SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 10
Honorable Frederick S. Chung

Rachel Tien, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408-882-2210

DATE: November 5, 2024 TIME: 9:00 A.M.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

The courthouse is open: Department 10 is now fully open for in-person hearings, as of April 18, 2023. The court strongly prefers **in-person** appearances for all contested law-and-motion matters. For all other hearings (*e.g.*, case management conferences), the court strongly prefers either **in-person or video** appearances. Audio-only appearances are permitted but disfavored, as they cause significant disruptions and delays to the proceedings. Please use telephone-only appearances as a last resort.

Scheduling motion hearings: Please go to https://reservations.scscourt.org or call 408-882-2430 between 8:30 a.m. and 12:30 p.m. (Mon.-Fri.) to reserve a hearing date for your motion *before* you file and serve it. You must then file your motion papers no more than five court days after reserving the hearing date, or else the date will be released to other cases.

CourtCall is no longer available: Department 10 uses Microsoft Teams for remote hearings. Please click on this link if you need to appear remotely, and then scroll down to click the link for Department 10: https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml. Again, the court strongly prefers in-person or video appearances. Telephonic appearances are a sub-optimal relic of a bygone era.

Recording is prohibited: As a reminder, most hearings are open to the public, but state and local court rules prohibit recording of court proceedings without a court order. This prohibition applies to both in-person and remote appearances.

Court reporters: Unfortunately, the court is no longer able to provide official court reporters for civil proceedings (as of July 24, 2017). If any party wishes to have a court reporter, the appropriate form must be submitted. See https://www.scscourt.org/general_info/court_reporters.shtml.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	20CV373181	Ao Wang et al. v. Bethany Liou et al.	Order of examination: parties to appear.
LINE 2	24CV431277	Briana Burrows et al. v. Pushpa Bisht et al.	Demurrer to answer: OFF CALENDAR.
LINE 3	24CV431277	Briana Burrows et al. v. Pushpa Bisht et al.	Motion to strike answer: OFF CALENDAR.
LINE 4	21CV386912	Yeo Bai Lee v. Christy Jihee Ryoo et al.	Click on LINE 4 or scroll down for ruling in lines 4-8.
LINE 5	21CV386912	Yeo Bai Lee v. Christy Jihee Ryoo et al.	Click on LINE 4 or scroll down for ruling in lines 4-8.
LINE 6	21CV386912	Yeo Bai Lee v. Christy Jihee Ryoo et al.	Click on LINE 4 or scroll down for ruling in lines 4-8.
LINE 7	21CV386912	Yeo Bai Lee v. Christy Jihee Ryoo et al.	Click on LINE 4 or scroll down for ruling in lines 4-8.
LINE 8	21CV386912	Yeo Bai Lee v. Christy Jihee Ryoo et al.	Click on LINE 4 or scroll down for ruling in lines 4-8.
LINE 9	23CV412113	Daniel Joseph Boyer v. Nava Siavoshy Khajeh et al.	Motion to compel: continued to February 20, 2025, per the ex parte application.
LINE 10	2013-1-CV-243528	Cavalry Investments, LLC v. Jesse Leandro et al.	Claim of exemption: judgment debtor's claim is DENIED. Leandro has not shown that his earnings are exempt, and his financial statement shows sufficient funds to satisfy the withholding per pay period to satisfy the judgment. Leandro's proposed amount to be withheld from earnings of $0 is unreasonable. (CCP § 706.123.)

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LINE #	CASE #	CASE TITLE	RULING
LINE 11	21CV375377	OneMain Financial Group, LLC v. Makda A. Zeray	Motion to set aside dismissal and to enter judgment pursuant to stipulation: notice is proper, and the motion is unopposed. Good cause appearing, the court GRANTS the motion. Moving party to prepare proposed order.
LINE 12	24CV440543	Ferras Hamad v. Meta Platforms, Inc.	Click on LINE 12 or scroll down for ruling.

- oo0oo -

Calendar Lines 4-8
Case Name: *Yeo Bai Lee v. Christy Jihee Ryoo et al.*
Case No.: 21CV386912

I. BACKGROUND

This case arises from a dispute over the control of four companies: K&L Supply Co, Inc. ("K&L Supply"), YBL Holdings, Inc. ("YBL"), Skylars LLC ("Skylars"), and K&L Supply Korea, Co., Ltd. ("K&L Korea"). Plaintiff Yeo Bai Lee, the founder of the companies, alleges that defendant Christy Ryoo, the CFO of K&L Supply, has usurped control over the companies, as well as real estate owned by both Lee and Ryoo.

Lee filed the original and still-operative complaint on September 15, 2021, naming Ryoo, K&L Supply, YBL, Skylars, and K&L Korea as defendants. The complaint originally stated eleven causes of action: (1) Breach of Oral Contract (against Ryoo); (2) Intentional Infliction of Emotional Distress (against Ryoo and various Does); (3) Fraud (against Ryoo); (4) Financial Elder Abuse (against Ryoo and various Does); (5) Constructive Trust (against Ryoo and various Does); (6) Cancellation of Written Instruments (against Ryoo and various Does); (7) Appointment of Receiver (against K&L Supply, YBL, Skylars and K&L Korea); (8) Rescission—Fraud (against Ryoo and various Does); (9) Recission—Failure of Consideration (against Ryoo and various Does); (10) Conversion (against Ryoo); and (11) Declaratory Relief (alleged against Ryoo and various Does).

On September 28, 2021, this court (Judge Helen Williams) issued a temporary restraining order (TRO) barring defendants from transferring any interest in the companies or the real estate pending a preliminary injunction hearing. The preliminary injunction hearing took place on November 3, 2021, and Judge Williams issued a tentative ruling on January 3, 2022, extending the TRO, granting a preliminary injunction, and requesting further briefing regarding the appropriate amount of an undertaking.

While that initial preliminary injunction ruling was pending, on December 8, 2021, Lee substituted new counsel in this case, the law firm of Steyer Lowenthal Boodrookas Alvarez & Smith LLP. On December 9, 2021, he filed an association of counsel by the firm of Valensi Rose, PLC. Both of these law firms are his present counsel.

On March 17, 2022, Judge Williams issued an amended order granting a preliminary injunction barring defendants from transferring any interest in the companies or any interest in the real properties, ordering Lee to deposit $30,000.00 as an undertaking. In that order, Judge Williams also denied Lee's ex parte application for further limitations on the defendants.

On August 8, 2022, this court (Judge Kulkarni) denied cross-motions to disqualify counsel on both sides. Lee appealed that order, which the Court of Appeal affirmed on November 16, 2023. On December 2, 2022, this court (Judge Kirwan) granted defendants' motion to appoint a discovery referee, based on the "number of discovery motions filed and the associated burden on the Court." On June 6, 2023, defendants acquired new counsel, the law firm of Keller/Anderle LLP, which is defendants' current counsel. On June 20, 2023, this court (the undersigned) denied a second motion by defendants to disqualify Lee's counsel.

On August 27, 2024, Lee filed a dismissal of his first cause of action for breach of oral contract and his third cause of action for fraud, without prejudice. This had the effect of

eliminating the eighth cause of action for "Recission—Fraud" and the eleventh cause of action for "Declaratory Relief," both of which were dependent upon the fraud cause of action. On October 23, 2024, Lee filed another dismissal, of his second cause of action for intentional infliction of emotional distress. Thus, the remaining causes of action in the complaint are the fourth, fifth, sixth, seventh, ninth, and tenth.

Currently before the court are five motions. The first is a motion for summary judgment, or alternatively, summary adjudication, filed by Ryoo and the four entity defendants (collectively, "Defendants") on August 14, 2024. Lee filed an opposition to this motion on October 22, 2024. The second is a motion to seal certain exhibits submitted in support of the motion for summary judgment, filed by Defendants on August 16, 2024. This motion is unopposed. The third motion, filed by Lee on September 11, 2024, seeks leave to file a first amended complaint. This motion was originally scheduled to be heard on December 10, 2024, but the court advanced the hearing at Lee's request on September 12, 2024, given that the trial date in this case is December 9, 2024. Defendants filed an opposition to this motion on October 23, 2024. The fourth motion, filed by Lee on September 26, 2024, seeks to modify the March 17, 2022 preliminary injunction to bar Ryoo from using the entity defendants' funds to defend herself in this case. Defendants' filed an opposition to this motion on October 23, 2024. The fifth motion seeks relief from a failure to post timely jury fees, originally filed by Lee as an ex parte application on October 23, 2024. The court set this fifth motion for a hearing on the same date as the other four motions on October 23, 2024, allowing Defendants to file an opposition by October 30, 2024.[1]

Defendants attempted to set a sixth motion for hearing with these other five: a motion to compel the appointment of a guardian ad litem for Lee. This was filed on October 29, 2024, with a request for a November 5, 2024 hearing—*i.e.*, on less than a week's notice. Lee's counsel filed a declaration indicating that he would not be able to submit a written response before November 5 but could file a response if the hearing were set for November 15 or thereafter. Accordingly, the court set this sixth motion for a hearing on November 19, 2024.

As noted above, this matter is currently set for trial on December 9, 2024. On September 23, 2024, the court denied a stipulated request from the parties to continue the trial date, noting in part that the "eleventh-hour filing of a motion for leave to amend the complaint cannot be the basis for a trial continuance, before the court has even considered whether it will grant such leave."

II. REQUESTS FOR JUDICIAL NOTICE

Both sides have submitted requests for judicial notice. "Judicial notice may not be taken of any matter unless authorized or required by law." (Evid. Code, § 450.) A precondition to judicial notice in either its permissive or mandatory forms is that the matter to be noticed must be relevant to the issues before the court. (*Silverado Modjeska Recreation and Park Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 307 [citing *People v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422, fn. 2].) It is the court, and not the parties, that determines relevance. Evidence Code section 453, subdivision (b), requires a party requesting

[1] Lee has also filed a motion to seal exhibits submitted in support of Lee's opposition to the motion for summary judgment on October 22, 2024. While Lee appears to have unilaterally set this motion for hearing on November 5, 2024, it is *not* on the court's calendar for November 5, 2024, as it has been filed on only 10 court days' notice.

judicial notice to "[furnish] the court with sufficient information to enable it to take judicial notice of the matter."

A. Defendants' Request

Defendants have filed a request for judicial notice of 21 documents in support of their motion for summary judgment: Exhibits 1, 2, 4-10, 11, 14, 15, 19, 20, 24, 25, 31, 33, and 36-38 to their appendix of exhibits. Other than a generic reference to Evidence Code sections 452 and 453, the request does not identify any specific basis for taking judicial notice of any particular document.

The court GRANTS judicial notice of: Exhibits 1 and 2, which are copies of petitions for appointment of conservator, filed by Julia Lee (Lee's daughter) in Santa Clara County Superior Court Case No. 1-13-PR-173494 (the "Conservatorship Action"); Exhibits 4, 5, and 10, which are complaints filed by Lee in San Francisco Superior Court Case No. CGC-14-539596 (the "Trust Action"); Exhibit 11, an October 16, 2014 notice of motion for summary judgment in the Conservatorship Action; and Exhibit 19, a petition for approval of adoption in Santa Clara County Superior Court Case No. 18AD024682 (the "Adoption Case"), pursuant to Evidence Code section 452, subdivision (d) (court records) only. These documents are only noticed as to their existence and filing dates. (See *Oh v. Teachers Ins. & Annuity Assn. of America* (2020) 53 Cal.App.5th 71, 79-81 ("*Oh*") [truth of contents of court records cannot be judicially noticed].)

The court DENIES judicial notice of Exhibits 6, 7, 8, 36, and 37. Deposition transcripts and declarations cannot be noticed as to the truth of their contents. (See *Oh*, *supra*, 53 Cal.App.5th at pp. 79-81; *Intengan v. BAC Home Loans Servicing LP* (2013) 214 Cal.App.4th 1047, 1057 [court may take judicial notice of existence of declaration but not of facts asserted in it]; *Bach v. McNelis* (1989) 207 Cal.App.3d 852, 865 [court may not notice the truth of declarations or affidavits filed in court proceedings].) The mere existence of these transcripts and declarations is irrelevant to the issues before the court. The court also DENIES judicial notice of Exhibit 15, a copy of the articles of incorporation for YBL. Again, Defendants have not stated any specific basis for notice of the document, and it cannot be considered an official record. (See *People v. Thacker* (1985) 175 Cal.App.3d 594, 598-599 ("*Thacker*") [copies of articles of incorporation, statement by domestic corporation, and notice of issuance of shares are materials prepared by a private person, merely on file with state agencies, and not official acts].)

Under Evidence Code section 452, subdivision (d), the court GRANTS judicial notice of: Exhibit 9, a September 19, 2014 statement of decision in Santa Clara County Superior Court Case No. 1-13-CV-252601; Exhibit 14, a January 14, 2016 order in Santa Clara County Superior Court Case No. 6-10-FL-005204 (the "Divorce Case"); Exhibit 20, a March 19, 2018 order of adoption in the Adoption Case; Exhibit 33, a September 9, 2020 order in Santa Clara County Superior Court Case No. 17CV314431 (*Hee Ja Lee v. K&L Supply Company, Inc. et al.*) (the "Fiduciary Duty Action"); and Exhibit 38, a copy of Judge Williams's March 17, 2022 order in this case. The court takes judicial notice of the contents of these exhibits and their legal effect, but not the truth of their findings. Court records, including court orders, cannot be judicially noticed as to the truth of the stated factual findings. (See *Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1565; *Fowler v. Howell* (1996) 42 Cal.App.4th 1746, 1749; *Kilroy v. State of Calif.* (2004) 119 Cal.App.4th 140, 145-148.)

The court GRANTS judicial notice of Exhibits 24, 25, and 31 under Evidence Code section 452, subdivision (c), as this code provision has been interpreted to permit judicial notice of recorded documents. (See *Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 264-65 ("*Fontenot*") [stating that "a court may take judicial notice of the fact of a document's recordation, the date the document was recorded and executed, the parties to the transaction reflected in a recorded document, and the document's legally operative language . . . [and, f]rom this, the court may deduce and rely upon the legal effect of the recorded document"], disapproved on other grounds in *Yvanona v. New Century Mortg. Corp.* (2016) 62 Cal.4th 919.)

B. Lee's Requests

Lee submits two requests for judicial notice. The first was filed on September 26, 2024 in support of his motion to modify the preliminary injunction. This request seeks judicial notice of three documents under Evidence Code section 452, subdivision (d). Exhibit 1 is a copy of Judge Williams's September 28, 2021 TRO. Exhibit 2 is a copy of Judge Williams's January 26, 2022 order granting the preliminary injunction. Exhibit 3 is a copy of Judge Williams's March 17, 2022 amended order granting the preliminary injunction and denying Lee's request for further restrictions. The court GRANTS the request as to these documents (but again, does not take judicial notice of the truth of any factual findings).

Lee's second request was filed in support of his opposition to the motion for summary judgment. It seeks judicial notice of 13 documents, submitted as Exhibits 101, 104, 105, 116, 120, 122, 123, 127, 128, 155, 156, 157, and 160. Judicial notice is only requested pursuant to Evidence Code sections 452 and 453 generally, without any identification of a basis for judicial notice of any specific document.

The court DENIES judicial notice of Exhibits 101, 122, and 160, which are previously filed declarations. (See *Oh*, *supra*.) The court DENIES judicial notice of Exhibits 104 and 123, which are docket printouts, the relevance of which is not apparent to the court. The court also DENIES notice of Exhibits 116 and 120, which are copies of articles of incorporation. (See *Thacker*, *supra*.)

The court GRANTS judicial notice of Exhibits 105, 127, and 128, which are copies of court orders and a petition to approve adoption, under Evidence Code section 452, subdivision (d). The court also GRANTS judicial notice of Exhibits 155, 156, and 157, which are copies of recorded deeds, and as already mentioned, are noticeable under Evidence Code section 452, subdivision (c), and *Fontenot*, *supra*.

Additional requests for judicial notice submitted by Lee with his replies to the motion to modify preliminary injunction and motion for leave to amend the complaint have not been considered. (See *Golden Door Properties, LLC v. Superior Court* (2020) 53 Cal.App.5th 733, 774 (*Golden Door*) [new evidence is not permitted in reply papers unless it is "strictly responsive" to arguments made for the first time in the opposition].)

III. DEFENDANTS' MOTION TO SEAL

Defendants have asked the court to seal six documents: the unredacted copies of Exhibits 42, 46, 47, and 50, as well as the unredacted copies of their notice of motion and their

separate statement in support of summary judgment. (See Defendants' Notice of Motion and Motion to Seal).

A court has the authority to order that a record be filed under seal if it expressly finds facts that establish: 1) there exists an overriding interest that overcomes the right of public access to the record; 2) the overriding interest supports sealing the record; 3) a substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; 4) the proposed sealing is narrowly tailored; and 5) no less-restrictive means exist to achieve the overriding interest. (See Cal. Rules of Court, rule 2.550.)

The California Rules of Court do not define what constitutes an "overriding interest." Instead, this has been left to case law. Different "[c]ourts have found that, under appropriate circumstances, various statutory privileges, trade secrets, and privacy interests, when properly asserted and not waived, may constitute overriding interests." (*In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 298, fn.3, quoting Judicial Council advisory committee comment to [former] Rule 243.1 [affirming lower court order unsealing certain records over defendants' objection that the materials contained proprietary trade secrets]; see also *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1222, fn. 46 [overriding interests found in various cases include: protection of minor victims of sex crimes from further trauma and embarrassment, privacy interests of a prospective juror during individual voir dire, protection of witnesses from embarrassment or intimidation so extreme that it would traumatize them or render them unable to testify, protection of trade secrets, protection of information within the attorney-client privilege, and enforcement of binding contractual obligations not to disclose, safeguarding national security, ensuring the anonymity of juvenile offenders in juvenile court, ensuring the fair administration of justice, and preservation of confidential investigative information].)

A declaration supporting a motion to seal should be specific, not conclusory, as to the facts supporting the overriding interest. If the court finds that the supporting declarations are conclusory or otherwise unpersuasive, it may conclude that the moving party has failed to demonstrate an overriding interest that overcomes the right of public access. (*In re Providian Credit Card Cases*, *supra*, 96 Cal.App.4th at pp. 301, 305.) While the supporting declaration here is brief, the court finds that it is sufficiently specific and properly references prior orders of the court in this case referencing the confidential investigative information that the motion seeks to protect from public disclosure.

The court GRANTS Defendants' unopposed motion to seal. The court finds that there exists an overriding privacy interest in the confidential information to be sealed that overcomes the right of public access to this information, that the overriding interest supports sealing the documents reflecting this information, that a substantial probability exists that the overriding interest will be prejudiced if the record is not sealed, that the proposed sealing is narrowly tailored with targeted redactions, and that no less restrictive means exist to achieve the overriding interest. Public access to the documents that have been conditionally lodged under seal will remain restricted until further order of the court.

IV. DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

A. General Standards

The pleadings limit the issues presented for summary judgment or summary adjudication, and such a motion may not be granted or denied based on issues not raised by the pleadings. (See *Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258; *Nieto v. Blue Shield of Calif. Life & Health Ins*. (2010) 181 Cal.App.4th 60, 73 ["the pleadings determine the scope of relevant issues on a summary judgment motion"].) A defendant moving for summary judgment needs to address only the issues raised by the operative complaint. (*Bostrim v. County of San Bernardino* (1995) 35 Cal.App.4th 1654, 1663-1664.) "Declarations in opposition to a motion for summary judgment are not a substitute for amending the pleadings to raise additional theories of liability." (*Nativi v. Deutsche Bank National Trust Co*. (2014) 223 Cal.App.4th 261, 290 (*Nativi*), internal citation omitted; see also *California Bank & Trust v. Lawlor* (2013) 222 Cal.App.4th 625, 637, fn. 3 ["[a] party may not oppose a summary judgment motion based on a claim, theory, or defense that is not alleged in the pleadings," and "[e]vidence offered on an unpleaded claim, theory, or defense is irrelevant because it is outside the scope of the pleadings"].)

The moving party bears the initial burden of production to make a prima facie showing that there are no triable issues of material fact. (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 850 (*Aguilar*).) "A defendant seeking summary judgment must show that at least one element of the plaintiff's cause of action cannot be established, or that there is a complete defense to the cause of action . . . . The burden then shifts to the plaintiff to show there is a triable issue of material fact on that issue." (*Alex R. Thomas & Co. v. Mutual Service Casualty Ins. Co.* (2002) 98 Cal.App.4th 66, 72; internal citations omitted.) "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable finder of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar, supra*, at p. 850.) A motion for summary judgment or adjudication shall be granted only if it completely disposes of an entire cause of action, an affirmative defense, a claim for damages, or an "issue of duty." (See Code Civ. Proc., § 437c, subd. (f)(1); *McClasky v. California State Auto. Ass'n* (2010) 189 Cal.App.4th 947, 975 ["If a cause of action is not shown to be barred in its entirety, no order for summary judgment—or adjudication—can be entered."].) Summary adjudication of general "issues" or facts is not permitted. (See *Raghavan v. The Boeing Company* (2005) 133 Cal.App.4th 1120, 1136.)

The moving party's declarations and evidence will be strictly construed in determining whether they negate or disprove an essential element of an opposing party's claim or defense; the court will "resolve any evidentiary doubts or ambiguities in [the non-moving party's] favor." (*Johnson v. American Standard, Inc.* (2008) 43 Cal.4th 56, 64; *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1037.) While the same standards of admissibility govern both, the opposition declarations are liberally construed while the moving party's evidence is strictly scrutinized. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768.) "Where a declaration submitted in opposition to a motion for summary judgment clearly contradicts the declarant's earlier deposition testimony or discovery responses, the trial court may fairly disregard the declaration and 'conclude there is no substantial evidence of the existence of a triable issue of fact.'" (*Whitmire v. Ingersoll-Rand Co.* (2010) 184 Cal.App.4th 1078, 1087, citing *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 21.)

As a general matter, the moving party may not rely on additional evidence filed with its reply papers. (See *Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537-38 ["The general rule of motion practice . . . is that new evidence is not permitted with reply papers. This principle is most prominent in the context of summary judgment motions . . ."]; see also *Nazir v. United Airlines, Inc*. (2009) 178 Cal.App.4th 243, 252; *San Diego Watercrafts, Inc. v. Wells Fargo Bank, N.A.* (2002) 102 Cal.App.4th 308, 316.)

B. The Bases for Defendants' Motion

Defendants filed their motion before Lee dismissed certain causes of action, and so they address all original causes of action in their opening papers. Regarding the six causes of action in the operative complaint that are still at issue (the fourth, fifth, sixth, seventh, ninth, and tenth), Defendants state that each cause "fails as a matter of law because Plaintiff does not possess and cannot reasonably obtain evidence to support it." (Notice of Motion, pp. 1:12-3:14.)

In addition to lacking evidence, Defendants also argue that the fourth cause of action for financial elder abuse fails because "under the principle of judicial estoppel, Plaintiff cannot show that Defendants ever took or misappropriated Plaintiff's property or assisted in such taking or misappropriation." (*Id*. at p. 2:5-6.) Further, they assert that the fifth cause of action for constructive trust fails because it is a remedy, not a cause of action, and because Lee "cannot establish that Ryoo obtained an interest in Defendant entities through fraud or any other improper means." (*Id*. at p. 2:12-13.) Defendants assert that the sixth cause of action for cancellation of instruments (specifically, grant deeds) also fails because Lee "cannot show the deeds at issue are void or voidable due to fraud or any other reason." (*Id*. at p.2:17.) Defendants assert that the seventh cause of action for appointment of receiver also fails because it is a remedy, not a cause of action, and because Lee "has not pursued and has not pursued this claimed remedy and has not and cannot otherwise show an entitlement to a receiver." (*Id*. at p. 2:22-23.) Defendants assert that the ninth cause of action for rescission (based on failure of consideration) also fails because Lee "cannot show the existence of a valid contract that can be rescinded, nor can Plaintiff show [that] his consent to any alleged oral agreement was induced by fraud or any other grounds warranting rescission." (*Id*. at p. 3:5-7.) Finally, as to the tenth cause of action for conversion of Lee's interest in the companies, Defendants assert that it fails because Lee "cannot show that Ryoo engaged in any wrongful act or that his consent to the transfers was procured by fraud or other improper means." (*Id*. at p. 3:11-12.)

Defendants' motion is supported by two declarations, in addition to the request for judicial notice. The first declaration is from counsel Reuben Cahn, who authenticates Exhibits 1-56 to Defendants' appendix of exhibits.

The second declaration is from defendant Christy Ryoo, who generally describes her relationship with Lee. She states that she first met Lee in 2002 and was his chiropractor for about two months in 2002, as well as later in 2012-2013. She also states that she was Lee's salaried personal assistant from 2013 through 2015; that Lee appointed her CFO of YBL in August 2016; that Lee legally adopted her on March 19, 2018; that Lee appointed her as general manager of K&L Supply in "mid-2018"; that she and Lee entered into a stock bonus agreement (Defendants' Exhibit 21) on May 4, 2018, which initially transferred a 10% interest in YBL to her; that Lee transferred ownership of K&L Korea and YBL to her on December 1,

2018 and October 1, 2019, respectively (Defendants' Exhibits 23 and 29); and that Lee executed grant deeds giving her a 50% interest in three real properties in 2019.

C. Discussion

For the reasons that follow, the court GRANTS Defendants' motion for summary judgment as to the remaining causes of action (the fourth, fifth, sixth, seventh, ninth, and tenth causes of action).

1. Lack of Evidence (All Causes of Action)

To obtain summary judgment or summary adjudication on the basis that a plaintiff has no evidence to establish an essential element of a cause of action, a moving defendant must support such a motion with discovery admissions or other admissible evidence following extensive discovery, showing that "plaintiff does not possess, and cannot reasonably obtain, needed evidence." (*Aguilar*, *supra*, 25 Cal.4th at pp. 854-855.) It is not enough for a moving defendant to show merely that a plaintiff currently "has no evidence" on a key element of the claim. (See *Gaggero v. Yura* (2003) 108 Cal.App.4th 884, 891, citing *Aguilar* ["the absence of evidence to support a plaintiff's claim is insufficient to meet the moving defendant's initial burden of production. The defendant must also produce evidence that the plaintiff cannot reasonably obtain evidence to support his or her claim."].) "Such evidence may consist of the deposition testimony of the plaintiff's witnesses, the plaintiff's factually devoid discovery responses, or admissions by the plaintiff in deposition or in response to requests for admission that he or she has not discovered anything that supports an essential element of the cause of action." (*Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 110.)

Defendants' motion focuses largely on Lee's deposition testimony in this action. Excerpts from his depositions (taken on May 18, 2023, June 19, 2023, February 13, 2024, and February 14, 2024) are submitted as Defendants' Exhibit 55. When asked what false statements Ryoo had made, Lee generally refused to answer before stating that he "didn't know" what Ryoo thought or how she did anything. (See Exhibit 55, pp. 97:3-98:10.) He also testified that his adoption of Ryoo was suggested by his attorney, Phil Silvestri, rather than Ryoo, as a means of putting his assets beyond the reach of his now ex-wife. (*Id.* at pp. 121:17-126:5 and 144:22-151:21.) Lee generally denied transferring YBL and K&L Korea to Ryoo but would not elaborate in response to questions. (*Id.* at pp. 170:16-176:8.) The result was the same with questions about transfers of real property (referred to as the "Comer Drive," "Dove Oak" and "Lake Elsinore" properties). (*Id.* at pp. 176:10-178:22.) Lee was also unwilling or unable to answer questions as to whether he had made an oral agreement with Ryoo whereby he would give her YBL and K&L Korea, and she would still allow him to run the companies. He eventually testified that he could not remember such an agreement or signing any documents that were shown to him at the deposition, and also, somewhat contradicting himself, that Ryoo "forced" him to sign the documents he was shown. (*Id.* at pp. 188:10-192:22 and 219:3- 238:13.) He testified that he could not remember talking to accountants or Ryoo about filing gift tax returns. (*Id.* at p. 241:7-21.) When shown copies of grant deeds showing transfers of a 50% interest from himself to Ryoo in the Comer Drive and Lake Elsinore properties, Lee testified that he did not remember signing the documents. (*Id.* at pp. 253:7-255:9.)

All of the remaining causes of action in this case depend either upon the alleged oral agreement between Lee and Ryoo or the allegedly fraudulent transfers of interest in companies and in real properties that Lee has testified he does not remember. Lee's deposition testimony also contradicts his responses to written discovery in this case that asserted there was an oral agreement to transfer asserts to put them beyond the reach of Lee's former wife. (See Defendants' Exhibits 39, 40, and 41.)

Lee's opposition brief fails to address the lack of evidence or explain, given Lee's deposition testimony, what evidence specifically supports each of the remaining causes of action in the operative original complaint. Instead, the opposition offers only a general discussion of the fourth cause of action for financial elder abuse.

Lee submits three declarations with the opposition. The first is from counsel Andrew August. The relevant portions of this declaration authenticate Exhibits 101-185 to Lee's appendix of exhibits. (Exhibits 108, 109 and 137 are excerpts from Ryoo's depositions.) The second declaration is from non-party Julia Lee, Lee's daughter, who describes her relationship with Lee. The third declaration is from counsel Linda Chung, who states that she has not found any Korean translation of a May 4, 2018 stock purchase agreement.

2. Fourth Cause of Action (Financial Elder Abuse)

Financial elder abuse is defined by Welfare and Institutions Code section 15610.30, subdivision (a), as follows: "'Financial abuse' of an elder or dependent adult occurs when a person or entity does any of the following: [¶] (1) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both. [¶] (2) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both. [¶] (3) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, as defined in Section 15610.70."

a) Sufficiency of the Allegations and the Evidence

A cause of action for elder abuse is statutory and therefore must be pleaded with particularity. (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790.) "Accordingly, [the] '[u]se of such terminology [as fraudulently and recklessly] cannot cure [the] failure to point out exactly how or in what manner the [respondent] transgressed.' [Citation.]" (*Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 410.) The fourth cause of action does not meet this standard. It incorporates the first three causes of action by reference, but those causes of action are now dismissed. It otherwise very generally alleges that "Defendants" committed financial elder abuse because they "acted with intent to defraud Lee and exerted undue influence over Lee in persuading him to transfer his property to Ryoo. Specifically, [Ryoo] used the doctor-patient relationship that existed between them *at the time*, and exploited Lee's vulnerabilities at a very difficult time for him to advance her own interests, to the detriment of Lee." (See Complaint, ¶¶ 60-65, emphasis added.)

The dismissal of the breach of contract and fraud causes of action, together with Defendants' evidence (which includes Lee's deposition testimony that he does not know what

Ryoo said or did that was false and cannot remember entering into an oral agreement or signing documents transferring interests in the companies or the real properties, as well as Ryoo's declaration), is sufficient to meet Defendants' initial burden to show that the Lee has no evidence to support the fourth cause of action.

With the burden shifted to Lee, he is unable to raise any triable issue of material fact. As noted above, the opposition does not directly address the lack of evidence pointed out by Defendants or identify specific evidence that supports the fourth cause of action. The opposition does repeatedly suggest that undue influence may be inferred from circumstantial evidence, but while this is true as a general matter, inferences must be reasonable and cannot be based on speculation or surmise to defeat a summary judgment. They must also be supported by evidence. (See *McHenry v. Asylum Entertainment Delaware, LLC* (2020) 46 Cal.App.5th 469, 479 [because speculation is not evidence, speculation cannot create a triable issue of material fact]; see also *Pipitone v. Williams* (2016) 244 Cal.App.4th 1437, 1453 ["A triable issue of fact can only be created by a conflict of evidence, not speculation or conjecture."]; *McGrory v. Applied Signal Technology, Inc*. (2013) 212 Cal.App.4th 1510, 1530 ["a material triable controversy is not established unless the inference is reasonable"].) Moreover, the inference upon which a plaintiff attempts to rely must satisfy the "more likely than not" evidentiary standard that a plaintiff will bear at trial. (*Leslie G. v. Perry & Assocs*. (1996) 43 Cal.App.4th 472, 487.) The court determines whether an inference is reasonable and whether it satisfies the "more likely than not" standard.

Lee's opposition also argues at length that Ryoo was in a confidential and fiduciary relationship with Lee, but this is not alleged in the complaint.[2] Summary judgment cannot be denied based on an unpled theory. While Ryoo is Lee's adopted daughter, adult children and their parents are not automatically in a fiduciary relationship as a matter of law, and contrary to what the opposition suggests, the adoption agreement and petition for adoption did not expressly create a fiduciary relationship. (See Lee Exhibits 126 and 127.)[3] The fact that Ryoo was Lee's personal assistant from 2013-2015 and was thereafter an officer in one of the companies founded by Lee, with an ownership interest in the others, also does not establish a fiduciary relationship between them. "Under prevailing judicial opinion, no presumption of a confidential relationship arises from the bare fact that parties to a contract are employer and employee." (*People v. Threestar* (1985) 167 Cal.App.3d 747, 759.) No fiduciary relationship is established merely because parties in a business relationship reposed trust and confidence in each other. (*Girard v. Delta Towers Joint Venture* (1993) 20 Cal.App.4th 1741, 1749 [citing *Worldvision Enterprises, Inc. v. American Broadcasting Companies* (1983) 142 Cal.App.3d 589, 595].)

The opposition also argues that an inference of undue influence could be drawn from a doctor-patient relationship between Lee and Ryoo. As noted above, this is alleged in the

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[2] It is a part of the proposed amended complaint, discussed below.

[3] The court also finds that the opposition grossly mischaracterizes the adoption hearing. The hearing transcript does not support Lee's claim that "he did not understand the proceedings and Christy *acted as both his and the court's interpreter*." (Opposition, p. 10:15-19 [italics added].) Instead, it reveals that there was a specific moment during the hearing when Ryoo spoke Korean to Lee in response to one of the court's questions; the court (Judge Emede) then stated that it did not understand what was said and asked if the parties wished to have a court-appointed Korean interpreter; the parties declined the court's offer; and then the hearing proceeded with Lee answering the court's questions in English. (Plaintiff's Exhibit 124, pp. 3:10-11:15.)

complaint in a general fashion. (See Complaint, ¶¶ 18-23, 42, and 63.) No evidence has been presented establishing that Ryoo practiced as a chiropractor after 2015, much less that Lee was a patient of Ryoo's at any time after 2013. On summary judgment, Lee is bound by his complaint, which alleges that the first of the transfers took place in December 2018. (See *id.* at ¶¶ 30-32.) It cannot reasonably be inferred that those transfers were the product of undue influence stemming from a chiropractor-patient relationship that had not existed for approximately five years.

b) Judicial Estoppel

Notably, even if a reasonable inference of undue influence could be drawn from something actually alleged in the complaint, the court agrees with Defendants' additional argument that the fourth cause of action still fails as a result of the application of judicial estoppel.

Judicial estoppel is an equitable doctrine that "prevents a party from asserting a position in a legal proceeding that is contrary to a position previously taken in the same or some earlier proceeding." (*Jackson v. County of Los Angeles* (1997) 60 Cal.App.4th 171, 181.) The doctrine applies when "(1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the first position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake." (*Id*. at p. 183.) "[F]or the doctrine to apply, the seemingly conflicting positions 'must be clearly inconsistent so that one necessarily excludes the other.' [Citation]." (*Id*. at p. 182.) "The third *Jackson* factor requires that the party to be estopped was successful in asserting the first position. [Citation.] This means not just that the party prevailed in the earlier action, but that 'the tribunal adopted the position or accepted it as true[.]' [Citation.]" (*The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 845, internal citations omitted.)

"Judicial estoppel is an equitable doctrine to protect against fraud on the courts. It has been said that '[b]ecause of its harsh consequences, the doctrine should be applied with caution and limited to egregious circumstances.' But unlike equitable estoppel that '"'focuses on the relationship between the parties . . .', 'judicial estoppel focuses on 'the relationship between the litigant and the judicial system' and is designed 'to protect the integrity of the judicial process.'"'" (*Blix Street Records, Inc. v. Cassidy* (2010) 191 Cal.App.4th 39, 47-48, internal citations omitted.) "The doctrine's dual goals are to maintain the integrity of the judicial system and to protect parties from opponents' unfair strategies. [Citation.] Consistent with these purposes, numerous decisions have made clear that judicial estoppel is an equitable doctrine, and its application, even where all necessary elements are present, is discretionary." (*MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.* (2005) 36 Cal.4th 412, 422.)

Here, Defendants' judicial estoppel argument is based on Lee's September 20, 2021 and October 28, 2021 declarations (Defendants' Exhibits 36 and 37), submitted in this action in connection with the TRO and preliminary injunction hearings before Judge Williams. In these declarations, Lee represented to the court that Ryoo had devised a fraudulent scheme to convince him to transfer assets to her that he would still control. He stated that pursuant to this alleged oral agreement, Lee knowingly transferred his interests and property to Ryoo, and for

some time, he remained in control of his companies: "At all times, Ryoo assured me that she was receiving the assets 'on paper only' and that I would continue to have sole and exclusive control over the assets for the remainder of my life." (Exhibit 36, ¶ 18.) But then Ryoo reneged on this alleged agreement and wrongfully wrested control from him in August 2021. (*Id.* at ¶¶ 18-28.) In other words, Lee's evidence at the TRO and PI hearings focused on his allegations of a breach of oral contract (the first cause of action) and fraud (the third cause of action).

Based on this evidence, Judge Williams found that Lee had shown "a sufficient likelihood of prevailing on the merits of his claims against defendants." (See January 3, 2022 Order, p. 7:6-7 & March 17, 2022 Amended Order, p. 2:14-15.) The TRO was upheld, and a preliminary injunction issued, which still remains in effect.

Lee has now dismissed the first, second, and third cause of action (thereby also eliminating the eighth and eleventh causes of action). Lee's deposition testimony (Defense Exhibit 55) directly contradicts the declarations he submitted in support of the preliminary injunction. In deposition, Lee testified that it was his former attorney Phil Silvestri's idea to adopt Ryoo and transfer assets to her, thereby keeping them away from his ex-wife—with whom he was involved in contentious divorce proceedings. It was not Ryoo's idea. He also contradicted both declarations with his repeated testimony that he did not recall any oral agreement with Ryoo regarding the transfer or control of assets and did not recall signing any agreements or deeds transferring assets to her.

Now, in his summary judgment opposition brief, Lee asserts a theory of financial elder abuse that is inconsistent with his prior claim that he made a knowing transfer of his assets to Ryoo pursuant to an oral agreement, procured by Ryoo's fraud, to shield them from his ex-wife. He now contends that Ryoo acted in "secrecy," going behind his back and working directly with an accountant, James Kim, and an attorney, Chan Jeon, to effect the corporate restructuring and asset transfers—without communicating with him. (Opposition, pp. 12:8-13:7.) He argues that Ryoo took advantage of his cognitive decline and used "affection, intimidation, or coercion" to induce Lee to "sign, sign, sign" documents put in front of him. (*Id.* at pp. 17:3-19:4.) He contends that "undue influence, almost by definition, is invisible to the victim." (*Id.* at p. 6:8-9.)

The court finds that this new theory of the case is "totally inconsistent" with the breach of contract and fraud allegations upon which the preliminary injunction was based. In addition, Lee's deposition testimony that it was Silvestri's idea to adopt Ryoo for the purpose of transferring assets to her establishes that his previous position was not taken as a result of ignorance or mistake.

This is not to say that a breach of contract or fraud cause of action is necessarily inconsistent with a financial elder abuse cause of action in all instances. Indeed, in this case, it appears that the original complaint (and Lee's declarations in support of a preliminary injunction) alleged undue influence by Ryoo in order to bolster the contract and fraud causes of action against her. But the court also finds that Lee's new theory of elder abuse in his summary judgment opposition and in his proposed amended complaint is necessarily dependent on an *abandonment* of the prior theory of breach of contract and fraud. It is directly inconsistent with the prior theory and therefore is barred by the doctrine of judicial estoppel.

In short, Defendants have established that Lee has no evidence to support the fourth cause of action and that the fourth cause of action is barred by judicial estoppel.

3. Fifth Cause of Action (Constructive Trust)

Defendants are correct that a constructive trust is a remedy and not a cause of action. (See 13 Witkin, *Summary of California Law* (11th ed. 2017) Trusts, § 357 ["A constructive trust is a remedy used by a court of equity to compel a person who has property to which he or she is not justly entitled to transfer it to the person entitled to it. The trust is passive, the only duty being to convey the property."].) Three conditions must be satisfied to impose a constructive trust: (1) the existence of a res (property or some interest in property); (2) the right of a complaining party to that res; and (3) some wrongful acquisition or detention of the res by another party who is not entitled to it. (See *Reliant Life Shares LLC v. Cooper* (2023) 90 Cal.App.5th 14, 56.)

Here, the fifth cause of action is based on the allegation that "[i]t was and is the intent of the parties and in accordance with the agreement alleged herein that Ryoo hold said title and interest solely in trust for Lee and subject to prompt re-conveyance of all such right, title, and interest to Lee upon demand by Lee." (Complaint, ¶ 67.) The "agreement" in question is the oral contract as to which Lee has now dismissed the relevant cause of action, and as to which Lee testified in deposition that he did not have any recollection. Defendants have therefore met their burden to show that Lee has no evidence of wrongful acquisition or detention of property to support the fifth cause of action.

Lee's opposition brief does not even address the fifth cause of action and so fails to raise any triable issue of material fact.

4. Sixth Cause of Action (Cancellation of Instruments)

"Under Civil Code section 3412, '[a] written instrument, in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable, may, upon his application, be so adjudged, and ordered to be delivered up or canceled.' To prevail on a claim to cancel an instrument, a plaintiff must prove (1) the instrument is void or voidable due to, for example, fraud, and (2) there is a reasonable apprehension of serious injury including pecuniary loss or the prejudicial alteration of one's position. [Citation.]" (*U.S. Bank National Assn. v. Naifeh* (2016) 1 Cal.App.5th 767, 778.)

Here, the sixth cause of action seeks to cancel Lee's grant deeds transferring a 50% interest in the "Saratoga Property, Cupertino Property, and Lake Elsinore Property" on the basis that they "were procured through fraud." (Complaint, ¶¶ 69-70.) As Lee has dismissed his breach of contract and fraud causes of action and testified that he does not remember the signing of any grant deeds, Defendants have met their initial burden to establish that Lee has no evidence to support the sixth cause of action.

Again, Lee's opposition fails to address the sixth cause of action and therefore fails to raise any triable issue of material fact.

5. Seventh Cause of Action (Appointment of Receiver)

Defendants are correct that appointment of a receiver is a remedy, not a cause of action. The appointment of a receiver is governed by Code of Civil Procedure section 564: "The requirements of Code of Civil Procedure section 564 are jurisdictional, and without a showing bringing the receiver within one of the subdivisions of that section the court's order appointing a receiver is void." (*Turner v. Superior Court* (1977) 72 Cal.App.3d 804, 811.) The seventh cause of action fails to cite any particular subdivision of section 564, but the court notes that a receiver may be appointed "where necessary to preserve the property or rights of any party." (Code Civ. Proc., § 564, subd. (b)(9).) "Receivership is an extraordinary remedy, to be applied with caution and only in cases of apparent necessity, and where other remedies would be inadequate." (*Rogers v. Smith* (1946) 76 Cal.App.2d 16, 21; see also *Starbird v. Lane* (1962) 203 Cal.App.2d 247, 261 (*Starbird*) ["[T]he power to appoint a receiver for a going corporation should be exercised sparingly. It is a drastic remedy and one which should not be invoked unless there is a threatened injury to a corporation of a serious nature."].)

Here, the seventh cause of action alleges that "there is a reasonable and good faith belief that unless a receiver is appointed . . . Lee faces severe and irreparable harm to his interest in" the four companies." (Complaint, ¶ 72.)

Contrary to Defendants' argument, it is not entirely true that Lee has made no effort to pursue this remedy, given Lee's 11th-hour filing of the motion to modify the preliminary injunction, which requests the appointment of a receiver in the alternative. That said, the dismissal of the breach of contract and fraud causes of action, together with Lee's deposition testimony that he does not recall anything Ryoo said that was false, does not recall entering into an oral agreement with Ryoo, and does not recall signing documents giving Ryoo an interest in his companies, along with Defendants' other evidence, is sufficient to meet their initial burden to show that Lee has no evidence to support the seventh cause of action.

When the burden shifts, the only response in Lee's opposition is a passing reference to the motion to modify the preliminary injunction. This does not raise any triable issue of material fact.

6. Ninth Cause of Action (Rescission—Failure of Consideration)

The ninth cause of action asserts that "[i]n furtherance of the agreement between Lee and Ryoo as alleged herein, Lee agreed to transfer his stock in K&L Supply, K&L Korea, and YBL, and his membership interest in Skylars to Ryoo. Lee also agreed to transfer a portion of his interests in the Saratoga Property, the Cupertino Property, and the Lake Elsinore Property." Lee seeks rescission of the "agreement" on the basis that he has "received no consideration" for the transfers, and "Ryoo has breached all promises she made to Lee to induce him to transfer his interests to her." (See Complaint at ¶¶ 81-84.) The "agreement" referred to is the alleged oral agreement in the now-dismissed first cause of action.

"[A] party to a contract cannot rescind at his pleasure, but only for some one or more of the causes enumerated in section 1689 of the Civil Code." (*Nmsbpcsldhb v. City of Fresno* (2007) 152 Cal.App.4th 954, 959.) The ninth cause of action is not pled with particularity and does not identify any subdivision of Civil Code section 1689, but it appears that the ninth cause of action would fall under subdivisions (b)(2)-(4).

As Lee has dismissed the causes of action for breach of breach of contract and fraud and has testified that he does not recall entering into an agreement with Ryoo or signing documents transferring interests in the companies or in real estate, Defendants have met their initial burden to show that Lee has no evidence to support the ninth cause of action. Once again, Lee's opposition fails to address the ninth cause of action and therefore fails to raise a triable issue of material fact.

7. Tenth Cause of Action (Conversion)

Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion cause of action are: (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages. (*Lee v. Haney* (2015) 61 Cal.5th 1225, 1240.) "[T]he law is well settled that there can be no conversion where an owner either expressly or impliedly assents to or ratifies the taking, use or disposition of his property." (*Chen v. PayPal, Inc*. (2021) 61 Cal.App.5th 559, 576.)

The tenth cause of action alleges that Ryoo procured "Lee's interest in K&L Supply, K&L Korea, YBL, and Skylars through her fraudulent conduct." (Complaint at ¶ 86.) As Lee has dismissed his causes of action for breach of contract and fraud, those causes of action cannot support the tenth. Additionally, given Lee's deposition testimony that he did not know what Ryoo had done and that he could not remember entering into an oral agreement with her or transferring interests in his companies, Defendants have met their initial burden to show that there is no evidence to support the tenth cause of action. When the burden shifts, Lee's opposition fails to address the tenth cause of action and thereby fails to raise any triable issue of material fact.

D. Objections to Evidence

1. Lee's Objections

Lee has submitted objections to some of Defendants' exhibits and to portions of the Cahn and Ryoo declarations with his opposition. These objections are not in the proper format and therefore will not be ruled upon. Rule 3.1354 of the California Rules of Court requires the filing of two documents, evidentiary objections and a separate proposed order on the objections, and both must be in one of the two approved formats set forth in the rule. Courts are not required to rule on objections that do not fully comply with the rule. (See *Vineyard Spring Estates v. Superior Court* (2004) 120 Cal.App.4th 633, 642 [trial courts have duty to rule on evidentiary objections only if presented in proper format]; *Hodjat v. State Farm Mutual Automobile Ins. Co.* (2012) 211 Cal.App.4th 1 [trial court not required to rule on objections that do not comply with Rule of Court 3.1354 and not required to give objecting party a second chance at filing properly formatted papers].)

Rule 3.1354(a) also states that "[u]nless otherwise excused by the Court on a showing of good cause, all written objections to evidence in support of or in opposition to a motion for summary judgment must be served and filed at the same time as the objecting party's opposition or reply papers are served and filed." The submission of a proposed order after the filing of the opposition or reply does not comply with the rule as the proposed order is required for objections to be complete and compliant with the rule's plain language.

2. Defendants' Objections

Defendants have submitted objections to the declarations submitted by August and Julia Lee, as well as to several exhibits with their reply brief. As these objections also do not comply with rule 3.1354, they will also not be ruled upon. "Objections to evidence that are not ruled on for purposes of the motion shall be preserved for appellate review." (Code Civ. Proc., § 437c, subd. (q).)

V. LEE'S MOTION FOR LEAVE TO AMEND

As noted above, Lee's motion for leave to amend his complaint was filed on September 11, 2024, more than two and a half years after the original complaint, nearly a month after Defendants' motion for summary judgment was filed, and approximately three months before the December 9, 2024 trial date. The court advanced the hearing on the motion to the current date by an order on Lee's ex parte application September 12, 2024. The court noted that "[b]ecause this ex parte application and the motion for leave have been filed so late and so close to trial, the only date that works for a hearing as a practical matter, is November 5, 2024, the same date as the motion for summary judgment."

As noted above, the court has not considered the request for judicial notice submitted with the reply, and it has not considered the October 29, 2024 declaration of Lynda Chung submitted with the reply. (See *Golden Door*, *supra*, 53 Cal.App.5th at p. 774 [new evidence is not permitted in reply papers unless it is "strictly responsive" to arguments made for the first time in the opposition].)

A. General Authority

A trial court has wide discretion, "in furtherance of justice," to "allow a party to amend any pleading." (Code Civ. Proc., § 473, subd. (a)(1); see *Falcon v. Long Beach Genetics, Inc.* (2014) 224 Cal.App.4th 1263, 1280 (*Falcon*).) The law generally favors amendments on the basis that cases should include all disputed matters between parties and be decided on their merits. As a general rule, courts liberally allow amendments. (See *Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 939.)

Nevertheless, if the party seeking amendment has been dilatory and the delay has prejudiced the opposing party, the trial court has discretion to deny leave to amend. (See *Hirsa v. Superior Court* (1981) 118 Cal.App.3d 486, 490.) Prejudice exists where the amendment would require delaying the trial, resulting in loss of critical evidence, or would add costs of preparation, an increased burden of discovery, etc. (See *Magpali v. Farmers Group, Inc.* (1996) 48 Cal.App.4th 471, 486-488; see also *Payton v. CSI Electrical Contractors, Inc.* (2018) 27 Cal.App.5th 832, 849 ["[D]enying a request for leave to amend a complaint may be appropriate when an unreasonable delay in seeking amendment prejudices the defendant. Prejudice can include the time and expense associated with opposing a legal theory that a plaintiff belatedly seeks to change."].)

B. Discussion

Lee's motion seeks to replace the operative complaint with a first amended complaint ("FAC") that states seven causes of action: (1) Financial Elder Abuse (based on a different factual scenario from what is alleged in the fourth cause of action in the original complaint);

(2) Breach of Fiduciary Duty—Constructive Fraud (a wholly new theory not alleged in the operative complaint); (3) Breach of Fiduciary Duty—Dissipation of Trust Res by Constructive Trustee (also a new theory); (4) Intentional Infliction of Emotional Distress ("IIED") (which is inconsistent with Lee's *subsequent* dismissal of the IIED cause of action in the original complaint on October 23, 2024); (5) Cancellation of Instruments (based on a different factual scenario from what is alleged in the sixth cause of action in the original complaint); (6) Conversion (based on a different factual scenario from what is alleged in the tenth cause of action in the original complaint); and (7) Accounting (a wholly new cause of action). There are several exhibits attached to the proposed FAC. (See Exhibit A to the Declaration of Andrew August.)[4]

The court denies the motion, as follows.

First, the court has already granted Defendants' motion for summary judgment on the operative complaint. "[W]hen a plaintiff seeks leave to amend his or her complaint only after the defendant has mounted a summary judgment motion directed at the allegations of the unamended complaint, even though the plaintiff has been aware of the facts upon which the amendment is based, '[i]t would be patently unfair to allow plaintiffs to defeat [the] summary judgment motion by allowing them to present a 'moving target' unbounded by the pleadings.'" (*Falcon, supra*, 224 Cal.App.4th at p. 1280.)

Second, the court finds that there has been unwarranted delay in seeking leave to amend and that permitting the proposed amendment would materially prejudice Defendants. Lee does not provide any explanation as to why he did not bring this motion sooner. In addition, the court finds that the new allegations and causes of action are so materially different from what is contained in the original complaint that granting leave would require delaying the trial and would result in significant added costs.

As Defendants point out in their opposition, the proposed FAC fundamentally seeks to change the factual premise of the lawsuit. For three years, Lee has alleged that he and Ryoo entered into an oral agreement whereby she would control certain of his assets "on paper only" while he continued to "make all important decisions"; that "Ryoo abided by the parties' agreement" until 2021; and that she then breached the agreement. (See Complaint, ¶¶ 28-34.) This was further stated in Lee's sworn declarations submitted in support of the preliminary injunction in this case. Lee also testified at his deposition that the purpose of adopting Ryoo and transferring assets to her (an idea first suggested by his attorney and not by Ryoo) was to put those assets beyond the reach of his now ex-wife. The primary premise of this lawsuit for the last few three years, based on the allegations of the complaint, has been breach of contract and fraud.

The proposed FAC would now allege that Lee has been a "dependent adult" "at all times relevant hereto"—a time period that is not defined but could potentially mean as early as 2011—and would also allege that Ryoo, also at some undefined point in time, became Lee's "caregiver" or "care custodian." (See Exhibit A to the August Decl., ¶¶ 22-25, 63, 71-78, 80-83, and 98.)

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[4] This is the order of causes of action in the body of the proposed FAC, which differs from the order on the caption page.

This is a completely different factual scenario from what has been alleged for the past three years, and it cannot be reconciled with the allegations of the operative complaint. The new proposed pleading also contradicts Lee's sworn declarations in this case, and it even contradicts Lee's sworn deposition testimony regarding his agreement with Phil Silvestri's idea to adopt Ryoo and transfer assets to her for the purpose of preventing his ex-wife from reaching those assets. "While inconsistent theories of recovery are permitted, a pleader cannot blow hot and cold as to the facts positively stated." (*Manti v. Gunari* (1970) 5 Cal.App.3d 442, 449, internal citation omitted.)

The court notes that if the allegations of the proposed FAC were assumed to be true, it would mean that Lee was a "dependent adult" when counsel (or Julia Lee) drafted and had Lee sign the two declarations submitted to Judge Williams on September 20, 2021 and October 28, 2021. These declarations did *not* state that Lee was a dependent adult or that Ryoo was a care custodian, even though they did state under penalty of perjury that Lee had made an oral agreement with Ryoo to transfer assets and that he, not Ryoo, had remained in actual control of the four companies until approximately August 2021. The FAC's allegations would also mean that Lee is *still* a "dependent adult" at the time of the drafting of the FAC itself and at the time of drafting all of the motion papers presently before the court. It would play directly into Defendants' pending motion to compel the appointment of a guardian ad litem, which is scheduled to be heard on November 19, 2024. It is unclear to the court how the FAC can be reconciled with all of these facts.

The proposed FAC would also add three wholly new causes of action—two for breach of fiduciary duty and one for accounting—which would reasonably require Defendants to engage in further discovery. The court does not see how the FAC could possibly be allowed without having to continue the trial, which would otherwise be set to commence in less than five weeks.

Finally, Defendants argue that in light of the inconsistencies between the FAC and the original complaint, the FAC is a "sham pleading." The court is inclined to agree but does not need to reach the issue, given the other compelling bases for denying the motion set forth above.

The motion for leave to amend is DENIED.

VI. LEE'S MOTION TO MODIFY THE PRELIMINARY INJUNCTION

A motion to modify an existing injunction may be brought based on a showing that there has been a material change in the facts on which the injunction was granted, the law on which the injunction was based has changed, or modification would serve the ends of justice. (See Code Civ. Proc., §§ 532-533; 6 Witkin, *Cal. Procedure* (6th ed. 2021-2023) Provisional Remedies, § 379.)

Lee's motion seeks to modify the preliminary injunction to bar Ryoo from using any funds from K&L Supply, YBL, Skylars, or K&L Korea to pay for her defense costs in this lawsuit. In the alternative, the motion seeks the appointment of a receiver for all four companies. (See Notice of Motion, p. ii:5-7.) As noted above, "the power to appoint a receiver for a going corporation should be exercised sparingly. It is a drastic remedy and one

which should not be invoked unless there is a threatened injury to a corporation of a serious nature." (*Starbird*, *supra*, 203 Cal.App.2d at p. 261.)

The stated basis for the modification is that "Ryoo used more than $4,000,000" of the companies' assets "to defend herself from Plaintiff's financial elder abuse and breach of fiduciary duty claims." (Notice of Motion, p. ii:8-10.) Again, the court notes that this lawsuit has been predicated primarily on an alleged breach of contract and fraud—at best, financial elder abuse has been a secondary basis for the suit—and there has never been a cause of action for a breach of fiduciary duty. In addition to the request for judicial notice submitted in connection with the motion, Lee supports the motion with a declaration from counsel Lynda Chung. The court has not considered the October 30, 2024 declaration from Andrew August, submitted in reply. (See *Golden Door*, *supra*, 53 Cal.App.5th at p. 774 [new evidence is not permitted in reply papers unless it is "strictly responsive" to arguments made for the first time in the opposition].)

The court denies the motion to modify the preliminary injunction or appoint a receiver.

First, the motion is moot, as the court has determined that the motion for summary judgment should be granted.

Second, even if the motion were not moot, Lee has not established that there has been a material change in the facts of this case justifying the proposed modification of the existing preliminary injunction. Indeed, the court is puzzled by the timing of this motion on the eve of trial. Lee identifies nothing new that warrants a modification so close to trial.

Third, Lee has not established that the interests of justice make his proposed modification, or the appointment of a receiver, necessary. Paying the costs of Ryoo's defense in this lawsuit is not barred by the existing injunction, and the parties' dispute over whether such payments are required is irrelevant to the question of whether a proper basis to modify the existing injunction has been stated. There is no evidence before the court that any of the four companies are in poor financial condition, much less that any poor financial condition was caused by paying for Ryoo's defense in this action (the only basis for modification stated in the notice of motion). The court also has no reason to believe that continuing to pay for Ryoo's defense through trial would threaten the financial wellbeing of any of the four companies.

For these reasons, the motion is DENIED.

VII. LEE'S MOTION FOR RELIEF FROM WAIVER OF JURY TRIAL FOR FAILURE TO DEPOSIT TIMELY JURY FEES

For the same reason that the court finds the motion to modify the preliminary injunction to be moot, the court also finds the motion to be relieved under Code of Civil Procedure section 631, subdivision (g), for the belated deposit of jury fees to be moot. The court has determined that Defendants' motion for summary judgment should be granted.

The court observes that if this trial were to proceed on December 9, 2024, Defendants would have a relatively compelling argument that they have been prejudiced by Lee's undue delay in depositing the required fees. On the other hand, if the court's summary judgment ruling were to be reconsidered, vacated, or reversed—and the trial were then reset for sometime in 2025 or 2026—then Lee would have a compelling argument that any such

prejudice has been mitigated. Rather than focusing on prejudice, Defendants' opposition makes the questionable argument that financial elder abuse is not a cause of action for the jury because it is "equitable" in nature. (Opposition, pp. 5:3-6:15.) Defendants do not cite any authority on point for this proposition.

Accordingly, the court DENIES the motion as MOOT, but this denial is WITHOUT PREJUDICE to it being resubmitted in the event that the matter is placed back on the court's trial calendar.

VIII. SUMMARY

The court GRANTS Defendants' motion to seal and Defendants' motion for summary judgment. The court DENIES Lee's motion for leave to amend and his motion to modify the preliminary injunction. Finally, the court DENIES the motion for relief from waiver of a jury trial without prejudice.

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Calendar Line 12
Case Name: *Ferras Hamad v. Meta Platforms, Inc.*
Case No.: 24CV440543

Defendant Meta Platforms, Inc. ("Meta") moves to compel arbitration, based on a "Mutual Arbitration Agreement" signed by it and its former employee, plaintiff Ferras Hamad.[5] Hamad opposes, arguing that the arbitration agreement is unenforceable because it is unconscionable. Having now reviewed all of the parties' papers, the court finds that the agreement is not unenforceable and GRANTS the motion.

1. General Legal Standard

The party challenging a contractual arbitration provision bears the burden of proving that it is both procedurally and substantively unconscionable. (*OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 126.) This may be done on a sliding scale, where the more substantively oppressive the contract term, the less evidence of procedural unconscionability is required, and vice versa. (*Id.* at pp. 125-126.) Nevertheless, both must be shown.

2. Discussion

In this case, Hamad argues that the arbitration agreement is procedurally unconscionable because it was presented as a contract of adhesion. Meta responds that Hamad has failed to present any evidence that this was a contract of adhesion. (Reply, p. 8:9-19.) While it is true that Hamad's evidentiary showing is scant—relying solely on a declaration submitted in support of Meta's motion—the court infers from this evidence that the onboarding process for new Meta employees necessarily included the electronic signing of agreements that were presented in a take-it-or-leave-it fashion. (Declaration of Maureen McKenna, ¶¶ 4-6.) Meta does not dispute that signing these agreements was a condition of employment. The court concludes that this was a contract of adhesion and that it constitutes a showing of procedural unconscionability by Hamad, though a relatively slight one. (See *Diaz v. Sohnen Enterprises* (2019) 34 Cal.App.5th 126, 132 [the fact of an adhesion contract is insufficient to make an agreement unconscionable on its own]; *Sanchez v. Carmax Auto Superstores California, LLC* (2014) 224 Cal.App.4th 398, 402 [same].) Hamad advances no other evidence to show surprise (*e.g.*, fine print, indecipherable jargon) or oppression (*e.g.*, undue pressure from the drafting party's salespersons). Instead, he relies solely on the McKenna declaration (again) to argue that the agreements were presented as "a stack of new hire documents," that he was given "only three days to sign and return the documents," and that he "was not aided by an attorney." (Opposition, p. 8:9-21.) The court finds that these contentions add nothing to the basic showing of a contract of adhesion.

[5] The undersigned makes the following judicial disclosure: I understand that Meta is a successor to a company (Facebook, Inc.) for which I provided privacy law counseling while in private practice in 2018. In October 2018, I ceased all representation of Facebook, Inc. and have had no relationship with the company (including no financial interest in the company or its successors) since that time. Given the passage of more than six years, and the lack of subject matter overlap between the prior representation and the present matter, the prior representation does not constitute a basis for recusal from this case under section 170.1 of the Code of Civil Procedure. Nevertheless, I make this disclosure in the interest of full transparency.

With a comparatively slight showing of procedural unconscionability, Hamad would need to make a robust showing of substantive unconscionability, and he does not do so. One of the hallmarks of substantive unconscionability is a lack of mutuality, where the arbitration provisions apply unequally to the parties. (*Cobb v. Ironwood Country Club* (2015) 233 Cal.App.4th 960, 968-969.) Here, Hamad does not show anything that is unduly harsh or one-sided in the arbitration agreement. Relying on the recent Supreme Court decision of *Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478 (*Ramirez*), he argues that the agreement "compels arbitration of the types of claims the weaker party is more likely to bring, but exempts the types of claims the stronger party is more likely to bring." (Opposition, p. 9:17-19.) But the only thing he highlights is that the agreement here makes an exception for intellectual property claims, which "are not covered by the arbitration agreement," and he contends that these intellectual property claims are "more likely to be employer-initiated." (*Id.* at p. 10:4-10.)

The court finds that this argument is not supported by evidence. In this case, Meta points out that Hamad professes to be the named inventor on several patents and therefore has his own distinct IP rights. (Opposition, p. 2:4-5.) Hamad presents no evidence to demonstrate that, under such circumstances, IP disputes are more likely to be initiated by employers rather than employees. Although it is true that the Supreme Court in *Ramirez* found that the arbitration provision in that case—which included an exemption for intellectual property claims—lacked mutuality, that determination was based on a broader exemption for additional types of claims that were far more likely to be employer-initiated—*e.g.*, claims for theft or embezzlement or claims for disclosure of company confidential information—which are not exempted in this arbitration agreement with Meta. Moreover, the *Ramirez* Court relied on case law that uniformly dealt with one-sided claims for disclosure of *company* trade secrets and confidential information (see *Davis v. Kozak* (2020) 53 Cal.App.5th 897, 916; *Fitz v. NCR Corp.* (2004) 118 Cal.App.4th 702, 725; *Mercuro v. Superior Court* (2002) 96 Cal.App.4th 167, 176). The arbitration agreement here, which governs "claims related to Employer's or Employee's intellectual property," is not so obviously one-sided as in these other cases. (McKenna Declaration, p. 25.)

Finally, Hamad takes issue with the fact that the arbitration agreement includes a confidentiality provision, which he says "prevents public scrutiny of the arbitrators' decision." (Opposition, p. 11:14-15 [citing *Murrey v. Superior Court* (2023) 87 Cal.App.5th 1254 and *Gilmer v. Interstate/Johnson Lane Corp.* (1991) 500 U.S. 20, 31-32].) Although the court agrees with Meta that these cases are distinguishable in several ways—for example, *Murrey* involved claims of sexual harassment, which are no longer arbitrable under federal law—the court agrees with Hamad that Meta has not identified any "legitimate commercial need for confidentiality" in this dispute. (Opposition, p. 11:17-19.) Moreover, the court disagrees with Meta's argument that the confidentiality provision "requires only that the arbitrator's written award [and opinion] remain confidential" and "does not prevent Plaintiff from discussing the arbitration proceedings." (Reply, p. 13:10-19.) A prohibition on disclosure of the written arbitration award and opinion is a broad prohibition and does not leave much else about the "arbitration proceedings" that could possibly be discussed. Although Meta argues that the clause "does not on its face prohibit mentioning of the fact of arbitration," discussing the "fact" of arbitration is comparatively meaningless if one is still precluded from discussing the outcome.

The court therefore finds that this provision is substantively unconscionable but also that it is eminently severable. The confidentiality clause does not go to the "central purpose of the arbitration agreement," and the agreement as a whole is not "tainted with illegality," merely because of the presence of this clause. (*Ramirez, supra*, 16 Cal.5th at p. 516.) Accordingly, the court determines that this provision should be severed but that the remainder of the agreement should remain in place.

With the foregoing modification, the court GRANTS the motion to compel arbitration. The court VACATES the case management conference currently set for November 26, 2024 and instead sets this matter for a case status review regarding arbitration for **May 22, 2025** at 10:00 a.m. in Department 10.

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