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: August 6, 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 go to https://reservations.scscourt.org or 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	2014-1-CV-271941	Carol Tran v. Mobile Tummy, Inc. et al.	Order of examination: parties to appear.
LINE 2	22CV399887	Dragica Kosta v. The Apricot Pit, LP et al.	Click on LINE 2 or scroll down for ruling in lines 2-7.
LINE 3	22CV399887	Dragica Kosta v. The Apricot Pit, LP et al.	Click on LINE 2 or scroll down for ruling in lines 2-7.
LINE 4	22CV399887	Dragica Kosta v. The Apricot Pit, LP et al.	Click on LINE 2 or scroll down for ruling in lines 2-7.
LINE 5	22CV399887	Dragica Kosta v. The Apricot Pit, LP et al.	Click on LINE 2 or scroll down for ruling in lines 2-7.
LINE 6	22CV399887	Dragica Kosta v. The Apricot Pit, LP et al.	Click on LINE 2 or scroll down for ruling in lines 2-7.
LINE 7	22CV399887	Dragica Kosta v. The Apricot Pit, LP et al.	Click on LINE 2 or scroll down for ruling in lines 2-7.
LINE 8	23CV418284	Wells Fargo Bank, N.A. v. Lydia T. Nguyen	Click on LINE 8 or scroll down for ruling.
LINE 9	23CV416524	Vijay Ramadoss v. American Honda Motor Co., Inc.	Click on LINE 9 or scroll down for ruling.
LINE 10	23CV420674	Vilma Aracely Jandres Umana v. Stephen Ballard et al.	Motion to compel responses to requests for production: notice is proper, and the court has received no opposition from the plaintiff. Good cause appearing, the court GRANTS the motion. In addition, the court GRANTS IN PART the request for monetary sanctions, in the amount of $760 (two hours at $350/hour plus the $60 filing fee). Moving party shall prepare the proposed order.

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LINE #	CASE #	CASE TITLE	RULING
LINE 11	23CV420674	Vilma Aracely Jandres Umana v. Stephen Ballard et al.	Motion for RFAs to be deemed admitted: notice is proper, and the court has received no opposition from the plaintiff. Good cause appearing, the court GRANTS the motion. In addition, the court GRANTS IN PART the request for monetary sanctions, in the amount of $410 (one hour at $350/hour plus the $60 filing fee). Moving party shall prepare the proposed order.
LINE 12	22CV397491	Barjinderpal Gill v. Amy Lui et al.	Click on LINE 12 or scroll down for ruling.
LINE 13	22CV404672	Matthew Richardson Crawford v. FCA US LLC	Click on LINE 13 or scroll down for ruling.

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Calendar Lines 2-7
Case Name: *Dragica Kosta v. The Apricot Pit, LP et al.*
Case No.: 22CV399887

Plaintiff Dragica Kosta initiated this matter against defendants The Apricot Pit, LP, Vidovich Apricot Pit II, LP, Neary-Vidovich, LP, John Vidovich, LLC, the John T. Vidovich Family Limited Partnership, and John T. Vidovich (collectively, "Defendants"), based on Defendants' alleged non-payment of wages. Defendants demur to each cause of action for failure to state sufficient facts. Defendants also demur to the entire complaint on the ground that it is uncertain.

I. BACKGROUND

A. Factual Allegations

According to the allegations of the complaint, Kosta began working for Defendants in 2006, originally as the personal caretaker to Marilyn Vidovich. (Complaint, ¶ 13.) Defendants advertised the position as a paid one with housing benefits. (*Id.* at ¶ 14.) After Kosta began working, Defendants provided housing but not any monetary pay. (*Id.* at ¶ 15.) Kosta inquired about her pay, but Defendants did not pay her even while they repeatedly assured her that they would. (*Id.* at ¶¶ 16-17.) Kosta worked for six years without pay until 2012, when Defendants began paying her a minimum salary. (*Id.* at ¶ 19.) Defendants never provided any backpay, but they led Kosta to believe that they would. (*Id.* at ¶ 20.) At the time Defendants began paying Kosta, her role had converted primarily to that of a housekeeper carrying out janitorial duties at Defendants' winery, Vidovich Vineyards. (*Id.* at ¶ 21.) Kosta received a $26,000 annual salary and regularly maintained a 40-hour week, sometimes working more than that for special events. (*Id.* at ¶¶ 22-24.) Kosta's wages fell below the City of Cupertino's minimum wage ordinances beginning in 2017, and Defendants never paid Kosta the appropriate minimum wage for her time after that. (*Id.* at ¶ 25.) Kosta's employment ended on April 15, 2022, and Defendants have not paid her any uncompensated wages since then. (*Id.* at ¶¶ 27-28.)

B. Procedural History

Kosta filed her complaint on June 10, 2022, alleging causes of action for: (1) failure to pay minimum wages; (2) failure to pay earned wages upon separation; (3) failure to furnish accurate wage statements; (4) unlawful and unfair business practices; and (5) human trafficking. She did not serve the summons and complaint for over a year, serving it on June 30, 2023.

On April 22, 2024, five defendants filed separate but substantively identical demurrers. On April 29, 2024, a sixth defendant (John T. Vidovich) filed another substantively identical demurrer. Kosta filed a single opposition on July 24, 2024. Defendants filed a single reply on July 29, 2024.

II. DEMURRER

A. Legal Standards

As relevant to the instant case, "[t]he party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in Section 430.30, to the pleading on any one or more of the following grounds: . . . [t]he pleading does not state facts sufficient to constitute a cause of action[;] . . . [t]he pleading is uncertain" (Code Civ. Proc., § 430.10, subds. (e), (f).) A demurrer may be brought 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, in ruling on a demurrer, treats it "as admitting all properly pleaded material facts, 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. [Citation.] It 'admits the truth of all material factual allegations in the complaint . . . ; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court.' [Citation.]" (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214, superseded by statute on other grounds as stated in *Californians for Disability Rights v. Mervyn's, LLC* (2006) 39 Cal.4th 223, 227.)

B. Discussion

1. Uncertainty

Defendants demur to the complaint on the ground of uncertainty but fail to address this point specifically in their memoranda of points and authorities. (E.g., The Apricot Pit, LP's Notice of Demurrer and Demurrer to Plaintiff's Complaint ("MPA"), p. 2.) Rather, the MPA makes passing references to a lack of specificity – for example: "Defendants, again without naming names or giving specifics . . . ." (MPA, p. 9:19-21.) A demurrer to a pleading lies where the pleading is uncertain. (Code Civ. Proc., § 430.10, subd. (f).) "Uncertain" includes ambiguous and unintelligible. As a general matter, courts disfavor demurrers for uncertainty, and a court will typically sustain them only when the pleading is so incomprehensible that the opposing party cannot reasonably respond. (*Lickiss v. Financial Industry Regulatory Authority* (2012) 208 Cal.App.4th 1125, 1135.) "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." (*Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616.)

The court finds that the allegations of the complaint are not so incomprehensible that Defendants are unable to respond. Indeed, it is readily apparent from Defendants' substantive arguments that they understand what each of the causes of action has attempted to allege. The court OVERRULES the demurrers to all five causes of action on the ground that they are uncertain.

2. First Cause of Action: Minimum Wage Violation

a) Statute of Limitations

Defendants argue under Civil Code section 338 that a three-year statute of limitations bars Kosta's first cause of action as to any wage and hour claims prior to June 10, 2019. (MPA, p. 7:4-8.) A statute of limitations defense may be asserted on demurrer, when the grounds for the defense are disclosed on the face of the complaint or from matters judicially noticed. (See *Vaca v. Wachovia Mortgage Corp.* (2011) 198 Cal.App.4th 737, 746; *Iverson, Yoakum, Papiano & Hatch v. Berwald* (1999) 76 Cal.App.4th 990, 995.) Here, it does appear that a three-year statute of limitations period applies to Kosta's first cause of action. (See *Cortez v. Purolator Air Filtration Products Co.* (2000) 23 Cal. 4th 163, 168 ["the three-year period of limitations of Code of Civil Procedure section 338, subdivision (a), that would otherwise apply in an action to recover unpaid overtime brought pursuant to Labor Code section 1194."].) Even Kosta does not appear to dispute the application of section 338 in her opposition.

Nevertheless, Kosta points out that some of the wage violation allegations are based on conduct that occurred after 2019 and through 2022, when she stopped working for Defendant(s). Because a demurrer cannot lie to only a portion of a cause of action, the court OVERRULES the demurrer based on the statute of limitations. (See *PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682.)

b) Labor Code Sections 1451 and 1454

Defendants argue that Labor Code sections 1451 and 1454 apply to Kosta as a domestic worker, rather than the "standard boiler-plate claims made by Plaintiff in her complaint," and therefore Kosta "cannot legally state a claim for violation of minimum wage." (MPA, p. 7:9-25.) Specifically, Kosta "qualifies as a domestic work employee," or an "individual who performs domestic work and includes live-in domestic work employees and personal attendants." (*Id*. at p. 7:15-17 [citing Labor Code section 1451, subdivision (b)(1)].) According to Defendants, "the rules for personal attendants differ from that of other workers" in that "instead of an 8-hour-a-day, forty-hour regular work week . . . a personal attendant has a 9-hour-a-day, forty-five hour regular work week." (*Id*. at p. 7:21-25 [citing Labor Code, section 1454].)

Defendants do not elaborate on these points any further, and it is unclear to the court how Defendants' argument about Kosta's classification as a "domestic worker" impacts her allegations that Defendants failed to pay her minimum wage. While Kosta may qualify as a domestic worker under Labor Code section 1451 and may have had a nine-hour-a-day regular work week rather than an eight-hour-a-day work week, Defendants fail to explain how this means that she has failed to set forth sufficient facts regarding a minimum wage claim. Accordingly, this argument is rejected.

c) Failure to Plead Sufficient Facts

Defendants further demur to the first cause of action on the ground that Kosta fails to plead sufficient facts regarding a failure to pay minimum wages. (MPA, pp. 5:11-7:1.) Specifically, Defendants point out that she merely asserts that "Defendants" employed her without providing any specifics as to this alleged employment relationship.

(*Id.* at p. 5:14-15.) Kosta "fails to state specifically who advertised the position, who[m] she talked to about the position, who hired her, the month or date she was hired, who arranged her housing benefit, or any specifics about her work other than that she worked as the 'personal caretaker to Marilyn Vidovich,' who is not a named defendant." (*Id*. at p. 5:16-21.) Similarly, "Kosta fails to plead any facts regarding who employed her, who paid her, how she was paid, or who supervised or directed her work." (*Id*. at p. 6:15-18.) Ultimately, Kosta "provides no particularized factual allegations stating how all six Defendants . . . may properly be deemed Plaintiff's employers." (*Id.* at p. 6:1-3.)

Labor Code sections 1194 and 1197 necessarily require the existence of an employment relationship, and California law mandates that all statutory causes of action be pleaded with particularity, showing every fact essential to the existence of liability under the relevant statute(s). (See *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790, citing *Lopez v. Southern Cal. Rapid Trans. Dist.* (1985) 40 Cal.3d 780, 795).) "Where a party relies for recovery upon a purely statutory liability it is indispensable that he plead facts demonstrating his right to recover under the statute. The complaint must plead every fact which is essential to the cause of action under the statute." (*Green v. Grimes-Stassforth Stationery Co.* (1940) 39 Cal.App.2d 52, 56.)

The court agrees with Defendants that Kosta has not sufficiently pled the existence of an employment relationship. The complaint alleges that the six Defendants collectively employed her but offers no further details as to how this employment relationship was maintained. As Defendants note, the complaint does not specify which defendant hired her, which defendant actually entered into an employment agreement with her, or similar basic allegations. Kosta alleges alter ego liability, but these allegations merely state that the corporate entity defendants are all alter egos of defendant John T. Vidovich without specifically alleging the existence of an employment relationship with Vidovich (or with any other defendant). (Complaint, ¶¶ 29-31.) Instead, the complaint simply lumps all the Defendants together, alleging that Kosta "entered into the services of Defendants" and "Defendants employed Plaintiffs as an employee entitled to minimum wages." (*Id*. at ¶¶ 13, 36.)

Kosta argues in response that "the properties were owned and managed by Defendant John T. Vidovich personally, but other entities had facilities there, to which Plaintiff provided services." (Plaintiff's Opposition to Defendants' Demurrers to Plaintiff's Complaint ("Opposition"), p. 5:15-18.) But this is also insufficient, as it still does not specify an employment relationship with Vidovich; moreover, Kosta alleges this fact in her opposition brief *but not in the complaint*, and so the court cannot consider it. (*Garton v. Title Ins. & Trust Co.* (1980) 106 Cal.App.3d 365, 375 ["A demurrer tests the pleading alone and not the evidence or other extrinsic matters and for this reason will lie only where the defects appear on the face of the pleading. [Citation.]"].) Relatedly, Defendants contend in a footnote that "Defendants' counsel has represented that Vidovich and The Apricot Pit, LP were the employers." (Opposition, p. 5, fn. 1.) Once again, even if this is accurate, it is extrinsic to the pleadings and cannot be considered on a demurrer.

Kosta contends that "[e]mployment relationships may be alleged generally, and that this is 'sufficient against a demurrer.'" (*Id.* at p. 5:19-22, citing *Kiseskey v. Carpenters' Trust for Southern California* (1983) 144 Cal.App.3d 222, 230 (*Kiseskey*).)

Kosta's reliance on *Kiseskey* is misplaced. In that case, the Court did observe that "[t]he general allegation of agency is one of ultimate fact, sufficient against a demurrer." (*Kiseskey, supra*, 144 Cal.App.3d at p. 230.) But the focus of that case was on the existence of an agency relationship and whether two individuals acted as "agents and/or employees" of the defendant. By contrast, Kosta's first cause of action alleges a statutory violation under the Labor Code, which has a heightened particularity pleading standard, and Kosta has indiscriminately grouped multiple defendants together without explaining how she worked for Vidovich and the various entities.

Kosta also fails to plead with particularity the relevant time periods during which Defendants failed to pay her a minimum wage, as well as the amounts that she received during these time periods. Moreover, in refuting Defendants' statute of limitations argument, Kosta contends that "all of the wage claims in the case, other than the Fifth Cause of Action for Human Trafficking, are based on the work done after June 10, 2019." (Opposition, pp. 5:25-6:1.) Yet the complaint also alleges that Kosta did not receive pay for the work she performed from 2006 to 2012, that she worked below minimum wage for overtime work at various times, and that Defendants allegedly paid her below minimum wage from 2017 onwards. (Complaint, ¶¶ 19, 23-25.) Kosta's allegation that "at all times herein relevant, Defendants employed Plaintiff as an employee entitled to minimum wages" confuses this point further. (*Id*., ¶ 36.)

The court SUSTAINS Defendants' demurrers to the first cause of action with 20 days' leave to amend.

3. Second Cause of Action: Failure to Pay Earned Wages

Defendants demur to the second cause of action on the same basis as the first cause of action. (MPA, p. 8:3-5.) Kosta's only response is that the demurrer to the second cause of action should be overruled because the demurrer to the first cause of action "is not well taken" and because "Defendants have not articulated any other bases for striking the Second or Fourth of Action separate from their arguments on the First Cause of Action." (Opposition, p. 6:10-15.)

Labor Code section 201 states that if "an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code section 202 states that if "an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting." Labor Code section 203 states that if "an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced."

Kosta's allegations that Defendants failed to pay earned wages under these Labor Code provisions necessarily require the existence of an employment relationship. For the reasons already discussed above, Kosta has failed to plead this relationship, as well as

other material facts. The court also notes Kosta fails to plead whether she was discharged or quit her employment, stating merely that she "was ultimately separated from her employment with Defendants on April 15, 2022." (Complaint, ¶ 27.)

The court SUSTAINS Defendants' demurrers to the second cause of action with 20 days' leave to amend.

4. Third Cause of Action: Failure to Provide Wage Statements

Citing Labor Code section 226, subdivisions (d) and (e), Defendants demur to the third cause of action on the ground that subdivision (e) does "not apply to any employer of a person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling." (MPA, p. 8:8-12.) Because Kosta "was a housekeeper, demurrer should be sustained as to Plaintiff's third cause of action for wage statement violations." (*Id*. at p. 8:13-14.) Kosta responds that "there is no allegation anywhere in the Complaint that Plaintiff's duties were limited to a residential dwelling, and indeed, they were not." (Opposition, p. 6:24-26.) According to Kosta, the complaint "alleges that she worked for a winery business and names a number of winery business defendants." (*Id*. at p. 6:25-27, citing Complaint, ¶¶ 21-24.)

Defendants do not address this point in reply, instead reiterating that Plaintiff "has admitted that she was employed as a 'personal caretaker' to the family matriarch from 2006 to 2012 and later from 2012 to 2022 as a 'housekeeper.'" (*Id*., ¶¶ 23-24.) This is unpersuasive. The complaint's allegations are clear that Kosta's duties were not limited to those "incidental to the ownership, maintenance, or use" of a residential dwelling.

The court OVERRULES Defendants' demurrers to the third cause of action.

5. Fourth Cause of Action: Unfair Business Practices

The complaint asserts that Defendants engaged in fraudulent, unfair, and unlawful conduct under Business and Professions Code section 17200, commonly known as the Unfair Competition Law ("UCL"). (Complaint, ¶¶ 60-69.) Defendants demur on the ground that Kosta relies on the Labor Code causes of action to support her UCL cause of action, but because the complaint does not sufficiently allege facts to support the former, the court should sustain Defendants' demurrer to the latter. (MPA, p. 8:16-20.)

Kosta's allegations that Defendants should have known "that Plaintiff was entitled to minimum wages and purposely elected not to pay Plaintiff for her labor" form the basis of her UCL cause of action. (See, e.g., Complaint, ¶¶ 60-69.) As a result, Kosta's UCL allegations do not appear to rely on the third cause of action for a wage statement violation.[1] Instead, Kosta's UCL cause of action depends upon the first and second causes of action, as to which the court is sustaining the demurrer.

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[1] While the court has overruled Defendants' demurrer as to the third cause of action, the court notes that a wage statement cause of action under Labor Code section 226 cannot support a UCL cause of action. Relief under Labor Code section 226 is either a penalty or actual damages. (Lab. Code, § 226, subd. (e)(1).) But neither damages nor a penalty are recoverable under the UCL. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1389, 1144; *Pineda v. Bank of America* (2010) 50 Cal.4th 1389, 1401-1402.)

Accordingly, the court SUSTAINS Defendants' demurrers to the fourth cause of action with 20 days' leave to amend.

6. Fifth Cause of Action: Human Trafficking

Defendants demur to Kosta's fifth cause of action for human trafficking on the ground that Kosta fails to plead sufficient facts, as she has not pled that Defendants deprived her of her personal liberty with the intent to obtain forced services. (MPA, pp. 8:23-10:13.)

Civil Code section 52.5 creates a private right of action for victims of human trafficking as defined by Penal Code section 236.1. (See Civ. Code, § 52.5, subd. (a) ["A victim of human trafficking, as defined in Section 236.1 of the Penal Code, may bring a civil action for actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those, or any other appropriate relief."].) Penal Code section 236.1 provides that "[a] person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services, is guilty of human trafficking." (Pen. Code, § 236.1, subd. (a).) As "summarized in the official standard jury instructions for criminal cases, the elements of this offense are (1) the defendant either deprived another person of personal liberty or violated that other person's personal liberty; and (2) when the defendant did so, he or she intended to obtain forced labor or services from that person." (*People v. Halim* (2017) 14 Cal.App.5th 632, 643 (*Halim*).)

As the phrase is used in the definition of this crime, unlawful "'[d]eprivation or violation of the personal liberty of another' includes substantial and sustained restriction of another's liberty accomplished through force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person, under circumstances where the person receiving or apprehending the threat reasonably believes that it is likely that the person making the threat would carry it out." (Pen. Code, § 236.1, subd. (h)(3).)

The court finds that Kosta has not sufficiently pled a cause of action under these definitions. She contends that the period during which Defendants did not compensate her "was highly illegal and unethical." (Opposition, p. 7:13.) Citing *Halim*, she further contends that Defendants violated Penal Code section 236.1, subdivision (1), because she "was consistently led to believe that she would be compensated for her work at a later date," demonstrating "that Ms. Kosta was coerced to providing free labor through fraud or deceit." (Opposition, p. 7:15-20.)

These allegations are insufficient, and Kosta's reliance upon *Halim* is misplaced, as *Halim* is materially distinguishable. The defendants in *Halim* recruited a foreign national to travel to the United States, helped her procure a visa, instructed her to misrepresent to federal authorities her relationship with defendants upon her entry into the country, misrepresented the terms of an employment contract to her, withheld her passport after she had surrendered it to defendants' nephew upon entry into the United States, and told her that she could not return to Indonesia because she and the defendants still had a valid employment contract. (*Halim, supra*, 14 Cal.App.5th at p. 638.) Here, the mere allegation that Defendants did not abide by the terms of an alleged employment agreement is not enough on its own to allege a "substantial and sustained restriction" of

Kosta's liberty. (See *People v. Guyton* (2018) 20 Cal. App. 5th 499, 507 ["we further hold that when a pimp keeps a woman's baby away from her unless she makes enough money to satisfy the pimp, that is a substantial and sustained restriction of the woman's liberty accomplished through force, fear, fraud, deceit, duress or menace."].) There is no allegation that Defendants recruited Kosta to come to the United States, withheld her passport, instructed her to lie to government authorities, or told her she could not leave their employment.

The complaint alleges that Defendants repeatedly waylaid Kosta's attempts to receive payment for her services over a six-year period, primarily by attempting to delay conversations between the parties about when Defendant would pay Kosta and informing her that pay was forthcoming. (Complaint, ¶ 16.) Such behavior does not constitute a substantial restriction of Kosta's liberty – had she been unsatisfied with not receiving pay, the complaint provides no reason why she could not have left Defendants' employment and still attempted to receive back pay for her services. Nor does Kosta cite any pertinent legal authority suggesting that a mere a refusal to pay constitutes a substantial and sustained restriction of one's liberty.

Defendants also argue that the statute of limitations bars the cause of action. (MPA, p. 10:9-11.) Civil Code section 52.5, subdivision (c), states that "[a]n action brought pursuant to [section 52.5] shall be commenced within seven years of the date on which the trafficking victim was freed from the trafficking situation or, if the victim was a minor when the act of human trafficking against the victim occurred, within 10 years after the date the plaintiff attains the age of majority." Kosta contends that the statute of limitations does not bar the cause of action because Defendants repeatedly informed her they would pay her at a later date. (Opposition, p. 7:15-20.) In support, Kosta cites two cases discussing how equitable estoppel prevents a party from asserting a statute of limitations argument when the party's "act or promise . . . causes another in reliance thereon to do or forbear from doing a thing to his detriment, which he would have otherwise performed, the promisor is estopped from taking advantage of the act or omission of the promisee." (*Ibid*., citing *Rapp v. Rapp* (1933) 218 Cal. 505, 509; *Langdon v. Langdon* (1941) 47 Cal.App.2d 28, 31.)

These arguments put the cart before the horse, as it is not even clear to the court how a statute of limitations argument applies to the facts at hand, given the complaint's failure to allege that Kosta escaped a trafficking situation under Civil Code section 52.5.

The court SUSTAINS Defendants' demurrers to the fifth cause of action with 20 days' leave to amend, based on a failure to allege sufficient facts. Although the court has difficulty envisioning how Kosta can amend the complaint to assert a viable cause of action for human trafficking based on the current allegations in the complaint, the court recognizes that this is the initial pleading in this matter.

III. CONCLUSION

The court SUSTAINS Defendants' demurrers to the first, second, fourth, and fifth causes of action with 20 days' leave to amend. The court OVERRULES Defendants' demurrers to the third cause of action.

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Calendar Line 8
Case Name: *Wells Fargo Bank, N.A. v. Lydia T. Nguyen*
Case No.: 23CV418284

I. BACKGROUND

This is a limited civil collection action brought by plaintiff Wells Fargo Bank, N.A. ("Wells Fargo") against defendant Lydia Nguyen ("Nguyen"). Wells Fargo seeks to recover unpaid credit card debt from Nguyen, who is self-represented.

The original and still-operative complaint is a form complaint filed by Wells Fargo on June 27, 2023. It states six causes of action, although some causes of action are not given their own attachment:[2] (1) breach of contract (a written credit card agreement); (2) breach of implied in fact contract; (3) common count—money lent; (4) common count—money paid upon request; (5) common count—open book account; and (6) common count—account stated.

Attached to the complaint as Exhibit A is a copy of the Visa credit card agreement upon which the first cause of action is based. (See Complaint, ¶ BC-1.) While the credit card agreement is not signed by either party, paragraph 1 states, in part: "This Agreement is a contract between Wells Fargo Bank, N.A. and each Account holder. You and any joint Account holder accept the terms of this Agreement by using or confirming your account." Paragraph 7 states: "When you use your Account or let someone else use it, you promise to pay the total amount of the Purchases, Cash Advances, and Balance Transfers, plus all interest, fees and other amounts that you may owe us."

Nguyen filed an answer to the complaint on August 15, 2023. Currently before the court is Wells Fargo's motion for summary judgment, filed on April 26, 2024. Nguyen's filed a partial opposition (a responding separate statement) on May 23, 2024.

II. WELLS FARGO'S 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 (*Laabs*); *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.) 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

[2] As Wells Fargo should be aware, each attachment form states: "Use a separate cause of action form for each cause of action."

action is not shown to be barred in its entirety, no order for summary judgment—or adjudication—can be entered."].)

The moving party's declarations and evidence will be strictly construed in determining whether they negate or disprove an essential element of an opponent's claim or defense. 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; see also *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1037 [evidence must be liberally construed in support of the opposing party, resolving any doubts in favor of that party].)

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.) Accordingly, the court has not considered the "Exhibit 1" attached to Wells Fargo's lengthy reply brief or any arguments in the reply based on that new evidence.

Where a plaintiff has moved for summary judgment, it 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 it 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 as to one or more material facts exists for that cause of action or a defense thereto. (See Code Civ. Proc., § 437c, subd. (p)(1); *Professional Collection Consultants v. Lauron* (2017) 8 Cal.App.5th 958, 965.)

B. The Basis for Wells Fargo's Motion

Wells Fargo moves for summary judgment on the basis that "there is no triable issue of material fact, or issue of liability, and therefore the moving party is entitled to summary judgment." (April 26, 2024 Notice of Motion, p. 2:1-3.) There is no request for summary adjudication in the alternative.

In its supporting memorandum, Wells Fargo argues that Nguyen applied for and was sent a credit card along with a copy of the credit card agreement attached to the complaint. The terms of the agreement state that use of the credit card constitutes acceptance of the agreement. Wells Fargo further contends: "In accordance with the Customer Agreement, Defendant used the account, and made payments, charges, and incurred a balance thereon. [¶] Plaintiff sent Defendant monthly statements of the Subject Accountant each and every billing period . . . . [¶] [T]here is no record of any unresolved disputes on the account . . . . [¶] Defendant's last payment on the Subject Account was on July 16, 2022. Thereafter, no further payments were made by the Defendant, and therefore, pursuant to the terms of the Customer Agreement, Defendant was in default. The balance due on Defendant's Subject Account is $18,116.18." (Memorandum, p. 6:10-24, [internal citations omitted].)

Wells Fargo goes on to argue that the evidence it has submitted in support of the motion supports the elements of all six of its causes of action. (Memorandum at pp. 5:19-10:4.)

The motion is accompanied by a separate statement of undisputed material facts, as required by Code of Civil Procedure section 437c, subdivision (b)(1), and by California Rule of Court 3.1350(c).

The motion is supported by a declaration from Susana Bello Salvo ("Salvo"), a Loan Workout Specialist employed by Wells Fargo. She states that as part of her duties, she is responsible for monitoring credit card accounts, investigating and resolving customer disputes, and reviewing Wells Fargo business records for purposes of litigation. She further states that, as part of her duties, she has reviewed Nguyen's records with Wells Fargo. These records show that Nguyen:

> applied for, and was issued, a Wells Fargo credit card account.
>
> Thereafter, Plaintiff sent Defendant a Wells Fargo Credit Card through the mail.
>
> The most recent Customer Agreement associated with the Credit Card was made available to Defendant for review and objection . . . .
>
> Pursuant to Paragraph 1 of the Customer Agreement, Defendant accepted the terms of the Customer [A]greement by using the credit card.
>
> Defendant's account was opened with Plaintiff on or about February 24, 2005.
>
> Pursuant to the terms of the Customer Agreement, in exchange for making charges on the credit card, or allowing others to make charges on the credit card, Defendant agreed to repay the principal amount plus any applicable interest and finance charges thereon.
>
> Defendant charged goods and services to the account, or authorized others to charge goods and services to the account, with Plaintiff and thereby incurred a balance for said charges which was stated on the monthly billing statements . . . .
>
> Every month Wells Fargo Bank, N.A.'s computer system generates a monthly billing statement that is sent to the customer. As transactions are reported, such as charges, overdraft transfers, cash advances and payments, they are recorded in Wells Fargo Bank, N.A.'s computer system which stores them, compiles the data, and keeps track of the balance on a daily basis. This data is then used to generate the statement which is sent to the customer.

(Salvo Decl. at ¶¶ 9-16.)

Salvo also states that there "is no record of any unresolved disputes on this credit card account or any active lawsuits against Wells Fargo Bank, N.A. for unresolved disputes on this credit card account of which Plaintiff is aware. [¶] The Defendant made payments of the principal and interest on the subject account up [to] and through July 16, 2022. [¶] No further payments were made on this account after July 16, 2022, and a

balance of $18,116.18 remains due and owing from Defendant to Plaintiff on the subject account." (Salvo Decl. at ¶¶ 20-22.)

There are two exhibits to the Salvo declaration. Exhibit 1 is a copy of Wells Fargo's most recent customer agreement. Exhibit 2 consists of copies of all available statements of account for Nguyen's credit card. (See Salvo Decl. at ¶¶ 11 & 15.)

C. Analysis of Wells Fargo's Motion

The court GRANTS Wells Fargo's motion for summary judgment, as follows.

The evidence submitted by Wells Fargo is sufficient to meet its initial burden of establishing an absence of triable issues of material fact as to the existence and amount of the debt owed by Nguyen to Wells Fargo. It is therefore sufficient to meet its burden as to each cause of action.

Nguyen is unable to raise any triable issue of material fact in rebuttal. The only document Nguyen has filed in opposition to this motion is a separate statement dated May 23, 2023, which states that she "denies" the truth of Wells Fargo's undisputed material facts. There are several problems with this statement.[3]

Code of Civil Procedure section 437c, subdivision (b)(3), states that papers opposing a motion "shall include a separate statement that responds to each of the material facts contended by the moving party to be undisputed, indicating if the opposing party agrees or disagrees that those facts are undisputed. The statement also shall set forth plainly and concisely any other material facts the opposing party contends are disputed. *Each material fact contended by the opposing party to be disputed shall be followed by a reference to the supporting evidence*. Failure to comply with this requirement of a separate statement may constitute a sufficient ground, in the court's discretion, for granting the motion." (Emphasis added.)

While Nguyen's separate statement purports to dispute Wells Fargo's undisputed material facts, it fails to cite any evidence to support those disputes. Nguyen has not submitted or cited any evidence in opposition to Wells Fargo's motion.

Nguyen's statement also includes objections to Wells Fargo's evidence. A separate statement is not a proper vehicle for stating objections to evidence in support of a motion for summary judgment. In the context of a motion for summary judgment, objections to evidence are governed by California Rule of Court 3.1354. This rule requires the filing of two documents: the objections to evidence and a proposed order on

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[3] As noted above, Nguyen is self-represented, which is sometimes referred to as appearing "in propria persona." "[W]hen a litigant is appearing in propria persona, he is entitled to the same, but no greater, consideration than other litigants and attorneys. Further, the in propria persona litigant is held to the same restrictive rules of procedure as an attorney." (*Burnete v. La Casa Dana Apartments* (2007) 148 Cal.App.4th 1262, 1267 [internal citations omitted]; see also *Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543 [self-represented litigants "are held to the same standards as attorneys" and must comply with the rules of civil procedure]; *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985 ["A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation."].)

the objections. Both documents must be in one of the formats set forth in the rule. Objections that do not fully comply with Rule of Court 3.1354 will not be considered. (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].)

In any event, the court overrules Nguyen's objections. The court finds that the Salvo declaration is based on a sufficient evidentiary foundation to authenticate the attached exhibits; and this evidence is sufficient to establish an account stated, a contract, Nguyen's acceptance of the contract, and the fact that Nguyen was sent and received statements of the account.

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Calendar Line 9
Case Name: *Vijay Ramadoss v. American Honda Motor Co., Inc.*
Case No.: 23CV416524

This is a Song-Beverly Act case in which plaintiff Vijay Ramadoss seeks further responses to document requests (Nos. 3, 4, 7, 9, 10, 12, 24-26, 37, 38, 44, and 45) from defendant American Honda Motor Co., Inc. ("American Honda").[4] The court addresses these requests as follows:

Requests Nos. 3, 4, 7, 9, 10, 12, and 45: Ramadoss argues that to the extent that American Honda has withheld responsive documents on the basis of privilege, it must provide a privilege log for those documents. The court finds that these requests are overbroad and that it would be unreasonable to require a privilege log for the full scope of these requests. For example, Request No. 3 seeks all documents that "evidence, support, refer, or relate to each of the affirmative defenses" in the case. The court finds that it would be unduly burdensome and of limited (or nonexistent) probative value to order American Honda to log all privileged documents in response to this request. The court DENIES the motion as to Requests Nos. 3 and 45.

As for Requests Nos. 4, 7, 9, 10, and 12, which focus on documents relating to the subject vehicle, the court orders American Honda to provide a privilege log, but only as to any privileged and responsive documents that *predate* the filing of the complaint in this case on May 18, 2023.

GRANTED IN PART and DENIED IN PART.

Requests Nos. 24-26: These requests are overbroad and call for documents (American Honda's "goals" that are untethered to any particular vehicle model) that have no discernible probative value to the causes of action in this case. DENIED.

Requests Nos. 37 and 38: These requests are overbroad and call for documents (board of director agendas/minutes) that have no discernible probative value to the causes of action in this case. DENIED.

Request No. 44: The court finds this request to be overbroad and therefore narrows it to the following: "Any documents evidencing complaints by owners of 2022 Honda Odyssey vehicles in California regarding malfunctions in the collision mitigation braking system." As narrowed, American Honda must supplement its response with a statement of compliance. GRANTED IN PART and DENIED IN PART.

Ramadoss's separate statement in support of the motion includes two requests (Nos. 18-19) that are not included in his notice of motion or discussed in his brief. To the extent that he seeks an order as to these requests, the motion is DENIED.

The court DENIES both sides' requests for monetary sanctions against the other.

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[4] The motion originally included Request No. 46, but Ramadoss has now withdrawn it.

Calendar Line 12
Case Name: *Barjinderpal Gill v. Amy Lui et al.*
Case No.: 22CV397491

Plaintiff Barjinderpal Gill has filed a motion for leave to amend the complaint. Defendants Amy Lui and Michael Gong oppose, but the court finds the opposition to be severely lacking. The motion is granted, and plaintiff is directed to file his first amended complaint within 10 days of this order.

On a motion for leave to amend, the most important consideration for the court is prejudice. Here, defendants' opposition brief includes the following heading: "Defendants Will Be Prejudiced By the Filing of This Proposed FAC." (Opposition, p. 14:14.) But then the five paragraphs that follow this heading fail to identify even a modicum of prejudice. Instead, these paragraphs take issue with the merits of the case, argue that this is a "frivolous and harassing suit," and complain that "Plaintiff seeks to move the goalposts by dramatically increasing the number of causes of action." (*Id.* at pp. 15:12-16:2.) None of this is prejudice. It does not even come close. No trial date has been set in this case, and so the court is not aware of any facts that would support defendants' position that the timing of the proposed amendment may be prejudicial.

Instead, defendants appear to be operating under the fundamental misimpression that the best way to oppose a motion for leave is to raise as many summary judgment-type arguments as possible, hoping that one of them will resonate with the court. It is ironic that defendants complain that "Plaintiff seeks to double-down and take a 'kitchen sink' type of approach" to the case (Opposition, p. 15:16-17), when a "kitchen sink" approach is exactly how the court would characterize defendants' diffuse and long-winded opposition brief, the longest brief that this court has ever received in opposition to a motion for leave to amend. Although it remains true that this court will deny a motion for leave to amend if it can be shown that the proposed amendment(s) would be futile, defendants have failed to show that here. Instead, what their opposition establishes is that they have a number of colorable arguments of varying levels of persuasiveness that they may raise at trial or in a summary judgment motion (or, potentially, in a demurrer, although many of their arguments appear to rely on extrinsic evidence). None of these arguments is an obvious slam dunk.

The court GRANTS the motion for leave to amend.

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Calendar Line 13
Case Name: *Matthew Richardson Crawford v. FCA US LLC*
Case No.: 22CV404672

This is a motion for attorney's fees, costs, and expenses by plaintiff Matthew Richardson Crawford against defendant FCA US LLC ("FCA"). The court GRANTS the motion in part and DENIES it in part, as follows.

The parties settled this Song-Beverly Consumer Warranty Act case after a little over a year of litigation. As FCA notes, in this case, there were no discovery motions, no depositions, and no vehicle inspection. It appears that the bulk of the parties' work consisted of serving and responding to written discovery. The terms of the parties' settlement includes an award of attorney's fees, costs, and expenses to Crawford as the prevailing party, but the parties disagree on the appropriate amount of fees. The description of total fees and costs in Crawford's motion is syntactically inaccurate and confusing, but it *appears* that he is requesting a total of $101.060.15 in fees and costs, consisting of $63,495.00 in attorney's fees, a 1.5x lodestar multiplier of $31,747.50, assistant fees of $2,430.00, and costs and expenses of $3,387.65.

Having reviewed the parties' papers, the court makes the following findings and conclusions:

- The billing rates set forth in the declaration of plaintiff's counsel of $550/hour for Hovanes Margarian and $450/hour for Armen Margarian are reasonable. At the same time, the court does not find the additional increase of $100/hour for contingency cases for each of these attorneys to be appropriate, given the simplicity of, and relatively low risk presented by, this case. For similar reasons, the court finds a 1.5x lodestar multiplier to be entirely unsupported here. Although the court has awarded a lodestar multiplier in a small percentage of Song-Beverly Act cases in the past, those cases were far more complicated and more risky than this one; they went on for longer periods of time and had a significantly larger number of disputed (and close) issues. By contrast, nothing about this case appears to have been particularly novel, complex, or challenging.

- The court finds FCA's suggestion to reduce the fees by 50% to be arbitrary. According to FCA, one-half of the causes of action were non-Song-Beverly causes of action (as to which attorney's fees are not normally awarded), and so the fees should therefore be reduced by one-half. The court is not persuaded by this facile argument, as it finds the gravamen of this case to be a Song-Beverly action, notwithstanding the peripheral fraud, § 17200, § 17500, and negligence causes of action contained in the complaint.

- The court disagrees with FCA that the number of hours spent by plaintiff's counsel on drafting a complaint, propounding discovery requests, reviewing discovery responses, and meeting and conferring were unreasonable, even if much of the work involved using or revising commonly used templates. The court also disagrees that the number of hours spent communicating with the client (7.9 hours) or communicating with each other (3.4 hours) was excessive, given the duration of this case.

- The court agrees with FCA that 1.1 hours to review FCA's standard (boilerplate) answer is excessive—the court reduces this to 0.1 hours. Having reviewed the verbose opening and reply papers on this motion, which are also filled to the brim with interminable boilerplate, the court agrees with FCA that 16.7 hours is grossly excessive. The court reduces this amount to 7.0 hours.

- Finally, the court disallows the $2,430 requested for assistant (non-lawyer) work.

In summary, the court awards the following amounts in fees, costs, and expenses:

- 61.6 hours (rather than 72.3 hours) at $550/hour (Hovanes Margarian) = $33,880.

- 30 hours at $450/hour (Armen Margarian) = $13,500.

- Costs and expenses of $3,387.65. (FCA has not raised any issue with the amount of requested costs and expenses.)

The total amount awarded is **$50,687.65**.

IT IS SO ORDERED.

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