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

November 7, 2024
9:00 A.M.

RECORDING COURT PROCEEDINGS IS PROHIBITED

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 will appear at the hearing to contest the tentative

If you fail to so notify the court or opposing side, the Court will not hear argument, and the tentative ruling will be adopted.

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

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

COURT REPORTERS

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LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
1	21CV388139	MARIA CALDERON vs CARDENAS MARKET, LLC	Defendant's motion to have facts in requests for admission deemed admitted is GRANTED. A notice of motion with this hearing date was served on Plaintiff by electronic mail on September 20, 2024. Plaintiff failed to file an opposition. "[T]he failure to file an opposition creates an inference that the motion [] is meritorious." (*Sexton v. Super Ct.* (1997) 58 Cal.App.4th 1403, 1410.) There is also good cause to grant this motion. Defendant served requests for admission on Plaintiff by mail on August 9, 2024. Defendant followed up on September 18, 2024 after receiving no responses. To date, Plaintiff served no responses. A party served with requests for admission must serve a response within 30 days. (Code of Civ. Pro. §2033.250.) When a party fails to respond—even in the face of a motion to have the matters in the requests for admission deemed admitted—as Plaintiff has done here, the Court must order the requests for admission deemed admitted. (Code of Civ. Pro. §2033.280(c); *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 775-776.) Such a "deemed admitted" order establishes that the nonresponding party has responded to the requests for admission by admitting the truth of the matters contained in the requests. (*Id.*) Accordingly, Defendant's motion is granted, and the matters set forth in Defendant's requests for admission are deemed admitted. Court to prepare formal order.
2	21CV384211	Cindy Ho et al vs Cindy Nguyen et al	Plaintiffs' motion for amendment of the judgment and order that granted Plaintiffs' motion for enforcement of judgment and an award of attorney fees is GRANTED. Moving parties shall submit an amended judgment identifying the correct defendant and correcting the typographical error within 5 court days of the hearing.

3	21CV385798	Victor Ramirez Cruz vs Danco Construction Company, Inc.	Before the Court is Defendant's motion to compel production of Plaintiff's financial documents. Plaintiff asserts that after a reasonable search and what he claims to be reasonable efforts, he cannot produce his financial documents because he cannot get them from his own accountant. That representation is evidence. Plaintiff will not be able to present these documents in support of his wage loss claim at trial since he has not produced them in discovery. Period. The purpose of discovery is to make trial "'less a game of blindman's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent.'" (*Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355, 376.) "An important aspect of legitimate discovery from a defendant's point of view is the ascertainment, in advance of trial, of the specific components of plaintiff's case so that appropriate preparations can be made to meet them. It is impossible to discover this other than from the plaintiff." (*Karz v. Karl* (1982) 137 Cal.App.3d 637, 650.) Accordingly, where a party fails to produce relevant evidence to support his claim as Plaintiff has done here, there are consequences. (See *Sauer v. Superior Court* (1987) 195 Cal.App.3d 213, 228 ["Where a party has refused to supply information relevant to a particular claim, an order precluding that claim is an appropriate sanction."]; *Deeter v. Angus* (1986) 179 Cal.App.3d 241 (*Deeter*) [upholding the trial court's exclusion of an audio tape a party willfully withheld from production in discovery]; *Thoren v. Johnston & Washer* (1972) 29 Cal.App.3d 270, 274 (*Thoren*) [excluding testimony from a witness a party willfully failed to identify in its response to an interrogatory, stating "[w]here the party served with an interrogatory asking the names of witnesses to an occurrence then known to him deprives his adversary of that information by a willfully false response, he subjects the adversary to unfair surprise at trial. He deprives his adversary of the opportunity of preparation which could disclose whether the witness will tell the truth and whether a claim based upon the witness' testimony is a sham, false, or fraudulent."].) And if Plaintiff believes he can avoid this result by arguing his failure to produce documents to support his wage loss claim is not willful—even though these are his documents purportedly in the possession of his accountant—he cannot. The trial court need not find Plaintiff's failure to produce these documents was willful to exclude them at trial if Plaintiff suddenly obtains them. A trial court's "inherent power to curb abuses and promote fair process extends to the preclusion of evidence" at trial. (*Peat, Marwick, Mitchel & Co. v. Superior Court* (1988) 200 Cal.App.3d 272, 288.) Accordingly, "trial courts regularly exercise their 'basic power to insure that all parties receive a fair trial' by precluding evidence." (*Ibid.*) Thus, Defendant's motion to compel production of documents Plaintiff claims he cannot produce because he does not have is DENIED. However, the above consequences will result at trial. Court to prepare formal order.
4	23CV410398	Nasir Deen vs Purple Lotus et al	Plaintiff's motion for leave to amend is granted, in part. Scroll to line 4 for complete ruling. Court to prepare formal order.

5	23CV423808	ARCHON DESIGN SOLUTIONS, INC. vs GLOBAL SEMICONDUCTOR ALLIANCE	After reviewing Plaintiff Archon Design Solutions, Inc.'s motion to compel production of documents by Defendant Global Semiconductor Alliance, Defendant's ex parte applications to shorten time on its motion for protective order, and the motion for protective order, the Court concludes a discovery conference is necessary here. While Plaintiff is correct that discovery is broad, the fact that the Court overruled a demurrer to some claims in no way means it has affirmed anything about those claims other than that they met a pleading standard; such orders do not give license to discovery requests that seek things like "all documents listing all GSA members". However, more difficult for the Court is that it appears significant documents and supplemental responses have been provided but now Plaintiff complains the documents are too voluminous. In short, the Court requires much more succinct clarity before it can cogently rule on Plaintiff's motion. Accordingly, the parties are ordered to appear by TEAMS on the department 6 link on Friday, November 15 at 9 am for a discovery conference. The conference will address Plaintiff's motion to compel, Defendant's motion for protective order, and the Court's views on the scope of discovery generally.
6	24CV430947	Wells Fargo Bank, N.a. vs Julie Nakamura et al	Plaintiff Wells Fargo Bank, N.A.'s motion to deem requests for admissions admitted is GRANTED. A notice of motion with this hearing date was served on Defendant by electronic mail on August 13, 2024. Defendant failed to file an opposition. "[T]he failure to file an opposition creates an inference that the motion [] is meritorious." (*Sexton v. Super Ct.* (1997) 58 Cal.App.4th 1403, 1410.) There is also good cause to grant this motion. Plaintiff served requests for admission on Defendant by electronic mail on May 1, 2024. To date, Defendant served no responses. A party served with requests for admission must serve a response within 30 days. (Code of Civ. Pro. §2033.250.) When a party fails to respond—even in the face of a motion to have the matters in the requests for admission deemed admitted—as Defendant has done here, the Court must order the requests for admission deemed admitted. (Code of Civ. Pro. §2033.280(c); *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 775-776.) Such a "deemed admitted" order establishes that the nonresponding party has responded to the requests for admission by admitting the truth of the matters contained in the requests. (*Id.*) Accordingly, Plaintiff's motion is granted, and the matters set forth in Plaintiff's requests for admission are deemed admitted. Court to prepare formal order.
7	24CV431497	Peter Dinh vs Elodia Dominguez	Case dismissed with prejudice on October 30, 2024.
8	24CV442973	Maha Dahdouh vs Samuel Teresi, Jr.	Defendants Samuel Frank Teresi Jr.'s and Therma LLC's demurrer is SUSTAINED WITHOUT LEAVE TO AMEND.
9	24CV445091	Xinwu Cheng vs Pro Appliance Installation	Plaintiff's petition for release of property from lien (California Civil Code §8490) first came on for hearing before the Court on October 8, 2024, and the Court found the petition had not been properly served. Civil Code section 8486(b) provides: "The petitioner shall serve a copy of the petition and a notice of hearing on the claimant at least 15 days before the hearing. Service shall be made in the same manner as service of summons, or by certified or registered mail, postage prepaid, return receipt requested, addressed to the claimant as provided in Section 8108." (Civ. Code § 8486.) Petitioner re-served by certified mail return receipt requested. Evidence of a signed return receipt is not in the file. The petition otherwise meets the requirements of Civil Code section 8460. Accordingly, if proper service can be demonstrated, the petition can be granted.

Calendar Line 4
Nasir Deen vs Purple Lotus et al, Case No. 23CV410398

Plaintiff's motion for leave to file an amended complaint first came on for hearing before the Court on October 22, 2024. Pursuant to California Rule of Court 3.1308, the Court issued its tentative ruling on October 21, 2024, which tentative ruling requested additional briefing on the statute of limitations and continued the hearing to November 7, 2024. The Court has now reviewed the supplemental briefing and issues its ruling below.

I. Alleged Facts

Plaintiff filed this action in pro per on January 27, 2023. The complaint alleges the following:

> On July 21, 2020 I went to a cannabis store for the very first time to help ease my anxiety during the Pandemic. I have no history of drug abuse what so ever. After explaining my situation they recommended a 10mg THC Edible to help my anxiety. So I took the edible and after a few hours I started to see random scary things without me not knowing whats going on so I ended up losing my mind and ended up in the emergency room. I had a 6 hour panic attack with psycosis [sic]. After waking up the next morning I felt very disconnected from reality, everything was a threat to me. Because of what they did my brain changed permanently since I have been on last resort medications and demand justice in regards to what happened to me.
>
> I have been diagnosed with PTSD, Anxiety/Panic disorder because of this edible they recommended. I even asked them what will this do to me the lady said it will make you relax but she lied and I then started seeing things randomly.
>
> I feared for my life because of this incident and I have lost 1 year worth of work. This has been passed the statute of limitation however this should be exempted since for the fact how I was INCAPACITATED FOR

> A WHILE. I was seeking help to see a psychiatrist however it was extremely hard to see one during the Pandemic. I don't feel the same anymore, my brain is numb with no feelings whats so ever [sic]. I have seen over 15 psychiatrist worldwide to help out with my mental health issue and some medications seemed to make me feel worse.
>
> I demand justice. All brain activity in my brain has been disconnected. I have lots of more medical paperwork to prove this did something to me. My body was stuck in DANGER MODE. I have been feeling severe migraines and much more. I had to focus on feeling better first before filing a lawsuit.

Plaintiff attached numerous documents to this complaint, including his receipt from Purple Lotus, his records from his July 21, 2020 emergency room visit, and other medical records, which records the Court later sealed to protect Plaintiff's privacy. Plaintiff submitted these records with his Complaint specifically to support his allegations against Purple Lotus.

Plaintiff now has counsel, who has been conducting discovery and analyzing Plaintiff's claims and seeks to amend the complaint, which amendments fall into the following categories: "(1) addition of new facts obtained through discovery that supports previously existing causes of action and (2) addition of new causes of action for Negligence, Medical Malpractice, Fraud, Negligent Misrepresentation, Breach of the Implied Covenant and Fair Dealing [sic], Violation of Business and Professions Code § 17200 and Intentional Infliction of Emotional Distress based on facts already plead and some new facts discovered and (3) addition of corresponding remedies, including a prayer for punitive damages."

Defendant opposes the amendments, arguing unreasonable delay, prejudice, and futility.

II. Legal Standard and Analysis

"It is a rare case in which 'a court will be justified in refusing a party leave to amend his pleadings so that he may properly present his case.' (*Guidery* v. *Green*, 95 Cal. 630, 633; *Marr* v. *Rhodes*, 131 Cal. 267, 270.) If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend

and where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion. (*Nelson* v. *Superior Court*, 97 Cal.App.2d 78; *Estate of Herbst*, 26 Cal.App.2d 249; *Norton* v. *Bassett*, 158 Cal. 425, 427.)" (*Morgan v. Superior Court of Los Angeles County* (1959) 172 Cal. App. 2d 527, 530-531 (error for trial court to fail to give leave to amend).

Here, where trial has not yet been set, discovery remains open, and the proposed amendment is based on the same incident as alleged in the original complaint, the Court finds Defendants would not be prejudiced by the amendment beyond the fact that additional discovery may need to be taken. On this record, it would be error not to grant amendment.

The Court also finds that the proposed amendments relate back to the original complaint. The comparisons between the original and proposed complaint in Defendant's briefing demonstrate that Plaintiff has always included some allegations similar to those now set forth in the proposed amended complaint. Because Plaintiff was originally unrepresented, the allegations were not made using language more familiar to legal practitioners, but they were nonetheless there.

However, Plaintiff's representation that he told the emergency room medical staff that he believed the gummy he consumed on July 21, 2020 caused the injuries that prompted him to call 911 and go to the emergency room on that same night seems to belie the claim he is now making that he did not discover the source of his injury until he obtained an exam from Dr. Fabar in 2023. Plaintiff attempts to remedy this conflict with the allegations made in proposed paragraph 36, wherein Plaintiff alleges other doctors repeatedly told him the single gummy could not have caused his injuries. The Court is not persuaded that (a) proposed paragraph 36 is sufficient to plead the delayed discovery rule or (b) that Plaintiff can sufficiently plead the delayed discovery rule to overcome the statute of limitations for the proposed amendments.

Plaintiff's Complaint and the attachments thereto demonstrate Plaintiff clearly and consistently suspected it was the gummy he purchased from Purple Lotus that caused his injury. That was sufficient to trigger the statute of limitations. (See *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 808.) Any attempt Plaintiff might make now to plead around this fact

would be a sham pleading. (*Lockton v. O'Rourke* (2010) 184 Cal.App.4th 1051, 1061 [Under the sham pleading doctrine, "admissions in an original complaint… remain within the court's cognizance and the alteration of such statements by amendment designed to conceal fundamental vulnerabilities in a plaintiff's case will not be accepted."]; *Owens v. Kings Supermarket* (1988) 198 Cal.App.3d 379, 383 ["[W]here a party files an amended complaint and seeks to avoid the defects of a prior complaint either by omitting the facts that rendered the complaint defective or by pleading facts inconsistent with the allegations of prior pleadings," the court may examine the prior complaint to ascertain whether the amended pleading is merely a sham.].)

Accordingly, Plaintiff's motion to amend is DENIED as to proposed causes of action 1, 2, 4, 5, and 7 and is GRANTED as to proposed causes of action 3 and 6.

Calendar Line 8
Maha Dahdouh v. Samuel Frank Teresi Jr., et. al. Case No. 24CV442973

Before the Court is Defendants Samuel Frank Teresi Jr.'s and Therma LLC's demurrer to Plaintiff's complaint. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Alleged Facts

Plaintiff alleges she was injured in a car collision on July 20, 2022 when Defendant Samuel Frank Teresi Jr., while employed by Therma LLC, drove a vehicle that collided with Plaintiff's.

II. Legal Standard

"The party against whom complaint or cross-complaint has been filed may object, by demurrer or answer as provided in [Code of Civil Procedure] section 430.30, to the pleading on any one or more of the following grounds: (e) The pleading does not state facts sufficient to constitute 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 complaint has been filed" to object to the legal sufficiency of the pleading as 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 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 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 complaint can be considered on demurrer. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.)

III. Request for Judicial Notice

Both parties request judicial notice of certain court documents filed in Santa Clara County Superior Court, case number 23CV420063 ("2023 Lawsuit").

These documents may be judicially noticed pursuant to Evid. Code § 452(d), which permits judicial notice of the records in the pending action, or in any other action pending in the same court or any other court of record in the U.S. However, "although the existence of a document may be judicially noticeable, the truth of statements contained in the document and its proper interpretation are not subject to judicial notice if those matters are reasonably disputable." (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 113; see also *Arce v. Kaiser Found. Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 482-484.) The Court can only take judicial notice of the truth of facts asserted in documents such as orders, findings of fact and conclusions of law, and judgment. (See, *Ramsden v. Western Union* (1977) 71 Cal.App.3d 873, 879.) The requests for judicial notice of the 2023 Lawsuit documents are therefore GRANTED IN PART.

Plaintiff also seeks judicial notice of a copy from Santa Clara Superior Court's public portal website referencing case number 23CV420063, identifying the parties involved, its status, and the case type. Defendants' object to the Court taking judicial notice of this document relevance grounds and because the court's public portal is not an official court record or determinative as to facts it purports to reflect. The Court agrees. The information in the portal is not relevant to this analysis, and the request for judicial notice as to the document reflecting the portal is DENIED.

IV. Analysis

Defendants contend res judicata has attached to the issues and claims alleged in the Complaint. Plaintiff argues res judicata is inapplicable here because (1) Defendants were not the intended defendants in the preceding case and (2) justice and public interest negate the application.

"Res judicata, or claim preclusion, prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them." (*Mycogen Corp. v.*

Monsanto Co. (2002) 28 Cal.4th 888, 896.) "Under this doctrine, all claims based on the same cause of action must be decided in a single suit; if not brought initially, they may not be raised at a later date." (*Id.*, at p. 897.) Importantly, "claim preclusion bars 'not only . . . issues that were actually litigated but also issues that could have been litigated.'" (*Colombo v. Kinkle, Rodiger & Spriggs* (2019) 35 Cal.App.5th 407, 416 [internal citation omitted].) "A party who asserts claim or issue preclusion as a bar to further litigation bears the burden of proving that the requirements of the doctrine are satisfied." (*Hong Sang Market, Inc. v. Peng* (2018) 20 Cal. App. 5th 474,489.)

"Three elements must exist for res judicata (or claim preclusion) to apply: '(1) the decision in the prior proceeding is final and on the merits; (2) the present proceeding is on the same cause of action as the prior proceeding; and (3) the parties in the present proceeding or parties in privity with them were parties to the prior proceeding." (*Association of Irritated Residents v. Department of Conservation* (2017) 11 Cal.App.5th 1202, 1219 [internal citation omitted].) "Only a final judgment on the merits between the same parties or their privies and upon the same cause of action is entitled to the res judicata effect of bar or merger." (*Ibid.*) For purposes of res judicata, a dismissal with prejudice "is equivalent to a judgment on the merits and as such bars further litigation on the same subject matter between the parties." (*Torrey Pines Bank* v. *Superior Court* (1989) 216 Cal.App.3d 813, 820.) Nonetheless, even if the formal conditions for claim preclusion are satisfied, California courts will not apply res judicata "if injustice would result or if the public interest requires that relitigation not be foreclosed." (*Villacres v. ABM Industries Inc.,* 189 Cal.App.4th 562, 577 (quoting *Dunkin v. Boskey*, (2000) 82 Cal.App.4th 171, 181).)

Here, judicially noticed court records for the 2023 Lawsuit show that on August 2, 2023, Plaintiff, Maha Dahdouh, filed a complaint alleging causes of action for general negligence, motor vehicle, and negligent entrustment of a motor vehicle. The 2023 Lawsuit complaint refers to two auto accidents that occurred on August 4, 2021 and July 20, 2022. The caption of the complaint and the summons list Zhihe Chen and Does 1 to 50 as defendants, and the body of the complaint includes both Zhihe Chen and Therma LLC as defendants. (PLD-PI-001 p. 2:5(a).)

Further, Plaintiff's general negligence claim in the 2023 Lawsuit lists Zhihe Chen, Samuel F. Teresi, Jr. and Therma LLC as defendants and alleges on July 20, 2022,

> Defendant Samuel F. Teresi, JR. was the driver of the vehicle that was owned and registered to Defendant Therma, LLC and failed to drive that motor vehicle … in a reasonable manner … violating at least one California Vehicle Code statute law, which resulted in … colliding with … Plaintiff … thereby legally (proximately causing … injuries to Plaintiff.

Plaintiff further alleges in the 2023 Lawsuit that at the time of the incident, Therma LLC employed Samuel F. Teresi Jr. and gave him permission to operate their vehicle knowing that he had a propensity to drive in an unsafe manner. (PLD-PI-001(2), GN-1) In her cause of action for Motor Vehicle, Plaintiff again references the July 20, 2022 and accident lists Samuel F. Teresi Jr. as one of the defendants who operated a motor vehicle and Therma LLC as the employer who entrusted the vehicle. (PLD-PI-001(1) MV-1, MV-2)

On April 3, 2024, Plaintiff dismissed the 2023 Lawsuit, including the "entire action of all parties and all causes of action" with prejudice. (Defendants' RJN, Ex. 2)

The present case is against Samuel Frank Teresi Jr. and Therma LLC. Plaintiff seeks to hold Mr. Teresi Jr. liable for negligently operating a vehicle on July 20, 2022, and Therma LLC liable for owning the vehicle and employing / permitting Mr. Teresi to operate it. A plain reading of the 2023 Lawsuit complaint and the complaint in this case demonstrates: (1) this action is based on the same cause of action as the prior proceeding, (2) the dismissal in the prior proceeding was final and on the merits, and (3) Defendants here were parties to the prior proceeding.

Although Mr. Teresi Jr. and Therma LLC were not listed in the caption of the complaint in 2023 Lawsuit, "in determining who the parties to an action are the whole body of the complaint is to be taken into account, and not the caption merely." (*Nelson v. East Side Grocery Co.* (1915) 26 Cal.App. 344, 347; accord *Plumlee v. Poag* (1984) 150 Cal. App. 3d 541, 547.) "[T]o determine the identity of a party courts are entitled to take into consideration the allegations of the complaint as well as the title. [Citations.]" (*Plumlee, supra*, at p. 547.) Here, the body of the

complaint clearly shows that Plaintiff intended and indeed commenced her action to obtain judgment against Zhihe Chen as well as Samuel Frank Teresi Jr. and Therma LLC.

Furthermore, it is not unfair or unjust to apply res judicata (both claim and issue preclusion) to bar further action against Defendants on the same issues and claims that were finalized in the 2023 Lawsuit. While the Court understands Plaintiff was self-represented in the 2023 Lawsuit, it cannot apply a different standard in adjudicating the application of res judicata. Under the law, self-represented litigants are entitled to the same, but no greater, consideration than other litigants and attorneys. (*County of Orange v. Smith* (2005) 132 Cal.App.4th 1434, 1444.)

Accordingly, Defendants' demurrer to the complaint is SUSTAINED WITHOUT LEAVE TO AMEND.