SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 10
Honorable Frederick S. Chung

Rachel Tien, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408-882-2210

DATE: March 12, 2024 TIME: 9:00 A.M.

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

The courthouse is open: Department 10 is now fully open for in-person hearings, as of April 18, 2023. The court strongly prefers **in-person** appearances for all contested law-and-motion matters. For all other hearings (*e.g.*, case management conferences), the court strongly prefers either **in-person or video** appearances. Audio-only appearances are permitted but disfavored, as they cause significant disruptions and delays to the proceedings. Please use telephone-only appearances as a last resort.

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

CourtCall is no longer available: Department 10 uses Microsoft Teams for remote hearings. Please click on this link if you need to appear remotely, and then scroll down to click the link for Department 10: https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml. Again, the court strongly prefers in-person or video appearances. Telephonic appearances are a sub-optimal relic of a bygone era.

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

Court reporters: Unfortunately, the court is no longer able to provide official court reporters for civil proceedings (as of July 24, 2017). If any party wishes to have a court reporter, the appropriate form must be submitted. See https://www.scscourt.org/general_info/court_reporters.shtml.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	23CV419866	Cindy Cilia et al. v. General Motors, LLC	Demurrer (original complaint): plaintiff has filed a first amended complaint, and so this demurrer is now MOOT.
LINE 2	23CV419866	Cindy Cilia et al. v. General Motors, LLC	Motion to strike (original complaint): plaintiff has filed a first amended complaint, and so this motion to strike is now MOOT.
LINE 3	19CV354233	Todd Henry Jarvis v. State Farm General Insurance Company et al.	Click on LINE 3 or scroll down for ruling.
LINE 4	21CV389355	Ali Uyanik v. Juan Gabriel Galan Ramirez et al.	Click on LINE 4 or scroll down for ruling.
LINE 5	19CV343781	Minh Vo v. Thai Nguyen	OFF CALENDAR – motion withdrawn.
LINE 6	21CV392859	Francisco Valencia Sanchez v. General Motors, LLC	Click on LINE 6 or scroll down for ruling.
LINE 7	22CV405021	De Mattei Construction, Inc. v. Stephen A. Finn	Click on LINE 7 or scroll down for ruling.
LINE 8	23CV414589	Priscilla Gonzalez et al. v. Live Nation Entertainment, Inc. et al.	Motion to compel compliance with subpoena: notice is proper, and the motion is unopposed. The court finds good cause to GRANT the motion, given that a stipulated protective order has now been signed by the court. Third-party Mountain View Police Department will produce responsive documents within 10 days of notice of entry of this order.
LINE 9	21CV376461	Baiting Jiang v. Joseph D. Kostmayer et al.	Click on LINE 9 or scroll down for ruling.

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LINE 10	21CV389250	Kai Chung et al. v. Somrudee Raveesangsoon et al.	OFF CALENDAR – the case has settled.
LINE 11	22CV396983	Angela Bergeson v. Silicon Valley International School et al.	Motion to compel arbitration and stay proceedings: defendants have filed a notice of non-opposition to plaintiff's motion. In fact, the court thought the parties had already agreed to arbitrate many months ago and does not understand why this issue continues to linger. The court GRANTS the motion and sets this matter for a case status review re: arbitration on October 10, 2024 at 10:00 a.m. in Department 10.
LINE 12	23CV412663	Yvette McDougal v. Jose Ontiveros Franco	Motion to be relieved as counsel: parties to appear.
LINE 13	23CV419307	S.J. Bayshore Development, LLC v. Timothy Bumb	Click on LINE 13 or scroll down for ruling.

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Calendar Line 3
Case Name: *Todd Henry Jarvis v. State Farm General Insurance Company et al.*
Case No.: 19CV354233

I. BACKGROUND

This is an insurance coverage dispute in which plaintiff Todd Henry Jarvis ("Jarvis") has sued defendant State Farm General Insurance Company ("State Farm") in connection with property damage from a water leak that occurred in September 2018 at Jarvis's property, located at 509 Monterey Avenue in Los Gatos, California.

Jarvis filed his original complaint on August 30, 2019, stating four causes of action against State Farm and/or non-insurance company defendants: (1) Breach of Contract (the insurance policy, alleged against State Farm only); (2) Breach of the Implied Covenant of Good Faith and Fair Dealing (insurance bad faith, alleged against State Farm only); (3) Negligence (against all defendants); and (4) Unfair Business Practices (against all defendants). While the specific insurance policy for the subject property is mentioned in the complaint, there are no attached exhibits.

More than a year later, on November 20, 2020, the parties submitted a stipulation asking the court "to file" a proposed first amended complaint ("FAC") attached to the stipulation, alleging the same four causes of action. This court (Judge Barrett) signed the order on November 24, 2020 but noted that the "FAC must be separately filed," as a document filed as an exhibit cannot be deemed separately filed. Judge Barrett also stated that "leave is granted for Plaintiff to file the First Amended Complaint within 15 days of the filing of this Order." Despite this instruction, plaintiff failed to file a timely amended complaint.

On June 28, 2023, State Farm filed a defective motion for summary judgment directed at the FAC rather than the still-operative original complaint. Footnote 1 to the notice of motion made it clear that State Farm was well aware that Jarvis had never followed the court's order to file the FAC. On October 10, 2023, this court (the undersigned) issued an order addressing several issues raised by the motion.[1] Among other things, the court directed Jarvis to file the FAC already approved by Judge Barrett by no later than October 31, 2023; directed State Farm to "re-file" its motion for summary judgment by December 15, 2023 (so that it would be directed to the operative pleading); and continued the hearing on the motion for summary judgment to the current date of March 12, 2024. Jarvis filed the FAC on October 10, 2023. State Farm filed an answer to the FAC on November 2, 2023.

Currently before the court is State Farm's motion for summary judgment, which was re-filed on December 15, 2023.[2]

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[1] The court takes judicial notice of the October 10, 2023 order on its own motion pursuant to Evidence Code section 452, subdivision (d).

[2] Despite the label attached to it, this is not a "second" motion for summary judgment. Nevertheless, there are some changes to the original motion filed on June 28 that were not expressly authorized by the court's October 10, 2023 order. That order directed State Farm to "re-file" the existing motion after the FAC was finally filed, not to file a new motion.

II. REQUEST FOR JUDICIAL NOTICE

"Judicial notice may not be taken of any matter unless authorized or required by law." (Evid. Code, § 450.) A precondition to judicial notice in either its permissive or mandatory forms is that the matter to be noticed be relevant to the material issue before the court. (*Silverado Modjeska Recreation and Park Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 307, citing *People v. Shamrock Foods Co*. (2000) 24 Cal.4th 415, 422, fn. 2.) It is the court, and not the parties, that determines relevance. Evidence Code section 453, subdivision (b), requires a party seeking notice to "[furnish] the court with sufficient information to enable it to take judicial notice of the matter."

In support of its motion, State Farm has submitted a request for judicial notice of six documents, submitted as Exhibits 52-57 to its index of supporting evidence, under Evidence Code section 452, subdivision (d). (See Request at p. 1:21-22.) The court GRANTS in part and DENIES in part State Farm's request as follows:

The court denies judicial notice of Exhibits 52, 55, and 56, which are copies of declarations filed by Jarvis in a different case (*Calder v. Jarvis*, Case No. 18CV329258). Testimony and declarations cannot be judicially noticed as to the truth of their contents. (See *Oh v. Teachers Ins. & Annuity Assn. of America* (2020) 53 Cal.App.5th 71, 79-81 [truth of contents of court records cannot be judicially noticed]; *Intengan v. BAC Home Loans Servicing LP* (2013) 214 Cal.App.4th 1047, 1057 [court may take judicial notice of existence of declaration but not of facts asserted in it]; *Bach v. McNelis* (1989) 207 Cal.App.3d 852, 865 [court may not notice the truth of declarations or affidavits filed in court proceedings]; *Garcia v. Sterling* (1985) 176 Cal App 3d 17, 22 ["Although the existence of statements contained in a deposition transcript filed as part of the court record can be judicially noticed, their truth is not subject to judicial notice."].) While the court could take notice of the fact that the declarations exist, that fact is irrelevant to the material issues before the court. The court also denies judicial notice of Exhibit 53 (a copy of a proof of service from the *Calder v. Jarvis* case), as it is also irrelevant to the issues before the court.

The court grants judicial notice of Exhibits 54 and 57 *in part*. These are copies of a memorandum of points and authorities filed by Jarvis in another case and of a notice of entry of an order of the court (Judge Arand) on a motion to sever claims and change venue in that case. The court takes judicial notice of Exhibit 54 only as to its existence and filing date, not the truth of the statements made within it.[3] The court takes judicial notice of the contents of Exhibit 57 and their legal effect but not the truth of the factual findings. Court records, including court orders, cannot be judicially noticed as to the truth of the stated factual findings. (See *Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1565; *Fowler v. Howell* (1996) 42 Cal.App.4th 1746, 1749; *Kilroy v. State of Calif.* (2004) 119 Cal.App.4th 140, 145-148.)

Exhibits 52-57 have not been authenticated by State Farm and are inadmissible to the extent that the court has denied judicial notice. "Authentication of a writing is required before it may be received in evidence." (Evid. Code, § 1401.) "[A] document is authenticated when

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[3] On summary judgment, parties may only rely on judicial admissions made in an opposing party's pleadings. (See *Myers v. Trendwest Resorts, Inc*. (2009) 178 Cal.App.4th 735, 746; *Minish v. Hanuman Fellowship* (2013) 214 Cal.App.4th 437, 456.) A memorandum of points and authorities in support of a motion is not a pleading.

sufficient evidence has been produced to sustain a finding that the document is what it purports to be." (*Jazayeri v. Mao* (2009) 174 Cal.App.4th 301, 321.) An unauthenticated document is inadmissible. (*McAllister v. George* (1977) 73 Cal.App.3d 258, 262.)

III. MOTION FOR SUMMARY JUDGMENT/ADJUDICATION

A. General Standards

The pleadings limit the issues presented for summary judgment or summary adjudication, and such a motion may not be granted or denied based on issues not raised by the pleadings. (See *Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258; *Nieto v. Blue Shield of Calif. Life & Health Ins*. (2010) 181 Cal.App.4th 60, 73 ["the pleadings determine the scope of relevant issues on a summary judgment motion"].) The moving party bears the initial burden of production to make a prima facie showing that there are no triable issues of material fact. (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 850 (*Aguilar*.)

A motion for summary judgment or adjudication shall be granted only if it completely disposes of an entire cause of action, an affirmative defense, a claim for damages, or an "issue of duty." (See Code Civ. Proc., § 437c, subd. (f)(1); *McClasky v. California State Auto. Ass'n* (2010) 189 Cal.App.4th 947, 975 ["If a cause of action is not shown to be barred in its entirety, no order for summary judgment—or adjudication—can be entered."].) Summary adjudication of general "issues" or of facts is not permitted. (See *Raghavan v. The Boeing Company* (2005) 133 Cal.App.4th 1120, 1136.) The only "claim for damages" that can be independently summarily adjudicated under section 437c(f)(1) is a claim for punitive damages.

The only means by which a moving party may seek summary adjudication of a legal issue or claim for damages that does not wholly dispose of a cause of action, affirmative defense, or issue of duty is through compliance with Code of Civil Procedure section 437c, subdivision (t). A party seeking summary adjudication under subdivision (t) must first submit a joint stipulation stating the issues to be adjudicated and declarations from each stipulating party that the motion will further the interest of judicial economy. (Code Civ. Proc., § 473c, subd. (t)(1)(A)(i)-(ii).) The court must approve this stipulation before the motion may be filed. No such stipulation was submitted by State Farm for its motion.

The moving party's declarations and evidence will be strictly construed in determining whether they negate or disprove an essential element of a plaintiff's claim "in order to resolve any evidentiary doubts or ambiguities in plaintiff's favor." (See *Atkins v. St. Cecilia Catholic School* (2023) 90 Cal.App.5th 1328, 1344-1345, citing *Johnson v. American Standard, Inc.* (2008) 43 Cal.4th 56, 64.) While the same standards of admissibility govern both, the opposition declarations are liberally construed while the moving party's evidence is strictly scrutinized. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768.) The evidence must be liberally construed in support of the opposing party, resolving any doubts in favor of that party. (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1037.) The moving party may generally not rely on additional evidence submitted with its reply papers. (See *Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537-38 ["The general rule of motion practice . . . is that new evidence is not permitted with reply papers. This principle is most prominent in the context of summary judgment motions . . . ."]; see also *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 252.)

"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.) "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable finder 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.)

B. Interpretation of Insurance Policies

The proper interpretation of a contract is a question of law for the court. "The interpretation of a contract is a question of law unless the interpretation turns on the credibility of extrinsic evidence." (*Sierra Vista Regional Medical Center v. Bonta* (2003) 107 Cal.App.4th 237, 245.) Generally, "[i]t is . . . solely a judicial function to interpret a written instrument unless the interpretation turns on the credibility of extrinsic evidence." (*Consolidated Theatres, Inc. v. Theatrical Stage Employees Union* (1968) 69 Cal.2d 713, 724.) The same principle applies to insurance policies, which are a form of contract. "[T]he interpretation of an insurance policy is a legal rather than a factual determination." (*Chatton v. National Union Fire Ins. Co.* (1992) 10 Cal.App.4th 846, 865 [citations omitted].)

"As a question of law, the interpretation of an insurance policy is reviewed de novo under well settled rules of contract interpretation. 'The fundamental rules of contract interpretation are based on the premise that the interpretation of a contract must give effect to the 'mutual intention' of the parties. 'Under statutory rules of contract interpretation, the mutual intention of the parties at the time the contract is formed governs interpretation. (Civ. Code, § 1636.) Such intent is to be inferred, if possible, solely from the written provisions of the contract. (*Id*., § 1639.) 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.' (*Id*., § 1644), controls judicial interpretation.'" (*E.M.M.I., Inc. v. Zurich American Ins. Co.* (2004) 32 Cal.4th 465, 470, internal citations omitted.)

"In general, interpretation of an insurance policy is a question of law that is decided under settled rules of contract interpretation." (*State of California v. Continental Ins. Co.* (2012) 55 Cal.4th 186, 194 (*Continental*).) If policy language is clear and explicit, it governs. (*Ibid*.) But a policy provision will be considered ambiguous "'when it is capable of two or more constructions, both of which are reasonable.'" (*Id*., quoting *Waller v. Truck Ins. Exchange, Inc*. (1995) 11 Cal.4th 1, 18 (*Waller*).) A term is not ambiguous merely because the policies do not define it. Nor is it ambiguous because of "[d]isagreement concerning the meaning of a phrase," or "'the fact that a word or phrase isolated from its context is susceptible of more than one meaning.'" "'[L]anguage in a contract must be construed in the context of that instrument as a whole, and in the circumstances of that case, and cannot be found to be ambiguous in the abstract.'" (*Continental*, *supra*, 55 Cal.4th at p. 195, internal citations omitted.) "If an asserted ambiguity is not eliminated by the language and context of the policy, courts then invoke the principle that ambiguities are generally construed against the party who caused the uncertainty to exist (i.e., the insurer) in order to protect the insured's reasonable expectation of coverage." (*Ibid*.) And "if a term in an insurance policy has been judicially construed, it is not ambiguous and the judicial construction of the term should be read into the

policy unless the parties express a contrary intent." (*CDM Investors v. Travelers Casualty & Surety Co*. (2006) 139 Cal.App.4th 1251, 1257, internal quotation marks and citation omitted.)

C. The Basis for State Farm's Motion

State Farm moves for summary judgment on the basis that "there is no genuine issue as to any material fact, and that State Farm is entitled to judgment as a matter of law." (Notice of Motion at pp. 1:28-2:1.) In the alternative, State Farm seeks summary adjudication as to nine "issues." (See Notice of Motion at pp. 2:2-3:4.) As Jarvis correctly notes in his opposition, three of these "issues" (Nos. 3-5) do not present proper subjects for summary adjudication: they do not dispose of an entire cause of action, affirmative defense, claim for damages, or issue of duty, and no stipulation was presented to the court pursuant to section 437c, subdivision (t). Accordingly, the court DENIES summary adjudication as to Issue Nos. 3-5.

The remaining issues presented are: (1) that the first, second, and fourth causes of action, as well as the request for punitive damages, fail because Jarvis is judicially estopped from claiming that he resided at the subject property at the time of loss (Issue No. 1); (2) that the first, second, and fourth causes of action, as well as the request for punitive damages, fail because "State Farm does not owe additional policy benefits" (Issue No. 2); (3) that the second and fourth causes of action, as well as the request for punitive damages, fail because "State Farm reasonably handled Plaintiff's claim as a matter of law" (Issue No. 6); (4) that the third cause of action fails as alleged against State Farm because State Farm "can neither be liable for" defects in the work of the restoration contractors nor be liable for "any purportedly negligent claim handling as a matter of law" (Issue No. 7)[4]; (5) that the fourth cause of action fails as alleged against State Farm because "it is an equitable claim and [Jarvis] has an adequate remedy at law" (Issue No. 8); and (6) that the request for punitive damages fails as against State Farm because "there is no clear and convincing evidence that State Farm acted with malice, fraud or oppression in handling plaintiff's claim" (Issue No. 9).

D. Analysis

As an initial matter, the court denies Jarvis's request that the court strike State Farm's separate statement. (See Opposition at p. 15:9-17.) While the court agrees with Jarvis that State Farm has not limited its bloated separate statement to "material" facts and has improperly attempted to incorporate by reference various facts into various issues, the court does not find that this warrants striking the entire statement and denying the motion outright.[5] The court's power to deny summary judgment outright for failure to comply with Rule 3.1350 of the California Rules of Court is discretionary, not mandatory. (See *Holt v. Brock* (2022) 85 Cal.App.5th 611, 619, citing *Truong v. Glasser* (2009) 181 Cal.App.4th 102, 118.) The court exercises its discretion to consider State Farm's statement, at least in part.

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[4] This issue has been altered from the June 28, 2023 notice of motion without leave of court.

[5] Contrary to what State Farm suggests in footnote 1 of its statement, it is not the court's responsibility to request that the parties submit statements that fully comply with Rule 3.1350(h) of the California Rules of Court; it is the parties' responsibility to do so in the first instance. If State Farm had confined itself to listing facts that were truly "material," it would not have had any difficulty listing all facts purportedly supporting each issue in the portion of the statement addressing each issue, as required by the rule. As it stands, the statement is of limited utility to the court.

Ultimately, the court DENIES State Farm's motion for summary judgment, for failure to meet the initial burden to establish an absence of triable issues as to *all* causes of action. In addition, the court DENIES State Farm's alternative motion for summary adjudication of "issues," as discussed further below.

1. Issue No. 1 – Judicial Estoppel

Judicial estoppel is an equitable doctrine that "prevents a party from asserting a position in a legal proceeding that is contrary to a position previously taken in the same or some earlier proceeding." (*Jackson v. County of Los Angeles* (1997) 60 Cal.App.4th 171, 181.) The doctrine applies when "(1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the first position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake." (*Id*. at p. 183.) "[F]or the doctrine to apply, the seemingly conflicting positions 'must be clearly inconsistent so that one necessarily excludes the other.' [Citation]." (*Id*. at p. 182.) "The third *Jackson* factor requires that the party to be estopped was successful in asserting the first position. [Citation.] This means not just that the party prevailed in the earlier action, but that 'the tribunal adopted the position or accepted it as true[.]' [Citation.]" (*The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 845, internal citations omitted.)

"Judicial estoppel is an equitable doctrine to protect against fraud on the courts. It has been said that '[b]ecause of its harsh consequences, the doctrine should be applied with caution and limited to egregious circumstances.' But unlike equitable estoppel that "'focuses on the relationship between the parties . . .', 'judicial estoppel focuses on 'the relationship between the litigant and the judicial system' and is designed 'to protect the integrity of the judicial process.'" (*Blix Street Records, Inc. v. Cassidy* (2010) 191 Cal.App.4th 39, 47-48, internal citations omitted.) "The doctrine's dual goals are to maintain the integrity of the judicial system and to protect parties from opponents' unfair strategies. [Citation.] Consistent with these purposes, numerous decisions have made clear that judicial estoppel is an equitable doctrine, and its application, even where all necessary elements are present, is discretionary." (*MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.* (2005) 36 Cal.4th 412, 422 (*Niederhauser*).)

The court denies State Farm's motion for summary adjudication as to the first, second, and fourth causes of action, as well as the request for punitive damages, based on the notion that Jarvis is judicially estopped from alleging that he resided at the subject property at the time of loss. State Farm has failed to meet its initial burden on summary judgment. First, its argument largely depends upon its request for judicial notice of the truth of the contents of court records that the court has denied. (See State Farm's Separate Statement of Undisputed Material Facts ("UMFs") Nos. 7-12.) Second, even if Jarvis argued in a prior lawsuit that his residence for purposes of venue was in Placer County, that does not bar him from asserting in this case that State Farm was obligated under its policy to cover the loss at the subject property in this county. The court agrees with Jarvis that the policy definitions relied upon by State Farm do not establish that coverage only exists for the subject property as a *primary* or *exclusive* residence for Jarvis, or that coverage would somehow automatically cease if Jarvis split his time between two or more residences. (See State Farm's UMFs 2-6.) Indeed, even if

the policy definitions cited by State Farm were ambiguous on this score, the court would construe any ambiguity against the insurer. (*Continental*, *supra*, 55 Cal.4th at p. 195.) The court finds that Jarvis's expectation that the policy covered the subject property was reasonable, based on the policy language. Jarvis's deposition testimony that at the time of loss, his primary residence was his Placer County home also does not estop him from pursuing coverage of the losses at the subject property. (Ellingson Declaration, Exhibit 60.)

The two declarations submitted in support of the motion authenticate copies of documents submitted as exhibits to State Farm's "Index of Evidence." The declaration of State Farm's counsel, Stephen Ellingson, authenticates Exhibits 58-61. The declaration from State Farm's Claim Team Manager, Martin Riehm, authenticates Exhibits 1-51. Neither declaration addresses judicial estoppel, and neither declaration authenticates Exhibits 52-57. (As noted above, Exhibits 52-57 have not been considered to the extent judicial notice was denied.)

Even assuming arguendo that State Farm had met its initial burden on this point, Jarvis's declaration in opposition, discussing his living arrangements during the relevant time period, would be sufficient to raise triable issues of material fact. The court cannot weigh the evidence on summary judgment or evaluate the credibility of declarants. "Typically in summary judgment litigation, equally conflicting evidence requires a trial to resolve the dispute." (*Kids' Universe v. In2Labs* (2002) 95 Cal.App.4th 870, 881.)

2. Issue No. 2 – The Owing of Additional Policy Benefits

State Farm next asserts that the first, second, and fourth causes of action, as well as the request for punitive damages, all fail because "State Farm does not owe additional policy benefits." In support of this issue, State Farm argues that it owes no additional funds to Jarvis under "Coverage A-Dwelling" because it paid all it was required to and "[t]he mere fact that Plaintiff located a contractor to provide an estimate to remodel his home . . . does not support a breach of contract." (See Memorandum at pp. 11:26-12:9.) State Farm further contends that it owes no additional benefits under "Coverage B-Personal Property" or "Coverage C-Loss of Use" because Jarvis purportedly failed to provide State Farm with records and documents as required by the policy and because the subject property "is not a 'residence premises' pursuant to the terms of the Policy." (*Id*. at pp.12:12-13:21.)

Even if State Farm's evidence were sufficient to meet its initial burden on summary judgment, the court would find that Jarvis raises triable issues of material fact. At a minimum, Jarvis has submitted evidence, including but not limited to his own declaration, raising material disputes over whether the inspections and work State Farm claims to have completed or paid for did in fact take place, as well as whether any delays in providing information or documentation were indeed caused by Jarvis, as opposed to by State Farm's own failures and delays in communicating with and providing relevant information (including the insurance policy itself and necessary forms) to its policyholder. Jarvis contends that State Farm failed to inform him of his obligations as to the need to provide information in a specific format and the timelines for doing so. (See Jarvis Decl. at ¶¶ 7, 16, 18-19, 23 and 28-30; Declaration of Sandra Moriarty at ¶¶ 24-57, 81-83 and 87.)

In addition, to the extent that State Farm's argument regarding "Coverage C-Loss of Use" relies upon definitions in the insurance policy, the court again disagrees with State

Farm's reading of the policy, holding that those definitions do not establish that the policy only provides coverage for a *primary* or *exclusive* residence.

3. Issue No. 6 – Reasonableness of Handling of Claim

State Farm asserts that the second and fourth causes of action, as well as the request for punitive damages, fail because "State Farm reasonably handled Plaintiff's claim as a matter of law." In arguing that it "reasonably handled Plaintiff's claim as a matter of law," State Farm again asserts that there was no breach of contract, but the court has already found that triable issues remain on this point. State Farm also asserts that there was no breach of the implied covenant of good faith and fair dealing (*i.e.*, "insurance bad faith"), even if there was a breach of contract, because of the "genuine dispute" doctrine. (See Memorandum at pp. 15:24-16:1, 16:25-27.) Jarvis responds that a failure to investigate a claim properly, as well as unreasonable delays in handling the claim, can be grounds for bad faith under this doctrine. (See Opp. at pp. 24:12-25:24.)[6]

The genuine dispute doctrine and its application on summary judgment have been explained as follows:

> The term "bad faith," as used in the context of an insured's claim against his or her insurer, is simply a shorthand reference to a claimed breach by the insurer of the covenant of good faith and fair dealing that is implied in every contract of insurance. [Citation.] "Every contract imposes on each party an implied duty of good faith and fair dealing. [Citation.] Simply stated, the burden imposed is '"that neither party will do anything which will injure the right of the other to receive the benefits of the agreement."' [Citations.] Or, to put it another way, the 'implied covenant imposes upon each party the obligation to do everything that the contract presupposes they will do to accomplish its purpose.' [Citations.] A '"breach of the implied covenant of good faith and fair dealing involves something beyond breach of the contractual duty itself," and it has been held that " '[b]ad faith implies unfair dealing rather than mistaken judgment . . . .' [Citation.]" [Citation.]'" [Citation.]
>
> To "fulfill its implied obligation, an insurer must give at least as much consideration to the interests of the insured as it gives to its own interests. When the insurer unreasonably and in bad faith withholds payment of the claim of its insured, it is subject to liability [for bad faith]. And an insurer cannot *reasonably and in good faith* deny payments to its insured without fully investigating the grounds for its denial. [Citation.]" [Citation.]
>
> Defining good faith and fair dealing "has not always proven an easy task." [Citation.] The issue has arisen as to whether the duty of good faith, which has been said to require the insurer to act "reasonably and in good faith," includes an element of subjective good faith in addition to objective

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[6] The opposition admits that the claimed violations of various code sections—which are not alleged in the FAC—do not establish bad faith. (See Opp. at p. 21:9-12, citing *Rattan v. United Services Auto Assn.* (2000) 84 Cal.App.4th 715, 724.)

reasonability. As early as 1978, our Supreme Court stated that, in the context of insurance bad faith, "[t]he terms 'good faith' and 'bad faith' . . . are not meant to connote the absence or presence of positive misconduct of a malicious or immoral nature—considerations which . . . are more properly concerned in the determination of liability for *punitive* damages . . . . Good faith performance or enforcement of a contract emphasizes faithfulness to an agreed common purpose and consistency with the justified expectations of the other party; it excludes [from consideration] a variety of types of conduct characterized [in other contexts] as involving "bad faith" because they violate community standards of decency, fairness or reasonableness.' [Citation.]" [Citation.]

Subsequent case law has confirmed that "the covenant of good faith can be breached for objectively unreasonable conduct, regardless of the actor's motive." [Citation.] Indeed, "'[t]he ultimate test of [bad faith] liability in ... first party [insurance] cases is whether the refusal to pay policy benefits was *unreasonable.*'" [Citation.] In other words, an insured plaintiff need only show, for example, that the insurer unreasonably refused to pay benefits or failed to accept a reasonable settlement offer; there is no requirement to establish *subjective* bad faith. [Citations.]

Not only is subjective bad faith *unnecessary* to establish a bad faith cause of action, it is also *insufficient* to do so. "If the conduct of the insurer in denying coverage was objectively reasonable, its subjective intent is irrelevant." (*CalFarm Ins. Co. v. Krusiewicz* (2005) 131 Cal.App.4th 273, 287, 31 Cal.Rptr.3d 619; *Morris v. Paul Revere Life Ins. Co.* (2003) 109 Cal.App.4th 966, 973, 135 Cal.Rptr.2d 718 [triable issues of fact regarding the insurer's subjective intent cannot defeat summary judgment in favor of the insurer in a bad faith action when the insurer's conduct was objectively reasonable as a matter of law].) Thus, while bad faith cases speak in terms of a duty to act reasonably *and* in good faith [citations], the standard by which the claims handling activities of the insurer will be judged is clear. If an insurer is to avoid liability for bad faith, its actions and position with respect to the claim of an insured, and the delay or denial of policy benefits, must be "founded on a basis that is *reasonable under all the circumstances.*" [Citation.] This is an *objective* standard.

"'[A]n insurer denying or delaying the payment of policy benefits due to the existence of a *genuine dispute* with its insured as to the existence of coverage liability or the amount of the insured's coverage claim is not liable in bad faith even though it might be liable for breach of contract.' [Citation.]" [Citation.] [Footnote.] This is known as the "genuine dispute" or "genuine issue" doctrine, and it enables an insurer to obtain summary adjudication of a bad faith cause of action by establishing that its denial of coverage, even if ultimately erroneous and a breach of contract, was due to a genuine dispute with its insured. [Citation.] The dispute, however, must be *genuine.* An insurer cannot claim the benefit of the genuine dispute doctrine based on an investigation or evaluation of the insured's claim that is not full, fair and thorough. [Citation.] Nor may an insurer "insulate itself from liability for bad

> faith conduct by the simple expedient of hiring an expert for the purpose of manufacturing a 'genuine dispute.'" [Citation.]
>
> In *Wilson*, the Supreme Court emphasized that the genuine dispute rule does not "alter the standards for deciding and reviewing motions for summary judgment. 'The genuine issue rule in the context of bad faith claims allows a [trial] court to grant summary judgment when it is undisputed or indisputable that the basis for the insurer's denial of benefits was reasonable—for example, where even under the plaintiff's version of the facts there is a genuine issue as to the insurer's liability under California law. [Citation.] . . . . On the other hand, an insurer is not entitled to judgment as a matter of law where, viewing the facts in the light most favorable to the plaintiff, a jury could conclude that the insurer acted unreasonably.' ([Citation.]) Thus, an insurer is entitled to summary judgment based on a genuine dispute over coverage or the value of the insured's claim *only* where the summary judgment record demonstrates the absence of triable issues (Code Civ. Proc., § 437c, subd. (c)) as to whether the disputed position upon which the insurer denied the claim was reached reasonably and in good faith." [Citation.] [Footnote.]

(*Bosetti v. U.S. Life Ins. Co. in City of New York* (2009) 175 Cal.App.4th 1208, 1235-1238, italics in original.)

This long excerpt, and particularly the final paragraph, clarifies that there is no basis for concluding as a matter of law that it is "undisputed or indisputable that the basis for the insurer's denial of benefits was reasonable" in this case. Here, a finder of fact "could conclude," if it credited Jarvis's evidence and version of events, that State Farm acted unreasonably in its handling of Jarvis's claim. Therefore, State Farm's motion for summary adjudication, based on the notion that "State Farm reasonably handled Plaintiff's claim as a matter of law" is denied.

4. Issue No. 7 – Third Cause of Action (Negligence)

State Farm asserts that it is entitled to summary adjudication as to the FAC's third cause of action, because it "can neither be liable for" defects in the work of the restoration contractors nor be liable for "any purportedly negligent claim handling as a matter of law."

The FAC's third cause of action alleges that all of the defendants, including State Farm, "were engaged and authorized to dry out and repair the real property to its original state suitable for healthy habitation. Defendants each had a duty to assess the best and proper means to perform the tasks for which they were engaged." "Defendants breached their duty to exercise due care in accomplishing the tasks for which they represented themselves able, including but not limited to failing to investigate the best means to remove the water and moisture from the real property, and thereby allowing the growth of toxic mold throughout the real property." (FAC at ¶¶ 33-34.) Jarvis is bound by his FAC on summary judgment and, as alleged against State Farm, this can most reasonably be interpreted as a claim for negligent investigation and supervision.

State Farm's argument on this issue largely depends on the decision in *Rattan v. United Services Auto Ins. Assn.* (2000) 84 Cal.App.4th 715 (*Rattan*). (See Memorandum at pp. 17:13-18:26.) *Rattan* involved a review of a jury verdict in a case involving claims against an insurance company (USAA) for breach of contract and breach of the implied covenant of good faith and fair dealing. (*Rattan*, *supra* at 719.) While it includes statements that, based on the evidence before it *after a trial*, USAA could not be considered an insurer of the contractors' work, *Rattan* has nothing to say about the viability of a negligence claim against an insurer as a matter of law. State Farm also cites *Wilson v. Farmers Ins. Exchange* (2002) 102 Cal.App.4th 1171 (*Wilson*). (See Memorandum at p. 18:1-8.) *Wilson* involved a review of a grant of summary judgment in a case that involved claims for breach of contract and negligence against an insurer, but it did not hold that negligence claims against an insurer must fail as a matter of law. Rather, it held that the policy before it contained an exclusion for inadequate or defective workmanship or renovations. (*Wilson*, *supra*, at pp. 1174-1176.) State Farm contends that the policy here contains a similar exclusion, but this does not dispose of the entirety of the third cause of action, and so it is insufficient to meet the initial burden on summary adjudication. (See Code Civ. Proc., § 437c, subd. (f)(1).) State Farm also makes a reference to the decision in *Sanchez v. Lindsey Morden Claims Services, Inc.* (1999) 72 Cal.App.4th 249, 254, which held that an independent insurance adjuster hired by an insurance company could not be liable to the insured on a negligence theory. (See Memorandum at p.18:24-26.) *Sanchez*'s holding as to an independent adjuster does not help State Farm demonstrate that it "can neither be liable for" defects in the work of the restoration contractors nor be liable for "any purportedly negligent claim handling as a matter of law."

State Farm's reliance on *Rattan*, *Wilson*, and *Sanchez* runs afoul of the general rule that "cases are not authority for propositions not considered." (*People v. Ault* (2004) 33 Cal.4th 1250, 1268 fn. 10; see also *Styne v. Stevens* (2001) 26 Cal.4th 42, 57 [an opinion is not authority for a point not raised, considered, or resolved therein].) The court denies summary adjudication as to the third cause of action for failure to meet the initial burden.

5. Issue No. 8 – Fourth Cause of Action (Unfair Business Practices)

State Farm seeks summary adjudication as to the fourth cause of action on the ground that "it is an equitable claim and [Jarvis] has an adequate remedy at law." (See Memorandum at pp. 18:28-19:11.) This also fails to meet the initial burden, and the court denies summary adjudication. The premise of this contention is incorrect as a matter of law.

The fourth cause of action—alleged against all defendants—is quite plainly a statutory claim, not an equitable one, alleging a violation of the unfair competition law ("UCL"), set forth at Business and Professions Code section 17200 *et seq*. (See FAC at ¶¶ 36-40.) "Business and Professions Code section 17200 et seq. prohibits unfair competition, including unlawful, unfair, and fraudulent business acts. The UCL covers a wide range of conduct. It embraces anything that can properly be called a business practice and that at the same time is forbidden by law." (*Korea Supply Co. v. Lockheed Martin Corp*. (2003) 29 Cal.4th 1134, 1143 (*Korea*).) "Section 17200 'borrows' violations from other laws by making them independently actionable as unfair competitive practices. In addition, under section 17200, a practice may be deemed unfair even if not specifically proscribed by some other law." (*Id*.)

There are two remedies available to private litigants bringing claims under section 17200: injunction and restitution. (See Bus. & Prof. Code, § 17203.) These are the only remedies requested by the fourth cause of action. (See FAC at ¶ 40.) State Farm's reference to the fact that the FAC's general prayer also requests additional remedies is irrelevant to the validity of the fourth cause of action. (See UMFs 89-90.) To the extent that State Farm's arguments on this issue could be viewed as an attempt to obtain summary adjudication as to a requested *remedy* or *damages* claim, the only "claim for damages" that can be properly be summarily adjudicated under section 437c(f)(1) is a claim for punitive damages, as already noted above. (See *DeCastro West Chodorow & Burns, Inc. v. Superior Court* (1996) 47 Cal.App.4th 410 [summary adjudication statute does not permit adjudication of one or more components of compensatory damages that do not dispose of entire cause of action]; see also *Chavez v. Glock, Inc*. (2012) 207 Cal.App.4th 1283, 1312; *Jameson v. Desta* (2013) 215 Cal.App.4th 1144, 1169; *Paramount Petroleum Corp. v. Superior Court* (2014) 227 Cal.App.4th 226, 240-241.)

This conclusion follows from the language of section 437c(f)(1) itself: "A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if that party contends that the cause of action has no merit or that there is no affirmative defense thereto, or that there is no merit to an affirmative defense as to any cause of action, or both, or that there is no merit to a claim for damages, *as specified in Section 3294 of the Civil Code*, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs. A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." (Emphasis added.) To read this language as stating that any "claim for damages" or requested remedy could be separately adjudicated would render the express reference to Civil Code section 3294, which governs punitive damages, superfluous. This interpretation is supported by Code of Civil Procedure section 437c, subdivision (t), which states: "Notwithstanding subdivision (f), a party may move for summary adjudication of a legal issue *or a claim for damages other than punitive damages* that does not completely dispose of a cause of action, affirmative defense, or issue of duty pursuant to this subdivision." (Emphasis added.) As already noted, State Farm did not bring its motion under section 437c, subdivision (t).

6. Issue No. 9 – Punitive Damages

State Farm seeks summary adjudication of the request for punitive damages on the basis that "there is no clear and convincing evidence that State Farm acted with malice, fraud or oppression in handling plaintiff's claim." (Notice of Motion at p. 3:2-4.) In its supporting memorandum, State Farm argues that "[t]here is no evidence, let alone clear and convincing evidence, to raise a triable issue of material fact supporting plaintiff's punitive damages claim." (Memorandum at p. 20:3-4.) This misstates the burden. It is State Farm's initial burden as the moving party to make a prima facie showing that no triable issues exist, not Jarvis's to show that they do exist. (See *Aguilar, supra,* 25 Cal.4th at 850; Code Civ. Proc., § 437c, subd. (f)(1).) State Farm's evidence is strictly construed in determining if it has met this burden.

To obtain summary judgment or adjudication on the basis that a plaintiff has no evidence to establish an essential element of a claim or request for punitive damages, a moving defendant must support such a motion with discovery admissions or other admissible evidence

following extensive discovery showing that "plaintiff does not possess, and cannot reasonably obtain, needed evidence." (*Aguilar, supra*, 25 Cal.4th at pp. 854-855.) It is not enough for a moving defendant to show merely that a plaintiff currently "has no evidence" on a key element of plaintiff's claim. The moving defendant must also produce evidence showing plaintiff cannot reasonably obtain evidence to support that claim. (See *Gaggero v. Yura* (2003) 108 Cal.App.4th 884, 891, citing *Aguilar* ["the absence of evidence to support a plaintiff's claim is insufficient to meet the moving defendant's initial burden of production. The defendant must also produce evidence that the plaintiff cannot reasonably obtain evidence to support his or her claim."].) "Such evidence may consist of the *deposition testimony of the plaintiff's witnesses*, the plaintiff's *factually devoid discovery responses*, or *admissions by the plaintiff in deposition or in response to requests for admission* that he or she has not discovered anything that supports an essential element of the cause of action." (*Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 110, emphasis added, citing *Aguilar* among others.) Demonstrating that a plaintiff does not have, and cannot get, essential evidence presupposes that the defendant thoroughly explored the plaintiff's case through discovery aimed at uncovering all the evidence that supports the plaintiff's case.

A party moving for summary judgment or adjudication on the basis of an opponent's lack of evidence does not satisfy its burden of proof by producing discovery responses that do not exclude the possibility that opposing parties may possesses or may reasonably obtain evidence sufficient to establish their claim. (See *Scheiding v. Dinwiddie Const. Co.* (1999) 69 Cal.App.4th 64, 80-81 [court may not infer that plaintiff lacks evidence on a point defendant does not pursue in discovery]; *Gulf Ins. Co. v. Berger, Kahn, Shaffton, Moss, Figler, Simon & Gladstone* (2000) 79 Cal.App.4th 114, 134-136 ["[T]o grant summary judgment, the court must be able to infer from the record that the plaintiff could produce no other evidence on the disputed point."]; *Weber v. John Crane, Inc.* (2006) 143 Cal.App.4th 1433, 1441-1442 ["A motion for summary judgment is not a mechanism for rewarding limited discovery; it is a mechanism allowing the early disposition of cases where there is no reason to believe that a party will be able to prove its case."].)

This issue is not supported by any UMFs in State Farm's separate statement. While State Farm contends in its statement that it incorporates all prior UMFs in support of this issue (something that is not actually permitted by Rule of Court 3.1350(d)), none of the prior UMFs in State Farm's statement address punitive damages or Jarvis's lack of evidence to support punitive damages. "This is the Golden Rule of Summary Adjudication: if it is not set forth in the separate statement, it does not exist." (*City of Pasadena v. Super. Ct. (Mercury Casualty Co.)* (2014) 228 Cal.App.4th 1228, 1235, fn. 4.) Neither the Ellingson declaration nor the Riehm declaration addresses the FAC's request for punitive damages or the evidence (or lack thereof) in support of the request for punitive damages.

Based on this showing, the court concludes that State Farm has failed to meet its initial burden to demonstrate that Jarvis has no evidence to support the request for punitive damages. The court denies State Farm's motion for summary adjudication of the FAC's request for such damages.

IV. OBJECTIONS TO EVIDENCE

A. Jarvis's Objections

With his opposition, Jarvis has submitted objections to certain exhibits in State Farm's Index of Evidence.[7] As his objections do not fully comply with Rule 3.1354 of the California Rules of Court, the court declines to rule upon them.

Rule 3.1354 of the California Rules of Court requires the filing of two documents—evidentiary objections and a separate proposed order on the objections—and both must be in one of the two approved formats set forth in the Rule. Jarvis has failed to submit the required proposed order. Rule of Court 3.1354(a) states that "Unless otherwise excused by the Court on a showing of good cause, all written objections to evidence in support of or in opposition to a motion for summary judgment must be served and filed at the same time as the objecting party's opposition or reply papers are served and filed." This includes the required proposed orders. The court is not required to rule on objections that are not fully compliant with Rule of Court 3.1354. (See *Vineyard Spring Estates v. Super. Ct.* (2004) 120 Cal.App.4th 633, 642 [trial courts only have duty to rule on evidentiary objections presented in proper format]; *Hodjat v. State Farm Mutual Automobile Ins. Co.* (2012) 211 Cal.App.4th 1 [trial court not required to rule on objections that do not comply with Rule of Court 3.1354 and not required to give objecting party a second chance at filing properly formatted papers].) Objections that are not ruled upon are preserved for appellate review. (See Code Civ. Proc., § 437c, subdivision (q).)

B. State Farm's Objections

With its reply, State Farm has also submitted objections to some of Jarvis's exhibits, as well as portions of the declarations from Jarvis, Bill Weber, Sandra Moriarty. As State Farm's objections also fail to comply with Rule of Court 3.1354 in the same way as Jarvis's objections, the court will not rule upon them.

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[7] In addition, the "objections" included in Jarvis's opposing separate statement have not been considered. All objections must comply with Rule 3.1354 and "facts" listed in a separate statement are not themselves evidence.

Calendar Line 4
Case Name: *Ali Uyanik v. Juan Gabriel Galan Ramirez et al.*
Case No.: 21CV389355

I. BACKGROUND

This action arises from an October 14, 2020 collision between a vehicle driven by plaintiff Ali Uyanik ("Uyanik") and a vehicle driven by defendant Juan Galan Ramirez ("Galan Ramirez"). The original and still-operative complaint is a verified complaint filed on October 4, 2021, stating a single cause of action for negligence.

Uyanik previously brought a motion for summary adjudication of nine enumerated "issues," which the court heard on July 18, 2023. The court granted the motion with respect to Issue No. 5, determining "that Galan Ramirez, like all of the drivers on the roadways in California, had a duty to operate his vehicle in a safe and reasonable manner." (July 18, 2023 Order at p. 6:5-7.) The court denied the motion with respect to all of the other issues, none of which disposed of a cause of action, affirmative defense, claim for damages, or issue of duty, and none of which were properly presented under Code of Civil Procedure section 437c, subdivision (t).

Uyanik now moves for summary judgment.

II. REQUEST FOR JUDICIAL NOTICE

"Judicial notice may not be taken of any matter unless authorized or required by law." (Evid. Code, § 450.) A precondition to judicial notice in either its permissive or mandatory forms is that the matter to be noticed be relevant to the matter issue before the court. (*Silverado Modjeska Recreation and Park Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 307, citing *People v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422, fn. 2; See also *Aquila, Inc. v. Superior Court* (2007) 148 Cal.App.4th 556, 569 [Since judicial notice is a substitute for proof, it is always confined to those matters that are relevant to the issues at hand.]; *Jordache Enterprises, Inc. v. Brobeck, Phelger & Harrison* (1998) 18 Cal.4th 739, 748, fn. 6 [a court need not take judicial notice of a matter unless it "is necessary, helpful, or relevant"].) It is the court, and not the parties, that determines relevance. Evidence Code section 453, subdivision (b), requires a party seeking notice to "[furnish] the court with sufficient information to enable it to take judicial notice of the matter."

In support of his motion for summary judgment, Uyanik requests judicial notice of two attached exhibits: Exhibit A is an advisory committee report relating to jury instruction CACI No. 3903J; and Exhibit B is CACI No. 3903J. The court GRANTS these judicial notice of these exhibits pursuant to Evidence Code section 452, subdivisions (c) and (h).

Uyanik also requests judicial notice of the Verified Complaint and the Verified Answer, neither of which are attached to the request. These documents are already part of the record in this matter, and the court must consider them on a motion for summary judgment. (See *Nieto v. Blue Shield of Calif. & Health Ins.* (2010) 181 Cal.App.4th 60, 73 (*Nieto*) ["[T]he pleadings determine the scope of relevant issues on a summary judgment motion."].) Therefore, the court DENIES these requests as unnecessary.

Uyanik further requests judicial notice of Galan Ramirez's associations and substitutions of attorneys, Galan Ramirez's case management statements, various provisions of constitutional law and statutory law, and various purported facts as matters of common knowledge. To the extent that the subject matter of these unmanageable and overbroad requests is even potentially relevant, it is still unnecessary. These requests are also insufficiently noticed and supported under Evidence Code section 453, subdivisions (a) and (b). The court DENIES these requests.

III. MOTION FOR SUMMARY JUDGMENT

A. General Standards

The pleadings limit the issues presented for summary judgment, and such a motion may not be granted or denied based on issues not raised by the pleadings. (See *Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258; *Nieto, supra*, 181 Cal.App.4th at p. 73 ["[T]he pleadings determine the scope of relevant issues on a summary judgment motion."].)

The moving party bears the initial burden of production to make a prima facie showing that there are no triable issues of material fact. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850 (*Aguilar*).) A motion for summary judgment or adjudication shall be granted only if it completely disposes of an entire cause of action, an affirmative defense, a claim for damages, or an "issue of duty." (See Code Civ. Proc., § 437c, subd. (f)(1); *McClasky v. California State Auto Assn.* (2010) 189 Cal.App.4th 947, 975 ["If a cause of action is not shown to be barred in its entirety, no order for summary judgment—or adjudication—can be entered."].)

The moving party's declaration and evidence will be strictly construed in determining whether they negate or disprove an essential element of a plaintiff's claim "in order to resolve any evidentiary doubts or ambiguities in plaintiff's (or opposing party's) favor." (*Johnson v. American Standard, Inc.* (2008) 43 Cal.4th 56, 64, parenthesis added.) While the same standards of admissibility govern both, the opposition declarations are liberally construed while the moving party's evidence is strictly scrutinized. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768.) The evidence must be liberally construed in support of the opposing party, resolving any doubts in favor of that party. (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1037.)

Where a plaintiff has moved for summary judgment, he has the burden of showing that there is no defense to a cause of action. (Code Civ. Proc., § 437c, subd. (a).) That burden can be met if the plaintiff has proved each element of the cause of action entitling him to judgment on that cause of action. If the plaintiff meets this burden, it is up to the defendant to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. (Code Civ. Proc., § 437c, subd. (p)(1); see also *Professional Collection Consultants v. Lauron* (2017) 8 Cal.App.5th 958, 965.) It is not part of a plaintiff's initial burden to disprove affirmative defenses and cross-complaints asserted by a defendant. (See Code Civ. Proc., § 437c, subd. (p)(1).)

The moving party may generally not rely on additional evidence filed with its reply papers. (See *Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537-38 ["The general rule of motion practice . . . is that new evidence is not permitted with reply papers. This principle is

most prominent in the context of summary judgment motions . . ."]; see also *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 252; *San Diego Watercrafts, Inc. v. Wells Fargo Bank, N.A.* (2002) 102 Cal.App.4th 308, 316.)

B. Uyanik's Motion for Summary Judgment

1. The Basis for the Motion

Uyanik states that he seeks "summary judgment made pursuant to . . . Section 437c of Code of Civil Procedure." (Notice of Motion and Motion for Summary Judgment at p. 2:5-6.) The sole cause of action asserted in Uyanik's complaint is for negligence. "The elements of a cause of action for negligence are well-established. They are (a) a *legal duty* to use due care; (b) a *breach* of such legal duty; and (c) the breach was the *proximate* or *legal cause* of the resulting injury. [Citation.]" (*Ladd v. County of San Mateo* (1996) 12 Cal.4th 913, 917, italics original, internal punctuation omitted; see also CACI No. 400.) "In short, to recover on a theory of negligence, Plaintiffs must prove duty, breach, causation, and damages. [Citation.]" (*Truong v. Nguyen* (2007) 156 Cal.App.4th 865, 875 (*Truong*).)

Here, the complaint alleges that Galan Ramirez "owed a duty of care to operate the vehicle he was driving in a safe and reasonable manner" and that Galan Ramirez "was driving in such a negligent and careless manner as to cause the detriment to the Plaintiff as herein alleged." (Complaint at ¶ 9.) The complaint alleges resulting damages amounting to $32,260.56, consisting of: (a) cost of repairs ($15,060.56); (b) loss of value ($10,000.00); and (c) loss of use for 36 days ($7,200.00). (Complaint at ¶ 10.)

2. Uyanik's Prima Facie Showing

Uyanik argues that "the motion for summary judgment is appropriate" because "the actual facts are undisputable" that Galan Ramirez is liable for causing the accident. (Memorandum of Points and Authorities ("MPA") at p. 2:22-25.) Uyanik contends that he was in full compliance with the law when he made a U-turn after receiving a green light, and Galan Ramirez entered the intersection at excessive speed and against a red light. (*Id.* at pp. 4:23-5:2.) Uyanik further asserts that it is undisputable that he acted reasonably. (*Id.* at p. 5:11-12.) Uyanik also contends that, under the negligence per se doctrine, Galan Ramirez's liability is presumed, and he can only rebut this with proof that he acted reasonably under the circumstances or that he was a child. (*Id.* at pp. 6-7 [citing Evidence Code section 669].)

As to damages, Uyanik contends that the collateral source rule applies, such that Galan Ramirez is not entitled to any credit for payments from Uyanik's insurance company. (MPA at p. 9:4-23 [citing, among others, *Helfend v. Southern Calif. Rapid Transit Dist.* (1970) 2 Cal.3d 1 (*Helfend*) and *Hrnjak v. Graymar, Inc.* (1971) 4 Cal.3d 725, 729].) Uyanik further argues that he may testify to any changes in his vehicle's value because he is the owner, and that expert opinion is not required. (MPA at pp. 11:18-14:6.)

The motion is supported by two declarations. The first is from Montie Day, counsel for Uyanik, who attaches his resume as Exhibit A. Mr. Day authenticates offers to compromise and written correspondence between counsel in this matter, attached to his declaration as

Exhibits B through F.[8] Day's declaration also includes a document identified as "Tesla Motors-Guideline for Repairs (Repairs Involving Structural Damages-Published via Internet)," at Exhibit G.

The second declaration is from Uyanik, who states that he purchased a new Tesla Model 3 on March 15, 2019 for $52,688.25. (Declaration of Ali M. Uyanik in Support of Motion for Summary Judgment ("Uyanik Decl.") at ¶ 2.) He states: "On October 14, 2020, at approximately 11:00 A.M., I was legally and safely driving my vehicle, the 2019 Tesla Model 3, within the City of Palo Alto, California traveling in a general northerly direction where it intersects with Maybell Avenue and El Camino Real." (*Id.* at ¶ 3.) Uyanik states that he stopped at the intersection as the first car in the left turn lane, and that his vehicle is equipped with video cameras. (*Ibid.*)

Uyanik attaches six photographs as "Exhibit B" to his declaration. He states that the first four images (Exhibits B-1 through B-4) are taken from video recorded by his vehicle's forward-facing camera. (Uyanik Decl. at ¶ 4.) Exhibit B-1 depicts Uyanik's vehicle stopped at the traffic signal with the left-turn arrow signal having just turned green, and Galan Ramirez's vehicle is not visible. (*Id.* at ¶ 4, pp. 2:16-3:2.) Exhibit B-2 shows Uyanik's vehicle starting a U-turn. (*Id.* at ¶ 4, p. 3:3-13.) Though Galan Ramirez's black GMC truck can be seen approaching the intersection from the opposite direction, Uyanik states that he was looking in the direction of his turn. (*Ibid.*) Exhibit B-3 depicts Uyanik's vehicle mid-way through its U-turn and before the impact with Galan Ramirez's vehicle, and Uyanik was looking to the left in the direction of his turn. (*Id.* at ¶ 4, p. 3:14-19.) Exhibit B-4 shows the front view from Uyanik's vehicle completing the U-turn, just before being struck by Galan Ramirez's vehicle. (*Id.* at ¶ 4, p. 3:20-25.)

Uyanik states that after the vehicles were stopped, he took the photo attached as Exhibit B-5 with his cell phone, showing damage to the front left bumper area of Galan Ramirez's vehicle. (Uyanik Decl. at ¶ 4, p. 5:1-5.) Attached as Exhibit B-6 is an image recorded by the vehicle stopped behind Uyanik at the light, showing Uyanik's blue car making its U-turn and colliding with Galan Ramirez's vehicle. (*Id.* at ¶ 4, p. 5:4-15.) Uyanik states that although the image was not taken from his vehicle, he recognizes the image as the scene and location of the accident in question. (*Id.* at ¶ 4, p. 5:16-20.)

Uyanik next describes his interaction with Galan Ramirez following the accident, stating that Galan Ramirez indicated that he did not speak English, and also that at no time did Galan Ramirez make any claim that the accident was caused by anyone other than himself. (Uyanik Decl. at ¶ 5.) Uyanik states that Galan Ramirez did not produce a driver's license, but did produce proof of insurance, attached as Exhibit C. (*Ibid.*) Uyanik states that Galan Ramirez's insurer offered to pay the policy limits of $10,000.00 for the accident, but this offer was withdrawn when Uyanik's insurer made a claim for subrogation, as filed in the consolidated matter. (*Ibid.*)

After describing the accident, Uyanik discusses the issue of damages. (Uyanik Decl. at ¶¶ 6-9.) He states that "the vehicle was worth $40,000.00 but that after the accident . . . my vehicle would be worth a salvage value of approximately $5,000.00." (*Id.* at ¶ 6.) Uyanik

[8] It is not appropriate to include the contents of settlement discussions in these filings. Moreover, these discussions have no possible relevance to the issues on this motion.

continues that, in his "opinion," the accident caused a $10,000.00 loss in value to his vehicle because after the repairs, it would be worth no more than $30,000.00. (*Ibid.*) Uyanik asserts that Galan Ramirez's negligence caused irreparable structural damage. (*Id.* at ¶ 7.) He states that the Final Repair Invoice (attached as Exhibit D) shows the repair costs were $15,060.56, paid by his insurer, Wawanesa General Insurance Company. (*Id.* at ¶ 8, p. 5:20-23.) Uyanik further states that he incurred loss-of-use damages in the amount of $7,200.00, calculated as $200.00 per day for 36 days. (*Id.* at ¶ 8, p. 6:19-22.) In summary, Uyanik asserts that he is owed $15,060.56 in actual repair costs, $10,000.00 in loss of value, and $7,200.00 in loss of use. (*Id.* at ¶ 8, p. 7:1-5.)

3. Galan Ramirez's Opposition

Galan Ramirez admits that he was negligent and entered the intersection against a red light. Nevertheless, he contends that he is entitled to have a jury determine whether Uyanik was comparatively at fault in some percentage. Galan Ramirez also argues that there are significant causation and damages issues that are not appropriate for summary judgment. As such, he asserts there are triable issues of material fact and opposes the motion in its entirety. (See Opp. at p. 2:12-19.) Galan Ramirez further contends that, while the negligence per se doctrine may allow for a jury instruction affecting the burden of proof, he is still allowed to rebut that presumption if it is established. (*Id.* at pp. 3:16-4:6.)

Galan Ramirez submits one declaration in support of the opposition, from counsel Pedro J. Moncayo. Moncayo authenticates Exhibit A, which consists of excerpts from Uyanik's deposition on June 27, 2023 ("Transcript"). In his deposition, Uyanik testified that the vehicle he was driving when the accident occurred was a 2019 Tesla Model 3 that he and his wife purchased new. (Transcript at p. 10:7-15.) They purchased the available self-driving feature, which cost approximately $8,000.00 extra. (*Id.* at p. 18:2-13.) The vehicle has been involved in multiple accidents. (*Id.* at p. 22:16-21.) At the end of 2022, he scratched somebody in a parking lot in San Francisco, resulting in a minor dent to his car that was repaired. (*Id.* at pp. 22:16-25:19 generally.) In addition, his car was involved in an accident that occurred in August 2019 (over a year before the collision with Galan Ramirez), where somebody ran a stop sign and hit his car on the left side. (Transcript, pp. 25:20-31:3.) The accident caused serious damage to his vehicle, leaving it undrivable, and it is the subject of a lawsuit that is still ongoing. (*Id.* at pp. 27:17-23, 29:3-16.) The damage to the vehicle caused by the 2019 collision was "comparable" to that caused by the collision with Galan Ramirez. (*Id.* at pp. 29:22-30:13.)

Uyanik also testified, in connection with the October 14, 2020 collision with Galan Ramirez, that it was bright outside when the accident occurred and that it happened "at like 2:00 plus or minus two hours." (*Id.* at p. 31:4-7.) Uyanik was on the way to the Tesla dealer to have a speaker in his car fixed, and he had been to that dealer many times. (*Id.* at pp. 31:11-32:17.) He was driving on El Camino towards Page Mill from the direction of Mountain View, and he thinks he made a U-turn on Maybell. (*Id.* at pp. 33:7-34:22.)

Uyanik testified that his car has four or six cameras, and the car recorded images from all cameras at the same time. (Transcript at p. 36:5-16.) After the accident, he downloaded all the video from the vehicle's computer before it was overwritten, but he does not know whether he still has the whole video or not because his computer still runs Windows 7. (*Id.* at pp. 36:17-38:3.) Uyanik said the driver in the car behind him was also recording the accident, and

though he talked to this person after the accident, he did not get his name and has never spoken to him since. (*Id.* at pp. 38:17-39:3.)

Regarding his memory of the collision itself, Plaintiff Uyanik testified: "I have a green light. I make a turn. Somebody hits me. It takes like two seconds." (Transcript at p. 39:5-7.) He did not see the car that hit him until a split second before the impact, when the other car was approximately three to five feet away. (*Id.* at p. 39:12-22.) Uyanik did not remember seeing on that afternoon when the other car was approaching the limit line and not stopping. (*Id.* at p. 41:3-6.) Uyanik's best estimate was that the very first time he saw the other car was out of the side of his eye when it was within a few feet of his own. (*Id.* at p. 41:7-17.) Uyanik said Galan Ramirez apologized to him after the accident, but Uyanik did not recall exactly what Galan Ramirez said. (*Id.* at pp. 41:18-42:25.)

Regarding damages, Uyanik testified that he believed his Tesla diminished in value because of the October 2020 accident. (Transcript at pp. 46:24-47:6.) He believed the diminished value was around $10,000. (*Id.* at p. 48:12-21.) When asked how he arrived at that amount, Uyanik stated: "I didn't do any surveys or any, I don't know, Google searches. But if that's what's required, I can do that." (*Id.* at pp. 48:22-49:8.) He also claimed to have talked to someone at a Maserati dealership who pulled a CARFAX report and told Uyanik: "once a car is in an accident, the value just drops significantly." (*Id.* at p. 49:9-15.) Uyanik testified that that there is nothing wrong or unusual with his car now. (*Id.* at p. 53:11-15.)

During the deposition, Galan Ramirez's counsel asked whether Uyanik had done any analysis as to what the reasonable value of the repairs was or should have been. (Transcript at pp. 54:25-55:2.) Uyanik's attorney objected to the question and asserted that the repair cost is ascertainable with certainty from the invoice. (*Id.* at p. 55:3-15.) When Uyanik was asked whether he had done any type of analysis about the repair cost other than the invoice, he stated: "I don't know how to answer that." (*Id.* at p. 55:17-21.) When asked again, Uyanik said: "Like I say, I can do analysis and research and surveys, and I'm sure it would be in line with my thinking that a car that's worth $50,000 – if I'm a buyer of a used car, I will negotiate that price down by at least $10,000 if it was involved in an accident, especially one that's worth, what, $15,000." (*Id.* at pp. 55:25-56:9.)

In his opposing separate statement, Galan Ramirez disputes many of the items in Uyanik's separate statement of undisputed material facts. Galan Ramirez contends that each of the disputed facts lack foundation, and that some are also hearsay. The court notes that Galan Ramirez's separate statement does not set forth any actual objections to Uyanik's proffered evidence, nor has he filed any separate objections. (See Cal. Rules of Ct., rule 3.1354(b) [all written objections to evidence must be served and filed separately from the other papers in support of or in opposition to the motion].)

4. Analysis

As noted above, "to recover on a theory of negligence, Plaintiffs must prove duty, breach, causation, and damages. [Citation.]" (*Truong v. Nguyen, supra,* 156 Cal.App.4th at p. 875.) Where, as here, a plaintiff moves for summary judgment, "that party has the burden of showing there is no defense to a cause of action. (Code Civ. Proc., § 437c, subd. (a).) That burden can be met if the plaintiff 'has proved each element of the cause of action entitling the party to judgment on that cause of action.' (Code Civ. Proc., §437c, subd. (p)(1).)" (*S.B.C.C.*

v. St. Paul Fire & Marine Ins. Co. (2010) 186 Cal.App.4th 383, 388.) "The burden of the moving party is to '*persuade* the court that there is no material fact for a reasonable trier of fact to find . . . .'" (*LPP Mortgage, Ltd. v. Bizar* (2005) 126 Cal.App.4th 773, 776, italics original, quoting and citing *Aguilar, supra*, 25 Cal.4th at p. 850, fn. 11.)

The court finds that Uyanik has met his initial burden with respect to showing a breach of duty on the negligence claim. As the court ruled previously, Galan Ramirez, like all of the drivers on the roadways in California, had a duty to operate his vehicle in a safe and reasonable manner. Furthermore, the evidence proffered by Uyanik establishes that Galan Ramirez breached that duty by entering the intersection against a red light and at an excessive rate of speed. Galan Ramirez admits that he owed Uyanik a duty and that he entered the intersection against a red light.

Nevertheless, the court concludes that summary judgment cannot be granted here, because triable issues remain regarding causation and the amount of damages owed, as well as regarding Galan Ramirez's claim of comparative negligence. In relying upon a negligence per se theory under Evidence Code section 669, Uyanik argues that all his claimed damages are presumed because Galan Ramirez violated a statute, Vehicle Code section 15423, by entering the intersection against a red light. (MPA at p. 6:3-27.) Uyanik asserts it is "undisputable that such violation of the statutory law proximately caused injury to PLAINTIFF UYANIK." (*Id.* at p. 6:24-25.) Even if the fact of a violation of the Vehicle Code is "undisputable," that does not relieve Uyanik of his burden of establishing causation and damages. Under the plain language of Evidence Code section 669, a failure to exercise due care may be presumed if an applicable statutory violation proximately caused harm to property. At the same time, Evidence Code section 669 does not provide that causation of *all claimed damages* is presumed upon the showing of a pertinent statutory violation. Here, because Galan Ramirez does not dispute that he acted negligently, the negligence per se doctrine has no practical application for purposes of this motion.[9]

Uyanik claims damages of $32,260.56, an amount comprising repair costs, loss of value, and loss of use. While Uyanik offers lengthy argument to assert that he may claim both loss of value in addition to repair costs, that is not the point of contention. Rather, Galan Ramirez takes issue with the amounts claimed for loss of value and repairs. Uyanik fails to show that these amounts are indisputable. Although he argues that his own testimony sufficiently establishes the amount of damages and that expert opinion is not required because it is a question of common knowledge, the court finds this unpersuasive, particularly as to the $10,000 diminished value claim. For example, Uyanik states that the prior accident on August 19, 2019 reduced the value of his car, but also that following the safe operation of the vehicle for over a year, the vehicle was "substantially restored." (Uyanik Decl., ¶ 8, p. 6:2-11.) It is unclear why that same logic would not apply to the claimed loss of value resulting from the 2020 accident with Galan Ramirez. Uyanik's self-serving lay testimony is insufficient to establish that all of his claimed damages are indisputably attributable to Galan Ramirez's negligence. Thus, he has not met his initial burden of showing the absence of triable issues of fact regarding damages.

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[9] Moreover, as the court already previously noted in its July 18, 2023 order, negligence per se is not an independent cause of action—it is an evidentiary presumption—and "Uyanik can make a request for a negligence per se jury instruction when the time comes for trial," if appropriate. (Order at p. 6:14-20.)

Further, even if Uyanik had met his initial burden, the evidence proffered by Galan Ramirez in opposition establishes triable issues of material fact. Uyanik's deposition testimony demonstrates that he had been in a prior serious accident in the same vehicle, and that he was in fact bringing the vehicle to be fixed when the accident involving Galan Ramirez occurred. It also appears that Uyanik's counsel prevented meaningful questioning regarding the basis of Uyanik's opinion of his claimed damages. As a consequence, portions of Uyanik's deposition testimony conflict with the declaration he submits in support of his negligence claim. "Typically, in summary judgment litigation, equally conflicting evidence requires a trial to resolve the dispute." (*Kid's Universe v. In2Labs* (2002) 95 Cal.App.4th 870, 881.)

For similar reasons, the court finds that Uyanik's arguments regarding the collateral source rule are unhelpful for deciding this motion. Even if the collateral source rule were to apply here and were to limit the admissibility of an insurance settlement in an effort to mitigate the amount of damages, it still would not relieve Uyanik of his burden to establish the amount of damages.

Finally, Galan Ramirez argues that material issues of fact remain as to whether Uyanik's own alleged negligence was a substantial factor in causing his injury. The court agrees that this is indeed a question of fact. "Under the principles of comparative fault, a person's negligent conduct may be assigned a share of fault greater than 0 percent only when the conduct was a substantial factor in the causation of the pertinent injuries." (*Pfeifer v. John Crane, Inc*. (2013) 220 Cal.App.4th 1270, 1287.) The "issue of superseding cause is generally one of fact." (*Torres v. Xomox Corp.* (1996) 49 Cal.App.4th 1, 19.) Here, Galan Ramirez's separate statement identifies facts that could conceivably cause a jury to assign comparative fault to Uyanik, including the notion that "Plaintiff was clearly not paying attention to cross-traffic." (Opposition at p. 4:18-26 [citing Statement of Disputed Facts, Nos. 20-24].)

Uyanik's motion for summary judgment is DENIED.

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Calendar Line 6
Case Name: *Francisco Valencia Sanchez v. General Motors, LLC*
Case No.: 21CV392859

This is a motion to compel compliance with the court's order of September 26, 2023, in which the court granted (in large part) and denied (in small part) a motion to compel the person-most-qualified deposition of defendant General Motors, LLC ("GM"). Plaintiff Francisco Sanchez filed this motion on February 2, 2024, and then he requested that the motion be heard on shortened time, given the trial date of April. 2, 2024. The court granted Sanchez's ex parte application and stated that GM should file an opposition by no later than March 6, 2024.

As of March 8, 2024, the court has received no opposition from GM. Accordingly, the court has no reason *not* to grant the motion. The motion is granted, and GM shall produce its person-most-qualified witness by no later than March 22, 2024.

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Calendar Line 7
Case Name: *De Mattei Construction, Inc. v. Stephen A. Finn*
Case No.: 22CV405021

Plaintiff De Mattei Construction, Inc. ("De Mattei") moves to compel further responses to construction form interrogatories (Nos. 302.1, 302.4, 305.3, 305.5, 305.8, 305.11, 305.12, 305.13, 305.14, 309.1, 309.2, 311.1, 311.2, 311.3, 311.4, 314.1, 314.2, and 314.3) and requests for production of documents (Nos. 1-50) from defendant Stephen Finn. For the reasons set forth below, the court grants the motion in part and denies the motion in part.

1. Form Interrogatories

Nos. 302.1 & 302.4: The answers are sufficient. The court agrees with Finn that De Mattei raises immaterial and needlessly nitpicky complaints about these responses. DENIED.

No. 305.3: The answer is non-responsive and evasive. Finn needs to supplement his answer to all of (a)-(d). If there are expert reports that are being prepared *as part of this case*, then they may obviously be withheld until the time expert disclosures are due, but this interrogatory is broader than that and seeks non-privileged information. GRANTED.

No. 305.5: The response is almost satisfactory, but an answer to 305.5(d) is missing. GRANTED.

No. 305.8: The answer is sufficient. The identification of the years 1990-1992 in 305.8(b) is specific enough. DENIED.

No. 305.11: The answer is almost satisfactory, but more specificity needs to be given with respect to 305.11(b). GRANTED.

No. 305.12: The answer is sufficient. DENIED.

No. 305.13: De Mattei's separate statement fails to include the text of the answer to Interrogatory No. 305.9, which is incorporated by reference into this response. Accordingly, the court has no basis upon which to judge the sufficiency of the response. DENIED.

No. 305.14: The answer is sufficient. DENIED.

No. 309.1: The answer is incomplete. It needs to provide more specificity regarding dates and amounts. GRANTED.

No. 309.2: The answer is inadequate. It needs to describe the documents or identify them by Bates number in the document production. GRANTED.

No. 311.1: The answer is inadequate. It needs to describe the media or identify them by Bates number in the document production. GRANTED.

No. 311.2: The answer is inadequate. It needs to describe the diagram(s), etc. or identify them by Bates number in the document production. GRANTED.

No. 311.3: The answer is non-responsive and evasive. Finn needs to supplement his response to all of (a)-(d). Again, if there are expert reports that are being prepared *as part of*

this case, then they may obviously be withheld until the time expert disclosures are due, but this interrogatory is broader than that and seeks non-privileged information. GRANTED.

No. 311.4: The date range given (311.4(b)) is too broad and vague. Finn must provide a more specific answer. GRANTED.

No. 314.1: The answer is almost satisfactory. Finn needs to supplement it with an identification of documents in his production by Bates number. GRANTED IN PART.

No. 314.2: The answer is sufficient. DENIED.

No. 314.3: The answer is sufficient. DENIED.

2. Requests for Production

Finn points out that De Mattei's notice of motion and motion does not set forth the correct statutory basis for De Mattei's complaints about Finn's document production, which is a *motion to compel compliance* under Code of Civil Procedure section 2031.320. Instead, the notice identifies only section 2031.310, which governs a *motion to compel further responses*. De Mattei's memorandum of points and authorities goes on to cite both sections 2031.310 and 2031.320 in an indiscriminate and confused manner. The court agrees with Finn that the motion is procedurally defective.

Under section 2031.310, De Mattei's takes issue with various "boilerplate" objections in Finn's responses to the document requests, but those objections are only significant if documents are actually being withheld on the basis of those objections. At this time, there has been no showing that any documents are being withheld. On the contrary, Finn argues that he has agreed to produce responsive and non-privileged documents, which is why the only pertinent motion is one under section 2031.320 rather than section 2031.310.

It appears that Finn produced documents both before and after De Mattei's motion was filed. De Mattei's opening brief fails to address the pre-October 17, 2023 production (which apparently occurred on September 15, 2023) *at all*. De Mattei's reply brief fails to address the post-October 17, 2023 production (which occurred on November 22, 2023), except in the most general of terms and only in a single paragraph. (Reply at p. 2:17-26.) This is insufficient. Moreover, the court ordinarily does not consider new facts or arguments raised for the first time on reply. Even if the motion were procedurally proper, which it is not, the court would find that De Mattei has not provided enough information about the alleged issues with Finn's document production to date. Indeed, the court understands that the production is still in progress.

The motion as it applies to the requests for production of documents is DENIED.

3. Monetary Sanctions

Both sides have requested monetary sanctions against the other. The court DENIES both requests, finding that each side has acted both with and without substantial justification at various points in this discovery dispute.

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Calendar Line 9
Case Name: *Baiting Jiang v. Joseph D. Kostmayer et al.*
Case No.: 21CV376461

This is a motion to set aside a dismissal under Code of Civil Procedure section 473, subdivision (b), by plaintiff Baiting Jiang. The court entered the dismissal on June 15, 2023, based on multiple failures to appear by Jiang. Jiang did not file this motion until December 20, 2023, more than six months later.

The motion is untimely under section 473(b), but there are also other problems with it. First, Jiang does not include any explanation for her prior failures to appear in this case. She has filed no memorandum of points and authorities under section 473(b), and even her notice of motion does not contain any rationale for setting aside the dismissal. Instead, she simply attaches a one-page exhibit, entitled "Medical Excuse Note," that recommends that she be "excused from all academic, work, and court duties" from "2023-05-06 to 2024-03-31." This exhibit raises more questions than it answers. It purports to be signed by someone, but it is not clear who this person is, what their name is, or whether they are even an authorized medical professional. It does not provide any explanation for *why* Jiang should be excused from these activities. Moreover, the date range given ("2023-05-06 to 2024-03-31") still does not explain why Jiang failed to appear for the February 21, 2023 hearing, when this court (Judge Kulkarni) first issued the order to show cause why the case should not be dismissed for a failure to appear. The court finds that Jiang's bare papers are insufficient to set forth a basis for relief under section 473(b).

Second, even though Jiang's medical note says that she should be excused from "court duties" for the 11-month period identified above, she still filed a notice of appeal of the dismissal of this case on August 14, 2023, in the middle of that period. (The Court of Appeal later dismissed the appeal for failure to obtain the record.) At a minimum, this indicates that: (1) Jiang was capable of filing papers during the period in which her medical note says she should be excused, and (2) Jiang was well aware of the dismissal but chose not to file the present motion before her deadline to do so, instead electing to try to pursue a remedy in the appellate court. This provides a further reason why the dismissal should not be set aside.

The court understands that Jiang is representing herself in this case, but it is a case that she herself filed, well over three years ago. Unfortunately, Jiang's status as a self-represented party does not excuse her failure to make any showing of a proper ground for setting aside the dismissal in this case.

The motion is DENIED.

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Calendar Line 13
Case Name: *S.J. Bayshore Development, LLC v. Timothy Bumb*
Case No.: 23CV419307

Defendant Timothy Bumb ("Timothy") moves for a "four-month stay" of this case, pending a determination of another case in this county (*First Street Holdings, LLC v. Timothy Bumb* (Case No. 22CV393229) ("*First Street*")), "which has a summary judgment hearing set for April 2, 2024 and a trial date of July 1, 2024." (Reply Brief at p. 2:2-5.) Plaintiff S.J. Bayshore Development, LLC ("S.J. Bayshore") opposes the motion. Because the court sees little to no utility in a four-month stay, and because Timothy does not demonstrate any valid basis for a stay, the court DENIES the motion.

Timothy contends that this case was commenced improperly by his brother, Brian Bumb ("Brian"), in Brian's capacity as manager of S.J. Bayshore, and that the *First Street* case will establish this fact by granting Timothy a declaratory judgment that Brian unlawfully removed T&B Management Group, LLC as the manager of S.J. Bayshore. Accordingly, Timothy claims that a stay until the *First Street* case is resolved will serve judicial economy. What Timothy fails to address, however, is how judicial economy would be served if the outcome of *First Street* is not as he hopes it will be. If Timothy does not prevail in his claim against Brian in *First Street*, then a stay will only result in a needless delay of this case.

Timothy argues that the doctrine of "exclusive concurrent jurisdiction" should apply here, because "two or more courts have subject matter jurisdiction over a dispute," and "the court that first asserts jurisdiction"—*i.e.*, the court in *First Street*—should have priority. (Memorandum at p. 6:17-21 [citing *Shaw v. Superior Court* (2022) 78 Cal.App.5th 245, 255].) As far as the court can tell from the parties' papers, the cause of action in the *First Street* case is for a declaratory judgment regarding the management of S.J. Bayshore, whereas the cause of action in this case is for damages arising out of the alleged breach of a promissory note by Timothy to S.J. Bayshore. These are two completely different things, and it is not clear to the court that resolution of the first case will resolve the dispute in this case. Indeed, that appears to be highly unlikely. S.J. Bayshore argues in its opposition that "a ruling either way in *First Street* as to the management issue will have no effect on whether [Timothy] owes money under the Note or SJ BAYSHORE's contractual rights." (Opposition at p. 7:4-5.) And then Timothy's reply brief fails to respond to this point or provide any further explanation as to how the issues between the two cases allegedly overlap or are intertwined. Based on this completely inadequate showing by Timothy, the court finds that the doctrine of exclusive concurrent jurisdiction does not apply.

The court also rejects Timothy's contention that, without a stay, there is a risk of inconsistent rulings because "Defendant could have property attached and be forced to pay attorneys' fees for a lawsuit that S.J. Bayshore had no authority to bring in the first place." (Memorandum at p. 8:10-12.) It is the court's understanding that Judge Kuhnle previously denied S.J. Bayshore's request for a writ of attachment on October 26, 2023, and so the specter of attachment seems negligible at best, *particularly during the next four months*. Similarly, how is it even remotely possible that Timothy will be held liable for attorney's fees *in the next four months*, when no trial has been set in this case and no trial is likely to be set for at least the next eight months?

Timothy repeatedly argues that there is no cognizable prejudice to S.J. Bayshore from a brief, four-month stay. That argument cuts both ways, and the court finds that there is no cognizable utility to a four-month stay. Of course, if any determinations are made in the *First Street* case that might ultimately apply here, the parties may bring them to the court's attention. In the meantime, there is no reason to delay any pretrial proceedings here.

Finally, the court notes that just a few hours before it posted its tentative ruling in this matter, counsel for the moving party contacted the courtroom clerk, asking to withdraw the motion. The court rejects this eleventh-hour effort to withdraw a meritless motion, pending since October 2023, and instead will proceed with a ruling on the merits.

The court DENIES the motion to stay.[10]

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[10] The court does not rely on Commissioner Thai Van Dat's rejection of a similar stay request by Timothy in a separate unlawful detainer matter, although the court does take judicial notice of the November 9, 2023 minute order. (Evid. Code, § 452, subd. (d).) The court agrees with Timothy that the relevant considerations regarding a stay in an unlawful detainer action are materially different from those in a regular civil action.