SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 6
Honorable Evette D. Pennypacker, Presiding

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

DATE: July 30, 2024 TIME: 9:00 A.M.

RECORDING COURT PROCEEDINGS IS PROHIBITED

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

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

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

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

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

FOR COURT REPORTERS: The Court does **not** provide official court reporters. If you want a court reporter to report your hearing, you must submit the appropriate form, which can be found here:
https://www.scscourt.org/general_info/court_reporters.shtml

FOR YOUR NEXT HEARING DATE: Use Court Schedule to reserve a hearing date for your next motion. Court Schedule is an online scheduling tool that can be found on the court's website here:
https://reservations.scscourt.org/

LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
1-2	21CV379156	Tewolde Belai vs Amanuel Keleta et al	Defendant's summary judgment motion is DENIED. The time for summary judgment has long passed. If Plaintiff fails to appear at this hearing, the case will be dismissed. If Defendant fails to appear at this hearing, Defendant's answer will be stricken. If the parties appear, the Court intends to set a new trial date.
3	21CV381901	PHYSICIANS SURGERY SERVICES, LP vs Shultz & Associates et al	Plaintiff's motion to compel further responses to special interrogatories (set one) and for sanctions is GRANTED. A notice of motion with this hearing date and time was served on Defendant by electronic mail on June 24, 2024. Defendant failed to oppose the motion. "[T]he failure to file an opposition creates an inference that the motion or demurrer is meritorious." (*Sexton v. Super Ct.* (1997) 58 Cal.App.4th 1403, 1410.) Plaintiff's responses to these interrogatories consist entirely of objections, which are not well taken. Correspondence attached as Exhibit C to the Declaration of Jonathan Do shows Plaintiffs' numerous extensions and attempts at securing more fulsome responses to these special interrogatories without success. This pattern looks very much like that which lead to the Court ordering responses to document requests without objections and $1860 in sanctions, which orders Plaintiff claims Defendants failed to comply with. Defendant is cautioned that failure to comply with discovery orders will lead to increasing sanctions and could ultimately result in terminating sanctions. For this discovery motion, Defendant is ordered to (1) produce verified supplemental code compliant responses within 10 days of service of the formal order and (2) pay $2000 in sanctions and the $1860 in sanctions previously ordered on March 1, 2024 within 20 days of service of the formal order, which formal order the Court will prepare.
4	22CV404026	Lorena Ayala vs Athiya Javid, MD et al	Bruce G. Fagel's motion to withdraw as counsel for Lorena Cecilia Lopez Ayala is GRANTED. Court will use order on file. Withdrawal will become effective upon filing of proof of service of the formal order.
5	23CV413225	Bejac Corporation vs SV Group, Inc. et al	Plaintiff's motion for matters in requests for admissions to SVG Contractors, Inc. be admitted is GRANTED. A notice of motion with this hearing date was served on Defendant by electronic and U.S. mail on May 14, 2024. Defendant does not oppose having the matters deemed admitted, but requests the Court not impose sanctions because of Defendant's financial status. Defendant's request ignores that such sanctions are mandatory, fails to explain why Defendant failed even to communicate with Plaintiff in any way that may have prevented Plaintiff from bringing this motion, and seeks treatment indigent self-represented litigants do not enjoy under the law. 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. The Court further imposes $1,379.67 in sanctions jointly and severally against Defendant SVG Contractors and its counsel. Court to prepare formal order.

6	23CV413818	Bejac Corporation vs SV Group, Inc. et al	Plaintiff's motion for matters in requests for admissions to SVG Contractors, Inc. be admitted is GRANTED. A notice of motion with this hearing date was served on Defendant by electronic and U.S. mail on May 14, 2024. Defendant does not oppose having the matters deemed admitted, but requests the Court not impose sanctions because of Defendant's financial status. Defendant's request ignores that such sanctions are mandatory, fails to explain why Defendant failed even to communicate with Plaintiff in any way that may have prevented Plaintiff from bringing this motion, and seeks treatment indigent self-represented litigants do not enjoy under the law. 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. The Court further imposes $1,379.67 in sanctions jointly and severally against Defendant SVG Contractors and its counsel. Court to prepare formal order.
7	23CV416631	PROFS LLC vs CONSTRUCTO, INC	Plaintiff's motion to enforce settlement is GRANTED. A notice of motion with this hearing date and time was served on Defendant by U.S. mail on June 24, 2024. Defendant failed to oppose the motion. "[T]he failure to file an opposition creates an inference that the motion or demurrer is meritorious." (*Sexton v. Super Ct.* (1997) 58 Cal.App.4th 1403, 1410.) The parties also stipulated to a payment plan and for the Court to retain jurisdiction to enforce that payment plan under Code of Civil Procedure section 664.6. Defendant failed to comply with the plan, and Plaintiff's motion to enforce is therefore appropriately granted. Moving party to prepare form of judgment consistent with the parties' stipulation. These rulings will be reflected in the minutes.
8-9	23CV418299	Rajeev Guliani vs Milind Dalal et al	The Court tentatively OVERRULES Defendants' demurrers. Please scroll to lines 8-9 for complete tentative ruling. The Court does have questions regarding two issues before it can finalize this ruling and invites the parties to attend the hearing to provide argument on these two specific issues: (1) where did the 8% come from and why was it not alleged as an alternative in the Complaint or First Amended Complaint? If the Court finds the 8% to be subject to sham pleading, what is the result? (2) Which documents does Plaintiff claim constitute the loan agreement, if any? Where are those documents referenced in the SAC?

10	24CV429674	Sheila Mitchell vs The Unity Care Group, a California Nonprofit Corporation	Plaintiff's motion to file a first amended complaint is GRANTED. A notice of motion with this hearing date and time was served on Defendant by electronic mail on July 3, 2024. Defendant failed to oppose the motion. "[T]he failure to file an opposition creates an inference that the motion or demurrer is meritorious." (*Sexton v. Super Ct.* (1997) 58 Cal.App.4th 1403, 1410.) Further, "[i]t 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, the case is in the very early stages of litigation. The request is therefore timely and will not prejudice Defendant, who is still able to able to challenge the amended pleading. Plaintiff is ordered to file the amended complaint as a separate document within 10 calendar days of service of this formal order. Court to prepare formal order.
11-14	24CV432798	Michael Karavastev vs Andrean Karavastev	Please scroll to lines 11-14 for complete rulings. Court to prepare formal order.
15	2008-5-CV-003281	Santa Clara County Federal Credit Union vs M. Zepeda, et al	Off calendar.
16	20CV366160	Mattew Price vs. City of San Jose et. al.	By order dated July 19, 2024, the Court stated its intent to deny Defendant's ex parte application to stay, preliminarily finding: "Not only is no Bird entity a party to this lawsuit, review of the complaint reveals that Plaintiff's claims relate to the City's sidewalk maintenance, not the operation of the scooter, and City did not bring a cross-claim against Bird or otherwise take action to bring Bird into this lawsuit. Based on this initial analysis, it does not appear to the Court that the Bird bankruptcy proceedings have any bearing on this litigation. However, given the issues and the parties' request for a hearing, the Court will hear argument on this issue on July 30, 2024 at 9 am in Department 6."

Calendar Lines 8-9
Case Name: *Rajeev Guliani v. Casa Blanca Investments LLC., et.al.*
Case No.: 23CV418299

Before the Court are (1) Defendants Milind P. Dalal's and Clarity Wealth Advisors, LLC's, demurrer and (2) Casa Blanca Investments, LLC's demurrer to Plaintiff's operative second amended complaint ("SAC"). Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

This dispute arises from an alleged breach of a loan agreement. According to the SAC, on September 18, 2015, Plaintiff entered an investment advisory agreement with Clarity Wealth Advisors, LLC ("Clarity") through its agent and owner Mr. Dalal. (SAC ¶ 25.) Pursuant to the agreement, Clarity agreed to provide financial planning and investment advice to Plaintiff. (SAC ¶¶ 26, 27.) At all times relevant, Defendant Dalal was also a member of Casa Blanca Investments, LLC ("Casa Blanca") and its agent. (SAC ¶ 2.)

In October 2018, Mr. Dalal advised Plaintiff to invest in Casa Blanca. (SAC ¶ 29.) Hence, Plaintiff made an initial investment of $200,000.00 in Casa Blanca through Clarity. Plaintiff's initial investment represented 20% of what he invested with Clarity. (SAC ¶ 34.) Apart from Plaintiff's investment, additional funds, totaling $2.3 million, were placed into Casa Blanca by other investors; all of which were clients of or associated with Clarity and Mr. Dalal. (SAC ¶ 35.) The purpose of Casa Blanca was to invest or loan money related to real estate ventures in the Bay Area. Casa Blanca loaned $2,500,000.00 to Dutchints Investments LLC ("Dutchints") to be secured by multiple properties located in Santa Clara County. A dispute arose between Casa Blanca, Dutchints, and others involving 24925 Oneonta Drive, LLC ("Oneonta") and 18771 Homestead Road LLC (Homestead"). To resolve the dispute, on July 31, 2020, Casa Blanca entered a settlement agreement. (SAC ¶¶ 37-43.)

Prior to execution of the settlement agreement, Mr. Dalal texted Plaintiff on July 15, 2020 stating that Casa Blanca needed to give $1.5 million to Homestead. In a follow up phone conversation, Mr. Dalal asked Plaintiff, on behalf of Casa Blanca, for a short-term loan to assist Casa Blanca with its settlement negotiations and agreement. (SAC ¶¶ 44, 63.) On the same day, Mr. Dalal, on behalf of Casa Blanca, orally offered to pay 8% annual interest on a $500,000.00 loan to Casa Blanca with payment within one month in exchange for Plaintiff providing the $500,000.00 directly to Homestead.

(SAC ¶¶ 51, 52.) Plaintiff, Mr. Dalal and Casa Blanca's member, Chris Meneze, agreed to the short-term loan of $500,000.00, which Plaintiff directly wired to Homestead per Casa Blanca's instruction. (SAC ¶¶ 64-67.)

On July 20, 2020, Chris Meneze shared details of Plaintiff's $500,000.00 loan to Casa Blanca in the context of the upcoming settlement agreement. This was followed up by a July 21, 2020, e-mail sent to Casa Blanca's members, including fellow member and alleged manager of Casa Blanca, Sandeep Duggal, referencing by implication, the $500,000.00 loan from Plaintiff to Casa Blanca. (SAC ¶¶ 73, 74.)

Over the next two years, Plaintiff repeatedly inquired about repayment of his loan, and Mr. Dalal and, by extension Casa Blanca, continuously made assurances that the debt would be paid soon or within days. Plaintiff relied on these repeated assurances since Mr. Dalal was both a member and agent of Casa Blanca as well as Plaintiff's financial advisor through Clarity. (SAC ¶¶ 80-95.) Eventually, on September 6, 2022, Sandeep Duggal sent Plaintiff an email denying the existence of the loan to Casa Blanca and claimed Plaintiff independently participated in a development scheme outside of Casa Blanca and the settlement agreement. (SAC ¶ 106.)

Plaintiff initiated this action on June 27, 2023. On April 25, 2024, Plaintiff filed his operative second amended complaint alleging (1) breach of oral contract, (2) common counts – money lent, (3) common counts – money paid, expended, (4) breach of fiduciary duty, (5) negligence, and (6) Promissory estoppel.

II. Legal Standard

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

The court treats a demurrer "as admitting all material facts properly pleaded, but not

contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214 (*Committee on Children's Television*).) In ruling on a demurrer, courts may consider matters subject to judicial notice and evidentiary facts found in exhibits attached to a complaint. (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 751; *Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.)

"Liberality in permitting amendment is the rule, if a fair opportunity to correct any defect has not been given." (*Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1227.) It is an abuse of discretion for the court to deny leave to amend where there is any reasonable possibility that plaintiff can state a good cause of action. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) The burden is on the plaintiff to show in what manner plaintiff can amend the complaint, and how that amendment will change the legal effect of the pleading. (*Id.*)

III. Analysis

A. Defendants Dalal & Clarity's Demurrer to the Fourth and Fifth Causes of Action for Breach of Fiduciary Duty and Negligence.

"The elements of a cause of action for breach of fiduciary duty are: (1) existence of a fiduciary duty; (2) breach of the fiduciary duty; and (3) damage proximately caused by the breach." (*Stanley v. Richmond* (1995) 35 Cal.App.4th 1070, 1086.) "[B]efore a person can be charged with a fiduciary obligation, he must either knowingly undertake to act on behalf and for the benefit of another or must enter into a relationship which imposes that undertaking as a matter of law." (*City of Hope National Medical Center v. Genentech, Inc.* (2008) 43 Cal.4th 375, 386 (internal citations and quotations omitted).) A fiduciary duty can exist even in the absence of a relationship defined by law if a plaintiff can show an agreement between the fiduciary and the principal where the fiduciary accepts fiduciary responsibilities. (*Wolf v. Superior Court* (2003) 107 Cal.App.4th 25, 29.) The existence of a fiduciary relationship undertaken by agreement, as opposed to a fiduciary relationship imposed by law, is a

question of fact. (*Maglica v. Maglica* (1998) 66 Cal.App.4th 442, 447-448.)

Similarly, to state a claim for negligence, a plaintiff must sufficiently allege the existence of a duty. "It is an elementary principle that an indispensable factor to liability founded upon negligence is the existence of a duty of care owed by the alleged wrongdoer to the person injured..." (*Richards v. Stanley* (1954) 43 Cal.2d 60, 63.) The existence of this duty is a question of law for the court. (See e.g., *Ky. Fried Chicken of Cal. V. Superior Court* (1997) 14 Cal.4th 814, 819.)

Defendants contend the SAC fails to state viable claims because, (1) as member/owner of Clarity, Mr. Dalal is entitled to the limited liability protections conferred to the members and managers of a limited liability company by the Corporations Code section 17703.04 (a), (2) the SAC fails to demonstrate a distinct and independent relationship with Mr. Dalal that would give rise to his personal liability, and (3) allegations of Clarity's vicarious liability are conclusory and confusing.

"A[n] [LLC] is a hybrid business entity formed under the Corporations Code and consisting of at least two 'members' who own membership interests. The company has a legal existence separate from its members. Its form provides members with limited liability to the same extent enjoyed by corporate shareholders." (*PacLink Communications Internat., Inc. v. Superior Court* (2001) 90 Cal.App.4th 958, 963 (internal citations and quotations omitted).) "In general, members of a limited liability company are not liable for the 'debts, obligations, or other liabilities' of the limited liability company." (*CB Richard Ellis, Inc. v. Terra Nostra Consultants* (2014) 230 Cal. App. 4th 405, 411, citing Corp. Code § 17703.04(a).) However, a member is "personally liable ... for any debt, obligation, or liability of the [LLC], whether that liability or obligation arises in contract, tort, or otherwise, under the same or similar circumstances and to the same extent as a shareholder of a corporation may be personally liable for any debt, obligation, or liability of the corporation." (Corp. Code § 17703.04 (b).) Furthermore, managers of limited liability companies "may be held accountable under Corporations Code section 17158, subdivision (a) for their personal participation in tortious or criminal conduct, even when performing their duties as managers." (*People v. Pacific Landmark, LLC* (2005) 129 Cal. App. 4th 1203, 1213; accord *Bonfigli v. Strachan* (2011) 192 Cal. App. 4th 1302, 1317 [managers "cannot escape potential liability by using their business entity as a shield"].) "'[T]ortious conduct' denotes that conduct, whether of act or omission, which subjects the actor to liability under the

principles of the law of torts." (*KFC Western, Inc. v. Meghrig* (1994) 23 Cal. App. 4th 1167, 1181, quoting *Rest.2d Torts, § 6*.)

Here, the crux of Defendants' motion pertains to Mr. Dalal's individual liability. The only argument presented on behalf of Clarity is that the SAC confusingly refers to Clarity's vicarious liability while its liability would directly stem from its written advisory agreement. The SAC alleges Mr. Dalal not only participated in Clarity's negligence and breach of fiduciary duties, but also committed his own tortious conduct when he (1) negligently advised Plaintiff to loan money to Casa Blanca despite having a conflict of interest, (2) failed to advise Plaintiff to get a loan agreement in writing, (3) failed to advise of the risks associated with not having a written loan agreement, and (4) continuously promised/assured Casa Blanca's repayment of the loan well after its due date, to hinder Plaintiff's enforcement remedies. (SAC ¶¶ 9-15, 143-145, 154-156.) Furthermore, since the SAC alleges Mr. Dalal's ownership of Clarity, the Court can reasonably infer that Clarity was at a minimum aware of Mr. Dalal's conduct. These allegations are sufficient to plead Mr. Dalal's personal liability for his own conduct and Clarity's vicarious liability for Mr. Dalal's conduct.

Accordingly, Mr. Dalal's and Clarity's demurrer to the fourth and fifth causes of action for breach of fiduciary duty and negligence is OVERRULED.

B. Defendant Casa Blanca Investments, LLC's Demurrer

1. First Cause of Action for Breach of an Oral Contract

The elements of cause of action for breach of written or oral contract are: (1) the existence of contract; (2) plaintiff's performance or excused nonperformance; (3) defendant's breach; and (4) resulting damage to plaintiff. (*Richman v. Hartley* (2014) 224 Cal. App. 4th 1182, 1186.) To show a contract was created plaintiff must show the terms of the contract were clear enough that the parties could understand their obligations, valuable consideration, and the parties' mutual assent to the contract. (CACI No. 302; Civ. Code § 1565(2).) A contract exists only if the agreed-upon terms "provide a basis for determining the existence of a breach and for giving an appropriate remedy." (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal. App. 4th 793, 811; *Bowers v. Raymond J. Lucia Companies, Inc.* (2012) 206 Cal. App. 4th 724, 734.)

Defendant asserts the SAC fails to state a viable claim because (1) it fails to allege the essential

contractual terms, (2) the referenced text messages only establish that Mr. Dalal and Plaintiff communicated to coordinate and confirm Plaintiff's $500,000.00 loan to Homestead, (3) inclusion of allegations about 8% annual interest term and a one-month repayment period are inconsistent with the allegations of the first amended complaint and should be disregarded under the sham pleading doctrine, (4) Mr. Dalal had no authority to bind Casa Blanca to any debt obligations, (5) the claim is time-barred, and (6) the claim is barred by the Statute of Fraud.

a. Essential Contractual Terms

Defendant contends the SAC fails to allege the essential terms of an oral loan agreement because the referenced text communications, at best, show that Mr. Dalal and Plaintiff communicated to coordinate and confirm Plaintiff's $500,000.00 loan to Homestead. In support of their argument, Defendant includes in its memorandum an image of text communications between Plaintiff and Mr. Dalal on July 15, 2020. Defendant emphasizes this image was attached as Exhibit F to Plaintiff's declaration that was filed on July 24, 2023, in support of his Ex-parte Application for Right to Attach Order and Order for Issuance of Write of Attachment.

Defendant's inclusion of text images violates the long-standing rule that extraneous evidence and matters cannot be raised or considered in connection with a demurrer. "A demurrer tests the pleadings alone and not the evidence or other extrinsic matters.... (Code. Civ. Proc. §§ 430.30, 430.70). The only issue involved in a demurrer hearing is whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action. (citation)." (*SKF Farms vs. Superior Court* (1984) 153 Cal. App. 3d 902, 905.)

Furthermore, the SAC alleges:

- On July 15, 2020, Mr. Dalal informed Plaintiff, via text communication, that Casa Blanca needed to pay Homestead $1.5 million and asked Plaintiff to loan the amount to Casa Blanca. Plaintiff responded that he could only provide a loan of $500,000.00 (SAC ¶¶ 63, 64.)
- Later that day, in a phone conversation, Mr. Dalal, acting as Casa Blanca's agent, promised that Casa Blanca would be able to repay Plaintiff's $500,000.00 loan from the sale of the Oneonta Property. (SAC ¶ 65.)

- Mr. Chris Meneze, member and agent of Casa Blanca, also sent a text to the Plaintiff stating, "OK to wire the $500k." (SAC ¶ 67.)
- "On or around July 15, 2024, Dalal acting as Casa Blanca's agent, orally offered to repay Rajeev $500,000.00 with an annual interest rate of 8 percent to be paid within a month." Plaintiff accepted this offer orally and through his performance by providing the agreed loan amount. (SAC ¶¶ 119, 120.)

While the SAC does not allege every material term of the loan agreement, the Court finds that the essential terms of the contract needed to determine the obligations and liabilities of the parties are sufficiently alleged. Accordingly, Defendant's demurrer on this basis is OVERRULED.

b. Sham Pleading

Under the sham pleading doctrine, a pleader cannot circumvent prior admissions by simply amending a pleading without explanation. (*Womack v. Lovell* (2015) 237 Cal. App. 4th 772, 787; *Deveny v. Entropin, Inc*. (2006) 139 Cal. App. 4th 408, 426.) Absent such explanation, however, the self-destructive allegations in the earlier pleading or discovery response are "read into" the complaint, and allegations inconsistent therewith treated as sham and disregarded. (*Owens v. Kings Supermarket* (1988) 198 Cal.App.3d 379, 384; *Lockton v. O'Rourke* (2010) 184 Cal. App. 4th 1051, 1061.) Unless the contradiction is satisfactorily explained, the rule requiring truthful pleading may subject the pleading to demurrer as a "sham." (*Amid v. Hawthorne Comm. Med. Group* (1989) 212 Cal. App. 3d 1383, 1390.)

Here, the Court agrees with Plaintiff's contentions that (1) the change in the 8% annual interest rate reflects the rate Mr. Dalal promised in their oral agreement as opposed to the prime interest rate that applied to the previously alleged breach of a written agreement, and (2) the payment period difference of 2-4 weeks as opposed to "within one month" is simply a clarification consistent with previous allegations. "The purpose of the doctrine is to enable the courts to prevent an abuse of process … The doctrine is not intended to prevent honest complainants from correcting erroneous allegations or to prevent the correction of ambiguous facts." (*Hahn v. Mirda* (2007) 147 Cal. App. 4th 740, 751.) Accordingly, Defendant's demurrer on this basis is OVERRULED.

c. Lack of Authority

Defendant contends (1) Casa Blanca is a manager-managed limited liability company and as such Mr. Dalal, as a mere member, had no authority to incur a debt obligation on its behalf, and (2) the SAC fails to allege facts showing approval vote of 67% of Casa Blanca's members for incurrence of the alleged $500,000.00 indebtedness, as required by Article 1 and section 5.3 of the Operating Agreement. A copy of Casa Blanca's Operating Agreement is attached as Exhibit C to the supporting declaration of Katerina U. Defendant further presents that the Operating Agreement is incorporated by reference in Plaintiff's SAC and was also put on the record on July 24, 2023, as Exhibit C to the Declaration of Rajeev Guliani in Support of Ex-Parte Application for Right to Attach Order and Order for Issuance of Writ of Attachment.

"To properly prove a contract claimed to be binding on [a] corporation, it should be shown that it was made on its behalf by someone who had authority to act for it. It must be shown that the officer was expressly authorized, or that the act was fairly within the implied powers incidental to his office, or that the corporation is estopped to deny his authority by reason of having accepted the benefit of the contract or otherwise." (*Snukal v. Flightways Mfg., Inc.* (2000) 23 Cal.4th 754.)

The SAC alleges (1) Casa Blanca received the value of the $500,000.00 loan from Plaintiff as admitted in the August 1, 2020, Promissory Note (referencing the $1.7 million value received by Homestead from Casa Blanca), and (2) in negotiating and securing the $500,000.00 loan, Mr. Dalal acted as Casa Blanca's agent. This is sufficient to allege Mr. Dalal had authority to bind Casa Blanca, and whether Mr. Dalal in fact had ostensible agency/authority to bind Casa Blanca to the loan agreement is an issue of fact inappropriate for determination on demurrer. (*Walker v. Signal Companies, Inc.* (1978) 84 Cal. App. 3d 982, 999.)

Accordingly, Defendant's demurrer on this basis is OVERRULED.

d. Statute of Limitations

For a statute of limitations to bar a claim on demurrer, "the defect must clearly and affirmatively appear on the face of the complaint; it is not enough that the complaint shows that the action may be barred." (*Committee for Green Foothills v. Santa Clara County Bd. of*

Supervisors (2010) 48 Cal.4th 32, 42 [internal quotations omitted].) Courts may look at defects on the face of the complaint, exhibits attached to a complaint, or superseded complaint(s). (*Burnett v. Fireman's Fund Ins. Co.* (2001) 90 Ca. 4th 500, 505.)

Pursuant to Code of Civil Procedure section 339, the statute of limitations for an action on an oral contract is two years. The statute of limitation does not begin to run until the cause of action accrues, which is when it is complete with all its elements. (*Fox v. Ethicon Endo-Surgery, Inc*. (2005) 35 Cal. 4th 797, 806.) For breach of contract, the claim accrues when the contract is breached. (*Cochran v. Cochran* (1997) 56 56 Cal. App. 4th 1115, 1120.) "An important exception to the general rule of accrual is the 'discovery rule,' which postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action." (*Fox v. Ethicon Endo-Surgery, Inc*., *supra*, at 807.) "A plaintiff has reason to discover a cause of action when he or she 'has reason at least to suspect a factual basis for its elements.' Under the discovery rule, suspicion of one or more of the elements of a cause of action, coupled with knowledge of any remaining elements, will generally trigger the statute of limitations period." (*Id*.) "The discovery rule only delays accrual until the plaintiff has, or should have, inquiry notice of the cause of action. The discovery rule does not encourage dilatory tactics because plaintiffs are charged with presumptive knowledge of an injury if they have 'information of circumstances to put [them] on inquiry' or if they have 'the opportunity to obtain knowledge from sources open to [their] investigation.' In other words, plaintiffs are required to conduct a reasonable investigation after becoming aware of an injury and are charged with knowledge of the information that would have been revealed by such an investigation." (*Id*. at 807-808.)

"Delayed accrual of a cause of action is viewed as particularly appropriate where the relationship between the parties is one of special trust such as that involving a fiduciary, confidential or privileged relationship." (*Moreno v. Sanchez* (2003) 106 Cal.App.4th 1415, 1424; see also, *Britton v. Girardi*, (2015) 235 Cal. App. 4th 721, 734.) "Courts have also employed the rule of delayed accrual in cases involving tradespeople who have held themselves out as having a special skill or are required by statute to possess a certain level of skill." (*Ibid*.)

A plaintiff whose complaint shows on its face that his claim would be barred without the benefit of the discovery rule must specifically plead facts to show (1) the time and manner of

discovery *and* (2) the inability to have made earlier discovery despite reasonable diligence. The burden is on the plaintiff to show diligence, and conclusory allegations will not withstand demurrer." (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal. 4th 797, 808, citing *McKelvey v. Boeing North American, Inc.* (1999) 74 Cal.App.4th 151, 160 [superseded by statute on another point].)

Here, the SAC alleges Casa Blanca was obligated to repay Plaintiff's loan within a month from its issuance on July 15, 2020. Therefore, the two-year statute of limitation began to accrue from August 15, 2020, when Casa Blanca failed to repay the loan. However, Plaintiff did not file his suit until June 27, 2023. Plaintiff, relying on the discovery rule for delayed accrual of his claims, contends (1) on at least 18 different occasions over a two-year period, Mr. Dalal and Mr. Meneze assured him that the loan would be repaid but Casa Blanca needed a little more time, (2) he reasonably relied on assurances of Mr. Dalal not only as the agent for Casa Blanca but also as his own financial advisor, (3) he had no reason to believe that his loan would not be repaid until September 6, 2022, when Mr. Duggal denied the existence of the loan in an email, and (4) Defendant is equitably estopped from asserting the statute of limitation defense due to its agents' continued assurances of repayment.

The SAC alleges at least 20 occasions, over a two-year period, whereby Mr. Dalal and Mr. Meneze reference Plaintiff's loan and/or assured Plaintiff that the loan would be repaid within a week or within a short time. (SAC ¶¶ 73-105.) Plaintiff also alleges a fiduciary relationship and relationship of trust between himself, Mr. Dalal, and Clarity since September 18, 2015, and that he therefore reasonably relied on Mr. Dalal's assurances and had no reason to believe the loan would not be repaid until he received Mr. Duggal's September 6, 2022 email denying the existence of the loan. (SAC ¶¶ 25, 26, 106, 107.) These allegations are sufficient, and Defendant's demurrer on this basis is accordingly OVERRULED.

e. Statute of Fraud

Civil Code section 1622 provides: "All contracts may be oral, except such as are especially required by statute to be in writing." Civil Code section1624(a)(7) states:

> (a) The following contracts are invalid, unless they, or some note or memorandum thereof, are in writing and subscribed by the party to be charged or by the party's agent:…

> (7) A contract, promise, undertaking, or commitment to loan money or to grant or extend credit, in an amount greater than one hundred thousand dollars ($100,000), not primarily for personal, family, or household purposes, made by a person engaged in the business of lending or arranging for the lending of money or extending credit.

(Civil Code § 1624(a)(7).)

Defendant contends the statute of fraud voids Plaintiff's alleged loan agreement because (1) the agreement falls within the parameters of an alleged business loan in an amount greater than $100,000, which is not evidenced by an appropriate writing signed by the party to be charged, (2) Plaintiff's conclusory allegation that he "was not and is not a person engaged in the business of lending or arranging for the lending of money or extended credit," is insufficient, and (3) Plaintiff is a member of Casa Blanca whose purpose was to invest or loan money related to real estate ventures.

In *Kucker v. Kucker* (2011) 192 Cal. App. 4th 90, 94 the Second District noted in construing Civil Code section 1624(a)(7), "[t]he plain meaning of the words of the statute manifests a legislative intent to limit the statute's application to agreements to loan money or extend credit made by persons in the business of loaning money or extending credit." The SAC alleges:

- Plaintiff was a passive member of Casa Blanca, whose business was to invest or loan money related to real estate ventures in the Bay area and to obtain profit for its members. (SAC ¶ 37.)
- Plaintiff invested $200,000.00 in Casa Blanca through Clarity, which represented approximately 20% of what he invested with Clarity. (SAC ¶ 34.)
- Plaintiff was not and is not a person engaged in the business of lending or arranging for the lending of money or extending credit. (SAC ¶¶ 47.)
- Plaintiff informed Mr. Dalal that he was building an Accessory Dwelling Unit in Newark and had other commitments and investments that he preferred over a loan to Casa Blanca. (SAC ¶¶ 48.)
- Had the request for the loan was not made, Plaintiff would have used the same funds to build an additional dwelling unit to a residence and invested the rest through his

Charles Schwab account (SAC ¶ 72.)

- Casa Blanca's agents, Mr. Dalal and Mr. Meneze discussed and acknowledged the loan agreement via text communications, emails and phone calls. (SAC ¶¶ 63-68.)

For pleading purposes, these allegations are sufficient to demonstrate Plaintiff was not in the business of loaning money or extending credit. "[T]he statute of frauds [also] does not require a written contract; a 'note or memorandum subscribed by the party to be charged' is adequate." (*Sterling v. Taylor* (2007) 40 Cal.4th 757, 765, quoting Civil Code § 1624.) The parties agree there are text messages and emails concerning the $500,000 loan. Not all of these materials are before the Court, and the required evidentiary analysis would be improper on demurrer.

Accordingly, Defendant's demurrer on this basis is OVERRULED.

2. Second & Third Causes of Action for Common Counts

A common count claim broadly applies "wherever one person has received money which belongs to another, and which in 'equity and good conscience,' or in other words, in justice and right, should be returned." (*Rubinstein v. Fakheri* (2020) 49 Cal.App.5th 797, 809; see also 55 Cal. Jur. 3d Restitution § 25.) The essential elements of common count for money lent, or paid claim are: (1) defendant is indebted to plaintiff in a certain sum; and (2) for money lent, paid or expended to, or for, the defendant. (*Moya v. Northrup* (1970) 10 Cal.App.3d 276, 280.) Furthermore, "where one person pays out money for the benefit of another, at the latter's request, a common count for money paid, laid out and expended will lie." (*Deicher v. Corkery*, (1962) 205 Cal. App. 2d 654, 661; see also *Halperin v. Raville*, (1986) 176 Cal. App. 3d 765, 772 (1986) ["showing that a person had use and benefit of money raises the obligation to pay for the value received"].)

Defendant contends the common count causes of action are predicated on a statutory barred and unenforceable oral loan agreement. The Court is not persuaded. Plaintiff's common count causes of action seek the same recovery demanded in his breach of contract claim and is based on the same facts. As stated above, the SAC contains sufficient allegations to state a claim for breach of contract and application of the discovery rule.

Accordingly, Defendant's demurrer to the second and third causes of action is OVERRULED.

3. Sixth Cause of Action for Promissory Estoppel

The elements of a promissory estoppel claim are (1) a promise clear and unambiguous in its terms; (2) reliance by the party to whom the promise is made; (3) reliance must be both reasonable and foreseeable; and (4) the party asserting the estoppel must be injured by his reliance. (*Granadino v. Wells Fargo Bank, N.A.* (2015) 236 Cal. App. 4th 411, 416.)

The SAC alleges (1) Mr. Dalal, acting as Casa Blanca's agent, promised to repay Plaintiff's $500,000.00 loan, plus 8% annual interest, within a month, (2) relying on this promise, Plaintiff agreed to the short-term loan and wired the loan amount to Homestead's account pursuant to Casa Blanca's instruction, (3) Plaintiff reasonably relied on the promise due to assurances of Casa Blanca's agents and given his long-standing relationship with Mr. Dalal as his financial advisor, (4) Plaintiff has been injured by Defendant's denial of the loan and refusal of payment. These allegations are sufficient to state a promissory estoppel claim.

Accordingly, Defendant's demurrer to the sixth cause of action is OVERRULED.

Calendar lines 11-14
Case Name: *Karavastev v. Karavastev*
Case No.: 24CV432798

Before the Court is (1) Defendant Andrean Karavastev's motion to stay, (2) Andrean's demurrer, (3) Plaintiff Michael Karavastev's motion to strike defense counsel James Torres' declaration in support of automatic extension and notice of limited scope representation, (4) Michael's motion to strike Andrean's demurrer, and (5) Michael's motion to strike Andrean's motion to stay and accompanying documents.[1] Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

This action arises from an alleged breach of contract and fraud. Michael was married to Andrean's daughter, Iva Karavastev until 2021 when he initiated divorce proceedings against her (the "Divorce Proceedings"), which are still pending. (Complaint, ¶¶ 7-11.) From 2006 to 2021, Michael gave Andrean business loans for his business activities in Bulgaria such as real estate matters, which totaled over $250,000 and for a courier business in the US, which totaled over $50,000. (Complaint, ¶¶ 12-14.) Michael did not maintain detailed records of the amounts owed, but he has cancelled checks and a written statement from Andrean that (at the time) confessed to owing over $100,000. (Complaint, ¶ 18.) On August 15, 2021, Andrean paid Michael $50,000. (Complaint, ¶ 23.) During the Divorce Proceedings, Iva informed Michael that Andrean would not repay the remaining amount. (Complaint, ¶ 25.)

On March 11, 2024, Michael filed his Complaint, asserting (1) breach of contract, and (2) fraud. On May 16, 2024, Michael filed his first motion to strike Torres' declaration in support of automatic extension and notice of limited scope representation and the same day, Andrean filed a demurrer to the Complaint. On May 20, 2024, Andrean filed a motion to stay. On May 22, 2024, Michael filed a motion to strike the demurrer and accompanying papers, and another motion to strike the motion to stay and accompanying papers. Andrean opposes the motions to strike. Michael did not file an opposition to the motion to stay or the demurrer.

[1] As the parties share a surname, the Court will refer to them by their first names, when necessary, for purposes of clarity. No disrespect is intended. (See *Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131, 1136, fn. 1.)

II. Plaintiff's Motion to Strike

A. Andrean's Request for Judicial Notice

Andrean requests judicial notice of a minute order in the underlying divorce proceeding (Case No. 21FL004401). The Court is permitted to take judicial notice of court records such as the minute order. (Evid. Code, § 452, subd. (d).) Thus, Andrean's request for judicial notice is GRANTED.

B. Meet and Confer

Before filing a motion to strike, the moving party is required to meet and confer with the other side. (Code Civ. Proc., § 435.5, subd. (a).) Michael does not detail any attempts to meet and confer. Therefore, it appears the efforts were insufficient. However, "[a] determination by the court that the meet and confer process was insufficient shall not be grounds to grant or deny the motion to strike." (Code Civ. Proc., § 435.5, subd. (a)(4).) Thus, the Court will consider the merits of the motions.

C. Legal Standard for a Motion to Strike

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

A motion to strike portions of a complaint or petition may be brought on the ground that the allegations at issue are "irrelevant" or "improper." (Code Civ. Proc., § 436, subd. (a).) Irrelevant matter includes (1) an allegation that is not essential to the statement of a claim or defense, (2) an allegation that is neither pertinent to nor supported by an otherwise sufficient claim or defense, and (3)

a demand for judgment requesting relief not supported by the allegations of the complaint or cross-complaint. (See Code Civ. Proc., § 431.10, subds. (b), (c).) Generally speaking, motions to strike are disfavored and cannot be used as a vehicle to accomplish a "line item veto" of allegations in a pleading. (*PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1683 (*PH II, Inc.*).) However, where irrelevant allegations are "scandalous, abusive, disrespectful and contemptuous," they should be stricken from the pleading. (*In re Estate of Randall* (1924) 194 Cal. 725, 731.)

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

Michael moves to strike Andrean's motion to stay and accompanying documents.

D. Analysis

Section 435 permit motions to strike to be filed against pleadings, which are defined as "demurrer, answer, complaint, or cross-complaint." (Code Civ. Proc., 435, subd. (a)(2).) Michael seeks to strike Andrean's motion to stay and accompanying papers. However, those documents do not constitute pleadings and the motion to strike them is improper. Even if they were proper, Michael seeks to strike the documents because he contends Torres's appearance was not entered properly and he was not telling the truth when he requested an extension of time to file the demurrer and regarding the limited scope of his representation. (Motion to Strike, p. 3:2-17.) The Court would need to consider evidence to address this argument, which goes beyond the boundaries for a motion to strike. (Code Civ. Proc., § 437, subd. (a) [grounds for a motion to strike must appear *on the face of the challenged pleading*] [emphasis added].) Thus, the motion to strike the motion to stay and accompanying papers is DENIED.

III. Motion to Stay

Defendant moves to stay this matter in light of the Divorce Proceedings which are scheduled for trial on September 12, 2024.

A. Andrean's Request for Judicial Notice

Andrean requests judicial notice of:

(1) Restraining Order after hearing in the Divorce Proceedings: Exhibit A;

(2) Minute Order from Trial Setting Conference in the Divorce Proceedings: Exhibit B;

(3) Michael's Request for Order Re: Competency/Mental Evaluation of Iva in Divorce Proceedings: Exhibit D;

(4) Michael's Request for Order Re: Order for "Epstein" credits and/or "Watts" in the Divorce Proceedings: Exhibit E;

(5) Michael's Request for Order Re: Order for "Alternative Dispute Resolution" in the Divorce Proceedings: Exhibit F;

(6) Michael's Complaint in Case No. 5:24-cv-001141-NC, filed in the United States District Court for the Northern District of California (the "Federal Case"): Exhibit 5; and

(7) Screening Order of Judge Nathanael M. Cousins, filed on March 4, 2024, in the Federal Case: Exhibit 6.[2]

The items are court records, which are proper items of judicial notice. (Evid. Code, § 452, subd. (d).) However, "with respect to any and all court records, the law is settled that the court will not consider the truth of the document's contents unless it is an order, statement of decision, or judgment." (*Joslin v. H.A.S Ins. Brokerage* (1986) 184 Cal.App.3d 369, 374-375.) With this in mind, Andrean's request for judicial notice is GRANTED.

B. Legal Standard for Motion to Stay

"Trial courts generally have the inherent power to stay proceedings in the interests of justice and to promote judicial efficiency." (*Freiberg v. City of Mission Viejo* (1995) 33 Cal.App.4th 1484, 1489.) The trial court's inherent power to exercise reasonable control over all proceedings connected with the litigation before it "rests upon and is limited by the exercise of sound judicial discretion." (*Bailey v. Fosca Oil Co.* (1963) 216 Cal.App.3d 813, 818.) "Granting a stay in a case where the issues in two actions are substantially identical is a matter addressed to the sound discretion of the trial court." (*Thompson v. Continental Ins. Co.* (1967) 66 Cal.2d 738, 746.)

[2] Exhibits 5-6 are included with Torres' declaration and Exhibits A-F are included with Charice Fischer's declaration.

"In exercising its discretion the court should consider the importance of discouraging multiple litigation designed solely to harass an adverse party, and of avoiding unseemly conflicts with the courts of other jurisdictions. It should also consider whether the rights of the parties can best be determined by the court of the other jurisdiction because of the nature of the subject matter, the availability of witnesses, or the stage to which the proceedings in the other court have already advanced." (*Caiafa Prof. Law Corp. v. State Farm Fire & Cas. Co.* (1993) 15 Cal.App.4th 800, 804 [internal citation and quotations omitted].)

C. Analysis

Plaintiff contends a stay is necessary because the family division has jurisdiction over the loans at issue here. (Andrean's Memorandum of Points and Authorities ("MPA"), p. 10:5-9.)

"After a family law court acquires jurisdiction to divide community property in a dissolution action, no other department of a superior court may make an order adversely affecting that division." (*Askew v. Askew* (1994) 22 Cal.App.4th 942, 961-962.) The court in Askew further notes, "Obviously, the actual division of community property is affected by the characterization of specific assets, so the issue of characterization also reposes in family law court." (*Id.* at 962.) The question here is whether the heart of the Complaint concerns characterization of the specific assets, as "Almost all events in family law litigation can be reframed as civil law actions if a litigant wants to be creative... It is therefore incumbent on courts to examine the substance of claims, not just their nominal headings." (*Neal v. Superior Court* (2001) 90 Cal.App.4th 22.)

Further, "[u]nder the rule of exclusive concurrent jurisdiction, 'when two superior courts have concurrent jurisdiction over the subject matter and parties involved in litigation, the first to assume jurisdiction has exclusive and continuing jurisdiction over the subject matter and all parties involved until such time as all necessarily related matter have been resolved.'" (*Plant Insulation Co. v. Fibreboard Corp.* (1990) 224 Cal.App.3d 781, 786-787 (*Plant Insulation Co.*) [also stating that "[t]he rule is based upon the public policies of avoiding conflicts that might arise between courts if they were free to make contradictory decisions or awards relating to the same controversy, and preventing vexatious litigation and multiplicity of suits… [t]he rule is established and enforced not 'so much to protect the rights of parties as to protect the rights of Courts of co-ordinate jurisdiction to avoid

conflict of jurisdiction, confusion and delay in the administration of justice'"]; see also *BBBB Bonding Corp. v. Caldwell* (2021) 73 Cal.App.5th 349, 374 (*BBBB Bonding Corp.*) [stating that "[t]he doctrine of 'exclusive concurrent jurisdiction' provides that when two or more courts have subject matter jurisdiction over a dispute, the court that first asserts jurisdiction assumes it to the exclusion of the others… [t]he purpose of this rule 'is to avoid unseemly conflict between courts that might arise if they were free to make contradictory decisions or awards at the same time or relating to the same controversy' and 'to protect litigants from the expense and harassment of multiple litigation'"].)

Iva's attorney in the Divorce Proceedings states:

> Based upon my review of the Complaint and my knowledge of the Divorce Proceedings, it appears the alleged loans Plaintiff Michael Karavastev now puts at issue in the Complaint are the same as the alleged loans that he first put at issue in the Divorce Proceedings. Michael Karavastev has claimed these alleged loans are community property in the Divorce Proceedings, thereby acknowledging that my client, Iva Karavastev, has equal ownership of the alleged loans as community property.

(Fischer Decl., ¶ 5.)

She further states "the trial scheduled for September 12, 2024, in the Divorce Proceedings will include a request for the Court to adjudicate all of the financial issues between Iva Karavastev and Michael Karavastev, including whether a valid loan/contract exists between these parties and Andrean Karavastev, and if so, which of the parties in the Divorce Proceedings has the right to collect the alleged debt…" (Fischer Decl., ¶ 6.) The family division's jurisdiction includes the authority to apportion community and separate property interests in particular assets and authority to characterize property as separate even if it may lack the authority to dispose of it. (See *Marriage of Buford* (1984) 155 Cal.App.3d 74, 78 [stating that "[t]he trial court certainly has jurisdiction to determine whether a particular asset is community or separate property], disapproved on other grounds in *Marriage of Fabian* (1986) 41 Cal.3d 440, 451, fn. 13.) It is only after the characterization and often the valuation of property that the family court may apply the law applicable to property division. (*Lehman v. Super. Ct.* (1986) 179 Cal.App.3d 558, 562 [stating that "[b]efore a trial judge can

effect an equal division of community property as mandated … the nature and extent of the parties' community assets must be ascertained].)

The characterization of the loans is central to Michael's claim against Andrean. It is undisputed that the Divorce Proceedings have not yet resulted in a final adjudication of the parties' property rights, which includes the loans at issue in this instant matter. Thus, the rule of exclusive jurisdiction applies until the community and separate property issues have been resolved. (See *Plant Insulation, supra,* 224 Cal.App.3d 781 at pp. 786-787; see also *BBBB Bonding Corp., supra,* 73 Cal.App.5th at p. 374.) Based on the foregoing, Andrean's motion to stay is GRANTED.

As a result, the hearing on Andrean's demurrer and Michael's remaining motions to strike are continued until the family division renders a final determination as to Michael's and Iva's property rights regarding the loans in the Divorce Proceedings.