SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

(Dept 16 is now hearing cases that were formerly in Dept 2)

Honorable Amber Rosen, Presiding

Felicia Samoy, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408.882.2270

DATE: 01-18-24 TIME: 9 A.M.

All those intending to speak at the hearing are requested to appear by video.

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 prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

TO CONTEST THE RULING: Before 4:00 p.m. 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 and contest the ruling
(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

TO APPEAR AT THE HEARING: The Court strongly prefers in person appearances. If you must appear virtually, please use video. To access the link, click on the below link or copy and paste into your internet browser and scroll down to Department 16.
https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml

TO SET YOUR NEXT HEARING DATE: You no longer need to file a blank notice of motion to obtain a hearing date. Phone lines are now open for you to call and reserve a date before you file your motion. If moving papers are not filed within 5 business days of reserving the date, the date will be released for use in other cases. Where to call for your hearing date: 408-882-2430 When you can call: Monday to Friday, 8:30 am to 12:30 pm

FINAL ORDERS: The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

COURT REPORTERS: The Court no longer provides official court reporters. If any party wants a court reporter, the appropriate form must be submitted. See court website for policy and forms.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	21CV387639 Hearing: Demurrer	Elizabeth Chung vs Altva Capital Management Limited et al	See Tentative Ruling. Court will prepare the final order.
LINE 2	21CV387639 Hearing: Demurrer	Elizabeth Chung vs Altva Capital Management Limited et al	See Tentative Ruling. Court will prepare the final order.
LINE 3	22CV394304 Motion: Compel	SOPHIA SERNA et al vs CARLOS CALLES	Notice appearing proper and good cause appearing, Defendant's motion to compel is GRANTED. Plaintiffs Sophia Renee Serna and Eli Casas shall provide verified responses to the form interrogatories, special interrogatories, and demand for inspection within fifteen (15) days from the service of the final court order to Defendant. If Defendant still wants the Court to order Plaintiffs to attend and testify at deposition at the law offices of defense counsel, Defendant shall appear at the hearing and inform the Court of a date for the deposition and the Court will order it. Plaintiffs Sophia Renee Serna and Eli Casas shall pay, jointly and severally, to Carbone, Smith & Koyama $960 in sanctions within 15 days from service of the final order.

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The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

LINE 4	23CV410157 Motion: Protective Order	Jane Doe vs Support Systems Homes, Inc. et al	See Tentative Ruling. Defendant SSH shall submit the final order.
LINE 5	23CV415224 Motion: Compel	Lingsen Leung vs Tawa Supermarket, Inc. et al	See Tentative Ruling. Defendants shall submit the final order.
LINE 6	23CV415224 Motion: Compel	Lingsen Leung vs Tawa Supermarket, Inc. et al	See Tentative Ruling. Defendants shall submit the final order.
LINE 7	22CV408498 Hearing: Motion Atty Fees after Notice of settlement	Teik Pang vs FORD MOTOR COMPANY, a Delaware Corporation et al	See Tentative Ruling. Plaintiff to submit the final order.
LINE 8	23CV418761 Motion: Withdraw as attorney	Eleuterio Primero et al vs Lizenia Fregoso	Notice appearing proper, the unopposed motions to withdraw of counsel for Plaintiffs Constantino Hernandez Primero and Eleuterio Hernandez Primero are granted. The proposed orders will be signed.
LINE 9	23CV418761 Motion: Withdraw as attorney	Eleuterio Primero et al vs Lizenia Fregoso	Notice appearing proper, the unopposed motions to withdraw of counsel for Plaintiffs Constantino Hernandez Primero and Eleuterio Hernandez Primero are granted. The proposed orders will be signed.
LINE 10	2000-7-CV-393402 Hearing: Claim of Exemption	First Select Corporation Vs Comer Shawnette M	The Court does not find that Debtor has made a viable claim for exemption. The claim for exemption is DENIED. Creditor shall submit the final order.
LINE 11			
LINE 12			

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The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

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Calendar Lines 1 and 2
Case Name: *Chung, et al. v. Altva Capital Management Limited, et al.*
Case No.: 21CV387639

According to the allegations of Altva Capital Management Limited's ("Altva") first amended cross-complaint ("FAXC"), Bend Capital, LLC ("Bend") is a California limited liability company in which Elizabeth Y. Chung ("Elizabeth") and David Chung ("David") are its only members and each have a 50% interest in it. (See FAXC, ¶¶ 2, 4, 6.) Altva is a wholly owned subsidiary of defendant Cairnryan Investments Limited ("Cairnryan") and is a Hong Kong SAR Limited Company. (See FAXC, ¶ 1.)

Both David and Elizabeth (collectively, "the Chungs") have lived at 27925 Roble Blanco in Los Altos ("subject property") since June 2016; prior to June 20, 2016, the Chungs resided at a family home located at 13920 Mirou Drive in Los Altos Hills. (See FAXC, ¶¶ 3, 5, 10.) In May 2016, the Chungs became aware that the sale of their Mirou Drive home would take longer than anticipated, and they therefore lacked funds to purchase the subject property and needed to borrow several million dollars to complete the purchase of the subject property and avoid the forfeiture of their $200,000 deposit. (See FAXC, ¶¶ 11-13.) The Chungs discussed that Bend—the company they formed to own the subject property—could borrow some of the money they needed to complete the purchase of the subject property from Filbert Global Limited ("Filbert"), a company owned by David's mother. (See FAXC, ¶ 14.)

On June 1, 2016, David, on behalf of Bend, signed a written loan agreement with Filbert by which Filbert agreed to lend Bend a principal amount of up to $2.5 million through one or more loan draw requests, and sent a written loan draw request for $800,000 to Filbert pursuant to the agreement. (See FAXC, ¶¶ 15-16, 23-24, exh. A.) David, on behalf of Bend, requested that those funds be wired to an escrow account in the name of Cornerstone Title Company—the escrow company that assisted the Chungs and Bend to buy the subject property. (See FAXC, ¶ 16.)

On June 16, 2016, Bend, as borrower, entered into a loan agreement with Cairnryan, by which Cairnryan agreed to loan Bend $5,700,000 at an 8% annual interest rate with a maturity date of June 16, 2017 ("Cairnryan loan") that was extended to June 30, 2018. (See FAXC, ¶ 18.) On June 20, 2016, the Chungs both signed a Buyer's Estimated Settlement Statement acknowledging the $800,000 deposit into escrow as a "Third Party Deposit from Filbert Global Limited" pursuant to the Loan Agreement. (See FAXC, ¶ 17.) Cairnryan wired $5,700,000 to Cornerstone Title Company's escrow account, evidenced by Third Party Deposit Instructions dated June 20, 2016, and acknowledged by the Chungs signing them. (See FAXC, ¶ 19.) Bend became the title owner of the subject property when its purchase closed on June 20, 2016. (See FAXC, ¶ 20.)

Bend does not engage in any business or generate any revenue and its only significant asset is the subject property. (See FAXC, ¶ 21.) As the Chungs are the sole members of Bend, each with a 50% interest of Bend, there is a unity of interest and ownership between Bend and the Chungs. (See FAXC, ¶ 37.) There is no separateness between Bend as a limited liability company and its two owners, and Bend does not operate as an ongoing business independent of the Chungs, and is solely used to own and hold the subject property as the family home for their private use. (See FAXC, ¶ 38.) The Chungs have never paid Bend any rent for their use of the subject property, thereby depriving Bend of assets to pay its debts. (See FAXC, ¶ 39.)

The Chungs have commingled their personal funds with Bend's funds in connection with its real property transactions, such as securing the loan and in the purchase of the subject property. (See FAXC, ¶ 40.) The Chungs caused Bend to pay off the Cairnryan loan from $300,000 of escrowed funds remaining after the purchase of the subject property, $4,400,000 paid in November 2016 from the sale proceeds of the Mirou Drive property, and $1,248,346.91 paid from November 23, 2016 through June 26, 2018 from a series of written draw requests pursuant to the Filbert agreement. (See FAXC, ¶ 22.)

Between June 7, 2016 and June 26, 2018, Filbert loaned Bend $2,498,346.91 in five separate loan draws pursuant to the Filbert loan agreement. (See FAXC, ¶ 25.) On July 5, 2018, Filbert assigned its rights under the loan agreement to Cairnryan and Bend was notified of the assignment, as expressly allowed pursuant to the terms of the loan agreement. (See FAXC, ¶¶ 24, 28-30.) On January 1, 2021, Bend was notified in writing that Cairnryan assigned the loan agreement to Altva. (See FAXC, ¶¶ 31-32.) On May 25, 2021, Altva notified Bend in writing that the principal amount of $2,498,346.91 plus accrued interest was due and payable on June 1, 2021. (See FAXC, ¶ 33.) On May 27, 2021, June 1, 2021, and June 4, 2021, Bend notified the validity of the loan agreement by requesting an extension of the maturity date of the loan "for Bend Capital to repay the loan." (See FAXC, ¶ 34.) On August 19, 2021, counsel for Altva sent a notice demanding repayment of the loan. (See FAXC, ¶ 35.)

On August 23, 2021, Elizabeth filed a complaint for declaratory and injunctive relief against Altva, Cairnryan and other parties, on behalf of herself individually and derivatively on behalf of Bend, seeking a declaration that the loan agreement is unenforceable and injunctive relief to prevent Altva from enforcing the loan. (See FAXC, ¶ 36.) An injustice would be caused by allowing the Chungs, who have used the Bend entity as a conduit for personal purposes to enjoy the benefits and proceeds of the loan agreement but now deny all obligations and debts of the loan by claiming that the loan is unenforceable. (See FAXC, ¶ 42.)

On July 31, 2023, Altva filed the FAXC against Bend, Elizabeth and David (collectively "cross-defendants"), asserting causes of action for:

1) Breach of contract (against Bend, Elizabeth and David);
2) Breach of contract (against Elizabeth and David);
3) Restitution/unjust enrichment (against Elizabeth and David); and,
4) Declaratory relief (against Bend, Elizabeth and David).

Cross-defendant Bend demurs to the first and fourth causes of action of the FAXC, arguing that Bend came into existence on June 8, 2016 and therefore cannot be a party to the loan agreement and that "Hong Kong law provides that when a pre-formation contract is unenforceable but the parties still want to benefit from terms of that agreement, the parties could form a new, post-formation contract with the same terms of the pre-formation contract." (Bend's memorandum of points and authorities in support of demurrer to FAXC ("Bend's memo"), pp.8:2-20, 9:2-4.)

Cross-defendant Elizabeth demurs to the FAXC and each of its causes of action, arguing that she cannot be held liable for the obligations of Bend, and cannot be considered as the alter ego of Bend where Bend is able to satisfy the obligations.

I. BEND'S DEMURRER TO THE FAXC

Bend's request for judicial notice

In connection with its demurrer, Bend requests judicial notice of:

- Bend's Articles of Organization (attached as Exhibit 1); and,
- *Dyno-Rod plc v. Stirling Drainage Services Ltd. & Anor* [1985] 2 H.K.C. 5041 (attached as Exhibit 2).

As to the articles of organization, "[i]n *South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 745-746 [38 Cal.Rptr. 392], it was held that the appellate court could not take judicial notice of deeds and other instruments prepared by private individuals even though they were on file with governmental agencies." (*People v. Thacker* (1985) 175 Cal.App.3d 594, 598-599.) In *People v. Thacker*, the court likewise denied judicial notice of certified copies of the articles of incorporation as the request was beyond the acknowledgement of the mere existence of the document and was instead a document "prepared by a private person… which are on file with the Secretary of State and the Commissioner of Corporations." (*Id*. at p.599.) Here, Bend does not seek judicial notice of the existence of the document but instead seeks to establish that the filing date of the document establishes the date of its first activity as an entity. Bend's request for judicial notice of the articles of organization is DENIED.

As to the Hong Kong case, while the Court may take judicial notice of foreign law, the party requesting judicial notice must "provide adequate data" to establish such law. (*Ehret v. Ichioka* (1967) 247 Cal.App.2d 637, 644 (denying judicial notice of alleged Japanese law regarding arising of constructive trust); see also *Mireskandari v. Gallagher* (2020) 59 Cal.App.5th 346, 359 (denying request for judicial notice of British cases and statute as foreign law because cases and statute were "without 'the advice of persons learned in the subject matter'").) Bend's request for judicial notice of the case is DENIED.

Bend's arguments in support of its demurrer to the FAXC are not persuasive.

Bend argues that there can be no liability for any breach of the loan agreement because it came into existence on June 8, 2016 which was more than a week after David had signed the agreement and requested the draw. (See Bend's memo, p.8:5-6.) However, this fact is reliant on Bend's request for judicial notice—which was denied. Thus, this argument is not persuasive.

Bend also argues that "Hong Kong law invalidates pre-formation contracts for non-Hong Kong companies… [because u]nder Hong Kong law[,] 'a company cannot by adoption or ratification obtain the benefit of a contract purporting to have been made on its behalf before the company came into existence." (Bend's memo, p.8:12-16.) Again, this argument relies on Bend's request for judicial notice, which was denied; thus, the argument is not persuasive. Moreover, even if it were true that Bend could not obtain the *benefit* of the contract prior to its existence, Bend is alleged to have already received the benefit of the contract in the sum of $2,498,346.91. If Bend is asserting that the contract is unenforceable because, while it received the loan proceeds, it did not exist at the time of the loan agreement, Bend is required

to return the amount of the loan proceeds to rescind the agreement. Additionally, Bend made several draw requests after June 8, 2016, which supports the ratification of the loan agreement.

Bend's demurrer is OVERRULED in its entirety.

The Court did not consider Altva's request for judicial notice in opposition to the demurrer as it was unnecessary to do so.

II. ELIZABETH'S DEMURRER TO THE FAXC

Elizabeth's argument that the FAXC fails to allege facts supporting the application of the alter ego doctrine

Citing *Associated Vendors, Inc. v. Oakland Meat Co*. (1962) 210 Cal.App.2d 825, Elizabeth argues that the alter ego doctrine does not apply "when a company can satisfy its obligations… [and] Altva has not alleged that Bend Capital is unable to pay…." (Elizabeth's memorandum of points and authorities in support of demurrer to FAXC ("Elizabeth's memo"), p.2:12-23.) However, *Associated Vendors* actually stated that "[e]vidence of inadequate capitalization is, at best, merely a factor to be considered by the trial court in deciding whether or not to pierce the corporate veil." (*Associated Vendors*, *supra*, 210 Cal.App.2d. at pp. 841-842.) *Associated Vendors* did not suggest that the alter ego doctrine is inapplicable where the entity can satisfy a judgment and Elizabeth's supporting memorandum does not cite to any legal authority so stating.

In order for the alter ego doctrine to apply, "there must be an inequitable result if the acts in question are treated as those of the corporation alone." (*Sonora Diamond Corp. v. Super. Ct. (Sonora Union High Sch. Dist.)* (2000) 83 Cal.App.4th 523, 538.) While recognizing that FAXC alleges that "an injustice would be caused by allowing the individual owners of Bend, who have used the Bend entity as a conduit for personal purposes, to enjoy the benefits and proceeds of the Loan but now deny all obligations and debts of the Loan by claiming, as Ms. Chung now alleges in her Complaint, the Loan is unenforceable," Elizabeth argues that the mere "exercise [of] her First Amendment right to seek relief in a proper legal proceeding" is not sufficient to warrant application of the alter ego doctrine." (Elizabeth's memo, pp.5:24-28, 6:1-17, citing *Meyer v. Glenmoor Homes, Inc*. (1966) 246 Cal.App.2d 242, 260.) It is unclear why Elizabeth cites to *Meyer*, *supra*; regardless, the case is distinguishable. *Meyer* does not involve the sufficiency of allegations supporting the application of the alter ego doctrine; rather, the appellate court reversed the trial court's denial of the defendant's instruction for a directed verdict and judgment notwithstanding the verdict, largely discussing the insufficiency of the evidence to support the plaintiff's contentions. (See *Meyer*, *supra*, 246 Cal.App.2d at pp.250-261 (stating that "[t]here is no evidence in the case to show that the particular transaction, whereby the decedent signed and caused the note of the corporation to be delivered to his wife in return for her joining in the execution of the quitclaim deed from the respective wives of the partners who had individually received the property from Glenmoor Sales Agency, Inc., was ever expressly authorized or ratified by defendant corporation or anyone, other than decedent, acting on its behalf… [t]he testimony is all to the contrary… [t]he note itself does not establish actual authority in the face of the uncontroverted evidence concerning its execution and delivery, and the inaction of the corporation… the evidence as a whole fails to sustain her assertion that there was implied authority to obligate the corporation in this transaction… [t]he shortcoming of plaintiff's case for implied authority is that she has failed to

show that the corporation ever engaged in transactions where it became obligated to pay for land, or an interest therein, which was conveyed to another for the use and benefit of that grantee as distinguished from the use and benefit of the corporation… [t]he evidence is clear that the act performed by plaintiff at the request of the decedent was the appending of her signature to a quitclaim deed which named her husband and his two associates individually as the grantees; and that these grantees took as individuals and not for the use and benefit of defendant corporation… plaintiff insists that the corporation received consideration… [t]he premises on which she rests are not sustained by the evidence… [t]here is no evidence to show whether plaintiff in fact surrendered any interest of value by her conveyances to the corporation or whether she was used as a nominee of the corporation as trustee of a resulting trust and surrendered her interest to the corporate *cestui que trust*; nor does the testimony that she herself received no individual consideration in those past transactions demonstrate that the community was not benefited by the conveyances made… [m]oreover, there is no evidence to show that the note was intended to be in payment for past benefits granted to the corporation… [w]here the evidence produced by the plaintiff reflects the absence of consideration it is proper to grant a nonsuit… [h]ere the evidence affirmatively shows that the interests in the partnership and the corporation were different… [t]he whole of the evidence discloses not only a situation where there was no actual authority or authority implied in fact, but also a transaction, which because it purported to obligate the corporation to pay a debt incurred personally by its officer and director, could not be ratified by the corporation").) In *Meyer*, the court did not suggest that, as a matter of law, there was a lack of injustice where the defendant asserted the unenforceability of a contract. In fact, the *Meyer* court noted that the plaintiff in the case failed to even allege any facts supporting the application of the alter ego doctrine. (*Id*. at p.260 (stating that "[t]he doctrine cannot be applied here for there is no pleading, and the record is devoid of any evidence, that appellant corporation was but the instrumentality through which Wyllis transacted his business or that he was the sole owner of all, or any, of appellant's capital stock or that appellant corporation was in effect the double of Wyllis").) In contrast, the FAXC alleges those facts that the plaintiff in *Meyer* did not. This argument is without merit.

In reply, Elizabeth argues that Altva's argument in opposition regarding Hong Kong law looking to California law to determine pre-formation liability issues is incorrect, citing to a declaration that she filed for the first time in connection with her reply brief. (See Elizabeth's reply brief in support of demurrer to FAXC, p.3:13-28.) However, this argument is of no import, because Elizabeth's own arguments in her supporting memorandum were faulty in the first instance. Elizabeth's request for judicial notice in reply of the Hong Kong law as stated by the declaration of John C.K. Chan is DENIED.

Elizabeth's demurrer to the FAXC on the ground that it fails to allege facts supporting the application of the alter ego doctrine is OVERRULED.

In light of the above ruling regarding the applicability of the alter ego doctrine, Elizabeth's demurrer to the FAXC on the ground that she did not have a contract with Filbert is likewise OVERRULED.

Elizabeth's demurrer to the second cause of action on the ground that it is barred by the Statute of Frauds

Elizabeth demurs to the second cause of action, arguing that "Altva does not allege whether the imaginary contract 'is written, is oral, or implied by conduct' [citation], and the

allegations of the First Amended Cross-Complaint also demonstrate that a contract of the nature Altva attempts to allege in its Second Cause of Action would be barred by the Statute of Frauds." (Elizabeth's memo, p.11:22-26.) However, the second cause of action is clearly premised on the written loan agreement, attached to the FAXC. (See FAXC, ¶¶ 53-55, exh. A.) Elizabeth is alleged to be the alter ego of Bend, a party to the written loan agreement. Elizabeth's demurrer to the second cause of action on the ground that it is barred by the Statute of Frauds is OVERRULED.

Elizabeth's demurrer to the third cause of action for restitution/unjust enrichment

Elizabeth demurs to the third cause of action for restitution/unjust enrichment on the ground that there are no allegations that Elizabeth was unjustly enriched, and there is no cause of action for unjust enrichment. As Altva points out, "restitution may be awarded in lieu of breach of contract damages when the parties had an express contract, but it was procured by fraud or is unenforceable or ineffective for some reason." (*Rutherford Holdings, LLC v. Plaza Del Rey* (2014) 223 Cal.App.4th 221, 231.) "Thus, a party to an express contract can assert a claim for restitution based on unjust enrichment by 'alleg[ing in that cause of action] that the express contract is void or was rescinded.'" (*Id*.) "A claim for restitution is permitted even if the party inconsistently pleads a breach of contract claim that alleges the existence of an enforceable agreement." (*Id*.) In reply, Elizabeth does not address Altva's argument in opposition, apparently conceding the issue. Elizabeth's demurrer to the third cause of action for restitution/unjust enrichment is OVERRULED.

Elizabeth's demurrer to the fourth cause of action for declaratory relief

Elizabeth lastly demurs to the fourth cause of action for declaratory relief, arguing that "[t]here is no need and no reason for a declaratory judgment claim on the subject matter of Ms. Chung's claim for a declaratory judgment that the Filbert Global loan 'is not enforceable and that the Filbert Global loan is a sham and that Altva has no right to enforce the Filbert Global loan agreement.'" (Elizabeth's memo, pp.14:23-28, 15:1-21.) Elizabeth misstates the allegations of the fourth cause of action, which actually "seeks a declaration that the Loan Agreement, the 2018 Assignment, and the 2021 Assignment are each genuine, valid and enforceable." (FAXC, ¶ 85.) Contrary to Elizabeth's argument, the fourth cause of action does not specifically reference "Ms. Chung's claim for a declaratory judgment."

As Altva argues in opposition, "[i]t is elementary that questions relating to the formation of a contract, its validity, its construction and effect, excuses for nonperformance, and termination are proper subjects for declaratory relief." (*Fowler v. Ross* (1983) 142 Cal.App.3d 472, 478; see also *Foster v. Masters Pontiac Co.* (1958) 158 Cal.App.2d 481, 486 (stating same); see also *Caira v. Offner* (2005) 126 Cal.App.4th 12, 24 (stating same).) In reply, Elizabeth apparently concedes the issue, offering no argument in response. Elizabeth's demurrer to the fourth cause of action for declaratory relief is OVERRULED.

The Court will prepare the Order.

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Calendar line 4
Case Name: *Doe v. Support Systems Homes, Inc., et al.*
Case No.: 23CV410157

On January 19, 2023, plaintiff Jane Doe filed a complaint against defendants Support Systems Homes, Inc. ("SSH") and Filipos Markolefas ("Markolefas") (collectively, "Defendants"), asserting causes of action for declaratory relief, negligence, improper hiring, retention, supervision and employment, and intentional infliction of emotional distress. Markolefas[1] moves for a protective order permitting him to use a pseudonym and to have all identifying information redacted from all public filings in the case. (See Markolefas' memorandum of points and authorities in support of motion for protective order, p.1:22-24.) Markolefas contends that Civil Code section 3427.3 authorizes the Court to take all steps reasonably necessary to protect the privacy of employees of healthcare facilities and shield them from harassment. (*Id*. at p.1:24-26.) Defendant SSH opposes the motion.

Section 3427.3 states:

> The court having jurisdiction over a civil proceeding under this title shall take all steps reasonably necessary to safeguard the individual privacy and prevent harassment of a health care patient, licensed health practitioner, or employee, client, or customer of a health care facility who is a party or witness in the proceeding, including granting protective orders. Health care patients, licensed health practitioners, and employees, clients, and customers of the health care facility may use pseudonyms to protect their privacy.

(Civ. Code § 3427.3.)

However, the critical conditional statements are that this statute refers to "a civil proceeding **under this title**" and that the court takes steps to safeguard privacy and the prevention of harassment "of a health care patient, licensed health care practitioner, or employee, client, or customer of a health care facility **who is a party or witness in the proceeding**." The referenced title is Title 6 to Part 1 of Division 4 of the Civil Code referring to Interference with Access to Health Care. In 1994, the Legislature added Title 6 to "make it unlawful, and specify it is the tort of commercial blockade, to intentionally prevent ingress or egress to or from a health care facility, as defined, or to disrupt the normal functioning of a health care facility, as specified." (Stats. 1994, ch. 1193.) Civil Code section 3427.1 states that "[i]t is unlawful, and constitutes the tort of commercial blockade for a person, alone or in concert with others, to intentionally prevent an individual from entering or exiting a health care facility by physically obstructing the individual's passage or by disrupting the normal functioning of a health care facility." (Civ. Code § 3427.1.) There is no suggestion that the instant action concerns the tort of commercial blockade. Markolefas fails to establish that he is entitled to a protective order pursuant to Civil Code section 3427.3.

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[1] Markolefas filed the motion, identifying himself only as "John Doe." While the moving papers did not identify him as Markolefas, the reply brief's caption indicates that counsel was "Attorney for Defendant FILIPOS MARKOLEFAS ('JOHN DOE')."

Markolefas' motion for protective order is DENIED.

Counsel for defendant SSH shall prepare the final order. See Tentative Ruling. Court will prepare the final order.

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Calendar Lines 5 and 6
Case Name*:* *Lingsen Leung vs Tawa Supermarket, Inc. et al*
Case No.: 23CV415224

Plaintiff requests further responses to its requests for production Nos. 7-9, claiming that Defendants have not provided the original camera footage or indicated why they cannot do so and has not indicated whether camera footage before and after the incident ever existed and if so, why it does not exist now, or providing information regarding re-recording of footage. Defendants contend that they have complied with the requests actually made, as opposed to the requests now made of them.

Request No. 7

Plaintiff requested "any and all camera footage of the subject incident." Defendants have provided a cell phone recording of the original version, according to Plaintiff. Defendants state this complies with the request because the request does not define "camera footage" and the definition of digital copies allows for digital copies to be the original or "best copy." Defendant is correct that Plaintiff's request does not define camera footage to be only the original and Plaintiff has cited no legal authority to support its interpretation. Therefore, this request is DENIED.

Requests No. 8 and 9

Requests 8 and 9 are for camera footage both one hour before and after the incident. recorded by the DVR. Defendant has responded that it has "conducted a reasonable search and diligent inquiry" and "is not in possession, custody, or control of any non-privileged responsive documents and is not aware of who would be in possession of such documents if any exist." Defendants contend that this complies with CCP § 2031.230 which requires that when a party cannot comply with the request, it "specify whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been or is no longer, in the possession, custody, or control of the responding party."

Plaintiff states that it requested Defendants to provide them how often the DVRS records over older footage and that Defendants have failed to do so. Plaintiff also complains that Defendants have not stated whether or not the footage previously existed. CCP § 2031.230 requires a party to specify whether the footage before and after the incident "has never existed, has been destroyed, has been lost, misplaced, or stolen." For Defendants to simply state that they don't know who would have the footage *if* it existed is not sufficient. It must state whether it existed and if so, why it no longer exists now, or at a minimum why it does not know if it ever existed. In this case, the question is not about how would have the footage, but rather why there is currently no footage. This request is GRANTED.

Because requests 8 and 9 do not request anything regarding whether or how often footage is recorded over, Defendants are not required to give such information unless it is part of the explanation for why the footage no longer exists. That Plaintiffs may have asked Defendants questions about the re-recording of footage and Defendants may have indicated they would provide such information, is not the same as Plaintiff requesting such information

as part of its propounded discovery. Plaintiffs are required to be specific in their questions. This part of Plaintiffs motion to compel is DENIED.

The Court cautions the parties, however, that the Court takes a dim view of needless fighting, particularly where such information can easily be obtained through other discovery methods, such as deposition. To argue over such things wastes the time of the parties and the Court and is not appreciated. Sanctions are denied to both parties.

The Court denies the motion with respect to No. 7 and grants it for Nos. 8 and 9, only to the extent that Defendants must provide further compliant responses to whether the footage "has [n]ever existed, has been destroyed, has been lost, misplaced, or stolen." Defendants shall submit the final order.

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Calendar Line 7
Case Name: *Teik Pang vs Ford Motor Co., et al*
Case No.: 22CV408498

Plaintiff brings a motion for attorney fees to which Defendant Ford Motor Company. (Defendant or Ford) raises several objections.

Defendant's first objection is that any fees incurred with respect to the dealership, Frontier Ford, should be deducted because the claim against Frontier was negligent repair, a cause of action for which no attorney fees are allowed. In support of this claim, Defendant cites *Akins v. Enterprise Rent-A-Car Co.* (2000) 79 Cal.App.4th 1127, 1133 which holds that "[w]hen a cause of action for which attorney fees are provided by statute is joined with other causes of action for which attorney fees are not permitted, the prevailing party may recover only on the statutory cause of action." Plaintiff does not dispute the holding of *Akins*, but counters that "'[s]uch fees need not be apportioned when incurred for representation on an issue common to both causes of action in which fees are proper and those in which they are not.' (*Bell, supra*, 82 Cal.App.4th at p. 687.) Moreover, '[a]pportionment is not required when the claims for relief are so intertwined that it would be impracticable, if not impossible, to separate the attorney's time into compensable and noncompensable units.' (*Ibid.*)." *Santana v. FCA US, LLC* (2020) 56 Cal. App. 5th 334, 349. In this case, Plaintiff is correct that the claim against Frontier for negligent repair is so intertwined with the Song Beverly claim against Ford that apportionment is impracticable, if not impossible. Simply deducting all fees related to the Dealership does not address the issue that the purpose for taking such actions related to Frontier was also necessary for litigation of the claims against Ford. This objection to the fee request is denied.

Defendant next objects that the hourly rates requested are too high for lawyers in Santa Clara County of similar skill and experience. The standard for determining the reasonable hourly rate is the reasonable market value of the services. The Court may consider the actual hourly billing rate and may consider other factors in its discretion in determining a reasonable hourly rate that is prevailing in Santa Clara County for similar services. The Court considered the actual rates represented by Defense counsel, whose offices are located in Los Angeles, and the Court's experience with reasonable rates in Santa Clara County for lawyers of similar experience, skill and subject matter. The Court finds the rates set forth in the supporting declarations are too high for this area for similar experience, skill and services and notes that Plaintiff did not include any evidence specific to rates in Santa Clara County. The Court awards $500/hr for Mr. Saeedian (39 hours), $400/hr for Mr. Urner (.3 hours), and $150/hr. for Mr. Acosta (17.8 hours). This reduces the fees by $9,422.50.

Defendant next objects that Plaintiff has billed too much for work that could have been done by a non-lawyer, for pre-complaint work, and for bringing this motion. With respect to the claim regarding "secretarial" work, Defendant asks for a reduction of $5,241.50. But it fails to persuade that the tasks were unreasonably billed by a lawyer or legal clerk. Communicating about surrender of the vehicle, for example, could very well require the gravitas of a lawyer or legal clerk, as opposed to a secretary. Yet, certainly some tasks are clerical and should not have been included, such as running a Carfax report. Of the $5,241.50 claimed by Defendant, the Court will deduct 20% of these costs, for a reduction of $1,048.30.

Defendant provides no legal authority to support its claim that Plaintiff cannot recover for pre-complaint work or for fees incurred for trying to recover attorney fees. Those objections are denied.

The Court does not reimburse for anticipatory time, such that $695 will be deducted from Plaintiff's claim for the time claimed for the hearing on this motion.

Plaintiff has provided support for its costs in Ex. A to the Decl of Saeedian filed in reply. Those costs are GRANTED.

In conclusion, Plaintiff is entitled to fees and costs in the amount of $21,647.24 ($32,813.04 - $9,422.50 – $1048.30 - 695 = $21,647.24).

The evidentiary objections are overruled.

Plaintiff shall submit the final order.

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