11, 2021, defendant/cross-complainant Seller filed a first amended cross-complaint ("FAXC") which alleges that on or about July 27, 2019, cross-defendant Malley doing business as Buyer entered into a purchase agreement ("PSA") with Seller for sale of the subject Property. (FAXC, ¶15.) The same date, cross-defendant Malley doing business as Buyer and cross-defendant Kirkley doing business as Bart 2 signed an Assignment of Agreement Addendum ("Assignment") whereby cross-defendant Malley doing business as Buyer assigned all interest in the PSA to cross-defendant Kirkley and Bart 2. (FAXC, ¶16.) At the time of the assignment, Bart 2 was not in existence and not registered with the California Secretary of State, facts which cross-defendants Malley and Kirkley were aware of. (FAXC, ¶17.) On August 1, 2019, cross-defendant Kirkley signed a Representative Capacity Signature Disclosure in which she represented Bart 2 was an entity that existed of which she was a partner. (FAXC, ¶18.) At the time, Kirkley knew Bart 2 had not been formed and did not exist.

(*Id.*) Cross-complainant Seller had no knowledge at the time of execution of the PSA and Assignment that Buyer and Bart 2 had not been formed and were not in existence. (FAXC, ¶¶19 – 20.)

Pursuant to the PSA, cross-defendants paid \$300,000 in earnest money deposit to be applied to the purchase price of the subject Property. (FAXC, ¶22.) Plaintiff/cross-defendant CTC received these deposits between July 2019 and November 2019. (*Id.*) Plaintiff/cross-defendant sent Third Party Deposit Escrow Instructions to cross-defendants Malley and Kirkley identifying cross-defendants Roygbiv and Li as third party depositors whose deposits were to be applied for the benefit of Buyer. (*Id.*) These documents were never signed and CTC did not follow up to obtain signatures. (*Id.*) CTC failed to inform Seller that the documents were not executed. (*Id.*)

Close of escrow (“COE”) was scheduled to occur on March 23, 2020. (FAXC, ¶24.) In or around January 2020, the buyers expressed a need to extend COE to June 2020. (*Id.*) On February 6, 2020, Malley dba Buyer, on behalf of buyers, and Seller signed an amendment to PSA which stated COE would be no later than May 22, 2020. (*Id.*) The same parties signed additional amendments on May 23, 2020 and July 29, 2020 which extended COE to September 27, 2020 and giving Seller the right to pursue other offers and if Seller accepted another offer, Seller would have the rights to Buyer’s deposit of \$300,000 and the PSA would be considered null and void due to non-performance. (*Id.*)

In or around April 2020, cross-defendant Malley attempted, without Seller’s knowledge or consent, to unilaterally rescind the Assignment informing CTC that Bart 2 was not a legal entity and claiming the Assignment was invalid. (FAXC, ¶27.) Around the same time, cross-defendant Kirkley requested the \$150,000 she paid toward the purchase price of the subject Property be returned to her. (FAXC, ¶28.)

On or about August 5, 2020, CTC filed the complaint interpleading the \$150,000 paid by cross-defendants Kirkley doing business as Roygbiv in earnest money deposit for the purchase of the subject Property. (FAXC, ¶29.) In the FAC, CTC interpleaded the remaining \$150,000 paid by buyer cross-defendants. (*Id.*)

Based on the above allegations, Seller’s FAXC asserted the following causes of action:

- (1) Declaratory Relief
- (2) Fraud (Intentional Misrepresentation) [against cross-defendant Kirkley]
- (3) Fraud (False Promise) [against cross-defendants Malley and Buyer]
- (4) Intentional Interference with Contractual Relationship [against cross-defendants Malley and Buyer]
- (5) Negligence
- (6) Breach of Fiduciary Duties [against cross-defendant CTC]
- (7) Promissory Estoppel [against all buyer cross-defendants]

On September 28, 2021, cross-defendant CTC filed a demurrer to the first, fifth and sixth causes of action in defendant/cross-complainant Seller's FAXC.

On November 4, 2021, cross-defendants Kirkley and Roygbiv filed an answer to cross-complainant Seller's FAXC.

On November 19, 2021, cross-defendants Buyer, Li, and Malley filed a demurrer to the first, third, fifth, and seventh causes of action in defendant/cross-complainant Seller's FAXC.

On January 21, 2022, the court sustained cross-defendant CTC's demurrer to the first, fifth, and sixth causes of action in Seller's FAXC. The court also sustained cross-defendants Buyer, Li, and Malley's demurrer to the fifth cause of action, but otherwise overruled cross-defendants Buyer, Li, and Malley's demurrer.

#### Second Amended Cross-Complaint

On February 7, 2022, defendant/ cross-complainant Seller filed the operative second amended cross-complaint ("SAXC") which alleges on or about July 27, 2019, Malley dba Buyer and/or assignees entered into an agreement (PSA) with Seller for a sale of the subject Property. (SAXC, ¶15 and Exh. A.) Also on or about July 27, 2019, Malley dba Buyer and Kirkley dba Bart 2 signed an Assignment of Agreement Addendum ("Assignment") whereby Malley dba Buyer assigned all of their interest in the PSA to Kirkley and Bart 2. (SAXC, ¶16 and Exh. B.)

At the time Malley and Kirkley signed the Assignment, Bart 2 was not in existence and not registered with the California Secretary of State. (SAXC, ¶17.) Malley and Kirkley knew Bart 2 had not been formed and did not exist. (*Id.*) On or about August 1, 2019, Kirkley signed

a Representative Capacity Signature Disclosure (“Disclosure”) representing Bart 2 was an entity that existed and that she was a partner of Bart 2. (SAXC, ¶18 and Exh. C.) At the time she signed the Disclosure, Kirkley knew Bart 2 had not been formed and did not exist. (*Id.*) At the time of execution of the PSA and Assignment, Seller had no knowledge that Buyer or Bart 2 had not been formed and was not an existing entity. (SAXC, ¶¶19 – 20.)

The parties to the PSA hired CTC to process escrow. (SAXC, ¶21.) Pursuant to the PSA, the buyer cross-defendants paid \$300,000 in earnest money deposit to be applied toward the purchase price of the subject Property. (SAXC, ¶22.) CTC received those deposits between July 2019 and November 2019 as follows: \$25,000 from Li (on behalf of Malley dba Buyer) on July 31, 2019; \$50,000 from Li (on behalf of Malley dba Buyer) on July 31, 2019; \$75,000 from Kirkley dba Roygbiv (on behalf of Kirkley dba Bart 2) on August 1, 2019; \$75,000 from Kirkley dba Roygbiv (on behalf of Kirkley dba Bart 2) on October 29, 2019; \$75,000 from Malley dba Nobel (on behalf of Malley dba Buyer) on November 1, 2019. (*Id.*) CTC did not inform Seller that it obtained earnest money deposits from third parties Li, Roygbiv, and Nobel even though CTC knew these third parties were not parties to the PSA. (SAXC, ¶23.)

On October 31, 2019, CTC became aware that a check from Nobel was returned for non-sufficient funds, but CTC did not inform Seller. (SAXC, ¶24.) On or about August 1, 2019, CTC sent Third Party Deposit Escrow Instructions to Malley and Kirkley asking they be signed and returned. (SAXC, ¶25.) The Third Party Deposit Escrow Instructions state Roygbiv and Li were Third Party Depositors and that checks in the amount of \$75,000, \$50,000, and \$25,000, respectively, were to be applied for the benefit of Buyer. (*Id.*) The documents were never signed and CTC never followed up to obtain signatures despite knowing those signed documents were necessary and material for the transaction and one of the tasks CTC undertook to perform. (*Id.*) CTC also failed to inform Seller that it had not secured those signatures. (*Id.*)

Close of escrow (COE) was to occur on March 23, 2020. (SAXC, ¶26.) On February 6, 2020, Malley dba Buyer, on behalf of the buyers, and Seller signed an amendment to the PSA stating COE would be no later than May 22, 2020. (*Id.* and Exh. E-1.)

On or about April 11, 2020, without Seller’s knowledge or consent, Malley attempted to unilaterally rescind the Assignment informing CTC that Bart 2 was not a legal entity and

claiming the Assignment was invalid. (SAXC, ¶27.) CTC acknowledged the rescission and understood the Assignment to be void and Buyer would be responsible for closing funds. (*Id.*)

On or about April 22, 2020, Kirkley emailed CTC requesting return of her \$150,000 earnest money deposit. (SAXC, ¶29.) CTC did not inform Seller of Kirkley's request. (*Id.*) On April 24, 2020, CTC learned the Third Party Deposit Escrow Instructions had not been signed, but did not inform Seller. (SAXC, ¶30.) Kirkley contacted CTC several times in April 2020 demanding her deposit back, but CTC did not inform Seller of these claims. (SAXC, ¶31.) On April 27, 2020, CTC knew Malley did not intend to replace Kirkley's \$150,000 deposit, but did not inform Seller. (SAXC, ¶32.) On or about May 18, 2020, CTC sent a letter to the parties informing them it had received conflicting demands regarding the \$150,000 deposited by Roygbiv and stating the funds would be interpleaded with the court unless the parties agreed on escrow instructions. (SAXC, ¶33.) This was the first time Seller became aware that \$150,000 of the earnest money deposit came from a third party entity, Roygbiv, and that there were conflicting demands to the funds. (*Id.*)

On or about May 23, 2020, Malley dba Buyer, on behalf of buyers, and Seller agreed to extend COE to July 27, 2020 and that Seller had the right to pursue other offers and if Seller accepts another offer, Seller would still have the rights to Buyer's original deposit of \$300,000. (SAXC, ¶34 and Exh. E-2.) COE did not occur before July 27, 2020. (SAXC, ¶35.)

On July 29, 2020, in reliance on assurances from buyers and CTC that the transaction was in a position to close and only an extension of time was needed, Seller agreed to another extension for COE to September 27, 2020 with further agreement that Seller had the right to pursue other offers and if Seller accepts another offer, Seller would still have the rights to Buyer's original deposit of \$300,000 and the PSA would be null and void due to non-performance. (SAXC, ¶36 and Exh. E-3.) COE did not occur on or before September 27, 2020. (SAXC, ¶37.)

Had Seller known escrow deposits were made by third parties, that there were conflicting demands to the deposit from Kirkley, that CTC had not secured signatures on the Third Party Deposit Escrow Instructions, that any of the legal entities had not been formed, or that there was animosity between the buyers, Seller would not have agreed to multiple

extensions of time to perform and would have looked earlier for other potential buyers. (SAXC, ¶40.) Due to cross-defendants' actions, Seller did not pursue other offers until late 2020 and sold the subject Property to another buyer for approximately \$2,000,000 less than the agreed upon sale price in the PSA. (SAXC, ¶41.) Buyers refused and continue to refuse to release the \$300,000 earnest money deposit. (SAXC, ¶42.)

Seller's SAXC now asserts causes of action for:

- (1) Declaratory Relief [versus Buyer Cross-Defendants]
- (2) Declaratory Relief [versus CTC]
- (3) Fraud (Intentional Misrepresentation) [versus Kirkley]
- (4) Fraud (False Promise) [versus Malley and Buyer]
- (5) Intentional Interference with Contractual Relationship [versus Malley and Buyer]
- (6) Negligence [versus Kirkley, Roygbiv, and Bart 2]
- (7) Negligence [versus Malley, Buyer, and Li]
- (8) Negligence [versus CTC]
- (9) Breach of Fiduciary Duties [versus CTC]
- (10) Breach of Implied-in-Fact Contract [versus CTC]
- (11) Breach of Duty to Perform with Reasonable Care [versus CTC]
- (12) Breach of Written Contract [versus Malley, Buyer, and Li]
- (13) Breach of Implied Covenant of Good Faith and Fair Dealing [versus Malley, Buyer, and Li]
- (14) Promissory Estoppel [versus Buyer Cross-Defendants]

On March 21, 2022, cross-defendants Malley, Buyer, and Li filed a demurrer to the fifth, twelfth, and thirteenth causes of action of Seller's SAXC.

On April 6, 2022, cross-defendant CTC filed a demurrer to the entirety of Seller's SAXC and also specifically to the second, eighth, ninth, tenth, and eleventh causes of action of Seller's SAXC.

On April 11, 2022, cross-defendants Kirkley and Roygbiv filed an answer to Seller's SAXC and also filed a demurrer to the sixth cause of action of Seller's SAXC.

On August 5, 2022, the court issued an order addressing the demurrers to Seller's SAXC. As to the demurrer filed by cross-defendants Kirkley and Roygbiv, the court sustained the demurrer to the sixth cause of action without leave to amend.

On March 13, 2024, cross-defendants Kirkley and Roygbiv filed a motion to amend their answer to Seller's SAXC. On April 12, 2024, the court granted cross-defendants Kirkley and Roygbiv's motion to amend their answer to Seller's SAXC. On April 19, 2024, cross-defendants Kirkley and Roygbiv filed an amended answer to Seller's SAXC.

On May 3, 2024, cross-defendants Kirkley and Roygbiv filed the motion now before the court, a motion for summary judgment/ adjudication of the remaining (first, third, and fourteenth)<sup>1</sup> causes of action asserted against them in the Seller's SAXC.

## **II. Cross-defendants Roygbiv and Kirkley's motion for summary judgment is DENIED.**

### **A. Requests for judicial notice.**

In support of their motion for summary judgment/ adjudication, cross-defendants Kirkley and Roygbiv request judicial notice of the SAXC in this action. Evidence Code section 452 and 453 permit the trial court to "take judicial notice of the existence of judicial opinions and court documents, along with the truth of the results reached—in the documents such as orders, statements of decision, and judgments—but [the court] cannot take judicial notice of the truth of hearsay statements in decisions or court files, including pleadings, affidavits, testimony, or statements of fact." (*People v. Woodell* (1998) 17 Cal.4th 448, 455.) Accordingly, the request for judicial notice in support of Roygbiv and Kirkley's motion for summary judgment or in the alternative summary adjudication is GRANTED insofar as the court takes judicial notice of the existence of the SAXC, not necessarily the truth of matters asserted therein.

In opposition, cross-complainant Seller requests judicial notice of the articles of organization of Roygbiv filed February 22, 2020 with the Secretary of State of California. Defendant Seller's request for judicial notice in support of its opposition to Roygbiv and

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<sup>1</sup> In their notice of motion, cross-defendants Kirkley and Roygbiv also request summary adjudication, in the alternative, of Seller's sixth cause of action. In the court's August 5, 2022 order, the court already sustained cross-defendants Kirkley and Roygbiv's demurrer to the sixth cause of action without leave to amend.



Kirkley's motion for summary judgment is GRANTED insofar as the court takes judicial notice of the existence of the articles of organization, not necessarily the truth of matters asserted therein. (See Evid. Code §452, subd. (h) [court may take judicial notice of "[f]acts 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"]; *Cody F. v. Falletti* (2001) 92 Cal.App.4th 1232, 1236 fn.2 [judicial notice of articles of incorporation]; *Cal. Aviation Council v. County of Amador* (1988) 200 Cal.App.3d 337, 344 fn.7 [judicial notice of certificate amending the articles of incorporation].)

**B. Cross-defendant Kirkley's motion for summary adjudication of the third (fraud) cause of action of Seller's SAXC is GRANTED.**

The third cause of action of Seller's SAXC, directed against cross-defendant Kirkley alone, alleges fraud. More specifically and in relevant part, Seller alleges cross-defendant Kirkley "signed the Representative Capacity Signature Disclosure wherein she represented that [Bart 2] was a valid legal entity, namely, a limited liability company, that already existed with knowledge that in fact, [Bart 2] was not yet formed and did not exist under the laws of California." (SAXC, ¶53; see also ¶18.) "[A]t the time these representations were made ..., [Bart 2 was not a] valid legal entit[y] registered with the State of California." (SAXC, ¶55.)

"The elements of fraud are: (1) a misrepresentation (false representation, concealment, or nondisclosure); (2) knowledge of falsity (or scienter); (3) intent to defraud, i.e., to induce reliance; (4) justifiable reliance; and (5) resulting damage." (*Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, 990.)

In moving for summary adjudication of this third cause of action, cross-defendant Kirkley apparently takes aim at the element of reliance. Kirkley argues Seller did not rely on the representation that Bart 2 was a validly formed and existing legal entity registered with the State of California.

a presumption, or at least an inference, of reliance arises wherever there is a showing that a misrepresentation was material. (*Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 814 [94 Cal. Rptr. 796, 484 P.2d 964, 53 A.L.R.3d 513]; see also 12 Williston on Contracts (3d ed. 1970) § 1515, p. 480; Rest.2d,

Contracts, § 167.) A misrepresentation is judged to be "material" if "a reasonable man would attach importance to its existence or nonexistence in determining his choice of action in the transaction in question" (Rest.2d Torts, § 538, subd. (2)(a); see also *Barnhouse v. City of Pinole* (1982) 133 Cal. App. 3d 171, 188, fn. 5 [183 Cal. Rptr. 881]), and as such materiality is generally a question of fact unless the "fact misrepresented is so obviously unimportant that the jury could not reasonably find that a reasonable man would have been influenced by it." (Rest.2d Torts, § 538, com. e, p. 82.)

(*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 977.)

Here, Kirkley contends a presumption of reliance does not arise because the evidence establishes Seller did not deem important Bart 2's status as a validly formed and existing legal entity registered with the State of California. To support this assertion, Kirkley proffers the following facts: Buyer assigned the Purchase Agreement to Bart 2.<sup>2</sup> Bart 2 was never registered with the Secretary of State.<sup>3</sup> Seller acknowledged receipt of the assignment on October 29, 2019.<sup>4</sup> Seller was indifferent to the identities of the [earnest money] depositors; it simply wanted the earnest money deposits made.<sup>5</sup> On March 26, 2020, Malley told Seller's agent, Anthony Zizzo ("Zizzo"), that because Bart 2 did not exist, Malley believed the assignment was invalid.<sup>6</sup> During this time, Seller spoke with Zizzo more than two times a week.<sup>7</sup> Seller believed the lack of registration of Bart 2 could be rectified because Kirkley could have registered it with the Secretary of State.<sup>8</sup> Seller never asked Zizzo or Kirkley that Bart 2 be formed.<sup>9</sup> On April 7, 2020, Malley declared to CTC that the assignment to Bart 2 was invalid.<sup>10</sup> On April 7, 2020, Malley told Zizzo that the purchase agreement between Seller and Buyer remained in effect.<sup>11</sup> It did not matter to Seller that Malley tried to invalidate the assignment

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<sup>2</sup> See Separate Statement of Undisputed Material Facts in Support of Roygbiv Real Estate Development LLC's and Loida Kirkley's Motion for Summary Judgment ("Cross-Defendants' UMF"), Fact No. 5.

<sup>3</sup> See Cross-Defendants' UMF, Fact No. 6.

<sup>4</sup> See Cross-Defendants' UMF, Fact No. 8.

<sup>5</sup> See Cross-Defendants' UMF, Fact No. 13.

<sup>6</sup> See Cross-Defendants' UMF, Fact No. 18.

<sup>7</sup> See Cross-Defendants' UMF, Fact No. 19.

<sup>8</sup> See Cross-Defendants' UMF, Fact No. 20.

<sup>9</sup> See Cross-Defendants' UMF, Fact No. 22.

<sup>10</sup> See Cross-Defendants' UMF, Fact No. 25.

<sup>11</sup> See Cross-Defendants' UMF, Fact No. 26.

between Buyer and Bart 2.<sup>12</sup> Seller was willing to go forward with the Purchase Agreement with either Buyer or Bart 2.<sup>13</sup> As of April 2020, Seller was willing to close escrow with whichever entity, as between either Buyer or Bart 2, had the money to do so.<sup>14</sup>

In opposition, Seller now apparently asserts that the representation it found to be material was not merely that Bart 2 was a validly formed and existing legal entity, but rather the representation by Kirkley that Kirkley and/or Bart 2 would be the buyer or one of the ultimate buyers in the transaction (and consequently, obligated to make the earnest money deposit). The court views Seller's argument to be an expansion of the scope of the operative pleading. "The pleadings play a key role in a summary judgment motion. "The function of the pleadings in a motion for summary judgment is to delimit the scope of the issues" and to frame "the outer measure of materiality in a summary judgment proceeding." [Citation.]" (*White v. Smule, Inc.* (2022) 75 Cal.App.5th 346, 354; see also *Leek v. Cooper* (2011) 194 Cal.App.4th 399, 412.)

As noted at the outset of this discussion, Seller very narrowly framed its third (fraud) cause of action against Kirkley. The only false representation identified is Kirkley's representation that Bart 2 was a valid legal limited liability company, that already existed. On this narrowly-framed allegation, the court finds cross-defendant Kirkley has met her initial burden of demonstrating that this misrepresentation was not material to Seller and, consequently, an inference that Seller relied on such misrepresentation does not arise. Seller's assertion, in opposition, that it relied upon Kirkley's representation that she [or Bart 2] were buyers and/or taking on the obligations of buyer under the PSA do not create a triable issue of material fact.<sup>15</sup>

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<sup>12</sup> See Cross-Defendants' UMF, Fact No. 27.

<sup>13</sup> See Cross-Defendants' UMF, Fact No. 28.

<sup>14</sup> See Cross-Defendants' UMF, Fact No. 47.

<sup>15</sup> See Defendant/ Cross-Complainant Green Villa Apts, LLC's Response to Separate Statement of Undisputed Material Facts in Opposition of Roygbiv Real Estate Development LLC's and Loida Kirkley's Motion for Summary Judgment ("Seller's Response UMF"), Fact Nos. 8 and 27. Seller now argues in opposition, different from the narrow allegations of the SAXC, the misrepresentation at issue is that Kirkley "[held] herself out as a buyer in the Transaction and a party to the PSA." (See page 11, lines 26 – 27 of Defendant/ Cross-Complainant Green Villa Apts, LLC's [MPA in] Opposition of Roygbiv Real Estate Development LLC's and Loida Kirkley's Motion for Summary Judgment, etc.)

Accordingly, cross-defendant Kirkley's motion for summary adjudication of the third cause of action of Seller's SAXC is GRANTED. [The court declines to address cross-defendant Kirkley's additional argument regarding causation.]

**C. Cross-defendants Kirkley and Roygbiv's motion for summary adjudication of the sixth (negligence) cause of action of Seller's SAXC is deemed MOOT.**

As noted in footnote 1, *supra*, the court already sustained cross-defendants Kirkley and Roygbiv's demurrer to the sixth cause of action without leave to amend.

Consequently, cross-defendants Kirkley and Roygbiv's motion for summary adjudication of the sixth cause of action of Seller's SAXC is deemed MOOT.

**D. Cross-defendants Kirkley and Roygbiv's motion for summary adjudication of the first (declaratory relief) cause of action of Seller's SAXC is DENIED.**

In the first cause of action, Seller alleges, in relevant part, "[Seller] contends that per the PSA, Assignment, and other addendums and amendments, it is entitled to the full \$300,000 deposit made towards the purchase of the Subject Property. ... Buyer Cross-Defendants contend that [Seller] has no right to the Deposit for various reasons, including, but not limited to, that the COVID-19 pandemic rendered performance of the PSA impossible; that they are not parties to the PSA, and thus not bound by it; that the Assignment was rescinded; and that the Third Party Deposit Escrow Instructions were never signed. [¶] [Seller] desires a judicial determination of its rights and duties, and a declaration as to whether [Seller] has a right to claim the full \$300,000 Deposit."<sup>16</sup> (SAXC, ¶¶44 – 45.)

Summary judgment is appropriate in a declaratory relief action when only legal issues are presented for the court's determination. (*Gafcon, Inc. v. Ponsor & Associates* (2002) 98 Cal.App.4th 1388, 1401–1402 [120 Cal. Rptr. 2d 392].)

The defendant's burden in a declaratory relief action "is to establish the plaintiff is not entitled to a declaration in its favor. It may do this by establishing (1) the

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<sup>16</sup> "A motion for summary adjudication shall be granted only if it *completely disposes* of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." (Code Civ. Proc., §437c, subd. (f)(1); emphasis added.) In light of these allegations, the court expresses some doubt whether cross-defendants' motion for summary adjudication of cross-complainant Seller's first cause of action "completely disposes" of Seller's declaratory relief cause of action. However, since the court is denying cross-defendants' motion for summary adjudication for the reasons discussed, *infra*, the court need not decide whether cross-defendants have sought only partial summary adjudication.

sought-after declaration is legally incorrect; (2) undisputed facts do not support the premise for the sought-after declaration; or (3) the issue is otherwise not one that is appropriate for declaratory relief.” (*Id.* at p. 1402.)

(*California Public Records Research, Inc. v. County of Yolo* (2016) 4 Cal.App.5th 150, 185.)

In moving for summary adjudication of the first (declaratory relief) cause of action of Seller’s SAXC, cross-defendants Kirkley and Roygbiv contend *Tribeca Companies, LLC v. First American Title Ins. Co.* (2015) 239 Cal.App.4th 1088 (*Tribeca*) compels a judicial declaration that cross-defendants Kirkley and/or Roygbiv are entitled to return of \$150,000 deposited into escrow.

As cross-defendants summarize, in *Tribeca*, a third-party (Grishin) deposited money into an escrow account opened by a joint venture limited liability company (LLC) to be used for the purchase of a senior mortgage note on a distressed property. The proposed investment fell apart. The title company, after learning the deposit came from an individual third-party investor, and not the LLC, returned the deposit to Grishin, the individual third-party. The LLC filed an action against the title company asserting causes of action for breach of contract, breach of fiduciary duty, negligence, fraud, and negligent misrepresentation. In a bench trial, the trial court found against the LLC.

On appeal, the *Tribeca* court determined the title company’s conduct did not cause LLC to suffer harm because LLC was not entitled to the money deposited into the escrow account. In part, the *Tribeca* court explained:

Courts have held “[t]he deposit of moneys in the escrow does not alter or change the ownership thereof.” (*People v. Hess* (1951) 104 Cal.App.2d 642, 681 [234 P.2d 65].) First American held Grishin's money in trust for his benefit, and no other party had any claim to his funds because he never designated another party as the beneficiary. (See *Hildebrand v. Beck* (1925) 196 Cal. 141, 145–146 [236 P. 301].) Because Grishin retained ownership, he was entitled to withdraw the money regardless of whether another party contended he was liable in damages for failure to consummate a transaction. (*Hastings v. Bank of America* (1947) 79 Cal.App.2d 627, 629 [180 P.2d 358]; see *Crooks v. State*

*Bar* (1970) 3 Cal.3d 346, 357 [90 Cal. Rptr. 600, 475 P.2d 872] [“It is established law that on failure of escrow the funds deposited with the escrow holder are returnable to the respective depositors.”].) Tribeca could not assert entitlement to the funds in escrow except upon the terms stipulated in the depositing party's instructions. (*Kellogg v. Curry* (1951) 101 Cal.App.2d 856, 860–861 [226 P.2d 381].) Grishin never provided any instruction to First American, other than the one requesting it to return his funds “immediately.” (*Tibeca*, *supra*, 239 Cal.App.4th at pp. 1107-1108.)

Cross-defendants Kirkley and Roygbiv proffer the following evidence in asking this court to follow *Tibeca*: On or about August 1, 2019, CTC received an earnest money deposit from Roygbiv of \$75,000.<sup>17</sup> On or about October 29, 2019, CTC received an earnest money deposit from Roygbiv of \$75,000.<sup>18</sup> CTC circulated Third Party Deposit Instructions for Roygbiv to sign.<sup>19</sup> CTC’s policy is that a third-party deposit instruction form be signed for any deposit payment originating from someone other than a principal buyer.<sup>20</sup> The Third Party Deposit Instructions CTC prepared provide that any deposited funds were to be applied for the benefit of Buyer.<sup>21</sup> However, neither Kirkley nor Roygbiv signed the Third Party Deposit Instructions.<sup>22</sup> The PSA does not list Roygbiv as a buyer.<sup>23</sup> Just as in *Tibeca*, cross-defendants Kirkley and Roygbiv contend, based on these facts, they never designated Buyer as the beneficiary of the \$150,000 in funds deposited.

On this point, however, the court finds the existence of a triable issue of material fact. Seller proffers evidence in opposition that Kirkley knew and understood the escrow deposits were for the purchase of the subject property, and Kirkley made the deposits into escrow for the benefit of the buyer (or anticipated buyer) under the PSA.<sup>24</sup>

Accordingly, cross-defendants Kirkley and Roygbiv’s motion for summary adjudication of the first cause of action of Seller’s SAXC is DENIED.

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<sup>17</sup> See Cross-Defendants’ UMF, Fact No. 10.

<sup>18</sup> See Cross-Defendants’ UMF, Fact No. 12.

<sup>19</sup> See Cross-Defendants’ UMF, Fact No. 14.

<sup>20</sup> See Cross-Defendants’ UMF, Fact No. 15.

<sup>21</sup> See Cross-Defendants’ UMF, Fact No. 16.

<sup>22</sup> See Cross-Defendants’ UMF, Fact No. 17.

<sup>23</sup> See Cross-Defendants’ UMF, Fact No. 56.

<sup>24</sup> See Seller’s Additional Undisputed Facts, Fact Nos. 58, 60, 62, 64, and 66.

**E. Cross-defendants Kirkley and Roygbiv's motion for summary adjudication of the fourteenth (promissory estoppel) cause of action of Seller's SAXC is DENIED.**

“The doctrine of promissory estoppel is set forth in section 90 of the Restatement of Contracts. It provides: ‘A promise which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise.’” (*Signal Hill Aviation Co. v. Stroppe* (1979) 96 Cal.App.3d 627, 637 (*Signal Hill*)). “California recognizes the doctrine. ‘Under this doctrine a promisor is bound when he should reasonably expect a substantial change of position, either by act or forbearance, in reliance on his promise, if injustice can be avoided only by its enforcement.’” (*Signal Hill, supra*, 96 Cal.App.3d at p. 637.)

In moving for summary adjudication of Seller's fourteenth cause of action for promissory estoppel, cross-defendants Kirkley and Roygbiv argue first that a claim for promissory estoppel and breach of contract are mutually exclusive. (See *Douglas E. Barnhart, Inc. v. CMC Fabricators, Inc.* (2012) 211 Cal.App.4th 230, 243—"our Supreme Court repeatedly has recognized the claims not only as distinct or alternative theories of recovery but also as mutually exclusive.") Cross-defendants point to Seller's discovery responses in which Seller asserts Kirkley and Roygbiv are parties to the PSA. However, in the court's opinion, citation to this evidence alone is not enough for cross-defendants to meet their initial burden. As cross-defendants' own authority acknowledges, breach of contract and promissory estoppel are "alternative" theories of recovery. "[A] plaintiff may plead inconsistent causes of action in separate counts of a single complaint." (*Lambert v. Southern Counties Gas Co.* (1959) 52 Cal.2d 347, 352.)

Alternatively, cross-defendants seek summary adjudication of Seller's promissory estoppel cause of action on the basis that there is no promise by cross-defendants Kirkley or Roygbiv to be bound by the PSA. "The required elements for promissory estoppel in California are ... (1) a promise clear and unambiguous in its terms; (2) reliance by the party to whom the promise is made; (3) his reliance must be both reasonable and foreseeable; and (4) the party

asserting the estoppel must be injured by his reliance.” (*Laks v. Coast Fed. Sav. & Loan Assn.* (1976) 60 Cal.App.3d 885, 890; see also *US Ecology, Inc. v. State of California* (2005) 129 Cal.App.4th 887, 901 (*US Ecology*).)

Cross-defendants Kirkley and Roygbiv again direct the court to the facts previously cited that although Roygbiv deposited earnest money funds into escrow, it did not sign the Third Party Depositor Instructions and, as in *Tribeca*, the deposit of funds does not turn the depositor into a contracting party for a purchase agreement. Again, the court finds Seller has presented evidence in opposition which creates a triable issue of material fact with regard to whether cross-defendants Kirkley/ Roygbiv undertook obligations under the PSA.<sup>25</sup>

Finally, cross-defendants contend Seller did not rely on a promise to close escrow again citing to the evidence that Seller “was indifferent to the identities of the depositors; it simply wanted the earnest money deposits made.”<sup>26</sup> The court finds this to be a misunderstanding of Seller’s promissory estoppel claim. Seller’s promissory estoppel is premised upon the theory that cross-defendant promised to close escrow upon a date certain or would forfeit the earnest money deposit. Even if cross-defendants’ evidence is sufficient to meet its initial burden, Seller proffers evidence in opposition which would present a triable issue of material fact with regard to whether Seller relied upon cross-defendants’ promise to close escrow or forfeit the earnest money deposit.<sup>27</sup>

Accordingly, cross-defendants Kirkley and Roygbiv’s motion for summary adjudication of the fourteenth cause of action of Seller’s SAXC is DENIED.

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<sup>25</sup> See Seller’s Additional Undisputed Facts, Fact Nos. 58 – 62.

<sup>26</sup> See Cross-Defendants’ UMF, Fact No. 13.

<sup>27</sup> See ¶¶10 – 13 of the Declaration of Gary Lee in Support of Green Villa’s Opposition, etc.



## Calendar Line 9

**Case Name:** *David Martin vs GOOGLE LLC et al*

**Case No.:** 23CV410545

### (1) Motion to Tax (City of West Sacramento)

Before the Court is Plaintiff's Motion to Tax Costs of Defendant City of West Sacramento ("City"). Defendant City's demurrer to Plaintiff's Third Amended Complaint was sustained without leave to amend by this court's April 19, 2024 order. Defendant City is the prevailing party. The City's Memorandum of costs was filed April 30, 2024. Plaintiff filed a motion to tax on May 14, 2024, arguing, *inter alia*, that such costs were unclear, and that proceedings should be stayed as he was "planning on filing the documentation regarding the appeal soon" for the court's ruling granting the City's demurrer. Plaintiff has not met his burden – he has not provided any competent authority to support his motion or to show that the costs are not recoverable, unnecessary, or unreasonable. Good cause appearing, the motion to tax costs is DENIED. Defendant City is the prevailing party and is entitled to its costs from Plaintiff, as set forth in its Memorandum of Costs. (Code Civ. Proc., §§ 916, 1032 -1033.5, *Blankes v. Lucas* (1992) 9 Cal.App.4th 365, 368-369). Defendant City to prepare formal order.

### (2) Motion to Tax (Emalee Ousley)

Plaintiff also filed a Motion to Tax Costs of Defendant Emalee Ousley ("Ousley"). **No reservation was obtained for this motion by Plaintiff. Despite this failure by Plaintiff, the Court will address this motion to avoid any delay and in the interests of justice.** After a hearing on December 7, 2023, Defendant Ousley's demurrer to Plaintiff's Second Amended Complaint was sustained without leave to amend. Despite this ruling, Plaintiff filed a Third Amended Complaint, which named Ousley. Defendant Ousley filed a demurrer to the Third Amended Complaint, which was granted on April 23, 2024. Defendant Ousley is the prevailing party. Defendant Ousley's Memorandum of costs was filed May 14, 2024. Plaintiff filed a motion to tax on May 28, 2024, arguing, *inter alia*, that such costs were unclear, and that proceedings should be stayed as he "is perfecting an appeal" for the court's ruling granting Ousley's demurrer. Plaintiff has not met his burden – he has not provided any competent authority to support his motion or to show that the costs are not recoverable, unnecessary, or unreasonable. Good cause appearing, the motion to tax costs is DENIED. Defendant Ousley is the prevailing party and is entitled to her costs from Plaintiff, as set forth in her Memorandum of Costs. (Code Civ. Proc., §§916, 1032 -1033.5, *Blankes v. Lucas* (1992) 9 Cal.App.4th 365, 368-369). Defendant Ousley to prepare formal order.

### (3) Motion Regarding Proposed Judgment (City of West Sacramento)

Moving party's motion was filed June 25, 2024. **There was also no reservation for the hearing of this motion.** In the interests of justice, the Court will address the motion. **Plaintiff is admonished that a reservation must be obtained for any motion that is filed.** There is also no proof of service of the motion providing the defendants with notice of the hearing date or the motion. Absent a poof of service showing that timely notice of hearing was given, the hearing will not go forward. If no appearance is made by the moving party the matter will be ordered OFF CALENDAR.