SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 20, Honorable Socrates Peter Manoukian, Presiding

Courtroom Clerk: Hien-Trang Tran-Thien

191 North First Street, San Jose, CA 95113

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"Every case is important" . . . . . "No case is more important than any other."—United States District Judge Edward Weinfeld (https://www.nytimes.com/1988/01/18/obituaries/judge-edward-weinfeld-86-dies-on-us-bench-nearly-4-decades.html)

"The Opposing Counsel on the Second-Biggest Case of Your Life Will Be the Trial Judge on the Biggest Case of Your Life."—Common Wisdom.

As Shakespeare observed, it is not uncommon for legal adversaries to "strive mightily, but eat and drink as friends." (Shakespeare, The Taming of the Shrew, act I, scene ii.)" (*Gregori v. Bank of America* (1989) 207 Cal.App.3d 291, 309.)

Counsel is duty-bound to know the rules of civil procedure. (See *Ten Eyck v. Industrial Forklifts Co.* (1989) 216 Cal.App.3d 540, 545.) The rules of civil procedure must apply equally to parties represented by counsel and those who forgo attorney representation. (*McClain v. Kissler* (2019) 39 Cal.App.5th 399.)

By Standing Order of this Court, all parties appearing in this Court are expected to comply with the Code of Professionalism adopted by the Santa Clara County Bar Association: https://www.sccba.com/code-of-professional-conduct/

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DATE: Tuesday, 07 May 2024
TIME: 9:00 A.M.

This Department uses Zoom for Law and Motion and for Case Management Calendars. Please use the Zoom link below.

TO ALL LAWYERS APPEARING IN THIS COURT: Please be on the lookout for announcements concerning "Civil Trials and Civil Motion Practice: Best Practices in Santa Clara County Superior Court." The program is tentatively set for 20 June 2024 at 12:00 PM on the Department 6 Teams Link. The program is available to all lawyers whether or not they are members of Santa Clara County Bar Association.

This Court expects all counsel and litigants to comply with the Tentative Rulings Procedures that are outlined in Local Civil Rule 8(E) and ***California Rules of Court***, rule 3.1308. If the Court has not directed argument, oral argument must be permitted only if a party notifies all other parties and the Court at (408) 808-6856 before 4:00 p.m. on the court day before the hearing of the party's intention to appear. A party must notify all other parties by telephone or in person. A failure to timely notify this Court and/or the opposing parties may result in the tentative ruling being the final order in the matter.

You may use these links for Case Management Conferences and Trial Setting Conferences without Court permission. Informal Discovery Conferences and appearances on Ex Parte applications will be set on Order by the Court.

Join Zoom Meeting
https://scu.zoom.us/j/96144427712?pwd=cW1JYmg5dTdsc3NKNFBpSjlEam5xUT09
Meeting ID: 961 4442 7712
Password: 017350

Join by phone:
+1 (669) 900-6833
Meeting ID: 961 4442 7712

One tap mobile
+16699006833,,961 4442 7712#

By appearing in this Department, whether in-person or by remote video platform, you represent that you have read the protocols of this Department, that you understand them, and that you will comply with them.

APPEARANCES.

Appearances are usually held on the Zoom virtual platform. However, we are currently allowing in-court appearances as well. If you do intend to appear in person, please advise us when you call to contest the tentative ruling so we can give you current instructions as to how to enter the building. If the doors to the Old Courthouse are locked, please see the deputies at the metal detector next door at 191 North First Street.

Whether appearing in person or on a virtual platform, the usual custom and practices of decorum and attire apply. (See ***Jensen v. Superior Court (San Diego)*** (1984) 154 Cal.App.3d 533.). Counsel should use good quality equipment and with sufficient bandwith. Cellphones are very low quality in using a virtual platform. Please use the video function when accessing the Zoom platform. The Court expects to see the faces of the parties appearing on a virtual platform as opposed to listening to a disembodied voice.

For new Rules of Court concerning remote hearings and appearances, please review California ***Rules of Court***, rule 3.672.

"A person's name is to him or her the sweetest and most important sound in any language."—Dale Carnegie. All Courts of California celebrate the diversity of the attorneys and the litigants who appear in our Courts. Do not hesitate to correct the Court or Court Staff concerning the pronunciation of any name or how anyone prefers to be addressed. As this Court is fond of saying, "with a name like mine, I try to be careful how I pronounce the names of others." Please inform the Court how you, or if your client is with you, you and your client prefer to be introduced. The Court encourages the use of diacritical marks, multiple surnames and the like for the names of attorneys, litigants and in court papers. You might also try www.pronouncenames.com but that site mispronounces my name.

Please notify this Court immediately if the matter will not be heard on the scheduled date. ***California Rules of Court***, rule 3.1304(b). If a party fails to appear at a law and motion hearing without having given notice, this Court may take the matter off calendar, to be reset only upon motion, or may rule on the matter. ***California Rules of Court***, rule 3.1304(d). A party may give notice that he or she will not appear at a law and motion hearing and submit the matter without an appearance unless this Court orders otherwise. This Court will rule on the motion as if the party had appeared. California Rules of Court, rule 3.1304(c). Any uncontested matter or matters to which stipulations have been reached can be processed through the Clerk in the usual manner. Please include a proposed order.

All proposed orders and papers should be submitted to this Department's e-filing queue. Do not send documents to the Department email unless directed to do so.

While the Court will still allow physical appearances, all litigants are encouraged to use the Zoom platform for Law & Motion appearances and Case Management Conferences. Use of other virtual platform devices will make it difficult for all parties fully to participate in the hearings. Please note the requirement of entering a password (highlighted above.) As for personal appearances, protocols concerning social distancing and facial coverings in compliance with the directives of the Public Health Officer will be enforced. Currently, facemasks are not required in

all courthouses. If you appear in person and do wear a mask, it will be helpful if you wear a disposable paper mask while using the courtroom microphones so that your voice will not be muffled.

Individuals who wish to access the Courthouse are advised to bring a plastic bag within which to place any personal items that are to go through the metal detector located at the doorway to the courthouse.

Sign-ins will begin at about 8:30 AM. Court staff will assist you when you sign in. If you are using the Zoom virtual platform, it will helpful if you "rename" yourself as follows: in the upper right corner of the screen with your name you will see a blue box with three horizontal dots. Click on that and then click on the "rename" feature. You may type your name as: Line #/name/party. If you are a member of the public who wishes to view the Zoom session and remain anonymous, you may simply sign in as "Public."

CIVILITY.

In the 50 years that this Judge has been involved with the legal profession, the discussion of the decline in civility in the legal profession has always been one of the top topics of continuing education classes.

This Court is aware of a study being undertaken led by Justice Brian Currey and involving various lawyer groups to redefine rules of civility. This Judge has told Justice Currey that the lack of civility is due more to the inability or unwillingness of judicial officers to enforce the existing rules.

The parties are forewarned that this Court may consider the imposition of sanctions against the party or attorney who engages in disruptive and discourteous behavior during the pendency of this litigation.

COURT REPORTERS.

This session will not be recorded. No electronic recordings, video, still photography or audio capture of this live stream is allowed without the expressed, written permission of the Superior Court of California, County of Santa Clara. State and Local Court rules prohibit photographing or recording of court proceedings whether in the courtroom or while listening on the Public Access Line or other virtual platform, without a Court Order. See Local General Rule 2(A) and 2(B); ***California Rules of Court***, rule 1.150.

This Court no longer provides for Court Reporters in civil actions except in limited circumstances. If you wish to arrange for a court reporter, please use Local Form #CV-5100. All reporters are encouraged to work from a remote location. Please inform this Court if any reporter wishes to work in the courtroom. This Court will approve all requests to bring a court reporter. Counsel should meet and confer on the use of a court reporter so that only one reporter appears and serves as the official reporter for that hearing.

PROTOCOLS DURING THE HEARINGS.

During the calling of any hearing, this Court has found that the Zoom video platform works very well. But whether using Zoom or any telephone, it is preferable to use a landline if possible. IT IS ABSOLUTELY NECESSARY FOR ALL INDIVIDUALS TO SPEAK SLOWLY. Plaintiff should speak first, followed by any other person. All persons should spell their names for the benefit of Court Staff. Please do not use any hands-free mode if at all possible. Headsets or earbuds of good quality will be of great assistance to minimize feedback and distortion.

The Court will prepare the Final Order unless stated otherwise below or at the hearing. Counsel are to comply with ***California Rules of Court***, rule 3.1312.

TROUBLESHOOTING TENTATIVE RULINGS.

To access a tentative ruling, move your cursor over the line number, hold down the "Control" key and click. If you see last week's tentative rulings, you have checked prior to the posting of the current week's tentative rulings. **Defendant City Of Sacramento's Demurrer**

To Plaintiff's Third Amended Complaint. You will need to either "REFRESH" or "QUIT" your browser and reopen it. Another suggestion is to "clean the cache" of your browser. Finally, you may have to switch browsers. If you fail to do any of these, your browser may pull up old information from old cookies even after the tentative rulings have been posted.

This Court's tentative ruling is just that—tentative. Trial courts are not bound by their tentative rulings, which are superseded by the final order. (See *Faulkinbury v. Boyd & Associates, Inc.* (2010) 185 Cal.App.4th 1363, 1374-1375.) The tentative ruling allows a party to focus his or her arguments at a subsequent hearing and to attempt to convince the Court the tentative should or should not become the Court's final order. (*Cowan v. Krayzman* (2011) 196 Cal.App.4th 907, 917.) If you wish to challenge a tentative ruling, please refer to a specific portion of the tentative ruling to which you disagree.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 1	23CV410545	David Martin vs Google LLC et al	**Defendant City Of Sacramento's Demurrer To Plaintiff's Third Amended Complaint.** Defendant Sacramento's demurrer to plaintiff Martin's TAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] and on the ground that the pleading is uncertain [Code Civ. Proc., §430.10, subd. (f)] is SUSTAINED WITHOUT LEAVE TO AMEND. Defendant is to provide notice of entry of order and submit it to this Department fee at the e-filing queue. SEE ATTACHED TENTATIVE RULING.
LINE 2	22CV405349	Sanjay Taxpro, Inc. v. Neil Jesani, et al.	**Motion of Defendants/Cross-Complainants Neil Jesani and BeamaLife Corporation for Summary Judgment.** Defendants Jesani and Beamalife's motion for summary judgment/adjudication plaintiff Taxpro's complaint is DENIED. SEE ATTACHED TENTATIVE RULING.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 3	23CV419284	SoFi Lending Corp. vs David Cheong	**Motion of Plaintiff for Summary Judgment/Adjudication.** Plaintiff's motion is unopposed. Ordinarily, a failure to oppose a motion may be deemed a consent to the granting of the motion. (see 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; ***see CDF Firefighters v. Maldonado*** (2008) 158 Cal.App.4th 1226, 1239, fn. 2 ["failure to file an opposition does not excuse" the moving party "from meeting its burden" on summary judgment].) Any party may move for summary judgment. (***Code Civ. Proc.***, § 437c, subdivision (a); ***Aguilar v. Atlantic Richfield Co***. (2001) 25 Cal.4th 826, 843 (***Aguilar***).) The motion "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); ***Aguilar,*** *supra,* at p. 843.) The object of the summary judgment procedure is "to cut through the parties' pleadings" to determine whether trial is necessary to resolve the dispute. (***Aguilar,*** *supra,* at p. 843.) The "party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact…" (***Aguilar,*** *supra,* 25 Cal.4th at p. 850; see ***Evid. Code*****,** § 110.) "A prima facie showing is one that is sufficient to support the position of the party in question." (***Aguilar,*** *supra,* at p. 851.) If the moving party makes the necessary initial showing, the burden of production shifts to the opposing party to make a prima facie showing of the existence of a triable issue of material fact. (***Code Civ. Proc.***, § 437c, subdivision (p)(2); see ***Aguilar,*** *supra,* 25 Cal.4th at p. 850.) A triable issue of material fact exists "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." (***Aguilar,*** *supra,* at p. 850, fn. omitted.) If the party opposing summary judgment presents evidence demonstrating the existence of a disputed material fact, the motion must be denied. (***Id.*** at p. 856.) Here, plaintiff has shown sufficient evidence to justify the grant of summary judgment in its favor. A motion for summary judgment is GRANTED. Plaintiff is to provide notice of entry of order and submit it to this Department fee at the e-filing queue. NO FORMAL TENTATIVE RULING.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 4	18CV326154	Richard Soukoulis vs Diana Southern et al and related cross-complaint.	**Motion of Cross-Defendants Richard Southern and Diana Southern for Summary Judgment/Adjudication against Cross-Defendants Elizabeth T. Crawford And Shannon D. Crawford.** OFF CALENDART.
LINE 5	22CV393229	First Street Holdings, LLC et al vs Ronald Werner	**Motion of Plaintiff to Compel Deposition of Timothy Bumb.** The motion is GRANTED. Unless the parties agree otherwise, the deposition shall be taken within 20 days at a code-compliant location and in a code-compliant manner. Plaintiff is to provide notice of entry of order and submit it to this Department fee at the e-filing queue. NO FORMAL TENTATIVE RULING.
LINE 6	22CV402498	José López Ruiz vs Shark City Builders, Inc. et al	**Motion of Defendants To Reopen Discovery after New Trial Date Set.** The motion of defendants to reopen discovery is GRANTED and DENIED as follows. Defendants may serve and "update" discovery device by way of either interrogatories, request for production of documents etc. Plaintiff is to list all health care providers that examined plaintiff from the date of the accident to the present. Defendants are free to subpoena the records of any health care provider not previously disclosed. Both sides are to submit updated expert disclosures. Any disclosed expert not previously deposed can be deposed. Discovery will otherwise close per the ***Code of Civil Procedure***. SEE ATTACHED TENTATIVE RULING.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 7	17CV318460	Charles Darquea et al vs Ivan Baev et al	**Motion of Defendants to Opt Out Of Settlement Agreement.** Advanced from 16 May 2024. On 22 May 2018, the parties participated in mediation and entered into a settlement agreement to resolve issues pertaining to a failing retaining wall separating the property boundaries of the defendants and the plaintiffs. The parties agreed to Mr. Beam as a structural engineer for the purpose of inspecting the retaining wall and preparing a report. Mr. Beam relied on a geotechnical report provided by Cotton-Shires. Paragraph 4 of the settlement agreement allowed either party to opt out of the settlement agreement if the remediation exceeded $30,000. Defendants claim that after five years, plaintiffs are unable to secure a compliant bid $30,000. Plaintiffs claim that repair estimates provided in January of this year included a bid by Xtreme concrete in the amount of $29,302. Defendants claim, however, that this bid is wholly deficient according to Mr. Beam. While the language of the Settlement Agreement allows defendant to "opt out" if the wall cannot be repaired or replaced for less than $30,000, defendants have not cited any authority in support of its claim that this is "discretionary" or explained how this discretion should be exercised. Plaintiffs assert that there is no evidence to prove that a satisfactory Keystone wall cannot be billed for less than $30,000. The motion of the defendants to opt out of the settlement agreement is DENIED. Any motion of the plaintiffs to enforce the settlement agreement is GRANTED. NO FORMAL TENTATIVE RULING.
LINE 8	21CV380664	City of Milpitas vs Rajeev Madnawat	**Further Hearing on Petition of City of Milpitas to Dispose of Firearms** NO TENTATIVE RULING. The parties should use the Tentative Ruling Protocol if they wish to appear or otherwise advise this Court of the status of this case.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 9	22CV398215	Helix Electric, Inc. vs FPC Builders Inc. et al	**Motion of Plaintiff for Award of Attorney's Fees, Costs and Prejudgment Interest.** On 18 April 2024, Judge Geffon granted the motion of plaintiff for summary judgment/adjudication on the first and second cause of action. The judge denied the motion as to the third cause of action. It turns out that the plaintiff dismissed the third cause of action on 15 March 2024. This Judge does not understand why the motion as to the third cause of action was denied as opposed to being rendered moot. In any event, ¶ 29 of the General Conditions provides that defendant was entitled to its attorney fees, costs etc. if it were the prevailing party. Pursuant to ***Civil Code***, § 1717 and ***Reynolds Metals Co. v. Alperson*** (1979) 25 Cal.3d 124, 128., The attorney fees provision goes both ways and in favor of Helix. Helix is the prevailing party. [(***Code of Civil Procedure***, § 1033.5(c)(1)] and is entitled to its attorney's fees, costs and prejudgment interest. (***Serrano v. Unruh*** (1982) 32 Cal.2d 621.) Defendant did not challenge the amounts claimed. Good cause appearing, the motion of plaintiff is GRANTED and plaintiff is entitled to (1) reasonable attorneys' fees in the amount of $61,800, (2) reasonable costs of suit in the amount of $3,065.48; (3) prejudgment interest in the amount of $221,477.74 from January 26, 2022 to March 19, 2024; (4) reasonable attorneys' fees and costs incurred by Helix in bringing this Motion in the amount of $3,510. Plaintiff is to provide notice of entry of order and submit it to this Department fee at the e-filing queue. NO FORMALTENTATIVE RULING.
LINE 10	22CV402218	Dolores Mattson vs Adi De La Zerda et al	**Petitioning concerning Compromise of Disabled Persons Claim**. At Mr. Van Der Walde's request, this petition has been continued to 18 June 2024 at 9:00 AM in this Department to be heard along with the petition of Mr. Van Der Walde to withdraw and to obtain an update on the related probate proceeding. NOFORMAL TENTATIVE RULING.
LINE 11	22CV406644	Gilbert Marosi et al vs TriCo Bancshares	**Motion of Plaintiff to Tax Costs.** This motion will be heard by Judge Geffon in Department 8 on 20 May 2024 at 9:00 in Dept. 8. Please check with his Department for further instructions.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 12	22CV406644	Gilbert Marosi et al vs TriCo Bancshares	**Motion of Defendant TriCo Bancshares for Attorney's Fees.** This motion will be heard by Judge Geffon in Department 8 on 20 May 2024 at 9:00 in Dept. 8. Please check with his Department for further instructions.
LINE 13	22CV406644	Gilbert Marosi et al vs TriCo Bancshares	**Motion of Defendant TriCo Bancshares for Sanctions.** This motion will be heard by Judge Geffon in Department 8 on 20 May 2024 at 9:00 in Dept. 8. Please check with his Department for further instructions.
LINE 14	23CV419857	Joseph LaRussa vs Zhiqiang Gu et al	**Motion of Plaintiff for Trial Preference (*Code of Civil Procedure*, § 36(d).)** Defendant has filed a declaration of non-opposition to the motion. The parties should be and confer and agree on a trial date within 120 days of this motion. The parties should use the Tentative Ruling Protocol to advise this Court if they wish to appear for the assigned trial date. NO FORMAL TENTATIVE RULING.
LINE 15			SEE ATTACHED TENTATIVE RULING.
LINE 16			SEE ATTACHED TENTATIVE RULING.
LINE 17			SEE ATTACHED TENTATIVE RULING.
LINE 18			SEE ATTACHED TENTATIVE RULING.
LINE 19			SEE ATTACHED TENTATIVE RULING.
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LINE 25			SEE ATTACHED TENTATIVE RULING.
LINE 26			SEE ATTACHED TENTATIVE RULING.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 27			SEE ATTACHED TENTATIVE RULING.
LINE 28			SEE ATTACHED TENTATIVE RULING.
LINE 29			SEE ATTACHED TENTATIVE RULING.
LINE 30			SEE ATTACHED TENTATIVE RULING.

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Calendar Line 1

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
DEPARTMENT 20

161 North First Street, San Jose, CA 95113
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(For Clerk's Use Only)

CASE NO.: 23CV410545 **David Martin v. Google LLC, et al.**
DATE: 07 May 2024 **TIME: 9:00 am** **LINE NUMBER: 01**

This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 20 in the Old Courthouse, 2nd Floor, 161 North First Street, San Jose. Any party opposing the tentative ruling must call Department 20 at 408.808.6856 and the opposing party no later than 4:00 PM on 01 May 2024. Please specify the issue to be contested when calling the Court and Counsel.

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Order On Defendant City Of Sacramento's Demurrer To Plaintiff's Third Amended Complaint.

I. Statement of Facts.

Plaintiff David Martin ("Martin"), a self-represented litigant[1], filed his original complaint in this action on 20 January 2023.[2] In the original complaint, plaintiff Martin alleges defendant Jose A. Ramirez ("Ramirez") is his landlord and that defendant Ramirez (and/or agents, employees, co-conspirators) committed trespass on plaintiff Martin's apartment.

Plaintiff Martin's original complaint further alleged that defendant Emalee Ousley ("Ousley") and defendant Ramirez (and/or agents, employees, co-conspirators) committed an assault and battery.

Plaintiff Martin's original complaint also names as defendants the City of Sacramento ("Sacramento"), City of West Sacramento ("West Sacramento"), and Google LLC ("Google"). Without much in the way of facts, plaintiff Martin's original complaint asserted the following causes of action:

(1) Trespass [against defendant Ramirez]

(2) Extortion [against defendant Ramirez]

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[1] Although a judge should ensure that self-represented litigants are not being misled or unfairly treated (see *Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1284), self-represented litigants are not entitled to special treatment with regard to the Rules of Court or Code of Civil Procedure. "[W]e cannot disregard the applicable principles of law and accord defendant any special treatment because he instead elected to proceed in propria persona. [Citations.]" (*Stein v. Hassen* (1973) 34 Cal. App. 3d 294, 303.) "A litigant has a right to act as his own attorney [citation] 'but, in so doing, should be restricted to the same rules of evidence and procedure as is required of those qualified to practice law before our courts.'" (*Lombardi v. Citizens Nat'l Trust & Sav. Bank* (1955) 137 Cal.App.2d 206, 208-209.)

[2] This Department intends to comply with the time requirements of the Trial Court Delay Reduction Act (**Government Code**, §§ 68600–68620). The California Rules of Court state that the goal of each trial court should be to manage limited and unlimited civil cases from filing so that 100 percent are disposed of within 24 months. (Ca. St. Civil **Rules of Court**, Rule 3.714(b)(1)(C) and (b)(2)(C).)

(3) Violation of California Civil Code 1940.2 [against defendant Ramirez]

(4) Violation of California Civil Code 1942.5 [against defendant Ramirez]

(5) Violation of California Civil Code 1947.12 [against defendant Ramirez]

(6) Violation of California Civil Code 827 [against defendant Ramirez]

(7) Intentional Infliction of Emotional Distress [against defendant Ramirez]

(8) Negligence [against all defendants]

(9) Negligence per se [against defendant Ousley]

(10) Nuisance [against defendant Ramirez]

(11) Violation and/or conspiracy to violate California Civil Code 52.1 [against all defendants]

(12) Assault [against defendants Ramirez and Ousley]

(13) Battery [against defendant Ousley]

(14) Violation of Right of Privacy [against all defendants]

(15) False Advertising [against defendant Google]

(16) Unfair Competition [against defendant Google]

(17) Fraud [against defendant Google]

(18) Negligent Misrepresentation [against defendant Google]

On 29 September 2023, plaintiff Martin filed a first amended complaint ("FAC"). While plaintiff Martin's original complaint consisted of nine pages, plaintiff Martin's FAC ballooned to 177 pages in length. The FAC continued to assert the same eighteen causes of action asserted in the original complaint against the same parties identified in the original complaint.

On 30 October 2023, plaintiff Martin filed a second amended complaint ("SAC"), growing further to 195 pages in length. The SAC continued to assert the same eighteen causes of action asserted in the original complaint against the same parties identified in the original complaint.

After the court (Hon. Kulkarni) took under submission various motions including demurrers to the SAC following a hearing on 7 December 2023, plaintiff Martin filed a request for dismissal on 12 December 2023 of "all causes of action only for Defendants: City of Sacramento, City of West Sacramento, Jose A. Ramirez, and Emalee Ousley." However, the court clerk did not enter dismissal as requested.

On 14 December 2023, the court (Hon. Manoukian) issued an order "dismiss[ing] all causes of action … regarding the following Defendants: City of West Sacramento, City of Sacramento, Jose A Ramirez, and Emalee Ousley."

On 20 December 2023, the court (Hon. Kulkarni) issued an order sustaining (some with and some without) the defendants' demurrers. As to defendant City of Sacramento, the court sustained the demurrer with leave to amend.

On 26 December 2023, the court (Hon. Manoukian) issued an order setting aside the 14 December 2023 order which dismissed, among others, defendant City of West Sacramento.

On 9 January 2024, plaintiff Martin filed the operative third amended complaint ("TAC"), now 202 pages in length, continuing to assert the same eighteen causes of action asserted in the original complaint against the same parties identified in the original complaint.

On 11 March 2024, defendant City of Sacramento filed the motion now before the court, a demurrer to plaintiff Martin's TAC.

II. Demurrers in General.

A complaint must contain substantive factual allegations sufficiently apprising the defendant of the issues to be addressed. (See *Williams v. Beechnut Nutrition Corp.* (1986) 185 Cal.App.3d 135, 139, fn. 2.)

A demurrer tests the legal sufficiency of a complaint. It is properly sustained where the complaint or an individual cause of action fails to "state facts sufficient to constitute a cause of action." (*Code of Civil Procedure*, § 430.10, subd. (e).) "[C]onclusionary allegations . . . without facts to support them" are insufficient on demurrer. (*Ankeny v. Lockheed Missiles and Space Co.* (1979) 88 Cal.App.3d 531, 537.) "It is fundamental that a demurrer is an attack against the complaint on its face, it should not be sustained unless the complaint shows that the action may not be pursued." (*Yolo County Dept. of Social Services v. Municipal Court* (1980) 107 Cal.App.3d 842, 846-847.)

"It is not the ordinary function of a demurrer to test the truth of the plaintiff's allegations or the accuracy with which he describes the defendant's conduct. A demurrer tests only the legal sufficiency of the pleading." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213.) "It 'admits the truth of all material factual allegations in the complaint . . .; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court.' [Citation.]" (*Id.* at pp. 213-214; see *Cook v. De La Guerra* (1864) 24 Cal. 237, 239: "[I]t is not the office of a demurrer to state facts, but to raise an issue of law upon the facts stated in the pleading demurred to.")

III. Analysis.

A. Preliminary considerations.

As a preliminary matter, plaintiff Martin argues in opposition that defendant Sacramento's demurrer is untimely. Plaintiff Martin cites Code of Civil Procedure section 430.40, subdivision (a), which states, "A person against whom a complaint or cross-complaint has been filed may, within 30 days after service of the complaint or cross-complaint, demur to the complaint or cross-complaint."

As noted above, plaintiff Martin filed the TAC on 9 January 2024. Plaintiff Martin acknowledges Sacramento filed a declaration in support of automatic extension on 2 February 2024, but contends Sacramento did not thereafter engage in meaningful meet and confer and did not file the instant demurrer until 11 March 2024, a date plaintiff Martin contends is beyond the time allowed to file a demurrer.

The flaw with plaintiff Martin's argument is that the deadline to file a demurrer begins to run "after service" of the TAC. Here, plaintiff has made no evidentiary showing as to when he ***served*** the TAC. Even if the court draws an inference that plaintiff Martin did properly and actually serve the TAC upon Sacramento on 9 January 2024, the delay in Sacramento's filing of a demurrer does not preclude the court from considering it now.

"Technically, defendants are 'in default' if they fail to file an answer, demurrer or other permitted response within the time allowed by law and without a court order excusing such filing. [¶] By itself, being 'in default' has no legal consequences because defendant can still appear in the action until the clerk has entered his or her default. [¶] Thus, even though the time to respond has expired, if no default yet has been entered, defendant can file a pleading or motion." (Weil & Brown, et al., CAL. PRAC. GUIDE: CIV. PRO. BEFORE TRIAL (The Rutter Group 2020) ¶¶5:2 – 5:3, p. 5-1 citing *Goddard v. Pollock* (1974) 37 Cal.App.3d 137, 141—"it is now well established by the case law that where a pleading is belatedly filed, but at a time when a default has not yet been taken, the plaintiff has, in effect, granted the defendant additional time within which to plead and he is not strictly in default.") "An untimely demurrer may be considered by the court in its discretion." (*Id.* at ¶7:24, p. 7(I)-16 citing *Jackson v. Doe* (2011) 192 Cal.App.4th 742, 750 (*Jackson*).) The court will exercise such discretion here to consider Sacramento's demurrer on the merits particularly in light of the fact that no default has been taken.

Plaintiff Martin also argues preliminarily that Sacramento did not comply with its obligation to meet and confer in advance of the filing of the instant demurrer. Code of Civil Procedure section 430.41 requires a demurring

party to meet and confer with the party who filed the challenged pleading to seek informal resolution of the demurring party's objections. (Code Civ. Proc., § 430.41, subd. (a).) Specifically, "If an amended complaint, cross-complaint, or answer is filed, the responding party shall meet and confer again with the party who filed the amended pleading before filing a demurrer to the amended pleading." (*Ibid.*) The meet and confer must be conducted in person or by telephone, and must address each cause of action to be included in the demurrer. (*Ibid.*) "The parties shall meet and confer at least five days before the date the responsive pleading is due." (Code Civ. Proc., §430.41, subd. (a)(2).) If these efforts fail, the demurring party must file and serve a declaration regarding the meet and confer process with the demurrer. (Code Civ. Proc., § 430.41, subd. (a)(3).)

Plaintiff Martin contends Sacramento did not timely meet and confer in good faith, refusing plaintiff Martin's offers to extend the time to meet and confer. However, a court may not sustain a demurrer based on the insufficiency of the meet and confer process. (Code Civ. Proc., §430.41, subd. (a)(4).) To avoid wasting any further judicial resources, the court will move on to the merits of the demurrer. The court will simply remind parties and counsel that compliance with Code of Civil Procedure section 430.41 is required and should be undertaken in good faith and not treated as merely a procedural hurdle.

As a third preliminary matter, plaintiff Martin contends the instant demurrer is unnecessary because plaintiff Martin has already dismissed Sacramento as a defendant from this action. However, also noted above, the court set aside the order of dismissal.

B. Defendant Sacramento's demurrer to plaintiff Martin's TAC.

Of the eighteen causes of action asserted in plaintiff Martin's TAC, the following three are leveled against defendant Sacramento: the eighth cause of action (negligence), the eleventh cause of action (violation and/or conspiracy to violate California Civil Code section 52.1), and the fourteenth cause of action (violation of right of privacy).

Defendant Sacramento demurs initially to plaintiff Martin's TAC on the ground of uncertainty.

> "'[D]emurrers for uncertainty are disfavored, and are granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond.'" (*Mahan v. Charles W. Chan Ins. Agency, Inc.* (2017) 14 Cal.App.5th 841, 848, fn. 3 [222 Cal. Rptr. 3d 360]; accord, *Lickiss v. Financial Industry Regulatory Authority* (2012) 208 Cal.App.4th 1125, 1135 [146 Cal. Rptr. 3d 173].) "'A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures.'" (*Chen v. Berenjian* (2019) 33 Cal.App.5th 811, 822 [245 Cal. Rptr. 3d 378], quoting *Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616 [17 Cal. Rptr. 2d 708].)

(*A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 695.)

Defendant Sacramento nevertheless contends where the "complaint is framed in such a disjointed and incoherent manner[,] … "the only course open … was that of interposing a demurrer raising the questions of … uncertainty, ambiguity and unintelligibility." (*Evarts v. Jones* (1951) 104 Cal.App.2d 109, 111.) Defendant Sacramento's argument is well taken.

A "complaint need only allege facts sufficient to state a cause of action; each evidentiary fact that might eventually form part of the plaintiff's proof need not be alleged. [Citation.]' [Citation.]" (*Pich v. Lightbourne* (2013) 221 Cal.App.4th 480, 495.) Plaintiff Martin's TAC is replete with allegations of evidentiary fact, greatly muddying the waters and making it extremely difficult to discern and analyze whether he has sufficiently stated a cause of action against defendant Sacramento. As defendant Sacramento points out, plaintiff Martin has changed little to nothing from his SAC in now pleading his TAC.

Defendant Sacramento demurs additionally to the eighth cause of action on the ground, essentially, that "[u]nder the [Government Claims] Act, governmental tort liability must be based on statute; all common law or judicially declared forms of tort liability, except as may be required by state or federal Constitution, were abolished." (*Michael J. v. Los Angeles County Dept. of Adoptions* (1988) 201 Cal.App.3d 859, 866.) "[P]ublic entities are immune

from liability except as provided by statute (§ 815, subd. (a))…." (*Caldwell v. Montoya* (1995) 10 Cal.4th 972, 980.) "Except as otherwise provided by statute[,] [a] public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person." (Gov. Code, §815, subd. (a).)

"[Where] recovery is based on a statutory cause of action, the plaintiff must set forth facts in his [or her] complaint sufficiently detailed and specific to support an inference that each of the statutory elements of liability is satisfied. General allegations are regarded as inadequate. [Citations.]" (*Mittenhuber v. City of Redondo Beach* (1983) 142 Cal.App.3d 1, 5.) At best, plaintiff Martin's TAC against defendant Sacramento consists of general, not sufficiently specific, allegations.

Plaintiff Martin has now had four opportunities to state a sufficient claim against defendant Sacramento, but has not done so. A plaintiff has the burden to show in what manner it can amend its complaint and how that amendment will change the legal effect of the pleading. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) Plaintiff Martin has not met this burden.

Accordingly, defendant Sacramento's demurrer to plaintiff Martin's TAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] and on the ground that the pleading is uncertain [Code Civ. Proc., §430.10, subd. (f)] is SUSTAINED WITHOUT LEAVE TO AMEND.

IV. Tentative Ruling.

The tentative ruling was duly posted.

V. Case Management.

This Court is aware that plaintiff has been declared to be a vexatious litigant.

The case will be placed on the Dismissal Review Calendar for 18 January 2024 at 10:00 AM. The case will be dismissed at that time unless the plaintiff can obtain a permission to continue litigation authorization from the Presiding Judge of this Court

VI. Order.

Defendant Sacramento's demurrer to plaintiff Martin's TAC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] and on the ground that the pleading is uncertain [Code Civ. Proc., §430.10, subd. (f)] is SUSTAINED WITHOUT LEAVE TO AMEND.

_____ _____

DATED:

HON. SOCRATES PETER MANOUKIAN
Judge of the Superior Court
County of Santa Clara

---oooOooo---

Calendar Line 2

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
DEPARTMENT 20

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(For Clerk's Use Only)

CASE NO.: 22CV405349 **Sanjay Taxpro, Inc. v. Neil Jesani, et al.**
DATE: 07 May 2024 **TIME: 9:00 am** **LINE NUMBER: 02**

This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 20 in the Old Courthouse, 2nd Floor, 161 North First Street, San Jose. Any party opposing the tentative ruling must call Department 20 at 408.808.6856 and the opposing party no later than 4:00 PM on 06 May 2024. Please specify the issue to be contested when calling the Court and Counsel.

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Order On Defendants And Cross-Complainants
Neil Jesani And Beamalife Corporation's Motion For Summary Judgment,
Or Alternatively, Summary Adjudication.

I. Statement of Facts.

Complaint

In the operative complaint, plaintiff Sanjay Taxpro, Inc. ("Taxpro") sets forth a contract claim against defendants Neil Jesani ("Jesani") and Beamalife Corporation ("Beamalife") (collectively, "Defendants"). Taxpro is a California corporation, Jesani is an individual residing in Florida, and Beamalife is a New Jersey corporation. (Complaint, ¶1-3.)

On or about 28 October 2020, defendant Jesani reached out to plaintiff Taxpro to solicit referrals of individual investors for financial planning and investments. (Complaint, ¶7.) Plaintiff Taxpro and defendants Jesani and Beamalife entered into a contract (partially orally and partially in writing) to split fees and commissions equally on all referrals from Taxpro and from all referrals generated from those referrals (the "Agreement"). (Complaint, ¶8.) On or about 17 November 2020, Jesani confirmed in writing with Taxpro the agreement to split fees and commissions equally for all referrals made by Taxpro to Defendants and all referrals from those referrals. (Complaint, ¶9.)

In December 2020, plaintiff Taxpro began referring clients to Defendants, and Taxpro continued to make such referrals in calendar years 2021 and 2022. (Complaint, ¶¶10, 11.) Defendants initially performed under the Agreement and paid Taxpro 50% of the fees and commissions earned on the referrals for calendar years 2020 and 2021. (Complaint, ¶12.) In August 2022, Defendants breached the Agreement and ceased to split commissions and fees earned on clients referred by Taxpro. (*Id.*) Taxpro is informed and believes that prior to August 2022, Defendants began to hide commissions and fees earned from plaintiff Taxpro's referrals. (*Id.*) Defendants continue to earn fees and commissions from clients referred by Taxpro but have failed to compensate Taxpro and are in breach of the Agreement. (*Id.*)

Taxpro has at all times fully performed its obligations under the Agreement. (Complaint, ¶13.) Defendants are in breach of the Agreement by failing to pay Taxpro 50% of the fees and commissions earned on referrals. (Complaint, ¶14.)

On 7 October 2022[3], plaintiff Taxpro filed its complaint against defendants Jesani and Beamalife asserting a sole cause of action for breach of contract.

On 13 January 2023, defendants Jesani and Beamalife filed an answer to plaintiff Taxpro's complaint.

On 21 January 2023, defendants Jesani and Beamalife filed an amended answer to plaintiff Taxpro's complaint.

Cross-Complaint

On 13 January 2023, defendants/cross-complainants Jesani and Beamalife filed a cross-complaint, alleging that Jesani is a Florida resident, a Certified Financial Planner, and the sole shareholder of Beamalife, a New Jersey Corporation. (Cross-Complaint, ¶1.) Jesani and Beamalife ("Cross-Complainants") provide financial and estate planning services for their clients. (*Id.*) Plaintiff/cross-defendant Taxpro is a California corporation, and cross-defendant Sanjay Muppaneni ("Muppaneni") is an individual and California resident (collectively, "Cross-Defendants"). (Cross-Complaint, ¶2.) Cross-Defendants provide tax advice and prepare tax returns for their clients. (*Id.*)

On or about 17 November 2020, Jesani (acting on behalf of himself and Beamalife) and Muppaneni (acting on behalf of himself and Taxpro) agreed to refer clients to one another and to equally share commissions and fees earned by the respective parties on such referrals (the "Referral Agreement"). (Cross-Complaint, ¶6.) Cross-Complainants performed under the Referral Agreement by referring clients to Cross-Defendants and by paying Cross-Defendants 50% of the commissions earned on referrals from Cross-Defendants. (Cross-Complaint, ¶7.) As early as April 2021, Cross-Defendants breached the Referral Agreement by failing and refusing to pay Cross-Complainants 50% of the fees earned by Cross-Defendants from clients referred by Cross-Complainants. (Cross-Complaint, ¶8.)

In or about January 2021, Cross-Complainants and Cross-Defendants entered into a joint venture under the which they agreed to equally share the cost of a radio marketing campaign and further that any new clients generated by the radio campaign would not be subject to the Referral Agreement and the sharing of commissions/fees. (Cross-Complaint, ¶11.) The radio marketing directed potential clients to seek appointments through Cross-Defendants' website. (*Id.*) The parties agreed that Cross-Defendants would service clients who responded to the radio advertising seeking tax advice and that Cross-Defendants would refer to Cross-Complainants any clients who responded to the radio advertising seeking estate and financial planning advice. (*Id.*) The intake appointment scheduler on Cross-Defendants' website asked clients to indicate if they heard about the website through the radio advertising, so Cross-Defendants could easily identify which potential clients were the result of the radio advertising joint venture. (*Id.*)

Cross-Complainants are informed and believe that throughout 2021, Cross-Defendants referred to Cross-Complainants estate and financial planning clients that Cross-Defendants knew had responded to the radio advertising, but which Cross-Defendants presented to Cross-Complainants as clients of Cross-Defendants. (Cross-Complaint, ¶12.) Cross-Defendants thus intentionally concealed from Cross-Defendants the source of these referrals to induce Cross-Complainants to pay Cross-Defendants 50% of the commissions earned Cross-Complainants in servicing those clients. (*Id.*) Cross-Complainants did not know that Cross-Defendants were misrepresenting the nature of the referrals and Cross-Complainants were damaged by paying Cross-Defendants amounts to which Cross-Defendants were not entitled. (Cross-Complaint, ¶13.) Cross-Complainants would not have paid Cross-Defendants a share of commissions/fees from the misrepresented clients if Cross-Complainants had known the truth of the matter. (*Id.*) Cross-Defendants actions were intentional and deceitful and constitute oppression, fraud, or malice. (Cross-Complaint, ¶14.)

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[3] This Department intends to comply with the time requirements of the Trial Court Delay Reduction Act (**Government Code**, §§ 68600–68620). The California Rules of Court state that the goal of each trial court should be to manage limited and unlimited civil cases from filing so that 100 percent are disposed of within 24 months. (Ca. St. Civil **Rules of Court**, Rule 3.714(b)(1)(C) and (b)(2)(C).)

On 13 January 2023, cross-complainants Jesani and Beamalife filed a cross-complaint against cross-defendants Taxpro and Muppaneni asserting the following causes of action:

(1) Breach of Contract

(2) Fraud

(3) Conversion – Theft

(4) Receiving, Concealing and Withholding Stolen Property – Penal Code § 496

On 13 February 2023, cross-defendants Taxpro and Muppaneni filed an answer to cross-complaints Jesani and Beamalife's cross-complaint.

On 13 February 2024, defendants Jesani and Beamalife filed the motion now before the court, a motion for summary judgment/adjudication of plaintiff Taxpro's complaint.

II. Legal Standard.

Any party may move for summary judgment. (***Code Civ. Proc.***, § 437c, subdivision (a); ***Aguilar v. Atlantic Richfield Co***. (2001) 25 Cal.4th 826, 843 (***Aguilar***).) The motion "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); ***Aguilar,*** *supra,* at p. 843.) The object of the summary judgment procedure is "to cut through the parties' pleadings" to determine whether trial is necessary to resolve the dispute. (***Aguilar,*** *supra,* at p. 843.)

The "party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact…" (***Aguilar,*** *supra,* 25 Cal.4th at p. 850; see ***Evid. Code*****,** § 110.) "A prima facie showing is one that is sufficient to support the position of the party in question." (***Aguilar,*** *supra,* at p. 851.)

If the moving party makes the necessary initial showing, the burden of production shifts to the opposing party to make a prima facie showing of the existence of a triable issue of material fact. (***Code Civ. Proc.***, § 437c, subdivision (p)(2); see ***Aguilar,*** *supra,* 25 Cal.4th at p. 850.) A triable issue of material fact exists "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." (***Aguilar,*** *supra,* at p. 850, fn. omitted.) If the party opposing summary judgment presents evidence demonstrating the existence of a disputed material fact, the motion must be denied. (***Id.*** at p. 856.)

Throughout the process, the trial court "must consider all of the evidence and all of the inferences drawn therefrom." (***Aguilar,*** *supra,* 25 Cal.4th at p. 856.) The moving party's evidence is strictly construed, while the opponent's is liberally construed. (***Id.*** at p. 843.)

Similarly, "[a] party may seek summary adjudication on whether a cause of action, affirmative defense, or punitive damages claim has merit or whether a defendant owed a duty to a plaintiff. A motion for summary adjudication…shall proceed in all procedural respects as a motion for summary judgment." (***California Bank & Trust v. Lawlor*** (2013) 222 Cal.App.4th 625, 630, internal citations and quotation marks omitted.)

III. Defendants Jesani and Beamalife's motion for summary judgment/adjudication is DENIED.

Defendants Jesani and Beamalife move for summary judgment/adjudication of plaintiff Taxpro's complaint. (Notice of Motion and Motion for Summary Judgment ("Motion"), p. 2, lns. 2-7.) Defendants contend the complaint's sole cause of action for breach of contract fails because it is indisputable that Defendants performed their obligations under the subject agreement at all times that it existed and because the obligations alleged in the complaint were not agreed to and/or are barred by the statute of frauds. (Motion, p. 2, lns. 8-12.)

"To prevail on a cause of action for breach of contract, the plaintiff must prove (1) the contract; (2) the plaintiff's performance of the contract or excuse for nonperformance, (3) the defendant's breach, and (4) the resulting damage to the plaintiff." (***Richman v. Hartley*** (2014) 224 Cal.App.4th 1182, 1186.)

It is Defendants burden to show "that 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 the cause of action." (***Code Civ. Proc.***, § 437c, subd. (p)(2).) To meet their initial burden, Defendants proffer the following evidence: In or around October 2020, defendant Jesani reached out to plaintiff Taxpro to solicit referrals of individual investors for financial planning and investments with Jesani's company, Beamalife.[4]

After discussion, both sides orally agreed to enter into an arrangement whereby Taxpro would refer potential investors to Defendants in exchange for a commission of the funds generated from such referred investors (the "Agreement").[5] At that time, the parties did not discuss or agree upon a timeframe applicable to the commission arrangement or whether Taxpro would be entitled to commissions related to additional clients referred by clients that Taxpro had referred, i.e., so-called "second generation referrals," and at no time did Defendants ever agree to pay commissions to Taxpro in perpetuity, or to pay commissions regarding second generation referrals.[6]

The agreement between plaintiff Taxpro and Defendants was subsequently memorialized in a 17 November 2020 email from defendant Jesani to Taxpro wherein Jesani wrote: "Thank you for your patience. This email confirms the agreement to split the fees and commission equally with you. For commission split arrangement you need to be duly licensed as per the law."[7] Other than this 17 November email, there is no other document between the parties reflecting any written contract between the parties regarding the Agreement.[8]

Eventually, disputes arose between the parties regarding the nature and scope of the commissions that were being paid to plaintiff Taxpro.[9] Taxpro contended it was entitled to commissions related to its referrals in perpetuity, and Defendants argued that Taxpro was only entitled to receive commissions for the year that each referral was made.[10] Taxpro asserted it was entitled to commissions related to second generation referrals, while Defendants contended that it was not.[11] Based on these disagreements, the parties mutually agreed to terminate the Agreement and refrain from further business with one another.[12] Termination of the Agreement was memorialized in a 2 February 2022 email from defendant Jesani to Taxpro principal Muppaneni as well as a 23 August 2022 email from Muppaneni to defendant Beamalife.[13]

Prior to termination of the Agreement, Defendants fully compensated Taxpro for all commissions due and owing to it related to Taxpro's referrals by paying a 50% commission during the year that the referral was made.[14] On 7 October 2022, Taxpro filed its complaint in this matter, setting forth a single cause of action for breach of contract

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[4] See Separate Statement of Undisputed Material Facts in Support of Defendants' Motion for Summary Judgment (Defendants' UMF"), Fact No. 2.

[5] See Defendants' UMF, Fact No. 3.

[6] See Defendants' UMF, Fact Nos. 4-6.

[7] See Defendants' UMF, Fact No. 7.

[8] See Defendants' UMF, Fact No. 8.

[9] See Defendants' UMF, Fact No. 9.

[10] See Defendants' UMF, Fact No. 10.

[11] See Defendants' UMF, Fact No. 11.

[12] See Defendants' UMF, Fact No. 12.

[13] See Defendants' UMF, Fact No. 13.

[14] See Defendants' UMF, Fact No. 14.

based on allegations that Defendants breached the Agreement by not continuing to pay commissions after August 2022.[15]

A. Termination

Defendants initially contend that they complied with the Agreement at all times prior to its termination. (Motion, p. 6, lns. 3-4.) Defendants argue that once a contract has been terminated, a party is no longer liable for further transactions under the contract. (Motion, p. 6, lns. 8-9, citing ***Merrill v. Continental Assurance Co.*** (1962) 200 Cal.App.2d 663, 670 ["Parties to a contract may provide therein for the respective rights and liabilities in the event of the termination thereof."].) According to Defendants, plaintiff Taxpro acknowledges in its own complaint that Defendants fully paid for all commissions earned on the referrals for a several-year period, and that it was not until August of 2020 – after the Agreement had been terminated – that Defendants ceased splitting commissions with Taxpro. (Motion, p. 6, lns. 11-14.) Defendants assert that they had no payment obligations for the time period set forth in Taxpro's complaint. (Motion, p. 6, lns. 14-18.)

Defendants have not sufficiently supported their termination argument to meet their initial burden.[16] Defendants assert: "Termination of the Agreement was memorialized in a February 2, 2022, email from Jesani and an August 23, 2022, email from Plaintiff."[17] In his 2 February 2022 email, defendant Jesani states the following in pertinent part:

> [P]lease keep in mind that I will not be able to pay you on any clients who were not your clients at the time I started the relationship with them. Also, whatever clients/prospects I have referred to you so far I will not share any future revenue with you. You are already getting paid for your services without spending any money on acquiring them or sharing with me. [¶] I will continue to honor our arrangement for your existing clients.

(Defendants' Compendium of Exhibits in Support of Motion for Summary Judgment ("Defendants' Exhibits"), Ex. 3.)

In the 23 August 2022 email referenced above, sent to an employee of defendant Beamalife and copied to defendant Jesani, Sanjay Muppaneni (principal of plaintiff Taxpro), writes the following:

> Hi Sally, [¶] I know you are telling new terms which we never agreed in the past. If you want to specify new terms going forward please feel free. But for past please follow what Neil has agreed to. He agreed to split commission on referrals he gets from my referrals. We are not asking anything beyond our contract. [¶] Also please refrain from contacting my referrals for any services in the future unless we come to understanding on any new terms you propose. [¶] Thanks for your cooperation.

(Defendants' Exhibits, Ex. 4.)

Plaintiff Taxpro's complaint sets forth Defendants' alleged breach of the Agreement as follows:

> Defendants initially performed under the Agreement and paid Plaintiff fifty percent (50%) of the fees and commissions earned on the referrals for calendar years 2020 and 2021. In August 2022, Defendants breached the Agreement and ceased to split commissions and fees earned on clients referred by Plaintiff. Plaintiff is informed and believes that prior to August 2022, Defendants began to hide commissions and fees earned from Plaintiff's

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[15] See Defendants' UMF, Fact Nos. 15-16.

[16] "A defendant seeking summary judgment must show that at least one element of the plaintiff's cause of action cannot be established, or that there is a complete defense to the cause of action. … The burden then shifts to the plaintiff to show there is a triable issue of material fact on that issue." (***Alex R. Thomas & Co. v. Mutual Service Casualty Ins. Co.*** (2002) 98 Cal.App.4th 66, 72; internal citations omitted.)

[17] See Defendants' UMF, Fact No. 13.

> referrals. Defendants continue to earn fees and commissions from clients referred by Plaintiff but failed to compensate Plaintiff and are in breach of the Agreement.

(Complaint, ¶12.)

In the court's view, the emails presented by Defendants do not indisputably show that the parties mutually agreed to terminate their arrangement, as Defendant's argue. Further, Taxpro's complaint alleges that Defendants did *not* fully pay Taxpro for all commissions earned on commissions prior to August 2022, as Defendants contend, because the complaint alleges that Defendants hid commissions and fees before August 2022. In addition, even if Defendants had met their initial burden concerning their termination argument, plaintiff Taxpro proffers evidence in opposition disputing that the Agreement was terminated as Defendants claim.[18]

Accordingly, Defendants' termination argument does not provide a basis for summary judgment/adjudication of the breach of contract cause of action.

B. Sufficiency of Terms

Defendants argue that the Agreement was not sufficiently definite to be enforceable against them, and that they did not agree to the terms alleged. (Motion, p. 6, lns. 19-20.) Defendants assert that for a contract to be enforceable, it must show a meeting of the minds upon its essential terms and sufficiently define the scope of the parties' duties and the limits of acceptable performance. (Motion, p. 6, lns. 25-28, citing: ***Cheema v. L.S. Trucking, Inc.*** (2019) 39 Cal.App.5th 1142, 1149 ["Although the terms of a contract need not be stated in the minutest detail, it … must evidence a meeting of the minds upon the essential features of the agreement, and … the scope of the duty and limits of acceptable performance [must be] sufficiently defined to provide a rational basis for the assessment of damages."].)

However, as argued by Taxpro in opposition, courts may look to the conduct of the parties to assist in interpreting the otherwise uncertain terms of a contract. (Opposition, p. 4, lns. 24-25.) "It is the rule when a contract is uncertain as to its meaning, it is proper for the court to look at the subsequent conduct of the parties to ascertain how they themselves construed the contract. This is strong evidence of the parties' original intentions." (***Muneir v. Hawkins*** (1961) 190 Cal.App.2d 655, 662, citing ***Woodbine v. Van Horn*** (1946) 29 Cal.2d 95.)

> Under statutory rules of contract interpretation, the mutual intention of the parties at the time the contract is formed governs interpretation. Such intent is to be inferred, *if possible*, solely from the written provisions of the contract. The 'clear and explicit' meaning of these provisions, interpreted in their 'ordinary and popular sense,' unless 'used by the parties in a technical sense or a special meaning is given to them by usage', controls judicial interpretation. Thus, if the meaning a layperson would ascribe to contract language is not ambiguous, we apply that meaning.

(***Santisas v. Goodin*** (1998) 17 Cal.4th 599, 608; emphasis added, internal citations omitted.)

Here, Defendants again fail to sufficiently develop their argument to meet their initial burden on summary judgment. Defendants do not direct the court to any evidence in support of this argument. (See Motion, p. 7, lns. 1-12.) This uncertainty argument is at odds with Defendants' prior argument, wherein they contend they fully performed under the Agreement. While Defendants do not address whether the parties' conduct is evidence of their original

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[18] See plaintiff Taxpro's Separate Statement of Undisputed Material Facts in Opposition to Defendants' Motion for Summary Judgment ("Plaintiff's UMF"), Fact Nos. 12-14.) Defendants filed Evidentiary Objections Concerning Declaration of Sanjay Muppaneni in Support of Opposition to Defendants' Motion for Summary Judgment. The court declines to rule on said objections since the court does not deem the material objected to be material to its ruling. "In granting or denying a motion for summary judgment or summary adjudication, the court need rule only on those objections to evidence that it deems material to its disposition of the motion. 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).)]

intentions, they do address this point in their reply.[19] Even so, Defendants apparently suggest that it is Taxpro's burden to present evidence that the parties' conduct support their breach of contract cause of action. (Reply, p. 3, 25-26.)

But, because this is Defendants' motion, it is not enough for them to show that Taxpro does not possess needed evidence; they must show that the plaintiff "cannot reasonably obtain" needed evidence. (***Aguilar***, *supra*, 25 Cal.4th at p. 854.) Defendants have not met this burden regarding this sufficiency-of-terms argument, and even if they had, Taxpro again has proffered evidence sufficient to establish a triable issue concerning whether the parties' conduct can support an enforceable contract.[20]

Accordingly, Defendants' sufficiency-of-terms argument does not provide a basis for summary judgment/adjudication.

C. Statute of Frauds

Lastly, Defendants contend that plaintiff Taxpro's theory that Defendants are obligated to pay commissions in perpetuity violates the statute of frauds. (Motion, p. 7, lns. 13-14.)

"The statute of frauds is a collective term describing the various statutory provisions that deny enforcement to certain enumerated classes of contracts unless they are reduced to writing and signed by the party to be charged." (1 ***Witkin***, Summary of California Law (10th ed. 2005) Contracts, §342, p. 390.) "The California statute of frauds (***Civil Code***, §1624) provides that certain contracts 'are invalid, unless the same, or some note or memorandum thereof, is in writing and subscribed by the party to be charged or by his agent." (***Id.*** at §343, p. 391.)

One type of contract subject to the statute of frauds is "an agreement that by its terms is not to be performed within a year from the making thereof." (***Civil Code***, §1624, subd. (a)(1).) "The important words are 'by its terms'; i.e., only those contracts which expressly preclude performance within a year are unenforceable. … 'To fall within the words of this provision …, the agreement must be one of which it can truly be said at the very moment it is made, 'This agreement is not to be performed within one year'; in general, the cases indicate that there must not be the slightest possibility that it can be fully performed within one year.'" (1 ***Witkin***, Summary of California Law (10th ed. 2005) Contracts, §363, pp. 408 – 409 citing ***White Lighting Co. v. Wolfson*** (1968) 68 Cal.2d 336, 343, fn. 2[21] (***White Lighting***).) "The contract is unenforceable only where by its terms it is impossible of performance in that period. If it is merely unlikely that it will be so performed, or the period of performance is indefinite, the statute does not apply." (1 ***Witkin***, Summary of California Law (10th ed. 2005) Contracts, §365, p. 410 citing ***Dougherty v. Rosenberg*** (1882) 62 Cal.32, 36.)

"If no time is specified for the performance of an act required to be performed, a reasonable time is allowed." (***Civ. Code***, § 1657.) "What constitutes reasonable time is always a question of fact." (***Pico Citizens Bank v. Tafco,***

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[19] The general rule of motion practice is that new evidence is not permitted with reply papers. (***Jay v. Mahaffey*** (2013) 218 Cal.App.4th 1522, 1537; see ***Nazir v. United Airlines, Inc.*** (2009) 178 Cal.App.4th 243, 252.) The inclusion of additional evidentiary matter with the reply should only be allowed in the exceptional case. (Id. at 1537-1538.) Although this principle is most prominent in the context of summary judgment motions, the same rule has been recognized noted in other contexts as well. (***Jay v. Mahaffey*** at 1536-1537; ***Carbajal v. CWPSC, Inc.*** (2016) 245 Cal.App.4th 227, 241; ***Alliant Ins. Services, Inc. v. Gaddy*** (2008) 159 Cal.App.4th 1292, [in preliminary injunction proceeding, "the trial court had discretion whether to accept new evidence with the reply papers"].)

[20] Plaintiff's UMF, Fact Nos. 4-6, 8-11; Declaration of Sanjay Muppaneni in Opposition to Defendant's Motion for Summary Judgment, ¶¶3, 7, 9-10, 12-14.)

[21] "In its actual application, however, the courts have been perhaps even less friendly to this provision [the "one year" section] than to the other provisions of the statute [of frauds]. They have observed the exact words of this provision and have interpreted them literally and very narrowly. . . . To fall within the words of the provision, therefore, the agreement must be one of which it can truly be said at the very moment it is made, 'This agreement is not to be performed within one year'; in general, the cases indicate that there must not be the slightest possibility that it can be fully performed within one year." (Italics added.) (2 Corbin on Contracts, § 444, at pp. 534-535.)"

Inc. (1962) 201 Cal.App.2d 131, 137; see also ***C.O. Bashaw Co. v. A.U. Pinkham Co.*** (1926) 77 Cal.App. 591, 594—"What is a reasonable time is usually a question of fact and must be determined from all the circumstances of the individual case, but where the facts are not disputed or the matter can be ascertained from the language of the contract, it may be determined as a matter of law.")

Here, Defendants' argument regarding the statute of fraud fails because there is nothing inherent in the contract terms asserted by Taxpro in its complaint that would expressly preclude performance within one year. (See Complaint, ¶8 ["Defendants and Plaintiff entered into a contract partially orally and partially in writing to split fees and commissions equally on all referrals from Plaintiff and from all referrals generated from those referrals."].)

The 17 November 2020 email drafted by defendant Jesani himself does not make any reference to any time period for performance. Where the period of performance is indefinite, the statute of frauds does not apply. (***White Lighting***, *supra*, 68 Cal.2d at p. 365.[22])

Defendants assert it was their understanding under the Agreement that Taxpro would only receive commissions for a referral during the year the referral was made. (Motion, pp. 7, ln. 27 – 8, ln. 1; Defendants' UMF, Fact No. 10.) Defendants do not provide evidentiary support for their position sufficient to meet their burden, and even if they had, Taxpro disputes Defendants' professed understanding.[23]

Accordingly, Defendants' statute of frauds argument does not provide a sufficient basis for their motion for summary judgment/adjudication of plaintiff Taxpro's breach of contract cause of action.

Therefore, for the reasons set forth, Defendants' motion for summary judgment/adjudication is DENIED.

IV. Tentative Ruling.

The tentative ruling was duly posted.

V. Case Management.

There is a discovery motion set on 30 May 2024 by defendant cross-complaint seeking further responses from cross-defendants etc.

The trial dates shall REMAIN IS SET.

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[22] "The contractual provision that Wolfson would receive one percent of the annual gross sales of White exceeding one million dollars per year does not in itself convert the oral employment contract into one which by its terms cannot be performed within a year. Decisions involving other oral employment contracts with similar terms as to compensation support this conclusion. Thus HN3 the statute of frauds does not apply to employment contracts for an indefinite period merely because the contract provides that payment will be forthcoming on termination of the employment relationship. (***Lloyd v. Kleefisch*** (1941) 48 Cal.App.2d 408, 414.) Nor does the statute of frauds apply to employment contracts because the compensation for the services is to be measured by their value to the employer over a period of more than one year. (***Reed Oil Co. v. Cain*** (1925) 169 Ark. 309.) Moreover, in ***Pecarovich v. Becker*** (1952) 113 Cal.App.2d 309, 315-316, the court held that the statute of frauds does not apply to an oral contract relating to the services and annual salary of a football coach for a three-year period; the court [explained that the contract authorized the employer to terminate the employment relationship at the end of each year by payment of a named sum."

[23] Plaintiffs' UMF, Fact No. 10.

VI. Order.

Defendants Jesani and Beamalife's motion for summary judgment/adjudication plaintiff Taxpro's complaint is DENIED.

DATED:	**HON. SOCRATES PETER MANOUKIAN** ***Judge of the Superior Court*** ***County of Santa Clara***

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SUPERIOR COURT, STATE OF CALIFORNIA COUNTY OF SANTA CLARA **DEPARTMENT 20** **161 North First Street, San Jose, CA 95113** **408.882.2320 · 408.882.2296 (fax)** ***smanoukian@scscourt.org*** ***http://www.scscourt.org***	*(For Clerk's Use Only)*

CASE NO.: 22CV402498 **José López Ruiz v. Sharkey City Builders, Inc.**
DATE: 07 May 2024 **TIME: 9:00 am** **LINE NUMBER: 06**

This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 20 in the Old Courthouse, 2nd Floor, 161 North First Street, San Jose. Any party opposing the tentative ruling must call Department 20 at 408.808.6856 and the opposing party no later than 4:00 PM on 06 May 2024. Please specify the issue to be contested when calling the Court and Counsel.

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I. Statement of Facts.

Plaintiff filed this complaint on 02 August 2022.[24]

The accident is one involving a pedestrian v. a vehicle accident that occurred on 21 May 2022. As a result of the event, plaintiff claims to have suffered orthopedic and traumatic brain injuries.

On 08 August 2023, the matter was set for long cause jury trial on 02 April 2024.

On 12 March of this year, this Court heard the ex parte application of the defendant to continue the trial date. That motion was granted and the case was set for jury trial on 27 January 2025. There was no discussion about reset dates including discovery cutoff dates. Apparently there was no agreement one way or another concerning discovery cut off between the parties and now the question has been left to this Court.

II. Motion To Reopen Discovery.

Defendant claims that it was never provided pertinent medical information during discovery prior to the trial date of 02 April 2024. Defense counsel declares that on 29 November 2023, plaintiff produced substantial new discovery, including over 1200 pages of medical records detailing significant recent treatment for his alleged injuries. Plaintiff has alleged hearing and visual problems and disclosed that he was admitted to an inpatient facility Centre for Neuro Skills in September 2023. Plaintiff's alleged special damages increased threefold.

[24] This Department intends to comply with the time requirements of the Trial Court Delay Reduction Act (Government Code, §§ 8600–68620). The California Rules of Court state that the goal of each trial court should be to manage limited and unlimited civil cases from filing so that 100 percent are disposed of within 24 months. (Ca. St. Civil ***Rules of Court***, Rule 3.714(b)(1)(C) and (b)(2)(C).

Defense counsel further declares that in September of 2022, just after the filing of a lawsuit, plaintiff underwent postural testing, neuropsychological examination and brain imaging, none of which were disclosed in discovery. In discovery responses served on 14 December 2022 the claimant had only gone to a pain specialist who is in the process of prescribing a spinal cord stimulator upon a lien.

Defendants also complain about nondisclosure of medical records from the Centre for Neuro Skills and a Medtrak report. Plaintiff contends that both reports are protected by the attorney work doctrine and constitute premature disclosure of expert identity, testimony, conclusions, observations, and/or opinions in violation of ***Code of Civil Procedure***, § 2034.210.

III. Analysis.

"As used in this chapter, discovery is considered completed on the day a response is do or on the day a deposition begins." (***Code of Civil Procedure***, § 2024.010.)

The time for the completion of discovery in the ordinary civil case is set forth in ***Code of Civil Procedure***, § 2024.020.[25] That section states:

> "(a) Except as otherwise provided in this section, any party shall be entitled as a matter of right to complete discovery proceedings on or before the 30th day, and to have motions concerning discovery heard on or before the 15th day, before the date initially set for the trial of the action. As used in this section, discovery is considered completed on the day a response is due or on the day a deposition begins.
>
> (b) Except as provided in [***Code of Civil Procedure***,] § 2024.050[26], a continuance or postponement of the trial date does not operate to reopen discovery proceedings."

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[25] See ***People v. Dixon*** (2007) 148 Cal.App.4th 414: In a Sexual Violent Predator Act case, ". . . . . defendant should have completed discovery 30 days before the date set for trial. (See ***Code of Civil Procedure***, § 2024.020; ***Beverly Hospital v. Superior Court*** (1993) 19 Cal.App.4th 1289, 1294.) Defendant did not make a demand for discovery before trial." (***People v. Dixon***

[26] ***Code of Civil Procedure***, § 2024.050. Motion for leave to complete discovery closer to trial date or to reopen discovery after new trial date set; Monetary sanction

(a) On motion of any party, the court may grant leave to complete discovery proceedings, or to have a motion concerning discovery heard, closer to the initial trial date, or to reopen discovery after a new trial date has been set. This motion shall be accompanied by a meet and confer declaration under Section 2016.040.

(b) In exercising its discretion to grant or deny this motion, the court shall take into consideration any matter relevant to the leave requested, including, but not limited to, the following:

(1) The necessity and the reasons for the discovery.

(2) The diligence or lack of diligence of the party seeking the discovery or the hearing of a discovery motion, and the reasons that the discovery was not completed or that the discovery motion was not heard earlier.

(3) Any likelihood that permitting the discovery or hearing the discovery motion will prevent the case from going to trial on the date set, or otherwise interfere with the trial calendar, or result in prejudice to any other party.

(4) The length of time that has elapsed between any date previously set, and the date presently set, for the trial of the action.

(c) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to extend or to reopen discovery, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

Once the discovery cutoff date has run and discovery has closed, the only means provided in the Discovery Act for reopening discovery is a motion for leave of court. (***Marriage of Boblitt*** (2014) 223 Cal.App.4th 1004, 1022.)

It is well-settled that the discovery statutes are not totally inflexible.

First, parties may agree to extend the discovery motion cutoff date. (***Code of Civil Procedure***, § 2031.310(c).

Second, under the doctrine of equitable estoppel, assurances of cooperation and delaying conduct may estop a party from relying on a discovery motion cutoff date. (***Sears, Roebuck & Co. v. National Union Fire Ins. Co. of Pittsburg*** (2005) 131 Cal.App.4th 1342, 1351. "Under the doctrine of equitable estoppel, one may not lull a party into inaction by words or deeds that lead to a false sense of security. For the doctrine of equitable estoppel to apply, however, the party asserting estoppel must rely on the other party's conduct, to its detriment." (***Pelton-Shepherd Industries, Inc. v. Delta Packaging Products, Inc.*** (2008) 165 Cal.App.4th 1568, 1585 (internal citations deleted, citations omitted). Depending upon circumstances, a finding of estoppel may be warranted with respect to a discovery motion cutoff date. (***Sexton v. Superior Court*** (1997) 58 Cal.App.4th 1403, 1410, fn. 4.)

Pursuant to ***Code of Civil Procedure***, § 2032.020, on 24 August 2023, plaintiff submitted to a neuropsychological evaluation by defense examiner Howard J. Friedman, Ph.D. On January 27, 2024, Plaintiff presented to Defendant's neuro-ophthalmologic exam by Dr. August Reader pursuant to ***Code of Civil Procedure***, § 2032.220. (Valerio Decl. ¶ 8.) Defendants did not disclose that an eye dilation procedure would be necessary for the exam. While an eye dilation these days is not particularly painful, intrusive, or even long-lasting, plaintiff was within his right to object to having his eyes dilated by Dr. Reader.

As to the contention that the referral of plaintiff by his attorneys to the Centre for Neuro Skills and for a Medtrak report are protected by the attorney work doctrine, that is just plain wrong. The observations and examinations of any health care provider constitute data points in the history of the patient's physical condition and complaints.

This Court is less than impressed with the meet and confer leading up to this motion. However, without calling either side at more fault than the other, this Court will rule as follows:

The motion of defendants to reopen discovery is GRANTED and DENIED as follows. Defendants may serve and "update" discovery device by way of either interrogatories, request for production of documents etc. Plaintiff is to list all health care providers that examined plaintiff from the date of the accident to the present. Defendants are free to subpoena the records of any health care provider not previously disclosed. Both sides are to submit updated expert disclosures. Any disclosed expert not previously deposed can be deposed. Discovery will otherwise close per the ***Code of Civil Procedure***.

IV. Tentative Ruling.

The tentative ruling was duly posted.

V. Case Management.

The parties should consider Alternate Dispute Resolution. Otherwise, all trial dates are to REMAIN AS SET.

VI. Order.

The motion of defendants to reopen discovery is GRANTED and DENIED as follows. Defendants may serve and "update" discovery device by way of either interrogatories, request for production of documents etc. Plaintiff is to

list all health care providers that examined plaintiff from the date of the accident to the present. Defendants are free to subpoena the records of any health care provider not previously disclosed. Both sides are to submit updated expert disclosures. Any disclosed expert not previously deposed can be deposed. Discovery will otherwise close per the ***Code of Civil Procedure***.

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DATED: **HON. SOCRATES PETER MANOUKIAN**
Judge of the Superior Court
County of Santa Clara

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