

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

**Department 16**

**(Dept 16 is now hearing cases that were formerly in Dept 2)**

**Honorable Amber Rosen, Presiding**

Felicia Samoy, Courtroom Clerk  
191 North First Street, San Jose, CA 95113  
Telephone: 408.882.2270

**DATE: 06-04-24    TIME: 9 A.M.**

**All those intending to speak at the hearing are requested to appear in person or by video. Parties are asked NOT to appear by telephone only.**

**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 prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)**

**TO CONTEST THE RULING: Before 4:00 p.m. 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 and contest the ruling (California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

**TO APPEAR AT THE HEARING:** The Court will call the cases of those who appear in person first. If you appear virtually, please use video. To access the link, click on the below link or copy and paste into your internet browser and scroll down to Department 16.

[https://www.scsccourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.shtml](https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml). You must use the current link.

**TO SET YOUR NEXT HEARING DATE:** You no longer need to file a blank notice of motion to obtain a hearing date. **You may make an online reservation to reserve a date** before you file your motion. If moving papers are not filed within 5 business days of reserving the date, the date will be released for use in other cases. Go to the Court's website at [www.scsccourt.org](http://www.scsccourt.org) to make the reservation.

**FINAL ORDERS:** The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

**COURT REPORTERS:** The Court no longer provides official court reporters. If any party wants a court reporter, the appropriate form must be submitted. See court website for policy and forms.

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LINE #	CASE #	CASE TITLE	RULING
<a href="#">LINE 1</a>	19CV343789 Motion: Judgment on Pleadings	Richard Pierce et al vs RAINCROSS FUEL & OIL, INC. et al	Notice appearing proper and good cause appearing, the unopposed motion by Defendant Marsha Fisterolera for Judgment on the Pleadings is GRANTED, as the failure to file a written opposition “creates an inference that the motion or demurrer is meritorious.” <i>Sexton v. Superior Court</i> (1997) 58 Cal.App.4th 1403, 1410. Defendant Fisterolera shall submit the final order.
<a href="#">LINE 2</a>	22CV398906 Motion: Leave to Amend	Marzieh Abdolyousefi et al vs Mojtaba Taiebat et al	See Tentative Ruling. Court will prepare the final order.
<a href="#">LINE 3</a>	22CV398906 Motion: Strike	Marzieh Abdolyousefi et al vs Mojtaba Taiebat et al	See Tentative Ruling. Court will prepare the final order.
<a href="#">LINE 4</a>	22CV398156 Motion: Summary Judgment/Adjudication	Central Coast Community Energy et al vs BigBeau Solar, LLC	Off calendar
<a href="#">LINE 5</a>	22CV398156 Motion: Compel	Central Coast Community Energy et al vs BigBeau Solar, LLC	Off calendar

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<a href="#">LINE 6</a>	22CV398156 Motion: Compel	Central Coast Community Energy et al vs BigBeau Solar, LLC	Off Calendar
<a href="#">LINE 7</a>	20CV373069 Motion: Compel	Paul Battaglia vs Nilufer Koechlin	Off Calendar
<a href="#">LINE 8</a>	20CV373069 Motion: Compel	Paul Battaglia vs Nilufer Koechlin	Off Calendar
<a href="#">LINE 9</a>	20CV373069 Motion: Compel	Paul Battaglia vs Nilufer Koechlin	Off Calendar
<a href="#">LINE 10</a>	20CV373069 Motion: Compel	Paul Battaglia vs Nilufer Koechlin	Koechlin's Second MTC re: Request for Production, Set 1 – filed July 1, 2022. If not already provided, Mr. Battaglia will produce Bates-stamped Venmo transaction histories for the time periods of March 2017 through July 2020 within 10 days of the hearing. Defendant shall submit the final order.
<a href="#">LINE 11</a>	20CV373069 Motion for Issuances of Letters	Paul Battaglia vs Nilufer Koechlin	The unopposed motion for letter rogatory is GRANTED, as the failure to file a written opposition “creates an inference that the motion or demurrer is meritorious.” <i>Sexton v. Superior Court</i> (1997) 58 Cal.App.4th 1403, 1410. Defendant shall submit the final order.

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<a href="#">LINE 12</a>	23CV423504 Hearing: Petition Compel Arbitration	Sal Alamayri vs Praveen Ande et al	Defendant Tech Mahindra brings a motion to compel arbitration. Plaintiff opposes the motion, claiming he never signed the arbitration agreement and that it is a forgery. Plaintiff filed a declaration in support of this claim. Defendant has objected to the information in the declaration, as the declaration is unsigned. The objection is SUSTAINED. Without the declaration, Plaintiff has stated no basis to oppose the motion. Because Defendant has provided sufficient evidence that it and Plaintiff entered into an agreement to arbitrate disputes such as those raised in Plaintiff's complaint, the motion is GRANTED and the complaint against Defendant Tech Mahindra is DISMISSED with prejudice. Defendant shall submit the final order.
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<a href="#">LINE 13</a>	24CV429195 Hearing: Petition Compel Arbitration	Meng-Hsiung Kiang vs Alain Harrus et al	Defendants bring a motion to compel arbitration, citing primarily the Limited Liability Company Agreement of ISV GP I, LLC (GP agreement), as well as other agreements (Exs. A and B to Ethier Decl). Plaintiff asserts that her claims are based on her termination from the ISV Management Company (Management Company), that there are no written agreements spelling out the governance or creation of the Management Company, and as such she never agreed to arbitrate disputes regarding the governance of the Management Company. The Court agrees. The documents relied upon by Defendants are not about the Management Company and its governance, but rather about its relationship to other entities or about other entities. While the Plaintiff and Defendants were the managing members of the General Partners, that is not the issue, as the General Partner and Management Company are separate entities. Plaintiff's claims are not based on the agreements cited by Defendants, and do not rely on any language in those agreements. The motion is DENIED. Plaintiff shall submit the final order.
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<a href="#">LINE 14</a>	22CV404333 Motion to Amend Judgment Nunc Pro Tunc	Westlake Services, LLC vs Gloria Ramos et al	The unopposed motion is GRANTED. Plaintiff shall submit the final order and amended judgment.
<a href="#">LINE 15</a>			
<a href="#">LINE 16</a>			
<a href="#">LINE 17</a>			

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### **Calendar Lines 2 and 3**

**Case Name:** *Taiebat v. Abdolyousefi*

**Case No.:** 22CV398906, consolidated with 22CV399354

According to the allegations of the second amended complaint (“SAC”), plaintiff Mojtaba Taiebat (“Taiebat”) and defendant Marzieh Abdolyousefi (“Abdolyousefi”) moved in together in 2013 and had a child together in 2017. (See SAC, ¶ 7.) Together, they acquired several properties including 1175 Montmorency Drive in San Jose, 12033 15<sup>th</sup> Ave. N.E., Apt. 303 in Seattle, Washington, 19857 25<sup>th</sup> Ave. N.E. Apt. 304 in Shoreline, Washington, 14018 Juanita Dr. N.E. Apt. C6 in Kirkland, Washington and 2100 N. 106<sup>th</sup> St. Unit 204 in Seattle, Washington. (See SAC, ¶¶ 8-12.) The parties agreed that Taiebat would put down the down payment for the properties and manage them and would get that money back upon sale. (See SAC, ¶ 13.) Some of these properties were sold; however, Taiebat was never paid back his down payments. (See SAC, ¶ 14.) The parties agreed to separate in September 2021; however, Taiebat contends that Abdolyousefi tricked Plaintiff into leaving the joint home by promising that the joint home at 1175 Montmorency Drive would be sold. (See SAC, ¶ 15.) Abdolyousefi reneged on the agreement and stopped responding to the realtor that the parties agreed to use to sell the property. (*Id.*)

On May 17, 2023, the Court granted Abdolyousefi’s motion for judgment on the pleadings as to Taiebat’s complaint as to the first cause of action, count 2 of the second cause of action, third through sixth and eighth causes of action, with 30 days leave to amend. On June 15, 2023, Taiebat filed the first amended complaint against Abdolyousefi, asserting causes of action for:

- 1) Fraud;
- 2) Breach of contract;
- 3) Declaratory relief—rescission;
- 4) Declaratory relief—contract terms;
- 5) Partition and sale of real property;
- 6) Unjust enrichment and restitution;
- 7) Battery;
- 8) Assault;
- 9) Defamation; and,
- 10) Computer tampering.

On October 26, 2023, the Court sustained Abdolyousefi’s demurrer to the first, third, fourth, and ninth causes of action without leave to amend, and sustained the demurrer to the first count of the second cause of action with leave to amend. The Court also granted without leave to amend Abdolyousefi’s motion to strike paragraphs 9-12 of the first amended complaint, alleging that the parties owned properties at 12033 15<sup>th</sup> Ave. N.E., Apt. 303 in Seattle, Washington, 19857 25<sup>th</sup> Ave. N.E. Apt. 304 in Shoreline, Washington, 14018 Juanita Dr. N.E. Apt. C6 in Kirkland, Washington and 2100 N. 106<sup>th</sup> St. Unit 204 in Seattle, Washington. The Court also granted with leave to amend the motion to strike as to the claim for punitive damages as relating to the tenth cause of action for computer tampering.

On November 6, 2023, Taiebat filed the SAC against Abdolyousefi, asserting causes of action for:

- 1) Breach of contract;
- 2) Partition and sale of real property;
- 3) Unjust enrichment and restitution;
- 4) Battery;
- 5) Assault; and,
- 6) Computer tampering.

Despite the Court's prior order striking the paragraphs without leave to amend, the SAC again alleges that the parties owned properties at 12033 15<sup>th</sup> Ave. N.E., Apt. 303 in Seattle, Washington, 19857 25<sup>th</sup> Ave. N.E. Apt. 304 in Shoreline, Washington, 14018 Juanita Dr. N.E. Apt. C6 in Kirkland, Washington and 2100 N. 106<sup>th</sup> St. Unit 204 in Seattle, Washington. (See SAC, ¶¶ 9-12.) The SAC also seeks punitive damages in connection with the sixth cause of action for computer tampering despite the fact that the sixth cause of action for computer tampering has identical allegations to the first amended complaint's tenth cause of action for computer tampering.

Abdolyousefi moves to strike paragraphs 9-12 from the SAC and the allegation of punitive damages in connection with the sixth cause of action in the prayer of the SAC. Taiebat also moves for leave to amend the SAC and/or set aside the Court's October 26, 2023 order regarding the demurrer to the first amended complaint.

#### **I. TAIEBAT'S MOTION FOR LEAVE TO AMEND THE SAC, AND/OR TO SET ASIDE THE COURT'S OCTOBER 26, 2023 ORDER**

On March 7, 2024, Taiebat filed a notice of motion for leave to amend the SAC and/or to set aside the Court's order issued on October 26, 2023. On March 25, 2024, Taiebat filed a memorandum of points and authorities in support of the motion. The notice of motion stated that it was made pursuant to Code of Civil Procedure section 473, subdivisions (a) and (b), and that the grounds for the motion are: the proposed Third Amended Complaint is based on essentially the same set of operative facts alleged in the previous pleadings and only introduces new theories of liability; Taiebat's previous attorney did not properly draft Taiebat's pleadings; and, the demurrer was sustained due to Taiebat's previous attorney's mistakes and/or inadvertent oversights.

#### **Motion to set aside the October 26, 2023 order**

As to the motion to set aside, Taiebat relies on subdivision (b) of Code of Civil Procedure section 473. (See Taiebat's memorandum of points and authorities in support of motion to set aside, p.7:14-15.) Taiebat does not include his former attorney's affidavit attesting to his mistake, inadvertence, surprise, or neglect; thus, the instant motion to set aside the October 26, 2023 order is made under the discretionary relief provision. Here, Taiebat argues that "the Court should set aside the order to the extent it relates to those claims [for fraud and defamation] because Mojtaba was in such a position where he was 'essentially unrepresented at a critical juncture in the litigation.'" (Taiebat's memorandum of points and authorities in support of motion to set aside, p.8:13-16.) Taiebat asserts that his "previous attorney amended the original complaint without even informing Mojtaba... the attorney acted without authority when he filed the FAC... the FAC is invalid and any subsequent orders made on the basis of the FAC are void." (*Id.* at p.8:16-22.)



Here, had Taiebat's attorney failed to file the first amended complaint within 30 days of the May 17, 2023 order, Taiebat would no longer be able to assert the first cause of action for fraud, count 2 of the second cause of action for breach of contract regarding the Settlement Agreement, the third through fifth causes of action, the sixth cause of action for partition and sale of real property and the eighth cause of action for assault and battery. Both the SAC and the proposed Third Amended Complaint include causes of action for breach of contract, partition, unjust enrichment, assault and battery. If Taiebat's former attorney did not file the June 15, 2023 first amended complaint, the lone remaining cause of action of the SAC would be Taiebat's cause of action for computer tampering. Taiebat's assertion that his former attorney was negligent or acting without authority on filing the FAC is without merit.

Taiebat also presents his declaration to demonstrate that he "learned that I had not been adequately informed about the case developments, that the complaint had been challenged by the MJP and the demurrer, and that the defects could have been easily cured had the attorney simply consulted with me." (Taiebat decl. in support of motion to set aside October 26, 2023 order ("Taiebat decl."), ¶ 3.) Abdolyousefi objects to the statement. Here, to the extent that Taiebat is stating that his former attorney told him that the defects could have been easily cured if the former attorney simply consulted with Taiebat, the statement is hearsay. To the extent that Taiebat is instead stating that he believed that the defects could have been cured if his former attorney simply consulted with Taiebat, this is Taiebat's lay opinion and does not demonstrate excusable neglect. Taiebat also states that after the October 26, 2023 order, his former attorney acknowledged his lack of communication with Taiebat and explained that he would seek leave to amend after filing the SAC, which he did on November 6, 2023. (See Taiebat decl., ¶ 3.) Due to that lack of communication, Taiebat states that he "could no longer trust the attorney, including with the task of drafting the motion for leave to amend and/or set aside the October 26, 2023 order... [and] started looking for a new attorney and eventually found Michael Tsivyan." (Taiebat decl., ¶ 4.) However, Mr. Tsivyan told Taiebat "that he was exceedingly busy with numerous other cases... [and i]t took him several weeks to find time for this case and get up to speed." (*Id.*) Thus, Taiebat states that his former attorney told Taiebat on October 26, 2023, that he needed to file a motion to set aside the October 26, 2023 order. However, rather than ensuring that the motion was filed immediately, Taiebat instead decided to look for an attorney. This neither demonstrates excusable neglect on behalf of the former attorney, nor demonstrates that the former attorney abandoned Taiebat, nor that the former attorney left Taiebat unrepresented. (See *Cochran v. Linn* (1984) 159 Cal.App.3d 245, 252 (stating that "[m]ere neglect or negligence is not a sufficient ground for relief under section 473... [o]n the contrary, the neglect or mistake on the part of counsel must be *excusable*") (emphasis original); see also *Garcia v. Hejmadi* (1997) 58 Cal.App.4<sup>th</sup> 674, 682-685 (stating that "[t]he Legislature did not intend to eliminate attorney malpractice claims by providing an opportunity to correct all the professional mistakes an attorney might make in the course of litigating a case... any neglect of the attorney is imputed to the client, who has the burden on the motion of showing this neglect was excusable... [c]onduct falling below the professional standard of care, such as failure to timely object or to properly advance an argument, is not therefore excusable... [t]o hold otherwise would be to eliminate the express statutory requirement of excusability and effectively eviscerate the concept of attorney malpractice... relief under section 473 was not warranted where the attorney did not abandon the client, but rather simply represented the client ineffectively... failure to timely make an argument cannot, therefore, be considered a mistake permitted to an untrained 'reasonably prudent person' within the meaning of section 473").)

Taiebat's motion to set aside the October 26, 2023 order is DENIED.

### **Motion for leave to file the Third Amended Complaint**

Taiebat moves for leave to file a proposed Third Amended Complaint that asserts causes of action for:

- 1) False promise;
- 2) Promissory estoppel;
- 3) Unjust enrichment;
- 4) Breach of contract;
- 5) Breach of the implied covenant of good faith and fair dealing;
- 6) Partition;
- 7) Computer tampering;
- 8) Concealment;
- 9) Breach of fiduciary duty;
- 10) Negligence;
- 11) Battery;
- 12) Assault; and,
- 13) Defamation.

Taiebat contends that the motion for leave should be granted otherwise he “would be deprived of his right to assert meritorious claims.” (Taiebat’s memorandum of points and authorities in support of motion for leave to amend, p.8:6-12.) In reply, Taiebat acknowledges that “[t]he proposed TAC contains causes of action that have been previously dismissed as well as new causes of action.” (Taiebat’s reply brief in support of motion for leave to amend, p.5:8-9.) Taiebat’s argument regarding the motion for leave to file the proposed Third Amended Complaint is dependent on his success of the motion to set aside the October 26, 2023 order. (See Taiebat’s reply brief in support of motion for leave to amend, p.5:9-13 (stating that “[i]t appears that the parties that in the event the Court grants Plaintiff’s request to set aside the Order, the Court should also grant Plaintiff’s request to file the proposed TAC to the extent it re-alleges the causes of action that have been dismissed... the request to set aside should be granted... [t]hus, the only remaining issue is whether the Court should grant leave to file the TAC to the extent it contains new causes of action”).) However, in light of the Court’s above ruling regarding the motion to set aside, Taiebat’s arguments lack merit.

Taiebat’s motion for leave to file the proposed Third Amended Complaint is DENIED.

## **II. ABDOLYOUSEFI’S MOTION TO STRIKE PORTIONS OF THE SAC**

### **Abdolyousefi’s request for judicial notice in support of motion to strike**

Abdolyousefi requests judicial notice of Taiebat’s June 15, 2023 first amended complaint, the October 26, 2023 order regarding Abdolyousefi’s demurrer and motion to strike portions of Taiebat’s first amended complaint, and the SAC. The request for judicial notice is GRANTED. (Evid. Code § 452, subd. (d).)

### **Paragraphs 9-12**

As previously stated, on October 26, 2023, the Court sustained Abdolyousefi's motion to strike paragraphs 9-12 of the first amended complaint, alleging that the parties owned properties at 12033 15<sup>th</sup> Ave. N.E., Apt. 303 in Seattle, Washington, 19857 25<sup>th</sup> Ave. N.E. Apt. 304 in Shoreline, Washington, 14018 Juanita Dr. N.E. Apt. C6 in Kirkland, Washington and 2100 N. 106<sup>th</sup> St. Unit 204 in Seattle, Washington. Taiebat did not move to reconsider the October 26, 2023 order and his motion for leave to amend makes no suggestion that he intended to move to reconsider the October 26, 2023 order. Despite the Court's prior order striking the paragraphs without leave to amend, the SAC again alleges that the parties owned properties at 12033 15<sup>th</sup> Ave. N.E., Apt. 303 in Seattle, Washington, 19857 25<sup>th</sup> Ave. N.E. Apt. 304 in Shoreline, Washington, 14018 Juanita Dr. N.E. Apt. C6 in Kirkland, Washington and 2100 N. 106<sup>th</sup> St. Unit 204 in Seattle, Washington. (See SAC, ¶¶ 9-12.) The insertion of the identical paragraphs that had previously been ordered stricken without leave to amend is a "part of any pleading not drawn or filed in conformity with... an order of the court." (Code Civ. Proc. § 436, subd. (b).)

Abdolyousefi's motion to strike paragraphs 9-12 from the SAC is GRANTED without leave to amend.

### **Punitive damages as to the sixth cause of action for computer tampering**

Abdolyousefi moves to strike the portion of paragraph 3 of the prayer seeking punitive damages on the sixth cause of action for computer tampering. As Abdolyousefi argues, the Court previously granted her motion to strike the identical claim for punitive damages in support of the first amended complaint's tenth cause of action for computer tampering with leave to amend. The allegations of the SAC are identical to the first amended complaint's tenth cause of action for computer tampering, alleging that "Defendant deleted Plaintiff's personal and family photos from his external hard drive without permission... [t]his was a violation of the Computer Tampering law, Penal Code sec. 502... [a]s a result of the foregoing wrongful conduct, Plaintiff suffered damages and prays for relief as set forth below." (SAC, ¶¶ 47-48; see also first amended complaint, ¶¶ 62-63.) As stated before, these allegations are insufficient to warrant the imposition of punitive damages. (See Civ. Code § 3294, subds. (a), (c)(1)-(3), (d) (stating that punitive damages may be recovered if it is either "based upon a death which resulted from a homicide for which the defendant has been convicted of a felony... [or if] it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice" as defined in subdivision (c)).)

Abdolyousefi's motion to strike the portion of paragraph 3 of the prayer seeking punitive damages on the sixth cause of action for computer tampering is GRANTED with 10 days leave to amend. Accordingly, the words "and sixth" is hereby stricken from paragraph 3 of the prayer of the SAC, page 8, line 12.

The Court will prepare the Order.

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