

**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 11, 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](https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml)

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

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

<https://reservations.scscourt.org/>

LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
1	16CV291442	Crispin Cortes et al vs Leticia Sandoval Gonzalez et al	The parties are ordered to appear for the debtor's examination.
2	21CV385527	Michael Darden vs The Board of Trustees of the Leland Stanford University et al	For efficiency, this matter is continued to July 16, 2024 at 9 am in Department 6 to be heard with Mr. Darden's other discovery related motion.
3	22CV398476	Hyunkyung Kim et al vs Chris Tao et al	Plaintiffs' motion for sanctions is GRANTED, IN PART. Scroll to line 3 for complete ruling. Court to prepare formal order.
4	22CV403128	Maritza Bolanos vs Lily Li	Defendant's motion to compel Plaintiff's further responses to form interrogatories and for \$2,475 in sanctions is GRANTED. Notice of this motion was served by electronic mail on May 7, 2024. Plaintiff did not oppose the motion. "[T]he failure to file an opposition creates an inference that the motion or demurrer is meritorious." ( <i>Sexton v. Super Ct.</i> (1997) 58 Cal.App.4th 1403, 1410.) The motion is meritorious. In response to each form interrogatory in the separate statement, Plaintiff merely referred Defendant to the police report. This is not a complete response. The Court also reviewed the correspondence between the parties attached to the Declaration of Matt Jedrzejek, which correspondence reveals a lack of engagement by Plaintiff despite repeated requests from Defense counsel for a response regarding these specific interrogatories. The Court previously sanctioned Plaintiff for failing to respond to these discovery requests, and that sanction has not been paid. The Court is concerned that the Plaintiff, who initiated this action, is not taking responsibility for moving the case forward by complying with the Code of Civil Procedure and the Court's orders. The Court therefore assesses the full amount of sanctions sought by Defendant, \$2,475, even though no opposition was filed. The Court cautions Plaintiff that further failure to meaningfully engage in discovery may warrant more than monetary sanctions. Court to prepare formal order.
5	23CV423415	VIET LE vs KEVIN VUONG et al	Defendant Diem Thi Hong Nguyen's Demurrer to the second cause of action for conspiracy is SUSTAINED WITHOUT LEAVE TO AMEND. A notice of this demurrer was served by electronic mail on April 4, 2024. Plaintiff did not oppose the demurrer. "[T]he failure to file an opposition creates an inference that the motion or demurrer is meritorious." ( <i>Sexton v. Super Ct.</i> (1997) 58 Cal.App.4th 1403, 1410.) It is Plaintiff's burden to articulate how the complaint can be amended. ( <i>Goodman v. Kennedy</i> (1976) 18 Cal.3d 335.) Since Plaintiff failed to respond to the demurrer, Plaintiff also fails to meet this burden. The demurrer is accordingly SUSTAINED WITHOUT LEAVE TO AMEND. Court to prepare formal order.
6	23CV427524	Swift Financial, LLC as Servicing Agent for WebBank vs Venkatapathi Rayapati et al	Petitioner's motion to confirm arbitration award is before the Court. The Court previously took this matter off calendar because there was no proof of service of the petition or the motion on file. The Court observes that the petition was served by personal service but does not see proof of service for the motion. The parties are ordered to appear, so that the Court can confirm that the notice of motion was served on respondents. With that confirmation, the Court will be able to confirm the arbitration award.
7	24CV433481	Pablito Concepcion vs Iniobong Uboh et al	Defendants' demurrer is SUSTAINED with 20 days leave to amend. Scroll to line 7 for complete ruling. Court to prepare formal order.
8	24CV439793	In Re: Tina Marie Flores	Petition for approval of transfer of structured settlement is APPROVED. Petition to submit form of order.

**Calendar Line 3**

**Case Name:** *Hyunkyung Kim et al vs Chris Tao et al*

**Case No.:** 22CV398476

Before the Court is Plaintiffs' motion for terminating sanctions against Tesla, Inc. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

**I. Background**

In 2021, Plaintiffs Jason and Hyunkyung Kim were using a loaner Tesla Model X while their own Model X was being repaired at a Tesla service center. (Complaint, ¶7.) Plaintiffs allege that on August 8, 2021, Plaintiffs and their two children were traveling on the freeway when the rental Model X's rear driver side tire blew out causing the vehicle to shut down and violently spin out of control over five lanes of the highway. (Complaint, ¶2.)

On August 8, 2021, immediately after the incident, Plaintiff Jason Kim contacted Tesla road side service, told them about the incident, and requested assistance. The next day, Plaintiff Jason Kim notified Tesla's legal department in writing about the incident and resulting injuries and expressly requested that a claim be opened for Plaintiffs' damages. On that same date, Plaintiff Jason Kim also notified the Tesla service center that loaned Plaintiffs the rental Model X in writing, describing the incident and resulting injuries and expressly requesting insurance information to use to open a claim for Plaintiffs' damages. Tesla investigated the incident, confirmed it was in possession of the rental Model X—including the blown out tire—and denied Plaintiffs' claim nearly seven months later. On May 18, 2022, Plaintiffs filed this lawsuit against Tesla Motors, Inc. and Chris Tao asserting negligence and loss of consortium.

Almost a year later, on April 24, 2023, Plaintiff served special interrogatory no. 43 to which Tesla responded on January 5, 2024: "Responding Party is no longer in possession of the tires as all tires on the vehicle have been replaced. Responding Party does not know the whereabouts of the tires. The last known location of the tire was at the Tesla service location in Torrance, California. The tire was scrapped at that service location along with the related wheel."

Based on this representation, Plaintiff now seeks terminating sanctions based on spoliation of evidence.

## II. Legal Standard and Analysis

“Spoliation of evidence means the destruction or significant alteration of evidence or the failure to preserve evidence for another’s use in pending or future litigation.” (*Williams v. Russ* (2008) 167 Cal. App. 4th 1215, 1223, citing *Willard v. Caterpillar, Inc.* (1995) 40 Cal.App.4th 892, 907, overruled on other grounds in *Cedars-Sinai Medical Center v. Superior Court* (1998) 18 Cal.4th 1, 18, fn. 4 (*Cedars-Sinai*)). “While there is no tort cause of action for the intentional destruction of evidence after litigation has commenced, it is a misuse of the discovery process that is subject to a broad range of punishment, including monetary, issue, evidentiary, and terminating sanctions. (Code Civ. Proc., §§ 2023.010, subd. (d), 2023.030, subds. (a)–(d); *Cedars-Sinai*, at p. 12.) A terminating sanction is appropriate in the first instance without a violation of prior court orders in egregious cases of intentional spoliation of evidence. (*R.S. Creative, Inc. v. Creative Cotton, Ltd.* (1999) 75 Cal.App.4th 486, 497 [89 Cal. Rptr. 2d 353].)” (*Williams v. Russ*, 167 Cal. App. 4th at 1223.)

“[A] party moving for discovery sanctions based on the spoliation of evidence must make an initial prima facie showing that the responding party in fact destroyed evidence that had a substantial probability of damaging the moving party’s ability to establish an essential element of his claim or defense.” (*Williams v. Russ*, 167 Cal. App. 4th at 1227.) However, “‘a party can only be sanctioned for destroying evidence if it had a duty to preserve it.’” (*Micron Technology, Inc. v. Rambus Inc.* (Fed. Cir. 2011) 645 F.3d 1311, 1320 (*Micron*)). “Once the duty to preserve attaches, a party must “suspend any existing policies related to deleting or destroying files and preserve all relevant documents related to the litigation.” (*Victor Valley Union High School Dist. v. Superior Court* (2023) 91 Cal. App. 5th 1121, 1143-1144 (internal citations and quotations omitted).)

“The duty to preserve material evidence arises not only during litigation but also extends to that period before the litigation when a party reasonably should know that the evidence may be relevant to anticipated litigation.” “Whether litigation is ‘reasonably foreseeable’ ‘is an objective standard, asking not whether the party in fact reasonably foresaw litigation, but whether a reasonable party in the same factual circumstances would have reasonably foreseen litigation. When litigation is ‘reasonably foreseeable’ is a flexible fact-specific standard that allows a [] court to exercise the discretion necessary to confront the myriad factual situations inherent in the spoliation inquiry.

[Citation.] This standard does not trigger the duty to preserve documents from the mere existence of a potential claim or the distant possibility of litigation. [Citation.] However, it is not so inflexible as to require that litigation be ‘imminent, or probable without significant contingencies ... .’ (*Victor Valley*, 91 Cal. App. 5th at 1143-1144 (internal citations and quotations omitted).)

Thus, in *Victor Valley*, the court of appeal affirmed the trial court’s evidentiary and monetary sanctions where a school district allowed surveillance video related to alleged sexual assault of a student to be deleted in the normal course before litigation was filed. The court concluded litigation was reasonably foreseeable given the school’s special duty to the student, the school would have known within six months of the date the student’s father was informed of the assault whether litigation would be filed, and therefore the school should have suspended its routine deletion of surveillance video and preserved the video for at least six months.

Here, the tire was allegedly destroyed the day after the accident. Tesla argues that litigation was not reasonably foreseeable at the time the tire was destroyed, and it was a service center that destroyed the tire in any event. Plaintiff argues it was Tesla’s responsibility to make sure the tire was preserved, and not issuing sanctions here would create a perverse incentive for Tesla to quickly rid itself of crash related evidence in the future. On balance, the Court agrees with Plaintiffs.

First, the parties do not appear to dispute that (1) Plaintiffs were involved in an accident in the rental Model-X on August 8, 2021, (2) the tire blow out is pivotal to determining what caused the accident, (3) both the wheel and the tire are gone, (4) there are only limited pictures of the outside of the tire, and (5) there was no analysis, report, or other data collected about the tire or the wheel before they were destroyed. Although the Court does not believe the tire or the wheel were intentionally destroyed – the evidence shows the service center was likely performing routine tasks – the tire and wheel are plainly relevant to this lawsuit.

Next, similar to the analysis in *Victor Valley*, litigation was at least reasonably foreseeable at the time the tire and wheel were destroyed given the nature and magnitude of the accident. In *Victor Valley*, the court found the district should have reasonably foreseen litigation because of the nature of the relationship between schools and their students and the type of conduct alleged. That analysis is applicable here: Tesla is a car company and is routinely sued for accidents that take place in its

vehicles. In this case, Tesla loaned Plaintiffs the rental Model-X on a long term basis for use why their own Tesla vehicle was being serviced, then the tire blew out on the rental while Plaintiffs were driving on the freeway. Litigation was at least reasonably foreseeable when the wheel and tire were destroyed, and the Court finds sanctions appropriate.

However, “[d]iscovery sanctions are intended to remedy discovery abuse, not to punish the offending party. Accordingly, sanctions should be tailored to serve that remedial purpose, should not put the moving party in a better position than he would otherwise have been had he obtained the requested discovery, and should be proportionate to the offending party’s misconduct.” (*Williams v. Russ*, 167 Cal. App. 4th at 1223, citing *McGinty v. Superior Court* (1994) 26 Cal.App.4th 204, 210–212.) “When exercising its discretion to determine which form of sanction is most appropriate for a discovery violation, a trial court should consider various factors, including the importance of the materials that were not produced—from the perspective of the offended party’s ability to litigate the case—and what prejudice, if any, the offended party suffered ... .” (*Victor Valley*, 91 Cal. App. 5th at 1158.)

The thus Court issues the following sanctions:

1. The jury will be instructed: “Defendant disposed of the subject blowout tire during repair of the vehicle before this lawsuit was filed.”
2. The issue sanction that (a) Defendant was a substantial factor in causing Plaintiffs’ injuries and damages and (b) Plaintiffs were not responsible for and did not contribute to the harm suffered by Plaintiffs. These sanctions do not preclude Defendant from introducing evidence regarding Plaintiffs’ use of the rental Model-X, including details of the trip during which the blowout occurred.

Plaintiffs’ motion is otherwise DENIED.

**Calendar Line 7**

**Case Name:** *Pablito Concepcion v. Iniobong Uboh, et al.*

**Case No.:** 24CV433481

Before the Court is Defendant Trinity Residential Care Facilities, Inc.’s (“Trinity”) and Iniobong Uboh’s (“Uboh”) (collectively, “Defendants”) demurrer to Plaintiff Pablito Concepcion’s complaint. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

**I. Background**

According to the Complaint, Plaintiff was hired in August 2020 as a caregiver for Defendants and he was paid \$15.20 per hour. (Complaint, ¶ 10.) Plaintiff alleges he was required to work more than 8 hours a day, more than 40 hours in a week, and Defendants failed to pay Plaintiff for all hours worked, at the proper rate. (Complaint, ¶ 11.) Plaintiff further alleges Defendants failed to provide the required meal and rest breaks or complete and accurate wage statements. (Complaint, ¶¶ 12-13.) Plaintiff’s employment ended on August 31, 2021, and he was not paid all wages owed or provided complete and accurate wage statements. (Complaint, ¶ 14.)

On March 19, 2024, Plaintiff filed his complaint, asserting (1) failure to pay state minimum wage (Lab. Code, § 1197, 1194, 1194.2), (2) failure to pay overtime (Lab. Code, § 510, 1194, 1194.2), (3) failure to provide meal breaks (Lab. Code, § 510, 226.7), (4) failure to provide rest breaks (Lab. Code, § 512, 226.7), (5) failure to pay all wages on discharge (Lab. Code, § 210-213), (6) failure to provide accurate pay stubs (Lab. Code, § 226), and (7) violation of unfair competition law (“UCL”) (Bus. & Prof. Code, § 17200). On April 29, 2024, Defendants filed the instant motion, which Plaintiff opposes.

**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. (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 751.) Evidentiary facts found in exhibits attached to a complaint can be considered on demurrer. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.)

Defendants demur to the Complaint on the ground that each cause of action is uncertain and fails to allege sufficient facts to state a claim. (Code Civ. Proc., § 430.10, subd. (e) & (f).)

### **III. Analysis**

#### **A. Uncertainty**

Uncertainty is a disfavored ground for demurrer; it is typically sustained only where the pleading is so unintelligible and uncertain that the responding party cannot reasonably respond to or recognize the claims alleged against it. (See *Khoury v. Maly’s of Cal, Inc.* (1993) 14 Cal.App.4th 612, 616 (*Khoury*).) “A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures.” (*Ibid.*)

“[U]nder our liberal pleading rules, where the complaint contains substantive factual allegations sufficiently apprising defendant of the issues it is being asked to meet, a demurrer for uncertainty should be overruled or plaintiff given leave to amend. (*Williams v. Beechnut Nutrition Corp.* (1986) 185 Cal.App.3d 135, 139, fn. 2.)

Defendants argue the claims are uncertain because Plaintiff fails to allege specific facts and the facts Plaintiff does allege are contradictory. Specifically (1) Plaintiff alleges he worked more than 8 hours in a day and more than 7 hours a day, and (2) that he was a non-exempt employee and misclassified as an independent contractor and exempt employee. (Complaint, ¶¶ 11, 22, 29.)



Although Plaintiff could have been clearer about the hours worked per day, his allegation would only be contradictory if the Complaint alleged he worked more than 7 hours per day but less than 8 hours, which is not the case. Plaintiff also does not allege that he was an exempt employee, a non-exempt, and an independent contractor, but rather that he was a non-exempt employee who was misclassified as a non-exempt employee and an independent contractor. (Complaint, ¶¶ 22, 29, 37.) Moreover, the Complaint is not so unintelligible that Defendants cannot reasonably respond to it. (See *Khoury*, *supra*, 14 Cal.App.4th at p. 616.) Thus, the demurrer on the basis of uncertainty is OVERRULED.

**B. Failure to State Sufficient Facts**

Causes of action one through six are all Labor Code violations and the seventh cause of action is a UCL claim arising from the Labor Code violations. Statutory causes of action must be alleged with particularity, showing *every fact* essential to the existence of liability under the relevant statutes. (See *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790; see also *Lopez v. Southern Cal. Rapid Trans. Dist.* (1958) 40 Cal.3d 780, 795 [emphasis added].) All of Plaintiff's claims consist of recitations of the statutory language without any supporting facts. (See Complaint, ¶¶ 11, 18, 23, 30, 38, 44, 51, 54.) Thus, the claims fail to satisfy the requisite pleading standard and the demurrer to the Complaint is SUSTAINED with 20 days leave to amend.