SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 6
Honorable Evette D. Pennypacker, Presiding

David Criswell, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2160

DATE: July 16, 2024 TIME: 9:00 A.M.

RECORDING COURT PROCEEDINGS IS PROHIBITED

FOR ORAL ARGUMENT: Before 4:00 PM today you must notify the:

(1) Court by calling (408) 808-6856 and

(2) Other side by phone or email that you plan to appear at the hearing to contest the ruling

(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

FOR APPEARANCES: The Court strongly prefers in-person appearances. If you must appear virtually, you must use video. To access the courtroom, click or copy and paste this link into your internet browser and scroll down to Department 6:
https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml

FOR COURT REPORTERS: The Court does **not** provide official court reporters. If you want a court reporter to report your hearing, you must submit the appropriate form, which can be found here:
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FOR YOUR NEXT HEARING DATE: Use Court Schedule to reserve a hearing date for your next motion. Court Schedule is an online scheduling tool that can be found on the court's website here:
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LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
1-2	18CV335385	TUSCANY HILLS HOMEOWNERS ASSOCIATION vs BLUE MOUNTAIN CONSTRUCTION SERVICES, INC.	Matter resolved; motions off calendar.
3	18CV335735	SABSE TECHNOLOGIES et al vs YOGESH PATEL et al	Defendants Yogesh Patel, Dhruv Patel, Ravi Patel, and Global Wallet, Inc. move to dismiss pursuant to Code of Civil Procedure sections 389(b) and 410.30(a). But in a May 3, 2019 order, the Court (Hon. Sunil Kulkarni) found: "'[E]xcept in extraordinary cases a trial court has no discretion to dismiss an action brought by a California resident on grounds of forum non conveniens.' (*Archibald, supra,* 15 Cal.3d at p. 858.) Here, Mr. Bhatia is a California resident and Sabse is a California corporation. And this does not appear to be an 'extraordinary' case under *Archibald*. Therefore, even if substantial justice were to require trial in India, the Court would not dismiss the case; at most, the Court would stay the case." The Court (Hon. Sunil Kulkarni) then denied Plaintiffs' motion for reconsideration of this order when Plaintiffs sought to revive the case by seeking leave to file a second amended complaint. Plaintiffs' appeal of this order was also denied as untimely. While the parties do not address this issue in their briefing, the undersigned Court fails to see how this is not a motion for reconsideration of Judge Kulkarni's order granting a stay but denying dismissal in 2019. Other than the passage of time, there are no new facts. Sabse is now revived, and whether it was a "nominal" Plaintiff was known to Defendants at the time of their original motion. And Plaintiff Sabeer Bhatia is still a California resident. The only "new" aspect of Defendants' motion is their argument that indispensable parties cannot be joined and that therefore this is an exceptional case under *Archibald v. Cinerama Hotels* (1976) 15 Cal.3d 853, 860.) First, this is also not "new" under Code of Civil Procedure section 1008—Defendants' analysis is based entirely on the First Amended Complaint, which Judge Kulkarni had before him at the time of the 2019 order. Next, *Archibald* is unequivocal that the trial court has no discretion to dismiss an action on forum non conveniens ground where the plaintiff is a California resident. Third, Code of Civil Procedure section 389 states: "the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed without prejudice, the absent person being thus regarded as indispensable. The factors to be considered by the court include: (1) to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; (2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; (3) whether a judgment rendered in the person's absence will be adequate; (4) whether the plaintiff or cross-complainant will have an adequate remedy if the action is dismissed for nonjoinder." Here, if the Court were to dismiss this case without prejudice, Plaintiffs would be unable to refiled in California because the statute of limitations would have run and there is no guarantee that they could bring these same claims in India after the passage of so many years. Thus, even considering the merits of Defendants' indispensable party argument, this motion must be denied. Court to prepare formal order.
4	20CV371745	Sung Jung vs George Paik	Defendants' motion to quash is GRANTED, and the complaint against these Defendants is DISMISSED without prejudice. Scroll to line 4 for complete ruling. Court to prepare formal order.

5	21CV382331	Becky Edwards et al vs Tesla, Inc. et al	The Maldonado Plaintiffs' motion for leave to file an amended complaint correcting the name of defendant is GRANTED. "[T]he allowance of amendment and relation back to avoid the statute of limitations does not depend on whether the parties are technically or substantially changed; rather the inquiry is as to whether the nature of the action is substantially changed." (*Hawkins v. Pacific Coast Bldg. Products, Inc.* (2004) 124 Cal. App. 4th 1497, 1504.) All parties understood what this lawsuit was about at the time it was filed even though Plaintiffs named the decedent rather than the estate as a party. The Maldonado's request is to correct a defect in the name of a party, not to name an entirely unknown party. Court to prepare formal order.
6,15	21CV385527	Michael Darden vs The Board of Trustees of the Leland Stanford University et al	Plaintiff Michael Darden's motion for reconsideration of the Court's December 8, 2023 order following informal discovery conference and accommodations request is DENIED. Motions for reconsideration are generally governed by Code of Civil Procedure section 1008, which represents the Legislature's attempt to regulate what the Supreme Court has referred to as "repetitive motions." (See *Standard Microsystems Corp. v. Winbond Electronics Corp.* (2009) 179 Cal.App.4th 868, 885.) The legislative intent was to restrict motions for reconsideration to circumstances where a party offers the court some fact or circumstance not previously considered, and some valid reason for not offering it earlier. (*Gilberd v. AC Transit* (1995) 32 Cal.App.4th 1494, 1500; see *Baldwin v. Home Sav. Of America* (1997) 59 Cal.App.4th 1192, 1198.) The burden under Section 1008 "is comparable to that of a party seeking a new trial on the ground of newly discovered evidence: the information must be such that the moving party could not, with reasonable diligence, have discovered or produced it at the trial." (*New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 212-213.) During the December discovery conference, the Court explained in detail why it would not permit Mr. Darden's spouse to be in the room to speak for Mr. Darden during Mr. Darden's deposition. Permitting Mr. Darden's spouse to provide clarifications and support for oral argument is different than permitting his spouse to explain and clarify Mr. Darden's sworn testimony or even to make objections. Mr. Darden's spouse is not an attorney and would be committing at least a misdemeanor if he objected to questions on Mr. Darden's behalf. Thus, the Court permitted Mr. Darden's deposition to be taken in a place where he could visit with his spouse for support during breaks (which the Court ordered should be frequent to accommodate Mr. Darden's needs) but the Court did not permit Mr. Darden's spouse to be in the room during the deposition. Mr. Darden's subsequent attempt to obtain this relief through an accommodations request was not appropriate, since those requests relate solely to court proceedings, and depositions are not conducted in court. Mr. Darden's motion for reconsideration offers no new facts or evidence, his deposition is now complete, and his motion must therefore be DENIED. Plaintiff Michael Darden's motion for terminating sanctions is DENIED. However, the parties are ordered to appear and report whether the four depositions have been scheduled, and, if not why they have not been, as it appears to the Court that Stanford offered dates. No other issue appears to remain for Court intervention. The Court wants to make sure Mr. Darden's discovery is complete before the time for his opposition to Stanford's summary judgment is due.
7-9	22CV407295	Royal Farms USA LLC vs Genflora Processing LLC	Scroll to lines 7-9 for complete ruling. Court to prepare formal order.
10	23CV409690	The People of the State of California et al vs Jose Sanchez et al	Plaintiffs' Motion to Strike Defendants' answers is GRANTED WITH 20 DAYS LEAVE TO AMEND. Scroll to line 10 for complete ruling. Court to prepare formal order.

11	23CV418073	BREANNA HAYES vs UNIVERSAL PROTECTION SERVICE, LP	Defendant's motion to compel arbitration and for a stay is unopposed and GRANTED. This matter is stayed pending arbitration. The November 12, 2024 case management conference shall remain as set so that the Court can obtain a status regarding the arbitration proceedings. These orders will be reflected in the minutes.
12	23CV418764	Lisa Cimino et al vs Covenant Care California, LLC	The Application for approval of compromise for person with a disability is APPROVED. Court to use form of order on file.
13	23CV419476	Hiteshkumar Ubaharani vs TESLA, INC	Telsa, Inc.'s motion to compel arbitration is GRANTED. A notice of motion with this hearing date and time was served on Plaintiff by electronic mail on March 21, 2024. Plaintiff did not oppose the motion. "[T]he failure to file an opposition creates an inference that the motion or demurrer is meritorious." (*Sexton v. Super Ct.* (1997) 58 Cal.App.4th 1403, 1410.) There is also good cause to grant this motion. Plaintiff's complaint alleges violations of the Song-Beverly act. (See, generally, Complaint.) Defendant submits the Declaration of Raymond Kim, Manager, Business Resolution at Tesla, who attaches the Motor Vehicle Order Agreement Kim explains Plaintiffs were required to enter at the time they purchased their vehicle. (Declaration of Raymond Kim ("Kim Decl."), Ex. 1, ¶¶3-6.) The Motor Vehicle Order Agreement contains an "Agreement to Arbitrate" at paragraph 3. (Kim Decl., ¶7.) This is prima facie evidence of the existence of an arbitration agreement, which evidence Plaintiff fails to refute. (*Condee v. Longwood Management Corp.* (2001) 88 Cal. App. 4th 215, 218; *Gamboa v. Northeast Community Clinic* (2021) 72 Cal. App. 5th 158, 165 (once moving party produces prima facie evidence of a written arbitration agreement by attaching the agreement or summarizing the terms in a motion to compel, the opposing party bears the burden of producing evidence to challenge the authenticity of the agreement.); California Rules of Court, Rule 371.) On this record, the Court is required to send this matter to arbitration. (Code Civ. Pro. § 1281.2 ("the court shall order a matter to arbitration if it determines that there is an agreement to arbitrate and (1) the agreement has not been waived or (2) the agreement has not been revoked."); *Cinel v. Barna* (2012) 206 Cal.App.4th 1383, 1389.) Accordingly, Defendant's motion is granted, the matter is ordered to arbitration, the case is stayed pending the arbitration, the August 1, 2024 status conference is VACATED AND RESET to March 13, 2025 at 10 a.m. in Department 6. Court to prepare formal order.
14	24CV435454	Jesse Jimenez vs Sunpower Corporation et al	Kayna Stavast Levy's pro hac vice application is GRANTED. Moving party ordered to submit formal order.

Calendar line: 4
Case Name: *Sung Su Jung dba AA Merchant Services, Inc. v. George Shu Paik*; related cross-claims
Case No.: 20CV371745

Before the Court are specially appearing Defendants' Navyz, Inc. and Navyzebra, Inc., motion to quash service of summons and denying amendment to add Does Defendants. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

This action arises from Mr. Paik's alleged unauthorized use of Plaintiff's trade secret i.e., customer list. According to the complaint, Mr. Paik was formerly employed by Plaintiff and is currently working at a competing company ran by Doe 1. In 2013, Plaintiff hired Mr. Paik as an outsourced contractor (sub-contractor) for its executive director position. When Mr. Paik was first employed, he purchased Plaintiff's customer list, considered its trade secret information, and was required to sell the list upon leaving the company. As executive director, Mr. Paik had access to and knowledge of Plaintiff's trade secrets and its approach to customer service. (Complaint, ¶¶ 3, 11.)

Plaintiff alleges it took all reasonable steps to maintain confidentiality of its trade secrets and included a confidentiality clause in all employment contracts. However, after leaving Plaintiff's employment in 2020, Mr. Paik allegedly devised a scheme to steal Plaintiff's customers by using its trade secret information. Mr. Paik not only used Plaintiff's trade secret to establish his own business but also communicated the same to third parties. In violation of his employment contract, Mr. Paik contacted Plaintiff's customers and solicited 44 customers to change to Mr. Paik's credit card reader service provider. (Complaint ¶¶ 12, 14, 24.)

Plaintiff initiated this action on October 5, 2020, alleging (1) misappropriation of trade secrets, (2) breach of contract, (3) breach of duty of loyalty, (4) intentional interference with contractual relations/inducing breach of contract, (5) intentional interference with prospective economic relations, (6) negligent interference with prospective economic relations, and (7) unfair competition.

On February 22, 2024, Plaintiff amended the complaint to substitute specially appearing Defendants NAVYZ, Inc. and NAVYZEBRA, Inc. for Doe 1 and Doe 2, respectively. A proof of service filed April 16, 2024 states NAVYZEBRA, Inc. was personally served on April 9, 2024, and a proof of service filed May 8, 2024 states NAVYZ, Inc. was served by substitute service on April 17,

2024. NAVYZEBRA, Inc. and NAVYZ, Inc. specially appear to move to quash this service, which motion Plaintiff opposes.

II. Legal Standard and Analysis

Code of Civil Procedure section 583.210(a) provides: "The summons and complaint shall be served upon a defendant within three years after the action is commenced against the defendant. For the purpose of this subdivision, an action is commenced at the time the complaint is filed." (Code. Civ. Proc., § 583.210(a).) Code of Civil Procedure section 583.240 provides: "In computing the time within which service must be made pursuant to this article, there shall be excluded the time during which any of the following conditions existed:

(a) The defendant was not amenable to the process of the court.

(b) The prosecution of the action or proceedings in the action was stayed and the stay affected service.

(c) The validity of service was the subject of litigation by the parties.

(d) Service, for any other reason, was impossible, impracticable, or futile due to causes beyond the plaintiff's control. Failure to discover relevant facts or evidence is not a cause beyond the plaintiff's control for the purpose of this subdivision.

(Code. Civ. Proc., § 583.240.) Code of Civil Procedure section 583.250 provides:

(a) If service is not made in an action within the time prescribed in this article:

(1) The action shall not be further prosecuted and no further proceedings shall be held in the action.

(2) The action shall be dismissed by the court on its own motion or on motion of any person interested in the action, whether named as a party or not, after notice to the parties.

(b) The requirements of this article are mandatory and are not subject to extension, excuse, or exception except as expressly provided by statute.

(Code. Civ. Proc., § 583.250.)

The three-year service requirement applies to all defendants, including a Doe defendant named in the original complaint later amended to show his or her true name. (*Inversiones Papaluchi S.A.S. v.*

Super. Ct. (2018) 20 Cal. App. 5th 1055, 1061; *Lesko v. Super. Ct.* (1982) 127 Cal. App. 3d 476, 484-485; *Higgins v. Superior Court* (2017) 15 Cal. App. 5th 973, 982; see also 3 Weil & Brown, California Practice Guide: Civil Procedure Before Trial (The Rutter Group 2023), ¶ 11:60.) Thus, a plaintiff has three years from the date of the filing the complaint to identify and serve a Doe defendant. Plaintiff's failure to serve Defendants within three years of the filing of the complaint triggers mandatory dismissal of the action as to the Defendants pursuant to Code of Civil Procedure section 583.210(a).

Plaintiff argues the motion should be denied in "interest of justice" because Plaintiff did not know the identity of Defendants at the commencement of the action and confusion remains as to the identity of Defendant Paik's current employers. However, Plaintiff cites no statutory exception to the application of Code of Civil Procedure section 583.250 or any other authority giving the Court such discretion. Indeed, Code of Civil Procedure section 583.240 (d) specifically provides that Plaintiff's failure to discover relevant facts or evidence would not be considered a cause beyond his control in evaluating the impossibility or impracticability or effectuating service. (Code. Civ. Proc. § 583.240 (d).) Plaintiff also argues the appropriateness of its Doe amendment. However, all that is relevant here is when the complaint was filed and when the Defendants were served.

While Defendants present this as a motion to quash rather than a motion to dismiss, the substance of the "motion to quash" is what matters and not its label. (Civ. Code § 3528; *A.N. v. County of Los Angles*, supra, at 1064 citing *Barrows v. American Motors* [*Corp*.] (1983) 144 Cal. App. 3rd 1, 9.) Code of Civil Procedure section 583.250 (a)(2) also provides the Court discretion to dismiss the action on its own motion when service is not made within the statutory time.

Accordingly, Defendants' motion to quash is GRANTED, and the complaint against these Defendants is DISMISSED without prejudice.

Calendar Lines 7-9
Case Name: *Royal Farms USA LLC v. Genflora Processing LLC*
Case No.: 22CV407295

Before the Court is Defendant Kevin Moore's demurrer to and motion to strike portions of Plaintiff Royal Farms USA LLC ("Royal") third amended complaint ("TAC") and Defendants' Kenneth Tersini's and Orso Farm LLC's ("Orso") demurrer to and motion to strike portions of the TAC, which is joined by Defendant Genflora Processing LLC's ("GPL").[1] Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

This action arises out of an alleged breach of contract. Moore was a manager of GPL. (TAC, ¶ 7.) In April or May 2021, Moore talked with Joseph Perry and Jonathan Simmons, both members of Royal, about growing hemp for GPL. (TAC, ¶5 13-15.) Plaintiff alleges that after initially decling, Perry and Simmons were ultimately persuaded by Moore's persistence and his oral representations that:

(1) GPL would provide Royal Farms at least 40 acres of hemp transplants derived from clones and/or seeds of particular strains which were desired by the commercial hemp market;

(2) GPL would supply Royal Farms with hemp transplants from its Greenhouse with genetics that had been previously planted and vetted; and

(3) GPL would market and sell the hemp to be grown by Royal to GPL's existing base of for the benefit of both parties and Royal's share of the proceeds would be $60 per pound for each pound produced. (TAC, ¶¶ 18-20.)

In June 2021, Royal and GPL entered an agreement (the "Hemp Supply Agreement") in which Royal agreed to grow and harvest, at its own costs and expense, industrial hemp from the hemp transplant derived from clones and/or seeds to be provided by GPL. (TAC, ¶¶ 21-23.) Plaintiff alleges GPL repeatedly breached the agreement, only 6 acres of the hemp crops were harvested in October 2021, the remaining crops could not be harvested or sold and none of it was tendered by Royal to GPL to be processed and sold. (TAC, ¶¶ 24-32.)

[1] The Court will refer to GPL, Tersini, and Orso as "Defendants" for clarity.

The parties also had an agreement for GPL to process hemp oil from the 2020 Hemp Crop at $.20 per gram (the "Hemp Processing Contract"), which Agreement Plaintiff alleges GPL also breached. (TAC, ¶¶ 25, 32.) Despite attempts, the parties were unable to resolve their disputes. (TAC, ¶¶ 33-37.)

On November 9, 2022, Royal Farms filed its complaint asserting (1) breach of written contract, (2) breach of implied covenant related to the written contract, (3) breach of oral contract, (4) breach of implied covenant related to the oral contract, (5) negligence, and (6) violation for Business and Professions Code, § 17200. It filed its first amended complaint on February 24, 2023 and its second amended complaint on October 10, 2023, asserting (1) breach of written contract, (2) fraud, (3) breach of oral contract, (4) breach of implied covenant relating to oral contract, (5) negligence, and (6) violation for Business and Professions Code, § 17200. On February 7, 2024, the Court issued its order sustaining Moore's demurrer to the fourth and sixth causes of action with leave to amend (the "Order"). On February 26, 2024, Royal Farms filed its TAC asserting the same claims. On May 2, 2024, Moore filed his motions and on May 14 GPL, Tersini, and Orso filed their motions. Royal Farms opposes the motions.

II. Tersini and Orso's Demurrer

A. Legal Standard

"The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in [Code of Civil Procedure s]ection 430.30, to the pleading on any one or more of the following grounds: . . . (e) The pleading does not state facts sufficient to constitute a cause of action, (f) The pleading is uncertain." (Code Civ. Proc., § 430.10, subds. (e) & (f).) A demurrer may be utilized by "[t]he party against whom a complaint [ ] has been filed" to object to the legal sufficiency of the pleading as a whole, or to any "cause of action" stated therein, on one or more of the grounds enumerated by statute. (Code Civ. Proc., §§ 430.10, 430.50, subd. (a).)

The court treats a demurrer "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual

allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214 (*Committee on Children's Television*).) In ruling on a demurrer, courts may consider matters subject to judicial notice. (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 751.) Evidentiary facts found in exhibits attached to a complaint can be considered on demurrer. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.)

Tersini demurs to the fifth cause of action and Orso demurs to the first, fourth, fifth and sixth causes of action for failure to state sufficient facts and uncertainty. (Code Civ. Proc., § 430.10, subd. (e) & (f).)

B. Request for Judicial Notice

1. Tersini and Orso

Tersini and Orso request judicial notice of the "State of Delaware Limited Liability Company Certificate of Formation," filed on December 16, 2021: Exhibit 1.

Official notices, statements, and certificates made by the Secretary of State are proper subjects of judicial notice as documents reflecting official acts of the executive department of the State of California, pursuant to Evidence Code section 452, subdivision (c). (*Friends of Shingle Springs Interchange, Inc. v. County of El Dorado* (2011) 200 Cal.App.4th 1470, 1483, 1484 (*Friends of Shingle Springs Interchange*).) However, "materials prepared by private parties and merely on file with state agencies" may not be properly judicially noticed as an official act of legislative, executive, or judicial department of the United States or any state of the United States. (*People v. Thacker* (1985) 175 Cal.App.594, 598.)

Exhibit 1 includes a certificate that was signed by the Secretary of the State of Delaware. Thus, the request for judicial notice is GRANTED.

2. Royal Farms[2]

Royal Farms requests judicial notice of:

[2] Royal filed an identical request in connection with its opposition to Defendants' motion to strike.

(1) Application to Register a Foreign Limited Liability Company, filed by Releaf Processing LLC on May 21, 2020: Exhibit A;

(2) Name Change Amendment filed by Releaf Processing LLC (GPL) on August 5, 2020: Exhibit B;

(3) Application to Register a Foreign Limited Liability Company filed by Orso, January 26, 2022: Exhibit C;

(4) Statement of Information filed by Orso on May 17, 2022: Exhibit D;

(5) Statement of Information filed by GPL on May 31, 2022: Exhibit E;

(6) Excerpts of the Orso website: Exhibit F; and

(7) Amendment to the SAC naming Doe 1: Exhibit G (Orso).

Exhibits A-C include certificates signed by the Secretary of the State of Delaware and are therefore the proper subject of judicial notice, whereas Exhibits D and E were merely filed with the Secretary of State and are not. (*Friends of Shingle Springs Interchange, supra,* 200 Cal.App.4th at p. 1484.) The Court will take judicial notice of Exhibit G under Evidence Code section 452, subdivision (d) and of Exhibit F only as to the size of Orso and its hemp operations. (Evid. Code, § 452, subd. (h).) Thus, the request is GRANTED as to Exhibits A-C, F, and G and it is DENIED as to Exhibit D-E.

C. Analysis

1. Uncertainty

Uncertainty is a disfavored ground for demurrer; it is typically sustained only where the pleading is so unintelligible and uncertain that the responding party cannot reasonably respond to or recognize the claims alleged against it. (*Khoury v. Maly's of Cal, Inc.* (1993) 14 Cal.App.4th 612, 616 (*Khoury*).) "A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures." (*Ibid*.) "[U]nder our liberal pleading rules, where the complaint contains substantive factual allegations sufficiently apprising defendant of the issues it is being asked to meet, a demurrer for uncertainty should be overruled or plaintiff given leave to amend. (*Williams v. Beechnut Nutrition Corp.* (1986) 185 Cal.App.3d 135, 139, fn. 2.)

Although Tersini and Orso identify uncertainty as a ground for their demurrer, they fail to offer any argument as to this point. Moreover, the TAC is not so unintelligible that they cannot reasonably respond to it. (*Khoury, supra*, 14 Cal.App.4th at p. 616.)

Tersini and Orso's demurrer on the basis of uncertainty is therefore OVERRULED.

2. Fifth Cause of Action-Negligence (Tersini)

Defendants argue the TAC fails to allege this claim against Tersini in his individual capacity as a managing member of GPL because his actions were conducted in the course of his duties.

"Ordinarily, a corporation is regarded as a legal entity, separate and distinct from its stockholders, officers, and directors, with separate and distinct liabilities and obligations." (See *Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 538.) However, a corporate officer is personally liable for any tortious conduct if they personally participate in the wrong or authorize or direct it to be done. (*PMC v. Kadisha* (2000) 78 Cal.App.4th 1368, 1379 (*PMC*) [stating that "[d]irectors are jointly liable with the corporation any may be joined as defendants if they personally directed or participated in the tortious conduct…[t]his liability does not depend on the same grounds as 'piercing the corporate veil'… but rather on the office or director's person participation or specific authorization of the tortious act."].)

On January 3, 2022, Perry learned Royal's 2020 Hemp Crop that was at GPL's Hemp Facility was completely destroyed because of rainwater, the elements, and the collapse of the containers holding the hemp crops. (TAC, ¶ 48.) Perry also learned the 2020 Hemp Crop was moved outside in anticipation of a second fire inspection because of GPL's inside storage practices that created a fire hazard. (TAC, ¶ 50.)

Royal's negligence claim is based on the storage of the 2020 Hemp Crop at the Hemp Facility. (TAC, ¶ 98.) Royal alleges Tersini took over Moore's management responsibilities in September or October 2021. (TAC, ¶ 41.) It alleges there was a fire inspection in August 2021, which resulted in the relocation of the 2020 Hemp Crop before the second inspection. (TAC, ¶ 49.) Prior to the second inspection, Cesar Montes Suarez, GPL's Facility Manager, "was directed by his superiors" to move the 2020 Hemp Crop outside and it was not moved back inside after the inspection. (TAC, ¶¶ 49-51.) There are no allegations that Tersini participated in moving the 2020 Hemp Crops outside, authorized

the move, or directed it to be done, therefore, the TAC does not support Tersini's liability based on the relocation of the 2020 Hemp Crop itself. (*PMC, supra*, 78 Cal.App.4th at p. 1379.)

Royal further alleges Tersini never directed his subordinates to move the 2020 Hemp Crop back inside, never informed Royal of the relocation or gave Royal the opportunity to move it to a safe and secure environment. (TAC, ¶ 101.) Royal relies on *PMC, supra* 78 Cal.App.4th 1368, which addressed whether managers, officers, and shareholders could be held personally liable for misappropriation of trade secrets, unfair competition, and interference with prospective economic advantage. (*Id*. at p. 1372.) The court identified the circumstances in which officers or directors could be liable for *an intentional tort*. (*Ibid.*) *PMC* involved the Uniform Trade Secrets Act, which imposes liability for *intentional misconduct* about which a person knew or had reason to know. However, the claim at issue here is negligence and Tersini's failure to act, thus *PMC* is inapplicable. Moreover, Royal fails to cite any authority which applies the "knew or had reason to know" standard on a negligence claim. Consequently, Royal fails to allege this claim against Tersini in his individual capacity, and the demurrer to the fifth cause of action is SUSTAINED 20 days leave to amend.

3. Claims against Orso

Defendants argue the claims cannot be stated against Orso because it did not exist until December 2021, after the conduct alleged in the TAC. (MPA, p. 8:20-23; Defendants' RJN, Exh. 1.) Defendants further argue Royal Farms has not and cannot plead that Orso was GPL's alter-ego.[3] (p. 10:13-15.)

"Under the standard alter ego doctrine, in appropriate circumstances the corporate form may be disregarded and the corporate veil pierced so that an individual shareholder may be held personally liable for claims against the corporation." (*Postal Instant Press, Inc. v. Kaswa Corp.* (2008) 162 Cal.App.4th 1510, 1513 (*Postal*).) The essential elements of an alter ego claim are (1) a unity of interest, and (2) inequitable results if the corporate separateness is respected. (*Zoran Corp. v. Chen* (2010) 185 Cal.App.4th 799, 811-812.) In considering whether to invoke the alter ego doctrine, courts look to a variety of factors and circumstances. (*Hasso v. Hapke* (2014) 227 Cal.App.4th 107,

[3] It is unclear to the Court how Orso can be liable for events which occurred before its existence outside of alter ego liability.

155, *citing Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 538–539 [internal citations and quotation marks removed]; see *Greenspan v. LADT LLC* (2010) 191 Cal.App.4th 486, 510–513.)

"Among the factors to be considered in applying the doctrine are commingling of funds and other assets of the two entities, the holding out by one entity that it is liable for the debts of the other, identical equitable ownership in the two entities, use of the same offices and employees, and use of one as a mere shell or conduit for the affairs of the other. Other factors which have been described in the case law include inadequate capitalization, disregard of corporate formalities, lack of segregation of corporate records, and identical directors and officers. No one characteristic governs, but the courts must look at all the circumstances to determine whether the doctrine should be applied." (*Ibid.*) "This long list of factors is not exhaustive. The enumerated factors may be considered [a]mong others under the particular circumstances of each case." (*Zoran Corp. v. Chen, supra*, 185 Cal.App.4th at p. 812 [internal citations and quotation marks removed].) "The alter ego doctrine prevents individuals or other corporations from misusing the corporate laws by the device of a sham corporate entity formed for the purpose of committing fraud and other misdeeds." (*Sonora Diamond Corp. v. Superior Ct.* (2000) 83 Cal.App.4th 523, 538.)

Royal alleges GPL and Orso shared a principal place of business, and Tersini was GPL's manager and Orso's manager. (See TAC, ¶¶ 4, 6, 8, 10; Royal's RJN, Exhs. B & C.) In opposition, Royal asks the Court to consider evidence beyond the scope of a demurrer. Focusing on the TAC, Plaintiff simply alleges Orso is GPL's alter ego, successor in interest, and/or recipient of the fraudulent exchange of the assets and business of GPL, without receipt of equivalent value in exchange of the transfer. (TAC, ¶ 9.) But besides using the same address, which alone does not mean the two businesses employed the same employees, Plaintiff fails to allege any facts to support these allegations. Royal argues there is commingling of funds, treatment of assets of corporation as its own, and diversion of corporate assets, this is not alleged in the TAC. Thus, Defendants' demurrer to causes of action one through six against Orso is SUSTAINED with 20 days leave to amend.

III. Tersini and Orso's Motion to Strike

A. Defendants' Evidentiary Objections

The Court has not considered Defendants' evidentiary objections to Royal's counsel's Effie F. Anastassiou declaration in opposition to Defendants' motion. There is no authority for evidentiary objections in the context of demurrers and motions to strike, and the objections are unnecessary because extrinsic evidence cannot and has not been considered by the Court for any purposes. (*SKF Farms v. Super. Ct.* (1984) 153 Cal.App.3d 902, 905 [a demurrer or motion to strike tests the pleadings alone and not the evidence or other extrinsic matters].)

B. Legal Standard for Motion to Strike

Under Code of Civil Procedure section 436, a court may strike out any irrelevant, false, or improper matter inserted into any pleading or strike out all or part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. (Code Civ. Proc., § 436.) The grounds for a motion to strike must appear on the face of the challenged pleading or from matters of which the court may take judicial notice. (Code Civ. Proc., § 437, subd. (a); see also *City and County of San Francisco v. Strahlendorf* (1992) 7 Cal.App.4th 1911, 1913.) In ruling on a motion to strike, the court reads the complaint as a whole, all parts in their context, and assumes the truth of all well-pleaded allegations. (*Turman v. Turning Point of Central California, Inc.* (2010) 191 Cal.App.4th 53, 63 (*Turman*), citing *Clauson v. Super. Ct.* (1998) 67 Cal.App.4th 1253, 1255.) "Thus, for example, defendant cannot base a motion to strike the complaint on affidavits or declarations containing extrinsic evidence showing that the allegations are 'false' or 'sham.'" (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2020) 7.169.)

A motion to strike portions of a complaint or petition may be brought on the ground that the allegations at issue are "irrelevant" or "improper." (Code Civ. Proc., § 436, subd. (a).) Irrelevant matter includes (1) an allegation that is not essential to the statement of a claim or defense, (2) an allegation that is neither pertinent to nor supported by an otherwise sufficient claim or defense, and (3) a demand for judgment requesting relief not supported by the allegations of the complaint or cross-complaint. (See Code Civ. Proc., § 431.10, subds. (b), (c).) Generally speaking, motions to strike are disfavored and cannot be used as a vehicle to accomplish a "line item veto" of allegations in a pleading. (*PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1683 (*PH II, Inc.*).) However,

where irrelevant allegations are "scandalous, abusive, disrespectful and contemptuous," they should be stricken from the pleading. (*In re Estate of Randall* (1924) 194 Cal. 725, 731.)

"While under Code of Civil Procedure section 436, a court at any time may, in its discretion, strike portions of a complaint that are irrelevant, improper, or not drawn in conformity with the law, matter that is essential to a cause of action should not be struck and it is error to do so. Where a whole cause of action is the proper subject of a pleading challenge, the court should sustain a demurrer to the cause of action rather than grant a motion to strike." (*Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1281, internal citations omitted.)

Defendants move to strike the allegations regarding Orso and restitution from the TAC.

C. Analysis

1. Scope of Amendment after SAC

Defendants contend Royal exceeded the scope of amendment after the Order because the Court only granted leave to amend the fourth and sixth causes of action, and, Royal includes new allegations in its background facts. While the identified portions at paragraphs 40, 41, 48, contain background facts, the allegations at paragraphs 49-52 pertain directly to the fifth cause of action. Royal contends it added such allegations to address concerns by defense counsel. (Opp., p. 14:14-16.) Although Royal did not amend the fifth cause of action itself, the added allegations are central to Royal's claim and impact the substance of the claim. Therefore, it appears Royal's amendment went beyond the scope of amendment granted by the Order. Thus, the motion to strike paragraphs 49-52 is GRANTED with 20 days leave to amend and the motion to strike portions of paragraphs 40, 41, 48 is DENIED.

Defendants also seek to strike allegations regarding Orso. While the SAC does not have any specific allegations as to Doe 1, the first, third, fourth, fifth, and sixth causes of action are asserted against DOES 1-20.

Code of Civil Procedure section 474 provides, in relevant part,

> When the plaintiff is ignorant of a name of a defendant, he must state that fact in the complaint… and such defendant may be designated in any pleading or proceeding by any name, and when his true name is discovered, the pleading or proceeding must be amended accordingly…

(Code Civ. Proc., § 474.)

On January 25, 2024, Royal filed its amendment to name Orso as Doe 1. However, it also amended the pleading to include allegations regarding Orso. (See TAC, ¶¶ 8-9.) Paragraph 10 alleges that references to "Defendants" includes Orso. (TAC, ¶ 10.) But Royal failed to name Orso in the specific causes of action which still state they are alleged against "DOES 1-20." Royal did not request leave to amend regarding the specific allegations about Orso nor was there a stipulation between the parties permitting amendment without leave of court. Royal's amendment was substantive; therefore, it was improper. Thus, the motion to strike paragraph 8, 9, and a portion of paragraph 10 is GRANTED with 20 days leave to amend.[4]

2. Allegations Regarding Restitution

Defendants argue Royal's allegations seeking restitution should be stricken because Business and Professions Code section 17203 does not allow for damages. (MPA, p.8:3-9.)

Royal seeks restitution for the amount it was induced to spend on the costs to plant, grow, and harvest hemp on the Farming Property in 2021.

A UCL action is an equitable action by means of which a plaintiff may recover money or property obtained from the plaintiff or persons represented by the plaintiff through unfair or unlawful business practices. (See Bus. & Prof. Code, § 17203.) "Damages are not available under the UCL." (*Dean Witter Reynolds, Inc. v. Superior Court* (1989) 211 Cal.App.3d 758, 774.)

Defendants contend the TAC is devoid of any allegations that they received any portion of the $501,563.33 either directly or indirectly. (MPA, p. 9:7-9.) Royal argues restitution can be awarded based on services rendered by a plaintiff where the defendant has engaged in unlawful practices relating to the rendering of those services. In support it relies on *Cortez v. Purolator Air Filtration Products Co.* (2000) 23 Cal.4th 163, 175-176 (*Cortez*), which involves a plaintiff's claim against her employer for failure to pay overtime wages for which she sought restitution. (*Id*. at p. 168.) However, the high court did not consider whether disgorgement under the UCL was proper because Section 17203 authorizes an order compelling a defendant to pay back wages as a restitutionary benefit. (*Id*. at

[4] Royal can still file a properly noticed motion for leave to amend, if it would like to include specific allegations regarding Orso.

p. 176.) The high court held that under Labor Code section 200 et seq., the plaintiff's *earned wages* were property, and they could be recovered as restitution under the UCL. (*Id*. at p. 178 [emphasis added].) Royal does not allege an employer-employee relationship with Defendants. The critical difference between *Cortez* and the instant matter is that plaintiff's earned wages constituted property. Royal does not allege the services constituted any money or property that was acquired by Defendants through unlawful practices, just that they were provided at the request of, and for the benefit of Defendants. In other words, there are no allegations that the sum requested by Royal was a sum that was taken by Defendants. Thus, the Court is not persuaded by Royal's reliance on *Cortez*.

"Under California law, there are two forms of disgorgement: 'restitutionary disgorgement, which focuses on the plaintiff's loss, and nonrestitutionary disgorgement, which focuses on the defendant's unjust enrichment." (*Meister v. Mensinger* (2014) 230 Cal.App.4th 381, 398.) To the extent Royal seeks nonrestitutionary disgorgement, it is unavailable under the UCL. (*Ibid*; *In Re Tobacco Cases II* (2015) 240 Cal.App.4th 779, 800.)

Royal contends it is entitled to restitution because under *People ex rel. Harris v. Sarpas* (2014) 225 Cal.App.4th 1539, 1560, restitution is "available from those who did not receive money directly from the victims of the fraudulent, unlawful, or unfair practice." But Royal relies on GPL's allegations from a completely different matter to support its argument, which is improper as those facts are not before the Court. (*Committee on Children's Television, supra,* 35 Cal.3d at pp. 213-214.) Moreover, Royal fails to allege Defendants received money or property directly or indirectly from it.

Based on the foregoing, Royal fails to allege sufficient facts to support its request for restitution under the UCL. Thus, the motion to strike paragraphs 107, 108, the first sentence of 109, and paragraph 6 in the prayer for relief is GRANTED with 20 days leave to amend.

IV. Moore's Demurrer

Moore demurs to the second cause of action for failure to state sufficient facts to constitute a claim. (See Code Civ. Proc., § 430.10, subd. (e).)

A. Meet and Confer

"Before filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to

demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer." (Code Civ. Proc., § 430.41, subd. (a).)

Anastassiou states Moore's counsel did not satisfy the meet and confer requirement. The parties dispute whether Moore stated his intent to challenge the fraud claim during their March 18, 2024, meeting. (Opp., p. 2:1-4; Anastassiou Decl., ¶¶ 2; Fischer Decl., ¶ 6.) On April 24, 2024, the parties spoke again and Anastassiou contends Fischer had not provided any new authorities or responded to the authorities provided by Anastassiou, while Fischer states she did not ask about the basis for the challenge at all. (Anastassiou Decl., ¶¶ 5-7; Fischer Decl., ¶¶ 8-10; Code Civ. Pro. § 430.41(a)(1) ("as part of the meet and confer process, the demurring party shall identify all of the specific causes of action that it believes are subject to demurrer and identify with legal support the basis of the deficiencies.") It appears Fischer had supporting authorities but was not able to communicate them to Anastassiou. (Fischer Decl., ¶ 6.) Therefore, the meet and confer was insufficient. Nevertheless, insufficient meet and confer is not grounds to sustain or overrule a demurrer. (Code Civ. Proc., § 430.41, subd. (a)(4).) Thus, the Court will address the merits.

B. Second Cause of Action: Fraud

The elements of fraud are (1) misrepresentation, (2) knowledge of falsity, (3) intent to defraud, (4) justifiable reliance, and (5) resulting damage. (*Lazar v. Superior Ct.* (1996) 12 Cal.4th 631, 638 (*Lazar*).) Every element of a fraud claim must be pleaded with particularity, conclusory allegations will not suffice. (*Tarmann v. State Farm Mut. Auto. Ins. Co.* (1991) 2 Cal.App.4th 153, 157 (*Tarmann*).)

Moore argues the claim fails because the TAC alleges he fulfilled his promise, there is no complete causal relationship between the alleged fraud and Royal's damages, and his representations were regarding future events and thus, not actionable. (MPA, p. 1:22-28.)

Royal alleges Moore represented to Perry and Simmons that (1) GPL would be able to timely supply Royal with at least 40 acres of healthy hemp transplants grown from clones and/or seeds of the Approved Varieties for the purpose of growing hemp on the Farming Property in 2021, (2) all the hemp varieties described in Schedule A of the Hemp Supply Agreement were industrial hemp cultivars which had been approved by the California Department of Food and Agriculture ("CDFA")

for planting in California, (3) all of the hemp varieties that GPL would supply would be derived from genetics that had been planted and vetted, (4) GPL had earned approximately $60 million dollars in gross revenues from the hemp business in 2020, and (5) GPL had an existing base of smokeable hemp customers who would purchase the hemp grown on the Farming Property and Royal would net approximately $60 for each pound of hemp flower produced. (TAC, ¶¶ 76-79.)

Royal alleges Moore knew at the time he made the representations that (1) a significant portion of the genetic materials supplied to GPL as mother plants and/or seeds that would be used to produce hemp transplants for Royal were not one of the Approved Varieties and/or not industrial hemp cultivars approved by the CDFA for planting in California, (2) a significant portion of the genetic material has not be tested to determine whether or not they would produce hemp at crop maturity that would be within the legal limits for acceptable levels of THC in California, (3) the varieties which GPL identified were not all Approved Varieties because he named the hemp cultivars used by GPL for production of the transplants to Royal, (4) a portion of the transplants to be supplied to Royal were newly created hybrids in 2021 which had not been previously grown for commercial use, and (5) the representations about GPL's 2020 gross sales revenue, existing customer base, and estimated revenues were false. (TAC, ¶¶ 81-82.)

1. Representations Regarding Future Events

"[A]n actionable misrepresentation must be made about past or existing facts; statements regarding future events are merely deemed opinions." (San *Francisco Design Center Associates v. Portman Companies* (1995) 41 Cal.App.4th 29, 44 (*San Francisco Design Center Associates*).) Moore argues the representations that, "[GPL] had an existing base of smokeable hemp customers who would purchase the hemp grown on the Farming Property and that Royal would net approximately $60 for each pound of hemp flower produced," pertained to future events.

The representation consists of an existing fact regarding GPL's customer base paired with predictions of future events, i.e., that GPL customers would buy the hemp and the profit Royal would make. Thus, the portion regarding future events is not actionable. However, "[a] demurrer does not lie to a portion of a cause of action." (See *PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682 (*PH II*).) Thus, the demurrer cannot be sustained on this basis.

2. Intent to Defraud

Relying on *Kaylor v. Crown Zellerbach, Inc.* (1981) 643 F.2d 1362 (*Kaylor*), which involved a labor dispute between an in-house trucking operator for unfair labor practices, Moore argues allegations that he partially performed negate the intent to defraud. (*Id*. at p. 1366.) In *Kaylor*, the driver's union filed a charge with the National Labor Relations Board ("NLRB") because the defendant refused to participate in grievances brought by drivers against its successor, and the parties reached a settlement. (*Ibid*.) After the defendant stopped its trucking operations, another company took over and it was unable to come to an agreement with the union. (*Ibid*.) The appellant and the union again filed charges with the NLRB, those charges were dismissed, and the parties filed suit. (*Ibid*.) The court stated the defendant's "initial performance in accordance with its promise negates any possible inference of fraud." (*Id.* at p. 1368.) By contrast, here Royal alleges from the first delivery on May 8, 2021, GPL failed to perform in accordance with the agreement. (TAC, ¶ 76; Exh. C-2.) Thus, *Kaylor* is inapplicable.

Moore also relies on *Church of Merciful Saviour v. Volunteers of America, Inc.* (1960) 184 Cal.App.2d 851 (*Church*) which involved the defendant's alleged promise to establish a training school for religious and charitable workers on the property plaintiff gave to it. (*Id*. at p. 855.) The plaintiff appealed from judgment against it, in part, based on inducement without intention to perform. (*Ibid*.) The court stated, "a declaration of intention, although in the nature of a promise, made in good faith, without intention to deceive, and in honest expectation that it will be fulfilled, even though it is not carried out, does not constitute fraud." (*Id*. at p. 859.) The court considered evidence and determined the defendant had no intention to defraud the plaintiff. (*Id*. at pp. 858-859.)

Here, Royal alleges Moore knowingly failed to make the representations in good faith to induce Royal to enter the Hemp Supply Agreement. (TAC, ¶¶ 18-20, 81-82.) Therefore, Moore's reliance on *Church* is unavailing. [5] At this time, the Court cannot determine that the intent element is negated, and Moore's demurrer cannot be sustained on this basis.

3. Causal Relationship between Reliance and Damages

[5] Moore also relies on *Justhiem Petroleum Co. v. Hammond* (1955) 227 F.2d 629, which involved an appeal from judgment and considered evidence to determine to find there was inadequate showing of bad faith or lack of intent to perform.

"[A]ctual reliance occurs when a misrepresentation is 'an immediate cause of [a plaintiff's conduct, which alters his legal relations' and when absent such representations, the plaintiff 'would not in all reasonable probability have entered into the contract or other transaction.'" (*Hall v. Time Inc.* (2008) 158 Cal.App.4th 847, 855.) To allege actual reliance with the requisite specificity, the "plaintiff must plead that he believed the representation to be true…and that in reliance thereon (or induced thereby) he entered into the transaction." (*Younan v. Equifax Inc.* (1980) 111 Cal.App.3d 498, 513.)

The TAC alleges Moore intended for Royal to rely on his representations, Royal relied on them, and Royal entered the Hemp Supply Agreement with GPL. (TAC, ¶ 83.) It further alleges its' reliance on Moore's representations was a substantial factor in its harm because but for Moore's representations it would not have entered into the Hemp Supply Agreement. (TAC, ¶ 84.) As a result, it was damaged in the amount of $501,563.44 in out-of-pocket costs to plant, grow, and harvest hemp on the Farming Property, while nothing of value was produced. (TAC, ¶ 85.) The Court is not persuaded by Moore's attempt to recharacterize the alleged connection between his conduct and Royal's damages because his alleged misrepresentations involved the quality, type, and quantity of the plants. Royal alleges sufficient facts to allege reliance, and Moore's demurrer to the third cause of action is OVERRULED.

D. Moore's Motion to Strike

Moore's notice of motion and memorandum of points and authorities ("MPA") states he moves to strike paragraphs 85, 107, 108, a portion of 109, and paragraph 6 of Royal's prayer for relief. (See Notice of Motion, p. 1:6-15; MPA, p. 1:23-2:18.) However, it appears he concedes as to paragraph 85 and limits the motion to the sixth cause of action and the prayer for relief.[6] (Reply, p.10:19-23.) The Court will address the motion accordingly.

Moore moves to strike the allegations regarding restitution of $501,563.44 on the basis that Business and Professions Code section 17203 does not allow for damages. The parties' arguments on this point are identical to those discussed above, and for reasons stated above, Royal fails to allege sufficient facts to support its request for restitution under the UCL. Thus, the motion to strike

[6] Moore did not demurrer to the sixth cause of action.

paragraphs 107, 108, the first sentence of 109, and paragraph 6 in the prayer for relief is GRANTED with 20 days leave to amend.

Calendar Line 10
Case Name: *The People of the State of California, et.al. v. Jose Antonio Sanchez, et.al.*
Case No.: 23CV409690

Before the Court is Plaintiffs' The People of the State of California and County of Santa Clara motion to strike Defendant's Jose Antonio Sanchez and Defendant's Trustee of Jose Antonio Sanchez Living Trust Dated March 1, 2018 answers and for entry of default judgment. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

This action arises from Defendants' alleged violations of various County Ordinances, Zoning Ordinances, Health & Safety Codes, and California Hazardous Waste Control Law provisions (HWCL). According to the complaint, Defendant José Antonio Sanchez Living Trust dated March 1, 2018 ("Living Trust") has owned the Shillingsburg Property, Assessor's Parcel No. 708-41-001, since November 2019. Defendant Eva Yanez owns the Jamaica Way Property, Assessor's Parcel No. 491-08-069. (Complaint ¶¶ 15, 20). The Shillingsburg Property is zoned exclusively for agricultural and is also designated as "Open Space Reserve" prohibiting any use other than agricultural and open space use. (Complaint ¶ 2.) The Jamaica Way Property is a residential neighborhood property in incorporated San Jose that includes a single-family residence. (Complaint ¶ 6.)

Despite the restrictions, Defendants used the Shillingsburg property as a concrete waste processing and recycling facility and a general dumping ground for corrosive concrete waste, hazardous chemically treated wood waste, toxic waste fluorescent lamps containing mercury, construction and demolition debris, and deteriorating vehicles. (Complaint ¶¶ 7, 46, 51-65.) Defendant United Concrete Cutting, Inc. ("UCCI") used the Jamaican Way Property to operate a concrete cutting service and as a storage/staging ground for unsafe and hazardous materials, which Defendants eventually dump onto the Shillingsburg Property. (Complaint ¶¶ 6, 7, 68-80.)

County staff also found numerous other Ordinance Violations on the Shillingsburg Property, including the creation and maintenance of unpermitted accessory units, an unpermitted bridge across Santa Teresa Creek, and illegal storage of cargo containers. Defendants also maintained illegal portable toilets and unpermitted stables or horse stalls at the Shillingsburg Property, all very close to

Santa Teresa Creek, and both of which pose runoff risks to the ground and nearby waterways, affecting public health and the environment. (Complaint ¶ 11.)

Plaintiffs initiated this action on March, 28, 2023, alleging (1) Public nuisance at Shillingsburg Property, (2) public nuisance at Jamaica Way Property, (3) Public nuisance, *Per Se*, at Shillingsburg Property [zoning Ordinance violations], (4) Public nuisance, *Per Se*, at Shillingsburg Property [Ordinance Code Violations – Building Provision & Incorporated State Codes], (5) Public nuisance, *Per Se* [Ordinance Code violations - Environmental Health Provisions], (6) Public nuisance, *Per Se* [Ordinance Code violations – Nonpoint Source Pollution Ordinance], (7) Public nuisance, *Per Se* [Ordinance Code violations – Streets and Highway Violations], (8) Public nuisance, *Per Se* [Ordinance Code violations – Grading Violations], (9) Trespass, (10) Intentional and negligent storage and disposal of hazardous waste in violation of Health & Safety Code §§ 25189(c), (d), and (e), (11) Strict liability for storage and disposal of hazardous waste in violation of Health & Safety Code §§ 25189.2 (c) and (d), (12) Unauthorized transportation of hazardous waste in violation of Health & Safety Code § 25163(a), (13) Failure to make hazardous waste determination in violation of California Code of Regulations, Title 22, section 6626.11, (14) Failure to properly store mercury-containing waste lamps in a structurally-sound container in in violation of California Code of Regulations, Title 22, section 66273.33(b)(1), (15) Failure to properly label and date mercury-containing waste lamps in violation of California Code of Regulations, Title 22, section 66273.34(c), and (16) Violations of the unfair competition law, B & P Code § 17200 et seq.

II. Meet and Confer

Code of Civil Procedure section 435.5 states: "Before filing a motion to strike pursuant to this chapter, the moving party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to the motion to strike for the purpose of determining if an agreement can be reached that resolve the objections to be raised in the motion to strike. If an amended pleading is filed, the responding party shall meet and confer again with the party who filed the amended pleading before filing a motion to strike the amended pleading." (*Id.*)

Defendants contend Plaintiffs' email communications sent on May 3, 2024, and May 7, 2024, were inadequate attempts at meet and confer because they lacked legal support for the basis of their

motion and were sent past the filing deadline. However, inadequacy or insufficiency of the meet and confer process is not grounds to grant or deny the motion to strike. (Code. Civ. Proc. § 435.5)

III. Legal Standard

"A party against whom an answer has been filed may object, by demurrer as provided in Section 430.30, to the answer upon any one or more of the following grounds: (a) The answer does not state facts sufficient to constitute a defense. (b) The answer is uncertain. As used in this subdivision, "uncertain" includes ambiguous and unintelligible." (Code. Civ. Proc. § 430.20(a)-(b).)

"The answer to a complaint shall contain: (1) The general or specific denial of the material allegations of the complaint controverted by the defendant. (2) A statement of any new matter constituting a defense." (Code. Civ. Proc. § 431.20(b)(1)-(2).) The phrase "new matter" refers to something relied on by a defendant which is not put in issue by the plaintiff. Thus, where matters are not responsive to essential allegations of the complaint, they must be raised in the answer as new matter. "Such 'new matter' is also known as 'an affirmative defense.' Affirmative defenses must not be pled as terse legal conclusions, but rather as facts averred as carefully and with as much detail as the facts which constitute the cause of action and are alleged in the complaint. A party who fails to plead affirmative defenses waives them." (*Quantum Settlement Agreement Cases* (2011) 201 Cal. App. 4th 758, 812, 813, [internal citations omitted]; *Dept. of Finance v. City of Merced* (2019) 33 Cal.App.5th 286, 294.) The answer must aver facts as carefully and with as much detail as the facts which constitute the cause of action and which are alleged in the complaint. (See *FPI Development, Inc. v. Nakashimi* (1991) 231 Cal.App.3d 367, 384.)

The court may, upon a motion, or at any time in its discretion, and upon terms it deems proper, strike any irrelevant, false, or improper matter inserted in any pleading. (Code. Civ. Proc., § 436(a).) The court may also strike all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. (*Id.* § 436(b).) The grounds for a motion to strike are that the pleading has irrelevant, false, or improper matter, or has not been drawn or filed in conformity with laws. (*Id*. § 436.) The grounds for moving to strike must appear on the face of the pleading or by way of judicial notice. (*Id*. § 437.)

IV. Analysis

Plaintiffs seek to strike Defendants' answers on the grounds that they are untimely, unverified, and improperly contain only general denials. Defendants contend, (1) Plaintiffs' motion is untimely, and (2) it is unjust to require verified responses to Plaintiffs' 214 allegations.

A. Timeliness

A motion to strike must be brought at the same time as a demurrer. (Cal. Rules of Court, rule 3.1322(b).) A demurrer to an answer must be brought within 10 days after service of the answer (extended by two court days if electronically served). (Code Civ. Proc., §§ 430.40(b), 1010.6(a)(4)(B).)

Trustee Defendant's answer was electronically served on Saturday April 27, 2024, while individual Defendant's answer was electronically served on April 9, 2024. Therefore, the corresponding deadlines for Plaintiff's motion to strike the answers would have been May 9, 2024, and April 22, 2024. Plaintiff's motion was originally filed on May 9, 2024, but it was rejected since the file failed virus scan. Plaintiff was notified of the rejection on May 16, 2024. Plaintiff's second attempt at filing its motion on May 16, 2024, was again rejected when it failed virus scan. Eventually, Plaintiff's filing on May 29, 2024, was accepted. While Plaintiff's motion against the trustee Defendant is timely, its motion against the individual Defendant is not.

However, it is within the Court's discretion whether to consider late-filed papers. (Cal. Rules of Court, rule 3.1300(d).) "[A] trial court has broad discretion in allowing relief from a late filing where, as here, there is an absence of a showing of prejudice to the other party." (*Hoover Community Hotel Development Corp. v. Thomson* (1985) 168 Cal.App.3d 485, 488.) The Court notes, (a) the motion was served on Defendants on May 9, 2024, despite the filing dilemmas, (b) Defendants had ample time to file their opposition and indeed they have, (c) the motion against both Defendants encompasses the same issues and grounds, and (d) there has been no showing of prejudice to Defendants.

Therefore, the Court exercises its discretion to accept the untimely motion against the individual Defendant and consider the motion on its merits.

B. Verification

Generally, a defendant must verify an answer to a complaint filed by a government entity. Code. Civ. Proc. § 446(a) provides, in pertinent part, "[w]hen the state, any county thereof, city,

school district, district, public agency, or public corporation, or any officer of the state, or of any county thereof, … in his or her official capacity, is plaintiff, the answer shall be verified, unless an admission of the truth of the complaint might subject the party to a criminal prosecution, or, unless a county thereof, city, school district, district, public agency, or public corporation, or an officer of the state, or of any county, … in his or her official capacity, is defendant." (Code. Civ. Proc. § 446(a).)

Here, Defendants are not a government entity and they do not contend admitting the truth of the allegations in the complaint might subject them to criminal prosecution. Their only argument is that, apart from only five minor alleged Code violations, most of the issues in this action have been resolved through motions to modify the preliminary injunction. As such, it is unjust to demand Defendants to provide verified responses to allegations that are now moot. However, Defendants provide no legal authority in support of this proposition or otherwise stating the Court has discretion to rule in their favor. The Court need not address arguments for which a party provides no supporting authority. (*Michael P. v. Superior Court* (2001) 92 Cal.App.4th 1036, 1042.)

C. Specific Denial Requirement

A defendant's answer to a verified complaint must contain a specific denial of each allegation of the complaint or a denial according to the defendant's information and belief. (Code. Civ. Proc. § 431.30(d); *Fish v. Redington (1866)* 31 Cal. 185, 194.) Thus, if a complaint is verified, the plaintiff can compel the defendant to deny specifically each separate allegation. (*San Francisco Gas Co. v San Francisco* (1858) 9 Cal. 453, 466.)

Plaintiffs' complaint is deemed verified under the terms of Code of Civil Procedure section 446. (*Whitney v. Montegut* (2014) 222 Cal. App. 4th 906, 913.) Therefore, Defendants may not answer with a general denial and are required to provide a specific denial of each allegation of the complaint.

Accordingly, Plaintiffs' Motion to Strike Defendants' answers is GRANTED WITH 20 DAYS LEAVE TO AMEND.