

**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

Telephone: 408.882.2320

Department20@scscourt.org

"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, 30 April 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.**

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 on any matter, 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 bandwidth. 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](http://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 be 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. 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.**

**Tentative Rulings begin on the next page.**

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 1	17CV313599	Jeffrey Hutchins vs Safyre Solutions, Inc et alc.	<p><b>Order Of Examination Of Alan Slater.</b></p> <p>Has the OEX been properly set in this Department? There does not appear to be a proof of service in the file. Counsel for judgment debtor is to appear and advise the Court of the status of this matter.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 2	17CV313599	Jeffrey Hutchins vs Safyre Solutions, Inc et al.	<p><b>Order Of Examination Of George Spilios.</b></p> <p>Has the OEX been properly set in this Department? There does not appear to be a proof of service in the file. Counsel for judgment debtor is to appear and advise the Court of the status of this matter.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 3	19CV348624	Long Gao et al vs Bethany Liou et al	<p><b>Plaintiffs' Motion To Compel Post Judgment Discovery (Request For Production Of Documents And Special Interrogatories); Request For Sanctions Against Defendant Judgment Debtors Bethany Liou And Golden California Regional Center LLC.</b></p> <p>No opposition to the motion was filed. A failure to oppose a motion may be deemed a consent to the granting of the motion. (see California <b>Rules of Court</b>, rule 8.54(c); <b>Sexton v. Superior Court</b> (1997) 58 Cal.App.4<sup>th</sup> 1403, 1410.)</p> <p>This Court has reviewed the moving papers on the merits. The motion is GRANTED in its entirety. Plaintiff is also entitled to the sum of \$2760.00 in monetary sanctions. Said sanctions are to be paid by respondents within 20 days of the filing and service of this order.</p> <p>Counsel for plaintiff is to prepare an appropriate order and presented to this Department via the e-filing queue.</p> <p>This Court notes that the Court of Appeal dismissed the appeal of defendant/appellant on or about 19 January 2024. According to the minutes of 28 March 2024</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 4	19CV348624	Long Gao et al vs Bethany Liou et al	<p><b>Order of Examination of Defendant Bethany Liou.</b></p> <p>The Court notes that the application for order of examination does not have a judicial officer's signature. Hearing on this order of examination should not have been set on the courts calendar without a judicial officer signature.</p> <p>According to the minutes of 28 March 2024, the clerk's office was directed to send the original application to Department 20 for judicial signature and reset a hearing date.</p> <p>While the hearing was properly reset to today, there still does not appear to be a signed application or a proof of service. Counsel for plaintiffs should use the tentative ruling protocol to advise this Court.</p> <p>NO FORMAL TENTATIVE RULING.</p>

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 5	24CV433320	Balboa Capital Corporation vs Daniel Reyes-Villa MD et al	<p><b>Order of Examination of Daniel Reyes Villa, M.D.</b></p> <p>The file reflects that the plaintiffs' "Application and Order for Appearance and Examination" was executed by this Court and. Properly filed.</p> <p>However, there does not appear to be the filing of a proof of service of the examination.</p> <p>Unless the parties agree otherwise, both parties are to appear in Department 20 at 9:00 AM via the Zoom virtual platform. The appropriate oath will be administered by the Court and the parties may conduct the examination off-line and report back to the Court. The parties may meet and confer on how to conduct the examination remotely.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 6	2011-1-CV-199736	Lobel Financial Corp. vs Ivonn Valdivia	<p><b>Claim of Exemption.</b></p> <p>The claim has been reviewed. In the opposition papers, Judgment Creditor notes that Judgment Debtor's financial statement shows her income exceeds expenses by \$368.66 a month. Judgment Creditor further states that it will accept \$150.00 per pay period on account of the debt.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 7	20CV369925	Chun Yu Lu; Min Yi Lai vs Fremont Hills Development Corporation; Peter Xu Zhong	<p><b>Motion of Defendant Peter Xu Zhong For Judgment on the Pleadings.</b></p> <p>Defendant Zhong's motion for judgment on the pleadings as the second cause of action in Plaintiffs' First Amended Complaint is GRANTED with 10 days' leave to amend.</p> <p>Defendant is to provide notice of entry of this order.</p> <p>SEE ATTACHED TENTATIVE RULING.</p>
LINE 8	21CV381934	A. Shirazi vs Jamie Sykora; Jamielee C. Miller; And Related Cross-Complaint.	<p><b>Cross-Defendant Niloufar Dehkordi's Demurrer To Cross-Complainant South Valley Construction, Inc's First Amended Cross-Complaint.</b></p> <p>Cross-defendant Dehkordi's demurrer to the first cause of action in cross-complainant SVCI's SAXC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for conspiracy is SUSTAINED with 10 days' leave to amend.</p> <p>Cross-defendant Dehkordi's demurrer to the third cause of action in cross-complainant SVCI's SAXC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for implied contractual/ equitable indemnification is SUSTAINED with 10 days' leave to amend.</p> <p>SEE ATTACHED TENTATIVE RULING.</p>

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 9	21CV384133	Miguel Vinces Bustamante vs Nicole Cizmar	<p><b>Motion of Defendant Nicole Cizmar for Summary Judgment/Adjudication.</b></p> <p>OFF CALENDAR per request of the moving party.</p> <p>The Dismissal Review calendar That currently set for 30 May 2024 at 10:00 AM shall REMAIN AS SET.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 10	20CV369138	Chicago Title Company vs. 28th Street Villa Apartments, LLC; Nobel Homes, LLC; Green Villa Apartments, LP; ROYGBIV Real Estate Development, LLC; Hui Jun Li; Gregory Malley. and related cross-complaint.	<p><b>Discovery Motions of Defendant ROYGBIV Real Estate Development, LLC And Cross-Defendant Loida Kirkley.</b></p> <p>What is the status of the deposition of responding party's PMK?</p> <p><b>1. Motion to Deem Requests for Admissions to Be Admitted etc.</b> Has defendant/responding party Green Villa Apartments, LP served verified responses prior to the hearing on this motion?</p> <p><b>2. Motion To Compel Responses To Request For Production Of Documents etc.</b> Has defendant/responding party Green Villa Apartments, LP served code-compliant and verified responses prior to the hearing on this motion?</p> <p><b>3. Motion To Disallow Special Interrogatory Responses and to Compel Code Compliant Form Interrogatory Responses etc.</b></p> <p>Moving party is requesting monetary sanctions.</p> <p>This Court is considering GRANTING the three motions in their entirety.</p> <p>NO TENTATIVE RULING.</p>
LINE 11	23CV412605	Gregory Blanda et al vs American Honda Motor Co., Inc.	<p><b>Motion Of Plaintiff To Compel Defendant To Provide Responses To Interrogatories Without Objections etc.</b></p> <p>Defendant did not file opposition.</p> <p>On 08 August 2023, the case was referred to mediation. These motions were originally filed on 06 September 2023 and calendared for 30 January 2024. However, on 12 September 2023, plaintiff filed a "Notice of Withdrawal etc." of the three motions.</p> <p>The last Court appearance on this case was a Case Management Conference/Mediation Review Conference in this Department, held at 10:00 AM on 29 February 2024. At that time, the matter was set for a Trial Setting Conference on 02 July 2024 at 11:00 AM in Department 20.</p> <p>On 08 March 2024, plaintiff filed three notices of motions set for hearing on this date. No Points and Authorities and declarations were filed in support of these motions.</p> <p>Was a defendant properly noticed of these motions? What happened in the time between plaintiff's withdrawal of the motions and the current time?</p> <p>NO TENTATIVE RULING.</p>

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 12	23CV412605	Gregory Blanda et al vs American Honda Motor Co., Inc.	<b>Motion Of Plaintiff To Compel Defendant To Provide Responses To Special and Form Interrogatories, Set One Without Objections etc.</b>  SEE LINE #11  NO TENTATIVE RULING.
LINE 13	23CV412605	Gregory Blanda et al vs American Honda Motor Co., Inc.	<b>Motion Of Plaintiff To Deem Requests for Admissions to Be Admitted etc.</b>  SEE LINE #11  NO TENTATIVE RULING.
LINE 14	18CV335520	Brian Hennessey vs Kathleen Broccoli	<b>Motion of Plaintiff for Leave to File an Amended Complaint.</b>  This Court will DENY the motion of plaintiff for leave to an amended complaint. The motion for preferential trial setting is MOOT as a trial date has already been set.  SEE ATTACHED TENTATIVE RULING.
LINE 15	21CV383107	Giuliani Construction and Restoration, Inc. vs Rancho HOA Albert Yeong And Related Cross-Complaint	<b>Motion of Defendant/Cross-Complainant Albert Yeong For Leave to File First Amended Cross-Complaint.</b>  The Court will GRANT the motion of defendant/cross-complainant Mr. Yeong for leave to amend the cross-complaint. Mr. Yeong is to submit to a code-compliant deposition not exceeding four hours in length and within the next 45 days of the filing and service of this Order. Counsel should present a copy of the proposed amended cross-complaint to the clerk via the e-filing queue and then serve an endorsed copy on all parties. Cross-defendant will then be given 30 days leave within which to RESPOND to the amended cross-complaint.  Counsel for Mr. Young is to provide notice of entry of ruling.  SEE ATTACHED TENTATIVE RULING.



LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 16	22CV398119	Nathaniel Villareal et al vs Richard Vasquez et al	<p><b>Motion Of Defendant Robin C. Silvera for Terminating Sanctions etc.</b></p> <p>The Order of this Court filed on 05 February 2022 required the plaintiffs to provide code-compliant responses to Ms. Vasquez's Requests For Admission (Set No. 1) and demand for inspection of documents within ten (10) days of the filing and service of the notice of entry of the Order; and that Plaintiffs' objections to the Discovery Requests were waived.</p> <p>Plaintiffs failed to comply with this order.</p> <p>Plaintiffs have not filed opposition to this motion. 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); <b>Sexton v. Superior Court</b> (1997) 58 Cal.App.4<sup>th</sup> 1403, 1410.</p> <p>The motion is GRANTED in its entirety. The action is TERMINATED and the complaint is STRICKEN. Plaintiffs are to pay to counsel for defendant the sums of \$9,875.00, and costs in the amount of \$1,569.45, for a total amount of \$11,444.45, within 10 days of the filing and service of this Order.</p> <p>Counsel for moving parties to prepare notice of entry of order.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 17	22CV402218	Dolores Mattson vs Adi De La Zerda et al	<p><b>Motion of Paul D. Van Der Walde, Esq. To Withdraw As Counsel for Plaintiff.</b></p> <p>Counsel declares that in actual conflict has arisen. The Court requests that Mr. Van Der Walde appear via the Zoom virtual platform for an in-camera discussion.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 18	23CV423715	Marco Cabrales et al vs Ramiro Cabrales, Jr. and related cross-complaint	<p><b>Motion of Plaintiff/Cross-Complainant Marco Cabrales to Consolidate Actions.</b></p> <p>The motion is DENIED for the reasons stated in the order of this Court filed on 05 April 2024.</p> <p>NO FORMAL TENTATIVE RULING.</p>



LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 19	21CV389006	Onemain Financial Group, LLC vs Juan Cordova Vazquez	<p><b>Motion of Plaintiff for Order Setting Aside and Vacating Its Prior Order of Dismissal and for Entry of Judgment Pursuant to Stipulation of the Parties.</b></p> <p>The moving papers set forth that defendant has defaulted under the terms of a stipulated settlement. Plaintiff now seeks an order setting aside the order of dismissal and for entry of judgment less credits for payments received and for costs.</p> <p>The motion is not opposed.</p> <p>The motion is GRANTED. Counsel should prepare a new judgment form and submitted to this the Department via the clerks e-filing queue.</p> <p>The matter will be set for Dismissal Review on 18 July 2024 at 10:00 AM in this Department.</p> <p>SEE ATTACHED TENTATIVE RULING.</p>
LINE 20	23CV423715	Marco Cabrales et al vs Ramiro Cabrales, Jr.	<p><b>Motion of Defendant/Cross-Complainant Ramiro Cabrales, Jr. to Expunge/Remove Multiple Lis Pendens.</b></p> <p>After reviewing the moving, opposing and reply papers, this Court believes that it is most likely that defendant/cross-complainant Ramiro Cabrales, Jr. will prevail and therefore, pursuant to <b>Code of Civil Procedure</b>, § 405.32 any Lis Pendens should be expunged.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 21	20CV369138	Chicago Title Company vs. 28th Street Villa Apartments, LLC; Nobel Homes, LLC; Green Villa Apartments, LP; ROYGBIV Real Estate Development, LLC; Hui Jun Li; Gregory Malley. and related cross-complaint. drf	<p><b>Motion of Defendants Nobel Homes LLC etc.; 28th Street Villa Apartments, LLC; Hui Jun Li etc.; Gregory Malley to continue the trial date.</b></p> <p>The parties were given leave to file additional papers up to and including noon on 29 April 2024.</p> <p>NO TENTATIVE RULING.</p>
LINE 22			SEE ATTACHED TENTATIVE RULING.
LINE 23			SEE ATTACHED TENTATIVE RULING.
LINE 24			SEE ATTACHED TENTATIVE RULING.
LINE 25			SEE ATTACHED TENTATIVE RULING.
LINE 26			SEE ATTACHED TENTATIVE RULING.
LINE 27			SEE ATTACHED TENTATIVE RULING.
LINE 28			SEE ATTACHED TENTATIVE RULING.
LINE 29			SEE ATTACHED TENTATIVE RULING.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 30			SEE ATTACHED TENTATIVE RULING.

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Calendar Line 7

**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)**  
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***http://www.scscourt.org***

*(For Clerk's Use Only)*

**CASE NO.: 20CV369925**

**Chun Yu Lu, et al. v. Fremont Hills Development Corporation, et al.**

**DATE: 30 April 2024**

**TIME: 9:00 am**

**LINE NUMBER: 7**

**This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 20 in the Old Courthouse, 2<sup>nd</sup> 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 29 April 2024. Please specify the issue to be contested when calling the Court and Counsel.**

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**Order on Motion of Defendant Peter Xu Zhong  
For Judgment on the Pleadings.**

**I. Statement of Facts.**

Plaintiffs Chun Yu Lu and Ming Yi Lai (collectively, "Plaintiffs") allege that on or about April 1, 2015, defendant Fremont Hills Development Corporation ("FHDC") agreed to sell a condominium to Plaintiffs requesting a \$50,000 deposit which Plaintiffs paid. (First Amended Complaint ("FAC"), ¶BC-1.)

On February 26, 2019, defendant Peter Xu Zhong ("Zhong") informed Plaintiffs that FHDC agreed to refund \$50,000 as the result of FHDC's inability to develop the condominium complex. (Id.)

On or about August 12, 2019, Zhong, on behalf of FHDC, executed a Mutual Termination Agreement with Plaintiffs and promised to refund the \$50,000 deposit. (Id.) FHDC failed to refund the \$50,000 deposit to Plaintiffs. (FAC, ¶BC-2.)

On August 26, 2020<sup>1</sup>, Plaintiffs filed a Judicial Council form complaint against defendants FDHC and Zhong asserting causes of action for:

- (1) Breach of Contract [against defendant FDHC]
- (2) Fraud [against defendants Zhong and FDHC]
- (3) Common Counts [against defendant FDHC]

On January 11, 2021, the court clerk entered default against defendant Zhong.

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<sup>1</sup> 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 August 4, 2021, Plaintiffs filed the operative Judicial Council FAC against defendants Zhong and FDHC continuing to assert the same three causes of action asserted in the original complaint.

On November 1, 2021, the court clerk dismissed the complaint against defendant FDHC at Plaintiffs' request.

On May 31, 2022, defendant Zhong filed an answer to Plaintiffs' FAC.

On March 5, 2024, defendant Zhong filed the motion now before the court, a motion for judgment on the pleadings.

## **II. Motions for Judgment on the Pleadings.**

Judgment on the pleadings may be granted upon the motion of either party or by the Court on its own motion. (*Code of Civil Procedure*, §§ 438(b)(1)-(2); *Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205, 1216 *Sheehan v. San Francisco 49ers, Ltd.* (2009) 45 Cal.4th 992, 998.)

To that end, "[a] motion for judgment on the pleadings performs the same function as a general demurrer, and hence attacks only defects disclosed on the face of the pleadings or by matters that can be judicially noticed." (*Cloud v. Northrup Grumman Corp.* (1998) 67 Cal.App.4th 995, 999.) All properly pleaded operative facts are accepted as true. (*Lehto v. City of Oxnard* (1985) 171 Cal.App.3d 285, 287.)

Essentially, "[m]otions by a plaintiff for judgment on the pleadings are the equivalent of a demurrer to an answer." (*Sebago, Inc. v. City of Alameda* (1989) 211 Cal.App.3d 1372, 1379.) Thus, the movant contends that the adversary's pleading, on its face, "fails to state a cause of action." (*Sofias v. Bank of America* (1985) 172 Cal.App.3d 583, 586.) The pleader's allegations must be accepted as true and liberally construed in his favor. (*Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 565.)

Like a demurrer, a motion for judgment on the pleadings may be addressed to the pleading as a whole or to separate counts. If addressed to the pleading as a whole, the motion must be denied if even one count is good. (See *Lord v. Garland* (1946) 27 Cal.2d 840, 850.) If addressed to separate counts, the motion may be granted as to some counts and denied as to others. (See *Steiner v. Rowley* (1950) 35 Cal.2d 713, 720.)

"The standard for granting a motion for judgment on the pleadings is essentially the same as that applicable to a general demurrer, that is, under the state of the pleadings, together with matters that may be judicially noticed, it appears that a party is entitled to judgment as a matter of law." (*Schabarum v. California Legislature*, *supra*, 60 Cal.App.4th 1205, 1216.)

"A plaintiff may test the sufficiency of an answer by a motion for judgment on the pleadings, and may thereby recover judgment, without the introduction of any evidence, if his complaint states facts sufficient to constitute a cause of action, and the answer, as interposed by the defendant neither raises any material issue nor states a defense, i.e., where the answer expressly or substantially admits or does not sufficiently deny all the material allegations of the complaint, and sets up no new matter which is sufficient to bar or defeat the action. Thus a judgment may be rendered on the pleadings if the answer is evasive, frivolous or sham." (*Adjustment Corp. v. Hollywood Hardware & Paint Co.* (1939) 35 Cal.App.2d 566, 569.) (internal citations omitted.)

When judgment on the pleadings is granted on the grounds that the complaint does not state a cause of action, leave to amend a complaint should generally be granted if there is a reasonable possibility that the defect can be cured. (See, e.g., *Carney v. Simmonds* (1957) 49 Cal. 2d 84, 97; *Smiley v. Citibank* (S.D.), N.A. (1995) 11 Cal.4th 138, 164, fn. 18.)

## **III. Analysis.**

**A. Defendant Zhong's motion for judgment on the pleadings as to Plaintiffs' second cause of action is GRANTED.**

"The elements of fraud, which give rise to the tort action for deceit, are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage." (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638 (*Lazar*); see also CACI, No. 1900.)

"Fraud actions are subject to strict requirements of particularity in pleading. ... Accordingly, the rule is everywhere followed that fraud must be specifically pleaded." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 216.) "The pleading should be sufficient to enable the court to determine whether, on the facts pleaded, there is any foundation, prima facie at least, for the charge of fraud." (*Commonwealth Mortgage Assurance Co. v. Superior Court* (1989) 211 Cal.App.3d 508, 518.)

The *Lazar* court did not comment on how these particular allegations met the requirement of pleading with specificity in a fraud action, but the court did say that "this particularity requirement necessitates pleading facts which 'show how, when, where, to whom, and by what means the representations were tendered.' A plaintiff's burden in asserting a claim against a corporate employer is even greater. In such a case, the plaintiff must 'allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written.'" (*Lazar, supra*, 12 Cal.4th at p. 645.)

Defendant Zhong moves for judgment on the pleadings based on the assertion that Plaintiffs have not sufficiently alleged their reliance on any misrepresentation. Defendant Zhong directs the court's attention to paragraph FR-5 of the Judicial Council FAC which states, "In justifiable reliance upon defendant's conduct, plaintiff was induced to act ... as follows: Defendant [Zhong] had directly discussed the refund terms and presented the Mutual Termination Agreement to Plaintiffs."

Actual reliance occurs when a misrepresentation is " 'an immediate cause of [a plaintiff's] conduct, which alters his legal relations,' " and when, absent such representation, " 'he would not, in all reasonable probability, have entered into the contract or other transaction.' " [Citation.] "It is not . . . necessary that [a plaintiff's] reliance upon the truth of the fraudulent misrepresentation be the sole or even the predominant or decisive factor in influencing his conduct. . . . It is enough that the representation has played a substantial part, and so has been a substantial factor, in influencing his decision." (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 976 – 977; see also *Alliance Mortgage Co. v. Rothwell* (1995) 10 Cal.4th 1226, 1239—"Reliance exists when the misrepresentation or nondisclosure was an immediate cause of the plaintiff's conduct which altered his or her legal relations, and when without such misrepresentation or nondisclosure he or she would not, in all reasonable probability, have entered into the contract or other transaction.") "In order to recover for fraud, as in any other tort, the plaintiff must plead and prove the 'detriment proximately caused' by the defendant's tortious conduct. Deception without resulting loss is not actionable fraud." (*Service by Medallion, Inc. v. Clorox Co.* (1996) 44 Cal.App.4th 1807, 1818.)

Perhaps misplaced, Plaintiffs do allege their reliance on Zhong's statement/ promise to refund their \$50,000. Earlier in the FAC, Plaintiffs allege, "After Plaintiffs Chun Yu Lu and Min Yi Lai executed the Mutual Termination Agreement, FHDC never made any payment." The court reasonably infers from this allegation that Plaintiffs actually relied upon defendant Zhong's promise to refund their \$50,000 by executing the Mutual Termination Agreement which they would not otherwise have executed.

Defendant Zhong argues additionally that there are no allegations that Zhong was a party to the underlying contract or of any specific act that Zhong committed beyond his scope as an agent of FDHC. Although not entirely clear, Zhong appears to argue that he is not individually liable for fraud and the allegations of fraud are attributable only to him in his capacity as an agent of FDHC. The allegations at paragraph FR-2 of the FAC allege that Zhong made misrepresentations concerning what FDHC would do. It is unclear whether Zhong is making representations in his own individual capacity or in his capacity as an agent/ representative on behalf of FDHC. In light of the requirement of specificity for pleading fraud, Plaintiffs should clarify by adding specific factual distinguishing whether Zhong is making representations in his own individual capacity or in his capacity as an agent/ representative on behalf of FDHC.

Finally, defendant Zhong argues Plaintiffs have not sufficiently alleged that defendant Zhong did not have the then-present intention not to perform (i.e., refund \$50,000); non-performance alone is not sufficient to establish a fraudulent intent. “Fraud is an intentional tort; it is the element of fraudulent intent, or intent to deceive, that distinguishes it from actionable negligent misrepresentation and from nonactionable innocent misrepresentation. It is the element of intent which makes fraud actionable, irrespective of any contractual or fiduciary duty one party might owe to the other.” (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 482.)

Something more than nonperformance is required to prove the defendant’s intent not to perform his promises. “A promise of future conduct is actionable as fraud only if made without a present intent to perform. (Civ. Code, §1710, subd. 4; [Citation omitted.])” “‘A declaration of intention, although in the nature of a promise, made in good faith, without intention to deceive, and in the honest expectation that it will be fulfilled, even though it is not carried out, does not constitute a fraud. [Citation.]’ ” [Citation omitted.]

Moreover, “ ‘something more than nonperformance is required to prove the defendant’s intent not to perform his promise.’ [Citations.] ... [I]f plaintiff adduces no further evidence of fraudulent intent than proof of nonperformance of an oral promise, he will never reach a jury.” (*Magpali v. Farmers Group, Inc.* (1996) 48 Cal.App.4th 471, 481.) “[T]he intent element of promissory fraud entails more than proof of an unkept promise or mere failure of performance.” (*Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Ass’n* (2013) 55 Cal.4th 1169, 1183.)

The flaw in this last argument by defendant Zhong is that this argument applies only insofar as Plaintiffs are asserting promissory fraud. However, Plaintiffs’ FAC alleges more than promissory fraud and also checks the boxes for affirmative misrepresentation as well as concealment. The affirmative misrepresentation is supported by an allegation that, “When defendant made the representations, defendant knew they were false.” (FAC, ¶FR-2, subd. (c).)

Defendant Zhong’s argument only addresses a portion of the second cause of action and a defendant cannot demur to only a portion of a cause of action. (See *Financial Corp. of America v. Wilburn* (1987) 189 Cal.App.3d 764, 778— “[A] defendant cannot demur generally to part of a cause of action;” see also *PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682— “A demurrer does not lie to a portion of a cause of action;” *Pointe San Diego Residential Community, L.P. v. Procopio, Cory, Hargreaves & Savitch, LLP* (2011) 195 Cal.App.4th 265, 274— “A demurrer challenges a cause of action and cannot be used to attack a portion of a cause of action.”)

Nevertheless, as noted earlier, Plaintiffs’ fraud cause of action lacks clarity with regard to whether defendant Zhong is making representations in his own individual capacity or in his capacity as an agent/representative on behalf of FDHC.

#### **B. Order.**

Accordingly, defendant Zhong’s motion for judgment on the pleadings as the second cause of action in Plaintiffs’ FAC is GRANTED with 10 days’ leave to amend.

#### **IV. Tentative Ruling.**

The tentative ruling was duly posted.

#### **V. Case Management.**

The matter has been set for a long cause jury trial on 10 March 2025. The parties should consider conducting alternate dispute resolution pending the upcoming trial date.

#### **VI. Order.**

Defendant Zhong's motion for judgment on the pleadings as the second cause of action in Plaintiffs' First Amended Complaint is GRANTED with 10 days' leave to amend.

Defendant is to provide notice of entry of this order.

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**DATED:**

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**HON. SOCRATES PETER MANOUKIAN**

*Judge of the Superior Court  
County of Santa Clara*

---oooOooo---

Calendar Line 8

**SUPERIOR COURT, STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

**DEPARTMENT 20**

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*(For Clerk's Use Only)*

**CASE NO.: 21CV381934**

**DATE: 30 April 2024**

**TIME: 9:00 am**

**A. Shirazi v. Jamie Sykora, et al.**

**LINE NUMBER: 8**

**This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 20 in the Old Courthouse, 2<sup>nd</sup> 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 29 April 2024. Please specify the issue to be contested when calling the Court and Counsel.**

**---oooOooo---**

**Order On Cross-Defendant Niloufar Dehkordi's  
Demurrer To Cross-Complainant South Valley Construction, Inc's  
First Amended Cross-Complaint.**

**I. Statement of Facts.**

**Complaint**

Defendants Jamielee Miller (sued as Jamielee C. Miller aka Jamielee Cherie Miller aka Jamie Lee Miller aka Jamie L. Miller aka Jamielee Miller aka Jamielee Miller Sykora aka Jamie Sykora aka Jamie Miller aka Jamielee L. Sykora<sup>1</sup>) and Joseph Sykora (collectively, "Sykoras") own and reside at real property located at 1104 Allston Way in San Jose ("Property"). (Complaint, ¶¶2 – 4 and 8.)

On or about 15 May 2019, defendant Sykoras hired persons to complete home improvement work at the Property which included furnishing labor and materials. (Complaint, ¶8.) Before work commenced, defendant Sykoras requested a loan from plaintiff A. Shirazi ("Shirazi") in the amount of \$17,000 to pay for the labor and materials for the home improvement work at the Property. (Complaint, ¶9.)

On or about 22 May 2019, defendant Sykoras orally agreed to repay plaintiff Shirazi \$17,000 within one week, by 29 May 2019. (Complaint, ¶10.) Plaintiff Shirazi agreed to pay \$17,000 directly to the persons for labor and materials and the work performed at the Property and did so on or about 24 May 2019. (Complaint, ¶¶11 – 12.)

Thereafter, defendant Sykoras acknowledged the payment by plaintiff Shirazi. (Complaint, ¶13.) On or about 26 May 2019, defendant Sykoras refused to pay the amount due and breached the oral agreement. (Complaint, ¶14.) Defendant Sykoras may have performed work at the Property themselves. (Complaint, ¶15.)

On 26 April 2021<sup>2</sup>, plaintiff Shirazi filed a complaint against defendant Sykoras asserting a single cause of action for breach of oral contract.

<sup>1</sup> See Errata to Plaintiff's Complaint filed 16 June 2021.

<sup>2</sup> 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



### **Sykoras' Cross-Complaint**

On 22 July 2021, defendant Sykoras filed an answer to plaintiff Shirazi's complaint and also filed a cross-complaint which alleges in or about December 2018, the Sykoras and cross-defendant South Valley Construction, Inc. ("SVCI") entered into a partially oral and partially written contract whereby SVCI agreed to perform certain home improvement residential construction services at the Sykoras' residence ("Project") in exchange for specified payment. (Cross-Complaint, ¶¶6.) Cross-defendant SVCI did not provide the Sykoras with a compliant written home improvement contract. (*Id.*)

Cross-defendant SVCI supplied materials and performed labor in connection with the Project. (Cross-Complaint, ¶¶7.) Cross-defendant SVCI materially breached the contract by failing to timely, properly, and adequately perform the home improvement work at the Property; failing to provide the Sykoras with a written home improvement contract as required by California law; failing to otherwise conform with California's home improvement law; performing work without the requisite permits; failing to complete work; performing work not requested; and performing defective work. (Cross-Complaint, ¶¶9.)

Cross-defendant SVCI was a purportedly licensed contractor and had on file with the Registrar of Contractors a bond required by California Business and Professions Code §7107.6. (Cross-Complaint, ¶¶16.) Cross-defendant American Contractors Indemnity Company ("ACIC") is the surety on said bond. (*Id.*)

Cross-complainant Sykoras' cross-complaint asserts causes of action for:

- (1) Breach of Contract
- (2) Negligence
- (3) Claim Upon License Bond

On 13 October 2021, cross-defendant SVCI filed a demurrer to cross-complainant Sykoras' cross-complaint, and also filed a cross-complaint against the Sykoras asserting a single cause of action for implied indemnity.

On 15 November 2021, the Sykoras filed an answer to SVCI's cross-complaint.

On 19 November 2021, cross-defendant ACIC filed an answer to the Sykoras' cross-complaint.

On or about 3 February 2022, the court overruled cross-defendant SVCI's demurrer to cross-complainant Sykoras' cross-complaint.

On 15 February 2022, cross-defendant SVCI filed an answer to cross-complainant Sykoras' cross-complaint.

### **SVCI's [Second] Amended Cross-Complaint**

After obtaining leave from this court to file an amended cross-complaint, SVCI filed a [first amended]<sup>3</sup> cross-complaint ("FAXC") on 24 January 2023 seeking implied contractual indemnification/ equitable indemnification against cross-defendant Niloufar Dehkordi ("Dehkordi").

On 20 October 2023, Dehkordi filed a demurrer to SVCI's FAXC which prompted SVCI to file a [second] amended cross-complaint ("SAXC") on 31 January 2024. SVCI's SAXC alleges the Sykoras hired persons to complete home improvement work at their Property. (SAXC, ¶¶10.) Before work commenced, in or about 22 May 2019, the Sykoras requested a loan from plaintiff Shirazi in the amount of \$17,000 to pay for the home improvement

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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))

<sup>3</sup> SVCI labeled the pleading filed on 24 January 2023 as "Cross-Defendant South Valley Construction, Inc.'s Cross-Complaint Against Niloufar Dehkordi for Indemnification" distinguishing it from its earlier filed (13 October 2021) "Cross-Complaint of South Valley Construction, Inc., for: Sole Cause of Action for Implied Indemnity" directed against the Sykoras only. As the second cross-complaint filed by SVCI, the court will treat and label the 24 January 2023 pleading as SVCI's FAXC.

work at their Property (SAXC, ¶11.) The Sykoras orally agreed to repay plaintiff Shirazi within one week, but thereafter refused to pay thereby breaching their agreement. (SAXC, ¶¶12 – 13.)

Thereafter, the Sykoras either performed construction work or hired other vendors, contractors, or persons to engage in construction, remediation, or remodeling at their Property. (SAXC, ¶14.) SVCI and plaintiff Shirazi were not one of the vendors, contractors, or persons with whom the Sykoras contracted for any construction, remediation, or remodeling work at the Property. (SAXC, ¶15.) Any allegation of defective work by the Sykoras was work performed by the Sykoras or those under the Sykoras' direction, excluding SVCI and plaintiff Shirazi. (SAXC, ¶¶16 – 18.) The Sykoras may have hired additional contractors or individuals who performed work before or after the alleged defects arose. (SAXC, ¶19.)

In the event SVCI is held liable to the Sykoras, such liability was caused by the acts, omissions, and/or other fault of cross-defendant Dehkordi. (SAXC, ¶¶25 – 27.) Dehkordi was an owner and principal of SVCI and was in control of its operations during the relevant period. (*Id.*)

SVCI's SAXC asserts the following causes of action:

- (1) Conspiracy [against Joseph Sykora and Dehkordi]
- (2) Quasi-Contract and Unjust Enrichment [against Joseph Sykora]
- (3) Implied Contractual Indemnification and Equitable Indemnification [against Dehkordi]

On 4 March 2024, cross-defendant Dehkordi filed the motion now before the court, a demurrer to the first and third causes of action in SVCI's SAXC.

## **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.**

### **B. Procedural violation.**

As a preliminary matter, the court notes that cross-complainant SVCI's opposition is untimely filed. Code of Civil Procedure section 1005, subdivision (b) states, "All papers opposing a motion . . . shall be filed with the court and a copy served on each party at least nine court days . . . before the hearing." Based on a hearing date of 30 April 2024, cross-complainant SVCI's opposition had to be filed no later than 17 April 2024. Cross-complainant SVCI did not file opposition until 19 April 2024, two court days late.

California Rules of Court, rule 3.1300, subdivision (d) states, “No paper may be rejected for filing on the ground that it was untimely submitted for filing. If the court, in its discretion, refuses to consider a late filed paper, the minutes or order must so indicate.”

Since the court has discretion to consider a late filed paper, since cross-defendant Dehkordi has not suffered any prejudice from the late filing, and to avoid the expenditure of any further judicial resources, the court will look past this procedural violation and consider the opposition on its merits. .

However, cross-complainant SVCI and its counsel are hereby admonished for the procedural violation. Any future violation may result in the court’s refusal to consider the untimely filed papers.

**C. Cross-defendant Dehkordi’s demurrer to the first cause of action [conspiracy] in cross-complainant SVCI’s SAXC is SUSTAINED.**

In *Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 510 – 511, the court wrote, “Conspiracy is not a cause of action, but a legal doctrine that imposes liability on persons who, although not actually committing a tort themselves, share with the immediate tortfeasors a common plan or design in its perpetration.”

Conspiracy is not a cause of action. It is a theory of liability under which persons who, although they do not actually commit a tort themselves, share with the tortfeasor or tortfeasors a common plan or design in its perpetration. One who participates in a civil conspiracy, in effect, becomes liable for the torts of the coconspirators. **But the conspiracy does not result in tort liability unless an actual tort is committed.** (*Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 510–511 [28 Cal. Rptr. 2d 475, 869 P.2d 454].) As the Supreme Court explained, “ ‘**A civil conspiracy, however atrocious, does not per se give rise to a cause of action unless a civil wrong has been committed resulting in damage.**’ ” [Citation.] ‘A bare agreement among two or more persons to harm a third person cannot injure the latter unless and until acts are actually performed pursuant to the agreement. Therefore, it is the acts done and not the conspiracy to do them which should be regarded as the essence of the civil action.’ [Citation.]” (*Id.* at p. 511.)

(*Kenne v. Stennis* (2014) 230 Cal.App.4th 953, 968; emphasis added.)

The first cause of action in SVCI’s SAXC for conspiracy alleges, in relevant part, “[SVCI] alleges injury was actually and proximately caused by the conspiratorial and cooperative actions between [Dehkordi] and SYKORAS in a scheme to mislead Plaintiff [Shirazi] through assurances and empty promises to repay the original \$17,000 lent by Plaintiff.” (SAXC, ¶32.) “[Dehkordi] and SYKORAS together ... use[d] false statements and false promises to further entice Plaintiff [Shirazi] to delay bringing a suit for damages.” (SAXC, ¶33.)

Dehkordi demurs to SVCI’s claim of conspiracy on the basis that it is apparently based upon fraud, but there has been no underlying claim of fraud asserted. To the extent SVCI is now attempting to assert fraud, the allegations are not pleaded with the requisite specificity. “Fraud actions are subject to strict requirements of particularity in pleading. ... Accordingly, the rule is everywhere followed that fraud must be specifically pleaded.” (*Committee on Children’s Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 216.) The court in *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645 stated that “this particularity requirement necessitates pleading facts which ‘show how, when, where, to whom, and by what means the representations were tendered.’ ”

Apart from generic principles of law relating to demurrer, SVCI does not squarely address Dehkordi’s contention that there is no underlying claim of fraud which has been alleged or that fraud has not been alleged with the requisite specificity.

Accordingly, cross-defendant Dehkordi’s demurrer to the first cause of action in cross-complainant SVCI’s SAXC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for conspiracy is SUSTAINED with 10 days’ leave to amend.

**D. Cross-defendant Dehkordi’s demurrer to the third cause of action [implied contractual/ equitable indemnification] in cross-complainant SVCI’s SAXC is SUSTAINED.**

In *Jocer Enterprises, Inc. v. Price* (2010) 183 Cal.App.4th 559, 573-574 (*Jocer*), the court explains:

Generally, “indemnity refers to ‘the obligation resting on one party to make good a loss or damage another party has incurred.’ ” (*Prince v. Pacific Gas & Electric Co.* (2009) 45 Cal.4th 1151, 1157 [90 Cal.Rptr.3d 732, 202 P.3d 1115] (*Prince*), quoting *Rossmoor Sanitation, Inc. v. Pylon, Inc.* (1975) 13 Cal.3d 622, 628 [119 Cal.Rptr. 449, 532 P.2d 97].) There are two basic types of indemnity: express indemnity, which relies on an express contract term providing for indemnification, and equitable indemnity, which embraces “traditional equitable indemnity” and implied contractual indemnity. (*Prince*, at pp. 1157–1159.)

Because the second amended complaint alleges no basis for express indemnity, we limit our analysis to equitable indemnity. Traditional equitable indemnity is “rooted in principles of equity” (*Exxess Electronix v. Heger Realty Corp.* (1998) 64 Cal.App.4th 698, 714 [75 Cal.Rptr.2d 376]), and “requires no contractual relationship between an indemnitor and an indemnitee” (*Prince, supra*, 45 Cal.4th at p. 1158). In contrast, implied contractual indemnity presupposes a contractual relationship that supports a right to indemnification not rooted in an express contract term. (*Prince, supra*, 45 Cal.4th at p. 1159.)

As our Supreme Court has recently explained, although implied contractual indemnity has long been regarded as distinct from both express and equitable indemnity, it is now to be viewed as a form of equitable indemnity. (*Prince, supra*, 45 Cal.4th at p. 1157, fn. 2.) Traditional equitable indemnity and implied contractual indemnity share a key feature that distinguishes them from express indemnity: **unlike express indemnity, neither traditional equitable indemnity nor implied contractual indemnity is available “in the absence of a joint legal obligation to the injured party.”** (*Id.* at pp. 1160–1161.) **Under this principle, “ ‘there can be no indemnity without liability,’ ” “that is, the indemnitee and the indemnitor must share liability for the injury.”** (*Id.* at p. 1165, quoting *Children’s Hospital v. Sedgwick* (1996) 45 Cal.App.4th 1780, 1787 [53 Cal.Rptr.2d 725].) **Thus, no indemnity may be obtained from an entity that has no pertinent duty to the injured third party** (*Prince, supra*, 45 Cal.4th at p. 1159), **that is immune from liability** (*id.* at pp. 1168–1169), **or that has been found not to be responsible for the injury** (*Children’s Hospital v. Sedgwick, supra*, 45 Cal.App.4th at p. 1787).

(Emphasis added.)

This is essentially what Dehkordi argues in her demurrer. In relevant part, the SAXC alleges only that Dehkordi “was an owner and principal of [SVCI] and was in control of its operations during the relevant time period” (SAXC, ¶45) and that SVCI’s liability “only arises by reason of the active and primary conduct of [Dehkordi].” (SAXC, ¶47.) These allegations do not support a finding of Dehkordi’s individually **shared** liability to the Sykoras. Apart from generic principles of law relating to demurrer, SVCI does not squarely address Dehkordi’s argument concerning equitable/ implied contractual indemnity in its opposition.

Accordingly, cross-defendant Dehkordi’s demurrer to the third cause of action in cross-complainant SVCI’s SAXC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for implied contractual/ equitable indemnification is SUSTAINED with 10 days’ leave to amend.

#### IV. Tentative Ruling.

The tentative ruling was duly posted.

#### V. Case Management.

This case is now slightly over two years old. The mandates of the Trial Court Delay Reduction Act require that 100% of civil cases be resolved within two years of filing.

The matter is also set on 30 April 2024 for a Case Management Conference at 10:00 AM in this Department. If the demurrer is contested, the CMC will be heard at 9:00 AM immediately following the hearing on the demurrer. If the party submit on the tentative ruling, the case will be heard at 10:00 AM. In either event, this Court will ask what the status of discovery and discussions concerning alternate dispute resolution.

**VI. Order.**

Cross-defendant Dehkordi's demurrer to the first cause of action in cross-complainant SVCI's SAXC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for conspiracy is SUSTAINED with 10 days' leave to amend.

Cross-defendant Dehkordi's demurrer to the third cause of action in cross-complainant SVCI's SAXC on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for implied contractual/ equitable indemnification is SUSTAINED with 10 days' leave to amend.

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**DATED:**

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

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Calendar Line 9

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Calendar Line 10

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**Calendar Line 11**

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Calendar Line 12

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**Calendar Line 13**

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**Calendar Line 14**

**SUPERIOR COURT, STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

**DEPARTMENT 20**

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*(For Clerk's Use Only)*

**CASE NO.: 18CV335520**

**DATE: 30 April 2024**

**TIME: 9:00 am**

**Brian Hennessey v. Kathleen Broccoli**

**LINE NUMBER: 14**

**This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 20 in the Old Courthouse, 2<sup>nd</sup> 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 29 April 2024. Please specify the issue to be contested when calling the Court and Counsel.**

**---oooOooo---**

**Order on Motion of Plaintiff  
For Leave to File an Amended Complaint.**

**I. Statement of Facts.**

Plaintiff filed this complaint on 28 September 2018<sup>1</sup> while representing himself in propria persona. Defendant answered the complaint on 15 September 2022.

On or about 23 February 2024, the ex parte application of plaintiff for trial preference and for leave to file an amended complaint was sent by this Court for hearing on 19 March at 11:00 AM on the Department 20 trial setting conference calendared

On 19 March 2024 in open court, counsel for plaintiff Jonathan Tung represented to Judge Kiff on that both parties stipulate to scheduling the trial he passed the five-year statute deadline. The minutes of the trial setting conference State that the trial date was set for 03 February 2025. The same minutes also reflect that the motion for preferential trial setting was continued to today's date.

For purposes of the motions today, counsel should bring any objections on the timing of these motions to the attention of the Court at the hearing on the 30 April 2024.

**II. Motion For Leave to File an Amended Complaint.**

On 16 February 2024, plaintiff retained his current counsel. On review the matter, counsel for plaintiff believes that the initial complaint the matter was improperly filed and omitted several elements of causes of action.

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<sup>1</sup> 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 08 March 2024, defendant filed opposition to the applications of the plaintiff for preferential trial setting and for leave to file a first amended complaint. Defendant contends grounds that the plaintiff has already brought an identical case in 17CV312091, which has gone to trial. Plaintiff, according to defendant, is attempting to claim new causes of action barred by the Statute of Limitations and has unreasonably delayed doing anything to move his case forward.

This Court takes judicial notice of Case Number 17CV312091.

Plaintiff has not filed a reply brief contesting the assertions in the opposition papers.

### III. Analysis.

Judicial policy favors the liberal exercise of discretion to permit amendment of the pleadings so as to resolve all disputed matters between the parties in the same lawsuit. (See **Nestle v. Santa Monica** (1972) 6 Cal.3d 920, 939; **Mabie v. Hyatt** (1998) 61 Cal.App.4th 581, 596.) An amendment is only to be granted if the Court, in the exercise of its discretion, finds that it will be in furtherance of justice (**Bank of Woodland v. Heron** (1898) 22 Cal. 107, 109; **Nelson v. Specialty Records, Inc.** (1970) 11 Cal.App.3d 126, 139.)

A review of the opposition papers indicates to this Court that the opposition, based upon res judicata principles and SOL if is well taken.

Leave to amend has been denied where the proposed amendment failed to state a valid cause of action or defense. (See **Allen v. Los Molinos Land Co.** (1914) 25 Cal.App. 206, 213; **Rose v. Ames** (1942) 53 Cal.App.2d 583, 589; **Oswald v. Northrop Aircraft** (1944) 62 Cal.App.2d 824, 828; **Vogel v. Thrifty Drug Co.** (1954) 43 Cal.2d 184, 189; **Hayutin v. Weintraub** (1962) 207 Cal.App.2d 497, 506; **Congleton v. National Union Fire Ins. Co.** (1987) 189 Cal.App.3d 51, 62; see **California Casualty General Ins. Co. v. Superior Court** (1985) 173 Cal.App.3d 274, 280-281) (overruled on the grounds in **Kransco v. American Empire Surplus Lines Ins. Co.** (2000) 23 Cal.4th 390.) Such denial is most appropriate where the pleading is deficient as a matter of law and the defect can not be cured by further appropriate amendment. (*Id.*)

While the Court has discretion to deny leave to amend when the proposed amendment fails to state a valid cause of action or defense, (**California Casualty General Ins. Co. v. Superior Court**, 173 Cal.App.3d 274, 280-281), where the sufficiency of the proposed amendment is a novel question almost certain to be tested in an appellate court, the preferable practice is to permit the amendment and allow the parties to test its legal sufficiency by demurrer or other appropriate motion. (*Id.*)

This Court will DENY the motion of plaintiff for leave to an amended complaint.

### IV. Tentative Ruling.

The tentative ruling was duly posted.

### V. Case Management.

The motion for preferential trial setting is MOOT as a trial date has already been set.

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**VI. Order.**

This Court will DENY the motion of plaintiff for leave to an amended complaint. The motion for preferential trial setting is MOOT as a trial date has already been set.

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**DATED:**

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

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**Calendar Line 15**

**SUPERIOR COURT, STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

**DEPARTMENT 20**

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(For Clerk's Use Only)

**CASE NO.: 21CV383107**

**Giuliani Construction and Restoration, Inc. vs Rancho HOA Albert Yeong**

**DATE: 30 April 2024**

**TIME: 9:00 am**

**LINE NUMBER: 15**

This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 20 in the Old Courthouse, 2<sup>nd</sup> 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 29 April 2024. Please specify the issue to be contested when calling the Court and Counsel.

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**Order on Motion of  
Defendant/Cross-Complainant Albert Yeong  
For Leave to File First Amended Cross-Complaint.**

**I. Statement of Facts.**

Plaintiff Giuliani Construction and Restoration, Inc. filed the complaint on 27 May 2021.<sup>6</sup> On 23 August 2021, defendant Yeong filed an answer to the complaint as well as a cross-complaint against plaintiff.

The procedural and factual history of this matter is otherwise will summarized in the Order on Giuliani Construction and Restoration's Motion for Summary Adjudication filed by this Court on 08 February 2024.

The case is set for jury trial on 13 January 2025.

**II. Motion For Leave to File an Amended Cross-Complaint.**

In the supporting declaration, Ms. Norby declares that Mr. Yeong seeks to amend his FAXC in order to add causes of action for breach of express warranty and breach of implied warranty. He will also remove the causes of action that were summarily adjudicated in Cross-Defendant Giuliani Construction's favor. Ms. Norby further declares that the omitting of cause of action for breaches of implied and express warranties was an oversight in drafting and became apparent following the motion for summary judgment.

In Mr. Giuliani's opposition to the motion, he declares that his contract with the Rancho HOA in refurbishing Building 95 was in the amount of \$890,182.50. Mr. Yeong was not a part of those negotiations. Mr. Yeong negotiated a separate contract for upgrades to his unit. The contract amount was \$4753.64. He does not ever remember instructing Miguel Garcia (a former Giuliani construction That Superintendent who left the employ of plaintiff on 16 April 2021) to provide a Letter of Completion to Mr. Yeong. If it had been provided, it would have been for the work conducted under his contract and not the HOA contract. In discovery, Mr. Yeong produced a document (YEONG\_00065). It purports to be a Letter of Completion and Warranty purportedly signed by Miguel Garcia.

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<sup>6</sup> 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).



Mr. Barton declares in support of the opposition that he recently spoke with Mr. Garcia, who speaks limited English. The Gentleman explained he only vaguely remembered the Rancho HOA project but did not remember Mr. Yeong or signing any paperwork related to his unit.

### III. Analysis.

Mr. Yeong argues that, under the liberal policy of the amendment of pleadings, several reasons justify the granting of leave to file the amended cross-complaint. These include:

1. The proposed amended pleading does not alter or significantly add factual allegations but is based on the same set of general facts as have been alleged in the previous versions.
2. Giuliani will not be prejudiced because the proposed amendments are based on the same set of facts that are known to Giuliani.
3. The amendment will not necessitate opening up new areas of discovery but even if further discovery is needed, Giuliani has almost nine months to do so.
4. Giuliani was given leave to file a cross complaint only four months before the original date of trial, and Yeong should be afforded equal dignity.
5. The amendments will not necessitate a continuance of trial; and
6. A denial of this motion will be severely prejudicial to Yeong.

California Rules of Court, rule 3.1324 sets out the general framework in considering granting or denying a motion a motion to amend a pleading.

Motions for leave to amend the pleadings are directed to the Court's sound discretion. (See **Code of Civil Procedure**, §§ 473(a)(1); 576.) Judicial policy favors the liberal exercise of discretion to permit amendment of the pleadings so as to resolve all disputed matters between the parties in the same lawsuit. (See **Nestle v. Santa Monica** (1972) 6 Cal.3d 920, 939; **Mabie v. Hyatt** (1998) 61 Cal.App.4th 581, 596.) Amendment is only to be granted if the Court, in the exercise of its discretion, finds that it will be in furtherance of justice (**Bank of Woodland v. Heron** (1898) 22 Cal. 107, 109; **Nelson v. Specialty Records, Inc.** (1970) 11 Cal.App.3d 126, 139.)

Leave to amend has been denied where the proposed amendment failed to state a valid cause of action or defense. (See **Allen v. Los Molinos Land Co.** (1914) 25 Cal.App. 206, 213; **Rose v. Ames** (1942) 53 Cal.App.2d 583, 589; **Oswald v. Northrop Aircraft** (1944) 62 Cal.App.2d 824, 828; **Vogel v. Thrifty Drug Co.** (1954) 43 Cal.2d 184, 189; **Hayutin v. Weintraub** (1962) 207 Cal.App.2d 497, 506; **Congleton v. National Union Fire Ins. Co.** (1987) 189 Cal.App.3d 51, 62; see **California Casualty General Ins. Co. v. Superior Court** (1985) 173 Cal.App.3d 274, 280-281) (overruled on the grounds in **Kransco v. American Empire Surplus Lines Ins. Co.** (2000) 23 Cal.4th 390.) If the delay in seeking the amendment has not misled or prejudiced the other side, the liberal policy of allowing amendments prevails and it is an abuse of discretion to deny leave to amend. (See **Higgins v. Del Faro** (1981) 123 Cal.App.3d 558, 564-565.) Such denial is most appropriate where the pleading is deficient as a matter of law and the defect cannot be cured by further appropriate amendment. (*Id.*)

While the Court has discretion to deny leave to amend when the proposed amendment fails to state a valid cause of action or defense, (**California Casualty General Ins. Co. v. Superior Court**, 173 Cal.App.3d 274, 280-281), where the sufficiency of the proposed amendment is a novel question almost certain to be tested in an appellate court, the preferable practice is to permit the amendment and allow the parties to test its legal sufficiency by demurrer or other appropriate motion. (*Id.*)

The Court will GRANT the motion for leave to amend the complaint. Mr. Yeong is to submit to a code-compliant deposition not exceeding four hours in length and within the next 45 days of the filing and service of this Order.

### IV. Tentative Ruling.

The tentative ruling was duly posted.

**V. Case Management.**

The Court notes that the cross-complaints against various subcontractors are still not settled and this Court will last for an update on those matters.

**VI. Order.**

The Court will GRANT the motion of defendant/cross-complainant Mr. Yeong for leave to amend the cross-complaint. Mr. Yeong is to submit to a code-compliant deposition not exceeding four hours in length and within the next 45 days of the filing and service of this Order. Counsel should present a copy of the proposed amended cross-complaint to the clerk via the e-filing queue and then serve an endorsed copy on all parties. Cross-defendant will then be given 30 days leave within which to RESPOND to the amended cross-complaint.

Counsel for Mr. Young is to provide notice of entry of ruling.

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**DATED:**

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



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