

**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: May 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.scsccourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.shtml](https://www.scsccourt.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.scsccourt.org/>

**FREE MCLE Civil Bench Presentation:**

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**Date:** June 20, 2024

**Time:** 12-1:00

**Place:** Microsoft Teams: <https://msteams.link/YGLE>

LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
1	20CV366727	City of San Jose vs Richard Lopez et al.	Plaintiff City of San Jose's motion for judgment on the pleadings is GRANTED. A notice of motion with this hearing date and time was served by U.S. mail on April 10, 2024. Defendants failed to oppose the motion. "[T]he failure to file an opposition creates an inference that the motion [] is meritorious." ( <i>Sexton v. Super Ct.</i> (1997) 58 Cal.App.4th 1403, 1410.) And, while in their answer Defendants state that they do not recall receiving the notices and have since changed the property, they otherwise admit the material allegations in the complaint. Defendants also failed to respond to requests for admission, and the material in those requests were deemed admitted. Accordingly, the City of San Jose's motion for judgment on the pleadings is GRANTED. Court to prepare formal order.
2	21CV384685	Jeremy Witt vs Sherry Ross et al	Defendants' Motion for \$9,416.58 in sanctions is GRANTED. The Court tentatively granted Defendants' motion to compel and for sanctions on March 19, 2024. The parties stipulated to continuing the hearing on that motion to permit Plaintiff to obtain new counsel. On May 13, 2024, Plaintiff filed a dismissal of the entire action without prejudice. On May 15, 2024, Defendants filed a memorandum of costs and a supplemental memorandum in support of their motion for sanctions, which motion the Court previously tentatively granted. The supplemental papers with this hearing date were served by U.S. mail on May 15, 2024. Plaintiff once again did not respond. "[T]he failure to file an opposition creates an inference that the motion [] is meritorious." ( <i>Sexton v. Super Ct.</i> (1997) 58 Cal.App.4th 1403, 1410.) Defendants provide ample authority (and Plaintiff's counsel makes plain in his motion to withdraw that Plaintiff was so advised) that the Court retains jurisdiction to award sanctions. (See <i>Marriage of Langer &amp; Blake</i> (2022) 85 Cal.App.5th 300, 307-308; <i>Manha v. Gallagher</i> (2021) 62 Cal.app.5th 504, 509; <i>Frank Annino &amp; Sons Construction, Inc. v. McArthur Restaurants, Inc.</i> (1989) 215 Cal.App.3d 353, 357.) The Court previously found that Plaintiff failed to respond to discovery and failed to comply with the Court's orders concerning same; that has not changed. Accordingly, Plaintiff is ordered to pay Defendants \$9,416.58 in sanctions. Court to prepare formal order.
3	21CV385427	Urvashi Bhagat vs Hong Guo et al	Plaintiff's motion to compel is DENIED. First, the "Combined Separate Statement Regarding Disputed Requests in Support of Motion to Compel" fails to comply with the separate statement requirement in California Rule of Court 3.1345(a)(2); it fails to include Defendants' supplemental response and the legal and factual reasons for compelling a further response. Further, based on the information submitted, it appears to the Court that Defendants did provide supplemental responses in compliance with the Court's November 15, 2023 order. The Court accordingly finds this motion to compel was not substantially justified and orders Plaintiff to pay Defendants \$1200 in sanctions within 30 days of service of the formal order. The Court further notes Plaintiff still has not paid the \$750 Judge Rudy ordered as a discovery sanction on July 27, 2022, which is a direct violation of a discovery order. Court to prepare formal order.

4	23CV423534	Yingshan Shen vs John Kim et al	Defendant Heesue Kim's motion to compel Plaintiff Yingshan Shen to serve further verified responses to special interrogatory nos. 4, 9, 11, and 15 is GRANTED. These interrogatories seek information directly relevant to Plaintiff's allegations. If Plaintiff does not have information to add to these interrogatories, Plaintiff had no basis to make the allegations in her complaint that Defendants took money from her bank account. Plaintiff must know the identity of her bank and her bank accounts. There also must have been some basis for her allegations that Defendants made false representations to induce her to give them money from her account(s) and/or otherwise wrongfully took money from her account(s). Plaintiff is therefore ordered to serve verified supplemental responses within 20 days of service of this formal order. The Court also finds Plaintiff's objections and opposition to this motion not substantially justified. Again, Plaintiff brought this lawsuit, these interrogatories seek the basis for her doing so, and she must answer these questions. Plaintiff is therefore further ordered to pay Defendants \$2,800 in sanctions. Court to prepare formal order.
5	23CV423548	Pathens, Inc., dba Office Solutions vs Morris & D'Angelo, a Partnership	Parties are ordered to appear for the examination.
6	23CV423745	Mona Ho vs Chi Tran et al	Cross-Defendant Edward Yuan's demurrer to Old Republic Title Company's cross-complaint is SUSTAINED WITHOUT LEAVE TO AMEND with respect to the fifth cause of action and SUSTAINED WITH 20 days leave to amend with respect to the sixth cause of action. Scroll to line 6 for complete ruling. Court to prepare formal order.

**Calendar Line 6****Case Name:** *Mona Ho v. Old Republic Title Company et.al. and related cross-claims***Case No.:** 23CV423745

Before the Court is Cross-Defendant, Edward Yuan's demurrer to the fifth and sixth causes of action alleged in the Old Republic Title Company's cross-complaint. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

**I. Background**

According to the complaint and the cross-complaint, in early 2015, Mr. Vuong, through his coworker Mr. Eddie Yuan, approached Mr. Chuen for a one-year loan of \$200,000.00 by mortgaging his property located at 3005 Silver Creek Road, Unit 126, San Jose ("Property"). Because the value of the Property was greater than the loan amount, Mr. Chuen recommended the loan to Plaintiff, and upon her agreement, he was hired to handle the arrangement on her behalf. (Complaint, ¶ 7.)

Mr. Chuen and Mr. Vuong agreed to an 8% annual interest rate, which translated to a monthly interest payment of \$1333.33 for twelve months with the promise to pay the principal amount of \$200,000.00 in a balloon payment at the end of the twelfth month. This loan agreement was subsequently processed and finalized through an escrow with Chicago Title Company on February 25, 2015. In exchange for receipt of the loan amount, Mr. Vuong signed a Deed of Trust with Assignment of Rents to Mr. Chuen against the Property. (Complaint, ¶ 8.) At the end of the year, Mr. Vuong asked for an extension of the loan term while he was seeking another lender to refinance the loan. Upon Plaintiff's agreement, Mr. Chuen assigned the Deed of Trust to Plaintiff in May 2016 and terminated his representation of Plaintiff.

In December of 2016, Mr. Vuong opened escrow order no. 061302779 at the Old Republic Title Company's San Jose office to facilitate the sale of the Property to Suong Thao Phung, Trustee of the Phung Living Trust Dated July 18, 2012 ("Subject Escrow"). (Cross-complaint, ¶ 4.) On January 5, 2017, Plaintiff went to the Old Republic Title Company's San Bruno office, with Mr. Yuan as her interpreter, to sign certain documents needed for the sale of the Property. Executing the Written Beneficiary Statement, Plaintiff stated the outstanding loan balance of \$200,000.00. The Old Republic Title Company's employee, Ms. Dionision, informed Plaintiff that she would receive the \$200,000.00

at the end of the escrow but did not provide her with copies of the documents she had executed. (Complaint, ¶ 13.)

When Plaintiff did not receive the \$200,000.00 and did not receive any communications from the Old Republic Title Company, she assumed Plaintiff had failed to secure refinancing and the escrow failed to close. Meanwhile, Mr. Vuong continued to make his monthly interest payment until February 2021. Plaintiff and Mr. Yuan sent notices and reminders of late payments to Mr. Vuong but received no response. As a result, Plaintiff sought legal help on November 16, 2022. Upon investigation, Plaintiff learned that Ms. Suong Thao Phung is Mr. Vuong's spouse and the Trustee of the Phung Living Trust on March 31, 2017, under the same Subject Escrow transaction. Upon examining the documents obtained from the Old Republic Title Company, Plaintiff uncovered a purported forged Written Beneficiary Statement that indicated zero for the unpaid balance of the \$200,000.00 loan and bore Plaintiff's forged signature.

Plaintiff then filed suit on October 3, 2023, alleging (1) breach of fiduciary duty, (2) fraud, (3) negligent representation, (4) negligence, (5) elder abuse, and (6) breach of contract. On January 3, 2024, Old Republic Title Company filed its cross-complaint against Mr. Vuong and Mr. Yuan alleging (1) breach of escrow instructions, (2) fraud, (3) negligent misrepresentation, (4) unjust enrichment, (5) implied contractual indemnity, and (6) equitable indemnity.

## **II. Legal Standard**

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.)

"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.) However, 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. Fifth Cause of Action: Implied Contractual Indemnity**

Historically, implied contractual indemnity was available when two parties in a contractual relationship were both responsible for injuring a third party; recovery rested on the theory that “a contract under which the indemnitor undertook to do work or perform services necessarily implied an obligation to do the work involved in a proper manner and to discharge foreseeable damages resulting from improper performance absent any participation by the indemnitee in the wrongful act precluding recovery.” [Citations.] (*Prince v. Pacific Gas & Electric Co.* (2009) 45 Cal.4th 1151, 1159.) Now, however, as a form of equitable indemnity ..., the doctrine rests on the equities apparent from the surrounding circumstances, because contracting parties should share loss in proportion to their breach. (*Id.* at 1157; *Sehulster Tunnels/Pre-Con v. Traylor Brothers, Inc./Obayashi Corp.* (2003) 111 Cal.App.4th 1328, 1350 (citations omitted).)

Cross-complainant acknowledges that California law now recognizes only express and equitable indemnity and focuses on the doctrine of equitable indemnity alleged as the sixth cause of action in the cross-complaint without addressing contractual indemnity in its opposition. However, even if opposed, Cross-complainant could not cure its failure to allege (1) what contractual relationship Cross-complainant rests its claim on, (2) the existence of a contractual relationship between Mr. Yuan and the Cross-complaint, (3) what specific duties Mr. Yuan owed, and (4) how Mr. Yuan failed to perform his contractual obligations that resulted in Plaintiff’s injuries.

Accordingly, Mr. Yuan’s demurrer to the cross-complaint’s fifth cause of action for contractual indemnity is SUSTAINED WITHOUT LEAVE TO AMEND.

#### **B. Sixth Cause of Action for Equitable Indemnity**

“The doctrine of comparative equitable indemnity is applied to multiple tortfeasors and is designed to apportion loss among tortfeasors in proportion to their relative culpability so there will be an equitable sharing of the loss among multiple tortfeasors.” (*Smoketree-Lake Murray, Ltd. v. Mills*

*Concrete Construction Co.* (1991) 234 Cal.App.3d 1724, 1736, citations omitted.) “The elements of a cause of action for indemnity are (1) a showing of fault on the part of the indemnitor and (2) resulting damages to the indemnitee for which the indemnitor is ... equitably responsible. [Citation.]” (*Bailey v. Safeway, Inc.* (2011) 199 Cal.App.4th 206, 217.)

The complaint alleges (1) Mr. Yuan was/is Defendant Vuong’s coworker, (2) Mr. Yuan approached Plaintiff’s friend, Mr. Chuen, about Mr. Vuong seeking a short-term loan, (3) on a few occasions Mr. Yuan’s assistance was sought by Mr. Vuong and Mr. Tran to communicate with the Plaintiff, and (4) on January 5, 2017, Mr. Yuan arrived at Cross-complainant’s San Bruno office with the Plaintiff as her interpreter. (Complaint ¶¶ 7, 9, 12, 13.) The cross-complaint incorporates the allegations of the complaint and alleges (1) Mr. Yuan is an individual living in the Santa Clara County, (2) Mr. Yuan acted as “Plaintiff’s agent, representative and/or advisor with respect to the subject Deed of Trust and the transaction that was the subject matter of the Escrow, in whom Plaintiff placed trust and confidence, and to whom she gave authority to protect her interest”, (3) Cross-defendants impliedly covenanted and contracted to defend and indemnify Cross-complainant, (4) Plaintiff’s damages were entirely or partially caused by Cross-defendants’ misrepresentations, breaches of contract, negligence or intentional conduct. (Cross-complaint ¶¶ 3, 11, 31, 35.) These conclusory allegations fail to allege Mr. Yuan owed Plaintiff a fiduciary duty or how this duty was breached.

Accordingly, Mr. Yuan’s demurrer to the sixth cause of action for equitable indemnity is SUSTAINED WITH LEAVE TO AMEND within 20 days from the service date of the final order.

**Calendar Lines 1-3**

**Case Name:** *Jai Kumar vs Jade Global, Inc.*

**Case No.:** 20CV363612

Before the Court are Plaintiff's motion for leave to file a second amended complaint, Plaintiff's motion to compel, and Defendant's motion to quash. Pursuant to California Rule of Court 3.1308, the Court issues its tentative rulings.

**I. Background**